

CERTIFICATE OF INTERESTED PERSONS

**ANTHONY FORD a/k/a
HUGH ANTHONY FORD**

APPELLANT

v.

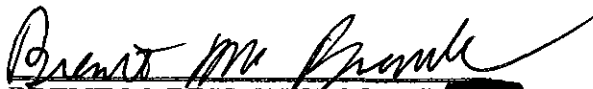
NO. 2007-KA-00818-SCT

STATE OF MISSISSIPPI

APPELLEE

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 judges of this Court may evaluate possible disqualification or recusal.

- 1. State of Mississippi;**
- 2. Anthony Ford, Defendant-Appellant;**
- 3. Michael Howe, Jr., Esq.
Assistant District Attorney, Fifth Judicial District;**
- 4. Susan Denley, Esq.
Assistant District Attorney, Fifth Judicial District;**
- 5. Mitch Moran, Esq.
Trial Attorney for Anthony Ford; and,**
- 4. Brent M. Brumley, Esq.
Appellant Attorney for Anthony Ford.**


BRENT M. BRUMLEY, MSB # [REDACTED]
Attorney for Anthony Ford
503 South State Street
Jackson, MS 39201
(601) 354-4384

SUMMARY OF THE ARGUMENT

- I. **Whether the Attala County Circuit Court was clearly erroneous and erred when it failed to overturn the jury's verdict finding Anthony Ford guilty of the crime of gratification of lust upon a child since the same was rendered against the overwhelming weight of the evidence produced at trial?**

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STATEMENT OF THE CASE

On February 7, 2007, Anthony Ford, A/K/A, Hugh Anthony Ford was indicted in a two count indictment, by an Attalla County Grand Jury as follows: Count One, that Hugh Anthony Ford, A/K/A, Anthony Ford on or about or between May 1, 2006 and the 28th day of June 2006, in Attalla County Mississippi, and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously, engage in sexual penetration with Tiffany Ramage, a female child under the age of fourteen (14) years of age, at a time when he the said Hugh Anthony Ford, A/K/A, Anthony Ford was twenty-four (24) or more months older than said child, in violation of Miss. Code Ann. §97-3-95(1)(d); and, Count Two that Hugh Anthony Ford, A/K/A, Anthony Ford on or about or between May 1, 2006 and the 28th day of June 2006, in Attalla County Mississippi, and within the jurisdiction of this Court, being a person above the age of eighteen (18) years, did willfully, unlawfully, knowingly and feloniously, and for the purpose of gratifying his lust, or indulging his depraved licentious sexual desires, handle, touch, or rub with his hand or any part of his body or any member thereof, the body Tiffany Ramage, a female child under the age of sixteen (16) years of age in violation of Miss. Code Ann. §97-5-23. The trial on the allegations contained in the indictment commenced on or about March 21, 2007, with the Honorable Joseph H. Loper, Jr., Circuit Court Judge, presiding. At the conclusion of the trial, the jury returned a verdict finding Hugh Anthony Ford, A/K/A, Anthony Ford not guilty of the crime of sexual battery as alleged in Count One of the Indictment and guilty of the crime of gratification of lust as alleged in Count Two of the Indictment. On March 21, 2007 Anthony Ford was sentenced to serve a term of ten, 10, years in the custody of the Mississippi Department of Corrections, as a consequence of his gratification of lust of a child conviction under Count Two

of the Indictment. On April 16, 2007, Anthony Ford filed a Motion for a Judgment Notwithstanding Verdict or in the alternative a Motion for New Trial which motion was denied on April 24, 2007. Thereafter, on May 14, 2007, Anthony Ford filed the within appeal presenting this Court with the following issues, to-wit:

I. THE ATTALA COUNTY CIRCUIT COURT WAS CLEARLY ERRONEOUS AND ERRED WHEN IT FAILED TO OVERTURN THE JURY'S VERDICT FINDING ANTHONY FORD GUILTY OF THE CRIME OF GRATIFICATION OF LUST UPON A CHILD, SINCE THE SAME WAS RENDERED AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE PRODUCED AT TRIAL.

STATEMENT OF THE FACTS

Tiffany Ramage was nine years old and in the third grade when the State alleges that her uncle by marriage, Anthony Ford, sexually abused her, between the dates of May 1, 2006 and June 28, 2006. T. Vol. 2, pg. 73. Ford at the time was 41 years old having been born on January 5, 1965. T. Vol. 2, pg. 73. Ford was married to Theresa Ford, Tiffany's aunt and the couple resided at 617 Lucus Road, Kosciusko, Mississippi. In and about 2001, Tiffany came to live with the Fords in Kosciusko, T. Vol. 2, pg. 90, as a consequence of Tiffany's biological mother and father not being fit to care for her. In fact, at the time of the allegation giving rise to the present action, Tiffany's father had died and her mother was incarcerated in Rankin County Mississippi for break-ins and drug violations. T. Vol. 2, pg. 89.

