IN THE COURT OF APPEALS OF MISSISSIPPI
No. 2022-KA-00988-COA

ANTHONY GERALD FOX
Appellant

v.

STATE OF MISSISSIPPI
Appellee

On Appeal from the Circuit Court
of Hinds County, Mississippi
First Judicial District

BRIEF OF THE APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

Under Mississippi Rule of Appellate Procedure 28(a)(1), governmental parties need not furnish a certificate of interested persons.

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Attorney General of Mississippi

/s/ *Casey B. Farmer*
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INTRODUCTION

The State agrees that this Court should reverse Anthony Fox's conviction and render judgment in his favor.

This case arises from the death of George Robinson after a struggle with Jackson police officers. On January 13, 2019, Fox and other officers were investigating a murder. After seeing Robinson make an apparent drug deal from a parked car, Fox approached and ordered Robinson out of the car. Robinson failed to follow Fox's commands or to show his hands. A struggle ensued. Two fellow officers came to Fox's aid. The struggle continued and, once the officers got Robinson out of the car, he continued to struggle against them, holding his arms at his chest to hide something in his hands. The officers maneuvered him to the ground and continued trying to pull his hands apart. Robinson dragged his hands to his mouth, where he ate what he was trying to hide. He then stopped struggling. In the struggle, Robinson got a small, superficial abrasion on his forehead. He had no other visible injuries or symptoms of injuries. He was arrested, charged with resisting arrest and disorderly conduct, and released at the scene. Several hours later, Robinson—who was 62, had health problems, and was on medication—suffered a seizure and two days later died of a subdural hematoma. A jury convicted Fox of culpable-negligence manslaughter—the core element of which is "negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Brown v. State*, 304 So. 3d 692, 696 (Miss. Ct. App. 2020).

That conviction should not stand. Our Supreme Court has long warned about the dangers of the culpable-negligence statute. In particular, that Court has cautioned that juries may be "overinclined to convict on proof of what is in fact no more than simple negligence." *Phillips v. State*, 379 So. 2d 318, 320 (Miss. 1980). The culpable-negligence-manslaughter statute demands more: a showing "beyond every reasonable doubt" of "wanton disregard" or "utter indifference" to the safety of human life—a "high burden." *Brown*, 304 So. 3d at 696. Because juries may convict on less than what culpable-negligence-manslaughter statute demands, "there have been more reversals in this class of cases than perhaps in any other." *Phillips*, 379 So. 2d at 320.

In line with those principles, this Court recently reversed a culpable-negligence-manslaughter conviction on facts that are strikingly on point here. In *Brown v. State*, 304 So. 3d 692, a security guard (Brown) tried to remove a (possibly unruly) patron from a bar by wrapping his arms around the patron's neck, choking him, taking him to the ground, and trying to handcuff him. *Id.* at 694. The patron—who had been trying to break up a fight between two others—fell unconscious and later died of "complications of hypertensive cardiovascular disease associated with a physical altercation." *Id.* The patron had only superficial visible injuries. *Id.* at 694–95.

This Court ruled that the evidence was insufficient as a matter of law to sustain Brown's conviction for culpable-negligence manslaughter.

304 So. 3d at 696–97. The Court contrasted Brown's case with two cases affirming homicide convictions that involved a physical struggle and a victim with health problems. *Id.* at 696. Those latter cases involved "*multiple blows* to the victims resulting in *severe* blunt-force trauma" during "*extensive* struggles." *Id.* (emphases added). In one case the defendant "bludgeon[ed]" the victim's head with a tire iron during a robbery; in the other the defendant inflicted "severe trauma" to the victim's "face, neck, and arms," leaving the victim with a "bloody nose" and a right eye that was "swollen shut." *Id.* Those extensive struggles, involving repeated blows to the head, contrast sharply with "Brown's singular act of attempting to remove" the patron from the bar. *Id.* Although that act "may have been negligent," "there was no evidence of severe trauma or trauma in multiple locations that could constitute gross negligence," the only injuries to the victim were visibly slight, and there was no "extensive struggle" of the sort present in those other cases, *id.* at 696–97—even though Brown wrapped his arms around the patron's neck, choked him, took him to the ground, and tried to handcuff him, *id.* at 696. "[T]hese facts," this Court ruled, "were insufficient to demonstrate negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Id.* at 697 (internal quotation marks omitted). The Court therefore rendered judgment for Brown.

