

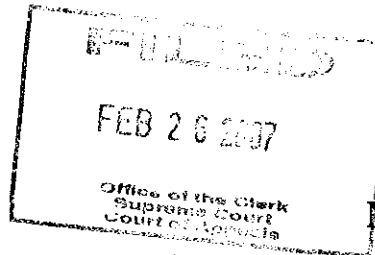
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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JOHNNY W. LADD**

**APPELLANT**

**VS.**



**NO. 2006-KA-00429-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**NO. 2006-KA-00429-COA**

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**STATEMENT OF THE CASE**

The grand jury of Neshoba County indicted defendant, Johnny W. Ladd, for the crime of Statutory Rape in violation of *Miss. Code Ann.* §§ 97-3-65(1)(a) & 97-3-65(2)(b). After a trial by jury, Judge Marcus D. Gordon presiding, the jury found defendant guilty beyond a reasonable doubt. The trial court sentenced defendant to 15 years, 5 suspended with 5 years post-release supervision in the custody of the Mississippi Department of Corrections. (C.p. 30).

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

## **STATEMENT OF FACTS**

After a night of hay riding with young friends and relatives defendant went into the living room where several children were sleeping. He removed the panties of his victim, and penetrated her with his penis. He left seminal fluid which was linked to him through expert testimony.

The jury heard much evidence and testimony and deliberated 25 minutes in finding defendant guilty of statutory rape.

## **SUMMARY OF THE ARGUMENT**

### **Issue I.**

**THE TRIAL COURT WAS WITHIN DISCRETIONARY LIMITS IN RULING THE TESTIMONIAL EVIDENCE WAS IRRELEVANT.**

### **Issue II.**

**THE TRIAL COURT DID NOT ERR IN DENYING FUNDS FOR EXPERT ASSISTANCE.**

### **Issue III.**

**THE SUPPOSED IMPEACHMENT SUBJECT WAS IRRELEVANT TO THE CHARGE AND ON A IMPERMISSIBLE MATTER.**

## ARGUMENT

### Issue I.

#### THE TRIAL COURT WAS WITHIN DISCRETIONARY LIMITS IN RULING THE TESTIMONIAL EVIDENCE WAS IRRELEVANT.

In this initial allegation of error counsel asserts when the trial court mistakenly sustained the State's objection to defendant's testimony about his W-2 forms being purloined... tr. 197-98.

The State objected on relevancy and the trial court sustained the objection.

¶ 25. The trial court has broad discretion in determining the relevance of evidence. Bryant, 850 So.2d at 1134(¶ 14). Upon review, we find that the trial court did not err regarding the testimony of Jeri Weaver. Thus, this issue lacks merit.

*Lee v. State*, 944 So.2d 56 (Miss.App. 2005).

In a diffuse, attenuated argument defendant claims the W-2 evidence was relevant. However this was not raised at trial, – nor in the motion for new trial.

It is the succinct position of the State the trial court acted within its broad discretion in sustaining the State's objection. There being no further showing, or proffer or preservation of the alleged error by defense counsel there is no merit to this claim.

Consequently, no relief should be granted based on this supposed error.

## Issue II.

### THE TRIAL COURT DID NOT ERR IN DENYING FUNDS FOR EXPERT ASSISTANCE.

Continuing the challenge to his conviction defendant asserts his counsel didn't inform the trial court of his indigent status and he was, therefore, denied funds for a DNA expert to assist in his defense.

Looking to the record, trial counsel filed a written motion for funds to secure a DNA expert.

First, the motion clearly brings to the trial court's attention the indigent status of defendant (twice) and his in forma pauperis designation. (C.p. 10).

Next, the standard of review applicable to such a question on appeal was comprehensively laid out:

¶ 32. "The standard of review of the trial court's denial of expert assistance is that an abuse of discretion occurred such that the defendant was denied due process whereby the trial was fundamentally unfair." *Richardson v. State*, 767 So.2d 195, 197(¶ 7) (Miss.2000) (citing *Coleman v. State*, 697 So.2d 777, 780 (Miss.1997)). A defendant may seek state funds for DNA analysis even though the State declines to use the DNA evidence in prosecuting the case. *Richardson*, 767 So.2d at 198 (¶ 11). The Mississippi Supreme Court has applied the three factors articulated in *Ake v. Oklahoma*, 470 U.S. 68, 77, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985), in determining whether a criminal defendant was entitled to an independent expert to evaluate DNA evidence. *Coleman*, 697 So.2d at 782.

