IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00608-COA

STANLEY MORGAN — APPELLANT

VERSUS

STATE OF MISSISSIPPI — APPELLEE

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

BRIEF OF APPELLANT

(Oral Argument is Requested)

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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 the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

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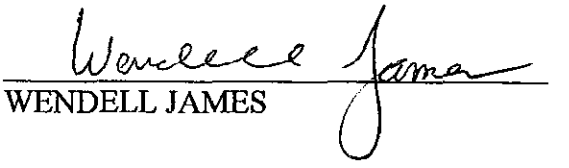

WENDELL JAMES

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2. Whether the trial court erred in denying the proffered Jury Instruction D-5.

3. Whether the Jury Verdict of Guilty is the result of bias and passion on the part of the Jury and contrary to the credible evidence adduced at trial and the law of this State.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW

Excepting only the length of time between the arrest and arraignment of the Appellant, Stanley Morgan, ("Morgan"), not an issue in this case, the procedural history of this case is quite succinct. Morgan was arrested on September 17, 2004, for the alleged sexual battery of Candice Edmonson, ("Edmonson"), a minor, over a period of time alleged to be in late 2003 and into 2004. The Grand Jury for the First Judicial District of Jasper County returned its Indictment charging Morgan with this violation of **Miss. Code 1972, Ann., Sec. 97-3-95(1)(d)** on August 1, 2005. (CP-3)

After Morgan's Arraignment and plea of "Not Guilty", (CP-17), discovery commenced between the State and Morgan. Based upon these findings, Morgan filed three (3) pre-trial Motions, (a) Motion in Limine to Suppress Opinion Testimony, (CP-

34), (b) Motion to Determine the Competency of a Minor Witness, (CP-39), and (c) Motion to Strike Hearsay Testimony, (CP-39). At a pre-trial hearing shortly prior to trial, the Court denied in part and granted in part these Motions in an Agreed Order, (CP-69), limiting the expected hearsay testimony of the State's witnesses, particularly as to the direct identification of Morgan as the alleged perpetrator of the alleged crime, limiting the testimony only as to the direct history of events.

Morgan's trial commenced on February 13, 2007, and took one day. The State called four witnesses, Shawanda Edmonson Pierce, ("Pierce"), the mother of the alleged victim, the alleged victim Edmonson, Deputy Doug Hill of the Jasper County Sheriff's Department, the investigating officer, and Dr. Patricia Tibbs of Laurel, a pediatrician, who was accepted as an expert, (T-91), and testified as to her examination of Edmonson. After the State rested, Morgan moved for a directed verdict, (T-97), and after brief argument by the parties, this was denied. (T-98) Morgan rested his case (T-101), without calling any witnesses, and after the submission of Jury Instructions and closing arguments, the Jury, after its deliberations found Morgan Guilty of sexual battery. (CP-87)

The Circuit Court called for a Pre-Sentence Report on Morgan, (CP-88), and Morgan timely filed his Motion for JNOV and/or New Trial, (CP-90). At the Sentencing Hearing on March 2, 2007, the Circuit Court rendered its Sentence of Morgan to serve a term of thirty (30) years in custody, and registration as a sexual

offender. On March 26, 2007, the Circuit Court also denied Morgan's filed Motion for JNOV and/or New Trial. (CP-96). From these adverse decisions, Morgan has timely perfected his appeal to this Court. (CP-98, 100, 102 and 107). Morgan remains incarcerated at this time.

FACTUAL STATEMENT OF THE CASE

The factual basis of this case is sad, and unfortunately a scenario that seems almost endemic in this time. Stanley Morgan and Shawanda Pierce met one another at a club sometime in April, 2003. (T-51) Both were single, and Pierce at this time was the mother of three children, all born from separate fathers. (T-58) Pierce worked on shift schedules at Howard Industries and Morgan worked intermittently, primarily in construction and pipeline jobs. Pierce and her children resided in Heidelberg and Morgan in Quitman, Mississippi.

The two began a sexual relationship sometime in July, 2003, (T-51), and in August, 2003, Morgan moved in with Pierce and her children in Heidelberg. (T-51) In the Fall of 2003, Pierce then became pregnant with twins from her relationship with Morgan, the twins being born on May 31, 2004. (T-52)

The alleged sexual battery of Candice Edmonson, Pierce's oldest child, allegedly began in October, 2003. (T-66) Morgan, when off work would often be in the Pierce home with the three children and care for them while Pierce was at work. Edmonson alleged that the sexual encounters occurred several times, all in the Pierce home. (T-70, 71) It was Edmonson's contention that Morgan threatened to rape her pregnant

mother so, "I just let him go through with it." (T-68)

The case came to a head on or about September 16, 2004, when Edmonson confided with her mother that Morgan had been molesting her. (T-54) When Morgan was confronted by Pierce and Edmonson, he strongly denied any such actions. (T-54) The next day, September 17th, Pierce using a ruse was with Morgan when she allegedly was paying a traffic ticket, (T-56), and she filed her complaint with Jasper County officials, and Morgan was arrested for his alleged crimes. (T-56) At the time of these alleged crimes, Edmonson was 12 and 13 years of age.

