

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK REED

FILED

APPELLANT

VS.

AUG 29 2007

NO. 2006-KA-01935-COA

STATE OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI

BRIEF OF APPELLANT
(Oral Argument Requested)

SIDNEY F. BECK, JR.
ATTORNEY FOR APPELLANT
MSB# [REDACTED]
9128 PIGEON ROOST, STE. F
P.O. DRAWER 1310
OLIVE BRANCH, MS 38654
(662) 895-7555

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies the following listed persons having interest in the outcome of this case. The representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Roderick Reed
2. Sidney F. Beck, Jr., Attorney at Law
3. Honorable Lawrence Y. Mellen, District Attorney
4. Honorable Jim Hood, Attorney General
5. Honorable Charles E. Webster, Circuit Court Judge

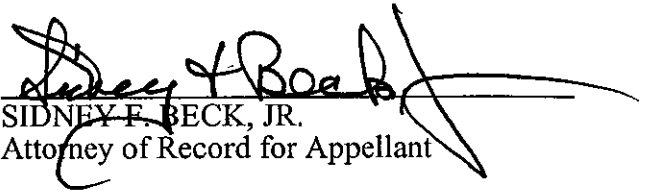

SIDNEY F. BECK, JR.
Attorney of Record for Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	i.
TABLE OF CONTENTS	ii.
TABLE OF CASES, STATUTES AND OTHER AUTHORITIES	iii.
STATEMENT OF ISSUES	1.
STATEMENT OF THE CASE	2.
STATEMENT OF THE FACTS	4.
SUMMARY OF THE ARGUMENT	7.
ARGUMENT	8.
CONCLUSION	14.
CERTIFICATE OF SERVICE	15.

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

Mississippi Rules of Evidence, Rule 801 (d) (1).

CASES:

James Preston Bailey v. State of Mississippi, 2007 MSCA 2005-KA-02109 - 061907;

Herman Veasley, a/k/a Herman Veasley, Jr., a/k/a "June" v. State of Mississippi, 735 So.2d 432 (Miss.1999);

Tyler Edmonds v. State of Mississippi, 2007 MSSC 2004-CT-02081 - 051007;

Charles Wayne Ross v. State Of Mississippi, 2007 So.2d (1998-DP-01038-SCT);

Willie Lee Brooks v. Ronnie Pennington, As Sheriff Of Rankin County, Mississippi, Rankin County, Mississippi, And Western Surety Company, 2007 MSCA 2006-CA-00396 - 052907

STATEMENT OF ISSUES

1. Whether the Court erred in failing to sustain the Motion For Directed Verdict at the close of the State's case in chief and at the conclusion of the trial;
2. Whether the Court erred in failing to give a pre-emptory instruction D-1 to the Jury, requiring them to return a verdict of "not guilty";
3. Whether the Court erred in overruling the Motion For J.N.O.V., Or In The Alternative, Motion For New Trial;
4. Is the verdict of the Jury against the great weight of the evidence?

STATEMENT OF CASE

This case is coming before the Court as a result of the indictment and trial of Roderick Reed for the alleged rape of Tatiyana Campbell, age 7.

The State's proof consisted of Tatiyana Campbell's testimony, and the testimony of Sue Thomas, Andrea Thornton and David Rowsey, the Deputy Sheriff.

A child, Tatiyana Campbell, at one time or another told Ms. Thornton and Mr. Rowsey that this Defendant molested her. She further told Ms. Thornton that her brother, Dartavius Barnes, had molested her (this child is only 9 years old), and told her mother that her Uncle Pee Wee had molested her. She also told Jeanette Goodman, her foster mother and grandmother, that Uncle Roger had done it. Ms. Goodman thought that Uncle Roger meant Uncle Roderick, however there is nothing in the record to bear this out.

Detective Rowsey, even though he knew that she had told her mother that Uncle Pee Wee had molested her and that she and Uncle Pee Wee were afflicted with gonorrhea, whereas the Defendant, his girlfriend, and their children, including an unborn child, all tested free of gonorrhea, did not investigate the possibility of the child being raped by anyone other than the Defendant.

