

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**COPY**

ANTHONY CROFT

APPELLANT

V.

NO. 2007-KA-01331-SCT

**FILED**

STATE OF MISSISSIPPI

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APPELLEE

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**BRIEF OF THE APPELLANT**

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**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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**V.**

**NO. 2007-KA-01331-SCT**

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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 disqualifications or recusal.

1. State of Mississippi
2. Anthony Croft, Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Charles E. Webster, Circuit Court Judge

This the 9<sup>th</sup> day of January, 2008.

Respectfully Submitted,  
COUNSEL FOR APPELLANT

BY:



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## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	2
FACTS .....	2
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT .....	5
<u>ISSUE NO. 1</u>	
THE TRIAL COURT ERRED IN DENYING INVESTIGATOR JOE SMITH'S TESTIMONY BASED ON MISSISSIPPI RULES OF EVIDENCE 608 AND 609. ....	5
<u>ISSUE NO. 2</u>	
THE TRIAL COURT ERRED IN DENYING CROFT'S MOTION FOR DIRECTED VERDICT AND J.N.O.V. ....	8
CONCLUSION .....	11
CERTIFICATE OF SERVICE .....	13

## TABLE OF AUTHORITIES

### CASES

<i>Cantrell v. State</i> , 507 So.2d 325, 329 (Miss. 1987) .....	8
<i>Fair v. State</i> , 789 So.2d 818, 820 (Miss. 2001) .....	8
<i>Fisher v. State</i> , 690 So.2d 268, 274 (Miss. 1996) .....	8
<i>Glenn v. State</i> , 439 So.2d 678, 680 (Miss. 1983) .....	9
<i>Hawthorne v. State</i> , 883 So.2d 86 (Miss. 2004) .....	11
<i>Heidel v. State</i> , 587 So.2d 835, 843 (Miss. 1991) .....	9
<i>Herron v. State</i> , 176 Miss. 795, 170 So 536 (1936) .....	10
<i>Hobson v. State</i> , 730 So.2d 20, 28 (Miss. 1998) .....	9
<i>Howard v. State</i> , 755 So.2d 1188, 1190-91 (Miss. App., 1999) .....	7
<i>Johnson v. State</i> , 655 So.2d 37, 41 (Miss. 1995) .....	6
<i>McClain v. State</i> , 625 So.2d 774, 778 (Miss. 1993) .....	8
<i>McLemore v. State</i> , 669 So.2d 19, 25 (Miss. 1996) .....	7, 8
<i>Peterson v. State</i> , 671 So.2d 647, 655 (Miss.1996) .....	5
<i>Randolph v. State</i> , 852 So.2d 547, 554 (Miss. 2002) .....	8, 9
<i>Register v. State</i> , 232 Miss. 128, 132, 97 So.2d 919, 921 (1957) .....	9
<i>Sanders v. State</i> , 352 So.2d 822, 824 (Miss. 1977) .....	8
<i>Stewart v. State</i> , 909 So.2d 52, 56 (Miss. 2005) .....	9
<i>Sykes v. State</i> , 291 So.2d 697 (Miss. 1974) .....	9
<i>Tillis v. State</i> , 661 So.2d 1139, 1142 (Miss. 1995) .....	6
<i>Turner v. State</i> , 726 So.2d 117 (Miss. 1999) .....	11

<i>Wetz v. State</i> , 503 So.2d 803, 808 (Miss. 1987) .....	9
<i>Williams v. State</i> , 317 So.2d 425, 427 (Miss. 1975) .....	9, 10

## **STATUTES**

Miss. Code Ann. Section 97-3-77 (Rev. 2000) .....	9
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## **RULES**

67 Am.Jur.2d Robbery section 61 .....	10
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**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE ISSUES**

**ISSUE NO. 1**

**THE TRIAL COURT ERRED IN DENYING INVESTIGATOR JOE SMITH'S TESTIMONY BASED ON MISSISSIPPI RULES OF EVIDENCE 608 AND 609.**

**ISSUE NO. 2**

**THE TRIAL COURT ERRED IN DENYING CROFT'S MOTION FOR DIRECTED VERDICT AND J.N.O.V.**

## STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Bolivar County, Mississippi, and a judgment of conviction of three (3) counts of Armed Robbery. Anthony Croft was sentenced to twenty-five (25) years on each count. All counts to run concurrently following a jury trial on June 4-6, 2007, Honorable Charles E. Webster, presiding. Smith is presently incarcerated with the Mississippi Department of Corrections.

