IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT DUBOSE **APPELLANT**

V. **NO. 2008-KA-01170-COA**

STATE OF MISSISSIPPI **APPELLEE**

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. Robert Dubose, Appellant
3. Honorable Eddie H. Bowen, District Attorney
4. Honorable Robert G. Evans, Circuit Court Judge

This the 14 day of April, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

Benjamin A. Suber
COUNSEL FOR APPELLANT

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V. — NO. 2008-KA-01170-COA

STATE OF MISSISSIPPI — APPELLEE

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jasper County, Mississippi, and a judgment of conviction for the crimes of Count I - Sexual gratification, Count II - Sexual gratification, Count III - Sexual Gratification. Dubose was sentenced by the Court to serve a term of ten (10) years in the custody of the Department of Corrections for each count for a total of thirty (30) years, following a jury trial on February 5, 2008, Honorable Robert G, Evans, presiding. Robert Dubose is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On or about March 22, 2006, Lyrita Moffitt-Parker, received a report on alleged sexual abuse. Tr. 81. The sexual abuse involved the children of Robert and Mary Dubose. Parker was working with the Department of Human Services in Jasper County. Tr. 79-80. Upon hearing a report of alleged sexual abuse, Parker went to the school and talked with the children about the abuse. Tr. 81.

Parker, from the conversations with the children, determined that the children warranted protection and possible removal of the children from the home. Tr. 84. Parker contacted the young court judge, and the judge gave her an order to remove the children from their home. *Id.*

The next day, the Judge scheduled a shelter hearing. *Id.* At the shelter hearing it was determined that the children were to remain in the Department of Human Services custody until the allegations could be further investigated. *Id.* After the shelter hearing,

Parker scheduled appointments for the children at the South Mississippi Children's Advocacy Center (CAC) and with a pediatrician. *Id.*

The appointment with the CAC was approximately one (1) week later on March 29, 2006. *Id.* The appointment with the pediatrician was approximately a week later, April 5, 2006. *Id.* All three (3) children were taken to the CAC for a forensic interview and to the pediatrician for a medical examination. Tr. 84-85.

A court hearing with the youth court was scheduled on or about April 27, 2006, to determine if the children had been abused or neglected. Tr. 85. The court determined that the children were found to be abused, neglected. *Id.* The Department of Human Services retained custody of the children. *Id.* The court issued a no contact order on Robert Dubose to stay away from the children. *Id.* Parker then turned all of her information that she gathered as a result of the investigation over to law enforcement. *Id.*

According to the testimony of Chante Dubose, one night Robert Dubose allegedly came to her room and asked did she want to have fun. Tr. 120. Chante said no and he went back to his room. *Id.* Dubose then came back and asked Chante to take off all of her clothes, and when Chante questioned him, he said never mind. *Id.* Dubose then asked Chante to come to his room and to get up into bed. *Id.* Chante got into bed and then Dubose told her to take off her underclothes. *Id.* Dubose allegedly put his hands on her privates, and told her to put her leg on top of his leg. *Id.* Chante claimed that she was told to hold Dubose's penis. *Id.* Chante continued to state that claimed that Dubose had her

touch his private parts, penis. Tr. 121. Chante did state that Dubose only asked her to take off her clothes one time. Tr. 131.

On cross-examination Chante stated that she saw Dubose and Robert Dubose, Jr. (Anthony) in a bedroom on two (2) separate incidents. Tr. 124. Once in Dubose's bedroom and once in Anthony's bedroom. *Id.* Chante contended that she saw Anthony on top of Dubose. Tr. 127.

Chante testified that she told Lakeisha Dubose about the incident between her and Dubose. Tr. 133. She also told Lakeisha about both times she saw Dubose and Anthony. *Id.* Chante claims to have told Lakeisha everything that she had witnessed. *Id.* Chante also asserts that she told Mary Dubose about the incident between her and Dubose. Tr. 134.

Lakeisha testified that Dubose touched her breast and private parts. Tr. 139. She claimed that Dubose called her to his bedroom and she went to his bedroom. *Id.* When she got into the bedroom, Dubose touched her breast and front part of her private area. Tr. 140.

