IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SAMUEL PARRAMORE — APPELLANT

VS. — NO. 2008-KA-0357

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATE CASES

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SAMUEL PARRAMORE **APPELLANT**

vs. **CAUSE No. 2008-KA-00357-SCT**

THE STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Harrison County, Mississippi, First Judicial District, in which the Appellant was convicted and sentenced for his felonies of **STATUTORY RAPE** and **FONDLING**.

STATEMENT OF FACTS

The victim in this case, a girl of twelve years at the time of trial, testified that she lived with her mother and the Appellant at an apartment in Gulfport in 2001. She stated that she was born on 3 May 1994, and thus would have been of about seven years of age in 2001. Her mother was in the Navy. The mother appears to have been the Appellant's paramour.

The victim's mother served a tour of duty in Guam. While the victim's mother was

away, the Appellant remained in the apartment with the victim. During that time the Appellant raped the child. She testified that she was in her room, at night and in her bed, and the Appellant came into her room, got into her bed, touched her buttocks, wakened her and turn her over onto her back. The Appellant then "put his private part into [her] private part." The victim tried to resist by scratching, kicking and screaming, but to no avail. The victim further testified that before he raped her he placed his hands on her "private parts" and "[felt] around."

To stop the victim from screaming, the Appellant went to the kitchen to get duct tape. While he was doing this, the victim tried to hide from him, but this too to no avail. The Appellant put duct tape over her mouth and around her wrists. When the victim continued to resist, the Appellant put a pillow over her face. While the victim was later told that one or more people in the apartment complex heard her screams, no one came to her assistance.

After the Appellant finished, he untaped the child and left her in her room. He did remark to her that what he had done to her was what had been done to him by his parents. He also told her at one point that he was sorry, but apparently not so sorry as to quit his attack upon her. There were other instances of rape committed by the Appellant against the child, but she could not recall how many. By the phrase "private part," she meant, in the Appellant's case, his penis, and in her case, her vagina.

The child's mother returned home in due course. The victim did not tell her mother about what the Appellant had done until she was about nine or ten years of age. She did not tell her mother immediately upon her mother's return because she was afraid of what the Appellant might do. In any event, in 2003 the victim and her mother moved to Florida. The Appellant did as well, but he was no longer living in the victim's home. It was in Florida that the victim told her mother what the Appellant had done. (R. Vol. 2, pp. 67 - 88).

The victim's mother testified. She stated that she was in the Navy in 2001 and that she was deployed in that year to Guam from February to September of that year. The Appellant lived with her and the victim in Gulfport. When the victim's mother left for Guam, the Appellant stayed with the victim and was to care for her. The Appellant was in his mid - twenties at the time. While the victim's mother was in Guam, she called the victim and the Appellant; the victim did not indicate during those calls that anything was amiss. The Appellant, though, was forever asking for money. In due course, the victim's mother returned to Gulfport, and in 2002 she and the victim went to Florida to live. By that time the Appellant was not living with the mother and child, the mother having decided that the Appellant and she did not belong together anymore. Nonetheless, the Appellant also moved to Florida. The Appellant and the victim's mother continued to see each other from time to time, but only as friends.

One night while the victim and her mother were living in Florida, the victim's mother told the victim that she could tell her anything, that she loved the child and that she could depend on her and trust her. The victim then went off to bathe but then returned to her mother, crying. Her mother asked her what was wrong, and the child told her that she wanted to tell her something but was frightened to do so. The child then told her of what the Appellant had done to her while her mother was in Guam. The victim's mother then called the police. When the mother confronted the Appellant with her daughter's revelation, the Appellant denied having raped the child. (R. Vol. 2, pp. 88 - 97).

In the course of the investigation into the child's account of what the Appellant had done, the mother told an investigator that, prior to the point at which the child reported the Appellant, she had been thinking of resuming her relationship with the Appellant. She also stated that, during a telephone call with the Appellant after the child revealed what the Appellant had done,

the Appellant seemed surprised that the child exposed his actions. She admitted having been told by the investigator that she was compromising the investigation by repeatedly calling the Appellant.

The mother testified that she might have seen the Appellant after the child reported the Appellant. However, the mother denied having seen a photograph of the Appellant and a new romantic interest of his and having told the Appellant that he would pay for it. The mother admitted having read books about hypnotism and having tried to hypnotize the Appellant on one or two occasions whilst the Appellant and she were stationed in Spain. (R. Vol. 2, pp. 98 - 103).

Stephanie Cox, a case coordinator with Florida's Children's Crisis Center Child Protection Team, and the one who cautioned the victim's mother about speaking to the Appellant on the telephone, was also a certified forensic interviewer. She interviewed the victim. The interview was videotaped and that videotape was published to the jury.

