

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DOCKET NO. 2007-TS-00282-SCT

WILLIAM ROLLINS

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLANT

APPELLANT DOES NOT REQUEST ORAL ARGUMENT

BY: L. IVAN BURGHARD  
MSBAR NO. [REDACTED]  
BURGHARDLAW FIRM P.L.L.C.  
512 MONTICELLO STREET  
BROOKHAVEN, MS 39601  
601-823-7100

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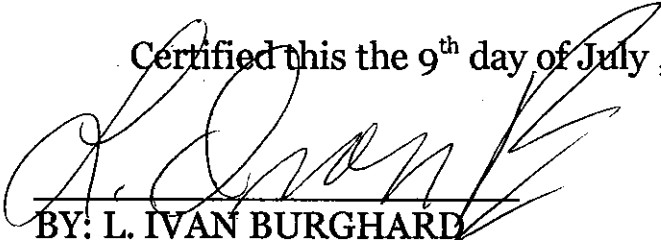
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. William Rollins
2. L. Ivan Burghard
3. Dee Bates
4. Diane Jones
5. Jim Hood
5. Hon. Mike Taylor

Appellant  
Attorney  
District Attorney  
Assistant District Attorney  
Attorney General  
Circuit Court Judge

Certified this the 9<sup>th</sup> day of July, 2007.



BY: L. IVAN BURGHARD

MSBAR NO. 100179

BURGHARDLAW FIRM P.L.L.C.

512 W. Monticello Street

BROOKHAVEN, MS 39601

601-823-7100

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE ISSUES .....	1
PRESENTED	
STATEMENT OF THE CASE .....	2
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	6
CONCLUSION .....	10
CERTIFICATE OF SERVICE .....	11

## TABLE OF AUTHORITIES

### CASES

**California v. Green**, 399 U.S. 149, 174 (1970),

**Kentucky v. Stincer**, 482 U.S. 730, (1987)

**Lee v. Illinois**, 476 U.S. 530, 540 (1986)

**People v. Algarin** (1986) 129 Misc 2d 1016, 498 NYS2d 977

**8 J. Pub.L.** 381, 384-387(1959)

### STATUTES

Miss. Code § 97-3-95 (1972)

Miss. Code § 97-5-23 (1972)

Miss. Code § 97-5-39 (1) (1972)

Section 617(d) Mississippi Rules of Criminal Procedure

## **STATEMENT OF THE ISSUES PRESENTED**

- I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL. THE DEFENDANT WAS DENIED HIS RIGHT UNDER THE SIXTH AMENDMENT'S GUARANTEE OF RIGHT OF CONFRONTATION BY THE FAILURE OF AUDIO EQUIPMENT AND THE FAILURE TO PROVIDE THE DEFENDANT WITH ANY VIDEO FEED TO VIEW THE TWO MINOR WITNESSES. THE DEFENDANT'S CONSTITUTIONAL RIGHTS GUARANTEED UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND MISSISSIPPI CONSTITUTION WERE CLEARLY VIOLATED.**

## STATEMENT OF THE CASE

The State brought charges against the Defendant, William Rollins, a male person over the age of eighteen years, who was twenty-four months or more older than S.R., a female child under the age of fourteen years. The State alleged that the Defendant did willfully, unlawfully and feloniously engage in sexual penetration with the said S.R. by inserting his finger into S.R.'s vagina contrary to and in violation of Section 97-3-95 of the Mississippi Code of 1972.

Count two charged the Defendant with the feloniously touching or rubbing with his hands the breast and/or genital area of one S.R., a female child under the age of sixteen (16) years, and/or allow said child to touch Defendant's nude or semi-nude body, for the purpose of then and there gratifying his lust or indulging his depraved licentious sexual desires, contrary to and in violation of Section 97-5-23 of the Mississippi Code of 1972, this being count two of the indictment;

Count three charged the Defendant with routinely playing strip poker with S.R. and a male child and/or by playing games with said children wherein William Rollins dared or instructed the said S.R. to touch the male child and/or William Thomas Rollins in a sexually inappropriate manner, contrary to and in violation of Section 97-5-39(1) of the Mississippi Code of 1972.

