

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
Case # 2007-KA-01646-COA

JOHNNY STEVE PARKER

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

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APPEAL FROM THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI  
ALCORN COUNTY CIRCUIT CAUSE NO. CR05-399

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REPLY BRIEF OF APPELLANT, JOHNNY STEVE PARKER

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CASES AND AUTHORITIES	ii
I. PARKER'S REPLY TO BRIEF OF THE STATE OF MISSISSIPPI	1-3
A. Reply to the State's Statement of the Facts	1-3
II. RESPONSE TO ARGUMENT OF THE STATE	4-9
A. The Testimony of Debra Dillingham Ross Parker (Debra)	4-5
B. The Testimony of Rhonda Lindsey and the Discovery Violation	5-6
C. The Issue of Whether or Not the State Provided Legally Sufficient Evidence to Support the Jury's Verdict or Whether the Verdict Is Against the Overwhelming Weight of the Evidence	6-9
VI. CERTIFICATE OF MAILING	10
VII. CERTIFICATE OF SERVICE	11

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CASES:

PAGE

CONLEY V. STATE  
790 So. 2<sup>nd</sup> 773, (Miss 2001)

DOWBAK V. STATE  
666 So. 2<sup>nd</sup> 137 (Miss 1996)

LADNIER V. STATE  
878 So. 2<sup>nd</sup> 926, 933 ¶27 (Miss 2004)

WEST V. STATE  
553 So. 2<sup>nd</sup> 8, (Miss 1989)

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PARKER'S REPLY TO BRIEF OF THE STATE OF MISSISSIPPI

Concerning comments made in the brief filed by the State of Mississippi herein, Parker requests this honorable Court to consider the following:

REPLY TO THE STATE'S STATEMENT OF THE FACTS

1) Generally, many of the statements of fact set forth in the Brief of the state are accurate. However, several matters need to be pointed out concerning certain of the facts alleged.

The statement that Debbie went home at around 2:00 a.m. unaware that it was the last time she would see her "beau" is contrary to the inconsistent statements of Debbie. Her statements to law enforcement personnel ranged her time of leaving the home of Tim anywhere from 1:00 a.m. on Tuesday, June 21, 2005, (Tr. 336), to 2:00 a.m., (Tr. 309-310,337), to 3:00 a.m., (Tr. 334-335).

As to Brenda Hillis' statement about her calling Steve around 3:00 a.m. and talking to John Parker, Steve's son, Brenda also testified at trial that she, in fact, talked to Steve Parker at approximately 2:50 a.m. on the morning of June 21, 2005, (Tr. 255). This time frame is important as Brenda Hillis also testified that Debra came to her house upset and made a

call at 2:15 a.m. to a Michael Joslin. (Tr. 267) Debra denied going anywhere after leaving Tim's house other than her father's home where she was living. (Tr. 337)

The last paragraph of the Statement of Facts in the State's brief relates to Beckner's investigation leading to Parker. Again, the statement by Parker that he had not left his house all day Tuesday was a rendition of what Parker had told Beckner at a time when Beckner was operating under the misconception that the murder of Tim had occurred in the early morning hours of June 22, 2005, the date obtained from the note of Debra. (Ex. 18) His investigation then centered on Parker when he asked him the question about Parker's whereabouts on the "night of June 21, 2005". That, of course, would have been almost twenty-four hours after the murder had taken place and there was no false statement by Parker as to his whereabouts on that occasion. (Tr. 436-437, 439) Therefore, the statement in the brief of the State indicating false statements by Parker from his mother is similarly incorrect as she acknowledged talking to her son on the morning of June 21, 2005, at approximately 7:13 a.m. when she talked directly to Steve who later went to her house and ate breakfast. (Tr. 604-605) These facts directly refute the testimony of Steve's son who peculiarly could not even recognize his father from the witness stand, (Tr. 480), had previously told officer Beckner he did not know where his father was on June 21, 2005, and June 22, 2005, (Tr. 499) and lied about having talked to both Brenda Hillis at 2:50 a.m. on June

21, 2005, and his grandmother, Mary Parker at 7:13 a.m. on June  
21, 2005. (Tr. 486)

## RESPONSE TO ARGUMENT OF THE STATE

### I.

#### THE TESTIMONY OF DEBRA DILLINGHAM ROSS PARKER (DEBRA)

The State cites the case of Ladnier v. State 878 So. 2<sup>nd</sup> 926, 933 ¶27 (Miss 2004) for the proposition that error cannot be predicated upon the admission or exclusion of evidence unless a substantial right belonging to the Defendant was violated. In this case, the substantial right that was violated was Parker's right to a fair trial and due process of law. Parker will not reiterate his position on this point here but would state that it is reversible error to allow inadmissible testimony into the record that denies Parker a fair trial and due process of law as her testimony and this statement, allowed into evidence over objection, formulates the purported motive of Steve to kill Tim, someone that he otherwise did not even know.

The reason that Debra's credibility is attacked throughout the brief is because her testimony is inconsistent and subject to numerous interpretations at best and which further shows her testimony to be incredible. This is a totally circumstantial evidence case and every piece of evidence offered by the state should be scrutinized. As noted in the case of Conley v. State 797 So 2<sup>nd</sup> 773, ¶65 (Miss 2001), if a fact is subject to two interpretations, one favorable to the State and one favorable to the Defendant, if there is a reasonable doubt as to which interpretation is correct, the jury is bound to find those facts

in favor of the Defendant. Therefore, this case should be reversed and remanded with the instruction that Debra's statement be disallowed upon re-trial.

