IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STEVEN WALTER EASON — **APPELLANT**

VS. — **NO. 2006-KA-1067-COA**

STATE OF MISSISSIPPI — **APPELLEE**

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

The grand jury of Perry County indicted defendant, Steven Walter Eason, with the crimes of Sexual Battery(Four Counts) in violation of *Miss. Code Ann.* §§ 97-3-95(1)(D) & 97-3-95(1)(A). After a trial by jury, Judge Robert B. Helfrich presiding, the jury found defendant guilty of all counts beyond a reasonable doubt. The trial court sentenced defendant to 30 years on each count consecutive to each other and on the last sentence with ten to serve the remainder on post-release supervision. (Sentence order, c.p.51-53). Essentially a sentence of 100 years, to be served day for day.

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

STATEMENT OF FACTS

Defendant penetrated his ten-year old victim orally, anally and vaginally with his penis. Further, he directed the victim's brother (twelve years old) to vaginally penetrate his sister as defendant watched.

SUMMARY OF THE ARGUMENT

Issue I.

THERE WAS AMPLE CREDIBLE, LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICTS OF GUILTY.

Issue II.

THE WEIGHT OF THE CREDIBLE EVIDENCE SUPPORTS THE JURY VERDICT.

ARGUMENT

Issue I.

THERE WAS AMPLE CREDIBLE, LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICTS OF GUILTY.

Within this first, compound, allegation of error appellate counsel raised the legal sufficiency of the evidence supporting the jury verdicts of all four counts.

As to the first three counts of sexual battery the record succinctly provides testimonial evidence for each count by the victim. Such is legally sufficient.

> ¶ 19. Despite any discrepancies in the witnesses' testimony, the jury was left with the responsibility to weigh the credibility of these witnesses' testimony at trial. As this Court has repeatedly held, the jury is the final arbiter of a witness's credibility. Morgan v. State, 681 So.2d 82, 93 (Miss.1996); see also Spicer v. State, 921 So.2d 292, 312 (Miss.2006). In Spicer v. State, 921 So.2d at 311 (quoting Franklin v. State, 676 So.2d 287, 288 (Miss.1996)), this Court stated:
>
> > Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. [This Court] may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

Ivy v. State, 949 So.2d 748 (Miss. 2007).

Now, with regards to the legal sufficiency of the prove for the element of penetration in Count IV, the answer is clear:

> ¶ 5. According to Mississippi Code Annotated Section 97-3-95(1)(d) (Rev.2000), a person is guilty of sexual battery "if he or she engages in sexual penetration with ... [a] child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child." "Sexual penetration" includes "any penetration of the genital or

anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body." Miss.Code Ann. § 97-3-97 (Rev.2000).

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

Further, the law both by case law and statutory are clear.

¶ 18. Sexual penetration is defined in Mississippi Code Annotated § 97-3-97(a) (Rev.2000) as, "cunnilingus, fellatio, buggery or pederastry, and penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body." . . .

Frei v. State, 934 So.2d 318 (Miss.App. 2006).

Consequently as to Count IV where it was proved by credible, legally sufficient evidence, that defendant ordered, caused and directed the penetration was sufficient.

There was evidence of defendant's penetration using an object, which was "part of a person's body" – granted it was someone else's body. Nevertheless such is an object within the meaning of the statute and will support that element.

No relief should be granted on this first allegation of error

Issue II.

THE WEIGHT OF THE CREDIBLE EVIDENCE SUPPORTS THE JURY VERDICT.

Lastly, appellate counsel adroitly and succinctly claims the verdicts are against the overall weight of the evidence.

> ¶ 21. A motion for new trial challenges the weight of the evidence. Sheffield v. State, 749 So.2d 123, 127 (Miss.1999). A reversal is warranted only if the trial court abused its discretion in denying a motion for new trial. Id. In Bush, 895 So.2d at 844, this Court set out the standard of review for weight of the evidence as follows:
>
> > When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Herring v. State, 691 So.2d 948, 957 (Miss.1997). . . .

Ivy v. State, 949 So.2d 748 (Miss. 2007).

The record is replete with testimony to support each and every count. Further there was expert medical testimony that supported and corroborated the testimony of the ten year old victim.

Accordingly, in viewing the evidence in light most favorable to the verdict it is the position of the State that to affirm the verdicts does not perpetuate an unconscionable injustice.

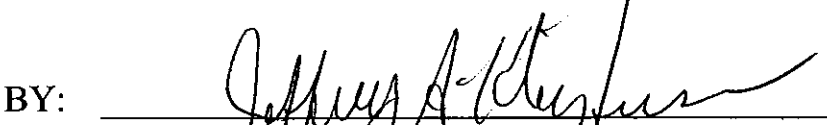
No relief should be granted based upon this allegation of trial court error.

CONCLUSION

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

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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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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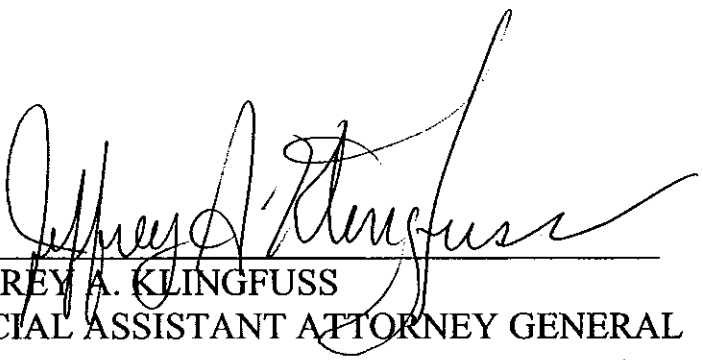
This the 5th day of June, 2007.



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