

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

**JACK MOORE**

**APPELLANT**

**VS.**

**NO. 2009-KA-0998**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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

**JACK MOORE**

**APPELLANT**

**VERSUS**

**NO. 2009-KA-0998-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

**Procedural History**

Jack Moore was convicted in the Circuit Court of Tishomingo County on two counts of sexual battery and was sentenced to two terms of imprisonment of 28 years, to be served concurrently. (C.P.155-57) Aggrieved by the judgment rendered against him, Moore has perfected an appeal to this Court.

**Substantive Facts**

R.W. testified that she was the mother of three children: a daughter, P.M.P., 17, the victim in this case; and two sons, J.M. and S.M., 15 and 14 respectively. She and their father, the defendant, had divorced in April 2003. The defendant had visitation with the children every other weekend. (T.205-06)

When the prosecutor asked, "What type of child was [P.M.P.] growing up?" R.W. answered, "She was very outgoing. She ... wanted to do the best at everything. She ... made good grades." Late in 2003, however, the child's behavior changed. "She became withdrawn and distant, depressed, different type of friends. She completely quit— she didn't do anything at school at all." (T.206-07)

R.W. first learned of the allegations against her former husband in February 2006. She immediately "reported it to DHS and the sheriff's department." She also "got ... counseling" for her daughter. The day she "found out," R.W. confronted Moore by telephone. According to her, "He told me that he was sorry. He cried and he was very emotional and I was too." (T.207-08)

Between that time and 2007, P.M.P.'s behavior deteriorated further. She "continued to go downward," became angry and remained depressed. Finally, she "tried to commit suicide" by taking an overdose of an over-the-counter remedy for menstrual cramps. She was then placed in a "behavioral health center for adolescents." (T.209)

P.M.P. was 17 years old, married and four months pregnant at the time of trial. She testified that after her parents' divorce in 2003, she and her brothers routinely visited their father on weekends. According to her, "Whenever I would go to bed at night he would come in my room and touch me ... [i]n my private areas." More specifically, she testified that he used his finger to touch her "[i]nside." While she stated that these offenses occurred "[e]very time" she "went over there," she was able to remember two precise dates: May 10, 2003, which was Mother's Day, while her mother was on her honeymoon with her second husband; and December 19,

2003, when she broke her leg while riding a dirt bike at her father's house. When these crimes were committed, she was 11 and 12 years old, respectively. (T.221-28)

P.M.P. went on to corroborate her mother's testimony about her ensuing mental, emotional and academic decline. She testified that in February 2006, she finally told her mother about the abuse. From that point on, she "didn't go over there" to visit her father. (T.228-33, 237) In a letter dated September 19, 2006, her father wrote to her as follows:

Dear [P.M.P.], I hope you can read my sloppy handwriting. I hadn't got to talk to you in awhile, thought I'd write and tell you my phone number in case you might want to talk a little. Just maybe tell me how you're doing, maybe some talk. I love you and really miss you. Please give me another chance to be a better dad. My phone number, in case you get a chance call me. Love you dad. P.S. I hope you're liking TC [Tishomingo Count High School], it's a whole new experience. Holler at me if you want to. I miss you.

(T.235)

During Easter weekend, 2009, P.M.P. and her husband went to pick up her brother, S.M., from the defendant's house. P.M.P. summarized what her father told her as follows: "He told me that no matter what happens he knows that he messed up and that he loves me." (T.238-39)

Detective Donald Kirk, II, of the Tishomingo County Sheriff's Department testified that after he received the complaint, he and Detective Greg Mitchell spoke with the defendant in one of the offices of the department. (T.174-75) In Detective Kirk's words,

I advised him what the case was about, what the allegations were, and asked him if he wished to speak to us at that time and he was adamant he wanted to. I

read him his Miranda rights, he waived those rights and wished to speak with us at that time.