Lakeisha also alleged that she saw Dubose laying on top of Anthony in the bedroom. *Id.* However on cross-examination, when asked whether Dubose was doing anything to Anthony or did she just see Dubose on top of Anthony, LaKeisha stated that she just saw Dubose on top of Anthony. Tr. 142. Lakeisha also declared that Chante was in the room when see saw Dubose and Anthony in the bedroom. *Id.* Lakeisha further testified that Chante never told her about anything that she saw in the bedroom. Tr. 144.

Anthony Dubose[1] who was eight (8) years old at trial and six (6) years old at the alleged incident told the pediatrician that Dubose molested and abused him. Tr. 150-52. Anthony claimed that Dubose put his hands on his butt and put his private parts in his butt. Tr. 152-53. Anthony continued to state that Dubose kissed him on the lips, touched his private parts, made him put his private part in Dubose's butt, and Dubose would stick his hand in Anthony's butt. Tr. 153.

Anthony asserted that Dubose would touch Anthony's private parts with his mouth. Tr. 154. Anthony also would have to put his mouth on Dubose's private parts. *Id.* The incidents would occur in both Anthony's and Dubose's room. *Id.* Anthony, however maintained that this incident not only happened once, but on cross stated that it happened well over a hundred (100) times. Tr. 154-56.

Anthony further testified on cross that he saw Dubose feeling on Chante and put Chante's private parts in his mouth. Tr. 156. Anthony stated that he witnessed this in Chante's room by looking through the door. Tr. 157. Anthony expressed that he saw Dubose kiss Lakeisha and put his private part in her butt. *Id.* He witnessed this incident in Dubose's room by peaking through the curtain. Tr. 158.

Mary Dubose, the wife of Dubose, testified the children were adopted in 2003. Tr. 172. She strongly affirmed that she did not know of any sexual abuse. Tr. 173. She testified that Chante did not tell her that Dubose was sexually abusing her. *Id.* She continued to state that Chante did not tell her that Dubose was sexually abusing Anthony

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[1]Anthony Dubose's name is Robert Dubose, Jr. but is called Anthony.

or Lakeisha. *Id.* Mary further claimed that Lakeisha did not tell her that Dubose was sexually abusing the children and neither did Anthony. *Id.*

Mary never observed any inappropriate situations with the children and Dubose. *Id.* Mary further testified that she never left the house and Dubose and the kids were there. Tr. 179. Whenever she left, she took the kids with her. *Id.*

SUMMARY OF THE ARGUMENT

The trial court improperly denied the Appellant's motion for a new trial. Juror Michael E. Thigpen, who was juror number 8 and who sat on the jury of the trial of the Appellant, Robert Dubose, failed to disclose to the Court during voir dire that he knew Mary Dubose, Robert Dubose's wife. C.P. 195, R.E. 26. Thigpen failed to also disclose that he was related to Mary Dubose's ex-husband, Quillie McDonald. *Id.*

The questions posed to the petit jury regarding Mary Dubose and Yolander Streeter were relevant to the voir dire examination, they were unambiguous, and Thigpen had substantial knowledge of the information sought in the questions. The Appellant would further assert that he was prejudiced in selecting the jury as a result of Thigpen's failure to respond to these questions. The Appellant asks that this Court reverse and remand Dubose's conviction for a new trial.

The State also used all six (6) peremptory challenges on six (6) African American jurors. Tr. 50-57. Judges are afforded great deference in their Batson rulings, as the Mississippi Supreme Court stated in Flowers, neither prosecutors nor defense counsel should be allowed to manipulate ***Batson*** to the point where voir dire is simply an exercise

in finding race neutral reasons. ***Flowers***, 947 So.2d at 937. The prosecution clearly engaged in disparate treatment and the reasons for striking jurors were insufficient.

The verdicts were also against the overwhelming weight of the evidence. The verdicts of guilty for gratification of lust were predicated upon the testimony of the three alleged victims who testified. Other than the statements made by the three young children, no evidence was present to show that there was in fact any sexual contact between them and Dubose. The testimony of the three (3) children was unreliable and conflicting. The verdict was against the overwhelming weight of the evidence and this was reversible error. Robert Dubose is entitled to a new trial.

ARGUMENT

ISSUE NO. 1

THE TRIAL COURT ERRED IN DECLINING TO SUSTAIN APPELLANT'S MOTION FOR NEW TRIAL BASED ON THE MISCONDUCT OF A JUROR.

