

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY BOONE

APPELLANT

VS


NO.: 2006-KA-00081-SCT

STATE OF MISSISSIPPI

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT
HINDS COUNTY, MISSISSIPPI

BRIEF FOR APPELLANT
GREGORY BOONE

John R. McNeal, Jr., Esquire/MSB 
Post Office Box 690
Jackson, MS 39205
Telephone No.: (601) 969-7794
Facsimile No.: (601) 969-0040

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	<u>Pages</u>
I. Table of Contents	i
II. Certificate of Interested Parties	ii
III. Table of Authorities	iii
IV. Statement of the Issues	1
V. Statement of the Case	
A. Nature of the Case and Course of Proceedings	2
B. Statement of Facts	2-8
C. Summary of the Argument	8-9
VI. Argument and Authorities	10-11
VII. Conclusion	12
VIII. Certificate of Service	13

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY BOONE

APPELLANT

VS

NO.: 2006-KA-00081-SCT

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

I, the undersigned counsel of record certify that the following 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 or recusal:

GREGORY BOONE

APPELLANT

HONORABLE TOMIE GREEN

CIRCUIT COURT JUDGE

JOHN R. McNEAL, JR., ESQ.

COUNSEL FOR APPELLANT

FAYE PETERSON, ESQ.

HINDS COUNTY DISTRICT ATTORNEY



JOHN R. McNEAL, ESQ.
COUNSEL FOR APPELLANT

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Cuyler v. Sullivan</u> , 343, 100 S.Ct. ,1715.....	10
<u>Gideon v. Wainwright</u> , 372 U.S. 335, 344, 83 S. Ct. 792, 796. 9 L.Ed.2d 799 (1963).....	10
<u>Jerningham v. State</u> , No. 2003-KA-02652-COA, Mississippi Court of Appeal, Slip Opinion, March 22, 2005, WL646660 *2, 916.....	10, 11
<u>Montana v. State</u> , 822 So. 2d 954, 967-78 (1161) (Miss. 2002).....	11
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).....	10
<u>U.S. v. Cronic</u> , 466 648, 104 S.Ct. 2039, 80L.Ed.2d 657 (1984).	10

STATEMENT OF THE ISSUE

1. The Court erred as a matter of law in denying the Defendant's Motion for Continuance based on the substitution of counsel less than two (2) weeks prior to the trial.
2. The Court erred in failing to grant a Motion for Directed Verdict.
3. The Court erred in failing to grant Defendant's Directed Verdict after renewal at the close of the State's case.
4. The Court erred in refusing or denying Defendant's Motion for J.N.O.V or in the alternative a new trial.
5. The verdict of the jury was against the overwhelming weight of the evidence and obvious jury bias and prejudice.

STATEMENT OF THE CASE

A. NATURE OF THE CASE AND COURSE OF PROCEEDINGS

This is an appeal from the Hinds County Circuit Court of the sentence of fifteen (15) years with ten (10) years suspended and five (5) years to serve and three (3) years probation, whereupon the Appellant was sentenced in reference to a guilty verdict of the charge of gratification of lust. Gregory Boone was indicted by the Grand Jury of Hinds County, Mississippi, First Judicial District, on October 12, 2004, in Cause No. 04-943CRG. Subsequent to said indictment, Gregory Boone waived arraignment and entered a plea of not guilty. A trial was had on November 7-8, 2005 and the Jury found the Appellant guilty in the Jury verdict on November 8, 2005. Subsequent to the jury verdict post trial motions were filed seeking J.N.O.V., said motions having been denied by the Court. The Appellant timely filed his Notice of Appeal, Designation of Record and Certificate of Compliance with the Court.

B. STATEMENT OF FACTS

The trial of this matter began on November 7, 2005. Appellant Boone was arrested on March 31, 2005 upon service of the aforementioned indictment. He was arraigned on April 12, 2005 and at said time was represented by Honorable Mike Knapp, a member of the Hinds County Public Defender's Office. The Appellant subsequently was bonded out and returned home awaiting further action on his case. Mr. Boone had no contact with his Court appointed Attorney until October 24, 2005, at which time he