In May of 2006, Tiffany, her eight year old brother Bubba, Antony and Theresa Ford, and their two children, a boy ten years old and a girl eight years old, resided together in the Ford family home in Kosciusko, Mississippi. The home was located about 25 feet from the home occupied by Tiffany's grandmother, Debbie Moudy. T. Vol. 2, pg. 99. The Ford home was approximately 2000 square feet in size contained three bedrooms, a dining room, two baths and a front living room. T. Vol. 2, pg. 131.

In 2004, Lauren Edwards moved into the Ford neighborhood. T. Vol. 2, pg. 131. Ms. Edwards had a child about Tiffany's age and she and Tiffany became very close. So close in fact that Tiffany has at times referred to Lauren as her mother. *Id.* In 2006 Tiffany had expressed a desire to live with Lauren and her family and at the time of trial Tiffany in fact did reside with Lauren.

In and about June 29, 2006, Tiffany allegedly told Lauren that she had been sexually abused by Ford. Tiffany was taken to Monfort Jones Hospital where she was examined. T. Vol. 2, pg. 83. The examination yielded no physical signs of abuse. T. Vol. 2, pg. 87. As a consequence of the abuse allegation the Mississippi Department of Human Services removed Tiffany from the Ford home. The Mississippi Department of Human services did not remove the Ford children and were not going to remove Tiffany's brother Bubba, but Ford insisted they do because he felt it best that the siblings not be separated. T. Vol. 2, pg. 127.

Upon learning of the allegations of abuse Ford went to the Kosciusko Police Station to let them know that the allegations were not true. Ford was interviewed by Officer Matt Steed and denied ever touching Tiffany in a sexual way. Ford admitted that he had touched Tiffany's rear-end, when playing and tossing her in the pool, and had held her by the waist when they were riding four wheelers and theorized that maybe Tiffany misconstrued those touches. During the interview Ford was adamant that he never touched Tiffany in any way for his sexual pleasure. T. Vol. 2, pg. 130. Ford theorized that perhaps Tiffany had made the allegations of abuse up because of a recent spanking he gave her or because she wished to live with Lauren. Despite the allegations of sexual abuse, and the fact that she provide testimony at trial that Tiffany had told her about the abuse, Debbie Moudy, Tiffany's grandmother, continued to let the Anthony and Theresa Fords babysit her 18 month old grandchild. T. Vol. 2, pgs. 99-100.

I. THE ATTALA COUNTY CIRCUIT COURT WAS CLEARLY ERRONEOUS AND ERRED WHEN IT FAILED TO OVERTURN THE JURY'S VERDICT FINDING ANTHONY FORD GUILTY OF THE CRIME OF GRATIFICATION OF LUST UPON A CHILD, SINCE THE SAME WAS RENDERED AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE PRODUCED AT TRIAL.

In order to preserve the issue that a defendant's conviction was against the overwhelming weight of the evidence for consideration on appeal, the defendant must raise the issue in a motion for new trial. *Howard v. State*, 507 So.2d 58, 63 (Miss.1987). "The decision to grant or deny a motion for new trial is discretionary with the trial court. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993)." *Murray v. State*, 2001 WL 1468924 (Miss. Nov 20, 2001). In determining whether a verdict is against the overwhelming weight of the evidence, the reviewing court must accept as true the evidence presented as supportive of the verdict, and we will only disturb the verdict when convinced that the circuit court has abused its discretion in failing to grant a new trial or if the final result will result in an unconscionable injustice. *Ford v. State*, 753 So.2d 489, 490 (Miss. 1999); *Danner v. State*, 748 So.2d 844, 846 (Miss.1999). See also *Turner v. State*, 726 So.2d 117, 125 (Miss.1998); *Herring v. State*, 691 So.2d 948, 957 (Miss.1997); *Groseclose v. State*, 440 So.2d 297, 300 (Miss.1983). The Mississippi Supreme Court in *Brooks v. State*, 695 So.2d 593, 594 (Miss.1997) set forth the standard of review to be applied when the assignment of error turns on the sufficiency of evidence. In *Brooks* the Court held that when on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, the reviewing court's authority to interfere with a verdict is quite limited. Evidence is considered in the light most consistent with the verdict, however if the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and

discharge are required. *Id.* at 594. This standard of review permits this Court to reverse the Attala County Circuit Court's judgment of Anthony Ford's guilt of gratification of lust upon a child only if it can say that the facts and inferences so considered point in favor of Ford with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty. See *Porter v. State*, 749 So.2d 250, 257 (Miss. 1999).

