

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**OMAR KAZERY**

**FILED**

**MAR 20 2008**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**APPELLANT**

**VS.**

**NO. 2006-KA-0390-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**BRIEF FOR THE APPELLEE**

The grand jury of Hinds County indicted defendant, Omar Kazery a/k/a Saumel D. Kazery for Felony Child Abuse in violation of *Miss. Code Ann.* § 97-5-39(2). (Indictment, cp.6). After a trial by jury, Judge Tomie T. Green, presiding, the jury found defendant guilty. (C.p.66). After a pre-sentence investigation the trial court sentenced defendant to 20 years, 15 suspended, 5 to serve plus 4 years post-release supervision subject to certain conditions. (Sentence order, c.p.69)

After denial of post-trial motions this instant appeal was timely noticed.

## **STATEMENT OF FACTS**

Defendant was angry at a small three year old. He hit her around the head, neck and face causing swelling and extensive bruising. The little girl testified he yanked out some of her hair.

Defendant asserted it was another child that lived in the home that caused the injury.

The jury heard the conflicting testimony and found defendant guilty.

## **SUMMARY OF THE ARGUMENT**

### **I.**

**THERE WAS LEGALLY SUFFICIENT EVIDENCE OF  
ADEQUATE WEIGHT AND CREDIBILITY TO SUPPORT THE  
JURY VERDICT OF GUILTY.**

## **ARGUMENT**

### **I.**

#### **THERE WAS LEGALLY SUFFICIENT EVIDENCE OF ADEQUATE WEIGHT AND CREDIBILITY TO SUPPORT THE JURY VERDICT OF GUILTY.**

In this singular allegation of error defendant seeks the relief of remand for a new trial. The claim of error is, generally, the evidence was insufficient and lacked adequate weight to support the verdict.

¶ 11. As to a denial of a motion for directed verdict or a motion for JNOV, the standard of review we must employ has been stated as:

We must, with respect to each element of the offense, consider all of the evidence-not just the evidence which supports the case for the prosecution-in the light most favorable to the verdict. The credible evidence which is consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

Le v. State, 913 So.2d 913, 956-57 (¶ 163) (Miss.2005) (quoting Wetz v. State, 503 So.2d 803, 807 (Miss.1987)). However, when reviewing the weight of the evidence, the following standard must be utilized:

A motion for a new trial is addressed to the sound discretion of the trial judge who may grant a new trial if he deems such is required in the interest of justice or [if] the verdict is contrary to law or the weight of the evidence. The trial judge should not order a new trial unless he is

convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice.

In reviewing this claim, this Court must accept as true the evidence favorable to the State. This Court will reverse only when it is convinced that the trial judge has abused his discretion. Further, where there is conflicting testimony, the jury is the judge of the credibility of the witnesses.

Le, 913 So.2d at 957 (¶ 164) (quoting Wetz, 503 So.2d at 812).

*Gordon v. State*, 2008 WL 709576 (Miss.App. 2008).

Looking to the transcript there was an abundance of testimony, physical and photographic evidence for each element of the offense. While there was conflicting testimony, as in most trials, the jury heard all the evidence, saw the demeanor of the witnesses and came to a conclusion.

The witness was merely three years of age and medical attention was received within hours of the injury. Police, medical and forensic interviews were conducted and recorded for review.

Based upon the evidence presented and the standard of appellate review, the State would ask this court to deny any relief based upon the sufficiency or the weight and credibility of the evidence.



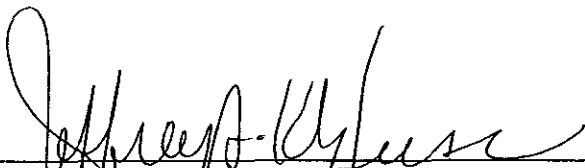
## CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdict of the jury and sentence of the trial court.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

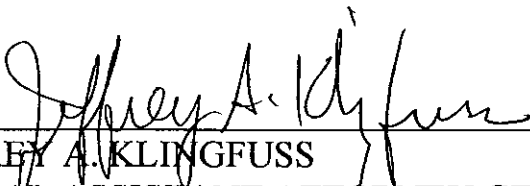
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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Circuit Court Judge  
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District Attorney  
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This the 20th day of March, 2008.

  
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