IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ARTIS F. POWER — APPELLANT

VS. — NO. 2008-KA-1663

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO[redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ARTIS F. POWER **APPELLANT**

vs. **CAUSE No. 2008-KA-01663-COA**

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 Choctaw County, Mississippi in which the Appellant was convicted and sentenced for his felony of **STATUTORY RAPE**.

STATEMENT OF FACTS

The victim in this case, a girl of fifteen at the time of trial[1], testified that she was thirteen years of age in late December, 2006 and January of 2007. In November, the Appellant asked the victim's parents if the victim could go hunting with him. The victim's mother was against the idea, but her father permitted her to do so. The victim went with the Appellant, and while they were sitting in a deer stand the Appellant began rubbing her stomach. The victim asked the Appellant to stop rubbing her stomach. The Appellant complied.

At Christmas of 2006, the victim babysat for the Appellant. At some point while

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[1] We will follow the practice of the appellate courts of this State in not using the name of a victim of a sex crime in our briefs. *E.g. Nix v. State*, 8 So.3rd 141, 143 fn 1 (Miss. 2009). The child was thirteen years of age when the acts she testified to were committed against her. (R. Vol. 3, pg. 134).

babysitting for the Appellant, the Appellant took the victim into a field owned by one Bill Blalack. Blalack drove up and spoke to the Appellant for a time and then left. While the victim was sitting in the Appellant's truck, the Appellant got out of the truck, went to her side of the truck and "stuck his private in [her]." After the Appellant did that, he took the victim to Bo Brooks' deer stand and "done it like a couple more times." The Appellant then took the child home. These acts occurred in December of 2006. The victim was thirteen years of age at the time; the Appellant was thirty four years of age.

On 18 February 2007, the day the victim turned fourteen years of age, the Appellant "had sex" with the victim on a couch inside his house. The victim spent the previous evening at the Appellant's home because her parents had taken one of her siblings to a hospital. At about half past six on the morning of 18 February, the Appellant's wife was called away. It was then that the Appellant took the opportunity to violate the child.

In March of 2007, the Appellant took the victim and her brothers "to go four-wheeler driving." The Appellant took the victim down a trail and performed cunnilingus upon her, penetrating her vagina with his tongue.

The victim later told one Allison Pittman that the Appellant had engage in sexual relations with her. (R. Vol. 3, pp. 130 - 147).

Mr. Billy Blalack testified that he saw the Appellant and the victim sitting in a truck on Blalack's property at Christmastime in 2006. Blalack spoke to the Appellant for perhaps fifteen or twenty minutes. The Appellant came onto Blalack's property often, the Appellant having been an avid hunter. (R. Vol. 3, 120 - 125).

Mrs. Allison Pittman, who was married to the victim's stepbrother, testified that the victim told her in early 2007 that the Appellant and she "had done something." The victim

further told her that she had not wanted to do it but that the Appellant "done it anyways." Pittman stated that she could see that something was wrong with the victim when the victim told her that. Pittman related this to her husband. (R. Vol. 3, pp. 125 - 128).

The victim's mother testified that her husband and the Appellant had been friends for number of years. The victim babysat for the Appellant's children occasionally, spending the night at the Appellant's home. Sometimes, but not always, one or more of the victim's siblings went with the victim. On one occasion, when one of her sons was hospitalized, the victim and her other siblings stayed with the Appellant. During the Christmas season of 2006, the victim babysat for the Appellant, spending the night at the Appellant's residence. She believed that the victim babysat for the Appellant on the night before her fourteenth birthday.

In the Spring of 2007, the victim exhibited moodiness, more than would be expected of a normal adolescent female. (R. Vol. 3, pp. 107 - 119).

The defense presented a case - in - chief. The first witness for the defense was the Appellant's wife, one Mary Power. She stated that her husband injured himself in June of 2006 while he was at work. The Appellant was put on a number of medications in consequence of his injury and was unable to work. She also stated that the medications had rendered him impotent. This state of affairs lasted about seven months. At the time of the injury, the victim and her siblings started coming to the Appellant's home. They stayed overnight two or three times. Mrs. Power did not recall that they stayed overnight during the Christmas break.

Mrs. Power stated that she lost her job in October of 2006 and was unemployed until 14 February 2007, when she began working at a convenience store in Starkville. She stayed at home with her husband during the time she was unemployed. On February 1th, her shift was from ten in the morning until three in the afternoon. Later, on the 17th, she began working from three in

the afternoon until eleven at night.