In the case at bar, based upon the evidence produced, at trial reasonable men could not have found beyond a reasonable doubt that Ford committed the crime of gratification of lust upon a child and the jury's verdict in this cause, finding Ford guilty of the same, amounted to an unconscionable injustice. The only two persons with actual knowledge of the alleged crime are Ford and Tiffany Ramage, a nine year old child. As aptly identified by defense counsel in his closing argument, no corroborating evidence was made available to the jury to help support Tiffany's description of the events she alleged occurred. "No physical evidence. No fingerprints. No DNA. No rape test kit. No pictures. No eyewitness." T. Vol. 3, pg. 155. The only direct evidence incriminating Ford at trial was the very short testimony of Tiffany which appears in the record between pages 72 and 82. See, T. Vol 2, pgs. 72-82. That evidence consisted of the following:

{Direct Testimony}

Q. Can you tell us if anybody has ever made you do anything - - that made you do anything to them that made you feel uncomfortable?

A. Um-hum.

Q. They have. Can you tell me who did that?

A. My uncle Anthony.

Q. Your uncle Anthony.

A. (Nodded.)

Q. Can you tell me what it was that he did to you?

A. He touched my private part.

Q. Touched your private part.

A. Um-hum.

Q. What did he touch your private part with? What part of his body did he touch you with?

A. His hands.

Q. His hands. Okay. Did he touch you with any thing else?

A. His mouth part.

...

T. Vo. 2, pgs. 73-74;

Q. Okay. Has he ever made you touch him anywhere?

A. Um-hum.

Q. Okay. Where did you touch him?

A. On his middle part.

Q. On his Middle part . What did you touch him with?

A. My hands.

Q. With your . . .

A. My hand.

Q. Anything else?

A. My mouth.

Q. And your mouth. Okay. Where were you at when these things happened?

A. In the living room. In the bedroom.

Q. In the living room and the bedroom. Did it ever happen anywhere else?

A. Outside.

Q. Outside where?

A. In the shed.

Q. In the shed. Did it happen any where else?

A. (Shook head.)

Q. Ever when you were hunting or any thing.

A. Um-hum.

...

T. Vol. 2, Pgs. 73-74 (emphasis added);

Q. When you -- when you saw Nurse Debbie Coleman did you tell her anything?

A. Um-hum.

Q. What did you - - do you remember what you told her?

A. (Shook head.)

Q. Did you tell the truth?

A. (Nodded.)

Q. Okay. Have you made any statements to your grandma, told you grandma about anything that happened?

A. (Shook head.)

Q. You haven't. You don't remember doing any. Okay. What about Lauren Edwards? You know Lauren Edwards don't you?

A. (Nodded.)

Q. Have you told Lauren anything about what happened?

A. (Nodded.)

Q. Okay did you tell her the truth when you told her?

A. (Nodded.)

Q. Tiffany do you remember about when these things started happening?

A. (Shook head.)

...

T. Vol 2, Pg. 76.;

Q. And Tiffany, you said it happened in the living room, in the bedroom. What house were you in when that happened? Hose house?

A. In his house.

Q. In Uncle Anthony's house. Is that here in town?

A. (Nodded.)

Q. The house where you used to live with him.

A. (Nodded).

Q. How long did you live with him.

A. (Nodded.)

Q. How long did you live with him? Do you Know?

A. (Shook head.)

...

T. Vo. 2, pg 77 (emphasis added). On cross examination Tiffany testified that she told Lauren, her

grandmother and a great aunt about what had happened to her but that she could not remember what she told them. T. Vol. 2, Pg. 79. On Cross examination Tiffany admitted that at the time she made the allegations that she no longer wished to stay at Ford's home but wanted to live with her grandmother and then later with Lauren. When asked on, cross examination, if any other persons were present when the alleged abuse occurred, Tiffany responded as follows:

