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STATEMENT OF THE CASE

On or about January 12, 2006, a Marshall County Grand Jury indicted Fonshanta Anthony for one count of felony child abuse of Briston Anthony and one county of felony child neglect of Briston Anthony. (C.P. 1) On August 20-22, 2007, Anthony was tried in Marshall County Circuit Court and was convicted of felony child abuse. (C.P. 80) She was sentenced to 20 years in the custody of the Mississippi Department of Corrections. (C.P. 81) Anthony filed a Motion for New Trial on August 30, 2007. (C.P. 83) The trial court entered an order denying the Motion for New Trial on July 30, 2008. (C.P. 88) The instant appeal ensued.

STATEMENT OF THE FACTS

On July 18, 2005, 9 month old Briston Anthony was badly burned in the bathtub of his family's apartment. The water in the tub was approximately 160 degrees and Briston suffered serious burns over 60% of his body. Briston was in the care of his mother, Fonshanta Anthony,

at the time he was injured. There was another child, age 2, in the household. Anthony was pregnant and unemployed. Chief Clyde Gunter of the Byhalia Police Department testified that he received a call at about 9:26 p.m. that a child had been accidentally burned and went to the Broadmoor Apartments where the Anthonys lived. A crowd of people gathered around and EMS was on the scene with the ambulance. Gunter saw Ms. Anthony with a male relative. (Tr. 99, 111) Gunter learned that the child had been burned in the bathtub and that he was in critical condition. Gunter went to the apartment and observed a cloth in the bathtub that had been used to slow the draining. There were also pieces of the child's skin in the tub where it had been burned off the child. (Tr. 106-07) Gunter checked the hot water tank and found that it was set at about 160 degrees. He went back downstairs to check on the child who had been airlifted to Memphis due to the severity of his burns. He observed the Anthony with the male relative. She was crying and stated, "You know I wouldn't do anything deliberately to hurt my child." (Tr. 110)

Sergeant David Taylor of the Byhalia Police Department testified that he was dispatched to the scene at about 9:29 p.m. He followed the ambulance into the apartment complex. (Tr. 119) He testified that the apartments are only about two blocks from the police department, so they arrived on the scene very quickly after the call came in. (Tr. 120) Anthony was in the parking lot with her uncle over to the side of the crowd and ambulance. The baby was inside Anthony's aunt's apartment. Taylor saw the baby when the paramedics took it from Anthony's aunt. (Tr. 123) He stated that skin was falling from the child. (Tr. 124) The child was alert, screaming, and obviously in pain. (Tr. 126) Taylor cleared a place for the helicopter to land to transport the child to Memphis. He went into the apartment and noticed skin in the drained tub.

(Tr. 127) Taylor testified that Anthony expressed interest in seeing her baby only after the police and paramedics had arrived. (Tr. 134) While on the scene, Taylor took a statement from the apartment manager, Sheila Lawrence, and another statement from neighbor Cassandra Watkins. (Tr. 130)

Sandra Watkins testified that she also lived in an upstairs apartment. She testified that Anthony beat on her door and asked Watkins to call 911 for the baby. Watkins asked her what happened, and Anthony replied that her oldest son, age 2, had turned the hot water on her baby. Watkins then called 911. Anthony also asked Watkins to call her father. Watkins then went downstairs to Anthony's aunt's apartment to find Anthony's father. (Tr. 136) She then went to tell Anthony and found Anthony on the phone, both she and the baby screaming. (Tr. 136)

Watkins testified that earlier in the evening she had seen Watkins carrying trash to the dumpsters. (Tr. 138) About 15 to 30 minutes after that, Anthony banged on her door and asked her to call 911. She testified that Anthony attempted to hand her the baby, but that she jumped back said "No" and then went to call 911 for Anthony. (Tr. 139) She said that the baby was screaming and his skin was coming off and that it hit floor and then he started bleeding. (Tr. 140) "His skin was coming steadily off, falling and bleeding." (Tr. 141)