SUMMARY OF THE ARGUMENT

This case begs the question: How does one defend himself against false accusations? Does one get into a swearing match with his accusers? Generally this does not accomplish anything. Does one attack his accusers? This also doesn't work as the accusers appear sympathetic. Or, does one just let them talk, and when the talk and lack of credible evidence to support the talk is non-existent, let the story collapse under its own weight.

This is what occurred in Stanley Morgan's case. Though seemingly perfectly scripted, the story of the alleged victim and her mother had no verifiable proof. A respected pediatrician could only relate what she was told, and rely upon one simple test that, as proof, was not carried to its ultimate end and conclusion.

At trial, all of the above lapses were brought out. But the carte blanc allowance of speculative testimony was allowed. And, when the single jury instruction that said in essence, "Be care of what you hear if it has no supporting evidence" was denied, proof went out the window.

Suspicion, speculation, bias and passion convicted Stanley Morgan. He now requests this Court to remedy these errors.

ARGUMENT AND CITATION OF AUTHORITIES

1. **Whether the trial court erred in allowing, over objection and contrary to an Agreed Order between the State and the Defendant, the hearsay testimony of Dr. Patricia Gibbs stating, "the boyfriend of the mother molested her."**

By way of introduction to this issue, and, what will be a recurrent theme throughout Morgan's appeal, though properly qualified as an expert witness, (T-91), in her examination of Edmonson on or about October 12, 2004, Dr. Tibbs found that Edmonson had been sexually active and had contracted Chlamydia. (T-93). Over objection, she also testified that it had been related to her by Edmonson and her mother, Pierce, that "Her mother's ex-boyfriend was sexually abusing her." (T-92). In denying this objection the trial court excused this as "It's just a history that was related". (T-92)

It should be remembered that, at the pre-trial hearing, the State and Morgan, after much discussion of the hearsay question from both lay and expert witnesses, limited testimony as to any alleged perpetrator. (CP-69) In opening the door to this hearsay of Morgan's alleged culpability, in a case of no physical evidence excepting only speculation from certain findings, the allegation that Morgan had to be guilty was firmly reinforced in the minds of the Jury. As will be discussed in detail below, this type of bolstering only serves to lessen the burden of proof against an accused.

STANDARD OF REVIEW

Though experts generally are given wide latitude in their testimony, when it comes to hearsay statement to prove the truth, limitations are properly enforced. ***Moore v. State,*** 859 So.2d 379 (Miss. 2003). This limitation applies equally to the

State and the defendant. ***Davidson v. Mississippi Dep't of Human Services,*** 938 So.2d 912 (Miss.App. 2006). **Miss.R.Evid., Rule 801** specifically prohibits hearsay evidence when the evidence presented is void of corroboration when such proof is available. ***Brown v. State,*** 944 So.2d 103 (Miss.App. 2007).

LEGAL PRINCIPLES

Other than the accusations of Edmonson and her mother, there is nothing excepting the presence of Chlamydia that could link Morgan to Edmonson. Yet, though Morgan was available, no test was ordered. The "tender years" exception was not present in this trial. (T-92) Neither do the uncorroborated statements made by Edmon- fall under the exceptions allowed by **Rule 803(4),** and ***Foley v. State,*** 914 So.2d 677 (Miss. 2005).

Statements made to prove the truth of an accusation, without else, are properly excluded. ***Hilliard v. State,*** 950 So.2d 224 (Miss.App. 2007). Even under **Rule 803(4),** and its extensions of medical testimony, when statements about cause are permitted, statements about fault are excluded. ***Jones v. State,*** 856 So.2d 285 (Miss. 2003). This should have been the case in Morgan's trial. The "boyfriend's" fault should have been excluded. The Agreed Order was violated.

2. Whether the trial court erred in denying the proffered Jury Instruction D-5.

This issue is fundamental. Briefly, the proffered Jury Instruction D-5, (CP-84), was a cautionary instruction as to the uncorroborated testimony of Edmonson. After

initially having no objection to the Instruction, (T-102), upon caution by the trial court, the State registered its objection. The trial court then denied the Instruction based upon lack of authority, (T-102), and completed the jury instruction review.

