IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI



BOBBY RAY STEADHAM — APPELLANT



VS. — NO. 2006-KA-1960

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**

**BOBBY RAY STEADHAM** **APPELLANT**

**vs.** **CAUSE No. 2006-KA-01960-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 Scott County, Mississippi in which the Appellant was convicted and sentenced for his felony of **SEXUAL BATTERY.**

## STATEMENT OF FACTS

Tammy Pilgrim testified that she lived in 722 Franklin Road, Morton, Scott County with Mark Steadham, her daughter and her son. Pilgrim further testified that the victim in this case, a boy of fifteen years at the time of trial, is her nephew. This nephew was a special education student. In June of 2005, the victim told Pilgrim of a matter, which caused her to have him examined by a physician.

The Appellant is Mark Steadham's brother. Tammy Pilgrim lived next door to the Appellant at the time the Appellant sexually battered the victim. Miss Pilgrim had a difficult

relationship with the Appellant's concubine. It seems this difficulty arose from gossip the Appellant's girlfriend indulged in concerning Pilgrim's daughter. No doubt the girlfriend was not trying to be ironic when she referred to the daughter as a whore. Pilgrim denied having animosity toward the Appellant. ( R. Vol. 2, pp. 32 - 43).

The victim testified. He said he was fifteen years of age. He knew the Appellant. In December of 2004, the victim was in the Appellant's trailer. Also present was the Appellant's live - in girlfriend and Pilgrim's young son. The Appellant begged the victim to have sex with him. At that time, the victim refused.

On another occasion, though, while at the Appellant's trailer, the Appellant forced the victim to submit to an act of buggery. The Appellant inserted his penis into the victim's anus. He used Vaseline to accomplish this act. The Appellant forced the victim to submit to this again on four other occasions.

The victim did not relate what the Appellant had done immediately. This was because the victim was scared. The Appellant told the victim that he would get in trouble if he told.

In any event, in 2005 the victim told his cousin, Pilgrim's daughter, what the Appellant had been doing. The daughter told the victim that he better tell her mother. This he did, and he was taken to an emergency room for an examination.

On cross-examination, the victim admitted that he told someone at the children's advocacy center that the Appellant had forced him to submit on two occasions. He did not know why he did so, could not remember why.

Another act of sexual battery apparently occurred in a tent behind the Appellant's property. The victim admitted that he went into the tent, but he did so because his young cousin was in it with the Appellant. The victim wanted to protect his cousin.

The victim stated that he became suicidal after several of these sessions with the Appellant. He stated he was afraid of the Appellant. ( R. Vol. 2, pp. 44 - 56).

A medical examination by a physician of the victim revealed that the victim had a "relaxed anus." The physician was able to easily insert two fingers without causing pain or discomfort. He stated that ordinarily only one finger could be inserted without causing pain and discomfort. The condition of the victim's anus was consistent with the victim's account of what had occurred to him. The condition of the anus was consistent with someone having inserted a penis into it.

The defense produced a case - in - chief. It first recalled the victim. The victim testified that the Appellant showed him a pornographic film and a "girlie" magazine. ( R. Vol. 2, pp. 68 - 70).

The Appellant's girlfriend then testified. She said had lived with the Appellant for nearly fourteen years and that during that time she had never seen him in possession of pornographic material. She further stated that she had no knowledge of the Appellant involving himself in homosexual conduct. She said she had no knowledge of the Appellant having sexual contact with a person under the age of fifteen years. She said that the Appellant had been a good boyfriend and that she loved him. She further stated that the Appellant did not have a video tape player. ( R. Vol. 2, pp. 70 - 73).

The Appellant's mother then testified. She said that the Appellant and his brother did not get on well. She said the allegations against the Appellant occurred after her other son asked her for a deed to the property on which his trailer stood. The other son wanted to run the Appellant and his girlfriend off the property. ( R. Vol. 2, pp. 73 - 77).

The Appellant then testified. He said that he had had a difficulty with the victim. The

victim and his brother came into his shop and made a disturbance, so the Appellant made them go home. He claimed that the victim had an attitude problem and that the victim became angry when he sent him out of his shop.

The following day, according to the Appellant, the victim accosted him, got up in his face, and told him that he did not appreciate what the Appellant had been saying about aunt Tammy. The Appellant said he sent the victim away. After this occurred, there was then some story about finding his brother's daughter's boyfriend sitting in a car at his brother's trailer. The Appellant denied calling her a name. When the Appellant's girlfriend told the daughter's mother about it, the mother became upset with the Appellant's girlfriend. It was after this contretemps about his brother's daughter occurred that the Appellant found himself charged with sexually battering the victim, according to the Appellant.

The Appellant did have at one time a video tape player. He claimed it quit working and so he through it away, this occurring about the time he was charged. He denied having possession of pornographic material. ( R. Vol. 2, pp. 79 - 85).

The Appellant's brother testified that he did approach their mother about purchasing some land from her, but he denied that it had anything to do with wanting to run the Appellant and his girlfriend off the property. The discussion with the mother occurred about a year prior to the time charges were brought against the Appellant for having sexually battered the victim. ( R. Vol. 2, pp. 86 - 88).

