

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**WILLIE LEWIS HODGES, JR.**

**APPELLANT**

**VS.**

**NO. 2008-KA-1346-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**PROCEDURAL HISTORY:**

On June 5, 2008, Willie Lewis Hodges, Jr., "Hodges," was tried for statutory rape of a female child under fourteen years of age before a Webster County Circuit Court jury, the Honorable Joseph Loper, Jr. presiding. R. 1. Hodges was found guilty by a jury of his peers. R. 200. He was sentenced to serve a life sentence in the custody of the Mississippi Department of Corrections. R. 201. Hodges filed a motion for a new trial which was denied. C.P. 34-36.

From that denial of relief, Hodges filed notice of appeal to the Mississippi Supreme Court. C.P. 54.

**ISSUES ON APPEAL**

**I.**

**WAS HODGES PREJUDICED BY TESTIMONY ABOUT  
OTHER WRONGS HE ALLEGEDLY COMMITTED  
AGAINST THE CHILD VICTIM?**

**II.**

**WAS THERE CREDIBLE, SUBSTANTIAL EVIDENCE IN  
SUPPORT OF HODGES' CONVICTION?**

## STATEMENT OF FACTS

On May 2008, Hodges was indicted for “statutory rape” of Ms. Melinda Mulky, “M.M.”, a female child under the age of fourteen, on or about January 1 through April 10, 2006. C.P. 1. This was under M. C. A. § 97-3-65(1)(b).

On June 5, 2008, Hodges was tried for statutory rape of a female under fourteen years of age before a Webster County Circuit Court jury, the Honorable Joseph Loper, Jr. presiding. R. 1. Hodges was represented by Ms. Glenda Burton Horne. R. 1.

Dr. Tim Whittle, an expert in obstetrics and gynecology, testified that he examined M M. This was in August, 2007. M.M. was having pain in her lower abdomen. After an examination, and a CAT scan, an infection was found. It was due to an abscess in one of her fallopian tubes. Dr. Whittle removed the mass by surgery. This infection was the result of a “sexually transmitted disease.” M M. tested positive for chlamydia. R. 105.

On a second occasion, another abscess was found requiring additional surgery. This was one of the most severe cases of sexual infection Dr. Whittle had ever encountered. This was in eighteen years of medical practice. Because the disease was not discovered early in its progression, M M lost her fallopian tubes as well as her ovaries. She lost her reproductive capacity as a result.

This infection was treatable in its early stages by using Cipro. Men who have venereal diseases such as chlamydia have no symptoms other than a penile discharge. R. 103-104.

On redirect, Dr. Whittle testified that if a man had chlamydia and took Cipro, it would clear it up. If tested after taking Cipro, the results would be negative for chlamydia. R. 108.

M. M. testified that she lived with her mother and her step-father, Hodges. One night while sleeping in her bed, she was sexually assaulted by Hodges. He took off her pants, and held his hand over her mouth. He then put his penis “inside” her vagina. M.M. testified that Hodges would kill

her if she revealed what he had done. R. 113.

On cross examination, M. M. was asked why she left her mother's home with Hodges. She had gone to live with her father. She was also asked about why she "wanted" to leave. She testified without objection that "because they were beating me and stuff. And we didn't hardly eat or take baths or nothing." R. 119.

She was asked if she "wanted to find some reason to move in with her dad?" On redirect, M M. testified that the reason she went to live with her father had nothing to do with the statutory rape charge. R. 121. She was placed with her father after an examination by the Department of Human Services.

Ms. Christina Mulkey, M.M.'s step mother, testified that after learning that M M.'s infection was from sexual contact, she questioned her. She asked her about what had happened to her. She told her of being raped by Hodges. She told her that this occurred after her mother had passed out from drinking and taking prescription drugs. R. 125.

At the conclusion of the prosecution's case in chief, the trial court denied a motion for a directed verdict. R. 145.

