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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GEORGE LEE MASSEY

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APPELLANT

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SUPREME COURT
COURT OF APPEALS

VS.

NO. 2007-KA-1831

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE SUPREME COURT OF MISSISSIPPI

GEORGE LEE MASSEY

APPELLANT

VERSUS

NO. 2007-KA-1831-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

George Lee Massey was convicted in the Circuit Court of Lauderdale County on a charge of touching a child for lustful purposes and was sentenced to a term of 10 years in the custody of the Mississippi Department of Corrections with five years suspended and five years probation. (C.P.44) Aggrieved by the judgment rendered against him, Massey has perfected an appeal to this Court.

Substantive Facts

J. M. testified that he was the custodial parent of three children, including K.B.M., who was born on June 11, 1992. During the summer of 2006, K.B.M. lived with him in Meridian. Almost every weekend, she visited her grandparents, Edgar and Charlotte Massey, who also lived in Meridian. Also residing with the grandparents was Edgar Massey's brother, George Massey. (T.88-91)

K.B.M. testified that she visited her grandparents and her great-uncle George Massey "[a] lot" during the summer of 2006. On June 29, 2006, K.B.M. went to her grandparents' residence. Her grandfather was at work at the time, but her grandmother and George Massey were present. During the early afternoon, K.B.M. went to her uncle's room to use his computer, as was her habit. The defendant was "sitting on the bed." According to K.B.M., "He was asleep, and then he woke up. ... He ... got a cigarette and smoked it." He was dressed "[j]ust in his boxers." The defendant "went to go use the bathroom after that." When he returned, he "started talking" to K.B.M., and started rubbing lotion on his feet and then on K.B.M.'s legs. K.B.M. began to feel uncomfortable. The defendant went on to rub lotion on her "private area," inside her panties. K.B.M. went on to testify that the defendant touched her vaginal area with his whole hand. (T.102-11)

Asked to recount what happened next, K.B.M. testified as follows:

I just like spun the chair around real quick, and then he got up and went to the bathroom, and that's whenever I ran in there to my Mamaw. And then like I came back not too long after that, and then he tried to— he said he had an ant bite or something on him in his private area and tried to show me, and I said, No. And he said, Does that offend you or something? And don't think nothing about it. And then— I don't know. I got up somehow, and I went in there, and he kept calling me back there. And my Mamaw said, Your Uncle George is calling you. I said, No, that's all right; I'll just stay in here with you.

(T.111-12)

When she was asked how she responded to the defendant's question about her being offended, K.B.M. testified, "I told him that I was 14 and that's my uncle." After he tried to expose himself to her, K.B.M. went to the living room and remained with her grandmother until she returned home. She did not tell her grandmother what had happened because she was "scared." (T.114-16)

Approximately three weeks later, K.B.M. told her grandfather what the defendant had done to her. When she was asked why she did not report this incident to her father, she testified, "Because I know how my daddy is, and I thought it would have been safer if I told my Papaw so my Papaw can sit down with my daddy so he'll do the right thing." In other words, K.B.M. was afraid that if she had told him directly, her father would have "hurt" the defendant. (T.116)

Edgar Massey testified that his grandchildren, including K.B.M., routinely spent a great deal of time at his house during the summer. At the end of June, 2006, however, K.B.M. abruptly stopped visiting. When he encountered her at a Fourth of July celebration, he told her, "I've been missing you. Why haven't you been over?" She told him that she had been busy doing "other things." Later, when he telephoned her, she told him the real reason she had stayed away. (T.145-47)

The defendant took the stand and denied having touched K.B.M. inappropriately. He testified that she had asked him to rub lotion on her legs. He also testified that he did not own a pair of boxer shorts. (T.177-79)

SUMMARY OF THE ARGUMENT

The trial court did not err in overruling the defendant's motions for j.n.o.v. and new trial. The victim's delay in reporting this crime did not render her testimony unworthy of belief.

PROPOSITION:

THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF AND IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

The sole issue presented on this appeal is whether the trial court erred in overruling the defendant's motions for j.n.o.v. and for new trial. To prevail on the assertion that he is entitled to a judgment of acquittal, Massey must satisfy the following formidable standard of review:

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. 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. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.

Manning v. State, 735 So.2d 323, 333 (Miss.1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

Furthermore,

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).

(emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App.1999).

See also *Jackson v. State*, 580 So.2d 1217, 1219 (Miss.1991) (on appellate review the state "is entitled to the benefit of all favorable inferences that may reasonably be drawn from the evidence"), and *Noe*, 616 So.2d at 302 (evidence favorable to the defendant should be disregarded). Accord, *Harris v. State*, 532 So.2d 602, 603 (Miss.1988) (appellate court "should not and cannot usurp the power of the fact-finder/ jury"). "When a defendant challenges the sufficiency of the evidence to support a conviction, the evidence which supports the verdict is accepted as true by the reviewing court, and the State is given the benefit of all reasonable inferences flowing from the evidence." *Dumas v. State*, 806 So.2d 1009, 1011 (Miss. 2000).

This rigorous standard applies to the claim that Massey is entitled to a new trial:

The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.

1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182 . "This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).

Smith v. State, 868 So.2d 1048, 1050-51 (Miss. App. 2004),

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As this Court recently reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss. 2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

This Court has held "that the 'totally uncorroborated testimony of a victim is sufficient to support a guilty verdict where that testimony is not discredited or contradicted by other evidence.'" *Taylor v. State*, 836 So.2d 774, 777 (Miss. Ct. App. 2002) (quoting *Christian v. State*, 456 So.2d 729, 734 (Miss.1984)), Massey centers his challenge to the weight and sufficiency of the evidence on the proposition that the three-week delay in reporting this incident renders K.B.M's testimony unworthy of belief.

While immediate reporting is recognized as corroborating evidence, it is not required. It is not unusual for a minor to delay reporting a sexual offense, especially when the perpetrator is a family member or friend of the family. See, e.g., *Lee v. State*, 944 So.2d 56, 59 (Miss.2005) (minor was sexually abused over a period of nine months by

neighbor/family friend); *Moran v. State*, 822 So.2d 1074, 1077 (Miss. App. 2002) (victim delayed reporting for several weeks that her mother's boyfriend had fondled her); *Givens v. State*, 730 So.2d 81 (Miss. App. 1998) (victim's stepfather fondled her several times over a period of four years before she reported it). It is not uncommon for children to fear being separated from their parents, upsetting their households, or to be embarrassed by the incident(s). In this case, the victim testified that she feared her father would physically harm the perpetrator. Nonetheless, after her grandfather persisted in ascertaining why she had stopped visiting their house, she told him what had happened.

K.B.M. testified that once this violation was committed upon her, she abruptly ceased visiting the residence that the defendant shared with her grandparents.¹ This was a dramatic change in her routine which the jury well could have found corroborative of her version of the events in question. Her testimony was consistent with the circumstances; therefore, its credibility was properly resolved by the jury.

Green v. State, 887 So.2d 940 (Miss. App. 2004), citing *Allman v. State*, 571 So.2d 244, 250 (Miss. 1990).

The trial court properly overruled the motions for j.n.o.v. and new trial.


¹A reasonable inference from a reading of the transcript is that this was a close, loving, extended family, and that K.B.M. and her siblings enjoyed visiting their grandparents, and that the grandparents enjoyed their company.

CONCLUSION

The state respectfully submits the argument presented by Massey is without merit.
Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

A handwritten signature in cursive script, appearing to read "Deirdre McCrory", is written over a horizontal line.

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 15th day of May, 2008.


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