The first [factor] is the private interest that will be affected by the action of the State. The second is the governmental interest that will be affected if the safeguard is provided. The third is the probable value of the additional or



substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided.

Ake, 470 U.S. at 77, 105 S.Ct. 1087. The determination of whether the State must pay for DNA experts or analysis for the defense must be made on a case-by-case basis. Richardson, 767 So.2d at 198 (¶ 12). A defendant cannot secure DNA experts or analysis by making “undeveloped assertions” that the evidence would be helpful, rather, the State is not required to pay for DNA testing unless there is a showing that it would “significantly aid” the defense. Id. at 197, 198 (¶ 7, ¶ 12).

*Brink v. State*, 888 So.2d 437 (Miss.App. 2004).

Now, looking again to the record, the motion for expert assistance merely asserts there is DNA evidence in the case and they want an expert. There is no assertion. Certainly not a developed argument and not showing of how it would significantly aid the defense. (C.p. 10-11).

Absent such developed rationale and how the expert would aid the defense the trial court cannot now be held in error for denying the funds for expert assistance.

There is no merit to this allegation of error and all requested relief should be denied.

### Issue III.

#### THE SUPPOSED IMPEACHMENT SUBJECT WAS IRRELEVANT TO THE CHARGE AND ON A IMPERMISSIBLE MATTER.

At trial defense counsel sought to impeach the testimony of the victim by trying to get in testimonial evidence during cross-examination of a nurse showing that the victim had previously had sexual intercourse.

The trial court ruled such evidence was irrelevant to the crime charged.

Sadly, this said same argument is oft raised and was recently decided giving a detailed legal analysis and rationale for review, to wit:

¶ 20. Rule 412(c) provides that, if the accused wishes to offer evidence of specific instances of the victim's past sexual behavior under subdivision (b), the accused must make a written motion, with a written offer of proof, not later than fifteen days before the scheduled trial date. However, the court may permit the motion to be made at a later time, including during the trial, if the court determines that the issue to which the evidence relates has newly arisen in the case, or if the court determines that the evidence is newly discovered and could not have been obtained earlier in the exercise of due diligence. M.R.E. 412(c)(1). If the court determines that the offer of proof contains evidence described in subdivision (b), then the court must hold a hearing in chambers to determine if the evidence is admissible. M.R.E. 412(c)(2). If the court concludes that the evidence is relevant and the probative value outweighs the danger of unfair prejudice, then the evidence is admissible to the extent that an order of the court specifies the evidence that may be offered and the areas in which the victim may be cross-examined. M.R.E. 412(c)(3).

¶ 21. Aguilar argues that the court's limitation of his cross-examination of K.P. about her past sexual behavior violated his fundamental constitutional right to impeach K.P.'s credibility. Aguilar admits that the evidence did not fit any of the three categories enumerated in Rule 412(b)(2). However, Aguilar contends that the cross-examination would

have shown that K.P. was lying about never having had sex and thus the evidence was impeaching and “constitutionally required to be admitted” under Rule 412(b)(1).

¶ 22. Aguilar recognizes that, for admissibility under Rule 412(b)(1), the other evidence of past sexual behavior must not only be constitutionally required to be admitted but must be admitted in accordance with subdivisions (c)(1) and (c)(2), and that he did not comply with those subsections. Since Aguilar failed to comply with subsections (c)(1) and (c)(2), there was no error in the court's limitation of Aguilar's cross-examination of K.P. about her past sexual history. *Levy v. State*, 724 So.2d 405, 409(¶ 18) (Miss.Ct.App.1999). This issue is without merit.

*Aguilar v. State*, 2006 WL 3490798, \*5 -6 (Miss.App. 2006).

The trial court *sub judice* came to the same conclusion based upon the same argument as in *Aguilar*.

There being no error in the ruling of the trial court below there is no merit to this last allegation of error and no relief should be granted.

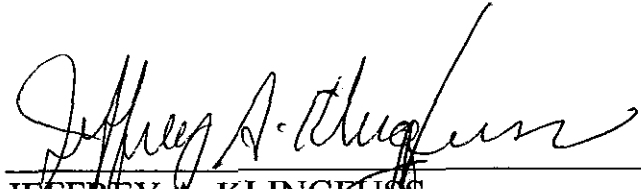
## CONCLUSION

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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This the 26th day of February, 2007.



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