

**COPY**

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

**JOE LOUIS BROOKS**

**APPELLANT**

**VS.**

**FILED**

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SUPREME COURT  
COURT OF APPEALS**

**NO. 2007-KA-0978**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

- I. THE VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.
- II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING PROPOSED JURY INSTRUCTION D-3 AS THERE WAS NO EVIDENTIARY BASIS IN THE RECORD TO SUPPORT THE INSTRUCTION.

**STATEMENT OF FACTS**

Officer Mark Chandlee of the Meridian Police Department was in his patrol car at Meadowbrook apartment complex when he noticed a red Chevrolet traveling without a tag. (Transcript p. 101-02). Officer Chandlee performed a routine traffic stop. (Transcript p. 101-02). He approached the driver of the vehicle and asked if the driver knew why he was being pulled over. (Transcript p. 108). Officer Chandlee explained that the vehicle was being pulled over because it had no tag. (Transcript p. 108). He then asked the driver for his license and proof of insurance. (Transcript p. 103). The driver indicated that he did not have a license but gave the officer his name

and social security number. (Transcript p. 104).

Officer Chandlee described the driver's condition at the time of the stop as follows:

Before he exited the vehicle, as I was asking him about his driver's license, I could smell the smell of what I thought to be an alcoholic beverage coming from his facial area - - because I was leaning over to speak to him and we were in close proximity. His eyes also seemed to be red. And as he was giving me the numbers and speaking to me about why his license was not correct, he appeared to have slurred speech.

(Transcript p. 104). Officer Chandlee ran the driver's social security number and determined that he was Joe Brooks [hereinafter "Brooks"] and that he had two prior DUI offenses. (Transcript p. 104). When Officer Chandlee asked Brooks if he had anything to drink, Brooks replied that he had consumed one beer. (Transcript p. 104).

Officer Chandlee then decided to call for backup because of a "situation" with the passenger of the vehicle Mr. Brooks was driving. (Transcript p. 105). Officer Dareall Thompson arrived at the scene shortly after receiving the call. (Transcript p. 195-96). Officer Chandlee began questioning the passenger and Officer D. Thompson approached Brooks who was still seated in the driver's seat of the vehicle. (Transcript p. 196-97). When he approached Brooks, he could smell alcohol. (Transcript p. 197). He also noticed that Brooks' eyes were red. (Transcript p. 198). Brooks informed Officer D. Thompson that he drank half a beer. (Transcript p. 197). Both Brooks and the passenger were taken to the station and Officer D. Thompson waited with the car for the tow truck. (Transcript p. 124).

Officer Terrell Thompson was called to the police department as he was the certified DUI officer on duty. (Transcript p. 133-34). Officer T. Thompson testified that when he approached Brooks, he noticed a strong alcoholic beverage smell and noted that his speech was slurred. (Transcript p. 141). Brooks also told Officer T. Thompson that he consumed one beer. (Transcript p. 141). Brooks was unable to walk in a straight line from the bench he was seated on to the wall

he later leaned against. (Transcript p. 145). Brooks was asked to stand in the center of the booking area but instead leaned on the back wall. (Transcript p. 143). Brooks was asked three or four times to step away from the wall but he continued to prop up against the wall. (Transcript p. 144). Officer T. Thompson testified that Brooks was having problems keeping his balance. (Transcript p. 144). Brooks refused to participate in standard field sobriety tests and refused the Intoxilyzer 8000 test. (Transcript p. 145 and 150). Brooks never requested a blood test. (Transcript p. 178).

Brooks was later tried and convicted of Felony DUI. He was sentenced as a habitual offender to five years in the custody of the Mississippi Department of Corrections and a \$2000 fine.

### **SUMMARY OF THE ARGUMENT**

Brooks' verdict and sentence should be affirmed as the verdict was not against the overwhelming weight of the evidence. Further, the trial judge did not abuse his discretion in refusing Brooks' proposed jury instruction which informed the jury that it was not illegal to drink and drive. There was no evidentiary basis in the record to support the instruction as Brooks testified that he did not drink alcohol on the day in question.

### **ARGUMENT**

#### **I. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

[This court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an "unconscionable injustice."

*Pierce v. State*, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86

(Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993).

