

**COPY**

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

**TOWANDER DENISE BROADHEAD**

**APPELLANT**

**FILED**

**VS.**

**JUL 18 2007**

**NO. 2006-KA-2063-COA**

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

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**TOWANDER DENISE BROADHEAD**

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**VS.**

**NO. 2006-KA-2063-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

This is an appeal against a judgment of the Circuit Court of Jackson County, Mississippi, in which the Appellant, Towander Denise Broadhead, was convicted and sentenced for the felony crime of **MURDER**, Mississippi Code Annotated section 97-3-19(2)(E), Code of 1972.

**STATEMENT OF FACTS**

During the afternoon and evening of Sunday, February 29, 2004, Kenderick Broadhead (Kenderick) was having trouble counting to twenty. (Tr. 279). As he kept missing the number sixteen while he counted, his mother, Towander Denise Broadhead (Broadhead), hit him several times. (Tr. 278 - 426). Kenderick's sister, Royteshia, was living in the home. She told investigators and the jury that as Kenderick kept missing the number sixteen while he counted, Broadhead repeatedly hit him with her hand, a broomstick, a belt, a book, a rod from the window blinds, and she would also pick him up and drop him on the floor several times. (Tr. 279 - 284).

Kenderick died from subdural and subarachnoid hemorrhaging and the brain herniation which followed. (Tr. 387). Kenderick's body was found on the side of a road in Harrison County

near Gulfport. (Tr. 239-30 and 373).

On November 16, 2006 Broadhead was sentenced to serve LIFE in the custody of the Department of Corrections for the Murder of Kenderick Broadhead.

### **SUMMARY OF THE ARGUMENT**

#### **I.**

#### **THE TRIAL COURT COMMITTED NO ERR IN ALLOWING INTO EVIDENCE THE AUTOPSY PHOTOGRAPHS OF THE VICTIM.**

Mississippi Rule of Evidence 401 states: "Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mississippi Rule of Evidence 402 states: All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Mississippi, or by these rules. Evidence which is not relevant is not admissible.

Mississippi Rule of Evidence 403 states: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

#### **II.**

#### **SUFFICIENT EVIDENTIARY FOUNDATION WAS LAID REGARDING ADMISSION OF THE RECORDED TELEPHONE CONVERSATION OF THE APPELLANT.**

Mississippi Rule of Evidence 901(b) states: By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(b)(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(b)(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

## THE ARGUMENT

### PROPOSITION I.

#### **THE TRIAL COURT COMMITTED NO ERROR IN ALLOWING INTO EVIDENCE THE AUTOPSY PHOTOGRAPHS OF THE VICTIM.**

Mississippi Rule of Evidence 401 states: “Relevant Evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

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Mississippi Rule of Evidence 403 states: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Exhibit 40, introduced during the trial, is an autopsy photograph of Kenderick’s chest, depicting internal injuries of Kenderick’s upper chest area. (Tr. 381). Exhibit 41 introduced during trial is an autopsy photograph of Kenderick’s skull, depicting internal head injuries of Kenderick Broadhead. (Tr. 381). The aforementioned were entered into evidence during the expert testimony of Dr. Paul McGarry. The photographs depict the kind of harm associated with that which Kenderick died from, subdural and subarachnoid hemorrhaging, and the brain herniation which followed. (Tr. 385 - 388).

The State contends that this evidence was relevant and necessary. The judge ruled that this evidence’s probative value was not substantially outweighed by its potential danger of prejudice. (Tr. 381).

Judgements of the trial courts come to the [appellate] court clothed with a presumption of correctness, and it is the burden of the appellant to overcome that presumption. King v. State, 857 So.2d 702 (Miss. 2003).

The state would submit that this issue brought by the Appellant is therefore lacking in merit.

## **PROPOSITION II.**

### **SUFFICIENT EVIDENTIARY FOUNDATION WAS LAID REGARDING ADMISSION OF THE RECORDED TELEPHONE CONVERSATION OF THE APPELLANT.**

The state introduced Exhibit 26, a compact disk recording, and Exhibit 27, a transcript, which were of a telephone conversation between the Appellant and someone named Cliff. Appellant stated in a response to a question from Cliff, "cause I murdered my child." (Tr. 307 - 313).

Mississippi Rule of Evidence 901(b) states: By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(b)(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(b)(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

By analogy, as with Wilburn v. State, 856 So.2d 686, 690 (Miss. App. 2003), the Court held that witnesses were in a position to recognize defendant's voice on audio tape of controlled purchase of drugs, and thus tape was properly identified and authenticated at trial for sale of cocaine; police officer who set up purchase testified that he had known defendant for several years, officer in charge of narcotics unit testified that he had known defendant for over 10 years, and two confidential informants who conducted and recorded the purchase testified that they had known defendant for one year. Witness, Investigator Richard Raider, testified that he was present during the interview of Broadhead, and that he was in the adjacent room operating the VCR and watching the interview over the TV. (Tr. 305). Therefore, Investigator Richard Raider was "in a position to recognize defendant's voice on audio tape" as defined in Wilburn v. State, 856 So.2d 686 at 690.

Investigator Richard Raider testified to the working order of the computer recording process used to produce the tape of the Appellant and showed that the process produced an accurate result. (Tr. 306 - 316).

The state would submit that this issue brought by the Appellant is therefore lacking in merit.


**CONCLUSION**

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

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Deshun T. Martin, 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 18th day of June, 2007.



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