IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK REED — APPELLANT

VS. — NO. 2006-KA-1935

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK REED **APPELLANT**

vs. **CAUSE No. 2006-KA-01935-COA**

THE STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Tunica County, Mississippi in which the Appellant was convicted and sentenced for his felony of **SEXUAL BATTERY**.

STATEMENT OF FACTS

Miss Elisabeth Thomas, a sexual assault nurse examiner, was qualified as an expert in the field of child and adolescent sexual abuse and assault. She testified that she examined the victim in this case, a girl of seven years, on 1 April 2005. She found abnormalities in the child's vagina and anus. These abnormalities indicated that the victim's vagina and anus had been penetrated by a blunt object, possibly a human penis. (R. Vol. 2, pp. 118 - 130).

Miss Andrea Thornton, an employee of the Mississippi Department of Human Services, testified that her agency received a report of physical neglect with respect to the victim and her siblings. This report was investigated; in the course of the investigation it was learned that one of the victim's siblings exhibited sexual behaviours on a school bus. Consequently, all of the

children involved were interviewed to determine if sexual abuse of them had occurred.

In the victim's home there were six other children, two mothers, grandparents and the Appellant. In the course of the investigation, the children were removed. It was also discovered that the victim was infected with gonorrhea.

When the child was informed that she would have to take medication for this infection, she told Miss Thornton that one of her brothers and the Appellant would have to take the medication as well. She told Thornton that the Appellant had "hunched"[1] her in April. She further told Thornton that she had blood in her underwear as a result of being "hunched" by the Appellant. The child told Thornton of an incident in which the Appellant laid himself atop her and "hunched" her. The child indicated that the Appellant put his privates into her privates. The child said it was painful. These actions by the Appellant occurred between July, 2004 and February, 2005. The child's nine - year - old brother also molested her.

The Appellant was examined to determine whether he was infected with gonorrhea. The test results indicated that he was not so infected. However, there was a period of delay between the time the child was tested and the time the Appellant was tested. (R. Vol. 2, pp. 130 - 160).

David Rowsey, a member of the Tunica County Sheriff's Department, testified that he was contacted by the Department of Human Services. He spoke to the victim; the victim told him that the Appellant rubbed his privy member against her buttocks and "hunched" on her. She also told him that the Appellant might need medication for gonorrhea. The child also stated that she had blood in her underwear after the Appellant "hunched" her. She also stated that she was wearing her underwear when the Appellant assaulted her and that the Appellant was naked at that

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[1] This curious expression is obscure to us. According to the on - line Urban Dictionary, it means a simulated or actual act of sexual congress.

time.

The blood sample was taken from the Appellant. The investigator, though, did not seek a court order for the taking of the Appellant's blood until early June. He was not tested until some two months passed from the time he committed the acts against the victim. The Appellant tested negative for gonorrhea, but positive for Chlamydia. (R. Vol. 3, pp. 157 - 186).

The victim in this case testified that the Appellant "hunched" her. By this expression she meant that the Appellant had placed his privates behind her. She stated that the Appellant's actions hurt her. She further testified that the Appellant and she were unclothed when the Appellant "hunched" her. Other than those facts, she was unable to recall much about the incident.

The victim also testified that some person known to the record as Pee Wee once "hunched" her too. She testified that her nine - year - old brother had not "hunched" her; she denied having told anyone that he had. (R. Vol. 3, pp. 195 - 217).

The Appellant's sister, also the mother of the victim, testified that, in addition to the victim, she had three other children, Taminika Thaddick, Dartavius Barnes, and Allneisha Campbell. Her children had been taken from her because of neglect.

She said she became aware of the allegations of sexual abuse some three or four months after the children were taken from her. She asked the victim whether the Appellant had violated her; the victim's response according to the witness, was that the Appellant had not done so. The other children said it was not the Appellant. She testified that she did not observe any untoward conduct by the Appellant with respect to her own children or the other children who were present in the house. She did not observe any blood in the victim's underclothing.

The Appellant was said to have had a girlfriend at the time, upon whom he had begotten

two children.

The witness further testified that she thought that the injuries noted to the child's vagina and anus were inflicted at a time when the child was not in her custody. (R. Vol. 3, pp. 223 - 233).

The investigator was then recalled by the defense. His testimony was largely the same as the testimony he gave on the State's case - in - chief, so we see no need in setting it out here.

The Department of Human Services employee was then recalled. She testified that the victim told her that the Appellant was the perpetrator. She also stated at one point that the victim stated that her brother, Dartavius Barnes, was a perpetrator. The employee stated that she told the investigator about Dartavius.

She further testified that the victim's mother told her that an individual known to the record as "Pee Wee' might have committed the outrage against her daughter. The detective was given that information as well. (R. Vol. 3, pp. 239 - 249).

Jeannette L. Goodman testified. She said she was the mother of "Pee Wee" and that she knew the Appellant. The victim began living with her after she was taken from her mother, this occurring in February, 2005. Pee Wee did not live with Goodman, though he visited in her home on occasion. Goodman did not want Pee Wee around the child because he had a history or molesting little girls. On account of that reason, Goodman kept a close eye on Pee Wee on the infrequent occasions that he visited her house.

In February, 2005, when the victim came to live with Goodman, Goodman noticed blood in the victim's underwear. The victim complained of pain, and the victim was taken to be seen by a physician. Goodman told the employee of the Department of Human Services of what she had observed.