Brooks argues that “the evidence that [he] was under the influence was extremely weak.” (Appellant’s Brief p. 6). However, the record indicates that three different officers who came in contact with Brooks on the day in question testified regarding the signs and indications that he was under the influence. First, the officer making the initial traffic stop testified that Brooks smelled of alcohol, had red eyes, and slurred speech. (Transcript p. 104). He further described Brooks’ eyes as “bloodshot” and stated that “[h]is words were - - kind of ran together, and he talked kind of thick in the mouth.” (Transcript p. 104 and 108). The officer further testified that he had an opportunity to speak with Brooks subsequent to the traffic stop and noticed that he did not smell of alcohol, did not have red or bloodshot eyes, and spoke clearly. (Transcript p. 130). The other officer on the scene also testified that Brooks smelled of alcohol and had red eyes. (Transcript p. 197-98). Moreover, the certified DUI officer on duty also testified that Brooks smelled of alcohol and had slurred speech. (Transcript p. 141). He further testified that after speaking with Brooks subsequent to the day in question, he could testify to a “clear difference” in his speech on the day in question and the subsequent time he spoke with him. (Transcript p. 143). Additionally, he testified that Brooks was leaning against a wall, having problems keeping his balance, and could not walk in a straight line. (Transcript p. 143-45).

Brooks further argues that “the only significant evidence that [he] was under the influence came from Officer Terrell Thompson” who “[a]lthough he mentioned none of this specifically in his report at the time, almost two years and several hundred suspects later, he remembers Brooks could not maintain his balance and had to lean up against the wall to keep from falling.” (Appellant’s Brief p. 7). However, it is well-established that the jury is the sole judge of the weight and credibility of

the witnesses. *Miller v. State*, 634 So.2d 127, 129 (Miss.1994). Thus, the trial court properly denied Brooks' motion for a new trial.

## **II. THE TRIAL COURT PROPERLY REFUSED PROPOSED JURY INSTRUCTION D-3.**

Jury instructions are within the sound discretion of the trial court. *Shumpert v. State*, 935 So.2d 962 (Miss. 2006) (citing *Goodin v. State*, 787 So.2d 639, 657 (Miss. 2001)). Mississippi law is "well-settled that jury instructions are not given unless there is an evidentiary basis in the record for such." *Fairchild v. State*, 459 So.2d 793, 800 (Miss.1984) (citing *Colburn v. State*, 431 So.2d 1111, 1114 (Miss.1983) and *Johnson v. State*, 416 So.2d 383, 388 (Miss.1982)) (*emphasis added*). Further, it has been held with regard to jury instructions:

The standard of review is "whether an issue should be submitted to the jury is determined by whether there is evidence, which, if believed by the jury, could result in resolution of the issue in favor of the party requesting the instruction. Conversely, only where the evidence is so one-sided that no reasonable juror could find for the requesting party on the issue at hand may the trial court deny an instruction on a material issue."

*Gill v. State*, 924 So.2d 554, 556 (Miss Ct. App. 2005) (quoting *Walls v. State*, 672 So.2d 1227, 1230 (Miss. 1996)).

The proposed instruction "inform[ed] the jury that it is not illegal to drink and drive." (Appellant's Brief p. 7). Brooks argues that he was "entitled to have the jury instructed on his theory of the defense." (Appellant's Brief p. 9). However, the proposed instruction has no basis in the evidence as Brooks denied drinking any alcoholic beverages on the day in question:

Q: Okay. Did you drink - - did you have at least a swallow or something like that?  
A: No, no, unh-unh. I wouldn't call it a swallow. You know, it's a taste. It was stale. I poured it out.

(Transcript p. 223-24).



Q: . . . How much had you had to drink from when you got up in the morning until you were stopped?

A: Nothing.

Q: Not a thing?

A: No, Sir.

(Transcript p. 245).

Q: Now, on this particular occasion, you said that you had not consumed any alcohol whatsoever; right?

A: That's right.

(Transcript p. 248). Accordingly, the trial court acted within its discretion in refusing proposed instruction D-3 as there was no evidentiary basis in the record.

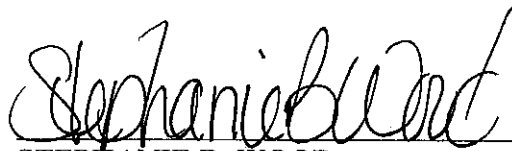
### CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Joe Louis Brooks as the verdict was not against the overwhelming weight of the evidence and as the trial court did not abuse its discretion in refusing Brooks proposed jury instruction.

Respectfully submitted,

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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 12th day of December, 2007.

  
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