met with Public Defender, Adam Powers, 15 days before the matter was to go to trial. At said time the Appellant requested Mr. Powers procure a continuance because two 92) weeks would not be sufficient to prepare for trial in that the Appellant, Mr. Boone had not had the opportunity or had not been presented any discovery in the matter for his review or asked to participate in his own defense of the charge. At said time Mr. Boone was advised by the Office of the Public Defender that Judge Green would not grant a continuance and that it would probably be in Appellant's best interest to take a plea. Subsequent to that time the Appellant's family borrowed money and retained Thomas Powell, Esquire on October 28, 2005. Mr. Powell sought a continuance to prepare for said trial but said motion was denied by the Judge and was forced to proceed on to trial without the benefit of having time to prepare an adequate defense. That the Appellant was forced to go to trial. and at the trial the Trial Judge denied the Defendant's Motion for Directed Verdict and for Judgment Notwithstanding the Verdict. That the complaining witness, Mya Norwood testified that she was awakened "Because I felt someone touching me". [T. Pg. 61, L. 21-22]. Ms. Norwood further testified that she slipped out of bed and went and told her mom, at which time her Mom went into the room and made a thorough search to determine, who, if anyone, had been in Ms. Norwood's room. [T. Pg. 62, L. 13-29; T. Pg. 63, L. 1-9] Ms. Norwood was asked what she did after her mother had searched her room and she stated, "I went in my room and closed the door and turned on the light and woke up my sister". [T. Pg. 63, L. 10-13]. Ms. Norwood was

further asked that she turned on the light and woke up her sister, did she say anything to her? She related to her sister that someone was touching her. [T. Pg. 63, L. 14-27]. On cross-examination, Ms. Norwood was asked, did you actually see Cameo (which is her nickname for Mr. Boone) in your bed?. The answer was, No, Sir, my sister saw him. [T. Pg. 66, L. 5-7]. Ms. Norwood, further on cross-examination, was asked, was your sister asleep or not?. Her answer, "she was asleep, but she told me, she had woke up". [T. Pg. 67, L. 3-4]. On further cross-examination, Ms. Norwood was asked, "Could you tell me again what happened when you woke your mother and told her someone was touching you?" Answer, "I woke my Mom up when she was on the couch and I told her somebody was touching me. And, she went in the room, and she was looking under the bed and through stuff. And, she made sure the window wasn't open and stuff and nobody was there." Question, Okay, and where was Jamilla during this time? Answer, "My sister, she was still in the room sleep". Question, so she was still sleep through all this time". "Yes, ma". Question, So it's not possible for her to have seen anybody"? "Yes, Because she told me that she had woke up and then she had went back to sleep. But she had woke up and saw him walking out the room, and then she went back to sleep". [T. Pg. 67, L. 25-29; T. Pg. 67, L. 1-16].

The Prosecution next called Jamilla Norwood to testify. Ms. Norwood was asked on direct examination what she and her sister were doing on the night this alleged touching took place. She responded, "watching tv". Question, "What were ya'll

watching, do you remember? Answer, "Yes". Question, "What was that?" Answer, "it was a scary movie . I think were was watching Freddy". [T. Pg. 71, L. 22-29] Ms.

Norwood was further asked what they did when her mom got home. "And when your Mom got home, did she come in your brother's room where you were?" Answer, "Yes." Question, "And what did she do when she came in there?" Answer, "She told us to go to bed and she turned off the light. And then she was about to turn off the T.V. and I asked her to keep it on". Question, "Why did you want her to keep the T.V. on?" Answer, "Because I was scared because we watched a scary movie." [T. Pg. 72, L. 5-15]. Ms.

Norwood was asked, question, "At any point in time did you wake up? Any time during the night, did you wake up? Answer, "I turned over and opened my eyes". Question, "What did you see?" Answer, "Somebody walked across the – it was Cameo. He walked across the T.V. I could see because the light on the T.V. showed". Question, "And how did you know it was Cameo?" Answer, "Because I could see him because his ears and his head shape". Question, "What stands out about his ears?" Answer, "They're pointed at the top." Question, "When you saw him in there, did it scare you to see him in there?" Answer, "No, ma'am." [T. Pg. 72, L. 19-29; T. Pg. 73, L. 1-4] Ms. Norwood was further asked, "Okay. So, why didn't it scare you to see him in your room?" Answer, "Because that's my mama's friend, and I didn't think he was going to do anything." [T. Pg. 72, L-20-23] Ms. Norwood was asked further, question, "At any point in the night did you know there was anybody else in the bed with you and your sister?" Answer, "I thought it

was my sister because she sleeps bad.” Question, “What do you mean, sleeps bad?” Answer, “She kicks and she turns.” [T. Pg. 75, L. 1-7] On cross-examination Ms. Norwood was asked how she knew it was Cameo in the room that night. Question, “Okay. Let me stop you right there. How did you know it was Cameo?” Answer, “Because I could tell because his ears and the way his head is shaped it was Cameo”. Question, Well, why couldn’t you see his face then?” Answer, “I could tell because his head and his ears shaped, it was Cameo”. Question. “So, you’re just saying – the only thing you described on him was his ears. But I’m just saying why were you not able to see his face?” Answer, “Because the lights were off.” [T. Pg. 76, L. 5-11; L. 15-18]. Ms. Norwood was further asked on cross-examination. Question. “Did you see anyone touch your sister?” Answer. “No”. Question. “And no one touch you?” Answer. “No”. [t. Pg. 79, L. 13-16].