As will be shown, Morgan suggests this was in error for two main reasons, (1) there is authority for cautionary instructions, and, (2) in denying this Instruction, the trial court effectively denied him the ability to present to his jury the underlying basis of his defense. To return to the general thesis of this appeal, but for Edmonson's story, there is no case against Morgan in this prosecution.

STANDARD OF REVIEW

As a general standard, jury instructions should fairly state the law, be supported by the facts and not be duplicative of each other. ***Wells v. State,*** 913 So.2d 1053 (Miss. App. 2005). Further, a defendant is entitled to have jury instructions which present his theory of the case, limited only by an incorrect statement of the law, or absence of a factual basis for said instruction. ***Walker v. State,*** 913 So.2d 198 (Miss. 2005). Yet, when a defendant's only instruction meets these requirements, the refusal to grant this instruction containing the defendant's theory of his defense is reversible error. ***Hester v. State,*** 602 So.2d 869 (Miss. 1992).

LEGAL PRINCIPLES

Alleged sexual battery of a minor is a horrific charge against an accused. As such, the Jury in Morgan's case was faced with a situation similar to that found in ***King v. State,*** 857 So.2d 702 (Miss. 2003). Though perhaps not as dramatic,

certain elements between the two cases are present: (1) an alleged sexual battery, (2) the lack of actual physical and/or medical evidence as to the alleged assault, (3) the uncorroborated testimony of the alleged victim, and, (4) the denial of a similar proffered jury instruction. The difference between ***King*** and Morgan is that in ***King*** there was a multitude of collateral evidence and witness presented to establish a pattern of behavior and mind set over a period of years. In Morgan, no such collateral evidence was present. To a degree, in Morgan's case, the trial court enforced a reverse *Weathersby Rule,* ***Weathersby v. State,*** 147 So. 481 (Miss. 1933), to the extreme prejudice of Morgan.

It has consistently been held that a failure to give a cautionary instruction regarding an informant's testimony. ***Moore v. State,*** 787 So.2d 1282 (Miss. 2001). The same holds true in the event of an accomplice's testimony. ***Wheeler v. State,*** 560 So.2d 171 (Miss. 1990). Though Edmonson's character was not an issue here, her testimony at trial to a large degree was one of a highly scripted nature Morgan submits. And, in a case as circumstantial as this, the proffered Instruction was essential to Morgan. ***United States v. John,*** 309 F.3d 298 (5th Cir., Miss 2002).

It has equally been established that jury instructions are not reviewed in isolation, but taken as a whole. However, when the whole lacks an essential element of the accused's defense, and the proffered instruction has an evidentiary basis, the refusal to grant same constitutes reversible error. ***Phillipson v. State,*** 943 So.2d 670 (Miss. 2006). Unfortunately what was left was a jury not fully instructed by the trial court's instructions and guided only by its speculation and bias and passion from the non-relevant circum-

stances of the case. ***Edwards v. State,*** 755 So.2d 443 (Miss.App. 1999).

3. Whether the Jury Verdict of Guilty is the result of bias and passion on the part of the Jury and contrary to the credible evidence adduced at trial and the law of this State.

By way of introduction to this issue, Morgan will argue three areas of evidence that he asserts fell short of the standard of proof beyond a reasonable doubt. These areas are as follows: (a) the uncorroborated testimony of Edmonson, (b) whether the presence of Chlamydia alone is sufficient proof, and (c) the total lack of physical evidence in the State's case. Though there are pieces of evidence, primarily the testimony of Edmonson and Pierce, Morgan will argue, the total does not equate to proof beyond a reasonable doubt.

STANDARD OF REVIEW

It is well established that matters regarding the weight and credibility accorded to the evidence are to be resolved by the jury. ***McIntosh v. State,*** 917 So.2d 78 (Miss. 2005). Further, when considering a questioned jury verdict, the appellate court will not reverse a jury verdict unless failure to do so would sanction an unconscionable injustice. ***Swann v. State,*** 806 So.2d 1111 (Miss. 2002). Finally, when the legal sufficiency of the evidence is challenged upon appeal, the appellate court's authority is quite limited. ***Manning v. State,*** 765 So.2d 516 (Miss. 1999), other citations omitted.

In spite of this exceedingly high burden, Morgan submits the State's reliance almost exclusively on hearsay and speculative testimony as evidence, and the absence of hard physical evidence, available to the State, makes the Verdict in his case suspect.

LEGAL PRINCIPLES

(a) Whether the uncorroborated testimony of Edmonson is sufficient to convict.

