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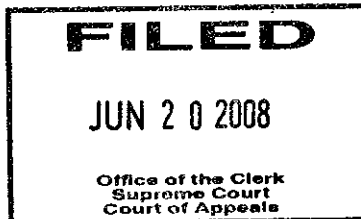
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C.P.D.
Lt. J. Gushner

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ANTHONY FORD

APPELLANT

VS.



NO. 2007-KA-0818

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. The State produced ample evidence that Anthony Ford committed the crime of gratification of lust between the dates of May 1, 2006 and June 28, 2006.
- II. The State produced evidence beyond a reasonable doubt that Ford committed the crime of gratification of lust in Attala County, Mississippi.
- III. The State clearly proved that Ford touched the victim, T.R., age 9, for lustful purposes.

STATEMENT OF THE FACTS

T.R. is a nine year old girl who was living with her Aunt Teresa Ford and her Uncle Anthony Ford during the summer of 2006, between the dates of May 1, 2006 and June 28, 2006. Her biological mother is in prison and her biological father is deceased. Her grandmother, Debbie Moudy, and grandfather, Charles Moudy, lived accross the street from T.R. and the Fords during that time.

Testimony of T.R.

T.R. testified that she is nine years old and in the third grade. She testified that she understands the difference between the truth and a lie. Tiffany testified that her "Uncle Anthony" had made her do things that made her uncomfortable. She testified that he touched her private part with his hands and with his mouth. She testified that she touched his "middle part" with her hand and her mouth. She testified that these things occurred in the living room and in the bed room and outside in the shed at the house in town [Kosciusco] where she used to live with Ford. T.R. testified that these things would happen in the afternoon when she got home from school and that Ford would tell the other children to stay in their bedroom. T.R. testified that these things also happened when they went hunting. T.R. testified that she told nurse Debbie Coleman, her grandmother Debbie Moudy and family friend Lauren Edwards the truth. (Tr. 76) She testified that her Uncle Anthony told her not to tell what was going on and that he would give her a spanking if she did. (T.R. 77-82)

Testimony of Debbie Coleman

Debbie Coleman testified that she is a licensed practical nurse at Montfort Jones Hospital. She testified that at the end of June, 2006, T.R. was brought in due to possible sexual assault.

T.R.'s aunt, Teresa Ford, was in the room at the time. Coleman testified that T.R. wouldn't talk to her until her Aunt Teresa left the room. (Tr. 83-84) T.R. told Coleman that her uncle had been touching her private areas, under her clothes, on her breasts and in her public area. She told Coleman that this had been going on a long time. T.R. told Coleman that she had been scared and embarrassed to say anything, but that she didn't want it to happen any more. T.R. told Coleman that it happened at her home where she was living at the time [the home of Anthony Ford]. Coleman testified that T.R. was nine years old at the time. (Tr. 84-85)

Testimony of Debbie Moudy

Debbie Moudy testified that T.R. is her granddaughter, age nine and would be ten in May. She testified that Tiffany's mother is in jail and that her father died three years ago. Moudy testified that Teresa Ford is her daughter and Anthony Ford, age 41, is her son-in-law. She testified that the Fords have had custody of T.R. for five or six years and that T.R. has been living in home with Anthony Ford during that time. T.R. was removed from the Ford's home in June, 2006. (Tr. 88-90)

Moudy testified that T.R. came to her in June of 2006 and told her that Anthony Ford made her put her mouth on his penis and put his hand on her private parts when they went hunting in the woods. (Tr. 91) She testified that T.R. told her that they went hunting at Grandma and Grandfather Ford's old home place on Highway 14. Ms. Moudy testified that she had been told that the old home place was in Attala County. (Tr. 92) There was no objection at trial to this testimony. Debbie Moudy also testified that on June 21, 2006, T.R. came running to her house and that she was upset and hollering. T.R. said "I don't want to lay on the couch with you." Anthony Ford followed T.R. into the house and T.R. kept repeating, "I don't want to lay on the

couch with you.” Moudy asked Ford why T.R. was saying this and Ford shrugged. He then picked up T.R. by the hip and dragged her hollering and kicking back to his house next door. Moudy testified that this occurred at her home in Attala County, Mississippi. (Tr. 93) Moudy testified that there was a change in T.R. around this time, that she did not want to be alone with Anthony Ford and that she no longer wanted to have anything to do with her brother and her grandfather. T.R. moved in with Ms. Moudy after that and has a room of her own. She will not sleep alone in her room and sleeps with Ms. Moudy. Prior to trial T.R. asked Ms. Moudy why she had a bad life and why she had to be hurt for it. She woke up hitting Ms. Moudy and hollering, “Uncle Anthony, don’t do it!” (Tr. 95)