Miss Cox indicated that it was not uncommon for a child to delay reporting sex crimes committed against her for a period of two years. The child's answers to her questions were consistent from one interview to the next, and the child's behavior was consistent with other children who had been victims of sex crimes. (R. Vol. 2, pp. 104 - 116)

Rosario Ing, a detective lieutenant with the Gulfport police department, testified that she had investigated child sex abuse cases and was herself a forensic interviewer. She stated that it was not uncommon for children not to disclose what had occurred to them immediately, particularly if the offender was still in their household. In some instances, the child would wait until adulthood to report such abuse. Officer Ing further determined that the victim in the case at bar was approximately seven years of age when the Appellant committed his acts against her; the Appellant was twenty - six or twenty -seven years of age. (R. Vol. 2, pp. 116 - 119).

The defense presented a case - in - chief. The Appellant testified for the defense. He described how and when he met the victim's mother and how he came to live with them. He stated that his romantic relationship with the victim's mother ended in 2002.

During the time he lived with the victim and her mother, the mother was twice deployed for six or seven months each. He cared for the child. This care included, according to his testimony, spanking the child for her having wet her bed and for having stayed up too late watching television. He claimed that the child was defiant with him since he was not her father. He denied ever having used duct tape on the child.

The Appellant testified that he had a few conversations with the victim's mother soon after the victim's account of what he had done to her had been reported to the Florida authorities. The victim's mother would call him, or he would call her.

The Appellant and the victim's mother had occasion to meet after the allegations were made against the Appellant. The Appellant stated that he had been in a bar celebrating his birthday and claimed that while so enjoying himself the victim's mother showed up. She supposedly indicated to the Appellant that he should call her. Later that evening, according to the Appellant, as he was going to his fiance's house, the victim's mother supposedly rang him and told him that they should meet. The Appellant claimed he tried to resist meeting her, but ended up meeting her in a Krystal's parking lot.

The Appellant said he arrived there first, but, since he was "a little tipsy," he fell asleep. When the victim's mother arrived, she got into the Appellant's car and told the Appellant that she wanted to be with him, marry him and have his babies. She asked him to forgive her, that she was sorry this ever happened.

Well, according to the Appellant, this put him in something of a sticky wicket. His fiancé

was already pregnant with his child – twins at that. So that Appellant said he refused the victim's mother offer of marriage. But that did not stop them from "messing around," according to the Appellant. After "messing around" for a bit, the Appellant said that the victim's mother and he repaired to his place that, fortuitously, was just down the street from the Krystal's parking lot. There they had "sexual contact."

After this late night rendevous was completed, the Appellant said he took the victim's mother back to her car at the Krystal's parking lot. The victim's mother espied a photograph of the Appellant and his fiancé lying on the dashboard. He claimed that she became incensed upon seeing the photograph and told him that he would pay for leaving her for the other woman.

The victim's mother tried to hypnotize the Appellant on one or two occasions.

The Appellant denied having sexual relations with the victim. He stated that he loved her as his own child and took care of her as though she were his own. He denied having fondled the child. He stated that the child became angry with him when he disciplined her.

On cross- examination, the Appellant claimed that he had been with the victim alone many times while in Florida. He stated that the victim's mother knew about his fiancé by the early Spring of 2003. There were no problems between the victim's mother and himself until mid- Summer of 2003, when the child reported what he had done to her.

He also claimed, during cross - examination, that after he and the victim's mother had had post Krystal's parking lot sex, the victim's mother called his fiancé to tell her that she had been with the Appellant the night before. But then maybe it was not at that point of time: He then testified that the victim's mother called the Appellant's fiancé at some earlier time, but just got mad about the Appellant's new flame after the rendevous in the Krystal's parking lot. In any event, the Appellant later decided to move to Texas with his fiancé, so he went to say goodbye to

the victim's mother. She told him to have a nice life. They supposedly parted on an amicable basis.

The Appellant did not know what hypnotism had to do with the case, but he suggested that maybe the victim's mother hypnotized her daughter and implanted the idea that the Appellant had committed these sex crimes. (R. Vol. 2, pp. 123 - 148).

The State recalled the victim's mother. She denied having met the Appellant at the bar in which he was celebrating his birthday, denied having signaled him to call her, denied having met him at a Krystal's parking lot and "fooling around" with him in his car, denied having had sex with the Appellant after fooling around in the Krystal's parking lot, denied having seen a picture of the Appellant's fiancé, and denied having become angry at the prospect of the Appellant leaving her for the fiancé. She further denied having told the Appellant that he would pay for what he had done.

