

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

**CURTIS LEE WILLIAMS**

**APPELLANT**

**VS.**

**FILED**  
**NOV 15 2007**  
OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**NO. 2007-KA-0143-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: JEFFREY A. KLINGFUSS**  
**SPECIAL ASSISTANT ATTORNEY GENERAL**  
**MISSISSIPPI BAR NO [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL**  
**POST OFFICE BOX 220**  
**JACKSON, MS 39205-0220**  
**TELEPHONE: (601) 359-3680**

## **TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>STATEMENT OF THE CASE .....</b>	<b>1</b>
<b>STATEMENT OF FACTS .....</b>	<b>3</b>
<b>SUMMARY OF THE ARGUMENT .....</b>	<b>4</b>
<b>ARGUMENT .....</b>	<b>5</b>
<b>Issue I.</b>	
<b>THERE WAS LEGALLY SUFFICIENT EVIDENCE         OF VALUE TO SUPPORT THE VERDICT GUILTY         OF GRAND LARCENY. ....</b>	<b>5</b>
<b>CONCLUSION .....</b>	<b>9</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>10</b>

## **TABLE OF AUTHORITIES**

### **STATE CASES**

<b>Brooks v. State, 748 So.2d 736, 741 (Miss.1999) .....</b>	<b>7</b>
<b>Ellis v. State, 469 So.2d 1256, 1259 (Miss. 1985) .....</b>	<b>5</b>
<b>Johnson v. State, 882 So.2d 786 (Miss.App. 2004) .....</b>	<b>7</b>
<b>Nelson v. State, 839 So.2d 584 (Miss.App. 2003) .....</b>	<b>5</b>

### **STATE STATUTES**

<b>Miss. Code Ann. §§ 97-17-33 .....</b>	<b>1</b>
<b>Miss.Code Ann. § 97-17-43 (Rev.2000) .....</b>	<b>5</b>

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

**CURTIS LEE WILLIAMS**

**APPELLANT**

**VS.**

**NO. 2007-KA-0143-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

The grand jury of DeSoto County indicted defendant, Curtis Lee Williams for Business Burglary and Grand Larceny as an Habitual Offender in violation of *Miss. Code Ann.* §§ 97-17-33, 97-17-41 & 99-19-81. (Indictment, cp.10-11). After a trial by jury, Judge Robert P. Chamberlin, presiding, the jury found defendant guilty of both charges. (C.p.80). Subsequently, the State put on proof and the trial court did find defendant to be an habitual offender within the meaning of the statute. Consequently, defendant was sentenced to seven years on the business burglary, five years on the grand larceny, consecutive to each other. Additionally defendant was assessed fine, restitution and costs. (Sentence order, cp. 88-89).

After denial of post-trial motions and allowance for perfecting an out-of-time appeal, notice was timely filed.

## **STATEMENT OF FACTS**

A woman was awakened and heard a commotion outside her home, and watched as two men took tools from a shed and placed them into a vehicle. She, bravely, confronted the men, got good descriptions and the make, model, color and license plate of the get-away vehicle.

The next day Memphis police investigated and caught defendant stripping down a vehicle as described. A photo line-up was presented to the woman and she immediately identified defendant. (Tr. 66-69).

## **SUMMARY OF THE ARGUMENT**

### **Issue I.**

**THERE WAS LEGALLY SUFFICIENT EVIDENCE OF VALUE  
TO SUPPORT THE VERDICT GUILTY OF GRAND LARCENY.**

### **Issue II.**

**THERE WAS AMPLE CREDIBLE EVIDENCE SUPPORTING  
THE TRIAL COURTS DENIAL OF THE MOTION TO  
SUPPRESS THE PHOTO LINE-UP IDENTIFICATION.**

## ARGUMENT

### Issue I.

#### **THERE WAS LEGALLY SUFFICIENT EVIDENCE OF VALUE TO SUPPORT THE VERDICT GUILTY OF GRAND LARCENY.**

First defendant avers there was legally insufficient evidence supporting the that the value of the property was over \$250 dollars.