## FACTS

On or about September 15, 2005, Anthony Croft, hereinafter Croft, was inside M.C.'s place<sup>1</sup>. According to Croft, he had been in M.C.'s place shooting some dice. Tr. 184. Croft believed that McKnight was shooting some "crooked dice." *Id.* Croft had went into M.C.'s place the first time with \$200 and left with \$25. Tr. 185. He then went to the house to get a gun because he believed he had been cheated. *Id.* Croft obtained a gun from Benjamin Fields. *Id.* Fields had a gun in the trunk of his car at his shop. *Id.* Fields gave Croft the keys to the car in order to get the gun out of the trunk of the car. *Id.*

After Croft got the gun, he went and got some more money then headed back down to M.C.'s place to shoot dice again. Tr. 186. Larry Hogan and Mike Warren were following Louise Fipps, Randell James<sup>2</sup>, and Croft in two vehicles. Tr. 186-87. When Croft went back, ten to fifteen people were shooting dice. Tr. 187-88. Croft started gambling and shooting

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<sup>1</sup>M.C.'s Place, Mac's place, and Mr. McKnight's place all refer to the same location.

<sup>2</sup>Randel James is also known as Mr. Ivory and Main Ivory

dice immediately upon returning to M.C.'s place. Tr. 188. Croft placed his bets and was losing. Tr. 189.

Croft was questioning McKnight about having bogus dice and that he had been cheated out of his money. Tr. 190. McKnight pushed Croft and told him that he did not know what he was talking about. *Id.* Once McKnight pushed Croft, Croft immediately pulled up the gun. *Id.* Croft's intentions were to get out of there without having any type of problem. *Id.* Croft said that he had been cheated and that he wanted his money back. *Id.*

Randell James jumped up and stated that he had lost and he wanted his money back also. Tr. 191. James started snatching money off of the table. *Id.* Also, Louise Fipps grabbed money off the table. *Id.* Croft admitted that he took \$75 off of the table that he claimed was his money. *Id.* Croft did not get anyone's money, he only wanted his money back after he found out he was shooting bogus dice. Tr. 194.

Croft was arrested at his grandmother's house ten to fifteen minutes after he left M.C.'s place. Tr. 192. Larry Hogan and Mike Warren were in the car with him when he was arrested. *Id.* He had dropped Randell James off at his grandmother's house and dropped Ms. Fipps off also. Croft was found with \$174 when arrested.

The testimony of the prosecution's witnesses were different than that of Croft. Kelvin Fipps and Sylvester Fipps both testified that a dice game was going on at M.C.'s Place on the night in question. Tr. 43, 56. Croft was shooting dice inside of M.C.'s Place along with numerous other people and Croft had been shooting earlier in the day. Tr. 43, 57-58. Sylvester Fipps did see Croft pull the gun but did not see Croft with a pool stick. Tr. 59.



However, according to Larry McKnight, people shoot pool, drink beer, play cards, and dominoes at M.C.'s place. Tr. 64. McKnight testified that Croft came into the place and went to the back. Tr. 65. McKnight stated that Croft had not participated in a dice game inside of M.C.'s Place. Tr. 73, 76. Croft asked Eddie Johnson to buy him a beer and then laid the pistol on the table. *Id.* McKnight stated that he did not think anything of that because he thought that him and Croft were on good terms. *Id.*

Then, according to McKnight, Croft pulled the pistol and told everyone to get up against the wall and put their money on the table. Tr. 65-66. McKnight stated that Croft had the pistol in one hand and a pool stick in the other. Tr. 70. At this point McKnight said he noticed Larry Hogan holding the front door, and people were knocking trying to get inside. Tr. 66-67. Croft told Louise Fipps to gather up the money on the table. Tr. 67. Croft was subsequently arrested by Officer Grant ten to fifteen minutes after he left M.C.'s Place. Tr.