Q. Okay. Now, you - - you've stated that this happened at Anthony and your aunt's house; correct?

A. (Nodded.)

Q. Okay. Did it ever happen while the other kids were around?

A. They would be in the bedroom.

Q. They would be in the bedroom. And you would be were? In the front room? Is That right?

A. (Nodded.)

Q. Where the t.v. is at.

A. (Nodded.)

Q. What time of day would it be?

A. In the afternoon sometimes?

Q. Afternoon. Would they be home from school?

A. Um-hum.

Q. Did they ever come out of the bedroom?

A. (Shook head.)

Q. They didn't. Okay. Why would they stay in their bedroom all day after school?

A. 'Cause Uncle Anthony tell them stay in there.

Q. Stay in the bedroom.

A. Um-hum.

Q. Would there be anybody in Uncle Anthony's bedroom?

A. (Shook head.)

Q. But y'all stayed in the front room?

A. (Nodded.)

Q. If somebody came to the door, do they - - where is the door, the front door go to the front room?

A. (Nodded.)

Q. Okay. Did anybody ever come up to the door when this was happening?

A. (Nodded.)

Q. Who?

A. My Tee-taw. [Aunt Theresa] . . .

Q. So Aunt Theresa came to the door one time. That would be [Ford's] wife, right?

A. Um-hum.

Q. When this was going on?

A. (Nodded.)

T. Vol 2. Pgs 79-81, emphasis added . Tiffany was clear in her testimony that she could not remember what she told any one concerning the allegations against Ford. In order to bolster Tiffany's testimony, the state called as witnesses, examining nurse Debbie Colman, Debbie Moudy, Tiffany's grandmother, Judy Bell, Tiffany's great aunt, Shirley Hutchinson, a family friend, Lauren Edwards,

a close friend to Tiffany and one she often referred to as her mother, (See T. Vol. 2, pg. 100), and investigating officer Matt Steed. Of particular significance, the State never called Tiffany's aunt Theresa, who according to her walked in the front room when Ford was allegedly abusing her or any of the children who resided at the Ford home who Tiffany testified were made to stay in their bedroom by Ford when he was abusing her in the front room of the residence..

Debbie Coleman, testified that in June of 2006 that she was employed as a nurse at Montfort Jones Hospital as a LPN nurse. She stated that in June of 2006 that she interviewed Tiffany concerning a possible sexual assault. She testified that at first Tiffany wouldn't talk to her. T. Vol. 2, pg 83. According to nurse Coleman, Tiffany made the following statements to her during the interview:

A. She told me that her uncle had been touching her in her private areas.

Q. And did she say anything else to you?

A. She told me that it had been going on for a long time. And that he touched her under her clothes on her breasts and in her pubic area.

...

Q. Did she tell you anything about where that this was occurring?

A. She told me it happened at her home were she was living at that time in her bedroom.

Q. Did she make any other statements to you other than those which would be related to this - - to these allegations?

A. That's all she told me.

T. Vol. 2, pgs 84-85. Nurse Coleman admitted during her testimony that Tiffany exhibited no

medical evidence of abuse and there was no physical signs of abuse. Also, it is significant that Tiffany told her that abuse occurred in her bedroom, while Tiffany's testimony at trial was that the abuse occurred in the front room of the home as well as outside in the shed. Also, according to nurse Coleman, Tiffany was unable to identify dates or date ranges when the abuse was to have occurred. While nurse Coleman did say that Tiffany told her that her uncle had touched her under her clothes on her breasts and in her pubic area, she never identified her uncle as Ford, and, most importantly, she never told her that her uncle made her touch him with her mouth or that he touched her with his.

Again to bolster Tiffany's testimony the State called Debbie Moudy, Tiffany's grandmother. Ms. Moudy testified that Tiffany had been living with her daughter, Theresa and Ford about five or six years prior to June of 2006. T. Vol.2, pg. 90. With regard to what Tiffany told her with regard to being abused, she testified as follows;

Q. What did - - what did she tell you?

A. She is telling me what happened and everything. And she told me about in the woods that -- what all Anthony done.

Q. What now?

A. What he made her do about oral sex and where he put his and at on her.

Q. So you said oral sex.

A. That's what she told me.

Q. If you would - and I know it may be difficult - but tell me exactly what you mean by oral sex?

A. She told me he made her put her mouth on his penis.

Q. And you said something about touching also. What was that?

A. His hand down this way. (Indicated.)

Q. And when did she say that this would occur?

A. When they went hunting in the woods.

T. Vol. 2, pg. 91 (emphasis added). When Moudy was asked about where Ford allegedly abused Tiffany she responded.

Q. And do you know where that place is that they go, that he goes into the woods at.

A. All I know is it's Grandma and Grandfather Ford's place, old home place. And it's right there on Highway 14.

Q. Is that in Attala County?

A. Now, I don't know for sure. But I asked Charles and he told me it was.

T. Vol. 2, pg. 91-92 (emphasis added). Moudy was asked on cross examination if Tiffany told her when she was abused and she responded:

Q. Now, from what has been told to you , when did these alleged acts happen?

A. What are you talking about?

Q. The sexual assault, abuse. Did it happen in the summertime 2006, 2005? Any specific time or dates that know of?

A. She didn't tell me no dates or nothing. She told me that it happened in the woods while they were hunting.

T. Vol. 2, pg. 100 (emphasis added). Moudy did testify that Tiffany told her that Ford shaved his pubic area.

Q. Has Tiffany - - I am thinking of the best way to word this. Has she ever described to you the appearance of the defendant's private area?

A. Yes, she has.

Q. What exactly did she say about that?

A. She told me he, he shaved down there. He don't have no hair down there, and he also got red bumps.

Q. Did she say he shaves his private areas?

A. Um-hum.

Q. How did that come up that she told you that?

A. She just come up to me one day after she talked to everybody else. And I said Baby, what is going on. And she - - you know, after she told the cops and everything, she told me. And she come to me. I did not push her. She came to me.