When looking at the sufficiency of the evidence to support granting or denying a jury instruction the reviewing courts have considered testimony of replacement value:

¶ 11. Petit larceny is a lesser-included offense of grand larceny if the stolen property in question is worth less than \$250. Miss.Code Ann. § 97-17-43 (Rev.2000). In this case, there was sufficient testimony for the jury to conclude the value of the carburetor exceeded \$250. There was evidence from the owner that the carburetor was worth \$1000, and the *replacement cost* \$400. Therefore, we find the lesser-included offense of petit larceny was not warranted.

*Nelson v. State*, 839 So.2d 584 (Miss.App. 2003)(emphasis added).

Additionally, value can be determined by in broad terms, not necessarily current value of the actual item.

Even if we accept that there were two separate crimes, the evidence of the prices that appellant sold the heaters for is not evidence of the true market value. As stated in *Barry*, the proper criterion is “ the price which the subject of the larceny would bring in open market-its ‘market value’ or its ‘reasonable selling price’ ”.... 406 So.2d 47 (Emphasis in original).

*Ellis v. State*, 469 So.2d 1256, 1259 (Miss. 1985).

Accordingly, and looking to the record it is replete with numerous references



to the replacement value, total value, market value of the stolen items. Tr. 110, 116, 117.

There being no merit to this allegation of error in fact or law no relief should be granted.

## **Issue II.**

### **THERE WAS AMPLE CREDIBLE EVIDENCE SUPPORTING THE TRIAL COURTS DENIAL OF THE MOTION TO SUPPRESS THE PHOTO LINE-UP IDENTIFICATION.**

Next, defendant challenges the ruling of the trial court in denying the motion to suppress the pre-trial photo line-up identification.

The standard of review applied to such a question, is:

¶ 9. When reviewing a trial court's findings regarding a pretrial identification which the defendant seeks to suppress, we consider "whether or not substantial evidence supports the trial court's findings that, considering the totality of the circumstances, in-court identification testimony was not impermissibly tainted," and we will disturb the findings of the lower court "only where there is an absence of substantial credible evidence supporting it." *Brooks v. State*, 748 So.2d 736, 741 (¶ 26) (Miss.1999).

*Johnson v. State*, 882 So.2d 786 (Miss.App. 2004).

Looking to the record of the suppression hearing the officer testified as to the manner of the line-up, how the photos were chosen, the similarities and the differences. Such similarities and differences in the style, color, background or other markings of the six varied photos were noted by the trial judge in his finding of facts and conclusion of law. (Transcript of denial of relief),

Therefore, based upon the rationale of *Johnson* there is credible evidence supporting the trial court's findings.

Additionally, and separately, there was a very persuasive in-court identification

(Tr. 81), supported by descriptive testimony of the time of day, conditions and circumstances surrounding her identification. Tr. 80-85. Such is legally sufficient and separate to support the identification. Especially in light that the pre-trial identification was not found to be impermissibly suggestive.

No relief should be granted on this second allegation of trial court error.

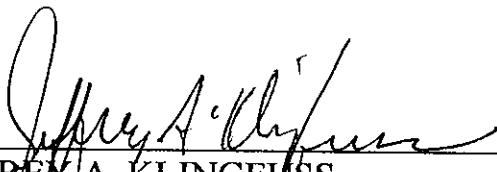
## CONCLUSION

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

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

  
\_\_\_\_\_  
JEFFREY A. KLINGFUSS  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## 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:

Honorable Robert P. Chamberlin  
Circuit Court Judge  
Post Office Box 280  
Hernando, MS 38632

Honorable John C. Champion  
District Attorney  
365 Loshier St., Ste. 210  
Hernando, MS 38632

W. Daniel Hinchcliff, Esquire  
Attorney At Law  
301 North Lamar St., Ste. 210  
Jackson, MS 39201

This the 15th day of November, 2007.

  
\_\_\_\_\_  
JEFFREY A. KLINGFUSS  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680