Ms. Moudy testified that T.R. was able to describe the appearance Anthony Ford’s private area. She told Ms. Moudy that he shaved down there and sometimes had red bumps. T.R. developed a yeast infection in her private which itched and caused her to scratch. Ms. Moudy attempted to treat the infection with antibiotic ointment. T.R. had blood and brown discharge in her panties. Ms. Moudy stated that she thought it was the yeast infection that caused the discharge. (Tr. 98) Ms. Moudy testified that the Anthony Ford went riding on the four-wheelers on the old home property even when it was not hunting season, and stated, “They go out there riding all the time.” (Tr. 102)

Testimony of Judy Bell

Judy Bell testified that T.R. is her great-niece. She testified that during the summer of 2006, Anthony Ford took T.R. hunting and four-wheeler riding. When they returned, T.R. had her hunting clothes on and Teresa asked her to go take a bath. T.R. took her clothes off and sat on top of the washing machine. She took her hand and opened her vagina and said “Aunt Judy,

this is the way I am supposed to do this.” (Tr. 103-104) Ms. Bell testified that on another occasion Anthony Ford was laying on the couch and he wanted T.R. to lay down with him. Ford told Teresa that T.R. would not lay with him and Teresa instructed T.R. to lay with Ford on the couch. (Tr. 104-105). Ms. Bell also testified that the T.R. and her sister took baths together and that they left the bathroom doors open. Ms. Bell saw Anthony Ford come and watch the two girls showering. He did not see Ms. Bell and left after watching the girls. (Tr. 105)

Bell testified that she believes the hunting land was in Attala County because she had been out there. She testified that it was on Highway 14 going towards Louisville. (Tr. 106)

Bell testified that she knew they were going hunting because (Tr.) had on hunting clothes and because Ford got guns out of the truck. Bell testified that it was summer of 2006 and that Ford always wanted to go hunting. (Tr. 107)

Testimony of Shirley Hutchinson

Shirley Hutchinson testified that she was a friend of the family and had know T.R. since she was a baby. Hutchinson testified that sometime during the latter part of December of 2004 or January of 2005 that she had been visiting Debbie and Charles. T.R. was at the house and was about to go hunting with Anthony Ford. When Ms. Hutchinson got ready to leave, T.R. came out to the car and started screaming and crying and grabbed Ms. Hutchinson hollering “I don’t want to go!” Ms. Hutchinson asked T.R. where it was that she didn’t want to go. She testified that Tiffany said, “I don’t want to go hunting. I don’t like it. Don’t make me go.” Ms. Hutchinson testified that she told Tiffany to go tell her Nana. (Tr. 108)

Ms. Hutchinson further testified that Anthony and T.R. were going hunting alone. She testified that T.R. was the only person she had ever seen Anthony take hunting with him and that

he did not take the boy who lived in the house or his own two children with him. (Tr. 109)

Testimony of Lauren Edwards

Lauren Edwards testified that she is related by marriage to T.R.'s father. T.R. lived down the street from Ms. Edwards on Lucas Street. Ms. Edwards testified that she has known T.R. for four years and has a very close relationship with T.R., and that T.R. calls Ms. Edwards her mother. (Tr. 110) Ms. Edwards testified that prior to the summer of 2006 T.R. was very outgoing and talkative and that she didn't ever meet at stranger. (Tr. 110) She testified that the past summer T.R. became very quiet, withdrawn and shy. She testified that T.R. and her uncle always had on camouflage and were and the truck and said they were going hunting. Ms. Edwards testified that T.R. was quiet and withdrawn when she returned from these "hunting trips" and that she never noticed Anthony Ford taking any other children with him when he took T.R. (Tr. 111) T.R. told Ms. Edwards that Ford would put his mouth on her private and put his hands on her private and that she put her mouth on his private. T.R. told Ms. Edwards that some of these events had occurred in the home where they were living on Lucas Street and when they would go hunting. T.R. told Ms. Edwards that she did not disclose these things sooner because it would make Anthony Ford very mad at her. (Tr. 111-112)