Juror Michael E. Thigpen, who was juror number 8 and who sat on the jury of the trial of the Appellant, Robert Dubose, failed to disclose to the Court during voir dire that he knew Mary Dubose, Robert Dubose's wife. C.P. 195, R.E. 26. Thigpen failed to also disclose that he was related to Mary Dubose's ex-husband, Quillie McDonald. *Id.* Upon information and belief, Thigpen is the cousin of Quillie McDonald, and yet he failed to disclose this information when asked if he knew Mary Dubose, Robert Dubose's wife, or was otherwise related to her or her ex-husband. C.P. 196, R.E. 27.

Furthermore, Yolander Streeter, daughter of Mary Dubose and Quillie McDonald, confronted Thigpen at the courthouse, after the voir dire of the petit jury. *Id.* Streeter asked him why he failed to disclose his relation to Quillie McDonald, to which it is believed that Thigpen simply smiled in response. *Id.*

Streeter did not disclose this information to counsel for the Appellant, and in fact refused to disclose the name of Thigpen to Mary Dubose when asked by Mary Dubose. *Id.* Streeter indicated that she did not want to get Thigpen in trouble for failing to disclose his relation to Quillie McDonald. *Id.* Mary Dubose did not recognize Thigpen as McDonald's cousin at the trial, and only learned of his identity on February 27 or 28, 2008. *Id.* Trial counsel for the Appellant was informed of these events on February 28, 2008. *Id.*

Mississippi law guarantees the right of either party in a case to probe the prejudices of prospective jurors and investigate their thoughts on matters directly related to the issues to be tried. ***West v. State***, 553 So.2d 8 (Miss. 1989). Such questions enable parties to conscientiously challenge prospective jurors for cause and provide valuable clues for the exercise of peremptory challenges. ***Harris v. State***, 532 So.2d 606 (Miss. 1988). By Thigpen failing to disclose his relation to the Appellant's wife's exhusband, the Appellant was denied the opportunity to question Thigpen about any bias or prejudice he may have against either the Appellant or the Appellant's wife. C.P. 196, R.E. 27. Therefore, the Appellant was denied a fair and impartial jury. *Id.*

The Mississippi Supreme Court in ***Odom v. State***, 355 So.2d 1381 (Miss. 1978) and ***Jones v. State***, 133 Miss. 684, 98 So. 150 (1923), "held that counsel must have latitude in searching the minds and consciences of jurors in order to be able to exercise their peremptory challenges intelligently." "Although [***Jones***] dealt with the denial of the statutory right of a defendant to question prospective jurors directly and not have to propound questions through the presiding judge, the principle announced is applicable in the case sub judice." ***Odom***, 355 So.2d at 1383. *See* ***Jones v. State***, 133 Miss. 684, 98 So. 150 (1923). "The failure of a juror to respond to a relevant, direct, and unambiguous question leaves the examining attorney uninformed and unable to ask any follow-up questions to elicit the necessary facts to intelligently reach a decision to exercise a peremptory challenge or to challenge a juror for cause." *Id.*

The Court in ***Odom*** and ***Jones***, held that "[where] a prospective juror in a criminal case fails to respond to a relevant, direct, and unambiguous question presented by defense counsel on voir dire, although having knowledge of the information sought to be elicited, the trial court should, upon motion for a new trial, determine whether the question propounded to the juror was (1) relevant to the voir dire examination; (2) whether it was unambiguous; and (3) whether the juror had substantial knowledge of the information sought to be elicited." *Id,* emphasis added. "If the trial court's determination of these inquiries is in the affirmative, the court should then determine if prejudice to the defendant in selecting the jury reasonably could be inferred from the juror's failure to respond." *Id.* "If prejudice reasonably could be inferred, then a new trial should be

ordered." *Id.* "It is, of course, a judicial question as to whether a jury is fair and impartial and the court's judgment will not be disturbed unless it appears clearly that it is wrong. *Id.*

During voir dire by the State, the prosecutor asked the entire jury panel, do any of you know Mary Dubose? Three jurors answer and none of them were juror number eight, Thigpen. Tr. 23. In addition, during voir dire by the defense, when asked whether anyone knew Yolanda Streeter, Thigpen stated that her only knew of her and was classmates with Streeter's husband. Tr. 34-35.