Mr. Hodges testified in his own behalf. R. 146-160. Hodges testified initially that he had never had a sexually transmitted disease. R. 151. However, he admitted that he took Cipro which his wife needed for a sexually transmitted disease. R. 152.

He denied having physically abused or raped M.M. He testified that he believed that "she was coached into" making the allegations against him. R. 156. He claimed the allegations began after she went to live with her father. He did not know why the bruises, cuts and whelps shown in the photographs 2-9 could have occurred when M M was living in his house. He believed it was the result of her playing with other kids. See photographic evidence 2-9 marked for identification. They

are contained in the manila envelop marked "exhibits."

M.M.'s grandmother, Ms. Helen Mulkey, testified that the pictures showing the bruises and cuts were taken when M.M. was living with Hodges. M.M. was visiting with her grandmother on a weekend when she saw these cuts, whelps and bruises. R. 178.

When the prosecution moved to have the pictures introduced into evidence, the trial court found that they could be marked for identification but would not go to the jury. R. 157; 180. Issues related to alleged physical abuse were separate from the rape charge for which Hodges was being tried.

At the conclusion of Hodges' defense, he renewed his motion for a directed verdict. It was general renewal and not specific as to any evidentiary issue. R. 181.

Hodges was found guilty by a jury of his peers. R. 200. He was sentenced to serve a life sentence in the custody of the Mississippi Department of Corrections. R. 201. Hodges filed a motion for a new trial which was denied. C.P. 34-36.

From that denial of relief, Hodges filed notice of appeal to the Mississippi Supreme Court. C.P. 54.



## SUMMARY OF THE ARGUMENT

1. The record reflects that this issue was waived. It was waived for failure to object to testimony about alleged child abuse against the victim in this case. R. 119-121; 157; 162-164; 173; 177-179.. **Spicer v. State**, 921 So.2d 292, 305 (¶22) (Miss. 2006). See also M. R. E. 103 (a) (1).

In addition, the record reflects that this testimony was “opened up” by Hodges’ questions on cross examination. **Hobson v. State**, 730 So. 2d 20, 24-25 (Miss. 1998). Hodges and his witnesses defense was that M.M. was not being truthful. R. 146-176. Their testimony indicated that they thought she was being “coached” by her father to make accusations. The photographs showing physical abuse corroborated M. M. ’s testimony of being “beaten” by Hodges. R. 119.

This testimony was “opened up” by Hodges insinuations on cross examinations. The photographs corroborated both M M. and the grandmother who testified to having “seen” the results of physical abuse. R. 130-131. It also contradicted Hodges and his wives denials of any abuse or any wrong doing toward M.M. while in their home. R. 148.

2. There was credible, substantial corroborated evidence in support of Hodges’ conviction.

The record reflects that Hodges testified in his own behalf. R. 146-162. He also made a general renewal of his motion for a directed verdict. R. 181. Therefore, he waived the sufficiency of the evidence. R. 145; 181. **Foster v. State** 928 So.2d 873, 881 (¶ 18) (Miss. App. 2005).

In addition, there was credible, substantial evidence in support of Hodge’s conviction. This is on grounds of the weight of the evidence.

M.M. identified Hodges as the person with whom she had forced sex. R. 110-111. She was cross examined. R. 119-121. Dr. Whittle testified that M.M. had more than one operation. She had “a full hysterectomy.” R.101. Ms. Donna Patterson, a surgical nurse, testified that M.M. identified someone referred to as “Little Willie” as the person who had sexually assaulted her. R. 139.

The hysterectomy was the result of an infection in M.M.'s fallopian tubes, and her ovaries. This infection was the result of "a sexually transmitted disease." R.100. M M. tested positive for chlamydia. R. 105. Hodges testified that he had been proscribed Cipro for an infection. R. 153. Cipro is used for treating chlamydia or gonorrhea, both sexually transmitted diseases. R. 104.