The next person to testify was Shelia Norwood, the mother of Mya Norwood. During direct examination Mrs. Norwood was asked, question, “What was she saying to you?” Answer, “She was saying somebody is in my room. Somebody is in my room, mama. I’m scared. Somebody is in my room. They’re touching me. They’re touching me. She was shaking like a leaf on a tree, and I’m saying, who is in your room? So, I got off the couch and went in the bedroom and turned on the light . The T.V. was still on. I turned the light on. I looked around in the room. I opened the closet door. I looked in the closed. I walked all the way around the bed. I even checked the bedroom

window, and the window was locked. So I was telling her, "it's nobody in here. What did you see?" And she kept saying, "somebody was in my room, I promise. It was somebody in my room." [T. Pg. 94, L 18-29; T. Pg. 95, L. 1-3]. Mrs. Norwood was then asked what she did immediately after she searched Mya's room. "I went in my room." Question, "Who was in your room?" Answer, "Cameo was in my room." Question, "Where was he in your room?" Answer. "He was in my room in my bed asleep wrapped up in a comforter." Question. "And you went to sleep again at that point?" Answer, "Yes, Pretty- well, yes." [T. Pg. 96, L. 5-13].

Subsequent to the close of Mrs. Norwood's testimony, the attorney for the Appellant made a motion for a Directed Verdict because the State had failed to prove its prima facia case of gratification of lust against Mr. Boone based upon the inaccuracies and testimony of all the State's witnesses said Motion was denied by the Trial Judge. [T. Pg. 113, L. 20-29; T. Pg. 114, L 1-17].

The Jury was brought back in and the Appellant proceeded with his case by calling Lonnie McGill who testified as to the whereabouts of the Appellant at the time the alleged crime took place. The substance of Mr. McGill's testimony was that the Appellant was with him and could not have been at the Norwood house the night the alleged crime took place. [T. Pg. 115, L. 16-29; T. Pg. 116, L. 1-29; T. Pg. 117, L. 1-29; T. Pg. 118, L. 1-29; T. Pg. 119, L. 1-29; T. Pg. 120, L. 1-29; T. Pg. 121, L. 1-29; T. Pg. 122, L. 1-29; T. Pg. 123, L. 1-29; T. Pg. 124, L. 1-29; T. Pg. 125, 1-29; T. Pg. 126, L. 1-

11] .

Subsequent to Mr. McGill's testimony, the defense rested. Mr. Powell, the attorney for Appellant renewed his Motion for Directed Verdict which was denied by the Court. [T. Pg. 127, L 6-18]. Counsel and the Court reviewed Jury Instructions and the Jury was instructed by the Judge. [T. Pg. 127, L19-29; T. Pg. 128, L. 1-29; T. Pg. 129, L 1-29; T. Pg. 130, L. 1-29; T. Pg. 131, L. 1-29; T. Pg. 132, L. 1-29; T. Pg. 133, L 1-29; T. Pg. 134, L. 1-29; T. Pg. 135, L. 1-29; T. Pg. 136, L. 1-29; T. Pg. 137, L. 1-29; T. Pg. 138, L. 1-9]. After instructing the Jury both sides gave closing arguments and the Jury retired to consider its verdict.

C. SUMMARY OF THE ARGUMENT

1. The Court erred as a matter of law by failing to grant the Defendant/Appellant's Request for Continuance. Black's Law Dictionary defines due process of law as "the exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights."

The essential elements are that the person be given notice, actual or constructive, and that he or she be given the opportunity to be heard. That the person be given the opportunity to defend himself/herself in an orderly proceeding according to the

rules and regulations of the law and the rules as they apply to all.

The Constitution guarantees that the laws shall not be unreasonable, arbitrary or capricious and that the means by which the opportunities are given be in substantial relation to the case.

