

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO.2007-KA-01831-SCT

GEORGE LEE MASSEY

APPELLANT

V.

STATE OF MISSISSIPPI

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APPELLEE

BRIEF OF APPELLANT

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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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. George Lee Massey

THIS ____ day of February, 2008.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For George Lee Massey

By:

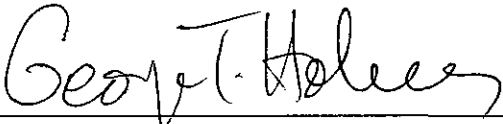

George T. Holmes, Staff Attorney

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STATUTES

none

OTHER AUTHORITIES

none

STATEMENT OF THE ISSUE

**ISSUE NO. 1: WHETHER THE TRIAL COURT SHOULD HAVE
RENDERED A DIRECTED VERDICT OR JNOV OF
ACQUITTAL?**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Lauderdale County, Mississippi where George Lee Massey was convicted of gratification of lust. A jury trial was conducted September 11-12, 2007, with Honorable Robert W. Bailey, Circuit Judge, presiding. Massey was sentenced to ten (10) years with five (5) suspended and is presently out of custody on bail pending appeal according to trial counsel.

FACTS

In June of 2006, K.B.M.¹, of Meridian, was fourteen (14) years old. She often visited with her paternal grandparents in Lauderdale County. K. B. M.'s great uncle, George Massey, lived with the grandparents and was the grandfather's brother. [T.87-90, 99-102].

According to the trial testimony, on June 29, 2006, K. B. M. was at her grandparent's house using the computer in George Massey's bedroom. [T. 104-110]. George was napping on the bed and woke up. *Id.* K. B. M. said that George rubbed some

¹

The minor prosecutrix's initials are used instead of her name.

lotion on her legs and in doing so slipped his hands under her shorts and felt between her legs. *Id.* K. B. M. said only her grandmother was in the home at the time and she was watching television in another room. [T. 111].

George, who is disabled, testified and said he did rub lotion on K. B. M.'s legs, at her request, but did not touch her improperly. [T. 186-87]. He also said that K. B. M.'s father, was in the home and that K. B. M. had the date wrong. *Id.*

The alleged incident of touching was not reported to anyone for approximately three (3) weeks when K. B. M.'s grandfather asked why she had not been around to visit. [T. 116].

SUMMARY OF THE ARGUMENT

The trial court should have rendered a directed verdict of acquittal or should have rendered a judgment of acquittal notwithstanding the verdict or new trial.

ARGUMENT

ISSUE NO. 1: WHETHER THE TRIAL COURT SHOULD HAVE RENDERED A DIRECTED VERDICT OR JNOV OF ACQUITTAL?

A review of a lower court's denial of a motion for new trial is by an abuse of discretion standard. *Esparaza v. State*, 595 So.2d 418 (Miss.1992). Pursuant to this standard, the reviewing court should "consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be

reasonably drawn from the evidence.” *Jefferson v. State*, 818 So.2d 1099, 1111 (Miss. 2002). If the evidence is “so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, [the court is] required to reverse and render.” *Id.* However, “if there is substantial evidence in support of the verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required.” *Id.*

“A motion for JNOV challenges the legal sufficiency of the evidence. *Montana v. State*, 822 So.2d 954, 967 (Miss. 2002). “Under this standard, this Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be reasonably drawn from the evidence.” *Coleman v. State*, 697 So.2d 777, 787-788 (Miss.1997). “If the facts so considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render.” *Id.*

“In determining whether a jury verdict is against the overwhelming weight of the evidence, this 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.” *Herring v. State*, 691 So.2d 948, 957 (Miss.1997). “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.” *Id.* See also *Benson v. State*, 551 So.2d 188, 193 (Miss.1989); *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

With sex offenses, the unimpeached testimony of a prosecutrix is usually sufficient to sustain a conviction. See, e. g., *Grant v. State*, 913 So.2d 316 (Miss. 2005). Unless an alleged victim’s testimony so “discredited or contradicted by other evidence that it becomes unbelievable” their testimony in and of itself can be “sufficient to sustain a guilty verdict.” *Musgrove v. State*, 866 So.2d 483, 486 (Miss. App. 2003)(citing *Collier v. State*, 711 So.2d 458 (Miss.1998); *Mabus v. State*, 809 So.2d 728 (Miss. App. 2001); *Riley v. State*, 797 So.2d 285 (Miss. App. 2001)).