Ms. Mary Hodges, the wife of the defendant, testified that she had a sexually transmitted disease. R. 167. She claimed that she did not receive it from Hodges. R. 167. She testified that the charges against Hodges was the result of a conspiracy between M M and her father. R. 164-166.

On a motion for a new trial, the state is entitled to reasonable inferences in support of the verdict, rather than the appellant. The uncorroborated testimony of a sex crime victim is sufficient for supporting a conviction on appeal. **Scott v. State** 728 So.2d 584, 586 (§ 17) (Miss. App.1998). M.M.'s identification testimony was corroborated by her step-mother, her grandmother and an examining nurse. R.125, 128, 139. Her testimony was also consistent with the medical testimony from Dr. Whittle and examining nurse Ms. Donna Patterson. R. 141.

## ARGUMENT

### PROPOSITION I

**THIS ISSUE WAS WAIVED FOR FAILURE TO OBJECT.  
THE RECORD REFLECTS THIS ISSUE WAS OPENED UP ON  
CROSS EXAMINATION FROM HODGES.**

Hodges believes that the trial court erred in admitting into evidence testimony about other crimes or wrongs that he allegedly committed. The jury were told of alleged physical abuse of M. M. and her siblings. The jury was also shown photographs showing the alleged effects of the physical abuse of M.M. . These actions prejudiced him before the jury and made his defense to the statutory rape charge more difficult. He believes that these other wrongs were introduced by the prosecution solely to inflame their passions and “for no other reason.” Therefore he opines this denied him a fair trial. Appellant’s brief page 6-11.

To the contrary, the record reflects that there was no objection to testimony about other alleged wrongs. R. 119-121; 157; 162-164; 173; 177-179. See M R E 103 (a)(1). The record reflects that an objection to the introduction of the photographs came from the trial court. He objected to the photographs of alleged abuse because they related to possible separate charges. R. 179-180. Consequently, while the photographs were mentioned before the jury, they were not introduced into evidence. R. 180.

In **Spicer v. State**, 921 So.2d 292, 305 (¶22) (Miss. 2006), the Court found that failure to make a specific “contemporaneous objection” waived an issue on appeal. An objection on one ground waives issues on all other grounds on appeal.

Because Spicer did not object to testimony giving evidence of his fleeing from law enforcement officials, he is procedurally barred from appealing the issue. Failure to make a contemporaneous objection waives an issue for purposes of appeal. **Williams v. State**, 684 So. 2d 1179, 1203 (Miss. 1996) (contemporaneous objection rule is applicable in death penalty cases). Spicer claims that he made an objection: however,

it is clear that the objection which he made merely challenged Sergeant Whites testimony on the basis that the events to which he was testifying were beyond the res gestae of the charged crime. An objection at trial on one or more specific grounds constitutes a waiver of all other grounds. **Doss v. State**, 709 So.2d 369, 379 (Miss.1996).

In the trial court's order denying a motion for a new trial or a JNOV, the court pointed out that there was no objection from Hodges. This would be an objection about alleged physical child abuse and negligence in caring for the child victim in the instant cause.

**At no time during the course of the trial did the defendant ever object to any testimony concerning child abuse or the photographs of the child abuse. In fact, the only objection that was interposed was by this court, when it refused to allow the introduction of the photographs into evidence.** A defendant can not sit mute and allow testimony to be offered at trial that he finds objectionable . then complain about the evidence after he is convicted, and argue that he is entitled to a new trial. Pursuant to M. R.E. 103(a), the defendant is barred from raising any objection to the allegations and purported photographs of child abuse. See **Lester v. State**, 692 So. 2d 755 (Miss 1997);...C.P. 39. (Emphasis by appellee).

In addition to being waived, the record reflects that testimony about child abuse came on cross examination of M.M. M.M. had already identified Hodges as the person who had raped her before the jury. R. 110-113.

On cross examination, M.M. was questioned about why she wanted to live with her father. R. 119. The implication being she did not care for her step-father, the defendant. She was also question about who had encouraged her "to lie." R. 120.