This Court's decision in *Brown* requires reversing Fox's conviction and rendering judgment in his favor. In every way that matters, the facts

here are indistinguishable from *Brown*. Like Brown, Fox engaged in a "singular act": trying to secure Robinson in the face of his possible wrongdoing and the possible danger that he presented. 304 So. 3d at 696. In neither case—Brown's or Fox's—was there an "extensive" struggle involving "multiple," "severe" blows to the victim. *Id.* There was only a lesser struggle in both Brown's and Fox's cases: Brown had a struggle with the victim that involved a choking, takedown, and handcuffing. Fox had a struggle with Robinson in which he assertedly slammed Robinson on the ground—yet that struggle was prolonged and made harder by Robinson's continual resistance and failure to follow commands. *See id.* Like the patron in *Brown*, Robinson suffered only superficial visible injuries: in Robinson's case, a small abrasion to his forehead, no other visible injuries, and no other symptoms of injuries. *See id.* at 696–97.

Thus, just as in *Brown*, here "there was no evidence of severe trauma or trauma in multiple locations that could constitute gross negligence," the only injuries to the victim were visibly slight, and there was no "extensive struggle" involving "multiple blows to the victims resulting in severe blunt-force trauma" that could sustain a culpable-negligence finding—even if Fox's effort to arrest Robinson "may have been negligent." *Id.* at 696. Under *Brown*, "these facts" are "insufficient to demonstrate negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Id.* at 697 (internal quotation marks omitted).

This Court should reverse Fox's conviction and render judgment in his favor.

STATEMENT OF THE ISSUE

Was the evidence at trial sufficient to sustain Fox's conviction for culpable-negligence manslaughter, particularly given this Court's decision in *Brown v. State*, 304 So. 3d 692 (Miss. Ct. App. 2020), reversing such a conviction and rendering judgment for the defendant, due to insufficient evidence, on facts that are materially indistinguishable from those in Fox's case?

STATEMENT OF THE CASE

A. Factual Background

On the night of January 13, 2019, Officer Fox and other Jackson Police Department officers—including Sergeant Lincoln Lampley, Officer Desmond Barney, and Officer George Moore—were searching for a suspect in the carjacking and murder of a local pastor. Tr. 492–93. A tip led them to Jones Avenue. Tr. 495. When the officers arrived, they split up to interview nearby residents. Tr. 497, 930.

Fox approached a white car parked in the street. Tr. 497. He saw a woman standing with a handful of cash at the driver's window. Tr. 1438. He watched as she "stuffed the money inside of the vehicle," which Fox suspected was a drug deal between her and the driver, George Robinson. Tr. 1438, 1471–72. Fox told the woman to stop, but she walked away. Tr. 1438. Once Robinson saw Fox, he "automatically [began] to start reaching

with his right hand in between the driver's seat and the center console." Tr. 1439. In Fox's experience, people kept guns in that area. Tr. 1440. Fearing that Robinson was reaching for a gun, Fox loudly ordered him to "stop reaching." Tr. 1440. Robinson ignored him. Tr. 1440–41.

Because Robinson refused to show his hands, Fox opened the driver's door and grabbed Robinson's arm. Tr. 1441. Robinson continued to reach between the seat and console. Tr. 1441. He then twisted his body toward the console, which pulled Fox "halfway inside of the door frame" of the car. Tr. 1441–42. Fox commanded Robinson to show his hands and stop reaching between the seat and console. Tr. 1442. Fearing for his safety, Fox unholstered his gun and continued ordering Robinson to show his hands. Tr. 1442. Once Fox heard Sergeant Lampley approach, Fox holstered his gun. Tr. 1442.

While conducting field interviews nearby, Sergeant Lampley heard "loud commands coming from Detective Fox." Tr. 502. Fox's voice sounded "distressed," so Lampley went to help. Tr. 502. Lampley saw Robinson "reaching in between his seat with one hand at first, then two hands" like he was trying to retrieve something. Tr. 503, 506. Lampley "drew [his] weapon out of fear [for] Detective Fox's life that Mr. Robinson may be attempting to retrieve a weapon ... due to the nature in which he was reaching and he wasn't following commands at that time." Tr. 504. He saw Fox grab Robinson's left arm to stop him from reaching between the seats and to remove him from the car. Tr. 503–04. Lampley said that Fox

and Robinson were "in a pretty good tug of war" as Fox tried to get Robinson out of the car. Tr. 504. He said that Fox continued to give Robinson "loud commands to exit the vehicle and stop reaching." Tr. 504. And he saw Robinson continue to stuff "both of his hands down in between the driver's seat and the center console." Tr. 504. Taking "a really, really, really, big risk," Lampley holstered his gun and reached in the car to assist Fox. Tr. 504.