Mrs. Power testified that the victim spent the night at the Power's residence on the night before the victim's birthday. However, a number of people also spent the night there, including Mrs. Power.

Mrs. Power further testified that the Appellant took her to Starkville at a little past two in the afternoon. She returned to her home at a quarter to twelve that night. The victim and her siblings and the Power's children were present, as was the Appellant. The children went to bed at about a quarter past midnight; Mrs. Power said she did not go to bed until half past four. Even when she went to bed, it took her some thirty to forty-five minutes to go sleep. According to Mrs. Power, the Appellant never left their waterbed. She would have known it if he had because he would have had to crawl over her to leave the waterbed. So far as Mrs. Power knew, the Appellant was never alone with the victim that night.

Mrs. Power was of the opinion that her husband was not guilty of the charges exhibited against him. She then stated that one James Power was living with them from February 2007 through April of that year. The victim did not spend the night with them in March of that year

Mrs. Power stated that the Appellant greatly enjoyed hunting. Mrs. Power knew that the Appellant took the victim to a deer stand behind Mrs. Power's father's house and to a deer stand on Bo Brook's property. She did not recall the visit to Bill Blalack's property.

Mrs. Power testified that the Appellant wakened at six o'clock each morning. She further testified that she slept until ten o'clock on the morning of 18 February. When asked how she could have known what her husband was doing between six o'clock and ten o'clock, she stated that somebody by the name of Michael Haney was at her house. She then stated that her children got up when her husband arose.

The Appellant made no complaint about impotency until October, 2007, some months after he had been charged in the case at bar. (R. Vol. 4, pp. 153 - 183).

James Power then testified. The Appellant is his uncle. James Power moved in with the Appellant and his wife on 19 February 2007 and lived with them until 10 April 2007. During that period of time, according to James Power, the Appellant was not out of his sight for more than fifteen minutes at a time. James Power never saw the victim at the Appellant's house during that period of time. James Power could not say what the Appellant might have been doing in December of 2006 or on 18 February of 2007. (R. Vol. 4, pp. 184 - 190).

Michael Shane Hainey came to visit the Appellant every other weekend to hunt, fish, and ride four - wheelers. At Christmas, 2006, he was visiting the Appellant. He stayed with the Appellant over the Christmas holidays until early January, 2007, except for Christmas Eve, when he went to see his mamma. The victim was at the Appellant's house before Christmas, but not afterwards. The victim was there to babysit the Appellant's children. Over the hunting season, though, Hainey saw the victim at the Appellant's house some three to five times.

The victim spent the night at the Appellant's house one time during that period, Hainey thinking it having been in November or December. The victim's siblings were not with her on that occasion.

Hainey testified that he slept on a couch when visiting the Appellant. However, after he got married he slept in the children's room when they were not there. (R. Vol. 4, pp. 190 - 201).

Linda Power, the Appellant's brother - in - law, testified. She and her husband, who was the Appellant's brother, and their children visited the Appellant from 16 February through 18 February. They did not spend the night during that period, though. The witness went on to describe the activities of the children and the times they were present in the Appellant's house.

We do not consider it important to relate all that here. She did testify neither she nor her family was at the Appellant's house at six o'clock on the morning of 18 February 2007, and that she could not state what, if anything happened at the Appellant's residence at that time. (R. Vol. 4, 201 - 209).

A Betty Ann Pittman was then called to testify, who was a sister - in - law to the victim. Pittman testified that she had occasion to be at the victim's home in the Spring of 2007. Law enforcement officers were present as well, talking to the victim's parents. The victim was not with her parents but was sitting inside the house with Pittman. Pittman thought the victim seemed very happy. Pittman thought the victim was very happy about the fact that she had had sex with the Appellant had come to light. The victim wanted to know who knew of it. (R. Vol. 4, pp. 210 - 214).

The Appellant was convicted of count one of the indictment and acquitted of counts two and three. (R. Vol. 4, pp. 276 - 277).

STATEMENT OF ISSUES

1. WAS IT NECESSARY THAT THE VICTIM'S TESTIMONY BE CORROBORATED?

2. SHOULD THE TRIAL COURT HAVE GRANTED A DIRECTED VERDICT IN LIGHT OF THE PROVISIONS OF MISS. CODE ANN. SECTION 97-3-69 (REV. 2006)?

