IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY ROBINSON — APPELLANT

VS. — NO. 2006-KA-0799

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY:

CHARLES W. MARIS, JR.
ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY ROBINSON **APPELLANT**

VS. **NO. 2006-KA-0799**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

On May 16, 2001 a Madison County Grand Jury indicted Anthony Robinson (Appellant) on one count of forcible sexual intercourse for his April 29, 2001 rape of Sheila Lacey. A jury trial was held in Madison County Circuit Court, the Honorable Samac S. Richardson presiding. After the jury returned a verdict of guilty, the trial court sentenced Appellant to a term of twenty-five years in the custody of the Mississippi Department of Corrections. Appellant's motions for JNOV and New Trial were denied. Feeling aggrieved, Appellant filed notice of appeal with this court.

STATEMENT OF THE FACTS

Sheila Lacey (Lacey) lived in her Canton Estates apartment complex for approximately 17 years prior to her April 29, 2001 rape by Appellant. Lacey was familiar with Appellant's identification and name because he too lived in the apartment complex four or five years before he raped her. Lacey noticed that shortly after Appellant arrived at the apartment complex he stared at her and stuck his tongue out at her. Because Appellant's behavior concerned her, Lacey

made a point to find out his name from other neighbors.

Other than seeing Appellant in and around the apartment complex, Lacey had no other contact or relationship with him. Lacey had neither a social nor sexual relationship with Appellant.

The night before Appellant raped her, Lacey spent an enjoyable night out with her brother Leon. Leon was known by family and friends as "Junior." Lacey went home alone, while Junior stayed out with other friends. Lacey and Junior made tentative plans for Junior to sleep at Lacey's apartment.

At approximately 2:30 AM, Lacey awakened to the sound of knocking at her front door. The person knocking identified himself as "Junior." Lacey cracked the door to verify that Junior was knocking, but instead of Junior it was Appellant who pushed his way into the apartment. After Lacey demanded that he leave, Appellant informed her that she was going to be his "bitch for the night." Appellant slapped and punched Lacey several times before raping her on the couch. Appellant choked Lacey while he raped her. Appellant told Lacey that if she called the sheriff's department that he would "beat her damn ass."

Lacey waited two minutes before calling the sheriff's department. Deputy Otha Brown responded to the call. Upon entering Lacey's apartment, Brown discovered Lacey visibly upset. Lacey was crying and shaking uncontrollably. Lacey told Brown about the rape and he recommended that she allow him to drive her to the University Medical Center so that a rape kit could be performed on her. Lacey agreed.

Brown escorted Lacey back to her apartment. As they entered the apartment complex Lacey pointed out where Appellant lived with his aunt. Brown took the rape kit and other information to Investigator Eddie Clark before returning to the apartment complex to question

Appellant. Upon arriving back at the apartment complex Brown was invited by Appellant into the apartment where Brown informed him that Lacey accused him of rape. Appellant did not react when faced with the accusation. Brown Mirandized and arrested Appellant before bringing him back to the Sheriff's Department for further questioning.

Lacey signed a written statement before Clark. Other than his statement to Clark that he was nowhere near her on that night, Appellant provided no other statement about a social or sexual relationship with Lacey. Clark obtained a search warrant for Appellant's blood. The Crime Lab discovered from the rape kit taken on Lacey that semen was found inside her vagina. The Crime Lab also determined that the DNA found in semen from the rape kit belonged to Appellant.

STATEMENT OF THE ISSUES

ISSUE ONE:
WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR JNOV, DIRECTED VERDICT AND NEW TRIAL?

ISSUE TWO:
WHETHER THE SENTENCE IMPOSED BY THE TRIAL COURT WAS EXCESSIVE?

SUMMARY OF THE ARGUMENT

The trial court did not err in denying Appellant's motions for directed verdict, JNOV and new trial. The sentence of twenty-five years by the trial court was not excessive.

ARGUMENT

ISSUE ONE:

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR JNOV, DIRECTED VERDICT AND NEW TRIAL?