Finally, Count four charged that the Defendant, a male person over the eighteen years, did willfully and unlawfully commit acts which tended to contribute to the delinquency of one T.R. a male child under the age of eighteen (18) years, by routinely playing strip poker with T.R. and a female child and/or by playing games with said children wherein Defendant dared or instructed the said T.R. to touch the female child in a sexually inappropriate manner, contrary and in violation of Section 97-5-39 (1) of the Mississippi Code of 1972.

At trial on this matter, the Defendant was found guilty of all four counts charged against him and was sentenced to life in prison by the

On November 9, 2006, in Lincoln County Circuit Court, Defendant William Rollins faced the second day of trial for the above-referenced four charges with the Honorable Michael Taylor presiding. Two minor witnesses were scheduled to testify against the Defendant that day. Judge Taylor explained to the jury that the testimony of the children will be given in chambers and broadcast over the TV. [T. 181] He explains that "We have everything worked out and it should move just as smoothly as if he were in the courtroom." [T. 181]

Once the testimony of minor TR was begun, a series of technical problems developed; **First the jury made repeated complaints that they could not properly hear the testimony.** [T. 183, 217, 221, 227, 229, 230,231, 241 ] **Secondly, The Defendant was denied any video feed and ability to witness his minor accusers, a clear violation of the United States**

**Constitution without exception.** The Defendant William Rollins was in a separate room from the minor children provided only with a listening device and no functioning video equipment to watch the witnesses testimony. During breaks all electronic equipment was turned off, therefore Counsel for the Defendant had no knowledge that the video equipment was not functioning properly during the testimony. Breaks were taken at various intervals during the testimony to allow Counsel to confer with the Defendant when all of the equipment was turned off. [T. 191, 194, 206, 227, 241] Following the completion of the second minor witness's testimony taken in chambers, S.R. a minor female the Court broke for lunch. [T. 244] After finding out from the Defendant later during trial that the Defendant had no visual way of viewing the minor witnesses as promised by the State, Counsel for the Defendant immediately objected and made a Motion for Mistrial , [T.384]. Officer Harrison stated plainly that the Assistant District Attorney was confused and that there was no video feed for the Defendant to witness the testimony against him. [T. 386-387]



## SUMMARY OF THE ARGUMENT

The Trial Judge abused his discretion by failing to grant a mistrial and then later denying Motion for New trial when finding out that the Defendant was denied a video feed to witness the two minor children's testimony against him. From the record it is clear and uncontroverted that the State made a serious and unconstitutional error requiring immediate new trial in this matter without exception.

## ARGUMENT

THE DEFENDANT WAS ILLEGALLY DENIED HIS  
CONSTITUTIONAL RIGHTS UNDER THE CONFRONTATION CLAUSE.  
THE DEFENDANT RECEIVED NO VIDEO FEED TO WITNESS THE  
MINOR WITNESSES AND THE FAILURE OF AUDIO EQUIPMENT KEPT  
THE DEFENDANT AND JURY FROM ADEQUATELY HEARING THE  
TESTIMONY.

What was true of old is no less true in modern times. President Eisenhower once described face-to-face confrontation as part of the code of his hometown of Abilene, Kansas. In Abilene, he said, it was necessary to meet anyone face to face with whom you disagree. You could not sneak up on him from behind, or do any damage to him, without suffering the penalty of an outraged citizenry... In this country, if someone dislikes you, or accuses you, he must come up in front. He cannot hide behind the shadow. The phrase still persists, "Look me in the eye and say that." Given these human feelings of what is necessary for fairness, the right of confrontation contributes to the establishment of a system of criminal justice in which the perception as well as the reality of fairness prevails. Lee v. Illinois, 476 U.S. 530, 540 (1986)

The confrontation clause of the United States Constitution Amendment VI made applicable to the States through the Fourteenth Amendment provides that “In All criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.” The Defendant in the present case was denied any constitutional ability to confront the witnesses against him. A totality of the problems includes no video feed for the Defendant and repeated audio problems for the Defendant and the Jury. By any reasonable standard, the Defendant was denied any ability to be confronted by his witnesses.

