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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CALVIN GORDON

APPELLANT

VS:

NO. 2005-KA-00687

STATE OF MISSISSIPPI

APPELLEE

FILED

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**BRIEF OF APPELLANT
ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PARTIES
PURSUANT TO RULE 28(a)(1)
MISSISSIPPI RULES OF APPELLATE COURT PROCEDURE**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications of recusal.

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BY 
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STATEMENT OF THE CASE

This case arises from the conviction and sentence of Calvin Gordon for four counts of capital rape. On May 3, 2004, Calvin Gordon was indicted by the Grand Jury of Humphreys County, Mississippi. Said indictment alleged that Calvin Gordon, being over the age of eighteen, did wilfully, unlawfully, and feloniously have sexual intercourse with Pamela McDougal, a female child, under the age of fourteen (14) years on four separate occasions. (CP 4). On March 3, 2005, the case was tried by a jury and at the conclusion of the trial Gordon was found guilty of all four counts. (CP 77) On March 3, 2005, Gordon was sentenced to twenty (20) years, on each count, in the custody of the Mississippi Department of Corrections, with the sentence on counts I and II to run concurrent and the sentence in counts III and IV to run concurrent. The sentence on counts I and II is to run consecutive to counts III and IV, for a total sentence of forty (40) years. (CP 103) On March 14, 2005, Appellant filed a Motion For A New Trial Or For A Judgment Notwithstanding The Verdict (CP 79) and on March 22, 2005 an Order denying this motion was entered. (CP 81) On April 5, 2005, Appellant filed his Notice of Appeal, thus beginning this appeal process. (CP 82) Whitman D. Mounger, counsel at trial, was appointed by the Court to represent the Appellant on his direct appeal.

STATEMENT OF THE FACTS

On November 26, 2003, Brenda Blakes took her niece, Pamela McDougal, age six (6) at the time, to the Belzoni Police Station to report that the child had been sexually assaulted by Calvin Gordon. After investigation into the allegation, the Appellant herein, was arrested for four counts of rape allegedly occurring between January 20, 2003 and November 17, 2003.

At trial, the State's first witness was the victim, Pamela McDougal, who was eight at the time of trial. Pamela testified that in November of 2003 she went to the Belzoni Police Station and reported that Calvin Gordon had sexual intercourse with her four times - once in November, 2003 at her house on Cain Street in Belzoni and three times between January, 2003 and November, 2003, at Gordon's house in the country. (T 25) Pamela stated that her Mother spanked her following the November 17, 2003 incident. (T 26)

She further testified that she was taken to Dr. Daisy Thomas' office in Belzoni and had tests done at the hospital. (T 27)

On cross-examination, Pamela testified that she had lived in several places with various people living with her. She also confirmed that she had not told anyone about the prior three sexual assaults "because it wasn't bothering me". (T 32) After the fourth time, she stated that "it was burning me". (T 32)

She admitted that Mary Ella and Denise Williams did not get along with Calvin Gordon and that this had been going on long before November, 2003. (T 33)

Pamela testified that she was taken to Jackson to see a lady to talk about the incident. She testified that the lady told her what she had heard had happened to Pamela - it "was more like she

told you what happened and you agreed with what she said.” (T 35-6)

The State then called Denise Williams, who lived side by side on Cain Street in Belzoni with Tracy Blakes, the mother of Pamela McDougal. (T 38)

Denise testified that on November 17, 2003, Tracy Blakes came over to her house to visit and asked Denise to call her daughter to come over for a minute. (T 39) She called Pamela but she didn't come. She then stated that she went into the house and stepped to the third bedroom when Pam failed to come. When she looked into the third bedroom she saw Calvin Gordon on top of Pamela on a bed, with Pamela's legs in the air. Calvin appeared to be having sexual intercourse with Pamela. (T 39)

She testified that they did not see her and she tripped out of the house and told Tracy what happened. The two of them then went back over to the house together and Tracy asked her for a belt. She thought that Tracy intended to use it on Calvin, but she whipped her daughter instead, asking her what she was doing messing with her man. Denise stated that she stopped Tracy from hitting her daughter and asked her what she was doing hitting her daughter instead of Calvin. Denise then stated that she ran to her house and called the police. (T 39) .

