

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2010-KA-00171-COA

DEWAYNE LADALE TUGLE

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S REPLY BRIEF

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<i>Warren v. State</i> , 709 So. 2d 415 (Miss.1998)	1

STATUTES

none

OTHER AUTHORITIES

none

REPLY ARGUMENT

Issue No. 1: *Instruction on Identification Evidence*

The state relies on the suggested rule that an identification instruction is not required when there are more than one identification witnesses. See *Francis v. State*, 791 So. 2d 904, 908-09 (Miss. Ct. App. 2001). However, there is no rational basis for the rule. The standards of identification evidence set out in *Neil v. Biggers*, 409 U. S. 188, 199-299, 93 S. Ct. 375, 382 (1972) mention nothing about the number of witnesses affecting the standard.

It is suggested that *Warren v. State*, 709 So. 2d 415, 420 (Miss.1998), upon which the *Francis* decision and those like it are based, has been misread and misapplied. The *Warren* court's mention of the single witness in that case is dicta, stated as a justification for the granting of the instruction there. A single witness should not be the *sine qua non* for application of the rule.

The reliability of each identification witness should be evaluated independently, and the application of the *Neil* factors likewise. The state's burden of proof is not diluted by the number of witnesses.

Appellant cited distinguishing factors from application of the single witness approach in the initial brief which are just as convincing that an identification instruction should have been given in this case.

Issue No. 2: *Late Discovery*

The appellant rests on his initial brief and authorities therein.

Issue No. 3: *Weight of Evidence, Counts 1 and 3:*

It should be stressed that the questionable identifications of Tugle are not the only shortcomings of the state's case here. The lady who owned the car Tugle ran said that Tugle had on different clothing than that described by the investigator and the Garrets. [T. 307-11]. She also said she watch Tugle exit his truck and did not see a gun or anything in his hands. *Id.*

Issue No. 4: *Sufficiency and Weight of Evidence under Count 4:*

There was no showing that Tugle operated his vehicle “ in such a manner as to indicate a reckless or willful disregard for the safety of persons or property” nor “in a manner manifesting extreme indifference to the value of human life.” Simply put, the state did not prove that Tugle's was nothing more than a run-of-the- mill fender-bender.

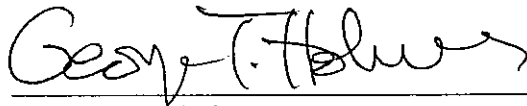
CONCLUSION

Dewaye Tugle is entitled to have his convictions under all counts reversed, with a new trial for Counts 1 and 3. An acquittal should be rendered under Count 4 or a new trial granted with the other Counts.

Respectfully submitted,

DEWAYNE LADALE TUGLE, Appellant

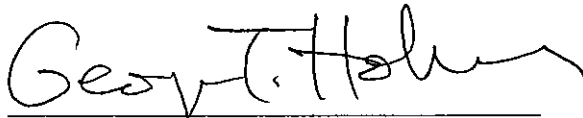
By:



George T. Holmes,
Mississippi Office of Indigent Appeals

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 11th day of June, 2010, mailed a true and correct copy of the above and foregoing Reply Brief to Hon. Kenneth L. Thomas, Circuit Judge, P. O. Box 548, Cleveland MS 38732, and to Hon. Charles W. Kirkham, Asst. Dist. Atty., 115 1st Street, Clarksdale MS 38614, and to Hon. LaDonna Holland, Asst. Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.



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