

**COPY**

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

**NO. 2006-KA-00390-COA**

**FILED**

**MAR 28 2008**

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SUPREME COURT  
COURT OF APPEALS**

**SAMUEL OMAR KAZERY**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF THE  
1<sup>ST</sup> JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

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**REPLY BRIEF BY APPELLANT**

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**OFFICE OF THE PUBLIC DEFENDER,  
HINDS COUNTY, MISSISSIPPI  
William R. LaBarre, MSB No. [REDACTED]**

**PUBLIC DEFENDER  
Virginia L. Watkins, MSB. No. [REDACTED]**

**Assistant Public Defender  
Post Office Box 23029  
Jackson, Mississippi 39225  
Telephone: 601-948-2683  
Facsimile: 601-948-2687**

***Samuel Omar Kazery v. State of Mississippi***

**Cause No. 2006-KA-00390-COA**

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## REPLY BY APPELLANT

**I. The evidence adduced at trial was insufficient as a matter of law and lacked adequate weight to prove beyond a reasonable doubt that Samuel Omar Kazery feloniously abused Shaylyn Buchanan.**

With all due respect for counsel opposite, honorable counsel for the state fails to examine the facts of this record, for it is upon the facts adduced at trial that Mr. Kazery now relies.

The state was required to prove beyond a reasonable doubt that it was Mr. Kazery who inflicted the felonious injuries upon three-year-old Shaylyn Buchanan. When such an issue is raised, this Court's decisions compel review of all evidence in a light most favorable to the prosecution. *Bush v. State*, 895 So.2d 836 (Miss. 2005) "If the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and to a theory of innocence ... then a reasonable jury must necessarily entertain a reasonable doubt." *Clark v. Procunier*, 755 F.2d 394, 396 (5th Cir.1985).

Mr. Kazery avers that the state failed to meet the high burden to overcome the reasonable doubt standard and therefore, his conviction must be reversed based on the following facts.

Consider:

- Testimony by Shaylyn and remarks by Shaylyn to others that identified anyone *but* Mr. Kazery *unless* the child's grandmother or other maternal relatives were present; (T. 139; 196-197)
- Testimony by Leah McPherson that her relationship with Mr. Kazery was no more than three months old and her mother cared for Shaylyn, so that Mr. Kazery remained a virtual stranger, not someone to whom the child would go after experiencing a bathroom accident, (T. 83; 96) and
- The fact that another adult, the child's cousin, Jason Scott [also identified in the record as Jason West] was also present at the trailer, an adult with whom Shaylyn was familiar. (T. 122).

Ms. McPherson indirectly implicated herself during testimony, for although she testified openly as to her intravenous drug use that night (T. 88-90), she also testified that her daughter would

have come to her after a bathroom accident. Mr. Kazery submits that Ms. McPherson is just as likely, in the throes of drug-induced intoxication, to have pummeled her child and pulled her hair as either Mr. Kazery or her cousin Jason Scott.

Alternatively, Mr. Kazery asserts that the evidence is insufficient as a matter of law to support the verdict of the jury. “Mere suspicion will not sustain a verdict.” *Williams v. State*, 98 So.2d 338 (1923). In that case, Williams was accused of possession of intoxicating liquors; the complaining witness *thought* the white liquid contained in the bottle was moonshine, but did not taste it or smell it, although others who drank from the bottle seemed livelier and more talkative after having drunk from the bottle.

In *Hedrick v. State*, 637 So.2d 834 (Miss. 1994), this Court reversed Hedrick’s conviction for vehicular homicide based on the insufficiency of proof that the accused was intoxicated at the time of the accident. The Court held the state failed to prove that Hedrick was intoxicated when he hit and killed Edgar Spruille, a pedestrian, late one night in Claiborne County. An intoxilyzer test taken after his arrest showed a blood intoxication level of 13%, but Hedrick testified that he had no alcohol until *after* he discovered he had hit and killed Spruille. *Id.*, at 836. The state offered no witnesses to demonstrate Hedrick had been drinking alcohol before the accident, just the intoxilyzer test results and thus, reversed and ordered the discharge of Mr. Hedrick. “In order to sustain a guilty verdict, there must be sufficient evidence that would allow a rational trier of fact to find the essential elements of the offense beyond a reasonable doubt.”[internal citations omitted]. *Id.*, at 839.

Mr. Kazery would assert that while the state certainly proved Shaylyn was injured that night, the evidence was insufficient as a matter of law to demonstrative beyond a reasonable doubt that he was the adult who abused her.

**Certificate of Service**

I, the undersigned attorney, do hereby certify that I have this day caused to be delivered via hand delivery a true and correct copy of the foregoing *Reply Brief by Appellant*, to the following:

Honorable Robert Shuler Smith  
District Attorney, Hinds County  
Post Office Box 22747  
Jackson, Mississippi 39225


Honorable Tomie T. Green  
Circuit Judge  
P.O. Box 327  
Jackson, Mississippi 39205

And via United States Mail, postage prepaid, to:

Honorable James Hood III  
Attorney General  
Charles W. Maris Jr., Esq.  
Assistant Attorney General  
Criminal Litigation Division  
Post Office Box 220  
Jackson, Mississippi 39205-0220

Mr. Samuel Omar Kazery  
c/o 346 Heritage Place  
Jackson, Mississippi 39212

So certified, this the 28<sup>th</sup> day of March, 2008.

  
Virginia L. Watkins, MSB No. [REDACTED]  
Certifying Attorney