IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STEVEN WALTER EASON — APPELLANT

V. — NO. 2006-KA-1067-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS
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STATE OF MISSISSIPPI **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed 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.

1. State of Mississippi
2. Steven Walter Eason, #118089
3. Honorable Jon Mark Weathers, District Attorney
4. Honorable Robert B. Helfrich, Circuit Court Judge

This the 1st day of March, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

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STATE OF MISSISSIPPI **APPELLEE**

BRIEF OF THE APPELLANT

STATEMENT REGARDING ORAL ARGUMENT

The Appellant does not request oral argument in this case. The issues lend themselves to thorough briefing on the record before the Court, and the oral argument would not likely aid the Court in its disposition of this case.

STATEMENT OF THE ISSUES

I. **THE EVIDENCE WAS INSUFFICIENT TO PROVE THE INDICTMENT.**

II. **THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

STATEMENT OF THE CASE

Steven Eason was convicted in the Perry County Circuit Court of four counts of sexual battery. (C.P. 50-53; R.E. 7-10). He was sentenced to a total of one-hundred (100) years in the custody of the Mississippi Department of Corrections. Specifically, he was sentenced to thirty (30) years on Counts I, II, and III, and ten (10) years on Count IV, with said sentences to run

consecutively. (C.P. 50-53; R.E. 7-10). Steven Eason is presently incarcerated with the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The evidence was insufficient to prove Count IV of the indictment. Specifically, the State failed to prove sexual penetration as required by Miss. Code Ann. § 97-3-95, which requires that the person engages in sexual penetration. Here the State failed to prove that the Appellant himself sexually penetrated the alleged victim. The basic premise of the statute is sexual penetration. ***Thompson v. State***, 468 So.2d 852, 853 (Miss. 1985); ***West v. State***, 437 So.2d 1212 (Miss.1983). Because the State failed to prove sexual penetration on the part of the Appellant in Count IV of the indictment, the conviction on Count IV should be reversed and rendered.

Additionally, the evidence was insufficient to prove Counts I, II, and III of the indictment. The Mississippi Supreme Court has stated that uncorroborated testimony of the prosecutrix should be scrutinized with caution. ***Rogers v. State***, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893)). In the present case, the victim gave a forensic interview and testified at trial that the Appellant committed various acts of sexual acts. (Tr. 217). However, she did not immediately report the alleged acts, and in fact the victim waited quite a period of time before she reported the alleged acts. (Tr.151; 170; 189-90).

This case is similar to ***Bishop v. State***, 370 So.2d 238, 239 (Miss. 1979), where the Mississippi Supreme Court reversed and rendered because, inter alia, "[N]o sperm was found, no bruises were found except a reddening around the vagina which the doctor stated could be attributed to a number of things, including sexual intercourse." ***Bishop v. State***, 370 So.2d 238, 239 (Miss. 1979). Just as in ***Bishop***, the alleged victim's testimony was completely impeached, unbelievable, and contradictory with the other evidence. Accordingly, the Court should reverse and render not

only on Count IV, but on Counts I, II, and III, as well.

The verdict was also against the overwhelming weight of the evidence. The victim did not immediately report the alleged acts, there was no testimony that a weapon was used by the Appellant on any of the occasions, and the medical doctor who examined her could not say with any sort of certainty that she had been anally penetrated, and in fact stated that her findings could also be caused simply by constipation. Furthermore, there was evidence that the victim suffered a fall in the bathtub when she was young which caused injuries to her vaginal area to the extent that she was required to go to the emergency room.

Under the facts set forth above, the Appellant asserts that it would have been impossible for reasonable minded jurors to find that he was guilty of sexual battery in any of the counts of the indictment. Accordingly, the Appellant respectfully submits that evidence was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial. ***Rogers v. State***, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893)).

FACTS

During the Christmas season of 2004, Steven Eason was keeping his step-children[1] while Marie Eason, his wife and the children's mother, attended basic training for the army in South Carolina. (Tr. 150; 328). The Appellant maintained a small tire and mechanic's shop a short distance from the family home. (Tr. 327). Both of the children were in school at the time. (Tr. 368). Steven would get up, get the children ready for school, and out to wait for the school bus. (Tr. 368).