Sheila Lawrence testified that she was the manager of the Broadmoor Apartments where the Anthonys lived. (Tr. 142) At about 9:05, Lawrence was out on her balcony and saw Anthony out by the dumpster sweeping up her garbage. Anthony said something like "Don't write me up." (Tr. 143, 146) In about 10 minutes, a police officer came to her door and told her that Anthony's baby had been burned. (Tr. 143) When they got to Anthony's apartment, Anthony had the baby in her arms, rubbing him, and Lawrence told her not to because the baby's

skin was peeling off. They put the baby on a clean white sheet until the paramedics arrived. The baby was crying loudly and constantly and Lawrence could tell he was in pain. (Tr. 144)

Chris Sowell testified that he was an officer with the Byhalia Police Department at the time Briston Anthony was burned. He responded to a call to the Broadmoor Apartments for a baby who had been burned in the bathtub. (Tr. 159) He was at the scene within a minute or two of receiving the call. He observed a woman with a baby and the paramedics went in and were handed the baby and began working on him. Sowell was trying to secure the area since a crowd had gathered. (Tr. 159) Sowell did go to the Anthony's apartment and observed the drained tub with pieces of skin in the tub. (Tr. 160) Sowell was instructed to go to Le Bonheur Hospital in Memphis where Briston was being transported and to get a further statement from Anthony. (Tr. 162) Anthony gave Sowell a statement that she started to run the bath water. She stated that after she finished running the water, she put her two year old in the tub and took the garbage outside the door. She then went back inside and put Briston in the tub. She then went back to the bed room to find some clothes for the children. She stated that was when she heard the water come on. She stated that she hollered and told her two-year-old to cut off the water. She stated that the two-year-old cried out, "Mama, Mama. Briston boo booed in the tub." She stated that she ran to see what happed and she looked down and saw her baby's skin floating around in the tub. She got him and went next door and called 911. (Tr. 165)

Patricia Amosika testified that she works for the Marshall County DHS Child Protection Office. (Tr. 171) Amosika received the call on July 19, 2005 that Briston had been burned. The case was assigned to Amosika, but shortly afterward, Briston was transferred to Texas since the burns were so severe that Le Bonheur could not handle the case. (Tr. 172)

Amosika testified that she spoke to Anthony who told her that she had run hot water in the tub and placed her two year old in the tub. (Tr. 172) Anthony stated that she went to go throw away the garbage and when she came back she placed Briston in the tub. Anthony stated to Amosika that she went to the bedroom to get their clothes and when she was in the bedroom she heard water running. She yelled at the two year old to turn off the water, but when she went into the bathroom the water was still on. The two year old was screaming "Baby boo booed in the tub." Anthony stated that she saw things floating in the tub and thought it was blood until she saw that the baby's body was pink. She stated that she grabbed the baby and went to the neighbor's apartment for help. (Tr. 173) Because Anthony stated that the two year old was in the tub at the time Briston was burned, Amosike then went to Byhalia to examine the two year old who was staying with Anthony's aunt. She examined the two year old carefully and found no wounds. (Tr. 174)

Cynthia Bowen testified that Briston Anthony is her foster child. He was burnt over 60 percent of his body. He was almost 3 at the time of trial and has great difficulty walking. (Tr. 180) He will continue to have surgeries for the rest of his life. Through puberty, he will have to have surgery with each growth spurt to release the scar tissue since the skin grafts he has received will not stretch. (Tr. 180) Dr. Art Sanford testified as an expert in the field of general surgery including burn injuries and pediatric burns and related fields. (Tr. 196) Dr. Sanford testified that Briston's burns appeared to be intentionally inflicted because of the straight line demarcation on his abdomen. He stated the burns were consistent with a child being held in the water in a sitting position, with patterns appearing where the skin was folded around the wrists and groin. (Tr. 202) He testified that the lack of splash marks and the straight line demarcation of the burn were

evidence of a forced immersion, since a 9 month old baby would be flailing in response to the painful stimuli. (Tr. 202) He further testified that if the hot water had been turned on while the child was already in a tub of temperate water, there would be varying degrees of burns on the child's body. (Tr. 202)

Dr. Sanford testified that the description Ms. Anthony gave of the events wherein the two-year-old was in the tub with Briston at the time the water was turned on was not consistent with the injuries Briston received. (Tr. 205, State's Exhibit 12) He testified that if another child had been in the tub with Briston, that child would have received burns as well. (Tr. 206) He testified that under those circumstances Briston would have been thrashing and flailing and attempting to get away from the painful stimulus.