She admitted that the Appellant came to her as he was preparing to move to Texas. She said they did have a conversation, and that during that conversation the Appellant apologized. He did not, however, state what he was sorry for. He did not tell her that he moving his fiancé to Texas. She recalled that the Appellant had told her that his fiancé was pregnant, but she was under the impression that the fiancé had lost the baby. She denied having a relationship with him while he was with his fiancé.

The victim's mother denied having attempted to hypnotize anyone other than the Appellant. She admitted that she was told that she should not talk to the Appellant while he was in jail, that doing so could be perceived as an interference with a criminal investigation. But she denied having called him at the jail. It was he, rather, who constantly called her. She was told that she had no obligation to talk to him and that she should not talk with him. (R. Vol. 2, pp.

148 - 150; Vol. 3, pp. 151 - 153).

STATEMENT OF ISSUES

1. WAS THE VERDICT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

SUMMARY OF ARGUMENT

THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

ARGUMENT

THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

The Appellant, though counsel, filed a motion for judgment notwithstanding the verdict or, in the alternative, motion for a new trial on 30 June 2006. (R. Vol. 1, pp. 57 - 58). The motion was not brought on for a hearing, however, until the Appellant *pro se* sought an out of time appeal. (R. Vol. 1, pp. 60 - 64). The trial court *sua sponte* denied relief on the post - trial motion filed by the Appellant's attorney, and denied relief on the Appellant's *pro se* motion. As for this latter motion, it was the trial court's view that it was not necessary to consider granting an out of time appeal because the time to appeal did not begin to run until the motion for a new trial or for judgement notwithstanding the verdict was ruled upon. (R. Vol. 1, pp. 70 - 71). The trial court's orders were filed on 10 December 2007; the notice of appeal was filed on 8 January 2008. (R. Vol. 1, pg. 72).

A motion for a new trial is addressed to the trial court's sound discretion. It does not seek discharge of the defendant on account of legally insufficient evidence. A trial court should grant relief on such a motion only when, in the exercise of its sound discretion, it is convinced that the verdict is contrary to the substantial weight of the evidence. This Court will not disturb a trial court's decision to deny relief on a motion for a new trial unless it is convinced that it would be

to sanction an unconscionable injustice to allow it to stand. *May v. State*, 460 So.2d 778, 781 (Miss. 1984).

The Appellant asserts that the trial court should have granted relief on the motion in post - conviction relief because, allegedly, the victim's testimony and memory were unreliable and because there was no physical evidence to corroborate the victim's testimony.

It is true that the victim could not remember the particular date or dates on which the Appellant committed his felonies against her. She knew that it or they occurred while her mother was away in Guam. From the mother's testimony, this would have been during the period between February and September of 2001. However, as this Court well knows from the many cases involving sexual abuse of children that have come before it, it is the exception rather than the norm that a child victim will recall the precise date or dates on which she was abused. Indeed, it is typical of cases of this kind that the indictment and proof, with respect to date of commission of the felony, will allege a range of dates. The most that may be said of the victim's inability to recall a specific date or dates is that it was a matter for the jury to consider in assessing the weight and worth of her testimony.

On the other, hand the victim gave a specific and highly detailed account of what the Appellant did to her. It may be true that no one responded to the victim's screams, but the fact there are times that no one comes to the aid of one who is the victim of a criminal act is not unknown. This, too, was simply a matter for the jury to consider.

The Appellant suggests that the child made her story up after she learned what the word "rape" meant. This is highly improbable, especially since no credible reason was advanced as to why the child what have made up such a thing. Instead, the Appellant suggested that the child might have been hypnotized by her mother, and that her mother might have implanted the idea

into her child's mind that she had been raped, this in order to make the Appellant "pay" for having taken another paramour. Yet, it was the mother who broke off the relationship with the Appellant, and the mother knew about the other woman long before she allegedly told the Appellant he would pay.

The child might not have known the word at the time she was raped; indeed, she might not have had an understanding of what the Appellant was doing to her, given her age. Nonetheless, it was simply a matter for the jury to consider in terms of the child's credibility.

The Appellant then points out that the child waited two years to report what he had done. This is borne out by the testimony, yet the testimony was as well that it was not uncommon for children to delay reporting such things, especially when the perpetrator is still in the child's home. Again, this was simply for the jury to consider.

The Appellant says that the only testimony demonstrating his guilt was that of the child's. This is true, yet it is also true that the uncorroborated testimony of a victim of a sex crime will be sufficient to establish guilt if it is not discredited or substantially contradicted by other evidence in the case. *Collier v. State*, 711 So.2d 458, 462 (Miss. 1998). In the case at bar, the child's testimony was not discredited. Her behavior, according to the forensic interviewer, was consistent with that of a child who had suffered sexual abuse.