The Court below calling any reference to "Pee Wee" hearsay, refused to let his name, or the fact that he was in the penitentiary for child molestation, be entered. The Attorney for the Defendant should have been allowed to use his name and any other thing about "Pee Wee" that was relevant.

At the conclusion of the State's testimony, defense counsel moved for a directed verdict, which was overruled, and at the conclusion of the trial, he filed a Motion For J.N.O.V., Or In The Alternative, Motion For New Trial, which was also overruled.

The Appellant would show that the Court erred in failing to sustain the Motion For Directed Verdict at the close of the State's case in chief and at the conclusion of the trial; that the Court erred in failing to give a pre-emptory instruction D-1 to the Jury, requiring them to return a verdict of "not guilty"; that the verdict of the Jury in this case was against the overwhelming weight of the evidence

in this case and the verdict evinced bias and prejudice against the Defendant; and the Prosecution failed to prove its case against the Defendant beyond a reasonable doubt.

STATEMENT OF FACTS

This cause came before the Court on October 23, 2006, after a Pretrial Hearing on October 2, 2006, in which it was decided that the State's Witnesses, namely, Andrea Thornton and David Rowsey, could be questioned as to them being told by Vanessa Barnes, the victim's mother, that the victim had told her that her uncle, Pee Wee, had molested her.

Heretofore, after Andrea Thornton started her investigation for neglect, this child said on one occasion that her brother, Dartavius Barnes, age 9, had molested her. On another occasion, she said her Uncle Roderick, had hunched her. On a third occasion, she told her mother that her Uncle Pee Wee, had hunched her. The only witnesses introduced by the State were Sue Thomas, a RN expert in Memphis, TN; her expertise being in children's rape. It was her opinion that Tatiyana Campbell had been subjected to sexual abuse, citing injury to her vagina and to the clitoral area.

Ms. Andrea Thornton testified that Tatiyana had told her that her uncle, Roderick Reed, had hunched her on more than one occasion and had also told her that her brother, Dartavius Barnes, had molested her, even though he is only one year older than Tatiyana, and the mother, Vanessa Barnes, had told Ms. Thornton that the child had told her that Randall Walker, "Uncle Pee Wee", had molested her, by hunching her. It was further established that "Uncle Pee Wee" had gonorrhea, as did Tatiyana at the time of her examination.

The Defendant, Roderick Reed, was tested some two or three months after the discovery that Tatiyana had been molested and also had gonorrhea, and tested free as did his girlfriend the mother of his children, his two (2) children and an unborn child. This was not allowed in testimony. The defense was only allowed to question as to a person who had molested her, and a person that molested her had gonorrhea. There was nothing to show that the Defendant had gonorrhea, or had ever had gonorrhea. The State attempted to discredit this, because he had refused to submit to a blood test without a Court Order, and stating that gonorrhea can be cured in 8 hours. This is not true. Symptoms can be arrested within three (3) days, but the cure can take up to one month.

David Rowsey largely reiterated the testimony of Andrea Thompson and admitted that he had been told by Vanessa Barnes that the child had said that her Uncle Pee Wee had touched her inappropriately, by hunching her. He further admitted that he did not investigate the possibility of the rape being done by "Pee Wee", even though "Pee Wee" at the time of the trial was in the penitentiary for child molestation and had suffered from gonorrhea about the time of the occurrence leading up to Roderick Reed's indictment. He stated that his only reason for not investigating was that he had a lot of work to do and that the child had not told him anyone but Roderick Reed had perpetrated abuse upon her.

Tatiana Campbell was called as a witness by the State, and upon cross examination she stated unequivocally that "Pee Wee" had molested her. She also named Roderick Reed, but denied her brother, Dartavius, doing anything to her.

Neither Andrea Thornton, nor David Rowsey, tried to follow up on the allegations about "Pee Wee". Ms. Thornton, using the reason that she didn't have the authority to investigate somebody outside of the home, and David Rowsey stating that he had other cases that he was busy on and that the child had not told him about "Pee Wee", but only about Roderick. Even though he was told about "Pee Wee" by her mother, he did not bother to investigate, but simply went after an indictment against Roderick Reed. This shows that David Rowsey was neglectful in indicting on an incomplete investigation, which could have exonerated the Defendant in this case, or could have had him indicting two defendants for separate molestations, but he elected to do nothing.