Dr. Sanford testified that the following indicators of intentional immersion burn were present: symmetrical mirror image burns of the extremities, minimal splash marks, uniform depth, a clear line of demarcation or crisp margin, donut shaped scars on the buttocks. (Tr. 210) An accidental burn would result in variable depth and variable position burns. (Tr. 211) The burns on Briston's arms and legs were symmetrical, there were minimal splash marks, there was uniform depth of the burns on his lower extremities, indicating that all immersed areas were exposed to the same amount of water at the same temperature. (Tr. 213) The donut shaped scars on the buttocks are an indication that the child's bottom was pressed against the bottom of the tub so that circular areas of the buttocks were not exposed to the hot water for the same length of time as the rest of the burned area. (Tr. 213) "Zebra stripes" on Briston's wrists and groin area indicate that Briston was forcibly held in the water so that the folds of skin prevented stripes of skin in those areas from getting burned. (Tr. 213-14)

Dr. Sanford also testified that it was unlikely that a sibling could be in the tub with Briston and not be burned as well. He testified that it would be hard for a two year old to have the fine motor coordination to turn on the water or change the water on a tap. (Tr. 214) Dr. Sanford testified that scald burns in general are indicative of intentional injury. (Tr. 215) Dr. Sanford noted that the mother's change in story was a further indicating factor for intentional burn injury. (Tr. 215) Attributing actions to a child not old enough to supervise or to reasonably perform the acts attributed to them is an additional indicating factor for intentional burn injury. (Tr. 215) Further, there was a history of stress and interrupted care due to the father's absence that was a further indicator of intentional injury, as well as inappropriate safety expectations such as leaving a nine month old child alone in a tub. (Tr. 216) Additional indicators of possible intentional injury were lack of external support, lack of financial self-sufficiency, unemployment and acute family stressors including two children under two and another expected. (Tr. 217) Dr. Sanford testified that ultimately, the burns were so severe that Briston could not grow skin back on 50% of his body. (Tr. 226)

SUMMARY OF THE ARGUMENT

The trial court did not abuse it's discretion in admitting Exhibit S-12, Abuse/Neglect Risk Factor Assessment, as an exception to the general rule against hearsay. The Abuse/Neglect Risk Factor Assessment was admissible as an exception to the rule against hearsay under the business records exception. The testimony of Dr. Sanford established that the assessment is a regularly kept business record, it is a written document that was made at the time the assessment was conducted and it was the regular practice of the hospital to make Abuse/Neglect Risk Assessments. Further, Dr. Sanford is an individual with knowledge who is acting in the course

and scope of the regularly conducted activity. Anthony is procedurally barred from raising an objection to the Abuse/Neglect Risk Factor Assessment pursuant to Mississippi Rules of Evidence 703 or 702 as no argument was made at trial or in any post-trial motion that the report was inadmissible pursuant to those rules.

The verdict not against overwhelming weight of the evidence and the evidence was sufficient to support the jury's verdict. The issues presented by the Appellant are without merit and the jury's verdict and the rulings of the trial court should be affirmed.

ARGUMENT

I. The trial court did not abuse it's discretion in admitting Exhibit S-12, Abuse/Neglect Risk Factor Assessment, as an exception to the general rule against hearsay.