T. Vol. 2, pgs. 96-97 (emphasis added). Additionally, Moudy testified to an incident when Tiffany ran to her house on June 21 2006, saying that she didn't want to lay on the couch with Ford, and Ford came and took her home. T. Vol. 2, pgs 92-93. It must be noted however that nowhere in the trial testimony does Moudy suggest that Tiffany said that anything sexual happened between her and Ford on that day. Moudy also testifies that Tiffany had nightmares, T. Vol. 2, pg 95 , that Tiffany told her she had a hard life, *Id.*, and that Tiffany, like her other granddaughter once had a yeast infection, T. Vol. 2, pg 97.

Following Ms. Moudy's testimony the State called Judy Bell, Tiffany's great aunt, to testify to bolster Tiffany's testimony. Ms. Bell provided testimony concerning a bizarre incident with Tiffany as follows:

Q. Okay. And you told us about a day where something unusual occurred with Tiffany back at the house in the bathroom. Can you tell us about that?

A. Tiffany had just got - - she had her hunting clothes on. And she had just got done hunting. And Theresa had asked her and Chelsea to go take - to go get a bath. And then were in the bathroom , and they undressed.

And I had to go to the bathroom. And Tiffany had taken her clothes off. She was up on top of the washing machine. And it's kind of hard for me to say this. But anyway, she was up on top of the washing machine. And she had taken her hand , and she opened her vagina. And she said Aunt Judy, this is the way I am supposed to do this. I said Tiffany, you are not supposed to do that.

But anyway, I went out of the room. And they proceed and went ahead and took their baths.

T. Vol. 2, pgs. 103-04. Nowhere in Ms. Bell's testimony does she say that Ford ever did anything to Tiffany or that Ford had instructed her to play with herself in that manner. Bell further testified that she was in the home when Ford, in her presence, had Tiffany lay on the couch with him, T. Vol. 2, pg. 104, and that she thought Ford watched the girls inappropriately when they bathed, T. Vol. 2, pgs. 105, and that Tiffany told her that she was real scared of being in the woods, T. Vol. 2, pg. 106. In none of these incidents to which she testified, does Ms Bell say she observed or Tiffany told her that Ford had sexually abused her or touched her inappropriately. With regard to where she thought the woods were where Ford and Tiffany would go hunting, it is clear from her testimony that she could not be sure it was in Attala County:

Q. Okay. On the hunting land that you are talking about, do you know what county the land is in?

A. It was in - - I' thinking it is in Attala County, because I've been out there. And it's 14 going towards Louisville. It's land. And it has a gate on it, and there is like an old house to the left of it when you turn in. And there is land back there. And then there is a big lake there in front. And it's just woods and woods and woods of woods.

T. Vol. 2, pg. 106 (emphasis added).

Following Ms. Bell's testimony the State called Shirley Henderson, a family friend, in an attempt to bolster Tiffany's testimony. Ms. Henderson's testimony mentioned no knowledge that she had of Tiffany being abused or that Tiffany ever told her that Ford did anything to her. The bulk of Ms. Henderson testimony revolved around a particular day that she recalled that Tiffany started acting out because she did not want to go hunting. T. Vol. 2, pg. 108.

Following Ms. Hutchinson's testimony the State called Lauren Edwards, the person that first reported that Tiffany told her that she had been sexually abused by Ford, to bolster Tiffany's testimony. Ms. Edwards described herself as a family friend who had a very close relationship with Tiffany. In fact she described the relationship as being so close that Tiffany often referred to her as her mother. T. Vol. 2, pg. 110. Ms. Edwards testified, regarding Tiffany's alleged disclosure of abuse to her, as follows:

Q. Okay. Has Tiffany ever made any statements to you regarding the alleged sexual assault?

A. Yes, ma'am. I believe last summer she told me that he was doing things that married people do. That - - you know, the things that were going on were things that married people do.

Q. Okay.

A. And within the past month it's been that he had put his mouth on her private and put his hands on her private and that she put her mouth on his private.

Q. Um-hum. Did she tell you were any of these events were happening at?

A. She said some of them had occurred in the home were they were living on Lucas Street and then they would go hunting.

T. Vol. 2, pg. 108.

The Final witness called by the State, to bolster Tiffany's testimony and to discuss what the State believed was a confession given by Ford, was Officer Matt Steed of the Kosciusko Police Department. Regarding the allegations of sexual abuse made by Tiffany's, Officer Steed provided know testimony concerning anything told to him by Tiffany or any of the other witnesses. Nor did Officer Steed provide any testimony concerning his investigation of the alleged abuse. He did not testify to the alleged location of the abuse, whether the same was in Attala County or else were nor could he provide dates for the abuse. When asked on cross examination whether the alleged abuse occurred in the last six months, year or two years he testified; "She, she didn't really specify like if it was two days ago or one week ago or nothing like that." T. Vol. 2, pg. 122.