Together, the officers managed to remove Robinson from the car. Tr. 504. Lampley was on Robinson's right side, and Fox was on his left. Tr. 507. Lampley testified that he and Fox were trying to hold Robinson up but Robinson was "using his weight to pull [them] down" and "trying to go to the ground." Tr. 507–08. Robinson's arms were crossed on his chest, and Lampley thought he was hiding something in his hands. Tr. 507.

As both officers struggled to keep Robinson standing, Robinson dropped to his knees and then fell on his stomach. Tr. 508. He continued to resist the officers' attempts to move his arms from underneath him, "using all his body weight to secure whatever he ha[d] in his hands." Tr. 508. As the struggle continued, Robinson moved his hands to his face, then stopped resisting. Tr. 512, 540. He stopped resisting after "he got whatever he had in his hand to his mouth and swallowed it." Tr. 540.

Officer Barney also testified to what occurred during the struggle. When the struggle began, he was conducting field interviews nearby. Tr.

930. He heard Fox yelling "show me your hands, stop reaching, show me your hands, stop moving, stop reaching." Tr. 931. Fox sounded "like either he was in danger or somebody else was in danger." Tr. 931–32. Barney approached the car. Tr. 934–35. He saw Robinson reaching between the seats, with "his hands completely in between the seat and the center console." Tr. 934–35. Believing that Robinson was reaching for a gun, Barney unholstered his gun. Tr. 935–37. Barney saw Robinson resist the efforts to remove him from the car and Fox and Lampley's efforts to keep him upright. Tr. 939, 941. Barney also saw Robinson "get down to the ground and continue[ ] to try to get his hands to his mouth." Tr. 942–43, 951. Noticing that Robinson was "just trying to swallow something," Fox prevented Barney from using his pepper spray on Robinson. Tr. 945.

Officer Moore testified similarly to Barney. He heard Fox order Robinson to show his hands. Tr. 1224. When the officers removed Robinson from the car, he saw Robinson tuck his hands and arms close to his body. Tr. 1225. Robinson "weigh[ed] himself down to get more ... leverage away from them, trying to pry his arms away." Tr. 1226. Robinson stopped resisting once he got what he was holding in his mouth. Tr. 1227.

Although not privy to Robinson's actions inside the car, two witnesses saw the officers remove Robinson from the car. Both witnesses testified that Fox acted forcefully when removing Robinson from the car and that Fox "threw" or "slammed" Robinson to the ground. Tr. 377, 387,

445, 455–56. Both saw Robinson's head hit the ground. Tr. 388, 446. One of these witnesses, Ronnie Arnold, testified that Robinson had recently had a stroke. Tr. 372. Arnold thought the stroke accounted for Robinson's failure to comply with Fox's orders. Tr. 421.

Once Robinson stopped resisting and stood up, the officers noticed a small scrape over his eye. Tr. 1210, 1228, 1133, 1155. Fox called an ambulance. Tr. 1449. An EMT testified that Robinson "refused medical attention," but Fox "requested a small bandage for [Robinson's] forehead." Tr. 634. The EMT said that the scrape, which was no bigger than his thumbnail, had stopped bleeding by the time he arrived. Tr. 640, 658. Fox "convinced [Robinson] to allow a bandage to be applied," but Robinson refused further treatment. Tr. 635, 637.

The EMT testified that Robinson was alert and aware. Tr. 641–42. He explained that Robinson had the highest rating on the Glasgow Coma Scale, which indicated that his eyes were moving and working normally; that he could communicate, understand, and talk; and that he could stand and walk on his own. Tr. 642–43, 654.

Fox cited Robinson for failure to obey and resisting arrest before telling him to leave the scene. Tr. 1453–55; Ex. D-5. Hours later, Robinson had a seizure at a nearby hotel. Tr. 557. The EMTs who arrived to treat him found him unconscious on the bed. Tr. 668. The EMTs noticed swelling on Robinson's head and a small scratch. Tr. 668, 772. Robinson was taken to a local hospital, where doctors performed a

craniotomy to alleviate pressure on his brain from a subdural hematoma. Tr. 819–21, 825. Robinson died on January 15. Tr. 830.