Denise testified that she had only seen Calvin Gordon once or twice before and that she had not previously had any problem with him. (T 40)

Denise further testified that Tracy's sisters came over and wanted to know what had happened. It was their intention to go to the police station because Tracy was not going to do anything about it. (T 40)

On cross-examination, Denise admitted that her mother was in charge of Tracy's check. She stated that Tracy received a check the first of every month and her mother paid her bills for

her. (T 44-45) She admitted that a fight had occurred on the date in question. (T 46)

Brenda Blakes, one of Tracy Blakes' sisters and Pamela's aunts, testified about an earlier incident she allegedly witnessed between Calvin and her niece. She stated that early in 2003 she was in Calvin's car and he was letting Pamela sit in his lap and pretend to drive. She stated that he had his hand between her legs. She testified that she had him stop his car and put Pamela in the back seat. (T 51)

Brenda testified that Tracy did not want to go to the police station with her and Pamela to report the sexual assault. (T 51)

On cross-examination, Brenda stated that Pamela did not go home with her after making the report at the police station and she did not know where Pamela went from the police station nor whom she stayed with after the report was made. (T 52-53)

Michael Starks, social worker supervisor with the Department of Human Services, testified that Pamela was six years old at the time of the incident and that Calvin Gordon was thirty-six years old. He testified that he went to Calvin Gordon's home, on fish pond levee, and that it was located in Humphreys County. He stated that another DHS worker went by the house on Cain Street and that it was located in Humphreys County as well. (T 55-56)

Dr. Daisy Thomas, a family practice specialist, testified that she examined Pamela to ascertain whether she had been sexually assaulted. Dr. Thomas testified that everything appeared normal except her vaginal examination. She testified that Pamela's hymen was not intact and that her orifice was larger than it should have been for a child of six. A white vaginal discharge was noted as well. In Dr. Thomas' opinion Pamela had been sexually assaulted. (T 60-61)

Dr. Thomas ordered testing for sexually transmitted diseases. Results of this test came back positive for chlamydia. She also ordered the same tests for Pamela's mother, Tracy Blakes, and the Appellant, Calvin Gordon. Both tests came back positive for chlamydia. (T 60-61) The test results as well as Dr. Thomas' notes from the physical examination of Pamela were introduced into evidence. (T 62-63)

On cross-examination Dr. Thomas admitted that the positive test results for chlamydia for two or three people does not prove that there had been sexual intercourse between the two or three people. She also stated that there were no tears or abrasions found on Pamela during her physical examination. (T 66)

Dr. Thomas testified that they did not administer treatment to Calvin Gordon or Pamela's mother for chlamydia, even though Gordon was admitted to the jail's general population. (T 67-68)

Dr. Wilkinson, medical director and a clinical pathologist with Labcore Laboratory in Meridian introduced the test results for Pamela, Calvin Gordon and Tracy Blakes. He testified that all three tested positive for chlamydia. He stated that, with one exception, chlamydia can only be transmitted through sexual intercourse. (T 72-73)

On cross-examination Dr. Wilkinson testified that he had no idea with whom Pamela had had sexual contact and that he did not personally examine any of the three individuals for which he performed tests. (T 74)

Following Dr. Wilkinson's testimony, the State rested its case and the Defense called the Appellant, Calvin Gordon, to testify in his own behalf.

Calvin Gordon testified that he was first accused of having sexually assaulted Pamela in

January of 2003, however, no one ever filed a report, so he disregarded the accusation. (T 79)

On the day of the incident that gave rise to these charges, November 26, 2003, Calvin and Tracy had gone to her house on Cain Street to pick up some clothes. Calvin stated that he and Tracy had been going together, off and on, for some five or six years. They had lived together part of this time and she had been living with him continuously since May of 2003 with her two boys. (T 80) At this time Pamela was living with someone else.