3. DID THE TRIAL COURT ERR IN ADMITTING AN OUT - OF - COURT STATEMENT MADE BY THE VICTIM SOME MONTHS AFTER THE RAPE?

SUMMARY OF ARGUMENT

1. THAT THERE WAS NO REQUIREMENT THAT THE VICTIM'S TESTIMONY BE CORROBORATED; THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO GRANT A DIRECTED VERDICT, MISS. CODE ANN. SECTION 97-3-69 (REV. 2006) HAVING NO APPLICATION IN THE CASE AT BAR

> In the trial of all cases *under the last preceding section*, it shall be presumed that the female was previously of chaste character, and the burden shall be upon the defendant to show that she was not; but no person shall be convicted upon the uncorroborated testimony of the injured female. (Emphasis added).

This statute first appeared in the 1914 code and was carried forward in the subsequent codes of the State.

Currently, "the last preceding section" is Miss. Code Ann. Section 97-3-68 (Rev. 2006). That statute, enacted by the legislature in 1977, Miss. Laws, 1977, Ch. 438, Section 1, prescribes the procedure to be availed of in rape cases where the sexual conduct of the complaining witness is offered in order to attack her credibility. It is doubtful, though, that the legislature intended the "last preceding section" language to refer to Section 97-3-68. Section 97-3-68 defines no crime, only a procedure to be followed in certain circumstances, and Section 97-3-69 long predated the existence of Section 97-3-68.

The "last preceding section" reference in Section 97-3-69 was a reference to Miss. Code Ann. Section 97-3-67 (Supp. 1997), a statute which was repealed in 1998. Miss. Laws, 1998, Ch. 549, Section 6. Section 97-3-67 was as follows:

> Any person who shall have carnal knowledge of any unmarried person of previously chaste character younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, upon conviction shall be punished either by a fine not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail not longer than six (6) months, or by both such fine and imprisonment or by imprisonment in the penitentiary not exceeding five (5) years; and such punishment, within said limitation, shall be fixed by the jury trying each case, or by the court upon entry of a plea of guilty.

That Section 97-3-67 was the "last preceding section" referred to in Section 97-3-69 is demonstrated by the fact in the 1942 code Section 97-3-69 was codified at Section 2360 while

Section 97-3-67 was codified at Section 2359; that in the 1930 code, Section 97-3-69 was codified at Section 1124 and Section 97-3-67 codified at 1123; and that in Hemingway's 1917 code what became Section 97-3-67 was the statute that immediately preceded what is now Section 97-3-69. The "last preceding section" language referred to and could only have referred to Section 97-3-67.

As we have said, Section 97-3-67 was repealed in 1998. Miss. Code Ann. Section 97-3-65 (Supp. 2008) was the statute upon which the case at bar was based. However, it does not "immediately precede" Section 97-3-69, and Section 97-3-69 has no application to it, by the very words of Section 97-3-69. Neither Section 97-3-69 nor its precursors have ever applied to Section 97-3-65 or its precursors.

The Mississippi Supreme Court has held that the unsubstantiated and uncorroborated testimony of a victim of statutory rape is sufficient to support a verdict of guilty where that testimony is not discredited or contradicted by other credible evidence. *Parramore v. State*, 5 So.3rd 1074, 1077 - 1078 (Miss. 2009); *Price v. State*, 898 So.2d 641, 651 (Miss. 2005). This Honorable Court has held that "[t]otally uncorroborated testimony of a victim is sufficient to support a guilty verdict where the testimony is not discredited or contradicted by other evidence." *Farrish v. State*, 920 So.2d 1066, 1068 (Miss. Ct. App. 2006). While it may be that the Courts in those decisions (and those decisions are not the only ones reported setting out this principle of law) did not specifically address Section 97-3-69 with respect to the sufficiency of the uncorroborated testimony of a victim, those decisions must surely be seen as having recognized that Section 97-3-69 has no application to prosecutions involving Section 97-3-65. We have found no decision applying Section 97-3-69 to a prosecution under Section 97-3-65. Indeed, the

last reported decision we have found in which a failure to comply with Section 97-3-69 worked a reversal of a conviction was one involving a prosecution under Section 97-3-67. *Howard v. State*, 417 So.2d 932 (Miss. 1982). Given the appellate courts' decisions in this regard and the fact that the statute to which Section 97-3-69 related has been repealed, nothing in Section 97-3-69 applies to a prosecution under Section 97-3-65.

