

DAMITA ANN HILL

APPELLANT

VS.

NO. 2008-KA-0811

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF AUTHORITIES	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	5
PROPOSITION ONE: NO ERROR HAS BEEN SHOWN IN THE TRIAL COURT'S OVERRULING THE MOTION TO DISMISS	5
PROPOSITION TWO: THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF AND IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE	7
CONCLUSION	10
CERTIFICATE OF SERVICE	11

<i>United States v. Tax Commission of Mississippi</i> , 421 U.S. 599 (1975)	5
---	---

STATE CASES

<i>Alexander v. State</i> , 759 So.2d 411, 421 (Miss. 2000)	8
<i>Carle v. State</i> , 864 So.2d 993, 998 (Miss. App. 2004)	8
<i>Collins v. State</i> , 757 So.2d 335, 337 (Miss. Ct. App. 2000)	8
<i>Dudley v. State</i> , 719 So.2d 180, 182 (Miss. 1998)	8
<i>Ford v. State</i> , 737 So.2d 424, 425 (Miss. App.1999)	9
<i>Gossett v. State</i> , 660 So.2d 1285, 1293 (Miss. 1995)	8
<i>Griffin v. State</i> , 607 So.2d 1197, 1201 (Miss. 1992)	8
<i>Hales v. State</i> , 933 So.2d 962, 968 (Miss. 2006)	9
<i>Kohlberg v. State</i> , 704 So.2d 1307, 1311 (Miss. 1997)	9
<i>Langston v. State</i> , 791 So.2d 273, 280 (Miss. Ct. App. 2001)	8
<i>Meshell v. State</i> , 506 So.2d 989, 990 (Miss. 1987)	7
<i>Noe v. State</i> , 616 So.2d 298, 302 (Miss.1993)	8
<i>Sago v. State</i> , 978 So.2d 1285, 1286 (Miss. App. 2008)	7
<i>Williams v. State</i> , 427 So.2d 100, 104 (Miss. 1983)	8

DAMITA ANN HILL

APPELLANT

VERSUS

NO. 2008-KA-0811-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Damita Ann Hill was convicted in the Second Judicial District of the Circuit Court of Harrison County on a charge of felonious child abuse and was sentenced to a term of 20 years in the custody of the Mississippi Department of Corrections. (C.P.65) Aggrieved by the judgment rendered against her, Hill has perfected an appeal to this Court.

Substantive Facts

Dr. Jennifer Stangle, accepted by the court as an expert in the field of pediatric medicine, testified that on June 29, 2004, she was called to the emergency room of Keesler Medical Center in Biloxi. There she found nine-week-old Jalen Hill, who had “some swelling of his left eye, ... some dropping of his heart rate, ... and had thrown up a couple of times.” Dr. Stangle asked the child’s parents, Douglas and Damita Hill, what had happened. They told her that the baby had been in his

when the father picked him up, the infant's head fell back. The baby also seemed more sleepy than usual. The father disavowed any knowledge of the cause of these conditions. The mother told Dr. Stangle "that she had fed him [the baby] in the middle of the night and that she didn't know anything else." (T.35-39)

After conferring with the emergency room staff and another resident on call that night, Dr. Stangle notified "the child protective services" and "arranged for a CAT scan of the head." The scan revealed that "there was bleeding in multiple places over the child's brain." This "meant that there had been serious injury to the head of the infant and that it was fairly recent." The primary injury was "[a]bove the left eye involving the lids, streaking back, and then back ... on the occipital area." (T.39-41)

After having reviewed the scan, Dr. Stangle had the child admitted "to the ICU for close monitoring" to "ensure that he didn't deteriorate in any way." She was concerned that because of the bleeding in the brain, the baby ran the risk of developing fluid around the brain and declining heart rate and respiration. When she was asked whether this was a life-threatening injury, she answered, "Absolutely." (T.41)

Further tests revealed that the infant had an elevated level of liver enzymes. The fact that this level "went down very quickly" over the next few days told the doctors that "it wasn't a chronic problem," but the result of an injury to the liver. When Dr. Stangle asked the parents whether there "had been any recent car accidents, falls, anything," they responded "no." They also said that they were the child's only care givers. The baby was not in day care; and no one else lived in their house. (T.42)

above the knee on the left, below the knee on the right, and then another crack one on the left side of the knee.” (T.43) The prosecutor asked Dr. Stangle, “Now, with a nine-week-old baby, how can that happen?” She answered,

Those kind of injuries we only see with shearing force, meaning that you’re pulling rapidly or you’re twisting rapidly or you’re doing both rapidly. But those are really the only way that happens, because you’re not ambulating, you’re not walking, you’re not crawling.