Goodman also asked the child whether anyone had been "fooling" with her. While initially reluctant to respond to Goodman, the child did finally tell her that her uncle "had been going with her" and that her uncle held her down by the wrists. The victim referred to the uncle as uncle Rogers. Goodman believed that the victim meant the Appellant. (R. Vol. 3, pp. 249 - 257).

The Appellant testified. He denied having penetrated the victim. He said he did not know why she would claim that she did. He did allow that he had on occasion disciplined the victim. He thought maybe the medical personnel or the Department of Human Services put the child up to accusing him of having penetrated her. On the other hand, he thought that maybe the Department of Human Services was picking on him because he refused to take a test to see if he was infected.

H further testified that he had relations with his girlfriend every day. He did not know how he got Chlamydia. He denied having taken medication to cure any sexually transmitted disease. (R. Vol. 3, pp. 257 - 271).

STATEMENT OF ISSUES

1. IS THE VERDICT SUPPORTED BY THE EVIDENCE; IS THE VERDICT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE?[2]

SUMMARY OF ARGUMENT

THAT THE VERDICT IS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT IS NOT OPPOSED BY THE GREAT WEIGHT OF THE EVIDENCE

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[2] The Appellant presents four Assignments of Error in this appeal. However, they are essentially two claims. One is a sufficiency - of - the - evidence claim; the other a weight - of - the - evidence claim.

ARGUMENT

THAT THE VERDICT IS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT IS NOT OPPOSED BY THE GREAT WEIGHT OF THE EVIDENCE

The Appellant, in his statement of issues, indicates that he wishes to assail the sufficiency and weight of the evidence of his guilt. Confusingly, though, he begins his argument with an assertion that the trial court erred in refusing to admit testimony to the effect that "Pee Wee" was infected with gonorrhea and that he had been committed to the custody of the Mississippi Department of Corrections for having committed a sexual assault of some kind on another child. The Court is told that the trial court found that such testimony would be inadmissible hearsay and that it refused admission of the testimony on that ground. (Brief for the Appellant, at 8). The Appellant, naturally, does not trouble himself to note where in the record he attempted to elicit such testimony.

The Appellant then drifts into an argument to the effect that he should have been able to introduce hearsay evidence because the State was able to introduce such evidence. Because he was not able to do so, says the Appellant, his right to present witnesses on his behalf was somehow violated. (Brief for the Appellant, at 9).

First of all, these arguments by the Appellant do not support the issues set out by him in his "Statement of Issues" (Brief for the Appellant, at 1). Nor is there an issue set out by him that raises these issues. Since the issues have not been raised, and since these arguments are not relevant to the errors that the Appellant has alleged, they should not be considered by this Court. Rule 28(a)(3) MRAP. There is no basis under "plain error" to relieve the Appellant of this bar; certainly the Appellant does not allege such a basis.

Assuming *arguendo* that these two issues are before the Court, notwithstanding the

conclusion that the Appellant did not.

The Appellant claims that the victim was confused or confusing. However, neither the trial court nor this Court is to undertake credibility assessments when considering whether there is evidence sufficient to permit a jury to pass on guilt or innocence. It is for the jury to make credibility assessments. *Parker v. State*, 825 So.2d 59 (Miss. Ct. App. 2002).

As for whether the verdict was contrary to the great weight of the evidence, we perceive no reason to find that the trial court abused its discretion in denying relief on the Appellant's motion for a new trial. It is true that the Appellant testified that he did not sexually batter the victim, but he could give no reason why she consistently said that he did. The injuries to her vagina and anus corroborated her story. It is true that the victim stated that she was battered by "Pee Wee", but this does not mean that the Appellant did not also batter her. Unfortunately, this child lived in miserable circumstances, at least while she was living with her "mother". Given the neglect this unfortunate child suffered, it is not inconceivable at all that should would have been violated by more than one person. The record does not show that the child was confused, as alleged here by the Appellant. It shows, to the contrary, that she knew well what occurred to her, and knew well who did it to her.

The Appellant then concludes his brief with some kind of rambling complaint that might be a discovery issue or might be some kind of a complaint concerning an alleged lack of probable cause. We do not find that any such issue or issues were raised in the trial court; they may not be raised here. *Brown v. State*, 868 So.2d 1027 (Miss. Ct. App. 2004). In any event, to the extent the Appellant is trying to assert that there was no probable cause for his arrest for the sexual assault of this child victim, we will point out that the uncorroborated statement of a child victim, in which an individual is accused of a sexual battery, is sufficient to arise to probable cause.

CERTIFICATE OF SERVICE

I, John R. Henry, 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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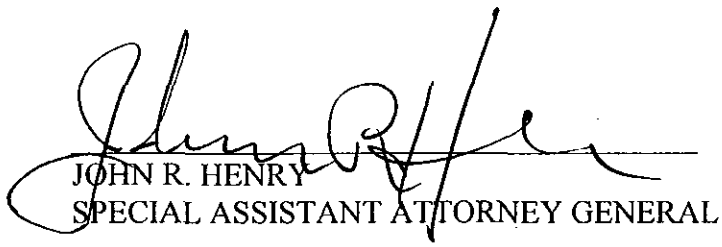
This the 29th day of November, 2007.



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