B. That the testimony of the victim was sufficient to permit the jury to determine the case

The Appellant, in an attempt to demonstrate that there is a requirement of corroboration, at least in an instance in which there is evidence said to be in conflict with a victim's testimony, embarks upon a lengthy attempt to categorize the decisions of the appellate courts. One must certainly must admire the effort made, yet it is perhaps a matter of missing the tree for the forest. And the attempt does not take into account the fact that the uncorroborated testimony of a statutory rape victim is sufficient upon which to base a conviction.

The Appellant begins with an allegation that testimony to the effect that the accused was impotent is testimony sufficient to contradict a victim's testimony, citing *Upton v. State*, 192 Miss. 339, 6 So.2d 129 (1942). (Brief for the Appellant, at 8). *Upton*, though, involved a prosecution for forcible rape. While it is true that there was testimony by the defense to the effect that the accused in that case was impotent, it was not that testimony alone that caused the Mississippi Supreme Court to order a new trial. The Court did so because: (1) lack of marks of violence on the person of the victim; (2) two "highly improbable accompaniments of such conduct"; (3) the victim's conduct subsequent to the alleged rape, which appeared to suggest that she was not conscious that a wrong had been committed against her; and (4) conduct on the part of the accused, which suggested that he was not aware that he had wronged the victim.

In addition to the fact that the Court did not in *Upton* hold that testimony concerning impotence was sufficient to require corroboration of the victim's testimony, the Court specifically held that a rape victim's testimony does not require corroboration. *Upton* is a forcible rape case, does not stand for the proposition that a rape victim's testimony must be corroborated, and does not stand for the proposition that testimony concerning impotency on the part of the accused is sufficient to contradict the victim's testimony so as to set into place a requirement of corroboration of the victim's testimony. The Appellant presents no decision, and we have found no decision, to demonstrate that a claim of impotency is of itself sufficient to amount to a contradiction of a victim's testimony.

The testimony by the Appellant's wife in this regard did not contradict the victim's account. That testimony suggested, albeit weakly, that the Appellant was not capable of sexual intercourse, but it was not testimony that directly contradicted the victim's testimony.

The Appellant then tells this Honorable Court that not only is there a requirement of corroboration but that such corroboration "must be, not of the incidental details, but of the commission of the prohibited act", citing *Howard v. State*, 417 So.2d 932 (Miss. 1982) and *Yancey v. State*, 202 Miss. 662, 32 So.2d 151 (1947) and earlier decisions. (Brief for the Appellant, at 8; 13 - 14). These decisions, however, were based upon Section 97-3-67 or, in the *Yancey* decision, a statute making it a criminal act to have carnal knowledge of a girl under the age of twelve. Again, whatever those decisions may have held, *Parramore, supra*, and a number of other decisions as well demonstrate that there is not a requirement of corroboration now.

The Appellant then embarks upon a lengthy discussion of decisions in an attempt to show what has been found sufficient or insufficient to corroborate a victim's testimony. It is not

surprising to find that many different factual situations have been considered in this regard. But the fact that the State will introduce evidence to corroborate a victim's testimony, where that evidence is available, does not require the conclusion that the State is required to do so under current law.

Whatever may have been the law in the past, when Section 97-3-67 was a part of the Mississippi Code, it is not the law now that there must be corroboration "of the commission of the prohibited act." The Mississippi Supreme Court has this year restated the rule now extant:

> An individual may be found guilty of rape on the uncorroborated testimony of the prosecuting witness, where the testimony is not discredited or contradicted by other credible evidence. *Withers v. State,* 907 So.2d 342, 353 (Miss.2005) (persons accused of statutory rape "may be found guilty on the uncorroborated testimony of a single witness.") (citation omitted); *Killingsworth v. State,* 374 So.2d 221, 223 (Miss.1979) ("[w]hile it is true that a conviction for rape may rest on the uncorroborated testimony of the person raped, that testimony should always be scrutinized with caution."); *Dubose v. State,* 320 So.2d 773, 774 (Miss.1975) ("the testimony of the victim of a rape may be sufficient to support a guilty verdict where the victim's testimony is neither contradicted nor discredited by other evidence or by surrounding circumstances."); *Blade v. State,* 240 Miss. 183, 188, 126 So.2d 278, 280 (1961) (the testimony of the prosecutrix in a rape case "does not need corroboration ....").