Mississippi appellate courts will reverse a trial court's admission of evidence only when the trial court abuses its discretion. *Cox v. State*, 849 So.2d 1257, 1268 (Miss.2003). "A trial judge enjoys a great deal of discretion as to the relevancy and admissibility of evidence. Unless the judge abuses this discretion so as to be prejudicial to the accused, the Court will not reverse this ruling." *Fisher v. State*, 690 So.2d 268, 274 (Miss.1996) (citing *Shearer v. State*, 423 So.2d 824, 826 (Miss.1982)). Further, "[a]s long as the trial court remains within the confines of the Mississippi Rules of Evidence, its decision to admit or exclude evidence will be accorded a high degree of deference." Ellis v. State, 856 So.2d 561, 565 (Miss.Ct.App.2003) (citation omitted).

A. The Abuse/Neglect Risk Factor Assessment was admissible as an exception to the rule against hearsay.

During the direct examination of Dr. Art Sanford, the prosecution introduced the "Abuse/Neglect Risk Factor Assessment". Dr. Stanford testified that he was familiar with the document and that is was prepared at Shriner's Hospital during the care and treatment of Briston.

(Tr. 202-03) It was prepared pursuant to Texas law which requires any adult to report suspicious injuries of a child to Child Protective Services. (Tr. 203) Dr. Stanford testified that it was the responsibility of the physician to prepare the form when faced with a suspicious injury. The form was signed by Shriner's Hospital employees Andy Brookover and Dr. Rosenberg, a psychologist. (Tr. 203-04) The risk assessment was completed during the care of Briston Anthony. Dr. Sanford stated that he would also have participated in the preparation of the document. (Tr. 204) Fonshanta Anthony's attorney objected to the admission of the "Abuse/Neglect Risk Factor Assessment", arguing that it was an out of court statement by Rosenberg who was not present and available for cross-examination. (Tr. 204) Upon inquiry by the trial judge, Dr. Sanford testified that the document was a regularly kept record for the treatment of the patient. (Tr. 204)

B. Appellant is procedurally barred from raising an objection to the Abuse/Neglect Risk Factor Assessment pursuant to Mississippi Rules of Evidence 703 or 702 as no argument was made at trial or in any post-trial motion that the report was inadmissible pursuant to those rules.

The Appellant goes beyond the original objection at trial, which was an objection to hearsay, and therefore this issue is procedurally barred. The trial court was never given the opportunity to pass on the admissibility of the Abuse/Neglect Risk Factor Assessment pursuant to the provisions of Mississippi Rules of Evidence 702 and 703 which govern the admissibility of expert opinion testimony and the qualifications to give expert testimony.

In *Haley v. State*, 864 So.2d 1022, 1024 (Miss.Ct.App.2004), the Mississippi Court of Appeals held that:

> [A]n appellate court will not consider or review issues that were not raised in the trial court. *Crenshaw v. State*, 520 So.2d 131, 134 (Miss.1988). A defendant is procedurally barred from raising an objection on appeal that is different than that raised at trial. *Jones*

> *v. State*, 606 So.2d 1051, 1058 (Miss.1992). A trial judge cannot be put in error on a matter which was not presented to him for decision. *Logan v. State*, 773 So.2d 338, 346 (Miss.2000).

Therefore, this issue may not be raised for the first time on appeal.

C. The Abuse/Neglect Risk Factor Assessment is admissible under the business records exception contained in Mississippi Rules of Evidence 803(6).

Under Rule 803(6), the focus is properly placed on the time period when the documents were created, the trustworthiness of the documents, and whether their creation was in the regular course of business. *Ferguson v. Snell*, 905 So.2d 516 (Miss. 2004). "[I]t is not necessary to call or to account for all participants who made the record." *Id.* (citing, *Miss. Gaming Comm'n v. Freeman*, 747 So.2d 231, 242 (Miss.1999); Miss. R. Evid 803(6) cmt.) It is only necessary that testimony concerning the source of these documents is offered by an individual "with knowledge who is acting in the course and scope of the regularly conducted activity." *Id.* The foundational requirements for admitting evidence under the business records exception are: 1) the statement is in written or recorded form; 2) the record concerns acts, events, conditions, opinions or diagnoses; 3) the record was made at or near the time of the matter recorded; 4) the source of the information had personal knowledge of the matter; 5) the record was kept in the course of regular business activity; and 6) it was the regular practice of the business activity to make the record. *Flowers v. State*, 773 So.2d 309, 322 (Miss.2000).