The Appellant would assert that the questions posed to the petit jury regarding Mary Dubose and Yolander Streeter were relevant to the voir dire examination, that they were unambiguous, and that Thigpen had substantial knowledge of the information sought in the questions. The Appellant would further assert that he was prejudiced in selecting the jury as a result of Thigpen's failure to respond to these questions.

The Appellant, Robert Dubose, moves this Court to reverse and remand his conviction on back to the trial court for a new trial.

ISSUE NO. 2

THE TRIAL COURT ERRED IN ACCEPTING THE RACE NEUTRAL REASONS GIVEN BY THE STATE AFTER A BATSON OBJECTION REGARDING SIX BLACK JURORS.

Dubose objected to the twelve (12) jurors that the prosecution tendered under ***Batson. Batson v. Kentucky***, 476 U.S. 79 (1986). Tr. 50. The State used all six (6) peremptory challenges on six (6) African American jurors. Tr. 50-57. Dubose objected because the pattern of exclusion was based on cognizable racial classification. *Id.* The

State claims that it offered race neutral reasons for its challenges and that the Appellant must show that the State used peremptory challenges on a person of race and that the circumstances give rise to an inference that the prosecutor used the peremptory changes in order to strike minorities. *Id.*

"In reviewing a claim for a ***Batson*** violation, the Mississippi Supreme Court 'will not overrule a trial court on a ***Batson*** ruling unless the record indicates that a ruling was clearly erroneous or against the weight of the evidence.'" ***Flowers v. State***, 947 So.2d 910, 917 (Miss. 2007) (citing ***Thorson v. State***, 721 So.2d 590, 593 (Miss. 1998)).

"In lodging a ***Batson*** claim, the party who objects to the peremptory strike 'must first make a prima facie showing that race was the criteria for the exercise of the peremptory strike.'" ***Flowers***, 947 So.2d at 917 (citing ***McFarland v. State***, 707 So.2d 166, 171 (Miss. 1997)). *See* ***Batson***, 476 U.S. at 96-97. A defendant can establish a prima facie case of discrimination by showing:

> (1) that he is a member of cognizable race group; (2) that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race; (3) and the facts and circumstances raised an inference that the prosecutor used his peremptory challenges for the purpose of striking minorities.

Snow v. State, 800 So.2d 472, 478 (Miss. 2001). "Once a prima facie case has been established, the party exercising the challenge has the burden to articulate a race-neutral explanation for excluding that potential juror." ***Flowers***, 947 So.2d at 917. *See* ***McFarland***, 707 So.2d at 171. "As long as discriminatory intent is not inherent in the explanation given by the prosecution, 'the reason offered will be deemed race neutral.'"

Flowers, 947 So.2d at 917. (*citing* ***Randall v. State***, 716 So.2d 584, 588 (Miss. 1998)). " After a race neutral explanation has been given, 'the trial court must determine whether the objecting party has met its burden to prove that there has been purposeful discrimination in the exercise of the peremptory,'" in other words, the reason givenwas a pretext for discrimination. ***Flowers***, 947 So.2d at 917 (*citing* ***McFarland***, 707 So.2d at 171).

The Mississippi Supreme Court identified five (5) indicia of pretext when examining race neutral explanations of a peremptory strike:

> (1) disparate treatment, that is, the presence of unchallenged jurors of the opposite race who share the characteristic given as the basis for the challenge; (2) the failure to voir dire as to the characteristic cited; . . .(3) the characteristic cited is unrelated to the facts of the case; (4) lack of record support for the stated reason; and (5) group based traits.

Lynch v. State, 877 SO.2d 1254, 1272 (Miss. 2004). "The burden remains on the opponent of the strike to show that the race neutral explanation given is merely a pretext for racial discrimination." ***Flowers***, 947 So.2d at 917. *See* ***Berry v. State***, 802 So.2d 1033, 1042 (Miss. 2001).