Q. Did you want to go live with him?(her father)

A. Yes.

Q, Why?

A. **Because they were beating me and stuff. And we didn't hardly eat or take baths or nothing.** R. 119.

...

Q. **Has anyone asked you to lie?**

A. No, **ma'am**. R. 120. (Emphasis by appellee).

On redirect, M. M. testified that going to live with her father had “nothing to do with” the alleged rape. It was because the chancery court found that she and her brothers were being beaten with belts and switches. They were also “feeding (her) food off the floor.” R. 121.

In the other instances where testimony about alleged other wrongs were mentioned in testimony, it is important to see them in context. They came after the trial court had denied a motion for a directed verdict. R. 144-145.

Mr. Hodges testified in his own behalf. R. 146-162. In his testimony on direct he denied that he had ever “whooped” or abused M.M. R. 148. He denied having raped her. R. 146. He admitted the Department of Human Services had investigated his home for child abuse but denied that he or his wife had abused anyone.

On cross examination, Hodges was questioned about whether M.M. and brother had ever been seen bruised and beaten up while they lived with him. R. 157. He was also questioned about what kind of venereal disease he had. R. 151-152. He denied having chlamydia or gonorrhea, but instead claimed he took Cipro allegedly for “trichomonis” which his wife had. R. 152.

The other references to child abuse came during testimony from defense witnesses on behalf of Hodges. Mary Hodges, Hodges’ wife testified that neither she nor Hodges had ever beaten or abused M.M. or her brother. R. 173. She also testified that she believed M.M. had not been truthful in claiming that Hodges abused and raped her. She admitted that she had a sexually transmitted disease but claimed that she did not receive it from Hodges. R. 167. She reluctantly admitted she received it from a sexual partner other than Hodges.

Ms. Mary Hodges also admitted that she took Valium and Xanax “for her nerves.” R. 165.

**Q. And you had this sexually transmitted disease in March of 2006?**

**A. Uh-hum.**

**Q. Did you get that from Willie?**

**A. No, sir.** R. 167. (Emphasis by appellee).

She believed the M.M. was “scared to come forward” and tell “who really done this to her.”  
R. 165.

Ms. Deborah Herrod, Hodges’ mother, testified that M.M. “was coached” into making allegations against Hodges.

**Q. You think the kids was coached to say that they was being abused over there?**

**A. Yes.** (Emphasis by appellee). R. 174. (Emphasis by appellee).

The prosecution showed Mary Hodges photographs showing cuts, whelps, and bruises on M.M. and her brother. R. 174. She was questioned how this could have occurred. In other words, if, as she testified M.M. had been “coached,” and there was no abuse of any kind from Hodges, then how did M.M. received the cuts and bruises shown in the photographs?

In rebuttal, the prosecution presented testimony from Ms. Helen Mulkey. R. 177-181. This was M.M.’s grandmother.

She testified that she took the photographs. The photographs were taken on April 7, 2006. The children living with Hodges at the time. M.M. had not yet moved to her father’s home. The grandmother took them after seeing red marks, whelps, bruises and broken skin on M.M. and her brother, Benjamin. Photographic exhibit 2 shows a permanent scar from an alleged coat hanger on M.M.’s arm.

There was no objection to testimony about the photographs or their use in cross examination of Hodges and his witnesses. R. 177-179. See photographs 2-9 marked for identification in manila envelop.

In **Hobson v. State**, 730 So. 2d 20, 24-25 (Miss. 1998), the Court stated that an appellant can not complain of evidence which he brought out at trial.

It is true that a party cannot open the door to admission of hearsay evidence. **Murphy v. State**, 453 So. 2d 1290, 1293-94 (Miss. 1984). However, in this case, the defendant elicited the hearsay himself. 'It is axiomatic that a defendant cannot complain on appeal concerning evidence that he himself brought out at trial...As the stated pithily in **Reddix v. State**, 381 So. 2d 999, 1009 (Miss.), cert. denied, 449 U.S. 986, 101 S. Ct. 408, 66 L. Ed 2d 252(1980): 'If the defendant goes fishing in the state's waters, he must take such fish as he catches.' **Fleming v. State**, 604 2d. 280, 289 (Miss. 1992) (internal citations omitted)(holding that defendant waived error of admission of hearsay testimony when he elicited it himself. We find no error resulting from the admission of Officer Winstead's testimony in this case.

