

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

---

**NO. 2005-408-CR1**

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**SCOTT DANIEL BAKER**

**APPELLANT**

**VS.**

**STATE OF MISSISSIPPI**


**APPELLEE**

**ON APPEAL FROM THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI**

**BRIEF OF APPELLANT**

**ORAL ARGUMENT REQUESTED**

**RESPECTFULLY SUBMITTED**



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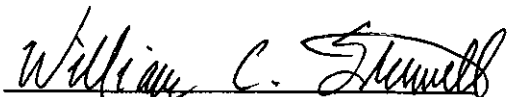
**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

1. Hon. Lyndsey Clemons  
Assistant District Attorney for the  
16<sup>th</sup> District of the State of Mississippi
2. Hon. Frank Clark  
Assistant District Attorney for the  
16<sup>th</sup> District of the State of Mississippi
3. Hon. William C. Stennett  
Counsel For Appellant  
William C. Stennett Law Firm, PLLC  
Tupelo, Mississippi
4. Hon. Lee Howard  
Circuit Court Judge  
16<sup>th</sup> District of the State of Mississippi

**RESPECTFULLY SUBMITTED**

  
**WILLIAM C. STENNETT**  
**ATTORNEY FOR APPELLANT**

IN THE SUPREME COURT  
OF THE STATE OF MISSISSIPPI

NO. 2005-405-CR1

SCOTT DANIEL BAKER

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

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**STATEMENT OF THE ISSUES**

The Appellant, Scott Daniel Baker, assigns as errors the following issues arising out of the trial in the court below.

I. The Trial Court erred in denying the Appellant's Motion To Suppress certain letters written by him to his wife approximately one year before the alleged incident complained of in the indictment.

The Appellant's argument is that the prejudicial effect of the admission of these letters far outweighed the probative value and therefore the evidence should not have been submitted to the jury. Further, these letters were not relevant as they were too remote in time to be of evidentiary value.

II. The Trial Court erred in not allowing the Appellant to produce evidence of his mental state when certain letters were written by the Appellant.

The Appellant's argument is that witnesses could have testified to the Defendant's mental state which could have served as a mitigation issue as to why letters were written.

III. The Trial Court erred in allowing evidence of a prior felony conviction of the Defendant to be presented to the jury.

The Appellant's argument is that the prejudicial effect of allowing this evidence before the jury far outweighed its probative value in that the only purpose of such evidence would be to convince the jury that because the Defendant had been convicted of a prior felony that he was now guilty of the offense as charged in the present indictment.

IV. The Trial Court erred in denying Appellant's Motion For Directive Verdict, both at the close of the State's case and at the close of the entire case, and in denying the Appellant's Motion For New Trial.

The Appellant's argument is the alleged victim's injuries were not severe enough to meet the definition of serious bodily injury as required in a child abuse case.

IV. The verdict of the jury was against the overwhelming weight of the evidence.

The Appellant's argument is that the Appellant's conviction was based primarily on the testimony of an eight year old child who was four years old at the time of the alleged incident. This testimony should not be held credible enough for a conviction in light of the Defendant's witnesses who presented conflicting testimony. Further, the child's trial testimony was in conflict with her prior statement to her mother immediately after the incident when she said that her sister had caused the injuries.

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**STATEMENT OF THE CASE**

**I. PROCEEDINGS & DISPOSITION IN THE TRIAL COURT**

The Appellant, Scott Daniel Baker, was found guilty of Felony Child Abuse following a jury trial conducted in the Circuit Court of Lowndes County, Mississippi, beginning on May 26, 2009.(Transcript-hereinafter (T) at 153) . The Appellant was represented by the Honorable William C. Stennett and the State was represented by the Honorable Frank Clark and the Honorable Lindsey Clemons. The Circuit Court Judge was the Honorable Lee Howard.