During Dr. Art Sanford's direct examination, the following colloquy occurred with regard to State's Exhibit 12, Abuse/Neglect Risk Factor Assessment:

Q. Was that prepared during the care and treatment that was provided to Briston?

A. Yes.

Q. At Shriner's?

A. Yes. Why would a document like that be prepared?

Q. Texas law requires any adult to report suspicious injuries to Child Protective Services, so that gets Child Protective Services involved. Then in order to provide them as much information as possible, our psychologist, who it used to be called Family Services at our institution; but the psychologists have an interest in both patient and family and identifying risks for who is at risk for injury, who is at risk for having a second burn injury to prevent recurrences. This document, there's a summary at the beginning, but then there's several pages of things we found that are common indicators of abuse.

Q. Would a physician have requested that this risk assessment be conducted?

A. Yes.

Q. It would be the responsibility of the physician when faced with a suspicious injury?

A. Yes, like I say, it's ultimately the physician's responsibility to report it, and Texas says you can't allocate the responsibility. You have to ensure that it's done.

Q. And this was signed by Andy Brookover and Dr. Rosenberg?

A. Yes. Dr. Rosenberg is the psychologist.

Q. Are they employees with Shriner's?

A. Yes.

Q. Colleagues of yours?

A. Yes.

Q. And this risk assessment would have been completed during the care of Briston Anthony?

A. Yes.

Q. Would you rely on this for care?

A. I would have participated in the preparation of the document?

By Mr. Creekmore: Your Honor, at this time we'd ask that the risk assessment report be received into evidence.

By Mr. Dolan: We would object, your Honor, on the basis that it is hearsay. It is not the doctor's report. It is a statement made out of court by a declarant named Rosenberg who is not present and available for cross- examination.

By the Court: All right. This is a part of your regularly kept record for the treatment of this patient?

A. Yes.

By the Court: The objection will be overruled.

(Tr. 203-04)

As noted above, it is only necessary that testimony concerning the source of these documents is offered by an individual "with knowledge who is acting in the course and scope of the regularly conducted activity." *Id.* The foundational requirements for admitting evidence under the business records exception are all present. The Abuse/Neglect Risk Factor Assessment is in written form. and concerns acts, events, conditions, opinions or diagnoses. The written document was made at or near the time of the assessment. The source of the information, Dr.

Sanford, has personal knowledge of the matter. And, the assessment was kept in the course of regular business activity; and it was the regular practice of the business activity to make the record. *Flowers v. State*, 773 So.2d 309, 322 (Miss.2000). "[I]t is not necessary to call or to account for all participants who made the record." *Ferguson*, (citing, *Miss. Gaming Comm'n v. Freeman*, 747 So.2d 231, 242 (Miss.1999); Miss. R. Evid 803(6) cmt.)

Further, Anthony is unable to demonstrate any prejudice from the admission of this document since Dr. Sanford participated in the preparation of the document and was able to testify by his own observations to the existence of the risk factors identified, particularly relating to the intentional infliction of the burn. This issue is without merit and the trial court's ruling should be affirmed.

II. The verdict not against overwhelming weight of the evidence and the trial court properly denied Anthony's Motion for New Trial.

Anthony challenges the jury verdict as contrary to the overwhelming weight of the evidence. When the weight of the evidence is challenged, appellate courts will not retry the facts but must take the view of the evidence most favorable to the State and must assume that the fact-finder believed the State's witnesses and disbelieved any contradictory evidence. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993); *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). On review, the appellate court must accept as true all evidence favorable to the State, and the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin*, 607 So.2d at 1201 (citations omitted). The appellate court will reverse such a ruling only where "reasonable and fairminded jurors could only find the accused not guilty." *McClain*, 625 So.2d at 778 (citing *Wetz v. State*, 503 So.2d 803, 808 (Miss.1987); *Harveston v. State*, 493

So.2d 365, 370 (Miss.1986)).