Ms. Edwards testified that during the summer of 2006, T.R. told her that Anthony Ford was doing things that married people do. (Tr. 111)

Testimony of Matt Steed

Matt Steed testified that he was an investigator with the Kosciusko Police Department in June of 2006 and that he talked with Anthony Ford. Ford and his wife Teresa came to the Police Department and met with Officer Steed. Ford told Steed that he had been accused of touching

T.R. for sexual purposes. Officer Steed then read a waiver of rights form to Ford. Ford then read the form himself and signed it. Steed stated that every time he talked with Ford he read him his rights and allowed Ford to read and sign the waiver of rights statement. There were three interviews and three forms, dated June 29, 2006, June 30, 2006 and July 15, 2006. (Tr. 114-115)

In the statement made and signed by Anthony Ford on June 29, 2006, Ford stated that he had not touched her [T.R.] in any sexual way *except for riding four-wheelers and swimming.* [emphasis added.] Officer Steed testified that T.R. was age 9 and that Ford was 41. Ford told Officer Steed that he might have touched T.R. sexually when he put his hand around her vagina to keep her from falling off the four-wheeler. He told Officer Steed that he touched T.R. on the butt when he threw her in the pool and sometimes slapped her on the butt when she came out of the bathroom with no clothes on. Officer Steed asked Ford if he had sexual desires when he saw T.R. naked. Ford started to cry and said "No."

Officer Steed asked Ford if he shaved his private parts and Ford admitted that he did shave around his penis, stating that he did this because he works offshore and it gets hot offshore. (Tr. 118)

SUMMARY OF THE ARGUMENT

The State produced ample evidence that Anthony Ford committed the crime of gratification of lust between the dates of May 1, 2006 and June 28, 2006. Ford has failed to demonstrate that the verdict reached by the jury was based on legally insufficient evidence. The indictment charged Ford with touching T.R., a female child, for lustful purposes on or about or between May 1, 2006 and June 28, 2006. (C.P. 1) The testimony of T.R., Moudy, Bell, Hutchinson, Edwards and Steed was more than sufficient evidence for the jury to have found Ford guilty. The jury was entitled to make reasonable inferences from the testimony of these witnesses. Each witnesses testimony contains strong inferences that Ford sexually touched T.R. for lustful purposes within the time immediately prior to T.R.'s statements to the above witnesses, thus placing the acts within the time frame specified in the indictment. In the case at bar there is sufficient evidence to support the jury's verdict, Ford's assignments of error are without merit.

The State produced evidence beyond a reasonable doubt that Ford committed the crime of gratification of lust in Attala County, Mississippi. Numerous witnesses, including T.R., Debbie Moudy, Judy Bell and Lauren Edwards testified for the State, and placed the some of the incidences of touching at the family's home unarguably located in Attala County. Further, two witnesses, Judy Bell and Debbie Moudy, placed the incidences of touching for lustful purposes at the Ford family farm. Both witnesses said they believed the farm to be on Highway 14 in Attala County.

The State clearly proved that Ford touched the victim, T.R., age 9, for lustful purposes. The testimony of the witnesses that Ford touched T.R. for lustful purposes described conduct that

can be for no other purpose than lustful. The jury was entitled to make this inference. Because the jury did not find that there was penetration does not mean that the jury did not find that incidences of touching for lustful purposes did not occur at the home where T.R. lived with Ford.

ARGUMENT

I. The State produced ample evidence that Anthony Ford committed the crime of gratification of lust between the dates of May 1, 2006 and June 28, 2006.