The Appellant then moves on to the testimony of the mother of the victim. First, he says that the evidence showed that the mother was in telephonic contact with him while he was in jail. He states that the mother had been contemplating returning to him as his paramour.

It seems clear that there was telephonic contact with the Appellant after the accusations of having sexually abused the child were made. However, it was in sharp dispute whether the Appellant or the mother initiated this contact. As for what the mother was told by Miss Cox, the

mother clarified that issue by her testimony that she was told by Cox that she did not have take the Appellant's calls or talk with him, and that it would be better not to do so. As for the testimony concerning the mother's thoughts of returning to the Appellant as his paramour, the testimony is clear that she was only considering this before she found out what the Appellant had done to her daughter.

The Appellant then focuses on his bizarre account of his late night rendevous with the mother at the Krystal's parking lot. The mother denied the whole of this odd account. To be sure, the differing accounts of what did or did not occur created an issue of fact for the jury to consider, but it is little surprise that the Appellant's account was evidently given short shrift.

The Appellant himself testified that the mother knew of his new paramour some months before the mother allegedly seduced him in a car in a Krystal's parking lot. According to the Appellant's testimony, what he had done to the child was reported to the police on 1 August 2003, yet the mother of the child supposedly had sexual relations with the Appellant twenty - three days later, and threatened to make the Appellant pay for turning her alleged overtures toward him down. (R. Vol. 2, pp. 139 - 140). But between March of 2003 and late August of that year, relations between the mother and the Appellant were said to have been amicable. (R. Vol. 2, 135 - 136). By the testimony given by the Appellant, the jurymen were asked to believe that the mother of the victim knew about the Appellant's new interest by March of 2003, that relations between the mother and the Appellant were not strained at all at and after that time, that the mother learned of what the Appellant had done on the last day of July, 2003, that the mother reported what her daughter told her to the police, and yet somehow, on 24 August 2003, the mother seduced the Appellant and got angry when she saw a picture of him with his new paramour. In other words, the jury was asked to believe that after the mother found out what the

Appellant had done, she decided she wanted him back. And even though she had already reported what he had done to the police, it was twenty - three days later that she decided she would pay the Appellant back by falsely accusing the Appellant of sexual crimes against her daughter.

It is little surprise that the jury would not have found this testimony convincing. In fact, we think it effectively served to corroborate the child's testimony, especially when it is recalled that another defense theory was that the child was hypnotized and her mind hijacked by her mother. This testimony by the defense was outlandish. If anyone's testimony was "unreliable," it was certainly the Appellant's. Nonetheless, it was a matter for the jury to determine. There is no basis to overturn the verdict on account of the fact that the jury evidently did not believe the Appellant.

Finally, the Appellant points out that there was no physical evidence to link him with the crimes. While conceding that the lack of such evidence is not fatal to the conviction, he says the lack of such evidence should be "noted."

Given the fact that there was a two-year gap between the commission of the felonies and the time the victim reported them, it is hardly surprising that there was no physical evidence to be had. The lack of such evidence is not, of itself, fatal to the conviction. The testimony of the child was alone sufficient upon which to found the convictions. *Collier, supra.* It was simply a matter for the jury to consider in reaching its verdict.

The evidence of the Appellant's guilt rested largely upon the victim's testimony, but her testimony was, in a sense, corroborated by the strange and unbelievable testimony from the Appellant. The testimony of the child was not weak, and it certainly was not impeached. There is no basis here to find that the verdict constitutes an unconscionable injustice.

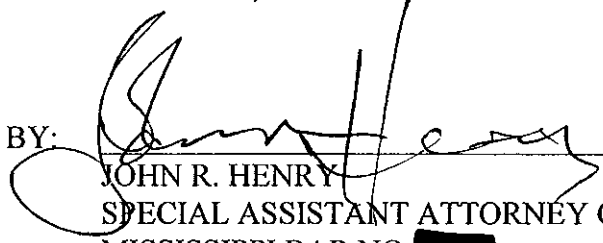
is no basis here to find that the verdict constitutes an unconscionable injustice.

CONCLUSION

The Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, John R. Henry, 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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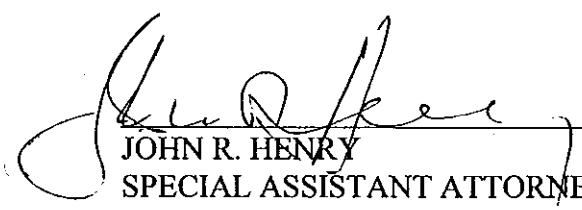
This the 22nd day of September, 2008.



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