IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ARTHUR WOODS — APPELLANT

VS. — NO. 2006-KA-0417-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

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STATEMENT OF THE CASE

The grand jury of Leflore County indicted defendant, Arthur Woods, for the crime of Statutory Rape (Two Counts) in violation of *Miss. Code Ann.* § 97-3-65(1)(a). (Indictment, as amended c.p.28). After a trial by jury, Judge W. Ashley Hines presiding, the jury found defendant guilty beyond a reasonable doubt of Count II. The trial court had dismissed Count I of the indictment at the conclusion of the State's case. Subsequently, the trial court sentenced defendant to 30 years in the custody of the Mississippi Department of Corrections plus assessments, court costs and fees. (C.p. 40).

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Defendant had sex one evening with a minor. Eventually, word spread and she accused defendant. Defendant was indicted. Later, the victim recanted and then at trial testified that defendant had sexually penetrated her. The victim was fourteen and defendant was 51. The jury heard the evidence, the recantations, the conflicting testimony and impeached testimonial statements... they heard it all and found defendant guilty as charged.

SUMMARY OF THE ARGUMENT

Issue I.

WHEN THE JUDGE SUSTAINED THE OBJECTION THERE WAS NO ERROR.

Issue II.

THE TRIAL COURT WAS CORRECT – IT WAS HEARSAY AND IT WAS INADMISSIBLE.

Issue III.

THERE WAS NO DISCOVERY VIOLATION.

Issue IV.

THERE WAS NO 'ELICITING' OF HEARSAY BY THE STATE.

Issue V.

THIS ISSUE IS PROCEDURALLY BARRED.

Issue VI.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT WHICH IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND NOT AN UNCONSCIONABLE INJUSTICE.

Issue VII.

THERE IS NO REVERSIBLE ERROR IN ANY PART, SO THERE IS NO REVERSIBLE ERROR TO THE WHOLE.

ARGUMENT

Issue I.

WHEN THE JUDGE SUSTAINED THE OBJECTION THERE WAS NO ERROR.

In this initial allegation of error defendant, aided by counsel, asserts the State improperly had witnesses 'vouch' for the truthfulness of the victim.

> ¶ 12. . . ."It is well settled that when the trial judge sustains an objection to testimony and he directs the jury to disregard it, prejudicial error does not result." Estes v. State, 533 So.2d 437, 439 (Miss.1988).

Pittman v. State, 928 So.2d 244 (Miss.App. 2006).

Before the first object of any kind was raised the trial court instructed the jury that when he sustains an objection "...the evidence cannot be presented to the jury." Tr. 135. This idea of testimony that the jury might hear, yet not be evidence, was again brought to the attention in the trial court instructions to the jury. (Instruction One, C.p. 31-33).

Contrary to the allegations there was more than one witness at this trial. And, the reasons for 'lying' were explored by all parties, including defense counsel. (Tr. 177-80).

It is the succinct position of the State there was no improper vouching of testimony and no error occurred.

Consequently, the State would ask this court to deny all requested relief.

Issue II.

THE TRIAL COURT WAS CORRECT – IT WAS HEARSAY AND IT WAS INADMISSIBLE.

During cross-examination of a State's witness, defense counsel sought to have a taped statement made by the witness admitted into evidence. The State objected and the trial court sustained the objection as hearsay.

> ¶ 85. "The relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused." Johnston v. State, 567 So.2d 237, 238 (Miss.1990)(citing Hentz v. State, 542 So.2d 914, 917 (Miss.1989); Monk v. State, 532 So.2d 592, 599 (Miss.1988)). "Unless [the trial judge's] discretion is so abused as to be prejudicial to the accused, this Court will not reverse his ruling." Shearer v. State, 423 So.2d 824, 826 (Miss.1982)(citing Page v. State, 295 So.2d 279 (Miss.1974)). "The discretion of the trial court must be exercised within the boundaries of the Mississippi Rules of Evidence." Johnston, 567 So.2d at 238.
>
> *Manning v. State*, 726 So.2d 1152 (Miss. 1998).

The trial court by this point of the trial had sustained several objections to inadmissible hearsay and was consistent, – and more importantly correct in his analysis.

There was no error in the ruling of the trial court and no relief should be granted on this allegation of error.

Issue III.

THERE WAS NO DISCOVERY VIOLATION.

Continuing the challenge to his conviction, defendant asserts there was a discovery violation. And, at trial, during the examination of a witness the State was attempting to impeach the witness by asking the essence of her statement before the grand jury – which was quite contrary to her testimony at trial.

Interestingly, there is absolutely no doubt, defendant and counsel knew what the basics of her grand jury testimony. And that is all the law requires. There was no surprise, no prejudice, – no error.

Interestingly, under similar circumstances the analysis on review held:

> The Yates Court further clarified that the inquiry is not whether the jury considered the improper evidence or law at all, but rather, whether that error was "unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." Yates, 500 U.S. at 403, 111 S.Ct. 1884.

Harris v. State, 901 So.2d 1277 (Miss.App. 2004).

In *Harris* the 'harmless error' was for the exclusion of the testimony. *Sub judice* defendant complains because it *was* being admitted. Such admission is not error.

There is no error and there was no discovery violation as defendant was well aware through other discovery the substance of this witness testimony.

Being no error, no relief should be granted.

Issue IV.

THERE WAS NO 'ELICITING' OF HEARSAY BY THE STATE.

In this next allegation of error, defendant asserts hearsay, but wraps it up as a prosecutorial misconduct for presenting 'impeachment' evidence as substantive evidence.