During the jury selection in the case at bar, a prima facie case was established, as all six (6) of the State's possible six (6) strikes were against African American jurors. After Dubose objected to the jurors that were struck, the trial court asked the State to present the race, gender, and reason for striking the juror. Tr. 50-51. The prosecution listed numerous reasons why each of the six (6) jurors were excluded:

THE COURT: Mr. King, give me race, gender, and reason for striking juror number 4, Johnny Pierce.
MR. KING: Johnny Pierce, black, male. Mr. Pierce was wanting off the panel, Your Honor. And he was not attentive when I was talking with him. And just - - when I was talking, he was looking the other way. Just his attitude and his inattentiveness, Your Honor.

.....

THE COURT: Well, the Supreme Court has said that inattentiveness is a legitimate reason. So I'll allow that strike. Number 9, Makita Jones, race, gender, and reason, please.
MR. KING: Makita Jones, number 9, black female
THE COURT: Why did you strike her
MR. KING: Because when asked a question about sexual allegations, I believe there has been sexual allegations on her husband. Since this question in my mind was not answered, that's the reason I am striking Makita Jones.

.....

THE COURT: Alright that is a race neutral reason. Gender neutral, as well. I'll allow that strike. Number 14, Robert Magee, race, gender, and reason for striking.
MR. KING: Race, black; gender, male. Mr. Magee when I was questioning showed more attentiveness to Mr. Neyland.
THE COURT: Showed more what?
MR. KING: Attention to Mr. Neyland. And besides that, the fact that he knew Yolanda and her husband, who is a defense witness.
THE COURT: Response?

.....

THE COURT: All right. I'm going to allow that, but if I find out later that - - well, it's not proper to accept a juror who know the same witness as a juror you reject, and that's the sole reason. Here Mr. King has assigned other reasons. So on the whole, I find that it's race gender neutral, and I'll allow the strike.
Number 17, Bobby Chapman, race, gender, and reason for strike.
MR. KING: Boby Chapman, a black male. Mr. Chapman, there have been several arrests in Mr. Chapman's family, and law enforcement has had problems with his family. That's the reason that - - okay, several members of the Chapman family have been arrested by the Jasper County Sheriff's Department. And this juror is known by the Sheriff because of prior run-ins with the law in the Chaoman family is the reason that I strike him.

.....

THE COURT: Well, my recollection of the case is the Supreme Court has said that arrests within the family of the prospective juror or race neutral reason, so I'm going to allow it. Number 21, Mack A. Holder, Jr. Race, Gender, reason.
MR. KING: Race, black; gender, male. The Holder family, there's been many arrests in the Holder family. The local law enforcement is aware of the Holder family and Mack Holder also. That the reason that we strike.
.....
THE COURT: That's pretty slim. The family is known by the sheriff's office doesn't say much to me. I expect the sheriff's office know every family in the county.
I'm going to allow the reason, but I going to reconsider if the verdict's adverse to you. I'll want to hear from you in depth about it. All right. Number 24, Mary Anne Barnett.
MR. KING: Your Honor, back to that one, I may not have said it right. Not only he knows that family, but he knows the family and he's made arrests of the family. I did not state that clear enough.
.....
THE COURT: Number 24, Mary Anne Barnett, race, gender, reason.
MR. KING: Race, black, female. Ms. Mary Anne Barnett, besides knowing the defendant, attends church with the defendant. And there's only two on the panel that attended church with him, and that's juror later on, number 33,
So, because she knows the defendant and attends church with him, he plays the organ at the church.

T.R. 50-58, R.E. 32-40.

When the State was giving its race neutral reasons for striking three (3) of these venire men (Juror #9, Makita Jones, Juror #17, Bobby Chapman, and Juror #21, Mack Holder), the State, through the prosecutor, stated that they or their families were known to the Sheriff or law enforcement as having criminal histories. Tr. 50-57. However, the State failed to show that any of the venire men had any criminal histories themselves, failed to show if any of them had been convicted of any crimes, failed to show if any of

them had any adverse or critical opinion of law enforcement, and failed to show how they came upon this information.

Furthermore, the State failed to show if they had asked the Sheriff of Jasper County whether he knew every member of the petit jury, or their families. Considering there was an approximate five (5) minutes time frame in which counsel was afforded the opportunity to confer with anyone, the Appellant would submit that the State's reasoning in striking these three (3) black potential jurors was a pretext, and that the State's striking of these potential jurors was discriminatory.