## STATEMENT OF ISSUES

**1. DID THE TRIAL COURT ERR IN PERMITTING THE STATE TO INTRODUCE MEDICAL EVIDENCE THAT WAS NOT DISCLOSED TO THE DEFENSE IN DISCOVERY?**

**2. DID THE TRIAL COURT ERR IN DENYING RELIEF ON THE APPELLANT'S MOTION FOR A NEW TRIAL?**

## SUMMARY OF ARGUMENT

**1. THAT THE RECORD DOES NOT SHOW THAT THE STATE FAILED TO DISCLOSE MEDICAL EVIDENCE TO THE DEFENSE; THAT THE RECORD DOES NOT SHOW THAT THE DEFENSE MADE ANY OBJECTION ON SUCH GROUND TO SUCH EVIDENCE; THAT THE FIRST ASSIGNMENT OF ERROR IS UNSUPPORTED BY AUTHORITY**

**2. THAT THE VERDICT IS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT IS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE**

## ARGUMENT

**1. THAT THE RECORD DOES NOT SHOW THAT THE STATE FAILED TO DISCLOSE MEDICAL EVIDENCE TO THE DEFENSE; THAT THE RECORD DOES NOT SHOW THAT THE DEFENSE MADE ANY OBJECTION ON SUCH GROUND TO SUCH EVIDENCE; THAT THE FIRST ASSIGNMENT OF ERROR IS UNSUPPORTED BY AUTHORITY**

In his first Assignment of Error, the Appellant contends that the State failed of Her duty under Rule 9.04 UCCCP to disclose the fact that the physician would testify that he could insert two fingers into the victim's anus without difficulty, and that the victim's rectum was relaxed.

First of all, the Appellant has not troubled himself to cite authority in support of his Assignment of Error. The consequence of this failure is that the Assignment is abandoned. *Puckett v. State*, 879 So.2d 920 (Miss. 2004).

Secondly, we find that there was no objection or request for a continuance made on this ground during the physician's testimony -- or at any other time in the trial of the case. The matter was only raised in the Appellant motion for a new trial. Because there was no contemporaneous

objection as to the alleged discovery violation, the issue is procedurally barred here. *Livingston v. State*, 943 So.2d 66 (Miss. Ct. App. 2006).

Thirdly, the State's response to the Appellant's motion for a new trial clearly shows that the report was in fact disclosed to the defense in advance of trial. ( R. Vol. 1, pp. 27 - 28). The Appellant had a duty to investigate his case. *Payton v. State*, 708 So.2d 559 (Miss. 1998). An interview with the physician should have brought these facts to his attention, if in fact the Appellant was unaware of what the physician would have testified to.

The First Assignment of Error is without merit.

**2. THAT THE VERDICT IS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT IS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE**

In considering the claims raised by the Appellant in his Second Assignment of Error, we bear in mind the respective standards of review concerning them. *May v. State*, 460 So.2d 779 (Miss. 1984).

Stated in summary form, the evidence in this was that the victim testified that the Appellant forced him to submit to at least one act of anal penetration. This credible testimony was corroborated by the physician's findings and opinion concerning the condition of the victim's anus. The evidence further showed that the Appellant more than thirty - six months older than the victim, the victim being older than fourteen years but younger than sixteen years at the time of the sexual battery. Taking the testimony of the victim and the physician as true, together with all reasonable inferences therefrom, the testimony was entirely sufficient to submit the case to the jury for its determination of the cause. *Allman v. State*, 571 So.2d 244 (Miss. 1990).

The Appellant tells this Court that there was no physical or biological evidence to tie the

Appellant to the felony he committed against the victim. It is true that there was no biological evidence, such as DNA evidence, involved in the case. On the other hand, there was the testimony of the victim to "tie" the Appellant to the felony. In any event, there was no requirement for such evidence, and the most that may be said of the Appellant's point is that it was a matter for the jury to consider. It was for the jury to determine the weight and worth of evidence and testimony, or lack of such.

The Appellant further says that there was no proof that the Appellant possessed pornography. Strangely, he further says that such testimony was an "essential element" of the State's case.

There was testimony that the Appellant showed pornography to the victim. It is true that no pornographic materials were entered into evidence, but this is a matter of no consequence. The Appellant cites no authority for the odd proposition that pornography was an "essential element" of the case. A cursory review of Miss. Code Ann. Section 97-3-95 (Rev. 2006) will show that there is no such element.

The trial court did not err in denying relief on the Appellant's motion for a new trial. While it is true that the Appellant denied having penetrated the victim and testified in effect that the charge against him resulted from ill - will between his brother and himself, or their girlfriends, this was for the jury to consider. It simply cannot be said, however, that the verdict returned by the jury amounted to an unconscionable verdict. The testimony of the victim, corroborated by the physician, was strong evidence of the Appellant's guilt.

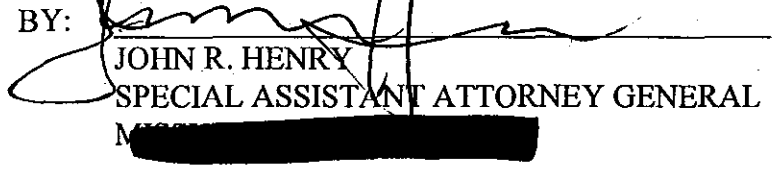
The Second Assignment of Error is without merit.

## CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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## 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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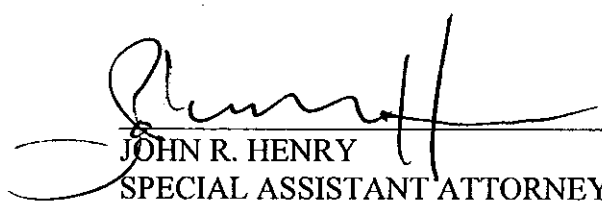
This the 1st day of February, 2008.



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