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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SAMUEL PARRAMORE

APPELLANT

FILED

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V.

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SUPREME COURT
COURT OF APPEALS

NO. 2008-KA-0357-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE 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. Samuel Parramore, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Stephen B. Simpson, Circuit Court Judge
5. Brett Ferguson and Justin T. Cook, Esqs., Attorneys for the Appellant, Mississippi

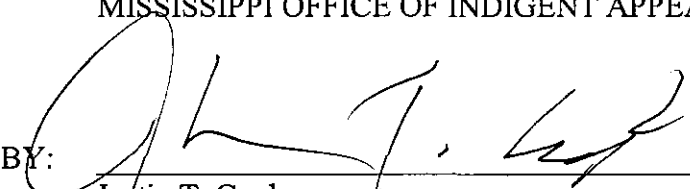
Office of Indigent Appeals

This the 17th day of June, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF ISSUE

ISSUE:

WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT APPELLANT HIS MOTION FOR A NEW TRIAL ON THE GROUNDS THAT THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF JURISDICTION

This honorable Court has jurisdiction of this case pursuant to **Article 6, Section 146 of the Mississippi Constitution** and **Miss. Code Ann. 99-35-101**.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Harrison County, Mississippi, First Judicial District and a judgment of conviction for statutory rape and unlawful touching of a child for lustful purposes against Samuel Parramore, following a jury trial on June 21, 2006, Honorable Stephen B. Simpson, Circuit Judge, presiding. Mr. Parramore was subsequently sentenced to a total of fifty (50) years in the custody of the Mississippi Department of Corrections.

FACTS

According to the testimony presented at trial, Frieda Moore ("Moore") was deployed to Guam from February to September of 2001. (T. 90). While on deployment Moore left her seven (7) year old daughter, KAM¹, with her boyfriend, Samuel Parramore ("Parramore"), whom she described as a good father figure. *Id.* It was during this time period that KAM testified Parramore had sexual intercourse with her. (T. 69-70). Two years passed before the incident was reported. (T. 75).

KAM testified that during the time she lived with Parramore he had sexual intercourse with her on more than one occasion. (T. 75). KAM could not remember over what period of time or how many times this occurred. *Id.* During the event KAM testified that she screamed, but that noone ever responded. (T. 82-83). KAM and Parramore lived on the second floor of the River 10 Apartments, with other apartments on either side and below their own. (T. 82).

KAM told her mother about what happened while they were living in Jacksonville, Florida. (T. 94). Moore reported the incident to the Jacksonville Police in August of 2003. (T. 95). After an interview with a Jacksonville Police detective, Moore took KAM to the Children's Crisis Center where they were both interviewed by a counselor, Stephanie Cox ("Cox"). (T. 96).

Cox interviewed KAM twice. (T. 108). Cox was allowed to testify as an expert in the field of forensic interviewing with regard to child abuse, child sexual abuse, and child neglect. *Id.* When asked whether it was common for children to wait lengthy periods before reporting sexual abuse she answered that it was not "uncommon." (T. 112). Cox testified that, in her opinion, during her interviews, KAM acted in a manner consistent with that of a child who had

1. In order to ensure the privacy of the party involved only the party's initials will be used.

been sexually abused. (T. 113).

The State called Detective Rosario Ing (“ Detective Ing”) of the Gulfport, Mississippi Police Department as its last witness. Detective Ing testified that she had received training in child sex abuse cases and forensic interviewing. (T. 117). Detective Ing also testified that it was not uncommon for children to fail to disclose abuse immediately or even shortly thereafter. *Id.* Detective Ing, however, did not personally interview anyone involved in the course of the investigation. (T. 119).

Parramore testified in his own defense. Parramore stated he cared for KAM while her mother was on deployment for six to seven months. (T. 126). He testified that on occasion he had to discipline KAM, but that he did not have sexual intercourse with her or touch her inappropriately. (T. 126-127,131). It was Parramore’s contention at trial that these allegations stemmed from Moore learning of his intimate relationship with his fiancée, Anitra. (T. 129-130). He testified that when Moore learned his other relationship she said that he would pay for this. (T. 129).