Although judges are afforded great deference in their ***Batson*** rulings, as the Mississippi Supreme Court state in ***Flowers***, neither prosecutors nor defense counsel should be allowed to manipulate ***Batson*** to the point where voir dire is simply an exercise in finding race neutral reasons. ***Flowers***, 947 So.2d at 937. The prosecution clearly engaged in disparate treatment and the reasons for striking jurors were insufficient.

ISSUE NO. 3

THE TRIAL COURT ERRED IN DENYING ROBERT DUBOSE'S MOTION FOR A NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

"When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." ***Bush v. State***, 895 So.2d 836, 844 (Miss. 2005)(citing ***Herring v. State***, 691 So.2d 948, 957 (Miss.1997)). In reviewing such claims, the Court

"sits as a thirteenth juror." ***Bush v. State***, 895 So.2d 836, 844 (Miss. 2005)(citing ***Amiker v. Drugs For Less, Inc.***, 796 So.2d 942, 947 (Miss.2000)(footnote omitted)).

"[T]he evidence should be weighed in the light most favorable to the verdict." ***Herring***, 691 So.2d at 957. "A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, 'unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict.'" ***Bush v. State***, 895 So.2d 836, 844 (Miss. 2005)(quoting ***McQueen v. State***, 423 So.2d 800, 803 (Miss.1982)). It means that "as the 'thirteenth juror,' the court simply disagrees with the jury's resolution of the conflicting testimony," and "the proper remedy is to grant a new trial." ***Bush v. State***, 895 So.2d 836, 844 (Miss. 2005)(quoting ***McQueen v. State***, 423 So.2d 800, 803 (Miss.1982)(footnote omitted)).

In the present case, the Appellant is at a minimum entitled to a new trial as the verdict was clearly against the overwhelming weight of the evidence. In the case *sub judice*, there was almost no evidence that Dubose sexually assault any of the children.

The verdicts of guilty for gratification of lust were predicated upon the testimony of the three alleged victims who testified. The Appellant did not testify. Deputy Reynolds offered nothing as to the substantive allegations contained in the indictment. Parker offered nothing as to the substantive allegations contained in the indictment. Dr. Tibbs opined not about gratification of lust, but about sexual assault.

It was the testimony of two of these alleged victims that they were both fondled and sexually assaulted by the Appellant. Yet, the jury found the Appellant not guilty of

sexual assault, but guilty if all three counts of gratification of lust. If the alleged victims were credible as to their allegations of fondling, then there is no reasonable basis for a jury to conclude that they were not credible as to their allegations of sexual assault. The reverse should be true. If the alleged victims were not credible as to their allegations of sexual assault, then how could a jury reasonably conclude that they were credible as to their allegations of gratification of lust? Additionally, the testimony of the alleged victims continually conflicted with each other or did not make sense. C.P. 188, R.E. 24.

Anthony, for example, claimed that this had happened over one hundred (100) times. Tr. 154-56. Yet, Chante and LaKeisha stated that this event only happened one time. Also, Anthony claimed that he saw Dubose and Chante together in Chante's room, however, Chante stated that the only incident between her and Dubose was in Dubose's room. Tr. 120, 156-57.

Lakeisha also alleged that she saw Dubose laying on top of Anthony in the bedroom. Tr. 140. However on cross-examination, when asked whether Dubose was doing anything to Anthony or did she just see Dubose on top of Anthony, LaKeisha stated that she just saw Dubose on top of Anthony. Tr. 142.

Furthermore, Lakeisha further testified that Chante never told her about anything that she saw in the bedroom. Tr. 144. However, Chante testified that she told Lakeisha everything that she had witnessed. Tr. 133. Also, Mary Dubose strongly affirmed that she did not know of any sexual abuse. Tr. 173. She testified that Chante did not tell her that Dubose was sexually abusing her. *Id.*

The testimony of the three (3) children, who are very young, was unreliable and conflicting. The verdict was against the overwhelming weight of the evidence. Robert Dubose therefore respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial.

CONCLUSION

Robert Dubose entitled to have his convictions of sexual gratification reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Robert Dubose, Appellant

BY: _____

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MISSISSIPPI BAR NO. [redacted]

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Robert Dubose, 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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Honorable Eddie H. Bowen
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This the 14 day of April, 2009.

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