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[1]In keeping with the Court's practices, the names of the victims will not be used. The "alleged victim" refers to the female who accused Steven Eason of sexual battery. Her proper name appears in the record. (Tr. 209). The "alleged victim's brother" refers to the male who accused Steven Eason of sexual battery, and his proper name also appears in the record. (Tr. 231).

Shortly after the children boarded the bus, Steven would leave for work at his shop. (Tr. 370). He would sometimes work until 10:30 or 11:00 at night. (Tr. 371). Other times he would finish up and be done around 5:00 p.m. (Tr. 370). During the time frame alleged in the indictment, he happened to be working on several different projects at his shop. First, he had bought an old three-wheeler for $50 and he was fixing it up for the step-children to give to them for a Christmas present. (Tr. 337). Second, he was replacing a transmission in a car free of charge because his former business partner had taken money from a customer to replace the transmission, but absconded with the money instead of replacing it. (Tr. 379). Finally, he was rebuilding the engine in his mother's car. (Tr. 338).

Sometime around December 17, the children's mother returned home from the military. (Tr. 327). She was unable to complete basic training because issues with her asthma had arisen. (Tr. 331). She stayed at home with the children during their Christmas vacation. (Tr. 328). Around January 15 or so, she began looking for a job. (Tr. 328). She found a job working for a daycare in Petal working days, so she was gone during the day, but she was home at night. (Tr. 328; 371).

Over the weekend of February 2, 2003, the children were spending the night with their aunt, Rebecca Rouse, as was a common occurrence. (Tr. 151; 170; 331-32). She promised them a trip to Disney World if they did enough chores around the house. (Tr. 184-86; 339). She would also buy them clothes and take them bowling, skating and do other things that their mother and Steven could not afford to do with them. (Tr. 173-74; 332). At one point when she had moved to Texas, Rouse attempted to get custody of the two children. (Tr. 377). Although she wanted children herself, Rouse did not have any because she was having difficulty getting pregnant. (Tr. 343).

On this particular day the children were doing chores for Rouse in order to earn money towards their trip to Disney World. The children were going to spend the night with Rouse, who was going to return them to the Eason residence the next morning after church. (Tr. 151-52; 187; 331)

Rouse and the children went to pick up Rouse's husband who was coming in from working on the pipeline. (Tr. 151). On the way back, somehow the subject of inappropriate touching came up. (189-190). The alleged victim denied anyone had inappropriately touched her, but when they got home, the alleged victim followed Rouse into the bathroom and alleged that Steven had raped her. (Tr. 151-52; 190). Rouse told her husband, who then called the police. (Tr. 152). Ultimately, the Rouses and the children ended up in the Sheriff's office in Perry County, who in turn called DHS to take custody of the children. (Tr. 153).

That same night, Steven's sister was severely injured in an automobile accident, so Steven and Marie Eason were in Hattiesburg at the hospital. (Tr. 193-200; 381). Around Noon on Sunday morning, they received a call from a DHS social worker informing them that she had the children and informing Margaret Eason of the allegations of the alleged victim. (Tr. 331-36).

Steven sometime later appeared at the Sheriff's department of his own accord to give a statement regarding the allegations. (Tr. 377). He categorically denied the allegations. (Tr. 375-378). He was subsequently indicted on four counts of sexual battery. (C.P. 4-5; R.E. 4-5). The jury found him guilty on all charges and he was sentenced to serve consecutive terms in the custody of the Mississippi Department of Corrections of thirty years on Count I, thirty years on Count II, thirty years on Count III, and ten years on Count IV for a total of one-hundred years. (C.P. 50-53; R.E. 7-10).

I. The Evidence Was Insufficient to Support the Verdict.

A. Standard of Review.

"The Supreme Court will reverse the lower court's denial of a motion for new trial only if, by denying, the court abused its discretion." ***Esparaza v. State***, 595 So.2d 418 (Miss.1992)(citing ***Wetz v. State***, 503 So.2d 803, 812 (Miss. 1987); ***Crenshaw v. State***, 520 So.2d 131, 135

(Miss.1988); ***Leflore v. State***, 535 So.2d 68, 70 (Miss.1988); ***Neal v. State***, 451 So.2d 743, 760 (Miss.1984), *cert. denied*, ***Neal v. Mississippi***, 469 U.S. 1098, 105 S.Ct. 607, 83 L.Ed.2d 716 (1984)). "Under this standard, this Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be reasonably drawn from the evidence." ***Jefferson v. State***, 818 So.2d 1099, 1111 (Miss. 2002)(citing ***Coleman v. State***, 697 So.2d 777 (Miss. 1997)). "If the facts so considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render." ***Id.*** "On the other hand if there is substantial evidence in support of the verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required." ***Id.***