### **SUMMARY OF THE ARGUMENT**

The Appellant, Anthony Croft, is entitled to have his case reversed and rendered or in the alternative, a new trial. Croft was offering Investigator Joe Smith's testimony in order to show that M.C.'s Place was being investigated for drug activity and gambling. Croft was entitled to present evidence as to the bias and prejudice against him by the state's witnesses. *McLemore* 669 So.2d at 25. Thus, the trial court erred when it denied Croft's the opportunity to attack the credibility of the state's witnesses.

Evidence was also present to suggest that Croft did not possess the necessary intent to be convicted of armed robbery. Croft claimed that the only money that he took was his

money off of the table from the illegal dice game. He also stated that he no intent to rob anyone else and that he did not take money from anyone else. The evidence was insufficient for a verdict of guilty and this Court should reverse and render his conviction of armed robbery.

## ARGUMENT

### ISSUE NO. 1

#### **THE TRIAL COURT ERRED IN DENYING INVESTIGATOR JOE SMITH'S TESTIMONY BASED ON MISSISSIPPI RULES OF EVIDENCE 608 AND 609.**

Croft proffered the testimony of Investigator Joe Smith in order to determine the admissibility of his testimony. Tr. 2. The trial court was of the opinion that the testimony was not admissible for the purpose of attacking the credibility of witnesses based on Mississippi Rules of Evidence 608 and 609. Tr. 24-25. Croft believes that this is in error.

The standard of review governing the admissibility of evidence is whether the trial court abused its discretion. *Peterson v. State*, 671 So.2d 647, 655 (Miss.1996) (citing *Baine v. State*, 606 So.2d 1076, 1078 (Miss.1992); *Wade v. State*, 583 So.2d 965, 967 (Miss.1991)). This Court must first determine if the proper legal standards were applied. *Peterson*, 671 So.2d at 655-56 (citing *Baine*, 606 So.2d at 1078). If the trial court incorrectly applied the rules of evidence, resulting in prejudice to the accused, then a reversal is warranted. *Peterson*, 671 So.2d at 656 (citing *Parker v. State*, 606 So.2d 1132, 1137-1138 (Miss.1992)).

Croft was offering Investigator Joe Smith's testimony in order to show that M.C.'s Place was being investigated for drug activity and gambling. Tr. 4. Therefore showing that

McKnight along with a few other people that were within M.C.'s Place was bias, prejudice, or had an interest against Croft. The trial judge excluded the witness based on Mississippi Rules of Evidence 608 and 609<sup>3</sup>. However, the evidence should have come in under Mississippi Rule of Evidence 616.

**Mississippi Rule of Evidence 616** states that: For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible. "This Court has held that the trial court is generally allowed wide discretion concerning the admission of evidence offered to suggest bias on the part of a witness against the defendant." *Tillis v. State*, 661 So.2d 1139, 1142 (Miss. 1995).

"**Rule 616** must be interpreted as it relates to other rules of evidence, particularly Mississippi Rules of Evidence 104, 401, and 402. Rule 616 states that the general rule of admissibility of such evidence subject to the trial court finding, in the exercise of its discretion under Mississippi Rule of Evidence 104, that it is relevant, under Mississippi Rule of Evidence 401 and 402, to the specific facts in the case." *Id.* "[T]here are several ways to impeach a witness' credibility including the showing of bias or prejudice of the witness . . . as long as the impeaching material is relevant to the issue at hand." *Johnson v. State*, 655

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<sup>3</sup> **Mississippi Rule of Evidence 608** - (a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

**Mississippi Rule of Evidence 609** - (a) General Rule. For the purpose of attacking the credibility of a witness: (1) evidence that (A) a nonparty witness had been convicted of a crime shall be admitted subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and (B) a party has been convicted of such crime shall be admitted if the court determines that the probative value of admitted this evidence outweighs its prejudicial effect to the party . . .

So.2d 37, 41 (Miss. 1995). *See also Howard v. State*, 755 So.2d 1188, 1190-91 (Miss. App., 1999).

