

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00608-COA

STANLEY MORGAN

APPELLANT

VERSUS

FILED

STATE OF MISSISSIPPI

OCT 25 2007
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SUPREME COURT
COURT OF APPEALS

APPELLEE

**Appeal from the Circuit Court for the First
Judicial District, Jasper County, Mississippi
Criminal Action No. 15-13**

REPLY BRIEF OF APPELLANT

(Oral Argument is Requested)

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STATEMENT REGARDING ORAL ARGUMENT

Contrary to the State's position on oral argument, your Appellant, Stanley Morgan asserts that oral argument will be necessary and beneficial in his case. Alleged sexual battery, particularly that of a minor child, is a most heinous crime. It invokes strong opinions from an overwhelming majority of citizens. The mere accusation of this crime can ruin the reputation of even a steller individual, irrespective of the outcome of a trial.

In its extremely well prepared Brief, the State seems to take the position that if The alleged victim and her mother says its true, then guilt attaches. This can be abused. One only has to reflect on the numerous exonerations of alleged rapists recently. Even more recently there has been the situations at Duke University and even Mississippi State. The Duke matter was resolved by medical evidence, and in the Mississippi State matter, fortunately before it got out of hand, it was discovered the alleged victim just flat out lied. There was dispositive medical evidence available to the State in Morgan's case, and for its own reason, the State did not pursue this. Why? This question still remains.

For this reason, and for the other errors as alleged in the incomplete proof of his guilt, Stanley Morgan respectfully requests oral argument in his case as permitted under **Miss.R.App.P., Rule 34(b)**.

SUMMARY OF THE REPLY ARGUMENT

Your Appellant, Stanley Morgan submits that in his direct Brief, and that of the State, the direct issues raised in this appeal have been fully and adequately examined by the parties. The State says it did enough to convict Morgan and Morgan says there were too many gaps in the alleged proof offered by the State that failed to cross the threshold of guilt beyond a reasonable doubt.

For this reason, Morgan will present a very concise summary of these gaps and pose the question, “Did these errors, taken in a cumulative fashion, and considering the nature of his alleged crime, effectively deny his a fair and impartial trial?”.

REPLY ARGUMENT AND CITATION OF AUTHORITIES

Whether the cumulative errors at trial resulted in a basically unfair trial of the Defendant in this case.

This is a judgement call, and one of perception. As a rule, if it appeared to a reasonable person that the accused at trial did not have a real defense to his charges, and the conduct of the trial was such to demonstrate this, the question of fairness is raised. In Stanley Morgan's case, the denial of his proffered Jury Instruction D-5 crippled his defense theory, and the undeniable fact of the lack of credible medical evidence of the alleged sexual battery allowed mere accusations of misconduct to prove a crime. This is both unfair and far short of proof beyond a reasonable doubt.

STANDARD OF REVIEW

A defendant cannot expect a perfect trial, but he is guaranteed a fair and impartial trial. These guarantees have long been established. The trial requires fair, impartial and unbiased jurors who are willing to be guided by the testimony and other evidence as presented at trial, together with the law announced by the court. It also requires that the defendant be tried in an atmosphere that is free from bias, hatred or prejudice against the defendant and his theory of defense, if reasonable. *Seals v. State*, 44 So.2d 61 (Miss. 1950); *U.S.C., Const.Amend. 6: Const. 1890, Sec. 26*.

LEGAL PRINCIPLES

In Morgan's case, perhaps the unfairness began in the victim and her mother's visit to Dr. Gibbs on October 12, 2004, and the discovery of Chlamydia in the two ladies. Other than this alleged fact, the rest of the "proof" was allegations explaining the sexual

activity of the victim. There was no proof of the source of the Chlamydia other than speculation. The dispositive proof, available to the State, never saw the light of day.

So we are left with these “graphic” descriptions of a then 13 year old, (15 at the time of trial), to rely upon. Nothing else but hearsay and speculation. In allowing the State almost unfettered latitude, over objections, in the presentation of its sexual activity theory, a fair trial went out the window. *Kelly v. State*, 735 So.2d 1071 (Miss.App. 1999). When Morgan was not allowed to present his cautionary instruction to this gossip, he was doomed. *Chinn v. State*, 958 So.2d 1223 (Miss. 2007).


When the sum of these errors are added up, including the instruction question, Stanley Morgan submits that a reasonable person would have to conclude that he was denied a fair and impartial trial. *McGee v. State*, 820 So.2d 700 (Miss.App. 2000); Accord: *Ross v. State*, 954 So.2d 968, pages 1018-19 (Miss. 2007). He therefore requests this Court’s reversal of his conviction and sentence.

CONCLUSION

Stanley Morgan's trial was not a complete trial. There were too many things missing from the State's proof to justify a valid conviction. Therefore, for the reasons and authorities presented in this appeal, Stanley Morgan respectfully requests this Court's reversal of his conviction and sentence by the Circuit Court for the First Judicial District, Jasper County, Mississippi.

Respectfully submitted,

STANLEY MORGAN, Appellant

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CERTIFICATE OF SERVICE

I, WENDELL JAMES, counsel of record for the Appellant, Stanley Morgan, do hereby certify that I have this day filed the original and three (3) true and correct copies of the above and foregoing Reply Brief of Appellant with the Honorable Betty W. Sephton, Clerk of the Supreme Court and Court of Appeals of Mississippi at Jackson, Mississippi.

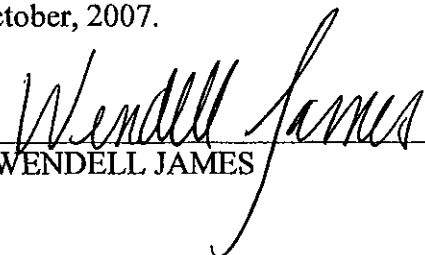
I further certify that I have delivered a true and correct copy thereof by United States Mail, postage prepaid, to:

The Honorable Jim Hood, Attorney General
The Honorable Billy L. Gore, Special Assistant Attorney General
Post Office Box 220
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The Honorable Robert G. Evans
Circuit Court Judge
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The Honorable Eddie H. Bowen
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CERTIFIED this, the 25th day of October, 2007.



WENDELL JAMES