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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO.2006-KA-00799-COA

FILED

ANTHONY ROBINSON

APPELLANT

APR 27 2007

VS.

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF MADISON COUNTY

REPLY BRIEF OF APPELLANT
ANTHONY ROBINSON

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II. TABLE OF AUTHORITIES

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III. ARGUMENT.

A. EITHER THE MOTION FOR DIRECTED VERDICT OR THE MOTION TO SET ASIDE VERDICT OR FOR A NEW TRIAL SHOULD HAVE BEEN GRANTED BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

1. There Was No Proof of the Violation Charged.

Appellant Robinson established in his brief that he was convicted for a statutory violation for which he was not indicted, and he supported his argument with citations to case law. *See Talley v. State*, 174 Miss. 349, 164 So. 771 (Miss. 1936), and *Dees v. State*, 151 Miss. 46, 117 So. 369 (Miss. 1928). The State of Mississippi responded with a simple denial of the proposition and neither cited case law in opposition nor distinguished the cases cited by Robinson. Where a party fails to cite a case in support of his argument, the appellate court may presume counsel has found no such case after diligent search. *Rayl v. Thurman*, 156 Miss. 1, 8, 124 So. 432, 433-34 (1929). Accordingly, this case must be reversed and judgment rendered acquitting Anthony Robinson of all charges.

2. There Was Insufficient Proof of Forcible Rape.

Appellant has briefed this issue adequately in his initial brief and will not repeat his arguments here. Rather, he incorporates the same herein by reference.

B. THE SENTENCE IMPOSED BY THE TRIAL COURT WAS EXCESSIVE.

Appellant has briefed this issue adequately in his initial brief and will not repeat his arguments here. Rather, he incorporates the same herein by reference.

IV. CONCLUSION.

The foregoing considered, appellant Anthony Robinson repeats his prayer submitted in his Brief of Appellant that this Court will reverse the judgment of the court below and render judgment acquitting him of the charge of rape herein. In the alternative, appellant prays that this Court will reverse this case and remand it for a new trial or resentencing.

Respectfully submitted,

A handwritten signature in black ink, reading "Ross R. Barnett, Jr.", written in a cursive style.

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V. PROOF OF SERVICE

I, the undersigned counsel of record for the Appellant certify that I have this day caused to be served by United States Mail, postage prepaid, a copy of the foregoing to the following persons:

1. T. K. Byrne, Esquire (Trial Counsel for Mr. Robinson)
Post Office Box 181
Clinton, Mississippi 39060-0181
2. Honorable David Clark
District Attorney
Honorable Jamie McBride
Honorable Scott Rogillio
Assistant District Attorneys and Prosecutors
P. O. Box 121
Canton, Mississippi 39046
3. Honorable Samac S. Richardson (Trial Judge)
Circuit Judge
Post Office Box 1599
Brandon, Mississippi 39043
4. Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, Mississippi 392051

This the 27th day of April 2007.



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