Nevertheless, the Mississippi Supreme Court has stated that such uncorroborated testimony of a prosecutrix should be cautiously scrutinized and where it is “unsupported, and the facts and circumstances in evidence discredit her and fail to satisfy the mind as to the guilt of accused, but rather suggests grave doubt of it, a conviction should be set aside.” *Rogers v. State*, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing *Monroe v. State*, 71 Miss. 196, 13 So. 884, 885 (1893)).

Courts and juries cannot well be too cautious in scrutinizing the testimony of the complaining witness, and guarding themselves against the influence of those indignant feelings which are so naturally excited by the enormity of the alleged offense. Although no unreasonable suspicion should be indulged against the accuser, and no sympathy should be felt for the accused, if guilty, there is much greater danger that injustice may be done to the defendant in cases of this kind than there is in prosecutions of any other character. The evidence is always direct, and, whatever may be the just force of countervailing circumstances, honest and unsuspecting jurors may think themselves bound, of necessity, to credit that which is positively

sworn. 204 Miss. 899-900, 36 So.2d 158

If under this close scrutiny the alleged victim's testimony is discredited or contradicted by other credible evidence, then the verdict must be set aside. *Maiden v. State*, 802 So.2d 134, 136 (Miss. App. 2001); *Cross v. State*, 759 So.2d 354 (Miss.1999); *Rogers v. State*, 204 Miss. 891, 899-900, 36 So.2d 155, 158 (Miss.1948); *Monroe v. State*, 71 Miss. 196, 13 So. 884, 885 (1893).

The scrutiny must include the victim's physical and mental condition after the incident, as well as the fact that she immediately reported the rape as corroborating evidence. *Christian v. State*, 456 So.2d 729, 734 (Miss. 1984)(quoting *Brooks v. State*, 242 So.2d 865, 868 (Miss.1971); *Lang v. State*, 230 Miss. 147, 159, 87 So.2d 265 (1956)).

In the present case, the K. B. M. did not mention any allegation to anyone for approximately three (3) weeks after the event was supposed to have happened. [T.116]. Moreover, the accusation was only made when the grandfather asked K. B. M. why she had not been around to visit. *Id.* Moreover, K. B. M.'s testimony differed in many material ways from her written statement to police. [Ex. 2].

This should be more than enough to negate the credibility and reliability of K. B. M.'s testimony, suggesting "grave doubt" of George Massey's guilt. *Rogers v. State*, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948).

Here, the verdict was against the overwhelming weight of the evidence. As stated

above, the only evidence to support the charge consisted of unreliable testimony of by K.BM. which was very suspicious and unreliable.

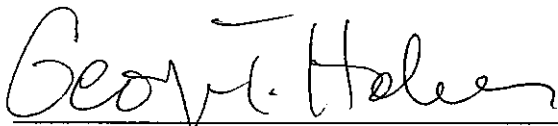
Under the facts set forth above, the Appellant asserts that it would have been impossible for reasonable minded jurors to find that he was guilty of gratification of lust as set forth in the indictment. *See Rogers v. State*, 204 Miss. 891, 899-900, 36 So.2d 155,158 (Miss.1948)(citing *Monroe v. State*, 71 Miss. 196, 13 So. 884, 885 (1893)). Accordingly, the Appellant respectfully submits that verdict was contrary to the overwhelming weight of the evidence, and the Court should reverse and render or remand for a new trial.

CONCLUSION

George Massey is entitled to have, and is respectfully requesting that, his conviction in this case be reversed and rendered as an acquittal, or that he be granted a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For George Massey, Appellant

By: 
George T. Holmes, Staff Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 13th day of February , 2008, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Robert W. Bailey, Circuit Judge, P. O. Box 1167, Meridian MS 39302, and to Hon. Lisa Howell , Asst. D. A. , P. O. Box 5172, Meridian MS 39302, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.


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