The appellee would submit that the record cited above indicates that this issue was waived for failure to make "a contemporaneous objection." In addition it was lacking in merit because it was brought out in response to questions by Hodges' counsel as well as by the testimony of Hodges, his wife and mother about alleged "coaching."

This clearly distinguishes the instant cause from **Eubanks v. State**, 419 So. 2d 1330, 1331 (Miss 1982), relied upon by Hodges' appeal counsel. In that case, there were contemporaneous objections and a motion for a mistrial. Testimony about the circumstances surrounding the arrest of Eubanks was not brought out in response to cross examination of state witnesses.

We are of the opinion Farlow's testimony concerning the warrant for reckless driving on state property, possession of alcoholic beverages on state property, failing to yield to a blue light and resisting arrest, was admissible to prove Farlow was acting within his authority to arrest Eubanks. However, it was error for the trial court to allow Farlow and Shoemake to testify as to the details of the incident at Lake Perry on June 21, 1980. There was no connection between the facts surrounding that incident and the charge of simple assault for which Eubanks was tried.

The record reflects that Hodges defense was to suggest a motive for M. M. to lie. R. 146-176. That motive was based upon the custody dispute. This resulted in M M leaving her mother and

Hodges' home for that of her father and step-mother.

On direct examination Hodges testified that he did not rape or abuse M. M.. R. 146-148. He also testified that the charge against him for rape only came after charges were made against his wife and M. M.'s mother in connection with alleged child abuse.

**Q. So these allegations weren't made until a custody action was filed against your wife?**

**A. Yeah. It was made in 2008, the first I have heard of it, of these allegations.**  
R. 149. (Emphasis by appellee).

The photographs corroborated M.M.'s testimony on cross examination about being "beaten" by Hodges. R. 119. They corroborated the testimony of M.M.'s grandmother who testified to "seeing" the cuts, whelps and marks on M. M. and her siblings. This was observed when she took the photographs. R. 130-131. She also contradicted Hodges by testifying that the photographs were taken when M. M. was living with Hodges and her mother. Hodges testified that he never touched much less beat or raped M. M.. R. 148.

Hodges' defense was to deny the charges and to accuse M.M. of lying for ulterior motives. R. 146-162. This was based upon the child custody dispute which occurred close in time to the bringing of an indictment against Hodges for statutory rape.

The appellee would submit that this issue was not only waived. It was waived for failure to make a contemporaneous objection. R. 119-121; 157; 162-164; 173; 177-179. It was also lacking in merit.



## **PROPOSITION II**

### **THE SUFFICIENCY OF THE EVIDENCE WAS WAIVED. AND THERE WAS CREDIBLE, SUBSTANTIAL CORROBORATED EVIDENCE IN SUPPORT OF HODGE'S CONVICTION.**

Hodges believes that the trial court erred in denying his motion for a new trial. He believes there was no evidence against him other than the testimony of M.M. The testimony from others to whom M.M. revealed her story was all based on what M.M. told them. M.M.'s own mother did not believe her. And there was no evidence that Hodges ever had the same kind of sexual infection that M.M. received through sexual contact. Hodges thinks this cast doubt on his conviction. Appellant's brief page 11-13.

To the contrary, the record reflects that after the trial court denied his motion for a directed verdict, Hodges chose to testify in his own behalf. R. 146-162. When he renewed his motion on the sufficiency of the evidence, it was general and not specific as to any evidentiary issue. R. 181.