Four medical experts testified at trial—Dr. Mark LeVaughn for the State, and Drs. Timothy Usee, Johnathan Arden, and George Russell for Fox. Tr. 809; 1080–81; 1258; 1315. All the experts agreed that Robinson suffered a subdural hematoma that led to his death. Tr. 832; 1083–84; 1259–60; 1294–95; 1315. Each expert agreed or conceded that it does not require great force to cause a subdural hematoma. Tr. 832–33, 854; 1083–84; 1096–97; 1260, 1278. And all experts agreed that Robinson's medical conditions—particularly his use of blood thinners—were contributing factors for his death. Tr. 846, 860–61; 1084; 1261–62.

Dr. LeVaughn testified that the swelling that EMTs saw was likely related to the forehead abrasions and was the effect of a blunt-force injury, which (he clarified) is not a comment on the amount of force or impact but means that "an impact occurred" and "it's not a sharp object." Tr. 830, 874. He explained that an abrasion is a superficial, minor injury that may not need treatment and that subdural hemorrhages can develop from "very minor trauma." Tr. 832, 854. Dr. LeVaughn saw no other evidence of traumatic injury to Robinson's chest, neck, or abdomen. Tr. 829. Because Robinson was taking Plavix, an anti-coagulant, he was more susceptible to bruising and bleeding. Tr. 842–42. Dr. LeVaughn agreed that Robinson's age (62), the side effects of his blood-thinner medication, and his hypertension were all contributing factors for his

death. Tr. 860–61. Fox's experts agreed that Robinson was more susceptible to subdural hemorrhages from minor impact due to his drug use and hypertension. Tr. 1083–84; 1261–62.

B. Procedural Background

After an investigation by the Federal Bureau of Investigation, the U.S. Attorney's Office for the Southern District of Mississippi declined to prosecute Fox, Lampley, or Barney. CP 1032. A federal district court dismissed a civil-rights lawsuit brought by Robinson's family against Fox, ruling that Fox was entitled to qualified immunity. CP 1046–67 (Reeves, J.).

Yet a Hinds County grand jury indicted Fox on one count of second-degree murder for Robinson's death. CP 14. The indictment alleged that Robinson died "during the commission of an act eminently dangerous to others and evincing a depraved heart" by Fox's acting in concert with or aiding and abetting Lampley and Barney. CP 14. The indictment alleged that Fox and those other officers "used physical force" on Robinson, including "slamming ... Robinson head first into the roadway pavement as well as striking and kicking ... Robinson multiple times in the head and chest." CP 14.

Lampley and Barney were indicted and tried separately. CP 27. After the State rested, the trial court granted them directed verdicts. CP 1013.

A Hinds County jury found Fox guilty of culpable-negligence manslaughter. CP 878. The trial court sentenced him to twenty years' imprisonment, with fifteen years suspended and five to serve. CP 953.

SUMMARY OF ARGUMENT

Fox presents several issues on appeal. Fox Br. ix. This Court should reach only one issue—Fox's challenge to the sufficiency of the evidence. This Court's decision in *Brown v. State*, 304 So. 3d 692 (Miss. Ct. App. 2020), compels the conclusion that the evidence at trial was insufficient to sustain Fox's culpable-negligence-manslaughter conviction. In *Brown* this Court concluded, on facts materially indistinguishable from those here, that the evidence was insufficient to sustain a culpable-negligence-manslaughter conviction. This Court therefore reversed the conviction and rendered judgment for the defendant. The Court should reach the same conclusion and same result here.

ARGUMENT

This Court reviews a challenge to the sufficiency of the evidence by examining the evidence in the light most favorable to the State and determining whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Brown v. State*, 304 So. 3d 692, 695 (Miss. Ct. App. 2020).

After thorough review, the State has concluded that the evidence at trial was insufficient as a matter of law to allow a rational juror to convict

Fox of culpable-negligence manslaughter. The evidence does not allow a finding that Fox acted with "negligence of a higher degree than that which in civil cases is held to be gross negligence" or "negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life ... beyond every reasonable doubt." *Id.* at 696–97 (quoting *Moore v. State*, 117 So. 2d 469, 471 (Miss. 1960)). This Court should reverse the judgment below and render judgment in Fox's favor.