On proffer of Investigator Joe Smith, defense counsel elicited testimony that M.C.'s Place was investigated for drugs and that McKnight had served time in the Federal system for a drug related activity. Tr. 3. McKnight did admit on cross-examination that he was convicted of a felony. Tr. 83. Defense counsel was also inquiring into the gambling activity that also was alleged to have occurred at M.C.'s Place. Tr. 4. The fact that M.C.'s had a reputation for criminal activity is relevant, because it shows that illegal activity was going on at M.C.'s. The evidence also could support Croft's theory of the case that he was threatened prior to pulling the gun and that McKnight was not being honest with the court. McKnight was bias and had an interest in testifying against Croft. McKnight was the operator<sup>4</sup> of M.C.'s Place. Croft had threatened to turn McKnight into the police for illegal gaming if he did not get his money back, which shows that McKnight had an interest against Croft. Tr. 196.

This Court in *McLemore* stated that the evidence of bias, motive, or interest is always relevant, and it should not matter when parties introduce the evidence. *McLemore v. State*, 669 So.2d 19, 25 (Miss. 1996). "McLemore sought to show evidence of bias and prejudice against him by officers of the sheriff's department. McLemore proffered that he would testify to the fact that officers already had a mind set of guilt as to him for the murders occurring the same day. Because one of the murders occurred while McLemore was in custody, the

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<sup>4</sup> McKnight testified that his girlfriend owned the business, and he just worked there

officers may have had reason to lie about McLemore's participation in the second one in order to cover shoddy investigative procedures.

McLemore did not seek to elicit such bias on cross-examination of the officers. [This Court] held that a party is entitled to present evidence as to bias and prejudice against him by the state's witnesses, and this should be accomplished on cross-examination. However, this is not the only time a party can show these motives." *Fisher v. State*, 690 So.2d 268, 274 (Miss. 1996); *McLemore*, 669 So.2d at 24-25. Evidence is allowed to come from a party as well as the actual witness. *Id.* See also *Cantrell v. State*, 507 So.2d 325, 329 (Miss. 1987); *Sanders v. State*, 352 So.2d 822, 824 (Miss. 1977).

Croft was entitled to present evidence as to the bias and prejudice against him by the state's witnesses. *McLemore* 669 So.2d at 25. Thus, the trial court erred when it denied Croft's the opportunity to attack the credibility of the state's witnesses.

## ISSUE NO. 2

### THE TRIAL COURT ERRED IN DENYING CROFT'S MOTION FOR DIRECTED VERDICT AND J.N.O.V.

Croft moved for a directed verdict at the close of the State's case, which was denied by the trial court. [T. 171-174]. Croft also made a post-trial motion for judgment against the verdict, which was also denied by the trial court. C.P. 82-84. R.E. 22-24. Denial of a directed verdict and J.N.O.V. challenges the legal sufficiency of the evidence supporting the guilty verdict. *Randolph v. State*, 852 So.2d 547, 554 (Miss. 2002); *Fair v. State*, 789 So.2d 818, 820 (Miss. 2001); *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993). With regard to the issue of the legal sufficiency of the evidence, the Mississippi Supreme Court has held "that

reversal can only occur when evidence of one or more of the elements of the charged offense is such that ‘reasonable and fair-minded jurors could only find the accused not guilty.’” *Stewart v. State*, 909 So.2d 52, 56 (Miss. 2005); *Randolph*, 852 So.2d at 555; *Fair*, 789 So.2d at 820; *Wetz v. State*, 503 So.2d 803, 808 (Miss. 1987).

Mississippi Code Annotated provides that “[e]very person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his will by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon shall be guilty of robbery.” **Miss. Code Ann.** Section 97-3-77 (Rev. 2000). The state must prove each element of the indicted offensive beyond a reasonable doubt. *Hobson v. State*, 730 So.2d 20, 28 (Miss. 1998); *Heidel v. State*, 587 So.2d 835, 843 (Miss. 1991).

“The three essential elements of robbery are: felonious intent, force or putting in fear as a means of effectuating the intent, and by that means a taking and carrying away if the property of another from his person or in his presence. *Glenn v. State*, 439 So.2d 678, 680 (Miss. 1983); *Williams v. State*, 317 So.2d 425, 427 (Miss. 1975); *Sykes v. State*, 291 So.2d 697 (Miss. 1974). “[A]ll these elements must occur in point in time . . . .” *Register v. State*, 232 Miss. 128, 132, 97 So.2d 919, 921 (1957).