In **Foster v. State** 928 So.2d 873, 881 (¶ 18) (Miss. App. 2005), the court pointed out that even if an appellant renews his motion for a directed verdict, he must do so with some "specificity" or the issue is waived. The record reflects that Hodges' renewal of his motion was general and not specific. R. 181.

¶ 18. Foster's motions for directed verdict stated that the prosecution failed to "prove their case beyond a reasonable doubt" and "failed by competent evidence to prove all the element's required of them as charged in the indictment." Foster's motion was too general to support appellate review. While Foster did elaborate on the specific element during his objection to the jury instruction, when the trial judge gave Foster an opportunity to renew his motion for directed verdict, Foster did not argue that point. "In the absence of such specificity, the trial court will not be put in error for overruling same." **Davis**, 866 So.2d at (¶ 21).

Without conceding that this issue was waived, the appellee would submit that the record contains credible, substantial corroborated evidence in support of Hodges' conviction on grounds

of the weight of the evidence.

M.M. testified that she was twelve years old at the time of trial. R. 109. The record indicates that M.M. identified Hodges as the person who forced her to have sex. R. 110-111. She was not married to him. R. 120. Hodges also threatened “to kill my family.” R. 114. She was still scared of him at the time of trial. R. 118.

Q. When you say Little Willie, who are you talking about?

A. (The witness points.)

Q. The defendant?

A. Uh-huh.

**Howie: I would ask the record to reflect that she has pointed out the defendant as who she is calling Little Willie.**

**Court: Let it so reflect.** R. 110-111. (Emphasis by appellee).

M.M. testified that Hodges, who she knew as “Little Willie,” came into her bed room. R. 110. She testified that he “took my pants off...” then he “stuck his penis in my vagina.” When he did this, he covered her mouth with his hand. R. 113. Hodges told her if she told what happened, he would “kill my family.” R. 114. M.M. testified that she was afraid to expose him for what he did to her. She was still afraid of Hodges at the time of trial. R. 118.

After learning from her physician that her infection was the result of sexually contact, she told what had happened. She testified that she told her “step-mom and my grandmother and Miss. Donna.” R. 118. She told them what Hodges had done to her. This sexual assault occurred while she was living in the same house with her mother, Ms. Mary Hodges and Hodges, aka “Little Willie.”

Unfortunately, it was necessary for M.M. to have “a full hysterectomy.” R. 101.

She lost her fallopian tubes as a result of this serious infection. Dr. Tim Whittle testified to having

treated her for a serious infection. It was an infection which was sexually transmitted. R. 100.

Ms. M. M. testified before the jury about how she was sexually assaulted. It occurred when she was sleeping in her bed. Her mother had passed out. She did so from taking both alcohol and drugs. This was when Hodges sexually forced himself upon her. She was alone in her bed. He held his hand over her mouth when he assaulted her. He took off her clothes. He entered her vagina with his penis. He also threatened "to kill" her if she should expose him.

Q. Okay, Melinda, go ahead. Just tell us what--

A. I was laying in my bed one night, and my mother had took all kinds of medicines and drunk whiskey and passed out. **And he came in my room and took my pants off and stuff, and then stuck his penis in my vagina. He covered my, covered my mouth, and when he got done, he if you tell anyone, that I will kill your whole family.** R. 112-113. (Emphasis by appellee).

...

Q. Why didn't you tell anybody right after that what happened?

A. **Because he said he will kill my family.** R. 114. (Emphasis by appellee).

The record reflects that M. M. consistently identified Hodges as the person who raped her. Dr. Whittle's testimony along with Christina Mulkey, her step mother, Helen Mulkey, her grandmother, and Ms. Donna Patterson, an examining nurse, corroborated M. M. as to identity. They testified that Hodges was consistently identified as the person who forced M.M. to submit to painful sexual relations. R. 125, 128, 139.

Ms. Christina Mulkey, M. M.'s step mother, testified that M.M. told her that Hodges had raped her. This was when her own mother had passed out. Hodges raped her in her own bed.