Parramore v. State, 5 So.3rd 1074, 1077 - 1078 (Miss. 2009); *See also Woods v. State*, 973 So.2d 1022, 1031 (Miss. Ct. App. 2008).

We now turn to the facts and reasonable inferences therefrom in support of conviction under Count 1 of the indictment (R. Vol. 1, pg. 20).

The victim testified that the Appellant took her to Blalack's field in December of 2006. While in Blalack's field, the Appellant inserted his penis into her vagina. The Appellant then took the victim to Brook's deer stand, where he repeated that act. (R. Vol. 3, pp. 133 - 134). Blalack testified that he saw the Appellant and the victim on his property in the Appellant's truck. (R. Vol. 3, pp. 120 - 124). The victim told her sister - in - law in early 2007 that the

Appellant and the victim had done something but that the victim had not wanted to do it. (R. Vol. 3, pg. 126). The victim's mother noticed that the victim was moody in early 2007. (R. Vol. 3, pg. 111). The Appellant's wife testified that she knew that the Appellant took the victim to Brooks' deer stand. (R. Vol. 4, pg. 175).

The victim's testimony was not discredited. It was corroborated to some extent by Blalack and the Appellant's wife. The question then, simply, is whether the Appellant's wife's testimony concerning the Appellant's alleged impotence was sufficient to contradict the victim's testimony, or whether that testimony was simply a matter for the jury to consider.

The Appellant did not testify as to his alleged impotency. His wife did so testify, yet she also stated that the problem arose at the end of July in 2006 and that the Appellant did not supposedly seek medical assistance for his alleged impotency until after he was arrested in April of 2007. (R. Vol. 4, 177 - 179). This testimony did not contradict the victim's testimony. It merely suggested that the Appellant might not have been able to perform sexually. This suggestion of impotency was simply a matter for the jury to consider. *Sheely v. State*, 836 So.2d 798, 803 (Miss. Ct. App. 2002)(Claim of impotence, complaint for which was not made until after arrest of defendant for a sex crime against a child, did not serve to impeach or discredit testimony of the child). Even had there been testimony from the defense denying that the act or acts of sexual intercourse ever occurred, the most that could be said as to the effect of such testimony would be that it was a matter for the jury to consider while considering the weight and credibility of the evidence. *Price v. State*, 898 So.2d 641, 651 - 652 (Miss. 2005).

The First and Second Assignments of Error are without merit.

2. THAT THE THIRD ASSIGNMENT OF ERROR IS NOT BEFORE THE COURT; THAT THE TRIAL COURT DID NOT ERR IN ADMITTING THE VICTIM'S PRIOR CONSISTENT STATEMENT

In the Appellant's Third Assignment of Error, the Appellant asserts that the trial court erred in admitting hearsay testimony from the victim. It is said that the victim was permitted to testify to a statement she made to her sister - in - law about what the Appellant had done to her.

Toward the conclusion of the direct examination of the victim, the prosecutor asked the victim whether she had told anyone "about all this." The victim replied that she told her sister - in - law. The defense objected on grounds of hearsay; the trial court overruled the objection, stating that the question put to the witness did not call for an answer that would be hearsay. The prosecutor then asked the victim who her sister - in - law was, and then asked the victim what she had told her sister - in - law. There was no objection to the latter question, and the victim responded that she told her sister - in - law that the Appellant had had sex with her. The victim went on to testify, again without objection by the defense, that her sister - in - law told her husband about what the victim told her. It is unclear when the victim told her sister - in - law about what the Appellant had done beyond that it was in early 2007. (R. Vol. 3, pp. 138 - 139).

Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. M.R.E. 801(c). The answer given by the victim to the question that was objected to was not hearsay. It was a simple statement of fact – a statement that she had made a statement to her sister - in - law. She did not, by way of contrast, relate what she said to her sister - in - law in that answer, only the fact that she said something to the sister - in law. Testimony as to the fact that a statement was made is not hearsay. As to the rest of the testimony, which possibly included hearsay statements,

there was no objection to that testimony as it was given. Consequently, the Appellant may not be heard to complain of those answers. *Jordan v. State*, 995 So.2d 94, 112 (Miss. 2008).