(T.176)<sup>1</sup>

Detective Kirk wrote the statement as the defendant dictated it. When it was complete, Detective Kirk "read it to him, ... made sure he understood it, and then ... handed it to him so he could read it himself." The defendant then signed the statement. (T.182-83) That statement as read to the jury is set out below:

I know I did things that here inappropriate with my daughter ... after my divorce ... I was in a deep depression and got with the wrong crowd and started popping pills, smoking methamphetamine and pot and drinking all the time. During this bad time in my life I did things that I could not control, things that weren't my fault. Sometimes [P.M.P.] would come into my room wearing a tank top, cotton panties and a pair of sweat pant shorts. While we're laying in bed I would rub her little pussy with my hand and fingers. Sometimes I slipped my finger a little inside her pussy, but not, underlined, but not every time. Sometimes she rolled over to make me stop, but other times she would stop. I always, underlined, stopped when she asked me to and I never saw or heard her crying about it. I don't remember every time it happened, but I know it happened during the following dates:

December of 2003 before Christmas, May of 2003 around Mother's Day, and October 2004 around [P.M.P.'s] birthday, and July 2004 around [J.M.'s] birthday, November of 2005 close to Thanksgiving, and at Jessie's house in June of 2005.

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<sup>1</sup>Detective Kirk testified that no promises or threats were utilized to obtain the statement, and that the defendant knowingly and voluntarily waived his rights. The defendant was "[I]ucid, calm, he wanted to talk about it." (T.178-80)

My daughter has never lied about things like this. She is a good girl and I am sorry that I'm making her go through all this. I hope that she can get counseling from DHS or the State to help her get past what I did to her.

(T.184-85)

The defendant testified at trial that he had never touched his daughter inappropriately. He also denied having made the statement. He testified that he did not sign the statement as such; rather, he signed a blank sheet of paper after the detectives threatened to keep him in the office "all night" if he refused. (T.256-588) He went on to testify that P.M.P. stopped visiting him "around the time" that he disciplined her for being disrespectful of him. He explained that the letter he wrote to her was meant to be an apology for his having "whooped her butt." (T.261)

In rebuttal, the state called Detective Mitchell, who corroborated Detective Kirk's testimony. (T.310-21)

### **SUMMARY OF THE ARGUMENT**

The state contends the verdict is not contrary to the overwhelming weight of the evidence. The state presented substantial proof that the defendant was guilty of sexual battery. The defendant's testimony to the contrary simply created a straight issue of fact which was properly resolved by the jury.

### **PROPOSITION:**

### **THE VERDICT IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE**

The sole issue proposition presented on this appeal is that the verdict is contrary to the overwhelming weight of the evidence. To prevail, Moore must satisfy the following formidable standard of review:



The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is also well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Collins v. State*, 757 So.2d 335, 337(¶ 5) (Miss. Ct. App. 2000) (quoting *Dudley v. State*, 719 So.2d 180, 182(¶ 9) (Miss.1998)). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Collins*, 757 So.2d at 337(¶ 5) (citing *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992)). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Collins*, 757 So.2d at 337(¶ 5) (quoting *Dudley*, 719 So.2d at 182).

*Carle v. State*, 864 So.2d 993, 998 (Miss. App. 2004).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial credible evidence of Moore's guilt of sexual battery. First, the victim testified unequivocally

that the defendant penetrated her sexually with his finger.<sup>2</sup> Moreover, the state presented proof that the defendant confessed to these crimes.<sup>3</sup> Moore's subsequent disavowal of that confession merely created "a question of fact to be resolved by the jury." *Cheatham v. State*, 12 So.3d 598, 602 (Miss. App. 2009) ("it was entirely within the prerogative of the jury to determine the weight and credibility to be assigned" to appellant's "voluntary confession"). Likewise, Moore's denials and his challenges to the credibility of the state's witnesses generated jury questions. Finally, contrary to Moore's suggestion, the state was not required to introduce physical evidence of these crimes. *Parramore v. State*, 53 So.3d 1074, 1079 (Miss. App. 2009), citing *Walker v. State*, 878 So.2d 913, 916 (Miss. 2004).

No basis exists for disturbing the jury's determination that Moore was guilty of sexual battery. Essentially, Moore has presented a jury argument which should be denied.

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<sup>2</sup>The dramatic decline in the victim's behavior and mental state tended to corroborate the fact that the abuse occurred.

<sup>3</sup>He also told his ex-wife that he was "sorry" and asked his daughter for a chance to be "a better dad." He also told her later that he realized that he had "messed up." Again, the defendant's attempted explanations for these statements created factual issues to be resolved by the jury.

### **CONCLUSION**

The state respectfully submits the argument presented by Moore is without merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

  
BY: DEIRDRE McCRORY  
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**CERTIFICATE OF SERVICE**

I, Deirdre McCrory, 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 4th day of March, 2010.

  
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