Mississippi appellate courts will “only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Bush v. State*, 895 So.2d 836, 844 (Miss.2005) (citing *Herring v. State*, 691 So.2d 948, 957 (Miss.1997)). To determine if this has occurred, the Court will look at the evidence in the light most favorable to the verdict. *Id.* If the verdict is against the overwhelming weight of the evidence, “the proper remedy is to grant a new trial.” *Id.*

In reviewing a trial court's denial of motions for a directed verdict and a judgment notwithstanding the verdict, the appellate court must look at the sufficiency of the evidence. *Bush v. State*, 895 So.2d 836, 843. We will ask whether the evidence shows “beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test[,] it is insufficient to support a conviction.” *Id.* (quoting *Carr v. State*, 208 So.2d 886, 889 (Miss.1968)). Taking the evidence in the light most favorable to the verdict, the question is whether a rational trier of fact could have found all the essential elements beyond a reasonable doubt. *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

As noted earlier, a motion for a new trial challenges the weight of the evidence, while a motion for JNOV challenges the sufficiency of the evidence. *Dilworth*, 909 So.2d at 736-37. In reviewing the trial court's denial of a motion for a new trial, this Court must discern whether

“[t]he verdict [is] ‘so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.’ ” *Id.* at 737 (quoting *Bush v. State*, 895 So.2d 836, 844 (Miss.2005)). Only where the “ ‘evidence preponderates heavily against the verdict’ should the trial court invade the province of the jury and grant a new trial.” *Id.* (quoting *Amiker v. Drugs for Less, Inc.*, 796 So.2d 942, 947 (Miss.2000)).

In reviewing the denial of a motion for JNOV, an appellate court must determine, by viewing the evidence in the light most favorable to the nonmoving party, whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Brown v. State*, 907 So.2d 336, 339 (Miss.2005). Most importantly, “the critical inquiry is whether the evidence shows ‘beyond a reasonable doubt that [the] accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction.’ ” *Dilworth*, 909 So.2d at 736 (citing *Carr v. State*, 208 So.2d 886, 889 (Miss.1968)). The State must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* “If, under this standard, sufficient evidence to support the jury’s verdict of guilty exists, the motion for a directed verdict ... should be overruled.” *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted).

When an appeal is taken from a denied motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Id.* Matters regarding the weight and credibility of evidence are to be resolved by the jury. *Id.*

Ford has failed to demonstrate that the verdict reached by the jury was based on legally insufficient evidence. The indictment charged Ford with touching T.R., a female child, for lustful purposes on or about or between May 1, 2006 and June 28, 2006. (C.P. 1) The testimony of T.R., Moudy, Bell, Hutchinson, Edwards and Steed was more than sufficient evidence for the jury to have found Ford guilty. The jury was entitled to make reasonable inferences from the testimony of these witnesses. Each witnesses testimony contains strong inferences that Ford sexually touched T.R. for lustful purposes within the time immediately prior to T.R.'s statements to the above witnesses, thus placing the acts within the time frame specified in the indictment. In the case at bar there is sufficient evidence to support the jury's verdict, Ford's assignments of error are without merit.

Each witness for the prosecution dated T.R.'s statements about the sexual touching of her genital areas by Ford to late June of 2006. Debbie Coleman, a licensed practical nurse at Montfort Jones Hospital, testified that at the end of June, 2006, T.R. was brought in due to possible sexual assault. Debbie Moudy, T.R.'s grandmother, testified that T.R. came to her in June of 2006 and told her that Anthony Ford made her put her mouth on his penis and put his hand on her private parts when they went hunting in the woods. Debbie Moudy also testified that on June 21, 2006, T.R. came running to her house and that she was upset and hollering. T.R. said "I don't want to lay on the couch with you." Anthony Ford followed T.R. into the house and T.R. kept repeating, "I don't want to lay on the couch with you." This testimony is consistent with T.R.'s statements and testimony that some of the incidents of touching occurred in the living room of the house where she lived with Ford. The agitation and distress this testimony conveys on the part of T.R. is sufficient for the jury to infer that the incidents that are the subject

of this trial were recent at the time of T.R.'s refusal to lay on the couch with Ford on June 21, 2006.

Judy Bell testified that T.R. is her great-niece. She testified that during the summer of 2006, Anthony Ford took T.R. hunting and four-wheeler riding. When they returned, T.R. had her hunting clothes on and Teresa asked her to go take a bath. T.R. took her clothes off and sat on top of the washing machine. She took her hand and opened her vagina and said "Aunt Judy, this is the way I am supposed to do this." She testified that during that time she witnessed T.R.'s agitation and distress at being told she had to lay on the couch with Ford. Again, this testimony is sufficient to support an inference by the jury that the incidents of sexual touching for gratification of lust took place in temporal proximity to T.R.'s statements to her aunt about what she was "supposed to do" and her obvious distress at being requested to lay on the couch with Ford.