In addition to those considerations, we will point out that, prior to the testimony of the victim, the sister - in - law testified, without objection, that the victim ". . . said that her and [Appellant] had done something. And she told him "no, that she did not want to do it, but he done it anyways." (R. Vol. 3, pg. 126). In view of this testimony, error, if any, in admitting the victim's testimony as to the fact that she made a statement to her sister - in - law was not prejudicial to the Appellant. *Harris v. State*, 970 So.2d 151, 155 (Miss. 2007). The substance of what the victim told the sister - in - law was already in evidence by the time the victim testified that she had made a statement to her sister - in - law.

The prosecutor did not advance a ground for admission, and the trial court, having no objection before it, had no reason to explain a basis for admission. While the Appellant relies upon *Leatherwood v. State*, 548 So.2d 389 (Miss. 1989) in his effort to demonstrate error in the admission of the victim's testimony, there was a proper and contemporaneous objection in *Leatherwood* which preserved the point on appeal. There was, as we have said, none here.

Nonetheless, we note that, beginning with the opening statement for the defense, it was the theory of the defense that it was impossible for the Appellant to have committed the acts comprising the felonies charged against him, that there was a conflict between the victim's family and the Appellant, and that the victim was simply caught up in a "vendetta." (R. Vol. 3, pp. 100 - 102). As such, the claim made by the defense amounted either to a claim of recent fabrication or improper motive or influence. The prior consistent statement was thus admissible

under M.R.E. 801(d)(1)(B). *Barnett v. State*, 757 So.2d 323, 330 (Miss. Ct. App. 2000).[3]

In the event, however, that this Court should find that there were proper contemporaneous objections, and that admission of such testimony was erroneous, we submit that any such error was harmless. This case was not one of a victim's word against an accused's word. The victim's testimony was corroborated in part. The Appellant did not give testimony. *Veasley v. State*, 735 So.2d 432 (Miss. 1999), cited by the Appellant, was a case in which there was only the testimony of the accuser and the accused. The testimony by the victim's sister - in - law did not likely significantly contribute to the verdict of the jury. The statement she testified to told the jurors nothing more than what the victim told them. Any error in the admission of the testimony was harmless.

The Third Assignment of Error is without merit.

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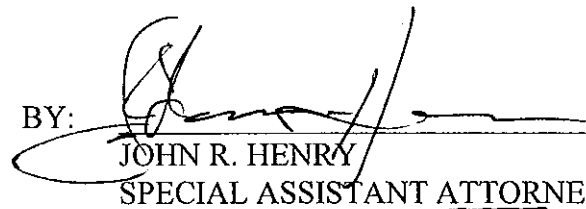
[3] The Appellant suggests that the only potential bases for admission of this testimony were under the "tender years" exception or the "excited utterance" exception or the "then existing state of mind exception', all found in M.R.E. 803. He then goes on to attempt a demonstration of why those exceptions should not have been applicable at trial. Because there was no proper objection, the prosecutor's reasoning as to admissibility of the statement is not of record. Nor that of the trial court. However, we will hazard a guess that the prosecutor (we hope) would not have relied upon the excited utterance exception state of mind exception. Whether the testimony would have been admissible under the tender years exception or perhaps the exception set out in 803(24) is not possible to determine here since there was no objection and consequent attempt to establish admissibility under those exceptions.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO[redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

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:

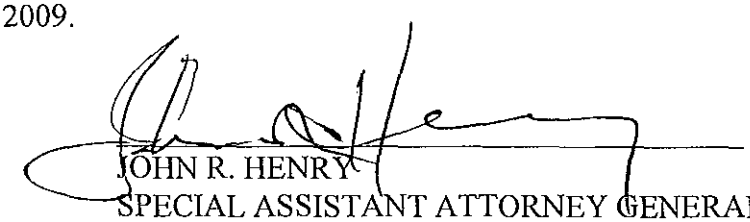
Honorable Joseph H. Loper, Jr.
Circuit Court Judge
P. O. Box 616
Ackerman, MS 39735

Honorable Doug Evans
District Attorney
P. O. Box 1262
Grenada, MS 38902-1262

T. H. Freeland, IV, Esquire
Attorney At Law
Freeland & Freeland
P. O. Box 269
Oxford, MS 38655

Billie Jo White, Esquire
Attorney At Law
White Law Firm, P.A.
100 Maxwell Street
Starkville, MS 39759

This the 6th day of October, 2009.



JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680