Interestingly, it was defense counsel that quoted substantially from 'the note' during his closing argument. The State had merely mentioned once, that it was this note, written between two school girls, that got the investigation going.

During defense closing argument, counsel quoted from the note and the inference that could be drawn therefrom.

In the State's final closing the prosecutor did much the same. Quoted from the note, for impeachment purposes and drew conclusions and inferences therefrom... such is proper in closing argument.

> ¶ 20. Counsel is not required to be logical in [his] argument; he is not required to draw sound conclusions, or to have a perfect argument measured by logical and rhetorical rules; his function is to draw conclusions and inferences from evidence on behalf of his client in whatever way he deems proper, so long as he does not become abusive and go outside the confines of the record.

Dunigan v. State, 915 So.2d 1063 (Miss.App. 2005),

The impeachment evidence was used by the defense and State to show inferences and support for each of their positions.

There being no error no relief should be granted.

Issue V.

THIS ISSUE IS PROCEDURALLY BARRED.

With two defense counsel sitting at counsel table the prosecutor outlined for the jury the procedural process for bring cases to the jury *and* the circumstances for dismissing some cases. There was no objection by either counsel. Silence.

It is the succinct position of the State this issue is procedurally barred.

> ¶ 190. Rubenstein also argues that the District Attorney expressed personal opinions about witnesses in the State's rebuttal closing argument. The record reflects that of the excerpts cited by Rubenstein, the defense made no contemporaneous objections. In United States v. Young, 470 U.S. 1, 20, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985), the United States Supreme Court stated that bolstering statements made by the prosecution do not amount to plain error as to require reversal. As the defense did not raise any objection to preserve this assignment of error for appellate review, it is procedurally barred.

Rubenstein v. State, 941 So.2d 735 (Miss. 2006).

As noted in *Rubenstein*, this issue is procedurally barred and the State would argue it is also without merit in fact. The prosecutor was merely commenting on the evidence presented at trial (including the inconsistent stuff) and the basis for the decision for bringing it to trial. This is proper in summarizing the process and for the jury to know they will ultimately decide.

Again, there being no error all requested relief should be denied.

Issue VI.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT WHICH IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND NOT AN UNCONSCIONABLE INJUSTICE.

Defense counsel repeated asserts the victim's testimony was uncorroborated. So that counsel needn't make that same erroneous assertion in the future it is worth point out the testimony of the victim need not be corroborated. Such is not a requirement to support a conviction. As the reviewing court's of this State have repeatedly held:

> ¶ 6. . . . [T]he supreme court has held that a ***victim's uncorroborated testimony is sufficient*** to support a guilty verdict if the testimony is not contradicted or discredited by other evidence. Vaughan v. State, 759 So.2d 1092, 1098(¶ 18) (Miss.1999).

McClure v. State, 941 So.2d 896 (Miss.App. 2006)(emphasis added).

Additionally defendant asserts that since the testimony was recanted the original statements should be viewed differently as should the testimony at trial.

However, the Mississippi Supreme Court has held that 'recanted' testimony and inferences therefrom may be used to support

> When the standards described above are applied to the evidence in this case, affirmance on this assignment of error is required. The testimony of Norman Breland, the victim, ***supplemented by the recanted testimony*** of Freddie Williams, are more than sufficient unto the day. The trial judge correctly denied Robinson's request for a peremptory instruction as well as his subsequent motion for judgment of acquittal notwithstanding the verdict.

Robinson v. State, 473 So.2d 957 (Miss. 1985).

Again, there being no error and ample legally sufficient evidence no relief should be granted.

Issue VII.

THERE IS NO REVERSIBLE ERROR IN ANY PART, SO THERE IS NO REVERSIBLE ERROR TO THE WHOLE.

It is the succinct position of the State defendant was afforded a fair trial by an impartial jury. The State as argued no reversible error has occurred and would cite the rationale of the reviewing Court's of this State in support of such a position.

> ¶ 29. West argues that the alleged cumulative errors require reversal. In Jenkins v. State, 607 So.2d 1171, 1183 (Miss.1992), this Court stated that "errors in the lower court that do not require reversal standing alone may [be] nonetheless when taken cumulatively require reversal." However, in this case sub judice, we find that no reversible error was committed. This Court stated where "there is no reversible error in any part, so there is no reversible error to the whole." Coleman v. State, 697 So.2d 777, 787 (Miss.1997). Since West has not shown any reversible error, this assignment of error is without merit.
>
> *West v. State*, 820 So.2d 668, 674 (Miss. 2001).

> ¶ 21. Baggett contends that even if any of his assignments of error taken individually would be insufficient grounds for reversal, the cumulative effect of the trial court's errors deprived him of a fair trial and require reversal. Mitchell v. State, 539 So.2d 1366 (Miss.1989). Baggett is unable to present sufficient errors to constitute cumulative error.
>
> *Baggett v. State*, 793 So.2d 630, 636-37 (Miss. 2001).

See also, *King v. State*, 788 So.2d 93, 98 (Miss. App. 2001).

No relief based upon this claim of cumulative error should be granted.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdict of the jury and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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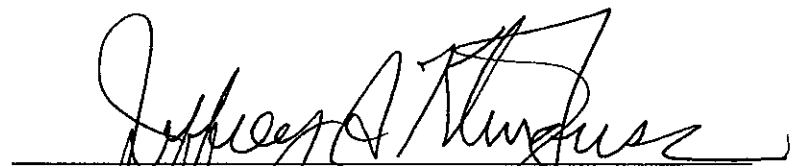
This the 23rd day of April, 2007.



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