The Court sentenced the Defendant on May 29, 2009, to 10 years in the custody of the Mississippi Department of Corrections to be followed by (5) five years of post-release supervision and fined in the amount of \$1,000.00. (T at 511). A timely Notice of Appeal was filed on July 20, 2009, after the Trial Judge denied the Appellant's Motion For Judgment For Acquittal Notwithstanding The Verdict (JNOV) or in the alternative, Motion For a New Trial. (Record-hereinafter R at 188).

**II. STATEMENT OF FACTS**

The indictment in this case results from an incident that occurred on May 19, 2005, wherein Elise Zeta Catherine Smith, a four year old child, was discovered with an injury to her

face and head by her mother, Ann Lee Baker. At this time, the child was living in a mobile home with her smaller sister, Maura, her mother, Ann Lee Baker and her step-father, Scott Baker. In addition, Alex Lawrence and Rachel Lawrence, friends of the Bakers, also were living in the mobile home.

The mother, Ann Lee Baker, asked the child what had happened and the child immediately informed her that her sister, Maura, had hit her with a Leap Pad. (T at 332). The child later changed her story to say that the Appellant, Scott Baker, had hit her and caused the injuries. (T at 266). The child first made this statement to Dr. Pam Sykes when she was taken to the doctor by Ann Lee Baker and Scott Baker.

Scott Baker has denied injuring the child from the beginning of the case and continued to deny all allegations throughout the trial and does allege his innocence to this date.

There were no eye witnesses to any assault on the child but there were two individuals who later became witnesses at the trial that were living in the trailer and sleeping in a room directly adjacent to the childrens' room where the incident occurred. These individuals were Alex Lawrence and Rachel Lawrence. Alex Lawrence testified there was absolutely no noise that came from the children's room during the night or that morning. (T at 308). Mr. Lawrence testified that he was pretty much awake throughout the night and he was certain that he would have heard some sort of noise if there had been some blows struck to the child in a location that was only a few feet from where he was in bed. (T at 308-309). Rachel Lawrence testified that she slept in the room with Alex Lawrence but she stayed awake most of the night. She stated with certainty that she would have heard any noise that came from the childrens' room and that she was certain Scott Baker did not go into the children's room that night or morning. (T at 319-



320). The first time that Alex and Rachel heard any noise was when Ann Lee Baker went into the children's bedroom and discovered the injury. (T at 320).

Ann Lee Baker testified that she was not aware of Scott Baker ever approaching the children's bedroom during that night or morning. (T at 332-335). In fact, Ms. Baker testified with certainty that she was awake during the time that Scott Baker got out of bed and he never approached the children's bedroom on any occasion.

In spite of this set of facts and primarily from the testimony of the child and of Dr. Pam Sykes, the jury returned a verdict of guilty against the Appellant. The Appellant would show unto this Honorable Court that the verdict of jury was against the overwhelming weight of the evidence and he should have been acquitted of this charge.

In addition, the Appellant respectfully argues to the Court that the Trial Court erred in several evidentiary matters including the admissibility of letters, the admissibility of a prior felony charge, and ruling that the State had proven the child had suffered a serious bodily injury as required in a felony child abuse case.

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**SUMMARY OF THE ARGUMENT**

The Appellant's argument to this Honorable Court can be divided into two critical topics or issues. The first topic deals with three separate evidentiary issues. The first issue involves the Court's ruling that allowed the State to present impeachment evidence against the Appellant which consisted of letters he had written his wife at a time of over a year before the alleged child abuse incident took place. These letters contained certain graphic language wherein the Appellant threatened to whip the minor child for disciplinary reasons. The Appellant is convinced that these letters were used to inflame the jury and should not have been allowed into evidence as their prejudicial effect for outweighed their probative value. Further, the Appellant would argue that they were too remote in time to be of relevant value to the issues before the jury.

The second evidentiary matter of concern to the Appellant is that the Trial Court would not allow testimony from witnesses as to his mental state when these letters were written. The Appellant would show that he was in a mental state at certain times wherein he could not be held responsible for what he said during these occasions. It is the Appellant's position that this evidence would be of mitigation value as to the language contained in these letters.