After the State rested upon the completion of Tatiana Campbell's testimony, the defense gave testimony by Roderick Reed and Vanessa Barnes testifying that she knew about "Pee Wee" and had told the policeman, David Rowsey, and the Social Worker, Ms. Thornton, about "Pee Wee". Further, Roderick Reed testified that he had never had gonorrhea, had not been to a doctor for treatment, saw no reason to be subjected to such by the State of Mississippi, therefore he only went when he was served with a subpoena. Also testifying on the Defendant's behalf, was Jeanette

Goodman, who at the time of the trial, had custody of Tatiyana Campbell. She testified that "Pee Wee" was her grandson and she did not want him around her house very often, when Tatiyana was there, because he had been involved in child abuse previously.

The only thing connecting Roderick Reed to this crime is the fact that the child, Tatiyana Campbell, under questioning by the Social Worker and the Detective, had stated that Roderick Reed had hunched her, and had further gone on to say that at least one other person had hunched her, namely "Pee Wee". This, at best, is weak and it should not have been submitted to the jury.

SUMMARY OF ARGUMENT

Generally, the argument is that the verdict is against the great weight of evidence, in which the Motion For Direct Verdict and Motion For J.N.O.V., Or In The Alternative, Motion For New Trial would be included therein.

That the Court erred in calling the testimony about "Pee Wee" hearsay, because the testimony of Vanessa Barnes was given in rebuttal to testimony of her daughter, Tatiyana Campbell, and was not hearsay insofar as Tatiyana was concerned. The only hearsay would have been if she had tried to testify against the Defendant. This is rebuttal evidence.

Further, that the child was obviously confused as to who had molested her, having named four different individuals.

That the investigation, or lack thereof, by Detective Rowsey was inappropriate and fundamentally denied the Defendant a fair trial.

ARGUMENT

COMES NOW, the Appellant, through undersigned counsel, and files the brief with this Court, showing where the Court below erred in refusing to allow a full and complete disclosure of facts surrounding Uncle Pee Wee, including the fact that he, as well as Tatiyana, suffered from gonorrhea, and that Pee Wee had been committed to the M.D.O.C. for the same crime on another person. The Court below referred to this as “hearsay”, given as the reason for restricting the testimony about Pee Wee to not naming him, but naming a person, and that person had the gonorrhea. This could not be the help to the Defendant that a full disclosure would have been.

Rule 801 of the Rules of Evidence, paragraph (d) (1) sets out that a statement is not hearsay if:

“*Prior Statement by Witness*. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (A) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him.”

It is obvious from this rule that it would not be hearsay, but simply rebuttal testimony of the mistakes made by this young child.

In the case of John Preston Bailey v. State of Mississippi, 2007 MSCA 1005-KA-02109 - 061907, the Court states:

“The standard of review for a trial court’s decision to admit or exclude evidence is abuse of discretion. *Watts v. State*, 936 So.2d 377, 382 (¶16) (Miss.Ct.App.2006) (quoting *Sturdivant v. State*, 745 So.2d 240, 243 (¶10) (Miss.1999)). “Hearsay is a statement, other than one made by the declarant while testifying at the trial or

hearing, offered in evidence to prove the truth of the matter asserted.” M.R.E. Rule 801 (c). It follows then that hearsay is not admissible except in certain instances provided by law. M.R.E. Rule 802. We find that the trial court correctly refused to allow hearsay testimony from the officer regarding what the inmates told him that Tharpe said. Had Bailey wanted to inquire about these alleged statements, he should have called the inmates themselves to testify. This issue is without merit.”

Hearsay plays a large part in any case involving a minor child, and can be used as corroboration, as was done in the case at bar, however, there are certain rules that must be applied. In the case of Herman Veasley, a/k/a Herman Veasley, Jr., a/k/a “June” v. State of Mississippi, 735 So.2d 432 (Miss.1999) the Court held on Page 436 of the said decision the following:

“Hearsay testimony concerning the details of a complaint of sexual assault is admissible where the complainant is of “tender years” if her statement is shown to have been spontaneous and without indication of manufacture, and if any delay in making the complaint is excusable insofar as it is caused by fear or other equally effective circumstances.”