B. The State failed to prove sexual penetration by the Defendant in Count IV.

Count IV of the indictment reads as follows:

> [I]n Perry County, Mississippi, between December, 2002 and January 2003, did willfully, purposely, unlawfully and feloniously commit Sexual Battery upon Nancy Finney and Adam Finney, without the consent of said Nancy Finney and Adam Finney, by engaging in the act of sexual penetration, to-wit: forcing Adam Finney to place his penis in the annus [sic] of Nancy Finney, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(C.P. 5; R.E.4-5).

Setting aside issues of the credibility for the sake of argument only, the alleged victims' testimony at trial regarding Count IV of the indictment was that the Appellant forced them to have sexual relations in his presence on two separate occasions on the same day. (Tr. 217; 221). The victims testified that the first time the penetration was vaginal. (Tr. 217; 235-36). The victims claimed the second time was anal. (Tr. 235-36; 221). Never in the testimony regarding Count IV of the indictment did either of the alleged victims testify that the Defendant sexually penetrated

either of them.

Miss. Code Ann. § 97-3-95, the statute making sexual battery a crime and under which Eason was charged, provides in pertinent part:

> (1) A person is guilty of sexual battery if he or she engages in **sexual penetration** with:
>
> (a) Another person without his or her consent;
>
> (b) A mentally defective, mentally incapacitated or physically helpless person;
>
> (c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or
>
> (d) 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.

(Emphasis added).

As demonstrated above, the State in this case failed to prove the "sexual penetration" which is a required element of the statute. **"The section's basic premise is 'sexual penetration.'** Mississippi Code Annotated, § 97-3-97 (Supp.1984), defines 'sexual penetration' viz, '(a) ... any penetration of the genital or anal openings of another person's body by any part of a person's body, ...' ***Thompson v. State***, 468 So.2d 852, 853 (Miss. 1985)(emphasis added)). The ***Thompson*** Court went on to state, "In ***West v. State***, 437 So.2d 1212 (Miss.1983), an attempted sexual battery case, we held that **penetration is the essence of Mississippi Code Annotated, § 97-3-95.** The case was reversed because of insufficient evidence." ***Thompson v. State***, 468 So.2d 852, 853 (Miss. 1985)(emphasis added).

In ***Friley v. State***, 879 So.2d 1031 (Miss. 2004), the Court noted that "***Friley*** was indicted for sexual battery, which requires penetration." ***Friley***, 879 So.2d at 1035. In ***Friley***, the Court was faced with the question of whether fondling is a lesser-included offense of sexual battery. ***Id.*** In so

doing, the Court emphasized that "[f]or purposes of this statute, 'sexual penetration' was, and continues to be, defined as 'any penetration of the genital or anal openings of another person's body by any part of a person's body....'" ***Friley***, 879 So.2d at 1035 (quoting Miss.Code Ann. § 97-3-97 (Supp.1993)).

"Penetration is the very essence of the crime of sexual battery. ***Thompson v. State***, 468 So.2d 852, 853 (Miss.1985); ***West v. State***, 437 So.2d 1212, 1213 (Miss.1983). *See also*, ***Johnson v. State,*** 626 So.2d 631 (Miss.1993)." ***Washington v. State***, 645 So.2d 915, 917 (Miss. 1994). As can be seen, the Mississippi Supreme Court has "repeatedly held that '[p]enetration is the very essence of the crime of sexual battery.'" ***Norman v. State***, 725 So.2d 247, 250 (Miss.App. 1998)(citing ***Washington v. State***, 645 So.2d 915, 917 (Miss.1994); ***Johnson v. State***, 626 So.2d 631, 632 (Miss.1993)).