The last evidentiary issue of which the Appellant complains is the Court's denial of his objection to admitting evidence of his prior felony conviction to the jury. The only evidentiary value of this evidence would be to convince the jury that he committed the crime as alleged in the indictment because he was a prior convicted felon. The Appellant would show unto this Honorable Court that this was against our Rules of Evidence and should not have been presented to the jury.

The Second set of issues of which the Appellant argues concerns the Court's denial of his Motion For Directive Verdict and his argument that the verdict of the jury was against the overwhelming weight of the evidence. The Appellant would show to this Honorable Court that the alleged victim's injuries were not severe enough to meet the definition of serious bodily injury as required in a child abuse case. The treating physician testified that stitches were not required for the injury. There were no fractures and the Doctor specifically testified that there were no permanent injuries. (T at 270-272).

The Appellant would lastly argue that the verdict of the jury was against the overwhelming weight of the evidence as the verdict was based on the testimony of a eight year old child who was four years old at the time of the incident and in fact, gave conflicting statements to her mother concerning the cause of the injuries. The Appellant would argue to the Court that such testimony was of insufficient value to allow the jury to convict him of this charge as there was no eye witnesses to the incident. In fact, the only persons who were close to the incident, all testified that there was absolutely no way this child could have been injured without their knowledge and they heard or saw nothing to cause concern. These witnesses include Ann Lee Baker, Alex Lawrence and Rachel Lawrence.

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**ARGUMENT OF APPELLANT**

**I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS CERTAIN LETTERS WRITTEN BY HIM TO HIS WIFE APPROXIMATELY ONE YEAR BEFORE THE ALLEGED INCIDENT COMPLAINED OF IN THE INDICTMENT.**

The Appellant learned through discovery that the State intended on introducing letters written by him to his wife approximately one year before the alleged incident. These letters contained statements by the appellant to the effect that he would discipline the children when he returned from incarceration because of their bad habits. However, the language used in the letters was vulgar and very inflammatory to the jury. Prior to trial, the Appellant filed a Motion To Suppress these letters and attached a copy of said letters for the Court's review. (R at 52). Thereafter a hearing was held and the Court denied the Appellant's Motion and allowed the introduction of the letters with certain caveats. (R at 106). The Appellant and his counsel disagreed with the Court's ruling that the letters would be admissible in that their prejudicial value for outweighed the probative value. Further, the letters were written over a year before the alleged incident occurred and it was the Appellant's position that this was too remote in

time to have any relevancy to the case. However, in spite of the Appellant's renewed objection at Trial, the Court allowed the introduction of these letters as impeachment testimony during the testimony of the Appellant and Ann Lee Baker. The vulgar language was used over and over by the prosecution and it is the Appellant's position that this matter did nothing but inflame the jury against the Appellant. The Appellant would argue to this Honorable Court that the Trial Court allowed the State to use a prior act of the Defendant to allow the jury to conclude that he committed the instance offense. The Appellant would argue to the Court that if the letters were written within a reasonable time of the incident such as on the same date or a day or two before the incident, then the letters might have had some relevancy. However, the letters were written over a year before the incident occurred and accordingly, the letters should have no probative value as to the Defendant's motive or state of mind. The Appellant would show unto this Court that this damaging evidence was one of the major factors of the Appellant's conviction.

The Appellant would show unto this Court that the Trial Court erred in allowing this irrelevant and highly prejudicial material to be used by the State. See Kelly v. State, 735 So. 2d 1071 (Miss. Ct. App. 1999)(In the trial for the manslaughter of Defendant's wife and two children it was error to allow the prosecutor to cross him about abusing his family and their being in an abuse shelter. The evidence had no purpose other than to show his violent character and his propensity of violence, clearly prohibited by Rule 404(a)); Banks v. State, 725 So. 2d 711 (Miss. 1997)(It was reversible error to allow evidence that the day before the murder, the Defendant said that he was a dangerous man who loved money and would do anything for it. The apparent purpose of the evidence was to prove that Banks acted in conformity with the revealed character); Houston v. State, 531 So. 2d 598 (Miss. 1988)(The probative value of