Q. ...How did y'all start talking about, you know, for it to come up to her telling you about what happened to her?

A. And that's when she told me that her mom had took some medications, gotten sick, well, passed out with whiskey and all. **And she was in the bedroom by herself, and Willie Hodges came in there, put his hand over her mouth and**

**raped her.** R. 125. (Emphasis by appellee).

Ms. Donna Patterson, a surgical nurse, testified that M.M. identified Willie Hodges, aka “Little Willie” as the person who molested her. R. 139. Patterson did not know or even heard Hodges’ name at the time of this revelation to her.

**Q. Ms. Patterson, you don’t know Willie Hodges or Little Willie, do you?**

**A. I have never met him or heard his name before the time Melinda mentioned him.**

**Q. Okay, and you are just testifying to what Melinda told you?**

**A. Yes.** R. 139. (Emphasis by appellee).

In **Jones v. State** 606 So.2d 1051, 1056 (Miss.,1992), the Court pointed out that the hearsay exception for medical diagnosis had been expanded to include the identity of the perpetrator. This is particularly true where the perpetrator is a member of a child victim’s household.

The record reflects that the trial court denied a motion for a directed verdict. R. 144. Hodges then testified in his own behalf. R. 146-160. He also presented Mary Hodges, his wife, and Deborah Herrod , his mother, as witnesses on his behalf. R. 162-176. 176. Hodges therefore waived complaining about the sufficiency of the evidence. The only issue would be issues concerning the weight of the evidence.

The record reflects that Hodges initially denied ever having a sexually transmitted disease. R. 150.

**Q. You have never had a sexually transmitted disease?**

**A. No, sir.** R. 151. (Emphasis by appellee).

On cross examination, Hodges reluctantly admitted that took the same medication his wife took for a sexually transmitted disease, allegedly trichonomis or “trichomonas.” R. 151. He admitted

that he took Ciproflaxin. R. 152.

**Q. But you just, I guess they just assumed you had it because your wife had it?**

**A. I guess I had to take it because if she had it.** R. 151. (Emphasis by appellee).

Mr. Willie Hodges admitted that he was given a medical prescription for a sexually transmitted disease. This was the same antibiotic used to treat sexually transmitted disease which M.M. was confirmed by scientific test to have. R. 105.

**Q. So if the evidence said on 10/17 of '06, Dr. Booth prescribed to you Ciproflaxin, would that be correct?**

**A. I guess so. Yeah.**

**Q. And you heard the doctor say that that is something that is prescribed for chlamydia or gonorrhea?**

**A. Yes, sir.** R. 153. (Emphasis by appellee).

Hodges admitted that he was living with M.M. and her mother. However, he denied having abused her. R. 146-148. Hodges testified that the accusations against him came only after M.M. was living with her father and step-mother, Ms. Christina Mulkey. R. 149.

He believed this was evidence of a conspiracy against him by M. M. and others. R. 156. Hodges denied having hit M.M. or her brother. R. 148. He thought the cuts and bruises shown on the children in the photographs came from them playing with other kids.

Ms. Helen Mulkey testified that the photographs showing cuts, welts and bruises on M.M. and her brother were taken while they were still living in the home with her mother and Hodges. She took them while they were with her for a week end visit. R. 178

Ms. Mary Hodges also claimed to have never abused M.M. or her siblings. R. 162. She reluctantly admitted that she had a sexually transmitted disease, R. 167. She reluctantly admitted that she got it from having sex with someone other than Hodges. She said she did not

receive it from Hodges.

The record reflects that the trial court denied a motion for a JNOV or a new trial. C.P. 37-40. The trial court found that there was sufficient evidence presented through M.M., Dr. Whittle, and other witnesses including Ms. Donna Patterson, an examining nurse, for denying the motion.

At trial, Melinda Mulkey, the child rape victim, testified that Willie Lewis Hodges, Jr. raped her... Additionally, this court heard testimony from Christina Mulkey, Melinda's grandmother, Helen Mulkey, Melinda's step-mother, and Donna Cooper Patterson, a registered nurse, each of whom testified that Melinda had advised them that she had been raped by Willie Lewis Hodges, Jr.

