

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SHANNON TROY DEROUEN

APPELLANT

V.

NO. 2007-KA-1005-SCT

FILED

FEB 11 2008

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SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF THE APPELLANT

NO ORAL ARGUMENT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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REPLY ARGUMENT

- I. WHETHER MR. DEROUEN IS PROCEDURALLY BARRED FROM RAISING ON APPEAL THAT THE TRIAL COURT ERRED IN FAILING TO HOLD AN 803(25) HEARING BEFORE ADMITTING ALTON HEBRON'S AND SARAH CAROTHERS' TESTIMONY BECAUSE HE FAILED TO MAKE A CONTEMPORANEOUS OBJECTION DURING TRIAL?

In its brief, the State argues that Mr. Derouen is procedurally barred from raising on appeal that the trial court erred in failing to hold an 803(25) tender years exception hearing, prior to admitting the hearsay testimony of Alton Hebron, social worker, and Sarah Bishop Carothers, forensic interviewer, for failure of the defense to make a contemporaneous objection. Mr. Derouen contends that even though he failed to make a contemporaneous objection to their testimony, their testimony constituted plain error because it violated his fundamental rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article 3 Section 26 of the Mississippi

Constitution. Because the Sixth and Fourteenth Amendments Rights to the United States Constitution and Article 3 Section 26 of the Mississippi constitution are fundamental rights this issue is not procedurally barred. Hobgood v. State, 926 So.2d 847 (Miss. 2006).

Mr. Deuroen further contends that the social worker's and forensic interviewer's testimony would be considered testimonial because these persons work in connection with the police for the purpose of prosecuting the accused. Therefore, their testimony should have been excluded because it violated his right of confrontation. Crawford v. Washington, 541 U.S. 36 (2004).

CONCLUSION

Because the Sixth and Fourteenth Amendments to the United States Constitution and Article 3 Section 26 of the Mississippi Constitution are fundamental rights of Mr. Derouen, the social worker's and forensic interviewer's testimony violated a fundamental right and constituted plain error. Therefore, even though defense counsel failed to make a contemporaneous objection to the social worker's and the forensic interviewer's testimony, the procedural bar does not apply.

Further, their testimony would be considered testimonial because these two people work in connection with the police for the purpose of prosecuting Mr. Derouen. As such, their testimony violated Mr. Deuroen's right of confrontation. This case should be reversed and remanded back to the trial court for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF SERVICE

I, Brenda Jackson Patterson, Counsel for Shannon Troy Derouen, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF THE APPELLANT** to the following:

Honorable Robert B. Krebs
Circuit Court Judge
1253 Jackson Ave., Suite B
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Honorable Anthony (Tony) Lawrence, III
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This the 11TH day of February, 2008.


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