evidence of prior acts of child abuse in a case involving killing in the course of child abuse is dubious and its prejudicial effect great, especially where there is no showing of criminal intent. 404(b)); Gates v. State, 936 So. 2d 335 (Miss. 2006)(In an aggravated assault case, testimony concerning an incident which occurred between the Defendant and the victim some weeks or months earlier was inadmissible under Rule 404(a)(2) to prove the victim's character trait for violence. The incident was too remote in time and there was no evidence that the victim was the first aggressor in the prior incident); Walker v. Benz, 914 So. 2d 1262 (Miss. Court of Appeals 2005)(In a case involving a tort claim for assault, the Court erred in allowing testimony concerning a statement the Plaintiff made to another person about threatening the Defendant because the Defendant was attempting to show that the Plaintiff had an aggressive or violent personality which made it more likely that he assaulted the Defendant).

**II. THE TRIAL COURT ERRED IN NOT ALLOWING THE APPELLANT TO PRODUCE EVIDENCE OF HIS MENTAL STATE WHEN CERTAIN LETTERS WERE WRITTEN BY THE APPELLANT.**

The Appellant would refer the Court back to the above argument wherein certain letters were admitted as impeachment evidence. As a result, the Appellant attempted to introduce witnesses who were familiar with his mental state on or about the time these letters were written. As stated by Appellant's Counsel, this evidence would not be admitted to support an insanity defense but would be admitted as mitigation evidence for the writing of the letters. (T at 387-388).

The Appellant's mother attempted to relate the Appellant's condition through her testimony but the Trial Court sustained the State's objection. (T at 381). However, there was

enough testimony elicited to show this Honorable Court the type of evidence that could be presented by other witnesses. The Appellant would ask this Honorable Court to review this testimony and consider it as relevant as mitigation evidence. As the Court was aware, there would be no attempts for mitigation evidence if the letters were not admitted previously as stated hereinabove.

The Appellant would argue to this Court that this evidence was admissible as probative evidence as a result of the Court's admission of letters written a year before the incident. See Mississippi Rules of Evidence 402 and 403; Green v. State, 614 So. 2d 926(Miss 1992)(Testimony by victim's wife about the victim's strange and unusual behavior following his brain surgery is relevant as supporting the Defendant's story of self-defense and should have been admitted).

### **III. THE TRIAL COURT ERRED IN ALLOWING EVIDENCE OF A PRIOR FELONY CONVICTION OF THE DEFENDANT TO BE PRESENTED TO THE JURY.**

The Court conducted a Peterson hearing prior to the Appellant's testimony to determine if evidence of his prior conviction of accessory after the fact could be used as impeachment evidence. Appellant's counsel strongly argued against the use of the evidence but the Trial Judge determined that it was admissible. (T at 292)

The Appellant takes the position that the very essence of Rule 609, 404 (b) and 403 is to keep the Defendant from being tried and convicted of a charge because of past acts. The Appellant would show unto the Court that in spite of the State's argument, the very essence of having evidence of past acts admitted into evidence is to convict the Appellant in the instant case because of prior conduct. The Appellant would show unto the Court that no matter how

the jury is instructed as to the admissibility of impeachment evidence or how they are instructed that it only goes to the Appellant's truthfulness, the jury still will conclude that if the Defendant committed a prior bad act then he more than likely committed the instant offense. Therefore, the Appellant, would ask this Honorable Court to review the Peterson factors as considered by the Judge and rule in favor of the Appellant that the factors do not weigh in favor of admissibility. The Appellant would show unto the Court when you get past all of the legalize then you have a Defendant convicted because of his past acts and not convicted because of the essence of the facts for which he is on trial.