The Right guaranteed by the confrontation clause of the U.S. Constitution includes not only a personal examination, but also (1) insures that the witness will give his statements under oath, , thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the greatest legal engine ever invented for the discovery of truth; and (3) permits the jury that is to decide the Defendant’s fate to observe the demeanor of the witness in making his statement, thus aiding the Jury in assessing his credibility: the combined effect of physical presence, oath, cross examination, and observation of demeanor by the trier of fact serves the purposes of the confrontation clause by insuring

that evidence admitted against and accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo-American Criminal Proceedings. The sixth Amendment gives a criminal Defendant the right “to be confronted with the witnesses against him.” This language “comes to us on faded parchment,” California v. Green, 399 U.S. 149, 174 (1970), with a lineage that traces back to the beginnings of western legal culture. There are indications that a right of confrontation existed under Roman law. The Roman Governor Festus, discussing the proper treatment of his prisoner, Paul, stated: “It is not the manner of the Romans to deliver any man up to die before the accused has met his accusers face to face, and has been given a chance to defend himself against the charges.” Acts25:6. It has been argued that a form of the right of confrontation was recognized in England well before the right to jury trial began, the right of confrontation was present: Its History and Modern Dress, 8 J. Pub.L. 381, 384-387(1959)

Furthermore, this sacred right as part of the American system of justice has been codified as part of Mississippi Rules of criminal procedure. Section 617(d) of the Mississippi Rules of Criminal Procedure states that the “Defendant the court, and the jury must be able to observe the demeanor of the child witness at all times during the questioning.”

In, Kentucky v. Stinger, 482 U.S. at 736, The Court found that “the state can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential trauma that allegedly justified the extraordinary procedure in the present case. That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs.”

In determining whether the use of “live” closed-circuit television in transmitting the testimony of the prosecution’s primary witness, a child, in a criminal trial for rape, sodomy, and sexual abuse, violated the Defendant’s right of confrontation under the sixth and fourteenth amendments of the United States Constitution and the State constitution, the State in People v. Algarin (1986) 129 Misc 2d 1016, 498 NYS2d 977 recognized that the closed-circuit television procedure to be used must be capable of providing the opportunity to observe the witness’ demeanor by providing clear and accurate sounds and images to the Defendant, the Judge, and the Public. Clearly in the present case, the Defendant was denied the use of a proper televised procedure and

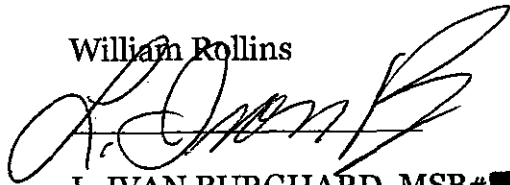
failed to provide accurate sounds to the jury, such that they complained frequently about not being able to hear. Further, the Defendant was denied all video ability to observe the demeanor of the minor witnesses.

### **CONCLUSION**

Clearly the appellant's constitutional right to be confronted by the minor witnesses against him was denied and a new trial should be ordered immediately.

Respectfully Submitted

William Rollins

A handwritten signature in black ink, appearing to read 'L. Ivan Burghard', is written over the printed name.

L. IVAN BURGHARD, MSB# [REDACTED]

BURGHARD LAW FIRM

512 W. Monticello Street

Brookhaven, MS 39601

601-823-7100

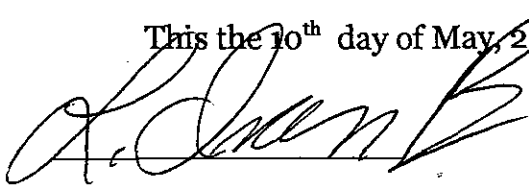
CERTIFICATE OF SERVICE

I, L. IVAN BURGHARD, Attorney for the Appellants do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief for the Appellant to the following:

Dewitt "Dee" Bates, Esq.  
District Attorney  
301 S. First St., Room 207  
Brookhaven, MS 39601

Jim Hood, Esq.  
MS Attorney General's Office  
P.O. Box 220  
Jackson, MS 39205  
Honorable Mike Taylor  
Circuit Court Judge District 14  
P.O. Box 1350  
Brookhaven, MS 39602

This the 10<sup>th</sup> day of May, 2006.

A handwritten signature in black ink, appearing to read "L. Ivan Burghard", written over a horizontal line.

L. Ivan Burghard, MSB# 100179  
BURGHARD LAW FIRM  
512 W. Monticello Street  
Brookhaven, MS 39601

601-823-7100