At the conclusion of the trial the jury correctly found that the State had not proved beyond a reasonable doubt that Ford was guilty of committing the crime of sexual battery. Sexual battery of a child under the age of fourteen years is prohibited by Section 97-3-95(1)(d), Mississippi Code Annotated.

(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:

(c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child;

Id. Sexual penetration as defined by Section 97-3-9(a), Mississippi Code Annotated includes cunnilingus and fellatio. A aptly put by the State in its response in opposition to Ford's Motion for a directed verdict at the end of the states case, "contact between a person's mouth, lips or tongue and genitals of a persons body whether by kissing, licking or sucking is sexual penetration." T. Vol. 2, pg. 123. In as much as the jury properly concluded that the defendant was not guilty of sexual battery,

the Appellant will exclude reference to the trial testimony concerning sexual penetration, oral sex.

In the case at bar, based upon the evidence produced, at trial reasonable men could not have found beyond a reasonable doubt that Ford was guilty of the crime of gratification of lust. The elements instruction given by Judge Loper was proper statement of the law and tracked Count II of the Indictment. *See*, T. Vol. 1, pg. 51. Among the elements that must have been proved beyond a reasonable doubt were that the crime occurred in Attala County Mississippi between the dates of May 1, 2006 and June 28, 2006.

The state failed to produce any evidence that the alleged crime of gratification of lust occurred between the dates of May 1, 2006 and June 28, 2006

Nowhere in the trial testimony could any of the witness, Tiffany or her corroborating witness, identify when the alleged gratification of lust occurred. During her testimony, when Tiffany was asked if she could remember when Ford allegedly touched her inappropriately, she shook her head no. T. Vol 2, Pg. 76. Nurse Coleman testified that Tiffany told her that the touching had been going on for along time but she was unable to give any date range. T. Vol. 2, pgs 84-85. When asked whether Tiffany ever told her when she had allegedly been abused, Debbie Moudy testified "She didn't tell me no dates or nothing." T. Vol. 2, pg. 100. Neither Judy Bell or Shirley Hutchinson provided any testimony concerning when Tiffany was allegedly abused. Nor could officer Steed identify when Tiffany was allegedly abused. When asked on cross examination whether the alleged abuse occurred in the last six months, year or two years he testified; "[Tiffany] didn't really specify like if it was two days ago or one week ago or nothing like that." T. Vol. 2, pg. 122. Lauren Edwards is the only

person that said that she knew when Ford put his hand on Tiffany's private and her testimony, on March 21, 2007, was that the abuse had happened within the past month. T. Vol. 2, pg. 108. Edwards' testimony, if it is to be believed, is that the inappropriate touching occurred nine months later than the date range upon which the jury was instructed and nine months after Tiffany was removed from the Ford Home. No evidence was produced at trial that Ford committed the crime of gratification of lust between the dates of May 1, 2006 and June 28, 2006 as required by the elements instruction.

The state failed to produce evidence beyond a reasonable doubt at trial that the alleged crime of gratification of lust, if it occurred in the wood or while hunting, as alleged by some of the corroborating witnesses, occurred in Attala County, Mississippi.

On direct examination Tiffany was asked were the alleged inappropriate touching occurred. Tiffany stated that the touching occurred in the living room of the family home and outside the home by the shed. T. Vol. 2, Pgs. 73-74. When asked if any of the touching occurred in the woods or while hunting, Tiffany responded by shaking her head indicating no. *Id.* Debbie Moudy and Lauren Edwards each provided testimony that Tiffany stated that the inappropriate touching occurred either in the woods or while hunting. T. Vol. 2, pg. 91 and T. Vol. 2, pg. 108 respectively. The only persons who provide testimony that they knew which woods Tiffany was making reference to was Debbie Moudy and Judy Bell. Neither witness had been present when the alleged abuse occurred, Neither witness testified that Tiffany identified the location of the woods were she was allegedly abused, but both guessed that the location must be the woods around the old Ford Family land. Notwithstanding that assumption neither Debbie Moudy or Judy Bell could definitively state that the Ford family land had actually been in Attala County. T. Vol. 2, pg. 92 and T. Vol. 2, pg. 106

respectively. Also, no testimony was elicited from Officer Steed concerning whether his investigation was able to uncover whether any of the touching occurred in Attala County. No evidence was produced beyond a reasonable doubt at trial that Ford committed the crime of gratification of lust, as alleged to have occurred in the woods or while hunting, in Attala County, Mississippi.