(T.45)

Dr. Stangle also observed bruising on the baby’s “right back rib cage area, ... on the back over the gluteal area, ... and ... at the base of the neck.” These bruises did not appear to be fresh or acute. (T.46-47)

Finally, Dr. Stangle was asked her opinion, based on a reasonable medical certainty, how the child received these injuries. She answered, “It was our opinion and my opinion that the child had been intentionally harmed or injured.” The injuries were consistent with child abuse. (T.54-57)

Dr. Benjamin Weintraub, accepted by the court as an expert in pediatric medicine, also observed Jalen Hill when he was brought to the emergency room. After having conferred with the radiologist on call that night, Dr. Weintraub concluded that some of the infant’s brain injuries were fresh and “some appeared as though they were older.” (T.70-74) Dr. Weintraub was asked, “What type of force are we talking about with a nine-week-old baby so as to have a bleeding in the brain or on the brain?” He responded,

It takes a significant amount of trauma or a force to cause those types of bleeds within the brain. ... Those forces, in order to obtain that sort of injury, it requires either a significant amount of blunt force trauma, a very strong strike that is seen, for example, on a very high impact motor vehicle collision or from shearing force

(T.75)

Dr. Weintraub went on to testify that the injuries could not have been caused from the baby's hitting his head on the side of a crib or from simply being dropped to the floor. Furthermore, the multiple fractures could not have resulted from any genetic abnormality, brittle bone syndrome or any type of disease. It would have been impossible for the baby to have inflicted these injuries upon himself. Dr. Weintraub's opinion of the cause of these injuries was identical to that given by Dr. Stangle.

(T.75-81)

Larry Hebdon, Jr., employed by the Air Force Office of Special Investigations at Keesler Air Force Base, testified that he interviewed Douglas Hill, who waived his *Miranda* rights and gave a written statement. In that statement, Douglas Hill said that he had arrived home at about 2:45 on the morning in question. At that time, Damita Hill was at home with the child. She left for work at approximately 6:45 that morning. From that time until about 10:00, the father had no contact with the baby. Upon checking the child, Douglas Hill found him lifeless, with a red mark on his face.

(T.88-95)

Heath Humble, also employed by the Air Force Office of Special Investigations, testified that he interviewed Damita Hill, who stated that she heard her son over the baby monitor at about 1:30 that morning; that she fed him and burped him; and that he "started fussing." She admitted when he failed to go back to sleep, she "hit" him out of "frustration." Thereafter, she "scooped him up," rocked him until he "calmed down," and put him back into his crib. At that time, according to Damita Hill, the baby's head "hit the side of the crib hard ... On a scale of one to ten, it would score

she was putting him to bed, but that he seemed “okay” when she left for work at 5:00 that morning. She denied that she had intentionally hit or abused the infant. (T.146-52)

SUMMARY OF THE ARGUMENT

Hill has not demonstrated reversible error in the trial court’s overruling her motion to dismiss. She has failed to show that the court erred in concluding that it enjoyed jurisdiction over this case.

Furthermore, the verdict is supported by legally sufficient proof and is not contrary to the overwhelming weight of the evidence. The state presented substantial, indeed, overwhelming, proof that the defendant was guilty of felonious child abuse.

PROPOSITION ONE:

NO ERROR HAS BEEN SHOWN IN THE TRIAL COURT’S OVERRULING THE MOTION TO DISMISS

Prior to the opening statements, counsel for Damita Hill moved the court to dismiss the charge on the ground that because the alleged crime occurred at Keesler Air Force Base, the federal government had exclusive jurisdiction over the case. The court inquired, “What says that? What says that it’s not concurrent jurisdiction with the city?” Defense counsel responded by citing *United States v. Tax Commission of Mississippi*, 421 U.S. 599 (1975), which addressed the issue of taxation of alcoholic beverages sold on military bases within the state. (T.13-14) Defense counsel went on to argue,

Now, the State of Mississippi reserved the right to issue process for civil and criminal, but as far as I know, Judge, I don’t know as far as actually prosecuting criminal cases which occur on base.

person on Keesler Air Force Base where the crime was committed ... Keesler Air Force Base. Not to say that there isn't one out there, Judge. I just have not been able to locate one, which would lead me to believe that if it occurred on Keesler Air Force Base, then the federal government would have exclusive jurisdiction , ... the state would not have jurisdiction to prosecute crimes which occurred on military bases.