In this case, hearsay evidence was used on the part of the State’s case, but was not used at all insofar as any latitude for this Defendant.

It is a fundamental right of an accused to be able to put witnesses on in his own defense. The Supreme Court in Tyler Edmonds v. State of Mississippi, 2007 MSSC 2004-CT-02081 - 051007 stated as follows:

“Few rights are more fundamental than that of an accused to present witnesses in his own defense. In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence. Although perhaps no rule of evidence has been more respected or more frequently applied in

jury trials than that applicable to the exclusion of hearsay, exceptions tailored to allow the introduction of evidence which in fact is likely to be trustworthy have long existed. The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. That testimony also was critical to Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Chambers v. Mississippi, 410 U.S. 284, 302, 93 S. Ct. 1038, 1050, 35 L. Ed. 2d 297, 312-13 (1973) (citations omitted) (emphasis added)."

This young child had named four different people who supposedly had molested her; namely Roderick Reed, her brother, Dartavius Barnes, Uncle Pee Wee, and Uncle Roger. Nobody knows who Uncle Roger is, even though Jeanette Goodman thought she was referring to her Uncle Roderick. In this situation, it clearly shows that this child was confused and did not remember who had done what to her. The Social Worker stated that she had used an open ended questioning in an effort to find out what had happened to this child. Under her probing, the child named Roderick Reed; told her mother, Uncle Pee Wee; also told the Social Worker about her brother; and told Jeanette Goodman someone named Uncle Roger. This clearly shows that the confusion was such that it was impossible for this jury to return a verdict of guilty, without there being error. The Court should have granted the Motion For A Directed Verdict, should have given the instruction submitted, directing a verdict, should have sustained the Motion For J.N.O.V., or at the very least, should have granted a new trial.

Some of the things in the record were not cited by counsel below, however we think this Court should look at this case in its entirety and argument should be allowed, even though there was possibly no objection made.

SCT) the Court set out:

“Prior inconsistent statements used to impeach a witness need not be disclosed to opposing counsel unless opposing counsel has requested that such statements be disclosed. See M.R.E. 613(a). However, if a statement is introduced into evidence not only for impeachment, but also to bolster the substantive case of a party, then the admission of the statement may nevertheless be subject to the reciprocal discovery rule under Rule 9.04 of the Uniform Code of Circuit and Chancery Practice (U.R.C.C.P.). See, e.g., *Coates v. State*, 495 So.2d 464, 466 (Miss.1986) (finding that, where statement was impeachment evidence but also outlined defendant’s substantive theory of the case, evidence was subject to the discovery rule, and the trial court’s exclusion of the statement was not error); see also *Byrom v. State*, 863 So.2d 836, 869 (Miss.2003) (citing *Coates v. State* and affirming that where the statement was substantive evidence but was sought to be introduced as impeachment evidence, exclusion of the evidence was proper for failure to adhere to the rules of reciprocal discovery.) This principle prevents a party from circumventing discovery rules by arguing that evidence was used merely for impeachment purposes. *Coates*, 495 So.2d at 466. In the present case while elements of the statement taken by Wells might have been used to impeach Jones’ testimony, introduction of the entire statement as impeachment testimony would have been inappropriate since a crucial element of Ross’ defense was undermining Jones’ credibility. Therefore, though the proper foundation was laid for the introduction of impeachment evidence, Wells’ statement should not have been admitted as impeachment evidence, since it tended to prove Ross’ theory of the case.”