Lauren Edwards testified that prior to the summer of 2006 T.R. was very outgoing and talkative and that she didn't ever meet at stranger. (Tr. 110) She testified that the past summer T.R. became very quiet, withdrawn and shy. She testified that T.R. and her uncle always had on camouflage and were and the truck and said they were going hunting. Ms. Edwards testified that T.R. was quiet and withdrawn when she returned from these "hunting trips" and that she never noticed Anthony Ford taking any other children with him when he took T.R. (Tr. 111) T.R. told Ms. Edwards that Ford would put his mouth on her private and put his hands on her private and that she put her mouth on his private. T.R. told Ms. Edwards that some of these events had occurred in the home where they were living on Lucas Street and when they would go hunting. T.R. told Ms. Edwards that she did not disclose these things sooner because it would make

Anthony Ford very mad at her. (Tr. 111-112) Ms. Edwards testified that during the summer of 2006, T.R. told her that Anthony Ford was doing things that married people do. (Tr. 111) Again, Ms. Edwards testimony creates an unavoidable and reasonable inference that Ford committed the incidents of touching for gratification of lust against T.R. during the time frame stated in the indictment.

The State must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* "If, under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict ... should be overruled." *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). The jury was entitled to make the reasonable and apparent inference that Ford touched T.R. for lustful purposes during the time frame set forth in the indictment. This assignment of error is without merit.

II. The State produced evidence beyond a reasonable doubt that Ford committed the crime of gratification of lust in Attala County, Mississippi.

Each and every witness who testified for the prosecution testified that T.R. stated that the touching occurred in Ford's home *which is located in the city of Kosciusco in Attala County, Mississippi*. Further, two witnesses testified that the property where Ford and T.R. went hunting was family property in Attala County. The State clearly proved that Ford touched T.R. for lustful purposes within Attala County.

III. The State clearly proved that Ford touched the victim, T.R., age 9, for lustful purposes.

The State clearly proved that Ford touched the victim, T.R., age 9, for lustful purposes. The testimony of the witnesses that Ford touched T.R. for lustful purposes described conduct that can be for no other purpose than lustful. The jury was entitled to make this inference. Because

the jury did not find that there was penetration does not mean that the jury did not find that incidences of touching for lustful purposes did not occur at the home where T.R. lived with Ford.

Ford argues that the trial judge should have granted his motion for a new trial because the verdict was against the overwhelming weight of the evidence. The standard of review concerning the overwhelming weight of the evidence is well settled: “[W]e will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Bush v. State*, 895 So.2d 836, 844 (Miss.2005). The appellate court sits as a hypothetical “thirteenth juror.” *Id.* As such, the Court weighs the evidence “in the light most favorable to the verdict.” *Id.* If, in this position, the Court disagrees with the verdict of the jury, “the proper remedy is to grant a new trial.” *Id.*

Ford argues that while he may have touched T.R., he was not doing so for the purpose of gratifying his lust as required by the statute. He was found guilty of violating Mississippi Code Annotated Section 97-5-23(1) (Rev.2006), which states, in pertinent part, as follows:

(2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of sixteen (16) years, with or without the child's consent . . . shall be guilty of a felony. . . .

In *Friley v. State*, 879 So.2d 1031, 1035 (Miss.2004), the Supreme Court found that by the defendant's actions “of grabbing [the victim], touching her genital area, and touching himself, he was gratifying his lust. There is absolutely no other reason why Friley would have performed these acts. It is well settled that intent can be inferred from a defendant's actions.” The victim

herein testified that Ford touched her private part with his hands and with his mouth. She testified that she touched his "middle part" with her hand and her mouth. Further, witness after witness testified as to T.R.'s statements Ford touching her private parts with his hands, putting his mouth on her private parts and placing her mouth on his penis. The intent to gratify his lust could easily be inferred from Ford's actions. T.R.'s statements remained consistent as she told adult after adult in her life hoping for relief from the unbearable acts of her uncle. The acts T.R. described to each witness could have no other purpose but the gratification of Ford's lust. The jury was entitled to make this inference. The verdict was consistent with the overwhelming weight of the evidence and this issue is without merit.

CONCLUSION

The assignments of error in the instant appeal are without merit and the decision of the Trial Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laura Tedder, 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 20th day of June, 2008.



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