The Appellant, Parramore, was indicted for the crime of statutory rape and the crime of unlawful touching of a child for lustful purposes. (C.P. 9-11, R.E. 5-7). After a jury trial on June 21, 2006 he was found guilty on both counts. (C.P. 52-53, R.E. 8-9). Parramore was subsequently sentenced to fifty (50) years in the custody of the Mississippi Department of Corrections. (C.P. 54-55, R.E. 10-11).

On June 30, 2006, Parramore filed a Motion for J.N.O.V. or for a New Trial in the alternative, claiming that the verdict was contrary to law and against the overwhelming weight of the evidence. (C.P. 57-59, R.E. 12-14). The motion was denied on December 10, 2007. (C.P. 70, R.E. 15). Feeling aggrieved by the jury verdict and sentence, the Appellant filed a notice of

appeal. (C.P. 72, R.E. 16).

SUMMARY OF THE ARGUMENT

The Circuit Court erred in failing to grant Appellant his motion for a new trial. The State relied almost entirely on the unreliable testimony of KAM. The State also failed to present any physical evidence, forensic or otherwise linking the Appellant to the crime. Therefore, the verdict was against the overwhelming weight of the evidence.

The Appellant herein submits that based on the propositions cited and briefed below, together with any plain error noticed by the Court, which has not been specifically raised, the judgment of the trial court and the Appellant's conviction and sentence should be reversed and remanded to the lower court for a new trial on the merits of the indictment on the charges of statutory rape and unlawful touching of a child for lustful purposes.

ARGUMENT

ISSUE: WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT APPELLANT HIS MOTION FOR A NEW TRIAL ON THE GROUNDS THAT THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

i. Standard of Review

A motion for a new trial challenges the weight of the evidence; reversal is only warranted if the lower court abused its discretion in denying a motion for a new trial. *Dilworth v. State*, 909 So. 2d 731, 737 (Miss. 2005). "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." *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997).

A jury verdict will only be disturbed on appeal in exceedingly rare cases. *Thomas v. State*, 92 So. 225, 226 (Miss. 1922). Despite the standard of review being so high, "this Court

has not hesitated to invoke its authority to order a new trial and allow a second jury to pass on the evidence where it considers the first jury's determination of guilt to be based on extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Dilworth v. State*, 909 So. 2d 731, 737 (Miss. 2005) (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984).

ii. The State relied solely on the unreliable memory of KAM.

KAM testified that Parramore had sexual intercourse with her while her mother was away on deployment, sometime between February to September of 2001. (T. 69-70). KAM could not remember, however, when this occurred other than that it occurred while her mother was away. (T. 75). Furthermore, KAM could not remember the number of times it took place. *Id.* She did recount with some detail how the incident occurred, but these details could have come from watching television or through the suggestion of her mother. She testified that she watched a television channel that had stories about events similar to the one she claimed happened to her. (T. 81). Moreover, she testified that she only learned of the word "rape" from her mother and from watching television. (T. 80-81). These facts indicate that she possibly either came up with her story or it was suggested to her.

KAM waited two years before telling anyone about what happened. (T. 75). Both Stephanie Cox and Detective Ing testified that it is not uncommon for children who have been sexually abused to wait such lengthy periods to report the abuse. (T. 112,117-118). While it is not uncommon, such long periods of time call into question the accuracy and veracity of the account. Take for instance KAM's failure to remember exactly when and how many times the incident took place.

KAM further testified that she resisted. She stated she fought, kicked, and screamed during the event. (T. 71). At the time, she and Parramore were living on the second floor of the River 10 apartments in Gulfport, Mississippi. (T. 69-70). Despite being surrounded by occupied apartments on all sides, it was never reported or responded that there were screams. (T. 82-83). It is incredible to believe that not a single person would report to the police the piercing screams of a young girl.

The only evidence that purported to link the Appellant to the crime was KAM's testimony. Her testimony was based on the memory of an event that occurred years in the past. She recounted with detail some specifics, but could not remember other important details. Yet this tenuous testimony is what sent a man to prison for what will likely be the rest of his life. Her version of the event could have been embellished or suggested by her mother, or subconsciously by watching television. Because of her unreliable memory it would sanction an unconscionable injustice to allow this verdict to stand.

ii. Moore's testimony was unreliable.