Calvin testified that Tracy had been having trouble with Denise Williams (Mesi) and her mother, Mary Ella, over her check and food stamps. Calvin stated that Tracy got a check from SSI and food stamps and that Mary Ella, Mesi's mother, was in charge of Tracy's check. He also stated that he did not want to get involved in the arguments - that he had always worked and that they did not need her money, but that Tracy wanted to have some of her own money to spend. (T 81-82)

On the day in question, Calvin stated that Tracy and Mesi got into an argument at the house on Cain Street. Calvin and Brenda Blakes' boyfriend went to the store to get a few beers and cigarettes. When they got back Calvin and Mesi got into an argument. Mesi, who was pregnant, had a confrontation with Calvin in the middle of the street. She accused Calvin of having something to do with Tracy wanting to get her check put in someone else's name. Mesi said that she was going to get Pamela and her clothes and they could pick her up from school the best way they could. Calvin left and when he came back Quida, one of Tracy's sisters, threw a brick through the windshield of his car. (T 83-84)

Calvin stated that Mesi wanted to break Tracy and Calvin up so that Tracy would move back home to the house on Cain Street and they could keep control over Tracy's check and food

stamps. (T 83-84)

After the brick was thrown through Calvin's windshield, Tracy told Calvin to come on and leave. She told him that they had called the police. When he and Tracy got back to his house, she told him about catching a boy, who had broken into his house, on top of Pamela. She told Calvin that she got a broom and whipped him and he ran out of the house. However, she never reported the incident to the police. (T 84)

Calvin testified that he was arrested December 4, 2003. He did not know that he was charged with rape. He thought he was arrested for the fight with Mesi. He testified that he had continued living with Tracy from the day of the incident until his arrest. (T 85) Calvin stated that it was his opinion that he and Pamela were victim's of Mesi's rage. (T 86) Further, he denied having sexual intercourse with Pamela. (T 87)

Calvin stated that he had been locked up for fifteen months and had no symptoms whatsoever. He stated that he never experienced any pain, discomfort nor any symptoms of having chlamydia and that he asked for treatment but never received any. (T 88)

Calvin testified that he found it hard to believe that Pamela had no tears, abrasions, bleeding or other physical symptoms if she had been assaulted four times. (T 88)

On cross-examination the Appellant again asserted that he did not sexually assault Pamela. He stated that the accusations against him were the result of Denise Williams taking revenge against him because she thought he was behind Tracy Blakes' wanting to put her check in the name of someone other than Mary Ella Wilson, Denise Williams' mother. (T 92-93)

However, he could not explain how Denise set all of this up or why Pamela and Brenda would lie for her. (T 92-94)

STATEMENT OF APPELLANT'S COUNSEL

Counsel for Appellant hereby states as follows in accordance with *Turner v. State*, 818 So. 2d 1186 (Miss. 2001) and *Lindsey v. State*, 2005 So. 2d _____ (3002-KA-00331-SCT):

1. It is the opinion of counsel for Appellant that there are no arguable issues supporting Appellant's appeal, and that he has reached this conclusion after scouring the record thoroughly, specifically examining:

- (a) the reason for the arrest and the circumstances surrounding the arrest;
- (b) any possible violations of Appellant's right to counsel;
- (c) the entire trial transcript;
- (d) all rulings of the trial court;
- (e) possible prosecutorial misconduct;
- (f) all jury instructions;
- (g) all exhibits, whether admitted into evidence or not; and
- (h) possible misapplication of the law in sentencing.

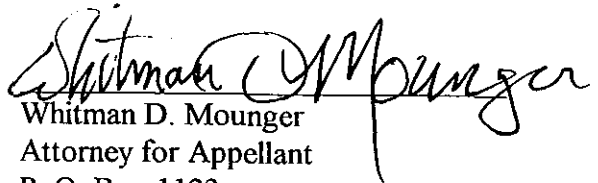
2. Counsel for Appellant shall forward a copy of this Brief with advice to Appellant that counsel could find no arguable issues in the record, but that he has the right to file a *pro se* supplemental brief, if he desires.

3. Counsel for Appellant requests that this Court allow 30 days additional time for the Appellant to file said supplemental brief, should he so desire.

CONCLUSION

Counsel for Appellant respectfully requests that this Court allow the Appellant 30 days additional time in which to file a *pro se* supplemental brief, should he so desire. It is further requested that this Court review the appeal of the Appellant in accordance with *Turner v. State*, 818 So. 2d 1186 (Miss. 2001) and *Lindsey v. State*, 2005 So. 2d _____ (2003-KA-00331-SCT).

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Whitman D. Mounger, counsel for Appellant, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

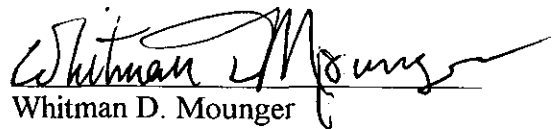
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