(T.14-15)

The prosecutor countered,

Your Honor, as the Court is aware, Keesler Air Force Base, unlike Beauvoir, has now and always is part of the municipality of the City of Biloxi. In fact, many years ago at the time that Keesler Air Force Base was established, the boundary line or the western boundary line of the city of Biloxi was in fact in Rodenburg.

This is a housing— as the Court may be aware of, if you go north on Rodenburg and you come to the gate there, the Keesler gate, and you proceed past that gate, this is some housing right to the east or to the right of Rodenburg.

This was property originally owned by the City of Biloxi, donated by the municipality of the City of Biloxi to Keesler where they have historically from the inception of Keesler Air Force Base maintained simultaneous jurisdictions of Keesler Air Force Base and Biloxi, City of Biloxi.

There has never been any mandate taking exclusive jurisdiction for the possibility of criminal prosecution on that land. So it was owned by the city. It was donated to Keesler for housing. They've agreed to have joint jurisdiction over the property, and it has always remained as such, Your Honor.

(emphasis added) (T.15-16)

The court finally issued this ruling:

It is my belief and understanding and has been for many years that the City of Biloxi and the State of Mississippi enjoy concurrent jurisdiction over felony crimes committed on the base and that there is a process of the military police in the state of Mississippi and/or

relinquished the concurrent jurisdiction to the State of Mississippi and the City of Gulfport [sic] to investigate and prosecute these charges. And the motion to dismiss based on that is overruled.

(T.19)¹

The trial court's ruling is presumed to be correct, and the appellant has the burden to demonstrate reversible error therein. E.g., *Sago v. State*, 978 So.2d 1285, 1286 (Miss.App.2008). In response to a position taken by a well-experienced prosecutor in this circuit court district, as well as a ruling made by a well-experienced trial judge who himself is a former prosecutor in this district, Hill has cited a case addressing the issue of the collection of taxes on liquor. To the best of our knowledge, this opinion has never been cited in a criminal case by this Court or the Mississippi Supreme Court.

The state respectfully submits that Hill has failed to sustain her burden of demonstrating error. Her first proposition should be denied.

PROPOSITION TWO:

**THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF
AND IS NOT CONTRARY TO THE OVERWHELMING
WEIGHT OF THE EVIDENCE**

Finally, Hill challenges the sufficiency and weight of the evidence undergirding her conviction. To prevail, she must satisfy the following formidable standards of review:

"If there is sufficient evidence to support a verdict of guilty, this Court will not reverse." *Meshell v. State*, 506 So.2d 989, 990

¹The trial judge clarified that he had intended to say, "City of Biloxi," rather than "City of Gulfport." (T.19)

the evidence so considered is such that reasonable and prudent jurors could only find the accused not guilty." *Alexander v. State*, 759 So.2d 411, 421(¶ 23) (Miss.2000) (quoting *Gossett v. State*, 660 So.2d 1285, 1293 (Miss.1995)).

The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is also well settled. "[T]his 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." *Collins v. State*, 757 So.2d 335, 337(¶ 5) (Miss. Ct. App. 2000) (quoting *Dudley v. State*, 719 So.2d 180, 182(¶ 9) (Miss.1998)). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Collins*, 757 So.2d at 337(¶ 5) (citing *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992)). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Collins*, 757 So.2d at 337(¶ 5) (quoting *Dudley*, 719 So.2d at 182).

Carle v. State, 864 So.2d 993, 998 (Miss. App. 2004).

Moreover, "[t]his Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).

Furthermore,

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104

It has been “held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony.” *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed “where there is a straight issue of fact, or a conflict in the facts...” [citations omitted] Rather, “juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. ” [citations omitted]

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial, indeed, overwhelming evidence of Hill’s guilt of felonious child abuse.

As the state argued during initial closing, the only rational explanation for the baby’s injuries was that they were caused by “an intentional blunt force trauma or that the child was picked up and violently shaken back and forth.” (T.218) Moreover, Damita Hill admitted that she had hit her child. Her attempt to ameliorate this fact and the additional evidence against her was rebutted by the expert testimony and in any event simply created an issue of fact which was properly resolved by the jury.

No basis exists for disturbing the jury’s determination that Damita Hill was guilty of felonious child abuse. Her second proposition should be denied.

Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**


BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

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:

Honorable Stephen B. Simpson
Circuit Court Judge
P. O. Box 1570
Gulfport, MS 39506

Honorable Cono Caranna
District Attorney
P. O. Drawer 1180
Gulfport, MS 39502

F. Philip Wittman, IV, Esquire
Attorney At Law
Post Office 1648
Gulfport, MS 39502

This the 28th day of January, 2009.


DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680