1. Culpable-negligence manslaughter is the killing of another by "negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Brown*, 304 So. 3d at 695; Miss. Code Ann. § 97-3-47. It is "the conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as a result of the wilful creation of an unreasonable risk thereof." *Tate v. State*, 16 So. 3d 699, 701–02 (Miss. Ct. App. 2008) (quoting *Evans v. State*, 562 So. 2d 91, 94 (Miss. 1990)). This means "negligence of a higher degree than that which in civil cases is held to be gross negligence." *Moore*, 117 So. 2d at 471. And "[e]ven in civil cases," a defendant is liable "only for" consequences "which he should reasonably have foreseen as something likely to happen"; he "is not liable for every consequence which may be remotely traced back to him." *Brown*, 304 So. 3d at 696. "[W]anton disregard" and "utter indifference" must be proved "beyond every reasonable doubt." *Id.*

This Court applied these principles in *Brown* to reverse a culpable-negligence-manslaughter conviction because "the[ ] facts" did not meet "the high burden of culpable negligence." 304 So. 3d at 696, 697. Brown was a security guard in a bar. *Id.* at 694. One night, a fight broke out at the bar between two men. *Id.* A third man, Tevin Quiney, "[a]lthough just a patron," "took it upon himself to remove one of the men involved from the bar" by holding "the man's hands behind his back while 'trying to take him out the door.'" *Id.* "Brown responded by attempting to remove Quiney from the bar." *Id.* He did so by "wrapp[ing] his arms around Quiney's neck," "chok[ing] him to the ground," then "trying to handcuff him." *Id.* Quiney fell unconscious and later died of "complications of hypertensive cardiovascular disease associated with a physical altercation." *Id.* Quiney had superficial visible injuries—"small bruises," "lacerations on his face," "redness in the eye," "a scrape to the chin," "injuries to ... the lip"—and no internal injuries. *Id.* Those injuries may have been caused by medical procedures used to try to help him. *See id.* at 694–95. Quiney (who was 5-foot-8-inches tall and weighed 367 pounds) may have been unruly: one witness said that he was acting "kind of hostile," including toward Brown. *Id.* at 694. But the evidence did not compel that conclusion. Another witness "stated that she had seen Quiney at the bar but had not witnessed him acting aggressively." *Id.* A jury convicted Brown of culpable-negligence manslaughter. *Id.* at 695.

This Court ruled that the evidence was insufficient as a matter of law to sustain Brown's conviction. 304 So. 3d at 696–97. The Court contrasted Brown's case with two cases in which the Mississippi Supreme Court affirmed homicide convictions, against sufficiency-of-the-evidence challenges, where (as in *Brown*) "there was evidence the cause of death was a combination of heart issues and stress." *Id.* at 696. In *Jackson v. State*, 441 So. 2d 1382 (Miss. 1983), the Court upheld a conviction for murder while engaged in a robbery where the defendant had, after the robbery, beaten the victim in the head with a tire iron. *Id.* at 1383. And in *Hawkins v. State*, 101 So. 3d 638 (Miss. 2012), the Court upheld a conviction where the defendant inflicted "severe trauma" to the victim's "face, neck, and arms," leaving the victim with "a bloody nose" and with a right eye that was "swollen shut." *Id.* at 640.

Those cases, this Court recognized, were materially different from Brown's. 304 So. 3d at 696. *Jackson* and *Hawkins* involved "*multiple blows* to the victims resulting in *severe* blunt-force trauma" during "*extensive* struggles." *Id.* (emphases added). Those extensive struggles, involving repeated blows to the head, contrasted sharply with "Brown's singular act of attempting to remove" Quiney from the bar. *Id.* Although that act "may have been negligent," "there was no evidence of severe trauma or trauma in multiple locations that could constitute gross negligence," the only injuries to the victim were visibly slight, and there was no "extensive struggle" of the sort in those other cases, *id.* at 696–

97—even though there was evidence that Brown wrapped his arms around the patron's neck, choked him, took him to the ground, and tried to handcuff him, *id.* at 696. "[T]hese facts," this Court ruled, "were insufficient to demonstrate negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Id.* at 697 (internal quotation marks omitted). The Court therefore rendered judgment for Brown.

2. This Court's decision in *Brown* requires reversing Fox's conviction and rendering judgment in his favor. The facts here are materially indistinguishable from *Brown*.

