

**SUPREME COURT OF MISSISSIPPI  
NO. 2006-KA-01957-SCT**

**AARON BISHOP**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**APPEAL FROM THE CIRCUIT COURT OF  
ATTALA COUNTY, MISSISSIPPI**

**REPLY BRIEF OF THE APPELLANT**

**ORAL ARGUMENT REQUESTED**

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COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
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REBUTTAL OF STATEMENT OF FACTS

The State's version of the facts is not only overly simplistic but actually erroneous in several different particulars. Contrary to the State's assertion at page 2 that "MB was not interviewed at the sheriff's department," she in fact was interviewed and did not disclose any abuse as discussed in our initial brief. This is also illustrated in the mother's testimony which can be found in the record at page 294. This misstatement of fact on behalf of the State is extremely relevant to the issue in this cause. Were the statements made by MB over the course of time reliable enough to be admitted into evidence?

In truth, the facts of this case undisputedly lend themselves to a conclusion that MB's statements morphed over time from excessive and improper interviewing techniques used over and over which lead to a distortion of MB's recollections.

The State's brief also implies that MB simply relayed statements which in fact is extremely misleading. Dr. Trudi Porter, whom the state claims simply confirmed that MB had told her she had been forced to perform oral sex on her father. In fact, she did

not believe that she could conclude that anything MB told her was in fact true, as she had to deviate from standard protocol and was only able to obtain the statement referred to by the State after MB had denied any such activity between her and her father and Dr. Porter had begun the use of leading questions. Dr. Porter's results were inconclusive to Dr. Porter herself and were not reliable.

### ARGUMENT

The State properly cites the twelve factor test which applies to any examination of whether or not the statements made by MB bear substantial indicia of liability to be admissible. Those factors are:

1. Whether there is an apparent motive to lie.

In this case, the mother left her husband with an obvious intent not to return and reported a very simple statement of a claim which only she overheard MB make. She clearly intended to obtain a divorce and the possibility is very real that the mother, in order to obtain a divorce and custody of MB, coaxed MB to make the statements at issue to others.

2. The declarant's general character.

In this case, MB had just turned four years old and was described as immature for her age. She was found not competent by the court upon the expert opinion of Dr. Trudi Porter that she was unable to distinguish between the truth and a lie and was uncommunicative.

3. Whether more than one person heard the statements.

When considering this factor, this Court must remember that the initial statements were only overheard by the mother, who obviously had a motive to lie. The statements subsequently made all built upon the foundation of those initial statements and changed greatly over time.

4. Whether the statements were spontaneous.

Only the mother claims that the statements were spontaneous.

5. The timing of the statements.

The statements initially made by MB to Christie are not inherently suspect, but one must consider Christy's immediate flight from the home and report to the sheriff's department without even discussing the statements with her husband. The statements made later on, including the absolutely horrific statements allegedly made to Ms. Donald, were made only after much time had passed, MB had been spoken with repeatedly by both investigators and members of her family and the expert testimony which was uncontradicted at trial was that because of the repeated interviewing of MB, the statements tend to become unreliable over time.

6. The relationship between the declarant and the witness.

This factor would probably weigh in favor of admissibility, but for the close relationship between MB and her mother at this time, and her mother's motivation to lie to obtain a divorce and custody of MB.

7. Possibility of faulty recollection by the declarant is remote.

Again, in this case, the possibility of faulty recollection is more likely than not, as agreed to by Dr. Porter as well as the defense's expert, Dr. Huffman. Repeated questioning of a child of this age and immaturity undoubtedly lead to the statements, which escalated over time to those which were clearly proven not to be true by the findings upon the physical examination.

8-9. Only Christie was certain MB made the statements, and her credibility is in question as discussed above.

10. The declarant's age and maturity.

Again, the declarant was barely four years old and immature for her age.

11. Whether suggested techniques were used in eliciting the statement.

As shown in the report of Dr. Huffman, her testimony and overall review of the record suggested that the techniques were used over and over again.


12. Whether declarant's age, knowledge and experience made it unlikely that the declarant fabricated.

Overwhelmingly, the evidence shows that many of the statements made by the defendant were not corroborated by the physical evidence and in fact it appears that the declarant MB created memories and beliefs which she put into statements which were simply not true. The trial court clearly committed an abuse of discretion in this case by allowing MB's hearsay statements to be admitted. Without these statements, the State had no case whatsoever.

CONCLUSION

For all of the above reasons, Aaron Bishop prays that this Court reverse and render the decision of the Circuit Court and order that the Defendant be immediately discharged from custody.

Respectfully submitted on this the 19<sup>th</sup> day of September, A. D., 2007.

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RAY T. PRICE  
Of Counsel for Appellant

CERTIFICATE OF SERVICE AS TO FILING

I, Ray T. Price, being the attorney of record for the Appellant in this case, certify that I have this date mailed, postage prepaid, the original and three copies of the foregoing Reply Brief of the Appellant to the Clerk of the Supreme Court, Supreme Court of Mississippi, P. O. Box 117, Jackson, MS 39205.

This the 19<sup>th</sup> day of September, A. D., 2007.

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RAY T. PRICE




CERTIFICATE

I, Ray T. Price, of counsel for Appellant, certify that I have this date mailed,  
postage prepaid, a true copy of the foregoing Reply Brief of Appellant to the following:

Hon. Clarence E. Morgan, III  
Attala County Circuit Court Judge  
P. O. Box 721  
Kosciusko, MS 39090

La Donna C. Holland, Esq.  
Attorney General  
P. O. Box 220  
Jackson, MS 39205-0220

This the 19<sup>th</sup> day of September, A. D., 2007.

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