“The issue of felonious intent is one of fact, and its determination is therefore within the exclusive province of the jury, under appropriate instructions from the court. Consequently, the jury may find, if the facts justify it, that a defendant’s expressed intent to retake money lost in an illegal game, or to collect a debt, was merely pretext resorted to as

a cover for an attempt to steal.” *Williams*, 317 So.2d at 427; 67 Am.Jur.2d Robbery section 61, at 63 (1973).

In *Herron v. State*, 176 Miss. 795, 170 So 536 (1936), the appellant (charged with robbery) argued that he took a mare under the belief that he had a right to do so, and that the mare was his property. There we said that had the accused taken the mare from the premises of Morris ‘in his absence’ without his knowledge or consent with the intent to deprive Morris of his property rights, he would have been guilty of larceny and ‘not mere trespass.’ This Court affirmed his conviction of robbery, and held that the issue (intent) was a question for the jury to resolve upon the proof which showed that the mare was taken by appellant at pistol point.

*Williams*, 317 So.2d at 427. The Court also stated that the proof was sufficient that Morris actually owned the mare, in that he had obtained the mare through a legal proceeding. *Herron*, 170 So. at 538.

The case at hand can be distinguished in that, Croft stated that the only money he grabbed off of the table was the money that he had on the table, which was seventy-five dollars. Tr. 191. In *Herron*, Morris had obtained legal possession of the mare, but in this case no one had obtained legal possession of Croft’s money. Croft stated that he had about seventy-five dollars on the table that he was placing on bets. Tr.189. Croft claimed he was getting cheated by McKnight gambling at dice. Tr. 190. Once Croft stated that he was getting cheated, McKnight pushed Croft and then that Croft pulled the gun. *Id.* Croft stated that he only pulled the gun to get out of M.C.’s Place without having any problem. *Id.* That was when Croft snatched his seventy-five dollars off the table. Tr. 191.

Croft did not have the intent to take the money from anyone that was at M.C.’s. His intent to was to recover his own money that was stolen from him because McKnight was

cheating him at dice. Croft claims that Randell James claimed he had been cheated also and started snatching money off of the table along with Louise Fipps. Furthermore, ten to fifteen minutes after the incident happened, Croft only had around \$174. Tr. 193. Croft stated that he was not directing his conversation towards anyone but McKnight. Tr. 195-96. He also never directed anyone to put any money on the table, he only asked for his money back. Tr. 196. The element of intent was not met and a reasonable and fair-minded juror should have found Croft not guilty.

The Court in *Turner* did say that it is the jury's job to determine the weight and credibility of the evidence presented. *Turner v. State*, 726 So.2d 117 (Miss. 1999). *See also Fair*, 789 So.2d at 821. No reasonable jury could have convicted Croft guilty of armed robbery looking at the weight and credibility of the evidence that was presented to the trial court.

Taking the evidence that was presented to the trial court, the elements of armed robbery were not proven beyond a reasonable doubt and this Court should reverse and render this case based on these facts. Croft therefore respectfully asserts that the foregoing facts demonstrate that the verdict was insufficient to the evidence, and the Court should reverse and remand for a new trial. To allow this verdict to stand would sanction an unconscionable injustice. *See Hawthorne v. State*, 883 So.2d 86 (Miss. 2004).


### **CONCLUSION**

Croft contends that he was entitled to present evidence as to the bias and prejudice against him by the state's witnesses and failure to do so is reversible error. The court should also reverse and render his conviction of armed robbery because the evidence was



insufficient in showing that he had the intent to rob everyone within M.C.'s Place.

Respectfully submitted,  
COUNSEL FOR APPELLANT

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## CERTIFICATE OF SERVICE

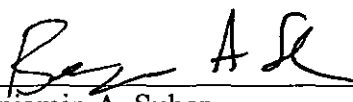
I, Benjamin A. Suber, Counsel for Anthony Croft, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Charles E. Webster  
Circuit Court Judge  
202 N. Pearman Avenue  
Clarksdale, MS 38614

Honorable Laurence Y. Mellen  
District Attorney, District 11  
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Honorable Jim Hood  
Attorney General  
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This the 9<sup>th</sup> day of January, 2008.

  
\_\_\_\_\_  
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