"I was scared, and I just let him go through with it." (T-68) Edmonson's account of the initial October, 2003 alleged assault by Morgan. The directness of this account from then, a 15 year old child, of any event over 3 years old is instructive. What is even more instructive is Edmonson's account of an alleged oral sexual assault on Labor Day of 2004, when she stated, "I ain't let him. Because I didn't want it." (T-74) What is also instructive is the testimony of Edmonson throughout the history of the alleged assaults, that in each instance, her younger siblings were in the home, and on the alleged July 4, 2004, and the above Labor Day instance, her mother was also at home. Something here just does not fit.

The only direct corroboration of Edmonson's testimony was the hearsay testimony of her Mother. At best this is only partial, and though it has been found to be sufficient it is suspect. ***Pearson v. State,*** 937 So.2d 996 (Miss.App. 2006). Such evidence is generally supported by other independent, non-interested, evidence and/or testimony. ***Gandy v. State,*** 788 So.2d 812 (Miss.App. 2001). Excepting only Morgan's denial, (T-54), there was none in this case.

To be sure, a jury is entitled to consider motives and interests of testifying witnesses. ***Millender v. State,*** 734 So.2d 225 (Miss.App. 1999). What is unfortunate

in this case was the graphic description of Morgan's alleged misdeeds by Edmonson was so specific, it just had to be true. This filter of judgement was lost. The mere suspicion that Morgan had to have done this took over. This is not enough for a conviction. ***Oswalt v. State,*** 885 So.2d 720 (Miss.App. 2004).

(b) Whether the presence of Chlamydia alone is sufficient proof of sexual battery.

"It's (Chlamydia) a sexually transmitted disease." (Dr. Tibbs, T-93) Giving the State's evidence its best value, the fact that both Edmonson and Pierce were diagnosed with Chlamydia would seem to be dispositive of guilt. Morgan suggests not.

Let's look at the scientific definition of Chlamydia:

> "Chlamydia are a special class of organisms which differ from bacteria because their reproductive cycle necessitates that they live inside another cell. Infection may be spread through sexual contact and cause cervicitis, urethritis, lymphogranoloma venereum; or spread from hand to eye and cause trachoma (a chronic form of conjunctivitis); or spread from the maternal birth canal to a newborn infant to cause neonatal pneumonia and conjunctivitis. Chlamydia infections are found in 12 per cent of pregnant mothers. Their babies have a one in three chance of conjunctivitis and a one in two chance of pneumonia."
>
> **Ausman & Snyder's, Medical Library,** 1991 (supp. 2006), Sec. 17:53, Page 324.

In short, Chlamydia just does not sit there, something else generally happens. It can be spread from sex, through the birth canal, by touching, even pet birds.

As was brought out at trial, Morgan was available for testing, and subject to judicial process if he refused. (T-110) This was not done. It begs the question – Why?

Edmonson and Pierce were diagnosed with Chlamydia. The source of this organism was never conclusively proven, when in fact it could have been proven. Inference, speculation and suspicion have never been elevated to proof beyond a reasonable doubt.

(c) Whether the lack of credible physical evidence is grounds for reversal.

The State just "dropped the ball" on Chlamydia. But there were other options also available. During trial, there were references to previous charges brought by Pierce against Morgan, (T-56), pornographic tapes, (T-75), keeping Edmonson absent from school, (T-60, 69), but no credible proof of same. It was this nature of physical evidence that tipped the scales in ***King,*** Ante.

The alleged proof of Morgan's guilt was the story of two women, a mother and daughter. This extends even to the story given to Dr. Tibbs. The State, in passing on every opportunity to present independent, physical proof of the story, apparently felt there was no need to do such. Mogan suggests this Court will not hesitate to invoke its authority to reverse this conviction when the conviction was based on weak or tenuous evidence even if this evidence is enough to withstand a motion for a directed verdict. ***Ross v. State,*** 954 So.2d 968 (Miss. 2007). He respectfully suggests this is the appropriate remedy in this case.

CONCLUSION

This is a most difficult case. Due to the emotional nature of the charge of sexual battery of a minor, and the opportunity for false accusations to achieve instant credibility, it is incumbent on the judicial system to exact the highest standards of proof at trial. Morgan asserts this was not done in his case.

For the facts, and lack of same, reasons and authorities as presented above, Stanley Morgan submits he has provided abundant grounds for reversal of his conviction and sentence. Morgan respectfully now requests this Court's reversal of the Jury Verdict and Sentence of the Circuit Court for the First Judicial District of Jasper County, Mississippi.

Respectfully submitted this, the 30th day of July, 2007.

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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 Brief of Appellant with the Honorable Betty W. Spehton, 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:

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CERTIFIED this, the 8th day of ~~July~~ August, 2007.

WENDELL JAMES