It goes without saying that the State's failure to prove the required element of "sexual penetration"was fatal to its case. "'It is hornbook criminal law that before a conviction may stand the State must prove each element of the offense.' ***Neal v. State***, 451 So.2d 743, 757 (Miss.1984). Due Process requires that the State prove each element of the offense beyond a reasonable doubt. ***Jackson v. Virginia***, 443 U.S. 307, 324, 99 S.Ct. 2781, 2791, 61 L.Ed.2d 560, 576-77 (1979). *See also* ***Carlson v. State***, 597 So.2d 657, 659 (Miss.1992). '[T]here must be in the record evidence sufficient to establish each element of the crime.'" ***Washington v. State***, 645 So.2d 915, 918 (Miss. 1994)(citing ***Fisher v. State***, 481 So.2d 203, 211 (Miss.1985)).

Here, the jury was instructed that it could find Steven Eason guilty of sexual battery in Count IV if the jury found that he forced the two victims to have sex. (C.P. 37; R.E. 6). However, that instruction was erroneous as it was not a proper recitation of the law. As shown above, the sexual penetration must be by the defendant, and here there is no question that Steven Eason did not engage

in sexual penetration with either of the victims in the events alleged in Count IV.

The State may argue that Eason's conviction was proper as an aider and abettor or as an accessory before the fact.[2] However, such an argument should not pass muster, as there was no aiding and abetting instruction given to the jury.

"Any person who is present at the commission of a criminal offense and aids, counsels, or encourages another in the commission of that offense is an 'aider and abettor' and is equally guilty with the principal offender." ***Hoops v. State***, 681 So. 2d 521, 533 (Miss. 1996)(citing ***Sayles v. State,*** 552 So. 2d 1383, 1389 (Miss.1989); ***Bullock v. State,*** 391 So. 2d 601 (Miss.1980), *cert. denied,*452 U.S. 931, 101 S.Ct. 3068, 69 L.Ed.2d 432 (1981)). "If a person was actually or constructively present at the offense, due to his participation he is an aider and abettor." ***Hoops v. State***, 681 So. 2d 521, 533 (Miss.1996)(citing ***Walters v. State,*** 218 Miss. 166, 65 So.2d 465 (1953)). "If he was not present, he is an accessory-before-the-fact." ***Id.*** (citing ***Clemons v. State,*** 482 So.2d 1102 (Miss.1985)).

In ***Hollins v. State***, 799 So.2d 118, 123 (Miss.App. 2001), the Mississippi Court of Appeals held that evident though Holling's indictment did not allege he was an aider and abettor, there was no error in giving and aiding and abetting instruction where the evidence showed that Hollins was present and assisted others in the commission of the crime. In ***Brassfield v. State***, 905 So.2d 754, 758 (Miss.App. 2004), the Court of Appeals again held that the evidence justified giving an aiding and abetting instruction even though it was not alleged in the indictment, and therefore there was no

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[2]In addition to alleging Eason was an aider and abettor, the State could have also charged Eason pursuant to Miss. Code Ann. §97-1-6 for allegedly directing or causing a felony to be committed by person under age of seventeen years which is punishable by twenty years imprisonment and a fine of not more than$10,000. However, the State chose not to for reasons not evident in the record.

error.

In ***Hoops v. State***, 681 So. 2d 521, 533 (Miss. 1996), the Court discussed the aiding and abetting instruction given.

Jury Instruction S-2 reads as follows:

> The Court instructs the Jury that each person present at the time of, or consenting to and encouraging, aiding or assisting in any material manner in the commission of a crime, or knowingly and wilfully doing any act which is an ingredient in the crime, is as much a principal as if he had with his own hands committed the whole offense.

Hoops v. State, 681 So. 2d 521, 533 (Miss.1996). The Court in ***Hoops*** found that the instruction was a proper aiding and abetting instruction because, *inter alia*, it contained the language "encouraging, aiding or assisting in any material manner in the commission of a crime. . . ." ***Hoops*** at 534. Here, however, there was no such language in State's jury instruction S-6 which was the State's substantive jury instruction as to Count IV. (C.P. 37; R.E. 6). Therefore, the jury was erroneously allowed to find Steven Eason guilty of sexual battery on facts that do not support it. The Appellant therefore respectfully submits that the Court should reverse and render as to Count IV of the convictions.

C. The Evidence Was Insufficient to Support the Verdict as to Counts I, II and III of the Indictment.

In light of the victim's testimony, which was inconsistent and discredited, the evidence elicited by the State on Counts I, II and III was insufficient to support the verdict regarding those counts. The obvious failure of proof on Count IV only serves to amplify the State's failure to prove Counts I, II, and III. The victim's testimony was inconsistent, contradictory with other evidence, and was therefore discredited.