An appellate court will only reverse a trial court's denial of a motion for new trial when it amounts to an abuse of discretion. *Ivy v. State*, 949 So.2d 748, 753 (Miss.2007). The Mississippi Supreme Court has held that:

> [w]hen reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. However, the evidence should be weighed in the light most favorable to the verdict.
>
> *Id.* (quoting *Bush v. State*, 895 So.2d 836, 844 (Miss.2005))

In reviewing a challenge to the weight of the evidence, Mississippi appellate courts accept all of the evidence supporting the verdict as true. *Hodges v. State*, 906 So.2d 23, 26(11) (Miss.Ct.App.2004) (citing *Swann v. State*, 806 So.2d 1111, 1117(25) (Miss.2002)). On appeal, "we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So.2d 836, 844(18) (Miss.2005) (citing *Herring v. State*, 691 So.2d 948, 957 (Miss.1997)).

In the case *sub judice*, the testimony established that on July 18, 2005, 9 month old Briston Anthony was badly burned in the bathtub of his family's apartment. The tub was approximately 160 degrees and Briston suffered serious burns over 60% of his body. Briston was in the care of his mother, Fonshanta Anthony, at the time he was injured.

The expert testimony of Dr. Art Sanford established that Briston's burns had

characteristics consistent with intentional infliction and that the burns were inconsistent with accidental injury. Dr. Sanford testified that Briston's burns were consistent with a child being forcibly held in the water in a sitting position, with patterns appearing where the skin was folded around the wrists and groin. (Tr. 202) He testified that the lack of splash marks and the straight line demarcation of the burn were evidence of a forced immersion, since a 9 month old baby would ordinarily be flailing in response to the painful stimuli. (Tr. 202) He further testified that if the hot water had been turned on while the child was already in a tub of temperate water, there would be varying degrees of burns on the child's body. (Tr. 202)

Dr. Sanford testified that the description Ms. Anthony gave of the events wherein the two-year-old was in the tub with Briston at the time the water was turned on were not consistent with the injuries Briston received. (Tr. 205, State's Exhibit 12) He testified that if another child had been in the tub with Briston, that child would have received burns as well. (Tr. 206) He testified that under those circumstances Briston would have been thrashing and flailing and attempting to get away from the painful stimulus. (Tr. 206)

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tub so that circular areas of the buttocks were not exposed to the hot water for the same length of time as the rest of the burned area. (Tr. 213) "Zebra stripes" on Briston's wrists and groin area indicate that Briston was pressed into the water so that the folds of skin prevented stripes of skin in those areas from getting burned. (Tr. 213-14)

Dr. Sanford also testified that it was unlikely that a sibling could be in the tub with Briston and not be burned as well. He testified that it would be hard for a two year old to have the fine motor coordination to turn on the water or change the water on a tap. (Tr. 214) Dr. Sanford testified that scald burns in general are indicative of intentional injury. (Tr. 215) Dr. Sanford noted that the mother's change in story was a further indicating factor for intentional burn injury. (Tr. 215) Attributing actions to a child not old enough to supervise or to reasonably perform the acts attributed to them is an additional indicating factor for intentional burn injury. (Tr. 215) Further, there was a history of stress and interrupted care due to the father's absence that was a further indicator of intentional injury, as well as inappropriate safety expectations such as leaving a nine month old child alone in a tub. (Tr. 216) Additional indicators of possible intentional injury were lack of external support, lack of financial self-sufficiency, unemployment and acute family stressors including two children under two and another expected. (Tr. 217) Dr. Sanford testified that ultimately, the burns were so severe that Briston could not grow skin back on 50% of his body. (Tr. 226)

Considering the testimony discussed above, the evidence overwhelming supports the jury's verdict that Anthony is guilty of felony child abuse for the intentional infliction of Briston's third degree burns over 60% of his body. No new trial is warranted, as the jury's verdict is consistent with the weight of the evidence. Sitting as the "thirteenth juror," it is clear

that the evidence, when weighed in the light most favorable to the verdict, supports the jury's decision to convict. Accordingly, the trial court did not err in denying Anthony's motion for a new trial and the trial court's ruling should be affirmed.