Like Brown, Fox engaged in a "singular act": trying to secure Robinson in the face of his possible wrongdoing and the possible danger that he presented. 304 So. 3d at 694, 696; *see* Tr. 1445–46, 1501. In neither case—Brown's or Fox's—was there an "extensive" struggle involving "multiple," "severe" blows to the victim. 304 So. 3d at 696; *see* Tr. 816–17 (no sign "of severe trauma or trauma in multiple locations"; no significant external injuries beyond the small abrasion to his forehead), 1442–46. Indeed, there was only a lesser struggle in both Brown's and Fox's cases. Brown had a struggle with the victim that involved a choking, takedown, and handcuffing. 304 So. 3d at 694. Fox had a struggle with Robinson too, assertedly involving Fox slamming Robinson on the ground—yet that struggle was incident to arrest, prolonged and made harder by Robinson, who continually resisted and

failed to follow commands. *See* Tr. 504, 507–08, 939, 941, 1440–42, 1224–25. Like the patron in *Brown*, Robinson suffered only superficial visible injuries: in Robinson's case, a small abrasion to his forehead, no other visible injuries, and no other symptoms of injuries. 304 So. 3d at 696–97; *see* Tr. 816–17 (no significant external injuries beyond the small abrasion to his forehead), 1442–46. In both cases there is evidence that the cause of death resulted from a combination of factors that included the decedent's health issues. 304 So. 3d at 696; *see* Tr. 846, 860–61, 1084, 1261–62.

In sum: Just as in *Brown*, here "there was no evidence of severe trauma or trauma in multiple locations that could constitute gross negligence," the only injuries to the victim were visibly slight, and there was no "extensive struggle" involving "multiple blows to the victim[ ] resulting in severe blunt-force trauma" that could sustain a culpable-negligence finding. 304 So. 3d at 696. Fox could not "reasonably have foreseen" that Robinson's death was "likely to happen" from an everyday effort to subdue a resisting, non-compliant suspect using traditional non-lethal means. *Id.* That means that Fox could not even be liable in a "civil case[ ]." *Id.* So the facts do not allow the conclusion that he committed culpable-negligence manslaughter. *Id.* Under *Brown*, "the[ ] facts" in Fox's case are "insufficient to demonstrate negligence so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." *Id.* at 697 (internal quotation marks omitted). Fox's

culpable-negligence-manslaughter conviction should be reversed and judgment should be rendered in his favor.

3. There is another, independent sufficiency-of-the-evidence ground for reversing Fox's conviction and rendering judgment in his favor.

Upholding Fox's conviction requires crediting testimony that Fox "thr[e]w" Robinson to the ground or "body slammed" him, Tr. 377; 455, and that Robinson's head forcefully hit the ground as a result, Tr. 388, 446. That testimony was the only possible basis for attributing to Fox an action so cavalier and wanton that it rose to the level of culpable negligence: an officer who slams someone's head into the ground, the thinking goes, shows utter disregard for that person's life. The rest of the trial record speaks to a struggle between officers and Robinson—the sort of common law-enforcement engagement that cannot support a culpable-negligence finding. So that head-cracking-body-slam (or head-cracking-throw-to-the-ground) testimony was essential to the conviction.

But that testimony has no sound basis. The record is clear that the wound to Robinson's head was superficial—a small abrasion no bigger than the size of a thumbnail. Tr. 640. If Robinson's head were forcibly slammed into the ground, he would not have had that sort of wound. The wound would have been far more substantial. Any rational lay juror would know that: it is a matter of basic life experience that any adult juror possesses. So the record evidence compels the conclusion that the head-slamming never occurred—and that the witnesses who claimed

otherwise cannot be credited. Because no rational juror could have credited their testimony—which was necessary to sustain Fox's conviction—that testimony is insufficient as a matter of law to sustain the conviction. (The State emphasizes that even if this testimony is fully credited, the evidence is still insufficient to sustain Fox's conviction for reasons laid out already. *Supra* Parts 1 and 2.)

4. On appeal, Officer Fox has challenged several jury instructions. Fox Br. 28–50. The deferential standard of review that applies to jury-instruction challenges is hard to overcome. *Ealey v. State*, 158 So. 3d 283, 289 (Miss. 2015) (denial or grant of jury instructions is reviewed for an abuse of discretion). But this Court need not—and should not—reach those challenges. As explained above, the conviction should be reversed outright and judgment rendered in Fox's favor. Fox should never have been convicted and should not face another trial.

CONCLUSION

This Court should reverse Fox's conviction and render judgment in his favor.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, Casey B. Farmer, certify that I have electronically filed this document with the Clerk of the Court using the MEC system, which sent notification to all counsel of record, and mailed, via U.S. Mail, postage pre-paid to the following:

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THIS, the 10th day of July, 2023.

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