The standard of review for a JNOV and a directed verdict are the same and implicate the sufficiency of the evidence. *Sheffield v. State,* 749 So.2d 123, 125 (Miss.1999). This Court in

McClain v. State, 625 So.2d 774, 778 (Miss.1993) held that amotion for JNOV, motion for directed verdict and a request for peremptory instruction challenge the legal sufficiency of the evidence. *See also Coleman v. State,* 697 So.2d 777, 787 (Miss.1997)(standard of review for denial of directed verdict, peremptory instruction, and JNOV are identical). "Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled [the] motion for JNOV." *McClain,* 625 So.2d at 778 (citing *Wetz v. State,* 503 So.2d 803, 807-08 (Miss.1987)). On the issue of legal sufficiency, this Court held in *Pinkney v. State,* 538 So.2d 329, 353 (Miss.1988), that reversal can only occur when evidence of one or more of the elements of the charged offense is such that "reasonable and fair-minded jurors could only find the accused not guilty."

By contrast, a motion for a new trial requires " '[a] greater quantum of evidence favoring the State.' " *Dilworth,* 909 So.2d at 737 (quoting *Pharr v. State,* 465 So.2d 294, 302 (Miss.1984)). Under this standard, reversal is warranted if the lower court abused its discretion in denying the motion for a new trial. *Dilworth,* 909 So.2d at 737 (citing *Howell,* 860 So.2d at 764; *Edwards,* 800 So.2d at 464; *Sheffield v. State,* 749 So.2d 123, 127 (Miss.1999)).

Accordingly, appellate courts defer to the discretion of the trial judge, and "[w]e will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice." *Groseclose v. State,* 440 So.2d 297, 300 (Miss.1983). Reversal according to the above stated standard, unlike reversal based on insufficient evidence, does not imply that acquittal was the only proper verdict. *Bush,* 895 So.2d at 844. Instead the standard proposes that, as the "thirteenth juror," the Court simply disagrees with the jury's resolution of the conflicting testimony-a

tantamount to one among the jurors themselves. *Id.* This being said, the power to grant a new trial should be invoked only in exceptional cases where the evidence preponderates heavily against the verdict. *Id.* (citing *Amiker v. Drugs for Less, Inc.*, 796 So.2d 942, 947 (Miss.2000)).

Appellant was indicted for forcible sexual intercourse, however the indictment erroneously includes the wrong statute number. Statute numbers are not required to be included in the indictment. This clerical error is one of form and not substance and failure to raise this issue at trial serves as a procedural bar.

It is clear from the "STATEMENT OF FACTS" recited above that the State provided sufficient evidence to show that Appellant raped Lacey. Appellant has failed to show this Court that "evidence of one or more of the elements of the charged offense is such that 'reasonable and fair-minded jurors could only find the accused not guilty.'" Appellant has failed to show how the lower court abused its discretion in denying Appellant's motion for a new trial. Thus, this issue is without merit.

ISSUE TWO:

WHETHER THE SENTENCE IMPOSED BY THE TRIAL COURT WAS EXCESSIVE?

The general rule in this State is that a sentence cannot be disturbed on appeal so long as it does not exceed the maximum term allowed by statute. *See Corley v. State,* 536 So.2d 1314, 1319 (Miss.1988); *Reed v. State,* 536 So.2d 1336, 1339 (Miss.1988). This Court will review a sentence, however, where it is alleged that the penalty imposed is disproportionate to the crime charged. *See Ashley v. State,* 538 So.2d 1181, 1184-85 (Miss.1989); *Davis v. State,* 510 So.2d 794, 797 (Miss.1987); *Presley v. State,* 474 So.2d 612, 618 (Miss.1985).

Appellant forcefully entered Lacey's apartment. Appellant slapped, punched and threatened her. Appellant choked Lacey while he was raping her. Appellant was sentenced

within the bounds of the maximum years allowed. Appellant earned his time for such a violent act. The trial court's sentence should not be disturbed.

CONCLUSION

The State respectfully submits that the conviction and sentence of the lower court should be upheld.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: _____

CHARLES W. MARIS, JR.
ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

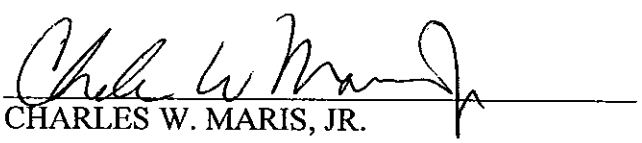
I, Charles W. Maris, Jr., Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson
Circuit Court Judge
P. O. Box 1885
Brandon, MS 39043

Honorable David Clark
District Attorney
P. O. Box 121
Canton, MS 39046

Ross R. Barnett, Jr., Esquire
Attorney At Law
501 South State Street
Jackson, MS 39201-5306

This the 29th day of March, 2007.



CHARLES W. MARIS, JR.
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680