III. The evidence was sufficient to support the jury's verdict and the trial court correctly denied Anthony's Motion for Directed Verdict.

An appellate court's review of the denial of a motion for directed verdict, or of a motion for a JNOV, is de novo. *White v. Stewman*, 932 So.2d 27, 32 (Miss.2006). In *Stewart v. State*, 986 So.2d 304, 308 (Miss.2008), the Mississippi Supreme Court stated that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for a JNOV, the critical inquiry is whether the evidence shows "beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." *Id.* at 308. However, the Mississippi Supreme Court stated that:

> this inquiry does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. If there is sufficient evidence to support a guilty verdict, the motion for a directed verdict must be overruled.
>
> *Johnson v. State*, 950 So.2d 178, 182 (Miss.2007).

If a review of the evidence reveals that it is of such quality and weight that, "having in mind the beyond a reasonable doubt burden of proof standard, reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the

offense," the evidence will be deemed to have been sufficient. *Edwards v. State*, 469 So.2d 68, 70 (Miss.1985).

In reviewing a challenge to the sufficiency of the evidence, "this Court considers all of the evidence in the light most favorable to the State and gives the State the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Seeling v. State*, 844 So.2d 439, 443(8) (Miss.2003). "We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *Gleeton v. State*, 716 So.2d 1083, 1087(14) (Miss.1998) (quoting *Wetz v. State*, 503 So.2d 803, 808 (Miss.1987)).

Mississippi Code Ann. § 97-5-39 (2)(a) provides that [a]ny person who shall intentionally (i) burn any child, (ii) torture any child or, (iii) except in self-defense or in order to prevent bodily harm to a third party, whip, strike or otherwise abuse or mutilate any child in such a manner as to cause serious bodily harm, shall be guilty of felonious abuse of a child and, upon conviction, shall be sentenced to imprisonment in the custody of the Department of Corrections for life or such lesser term of imprisonment as the court may determine, but not less than ten (10) years.

In the instant case, the jury considered the evidence and returned a verdict against Anthony. In viewing the evidence in the light most favorable to the prosecution, it is clear that a reasonable juror could have found Anthony guilty of felony child abuse. Dr. Sanford testified that Briston's injuries were intentionally inflicted by forced immersion into water of at least 130 degrees. There was no evidence that anyone else could have been responsible for Briston's injuries other than Anthony. Evidence revealed that Ms. Anthony changed her story several

times and that her explanations of the events were inconsistent with the physical evidence of Briston's injuries. Ms. Anthony further evidenced her guilty state of mind by exclaiming that she would never hurt her baby deliberately before Briston had ever received any treatment and before there was any suggestion that she was suspected of causing Briston's injuries.

The Mississippi Court of Appeals has held that "[w]hen on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited." *Phinisee v. State*, 864 So.2d 988, 992 (Miss.Ct.App.2004). Accordingly, the State urges the Mississippi Court of Appeals to affirm the trial court's decision to deny Anthony's motion for a judgment notwithstanding the verdict.

CONCLUSION

Anthony's assignments of error are without merit and the jury's verdict and the rulings of the Trial Court should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I, Laura H. Tedder, 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:

Honorable Andrew K. Howorth
Circuit Court Judge
1 Courthouse Square, Suite 201
Oxford, MS 38655

Honorable Ben Creekmore
District Attorney
P. O. Box 1478
Oxford, MS 38655

Hunter N. Aikens, Esquire
Attorney At Law
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301 North Lamar Street, Suite 210
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This the 5th day of March, 2009.

Laura H. Tedder

LAURA H. TEDDER
SPECIAL ASSISTANT ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I, Laura H. Tedder, 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:

Honorable Andrew K. Howorth
Circuit Court Judge
1 Courthouse Square, Suite 201
Oxford, MS 38655

Honorable Ben Creekmore
District Attorney
P. O. Box 1478
Oxford, MS 38655

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