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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SHAWN MICHAEL SINGLETON — APPELLANT

VS. — NO. 2007-KA-0911

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2007-KA-0911**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

ANY VIOLATION OF THE CONFRONTATION CLAUSE WAS HARMLESS ERROR.

STATEMENT OF THE FACTS

The Defendant, Shawn Michael Singleton, Doris Vann, and Joseph "Joey" McHenry were riding around drinking and doing drugs when they decided to rob Elmer "Stubbie" Dobbins. (Exhibit 8). The Defendant and Ms. Vann got out of the vehicle outside Mr. Dobbins' residence and walked around to his shop. (Exhibit 8). The Defendant and Mr. Dobbins began "tusseling" during which the Defendant stabbed Mr. Dobbins two times with a screwdriver and Ms. Vann began beating him with a hammer. (Exhibit 8). After the Defendant stabbed Mr. Dobbins, he dropped to the ground and the Defendant went back to the car. (Exhibit 8). When Ms. Vann returned to the vehicle, she had cash. (Exhibit 8). The three individuals then continued to drive around making numerous stops to purchase drugs and alcohol. (Exhibit 8).

The Defendant was later arrested, tried, and convicted of capital murder. He was sentenced to serve life in the custody of the Mississippi Department of Corrections without the possibility of parole.

SUMMARY OF THE ARGUMENT

Any violation of the confrontation clause was harmless error in light of the overwhelming evidence of the Defendant's guilt.

ARGUMENT

The Defendant argues that he was denied his right to confrontation when the trial court allowed Sheriff Todd Kemp to testify that Ms. Vann's statement to police was consistent with the Defendant's statement to police. However, any error in allowing this testimony was harmless. The Mississippi Supreme Court has held on numerous occasions that a violation of the Confrontation Clause can be subjected to harmless error review. *Rogers v. State*, 796 So.2d 1022, 1028 (Miss. 2001); *Earl v. State*, 672 So.2d 1240, 1243 (Miss. 1996); and *Clark v. State*, 891 So.2d 136 (Miss. 2004). In fact, the *Clark* Court held that "even errors involving a violation of an accused's constitutional rights may be deemed harmless beyond a reasonable doubt where the weight of the evidence against the accused is overwhelming." 891 So.2d at 142 (quoting *Riddley v. State*, 777 So.2d 31, 35 (Miss. 2000). The *Clark* Court then quoted *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438, 89 L.E.2d 674 (1986) as follows:

> [w]e hold that the constitutionality improper denial of a defendant's opportunity to impeach a witness for bias, like other confrontation clause errors, is subject to *Chapman* harmless-error analysis ... Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Id.

In the case at hand, the evidence against the Defendant is overwhelming and includes his own

confession which reads in pertinent part as follows:

> On Tuesday, July 26, 2005, me and Doris Vann Freeman went to Mr. Shubbie Dobbins residence to borrow money. He gave the two of us a $20 bill. Then Doris and I went to Gilbertown. . . . We all three (Doris [Vann], Joey [McHenry], and myself) left the Melvin Store and while we were riding Doris and Joey started talking about going and robbing Mr. Shubbie. We got back to Mr. Shubbie's. Doris and I got out. The two of us stood around talking for a few minutes while Joey was in the car. Me and Shubbie got to tusseling and ended up in the back room of Mr. Shubbie's shop. Doris came on in behind me. Shubbie and I were still tusseling and in the process somewhere I picked up a screwdriver and Doris picked up a hammer. In the process of me stabbing Shubbie twice in the upper left abdomen, Doris was hitting him with a hammer. After the second time, I stabbed Shubbie, he fell. I left the room and went to the car. I do not remember what I did with the screwdriver. Doris stayed in the shop where Mr. Shubbie was for about 1 ½ to 2 minutes. I don't know if she was still hitting him with the hammer or what. I hollered her name and told her to come on. She (Doris) finally came back to the car and we left. We (Doris, Joey, and myself) went down the ro[ad] and I said I don't know if he is dead or not but he dropped after the second time I stabbed him. Doris then said if he ain't dead then he will be a vegetable because I beat him in the head. . . . Doris gave Joey a $100 bill and Joey got out of the car and got $100 worth of crack from Jerry . . . Doris gave me $100 and I went in and got $40 worth of crack. . . . Doris said we need to get rid of our clothes.

(Exhibit 8). Moreover, the Defendant's parents' car, a white Ford Taurus, was searched and a Clover Valley Root Beer can was found in it which is the same type of can found at the scene of the murder. (Transcript p. 109). Also, police were informed that a white Ford Taurus was seen leaving the victim's residence on the day of the murder. (Transcript p. 129). Furthermore, Mr. McHenry testified that when the Defendant and Ms. Vann got back into the vehicle, the Defendant was holding a screwdriver, had blood on his hand, and stated that he stabbed the victim two times. (Transcript p. 229 - 231). Mr. McHenry also testified that the Defendant and Ms. Vann did not have money when they got out of the car at the victim's house but did have money when they returned to the car. (Transcript p. 231).

Further, Sheriff Kemp's testimony regarding Ms. Vann's statement itself establishes that her statement was "merely cumulative of other overwhelming and largely uncontroverted evidence

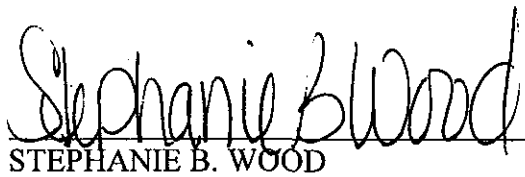
properly before the jury." Additionally, Sheriff Kemp's testimony regarding Ms. Vann's statement was not important to prosecuting the Defendant's case in any way as the Defendant's guilt was already established in substantial part by his own confession. As such, the admission of Sheriff Kemp's testimony regarding Ms. Vann's statement was harmless error and therefore, the Defendant is not entitled to reversal.

CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Shawn Michael Singleton as any violation of the confrontation clause was harmless error.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, Stephanie B. Wood, 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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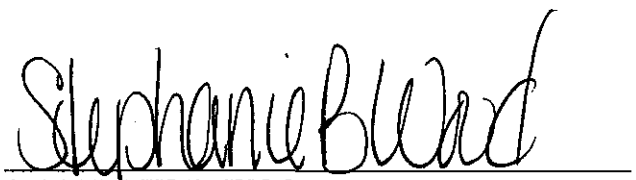
This the 25th day of January, 2008.



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