Detective Rowsey arrested the Defendant solely upon the word of a 7 year old child, who had contradicted herself, rather than investigate the case thoroughly and then coming to a careful, sane decision as to who to indict. In the case of Willie Lee Brooks v. Ronnie Pennington, As Sheriff Of Rankin County, Mississippi, Rankin County, Mississippi, And Western Surety Company, 2007 MSCA 2006-CA-00396 - 052907 the Plaintiff was arrested by a bail bondsman for nonpayment of a bond fee and taken to the Rankin County Sheriff's Department. The Plaintiff protested and told the officers they were mistaken, but was incarcerated. The Court set out the following:

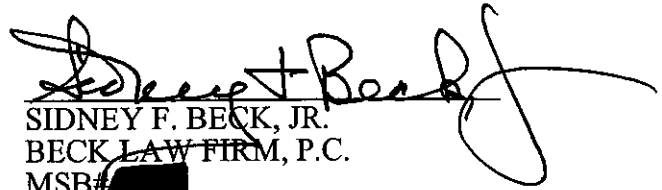
“In addition to their possible noncompliance with the duties detailed above, Brooks alleged that after being told of their mistake the jailers/deputies refused to investigate the grounds for his continued detention, refused him another bond, refused to take him before a neutral magistrate, refused to tell him what crime he was charged with, and generally ignored his protest of unlawful incarceration. Under the facts of the case before us, this is sufficient evidence to create a jury question as to whether the conduct, through action or inaction, of the sheriff's department evinced a reckless disregard of the safety and well-being of Brooks. Moreover, a sworn affidavit by an expert witness, Hon. Stanley F. Slater, municipal judge for the City of Canton, Mississippi, for over sixteen years, and practicing attorney for over thirty years, who proclaimed intimate knowledge of the bail bonding processes in this state, after a full review of all the relevant documentation in this case, claimed that the failure of the sheriff's booking deputies to verify the bond status on Brooks before accepting surrender was grossly negligent and with wanton disregard of Brooks's rights. We conclude that genuine issues of material fact exist sufficient to defeat summary judgment on this immunity ground.”

It is elementary that law enforcement officials should be thorough and pain staking in their investigations and should never arrest somebody without such an investigation. In the case at bar, virtually no investigation was done and based on the case submitted by the State, this Defendant should have been exonerated and held to be not guilty.

CONCLUSION

It is obvious that there was error in this case and that the evidence warranting an acquittal was overwhelming, but because of the lower Court's refusal to allow certain testimony, a conviction was had. For these reasons, it is submitted that this Court should reverse and render the decision of the lower Court, or at the very least, grant the Appellant a new trial.

RESPECTFULLY SUBMITTED, this the 29 day of August, 2007.



SIDNEY F. BECK, JR.
BECK LAW FIRM, P.C.
MSB# [REDACTED]
9128 PIGEON ROOST, STE. F
P.O. DRAWER 1310
OLIVE BRANCH, MS 38654
(662) 895-7555

CERTIFICATE OF SERVICE

I, Sidney F. Beck, Jr., Attorney at Law, certify that I have this date mailed, postage prepaid, a true and correct copy of the foregoing Brief Of Appellant to the Honorable Jim Hood, Attorney General, P.O. Box 220, Jackson, Mississippi 39205-0220.

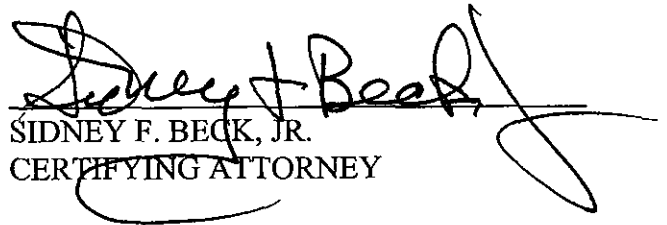
This the 29 day of August, 2007.


SIDNEY F. BECK, JR.
CERTIFYING ATTORNEY

CERTIFICATE OF SERVICE

I, Sidney F. Beck, Jr., Attorney at Law, certify that I have this date mailed, postage prepaid, a true and correct copy of the foregoing Brief Of Appellant to the Honorable Jim Hood, Attorney General, P.O. Box 220, Jackson, Mississippi 39205-0220 and to the Honorable Charles E. Webster, Circuit Court Judge, 115 1st Street, P.O. Box 998, Clarksdale, MS 38614-0998.

This the 29 day of August, 2007.


SIDNEY F. BECK, JR.
CERTIFYING ATTORNEY