

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COY MICHAEL EDMOND

APPELLANT

VS.

NO. 2008-KA-1027-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Lafayette County indicted defendant, Coy Michael Edmond for Sexual Battery of a Child over 14 and under 16 years of age, in violation of *Miss. Code Ann.* §§ 97-3-95(1)©. (Indictment, cp.1). After a trial by jury, Judge Andrew K Howorth, presiding, the jury found defendant guilty. (C.p.55). Subsequently, defendant was sentenced to 30 years, 20 suspended, with 5 years of post-release supervision, plus court costs and \$50,000 restitution.

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Defendant was 26 years old and his babysitter was 15 years of age. One night when the kids were asleep he approached her, and she performed oral sex on him. Defendant told a friend the next day that he didn't have sex with her but the victim gave him a blow job. Defendant denied any wrong doing.

The jury heard the evidence and found him guilty.

SUMMARY OF THE ARGUMENT

I.

THERE WAS LEGALLY SUFFICIENT EVIDENCE OF THE AGE OF THE CHILD VICTIM.

II.

DEFENSE DID NOT ASK FOR A CONTINUANCE BASED ON THE SUPPOSED DISCOVERY VIOLATION SO HAS WAIVED REVIEW.

III.

DEFENDANT WAIVED ANY CHALLENGE TO THE COMPETENCY OF THE VICTIM WITNESS WHEN HE CROSS-EXAMINED THE WITNESS.

Issue IV.

THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR NEW TRIAL.

ARGUMENT

I.

THERE WAS LEGALLY SUFFICIENT EVIDENCE OF THE AGE OF THE CHILD VICTIM.

In this initial allegation of error defendant asserts the State did not put on adequate proof of age. Interestingly, in closing argument counsel for defendant argued before the jury that age wasn't an issue. Now it is.

So, there was testimony under oath that the victim's birth date was May 16, 1990. (Tr. 61 & 93). The date of the offense was February 4, 2006.

¶ 8. . . . When a word or phrase is used in a statute, the "common and ordinary acceptance and meaning" will be applied, except when technical words must be given their technical meanings. Miss.Code Ann. § 1-3-65 (Rev.2005). We apply the ordinary acceptance that a person's age is calculated from birth.

McKenzie v. State, 946 So.2d 392 (Miss.App. 2006).

Further, in *Hayes v. State*, 803 So.2d 473(¶12)(Miss.App. 2001), the court listed the testimony of the victim giving her birth date as credible, legally sufficient evidence.

There is no merit to this first allegation of error and no relief should be granted.

II.
**DEFENSE DID NOT ASK FOR A CONTINUANCE BASED ON THE
SUPPOSED DISCOVERY VIOLATION SO HAS WAIVED REVIEW.**

At trial, the victim, who had been living out-of-state for the two previous years appeared for trial. The Mother informed the prosecution that she was developmentally disabled. Defense counsel objected which was overruled by the trial judge. (Tr. 49-52).

There was no request for continuance. Such a failure to request a continuance waives any claim of discovery violation on appeal. *Bell v. State*, 963 So.2d 1124 (¶23)(Miss. 2007).

Further, there was no claim at trial or even now on appeal of prejudice. The trial court made an extensive ruling on how he would handle the issues as they arose including the child witness competency to testify question. There does not appear to be any further, objection or discussion as to this issue. This issue was waived and cannot now be revived.

Consequently, there being no error raised all requested relief should be denied.

III.
**DEFENDANT WAIVED ANY CHALLENGE TO THE COMPETENCY
OF THE VICTIM WITNESS WHEN HE CROSS-EXAMINED THE
WITNESS.**

At trial there was no objection to the testimony of the victim witness. Then counsel for defendant began his cross examination (Tr. 100) by ascertaining her ability to distinguish truth and telling the truth. He then carefully sought to impeach her by comparing her testimony with her previously written statement.

The law is clear:

The above examination indicates that the child knew the meaning of telling the truth. The cross-examination by appellant waived his challenge to the competency of such witness. *Jackson v. State*, 158 Miss. 524, 130 So. 729 (1930).

Rhymes v. State, 356 So.2d 1165, 1169 (Miss. 1978).

Having waived any challenge to the competency of the victim witness this issue is now procedurally barred from review.

This issue having been waived and barred no relief should be granted.

IV.
**THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION
FOR NEW TRIAL.**

In this last allegation defendant avers the trial court erred in denying the motion for new trial.

¶ 11. Wilkins made a post-trial motion for new trial, which was denied by the circuit court. ***“A motion for new trial challenges the weight of the evidence. Sheffield v. State, 749 So.2d 123, 127 (Miss.1999). A reversal is warranted only if the trial court abused its discretion in denying a motion for new trial.”***

Wilkins v. State, 2008 WL 5096062 (Miss. 2008)(emphasis added).

Looking to the evidence there was clear basically uncontradicted evidence of the elements of the offense. There was testimony as to venue, age of victim, stipulated age of defendant and the physical act. No equivocation. Oh, to be sure, there was the inevitable questions as to what transpired *after* the allegations were made. Who said what to whom and when, etc. But the elements of the offense were succinct and of substantial weight and credibility.

The trial court did not abuse his discretion in denying the motion for new trial.

Therefore, no relief should be granted on this last claim of error.

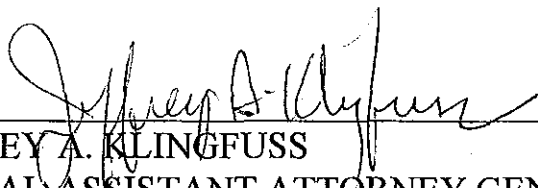
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal and exhibits the State would ask this reviewing court to affirm the verdict of the jury and sentence of the trial court.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

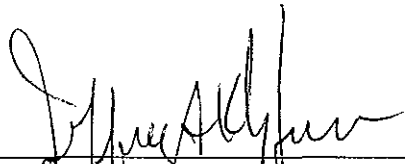
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 5th day of March, 2009.



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