Moore testified that she left her daughter with her boyfriend, Parramore, while she was on deployment. (T. 90). Two years later, after moving to Jacksonville, Florida, KAM told her about what happened. (T. 94-95). According to her testimony at trial, Moore called Parramore about what KAM told her. (T. 99). She testified that she had several phone conversations with Parramore afterwards. (T. 100).

Moore claimed she could not remember whether she called him or he called her, but she did remember Stephanie Cox telling her not to call him anymore because it could be tampering with an investigation. *Id.* The fact remains that despite knowing what KAM had told her she

remained in contact with him. She even testified that very close to or contemporaneous with KAM telling her about what happened, she contemplated resuming her romantic involvement with Parramore. (T. 99). Remaining in contact with Parramore under the circumstances hardly seems consistent with someone who believed KAM's story.

Not only was Moore's memory unclear as to the many phone conversations she had with Parramore, she was also unclear as to any physical meetings. When she was asked whether she saw Parramore on a night when KAM was not present she replied, "I don't know. Probably. Maybe." (T. 101). Parramore testified that the two did in fact meet one night while KAM was not present. (T. 128-129). Parramore testified that at that meeting Moore saw a picture of his fiancée, became angry and told him, "you're going to pay for this." (T. 129). Moore testified that she never saw such a picture and never told Parramore he would pay for this. (T. 101). Somewhat conveniently, she remembers that meeting never taking place, but fails to remember if she called him or he called her.

Moore could have easily become enraged with her former boyfriend, whom she testified she was thinking of resuming her romantic involvement with, when she saw that he had moved on. She could have then suggested or told KAM to make up a story about Parramore having sexual intercourse with her so that she could make him pay for this.

Moore's testimony was unreliable. It is very improbable that anyone would remain in contact with the person who they believed committed such a act. Moreover, it is unlikely that anyone would forget meeting that person face to face. What is more likely is that she used KAM to get back at her former love interest because he had moved on and found someone else.

iii. There was no physical evidence linking the Appellant to the crime.

The Court should take note of the complete lack of any physical evidence, forensic or otherwise, linking the Appellant to the crime.² The only evidence linking the Appellant to the crime was the testimony of KAM. The Appellant does not assert or argue that physical evidence is required for a conviction, but the lack thereof is something that should be noted.

iv. Conclusion

The Appellant was convicted based on the unreliable memory and testimony of both KAM and Moore. Both KAM and Moore failed to remember significant details and events. KAM's testimony revealed how it was quite possible her story was embellished or suggested to her by her mother or television. Portions of Moore's testimony were almost unbelievable.

The evidence in this case was weak and tenuous. While the State's evidence was sufficient to withstand a motion for a directed verdict the defense's evidence was enough to cast significant doubt as to the Appellant's guilt. The extremely weak evidence in this case should not have been enough to send a man to prison for nearly the rest of his life. The verdict was against the overwhelming weight of the evidence and to allow it to stand would sanction an unconscionable injustice.

The Appellant respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and this honorable Court should reverse and remand for a new trial.

CONCLUSION

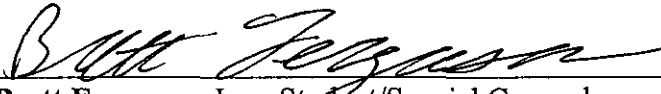
2. While the Appellant is aware that physical and forensic evidence are not required in order to have a conviction, the lack thereof is further indication of the lack of credible evidence linking the Appellant to the crime for which he is convicted.

The Appellant herein submits that based on the propositions cited and briefed hereinabove, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and the Appellant's conviction and sentence should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial on the merits of the indictment on the charge of statutory rape and the charge of unlawful touching of a child for lustful purposes, with instructions to the lower court.

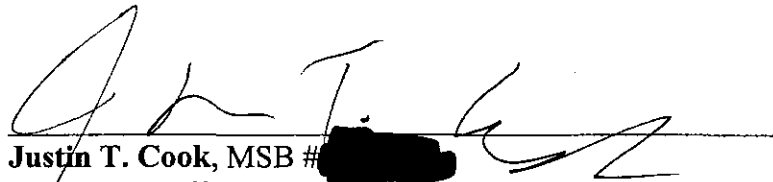
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CERTIFICATE OF SERVICE

I, Justin T. Cook, Counsel for Samuel Parramore, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and

correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 19th day of June, 2008.


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