**This court finds that there was ample evidence presented at trial to show that the defendant was guilty of the crime of statutory rape. The jury's verdict was certainly not against the overwhelming weight of the evidence. Consequently, this court finds that Hodges is not entitled to a new trial or a judgment notwithstanding the verdict on this issue. C.P. 37-38. (Emphasis by appellee).**

In *Scott v. State* 728 So.2d 584, 586 (¶ 17) (Miss. App.1998), the appeals court relied upon *McKinney v. State*, *infra*, for finding that the uncorroborated testimony of a sex crime victim is sufficient for supporting a conviction.

¶ 17. Scott asserts the evidence is insufficient to support his conviction because P.P.'s testimony was the only testimony that a rape occurred. Our case law clearly holds the unsupported word of the victim of a sex crime is sufficient to support a guilty verdict where that testimony is not discredited or contradicted by other credible evidence. "It is well settled in this State that a conviction of rape may be upheld with the uncorroborated testimony of the victim." *McKinney v. State*, 521 So.2d 898, 899 (Miss.1988). Scott's argument as to P.P.'s testimony being uncorroborated, and therefore insubstantial to support his conviction, is clearly without merit.

In *Groseclose v. State*, 440 So. 2d 297, 301 (Miss. 1983), the Court stated that any conflicts in the evidence created by testimony from defense witnesses was to be resolved by the jury. What the jury believes and who the jury believes as to what piece of evidence presented is solely for their determination. As stated:

Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting

testimony into finding of fact sufficient to support the verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution. **Shannon v. State**, 321 So. 2d 1 (Miss. 1975) 373 So. 2d at 1045.

In **Jones v. State** , 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that a motion challenging the weight of the evidence was in the trial court's discretion. However, it should be denied except to prevent "an unconscionable injustice."

Our scope of review is well established regarding challenges to the weight of the evidence issue. Procedurally, such challenges contend that defendant's motion for new trial should have been granted. Miss. Unif. Crim. R. of Cir. Ct. Prac. 5.16. The decision to grant a new trial rests in the sound discretion of the trial court, and the motion should not be granted except to prevent "an unconscionable injustice." **Wetz v. State**, 503 So. 2d 803, 812 (Miss. 1987). We must consider all the evidence, not just that supporting the case for the prosecution, in the light most consistent with the verdict." **Jackson v. State** , 580 So. 2d 1217, 1219 (Miss. 1991), and then reverse only on the basis of abuse of discretion.

The record cited above indicates , as found by the trial court, that M. M. identified Hodges as the person who raped her. R. 110-111. She was less than twelve years old at the time of the rape, and not married to him.

M.M.'s testimony was corroborated by the testimony of Dr. Whittle. This gynecologist testified M.M.'s female infections was sexually transmitted. R. 100. That M M tested positive for chlamydia. R. 105. M. M. was corroborated by her step mother, grand mother and an examining nurse, Ms. Patterson. R. 125,128, 139. They testified that she told them about the circumstances under which Hodges had raped her. This was more than sufficient corroboration of M M to support Hodges conviction.

The fact that Hodges denied having raped M.M. and there was no proof as the actual type of venereal infection Hodges had contracted merely created a conflict in the evidence. The record

reflects that his wife admitted she had a sexually transmitted disease. R. 167. Hodges admitted that he took Cipro which is taken for a sexually transmitted disease. R. 152.

The jury was responsible for resolving these factual and credibility issues in their deliberations. The appellee would submit that there was no “unconscionable injustice” involved in denying Hodges’ motion for a new trial.

This issue is also lacking in merit.



CONCLUSION

The trial court's denial of relief for a new trial should be affirmed. Hodges' conviction for statutory rape of M.M. should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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 ~~28th~~ day of January, 2009.



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