## II.

### THE TESTIMONY OF RHONDA LINDSEY AND THE DISCOVERY VIOLATION

The state contends that the alleged discovery violation was not preserved for appeal due to the fact there was not a contemporaneous objection during Lindsey's testimony. Frankly, the state is misconstruing to some extent Parker's position on this point. The substance of the statement given to the defense from Beckner's interview with Rhonda Lindsey was that within the past week she saw a full-sized light colored van parked over at Tim Kingen's residence though she could not remember the date. When she testified she added the fact that she had told Beckner that she heard gunshots. Nothing was contained in the statement of Lindsey pertaining to any gunshots.

The reason this was a discovery violation of substantial importance to Parker is that had that been included in the synopsis of Rhonda Lindsey's statement at the time of the disclosure by the state, additional inquiry would have possibly resulted in important information relative to the hearing of gunshots in that neighborhood and when they occurred. As the Court will remember, the body of Tim was not discovered for several days after the murder and information about hearing gunshots regardless of the time of day or the date would be of importance to the defense in investigating alternatives to the



State's theory of the case. Recalling her and having her clarify about the gunshots did not suffice to cure the substantial prejudice to Parker by the State's failing to give full disclosure of what was told by Rhonda Lindsey to Beckner. It is this reason why the attorneys for Parker requested a mistrial and as noted in the case of Dowbak v. State 666 So. 2<sup>nd</sup> 1377, 1385 (Miss. 1996), a Defendant's Motion for Mistrial preserved the issue for appeal without a Motion for Continuance as it has been held that a Motion for Mistrial in this context is the functional equivalent of a Motion for Continuance. West v. State 553 So. 2<sup>nd</sup> 8, 18 (Miss 1989)

For this reason, the failure to fully disclose the statement of Lindsey caused great prejudice to the Defendant in the preparation of his defense and very well may have revealed exculpatory evidence had the State fully disclosed her statement to Beckner.

### III and IV.

#### THE ISSUE OF WHETHER OR NOT THE STATE PROVIDED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT OR WHETHER THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

The State argues correctly the test for determining whether or not there is sufficient evidence to sustain a verdict. After reciting certain of the alleged facts, the State contends that Parker did not put forth but one hypothesis as an alternative hypothesis to the State's case.

First, it is not incumbent upon a Defendant in a criminal case to prove anything. The heightened burden in a

circumstantial evidence case clearly requires that all of the State's evidence be scrutinized to determine whether or not there is sufficient evidence presented at trial to sustain the verdict. In this case, Parker has shown that no reasonable hypothetical jury could find beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence that he was guilty of murdering Tim Kingen. The only reason that Parker was convicted in this case was not because the State proved him guilty by the requisite standard but simply because the jury, contrary to the instructions given to it by the Court, got wrapped up in the question of who else could or would have done it. The evidence is not legally sufficient to prove Steve Parker guilty of this crime because every point of evidence that the State contends points to his guilt has a very reasonable explanation which has nothing to do with his being guilty of any crime, even if taken as true.

The State is wrong, however, in contending that this is purely an inquiry by Parker as to whether or not the witnesses are credible, as it is also an inquiry into whether or not, even if credible, the evidence presented by the State will sustain a verdict of guilty or would sanction an unconscionable injustice. The fact is, there is nothing in this case that points to Steve Parker being guilty of the crime of murdering Tim Kingen. Under the Conley decision, the jury failed to take into consideration the facts relied upon by the State to convict as having more than one interpretation. This jury convicted on the

uncorroborated testimony of an incredible witness, Debra, who supplied a purported motive and nothing more. Parker was the only suspect who was really investigated and the investigation against him began with a misconception by officer Beckner, the investigating officer. It was his error, a cell phone bill, and inconsistent testimony about which there was clearly a reasonable doubt as to which interpretation was correct, that convicted Steve Parker.

For the forgoing reasons, Steve Parker respectfully asks this honorable Court to reverse and remand his conviction and sentence for a new trial.

Respectfully submitted,

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CERTIFICATE OF MAILING

This is to certify that I, John A. Ferrell, attorney for Appellee, have this day mailed by United States mail, postage prepaid, the original and three (3) copies of the Appellant's Reply Brief to Betty W. Sephton, Clerk, Supreme Court of Mississippi at the address of said Court, P. O. Box 249, Jackson, Mississippi, 39205-0249.

This the <sup>21<sup>st</sup></sup> day of October, 2008.

  
JOHN A. FERRELL

CERTIFICATE OF SERVICE

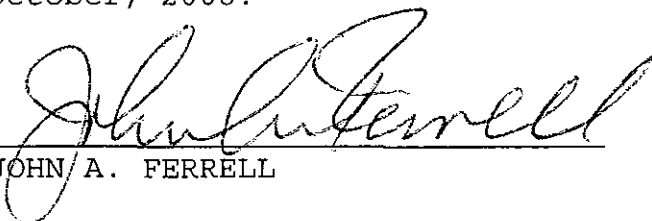
I, John A. Ferrell, do hereby certify that I have this day forwarded by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant to the following:

Honorable Paul S. Funderburk  
Circuit Court Judge  
Post Office Box 1100  
Tupelo, MS 38802-1100

Honorable Arch Bullard  
Assistant District Attorney  
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This the 21<sup>st</sup> day of October, 2008.

  
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JOHN A. FERRELL