Thus, a person is entitled to fundamental fairness in his/her case, which violates the 4th, 5th, 6th, 8th and 14th amendment of the Constitution of the United States of America and the Constitution of the State of Mississippi.

Thus, the Trial Judge erred as a matter of law by failing to grant the Appellant a continuance so that his newly acquired counsel could prepare an adequate defense for the Defendant.

2. The Trial Court erred again as a matter of law by failing to grant Defendant/Appellant's Motion for Directed Verdict at the close of the State's case in that the testimony of the State's witnesses amounted to nothing but mere speculation and conjecture.

3. The Trial Court erred again as a matter of law by failing to grant Defendant/Appellant's renewed Motion for Directed Verdict, Directed Verdict and failing to grant a J.N.O.V. and that the State had failed to prove a prima facie case of gratification of lust and/or that the verdict of the jury was against the overwhelming weight of the evidence and was evidenced by jury bias and prejudice.

ARGUMENT AND AUTHORITIES

1. The Court has held that trial level right to counsel, created by the Sixth (6th) Amendment and applied to the State through the (14th) Amendment, see Gideon v. Wainwright, 372 U.S. 335, 344, 83 S. Ct. 792, 796. 9 L.Ed.2d 799 (1963), comprehends the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); U.S. v. Cronin, 466 648, 104 S.Ct. 2039, 80L.Ed.2d 657 (1984). The Constitutional mandate is addressed to the action of the State in obtaining a criminal conviction through a procedure that fails to meet the standard of due process of law. “Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself. When the State obtains a criminal conviction through such a trial it is the State that unconstitutionally deprives the Defendant of his liberty.” Cuyler v. Sullivan, 343, 100 S.Ct. ,1715.

The Trial Judge’s denial of the Defendant’s Motion for Continuance violated the Defendant’s constitutional right to a fair trial by failing to grant Defendant’s Motion for Continuance allow the Defendant’s attorney adequate time to review the file, including discovery, and prepare an adequate defense for the Defendant of the charges against him.

2. Further, when reviewing the sufficiency of the evidence, the Court views the evidence in the light most favorable to the Appellee. The Appellee is to be given all favorable inferences arising from the evidence. The evidence is sufficient to support a

verdict of guilty if a reasonable hypothetical juror acting in good faith could have found the Defendant guilty of committing every element of the crime. *Jerningham v. State*, No. 2003-KA-02652-COA, Mississippi Court of Appeals, Slip Opinion, March 22, 2005, WL646660.

The evidence, at best, was confusing and contradictory and in no way rose to the level of reasonable doubt and failed to make a prima facie case because of such contradictory and uncorroborated evidence.

3. When "... determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the Trial Court has abused its discretion in failing to grant a new trial, and the Court finds the verdict is against the overwhelming weight of the evidence so that allowing the verdict to stand would sanction an unconscionable injustice." *Montana v. State*, 822 So. 2d 954, 967-78 (1161) (Miss. 2002); *Jerningham v. State*, No. 2003-KA-02652-COA, Mississippi Court of Appeal, Slip Opinion, March 22, 2005, WL646660 *2, 916.

The only evidence in this case was an identification of the Appellant by comparing his ears and the shape of his head. The Jury obviously had to fill in the blanks and overlook the gross contradiction and lack of corroboration and returned a verdict based solely on sympathy, bias and prejudice and this should have prompted the Trial Judge to grant Defendant's Motion J.N.O.V. or in the least, a new trial.

CONCLUSION


Based on the foregoing facts and circumstances this Court should reverse and render a "Not Guilty" verdict in favor the Appellant.

Respectfully submitted this the 8 day of March, 2007.

GREGORY BOONE

BY: 

JOHN R. McNEAL, JR.
Co-Counsel for Plaintiff

JOHN R. McNEAL, JR., ESQ.
Post Office Box 690
Jackson, MS 39205-0690
Telephone No.: (601) 969-7794
Facsimile No.: (601) 969-0040
MSB No.: 

CERTIFICATE OF SERVICE

I, John R. McNeal, Jr., hereby certify that I have caused to be delivered by United States Postal Service, first class prepaid postage, or by facsimile/electronic transmission or by hand delivery, a true and correct copy of the above and foregoing Appellant's Brief as follows:

Faye Peterson, Esq.
Hinds County District Attorney
Post Office Box 22747
Jackson, Mississippi 39205

Honorable Tomie T. Green.
Hinds County Circuit Court Judge
Post Office Box 327
Jackson, Mississippi 39205

This the 8 day of March, 2007.



JOHN R. McNEAL, JR.