**IV. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DIRECTIVE VERDICT, BOTH AT THE CLOSE OF THE STATE'S CASE AND AT THE CLOSE OF THE ENTIRE CASE, AND IN DENYING THE APPELLANT'S MOTION FOR NEW TRIAL.**

The Mississippi Supreme Court has stated that for a conviction to stand the prosecution is required to prove every element of the offense beyond a reasonable doubt. Williams v. State, 544 So. 2d 782(Miss. 1987); Neal v. State, 451 So. 2d 743(Miss. 1984). An essential element of the crime of felony child abuse is that the State must prove that the child suffered serious bodily injury.

Dr. Pam Sykes gave her expert testimony as to the child's injuries. (T at 270). During cross-examination, Dr. Sykes admitted that the wound below the child's eye was very small and did not require stitches. Further, there was no fractured skull, there were no broken bones, and particularly there were no permanent injuries. (T at 271-272). The Appellant would admit that Dr. Sykes testified that there was bruising, swelling and some bleeding immediately following the incident when the child was seen in her office. However, from a picture entered by the State,



it is evident that the child's injuries were greatly subdued a short time thereafter. The Appellant would also refer the Honorable Court to the testimony of Ann Lee Baker who testified that the small puncture wound was not bleeding profusely. The Appellant would show unto the Court that the injury would sustain only a conviction of misdemeanor child abuse at best.

**V. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE**

The Appellant would show that his conviction was based primarily on the testimony of an eight year old child who was four years old at the time of the alleged incident. The Court should also be aware that the child's testimony conflicted with what she had told her mother immediately after the incident occurred. (T at 327-366). The Appellant asked the Court to reflect on this child's testimony which was even called in to suspect by Dr. Pam Sykes when she testified that yes children's testimony could be swayed. (T at 250-275).

The Appellant would further ask the Court to reflect on the testimony of Ann Lee Baker, Alex Lawrence, Rachel Lawrence and the Appellant who all testified that there was no way that the Appellant could have entered the child's room and caused this damage without these individuals being aware of the incident. As the Court is aware, the incident occurred in a mobile home with Alex and Rachel Lawrence located in a room directly next to the children's room. They did not hear any sounds whatsoever until the mother entered the child's room. This was the first time that anyone became aware that anything had happened. The mother herself testified that when the Appellant left her bedroom she could see his presence and he never went close to the child's bedroom. The Appellant would ask the Court to reflect on the testimony on all of the Defendant's witnesses whose testimony is in direct conflict with that of

the four year old child. The Appellant would argue to the Court that the verdict of the jury was against an overwhelming weight of the evidence.

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**CONCLUSION**

The Appellant would show unto this Honorable Court that he was denied a fair trial in this cause because of the reasons that were set forth in this brief. The Appellant would urge this Honorable Court to consider the issues raised herein and thereafter find that he was denied his right to a fair trial and his case should be reversed and rendered.

The Appellant urges this Court to closely review the testimony of the defense witnesses and compare that testimony to the testimony of the alleged child victim. The Appellant would ask the Court to particularly keep in mind that the child was four years old when this incident occurred and eight years old when the trial occurred. The Appellant would also urge the Court to consider that the child's testimony changed from claiming that her sister had hit her to claiming that her father had hit her. The Appellant would show that of particular importance is that no one in the mobile home heard anything out of the child until the mother entered the bedroom. It was at this time that the incident arose. The Appellant asserts to this Court that if the Court would take the cumulative effect of all these issues it will find that the Appellant was denied a fair trial in this cause.

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CERTIFICATE OF SERVICE

This is to certify that I, William C. Stennett, have this day delivered a true and correct copy of the above and foregoing Appellant's Brief, by placing a copy of the same in the United States Mail, postage prepaid, to the following persons at these addresses:

Honorable Jim Hood  
Attorney General  
P. O. Box 220  
Jackson, MS 39205-0020

Honorable Lee Howard  
P. O. Box 1334  
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Honorable Lindsay Clemons  
P.O. Box 1344  
Columbus, MS 39703

Honorable Frank Clark  
P.O. Box 1344  
Columbus, MS 39703

This is the 29<sup>th</sup> day of Jan, 2010.

  
WILLIAM C. STENNETT, 