The state failed to produce evidence beyond a reasonable doubt at trial that Ford ever touched Tiffany for lustful purposes.

The statute under which Ford was charged states as follows:

(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 under the age of sixteen (16) years, with or without the child's consent, . . . , shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court.

Section 97-5-23(1), Mississippi Code Annotated.

In the case at bar no insufficient evidence concerning the alleged improper touching was presented to the jury for the jury to find beyond a reasonable doubt that such touch was for Ford's lustful purposes. Tiffany testified that sometimes her Uncle Anthony made her feel uncomfortable. T. Vo. 2, pg. 73. She stated that Ford touched her private part with his hands. *Id.* Tiffany testified that she touched Ford with her hands on his middle part. T. Vo. 2, pg. 74. Tiffany stated that she told Lauren Edwards and Nurse Coleman that Ford touched her, but that she could not remember what she told them. T. Vo. 2, pg. 76. Tiffany denied ever telling her grandmother, Debbie Moudy or her great aunt, Judy Bell, about the touching. *Id.* Tiffany was unable to tell the jury how or precisely

where Ford touched her. She did not describe the touching as being under her clothes nor could she be any more descriptive than that Ford touched her private part. She did not identify whether Ford touched her vaginal area, her rear-end or her breasts. She could not describe the touching. Was it a rubbing, a massaging, a pinching, a slap? Nor did she describe the duration of the touching.

Additionally, while Tiffany testified that the touching occurred at the family home, and mostly in the front room, T. Vol 2. Pgs 79-81, she did not give any core details. No testimony was elicited concerning whether the touching occurred on the floor the couch or some where else. No testimony was elicited concerning what clothes she was wearing or what Ford was wearing. No testimony was elicited concerning what if anything Ford may have said to her prior to, during and subsequent to the touching. Nor did any of the other witnesses, who alleged that Tiffany told them about the touching, provide any details involving the same.

During the trial the State made a big deal about the supposed written confession they artfully obtained from Ford. The statement obtained from Ford was a far cry from a confession. In that statement Ford wrote "I have been accused touching Tiffany in a sexual ways. I have not touched her in any sexual ways except for riding four wheelers or swimming." With regard to that statement Officer Steed testified:

Q. Just with regard to your conversation with him, what else did y'all talk about?

A. Anthony told me that the only time that he might have touched her sexually was when he was riding the four-wheeler, he put his hand around her vagina to keep her from falling off the four-wheeler.

He told me that when they were swimming in the swimming pool that he would pick her up with his hand, throw her and his hand would touch her butt. Anthony's told me

that she would come out of the bathroom naked sometimes, and he would slap her on the butt and tell her to go put clothes on.

Q. What did you ask him when he said she would come out of the bathroom with no clothes on and he would slap her? What did you ask him that time?

A. I asked him if he got horny or had any kind of sexual desire when he seen her naked.

Q. What did he do at that time?

A. He started crying and said no.

T. Vol 2. Pgs. 117-118 (emphasis added). With regard to the supposed confession Ford testified:

Q. Now, when you went to the police department and you wrote that statement, what were you trying to say? Or what did statement - - what did you say?

A. He asked me - - he was asking me if I ever done anything sexually to abuse - - you know, abuse to Tiffany. I said no, si, I have not. I.

Said the only thing I can think of that y'all could concern, probably concern is sexual abuse is like holding her on the four-wheeler. We rode four-wheelers. I have her and my little girl and my little boy on the four-wheeler with us.

All right. Tiffany liked to drive the four-wheeler, but Tiffany always liked to go fast on the four-wheeler. And I would put my arms around Tiffany to hold Tiffany up there on the front to keep her from falling off.

Q. Are you doing this for sexual pleasure?

A. No.

T. Vol 2. Pg. 130 (emphasis added). Clearly from both Officer Steed's testimony as well as Ford's, Ford never admitted nor intended to admit he touched Tiffany in a sexual way.

In this case, no evidence has been produced at trial that Ford touched Tiffany for lustful purposes. This case poses identical issues to those presented in *Bradford v. State*, 736 So.2d 464 (Miss. 1999). In *Bradford*, a father was alleged to have committed the same crime as Ford was charged with herein. The *Bradford* court found that "the sole legitimate disputed issue of fact was whether the State presented sufficient proof to support a finding by the jury that Bradford's actions

were "for the purpose of gratifying his ... lust." Miss.Code Ann. § 97-5-23 (Rev.1994)" *Bradford*, 736

So. 2d at 465. The *Bradford* court struggling with this issue made the following finding:

We find no case law that is particularly helpful in determining what evidence is necessary to give rise to an inference that an undisputed act of touching was for the purpose of satisfying the defendant's depraved sexual desires. Nevertheless, we are of the opinion that there must be evidence of some nature that is probative on the issue; otherwise, every demonstration of affection or playful act directed by an adult toward a child would expose the adult to potential criminal charges, the outcome of which would depend solely on the jury's unsubstantiated subjective assessment of the purposes of the encounter. Certainly, such evidence could arise from a description of the circumstances of the encounter itself. For example, touching in inappropriate parts of the child's body, overly demonstrative acts of affection, events occurring when the child is not fully clothed, or some evidence of sexual arousal by the defendant during the encounter, might be sufficient to permit the jury to draw a reasonable inference as to the improper purpose of the defendant's act. We do not intend, by the foregoing, to exhaust the possibilities of the avenues of proof available to the State. We only mean to demonstrate that a jury's determination of the motivation underlying a defendant's actions in regard to physical contact with children must be based upon something other than pure conjecture.

Id. 466-65, Emphasis added. Finding that the jury that convicted Bradford had made a subjective assessment of the motivation behind that touching that was unsupported by the evidence, the *Bradford* Court set aside the his conviction.

As in *Bradford* no evidence is present in the *case sub judice* to give rise to an inference that Ford touched Tiffany for the purpose of satisfying his sexual desires or gratifying his lust. In the case at bar, no evidence was produced at trial that Ford was touching Tiffany for the purpose of satisfying his sexual desires or gratifying his lust. Reasonable men could not have found beyond a reasonable doubt that Ford was guilty of the crime of gratification of lust. The Attala County Circuit Court was clearly erroneous and erred when it failed to overturn the jury's verdict finding Anthony Ford guilty of the crime of gratification of lust upon a child since the same was rendered against the

overwhelming weight of the evidence produced at trial.

In criminal appeals this Court is almost always presented with the argument that the Defendant's conviction at trial is against the overwhelming weight of the evidence. Most of the time those arguments are merely a last ditch effort for the appellant, often lack merit and are summarily dismissed. In this case however Ford's conviction is an unconscionable injustice. The evidence upon which is conviction is based is so minuscule, uncorroborated and conflicting that innocent persons should be appalled, lest the same could happen to them. Tiffany's recollection of the alleged sexual abuse is minimal and is devoid of any core details. Neither she nor any of the other witnesses can identify when the alleged abuse occurred. What if any abuse occurred in the woods, remains a mystery as does where the same may have happened. Tiffany claims that the majority of the abuse occurs in the front room of the Ford home in the afternoon, notwithstanding the fact that her grandmother's home is only 25 feet from the door to that room and three other children her age are present in the home. Tiffany even goes so far to suggest that Theresa walked into the room, via the front door, when the abuse was occurring and did nothing. The statement given by Ford, when viewed in the entirety of the testimony, is clearly a statement by a simple man trying to understand why Tiffany made the allegations against him that she did. The State's attempt to characterize it as a confession is dishonest. This Court has examined many appeals were sexually abused children much younger than Tiffany are able to give much clearer and more descriptive testimony. If ever this Court was obliged to hold that a jury's verdict was against the overwhelming weight of the evidence ,it would be in this Cause. From his testimony it is clear that Ford is not well educated nor a master of words, which most certainly aided in his conviction. In light of the paucity of the evidence produced at trial your Appellant would assert that this Court is duty bound to overturn Ford's conviction.

CONCLUSION

The Attala County Circuit Court was clearly erroneous and erred when it refused to allow it failed to overturn the jury's verdict finding Anthony Ford guilty of the crime of gratification of lust upon a child since the same was rendered against the overwhelming weight of the evidence produced at trial.

WHEREFORE, the Defendant-Appellant, Anthony Ford, prays that this Honorable Court over turn Ford's Attalan County Circuit Court conviction for of the crime of gratification of lust of a child and for such other general and specific relief as this Court deems appropriate.

Respectfully submitted,



BRENT M. BRUMLEY, MSB # [REDACTED]

Attorney for Anthony Ford

503 South State Street

Jackson, MS 39201

(601) 354-4384

CERTIFICATE OF SERVICE

I, Brent M. Brumley, attorney for Anthony Ford, do hereby certify that I have this day mailed, by United States Mail, a true and correct copy of the above and foregoing Appellant's Brief to the Following:

**Honorable Joseph H. Loper
Circuit Court Judge, Fifth Judicial District
Post Office Box 616
Ackerman, MS 39735**

**Michael Howe, Jr., Esq.
Honorable Susan Denley, Esq., Esq.
Assistant District Attorneys, Fifth Judicial District
P.O. Box 11262
Grenada, MS 38902**

**Attorney Jim Hood, Attorney General
Mississippi Attorney General's Office
Walter Sillers Building
550 High Street
Jackson, MS 39201**

SO CERTIFIED this the 20th day of March, 2008.


BRENT M. BRUMLEY