Generally, the unimpeached word of a rape victim is sufficient to sustain a conviction of rape.

Grant v. State, 913 So.2d 316 (Miss. 2005). "[W]here a victim's testimony is not so discredited or contradicted by other evidence that it becomes unbelievable, that testimony alone is sufficient to sustain a guilty verdict." ***Musgrove v. State***, 866 So.2d 483, 486 (Miss.App. 2003)(citing ***Collier v. State***, 711 So.2d 458 (Miss.1998); ***Mabus v. State***, 809 So.2d 728 (Miss.App. 2001)***; Riley v. State***, 797 So.2d 285 (Miss.App. 2001)).

However, the Mississippi Supreme Court has stated that such uncorroborated testimony of the prosecutrix should be scrutinized with caution. "This Court, in ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885, also held that while a conviction of rape may be based on the uncorroborated testimony of the female, it should always be scrutinized with caution, and where she is unsupported, and the facts and circumstances in evidence discredit her and fail to satisfy the mind as to the guilt of accused, but rather suggests grave doubt of it, a conviction should be set aside." ***Rogers v. State***, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893)).

The Court in ***Rogers*** went on to explain the reasoning for such scrutiny.

> The opinion approved the following: 'Courts and juries cannot well be too cautious in scrutinizing the testimony of the complaining witness, and guarding themselves against the influence of those indignant feelings which are so naturally excited by the enormity of the alleged offense. Although no unreasonable suspicion should be indulged against the accuser, and no sympathy should be felt for the accused, if guilty, there is much greater danger that injustice may be done to the defendant in cases of this kind than there is in prosecutions of any other character. The evidence is always direct, and, whatever may be the just force of countervailing circumstances, honest and unsuspecting jurors may think themselves bound, of necessity, to credit that which is positively sworn.'

Rogers v. State, 204 Miss. 891, 899-900, 36 So.2d 155, 158 (Miss.1948)(quoting ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893)).

Thus, where the unsupported word of the victim of a sex crime is sufficient to support a

guilty verdict, the victim's testimony must be closely scrutinized, and if it is discredited or contradicted by other credible evidence, then the verdict must be set aside. ***Maiden v. State***, 802 So.2d 134, 136 (Miss.App. 2001); ***Cross v. State***, 759 So.2d 354 (Miss.1999); ***Rogers v. State***, 204 Miss. 891, 899-900, 36 So.2d 155, 158 (Miss.1948); ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893).

The Mississippi Supreme Court has stated that some of the corroborating evidence that it takes into consideration. This Court has recognized the victim's physical and mental condition after the incident, as well as the fact that she immediately reported the rape as corroborating evidence. ***Christian v. State***, 456 So.2d 729, 734 (Miss. 984)(quoting ***Brooks v. State***, 242 So.2d 865, 868 (Miss.1971); ***Lang v. State***, 230 Miss. 147, 159, 87 So.2d 265 (1956)).

In the present case, the victim gave a forensic interview and testified at trial that the Appellant committed various acts of sexual acts. (Tr. 217). However, she did not immediately report the alleged acts, and in fact the victim waited quite a period of time before she reported the alleged acts. (Tr.151; 170; 189-90).

Bishop v. State, 370 So.2d 238, 239 (Miss. 1979), is a similar case. In that case, the defendant allegedly raped the prosecutrix multiple times. However, when another person came into the room, she never complained to the witness that Bishop had raped her. ***Bishop*** at 239. The Mississippi Supreme Court reversed and rendered, and in so doing observed, "According to the doctor who examined her following the rape, no sperm was found, no bruises were found except a reddening around the vagina which the doctor stated could be attributed to a number of things, including sexual intercourse." ***Bishop v. State***, 370 So.2d 238, 239 (Miss. 1979). The Court further noted, "The evidence not only fails to satisfy the mind of the guilt of the accused but suggests grave doubt of it. No bruises or marks of violence were evident except reddening around her vagina. No

weapons were used and the evidence does not show that the prosecutrix submitted because of a reasonable apprehension she would suffer injury if she refused." ***Id.***

In the case before the Court, Dr. Tibbs, a medical doctor who examined the victim testified that her findings regarding possible anal penetration could be the result of other things such as constipation, and therefore could not say with certainty or conclude that the victim had been penetrated anally. (Tr. 123-24; 127-28). Moreover, there was testimony presented that the victim had been in a accident in the bathroom when she was much younger which caused severe injuries to her vaginal region. (Tr. 316-318). So much so that she was bleeding profusely, and she was required to go to the emergency room. (Tr. 316-18). Finally, there was no testimony that the Appellant used any sort of weapon.

Thus, just as in ***Bishop***, the Appellant submits that the alleged victim's testimony was completely impeached, unbelievable, and contradictory with the other evidence. Accordingly, the Court should reverse and render not only on Count IV, but on Counts I, II, and III, as well.

II. The Verdict Was Against the Overwhelming Weight of the Evidence.

A. Standard of Review.

The Appellant contends that the verdict was against the overwhelming weight of the evidence. This issue was raised by the Appellants in post-trial motions. (C.P. 54-56; R.E. 11-13).

"A motion for jnov challenges the legal sufficiency of the evidence. ***Montana v. State***, 822 So.2d 954, 967 (Miss. 2002)(citing ***McClain v. State***, 625 So.2d 774, 778 (Miss.1993)). "Under this standard, this Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be reasonably drawn from the evidence." ***Coleman v. State***, 697 So.2d 777, 787-788 (Miss.1997)(citing ***Sperry-New Holland, a Div. of Sperry Corp. v. Prestage***, 617 So.2d 248, 252 (Miss.1993). "If the facts so considered point so

overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render." ***Id.***

"In 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 circuit court has abused its discretion in failing to grant a new trial." ***Herring v. State***, 691 So.2d 948, 957 (Miss.1997). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." ***Id.*** *See also* ***Benson v. State***, 551 So.2d 188, 193 (Miss.1989); ***McFee v. State***, 511 So.2d 130, 133-34 (Miss.1987).

B. The Verdict Was Against the Overwhelming Weight of the Evidence.

Here, the evidence was against the overwhelming weight of the evidence. As stated above, the victim stated that she was forced to commit various sexual acts. (Tr.217-18). However, as also pointed out above, the victim did not immediately report the alleged acts, and in fact the victim waited quite a period of time before reporting the acts. (Tr. 151; 170; 189-90). There was no testimony that a weapon was used by the Appellant on any of the occasions. The medical doctor who examined her could not say with any sort of certainty that she had been anally penetrated, and in fact stated that her findings could also be caused simply by constipation. (Tr. 123-24; 127-28). There was evidence that the victim suffered a fall in the bathtub when she was young which caused injuries to her vaginal area to the extent that she was required to go to the emergency room. (Tr. 316-318).

Furthermore, victim testified that she also saw the Appellant molesting one of her friends, and that her friend had commented to her about it. (Tr. 218; 219-220). However, the friend testified at trial that no such thing ever happened, and that she never made any sort of comments to the victim

about it. (Tr. 301-02). Finally, there was testimony that the victim's aunt, who has now adopted the victim and her brother, gave the children many material things such as clothes. (Tr.151; 170; 331-32). She took them skating and bowling – things that the children's mother could not afford to take them to do. (Tr.184-86; 339). The aunt at the time had been trying to get pregnant but could not, and there was testimony that the aunt was simply trying to get the children away from their mother so she could have them for her own. (Tr. 343).

Under the facts set forth above, the Appellant asserts that it would have been impossible for reasonable minded jurors to find that he was guilty of sexual battery in any of the counts of the indictment. *See* ***Rogers v. State***, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing ***Monroe v. State***, 71 Miss. 196, 13 So. 884, 885 (1893)).

Accordingly, the Appellant respectfully submits that evidence was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, the Appellant contends that the evidence was insufficient to support the verdict of guilty on all counts of the indictment, and therefore the Court should reverse and render the convictions of the Appellant. Additionally, should the Court not reverse and render, the Appellant contends that the verdict was against the overwhelming weight of the evidence, and therefore the Court should reverse and remand for a new trial.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Glenn S. Swartzfager, Counsel for Steven Walter Eason, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Robert B. Helfrich
Circuit Court Judge
Post Office Box 309
Hattiesburg, MS 39403-0309

Honorable Jon Mark Weathers
District Attorney
Post Office Box 166
Hattiesburg, MS 39403-0166

Honorable Jim Hood
Attorney General
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This the 1st day of March, 2007.

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