

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACK MOORE

APPELLANT

V.

NO. 2009-KA-0998-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

On Direct Appeal from the Circuit Court of Tishomingo County, Mississippi

MISSISSIPPI OFFICE OF INDIGENT APPEALS
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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.

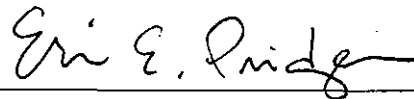
1. State of Mississippi
2. Jack Moore, Appellant
3. Honorable John R. Young, District Attorney
4. Honorable James Seth Andrew Pounds, Circuit Court Judge

This the 16th day of November, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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STATEMENT OF THE ISSUES

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Tishomingo County, Mississippi, where a jury convicted Jack Moore of two counts of sexual battery. The Honorable James Seth Andrew Pounds, Circuit Court Judge, presided over the trial.

Prior to trial, Moore's attorney filed a motion to suppress Moore's alleged statement to the police, in which Moore purportedly confessed to the alleged offenses. Moore's attorney argued that Moore did not voluntarily waive his constitutional rights to remain silent. His attorney further argued that, based on the coercive tactics of the police officers, Moore unwillingly signed a blank statement and that the police officers filled in the incriminating confession at a later time. The court held a suppression hearing regarding the statement and denied Moore's request to exclude the statement from evidence.

Moore's attorney also filed a pre-trial motion to quash the indictment in this case. According to the defense, the indictment improperly stated the age of both Moore and the alleged victim. Moore's attorney argued that the ages of the defendant and alleged victim were essential elements of the charge and the indictment could not be amended outside the presence of the jury. The trial court found that the amendments were of form and not substantive. The trial court denied Moore's motion to quash the indictment and granted the State's motion to amend the indictment.

At the conclusion of the trial, the jury rendered guilty verdicts as to both counts. As to Count I, the court sentenced Moore to serve twenty-eight (28) years in the custody of the Mississippi Department of Corrections, day-for-day, without the possibility of parole. At the end of this sentence, Moore will be placed on five years post-conviction release supervision. Moore was also assessed court costs and fines and would be required to register as a sex offender upon release from prison.

As to Count II, the court sentenced Moore to serve twenty-eight (28) years, to be served concurrent to the sentence imposed in Count I. Moore was ordered to serve this sentence day-for-day as well.

Moore is currently in the custody of the Mississippi Department of Corrections. The trial court denied his motion for JNOV or, in the alternative, motion for a new trial and Moore timely files this appeal.

STATEMENT OF THE FACTS

Jack David Moore, Jr, (Jack) was a struggling, divorced father of two boys - Steven and Jacob Moore, and one girl - Patricia Moore (Pounders¹). Following Jack's 2003 divorce from his

¹At the time of trial, Patricia had married Justin Pounders.

wife, Regina Wade, he attempted to maintain a consistent relationship with his children. Regina was awarded physical custody of the children, but Jack exercised liberal visitation rights.

Jack was not a perfect father. His divorce and subsequent job loss left him depressed and frequently relying on alcohol and illegal substances to cope with the pain. Despite this fact, Jack continued to support his children financially and exercised his visitation rights with his children every other weekend and on arranged holidays.

At the time of their divorce, Patricia (Trish), Jack and Regina's eldest child, began to display extreme behavior problems. Once a straight-A student and well-behaved child, Trish started hanging with different friends, exhibiting intense mood-swings, and even attempted suicide. Trish's behavior led her to spend time in juvenile detention facilities, as well as being admitted into several treatment facilities.

Jack attributed Trish's extreme behavior to her mother's lack of discipline. According to Jack, Regina would allow Trish to leave the house with boys, often several nights at a time, and she would smoke illegal drugs with her daughter. Tr. 262. On one of Trish's visits to Jack's house, he attempted to discipline Trish by holding her against a gas tank and spanking her. Tr. 261. Shortly after this punishment, Trish stopped visiting her father. Against his better judgment, but acting on the advice of his ex-wife, Jack did not reach out to Trish. Instead, he decided to allow her to initiate the communication between them. In September 2006, Jack wrote his daughter a letter and attempted to reach out to her. R.E. 26.

Regina and Trish testified at trial that there was a different reason for Trish's extreme behavior change that began in 2003. According to Regina, Trish informed her in February 2006 that Jack had been molesting her during her visits to his house. Trish claimed that the abuse only happened during the time between her parents' divorce in 2003 until 2006. Trish said the incidents

always happened at nighttime in a house full of relatives. Trish said the abuse occurred every time she visited her father, however, she was able to pinpoint two specific instances of abuse. She recalled the dates of May 10, 2003 and December 19, 2003. Trish was eleven years old in May 2003 and had turned twelve years old by December 2003.

Regina testified that she reported these allegations to the Department of Human Service (DHS) and the Tishomingo County Sheriff's Department. Her daughter also received counseling. DHS interviewed Regina and Trish but it is unclear what actions that sheriff's department took at that time.

In 2007, Trish attempted suicide by overdosing on over-the-counter drug medication. Regina once again informed the sheriff's department and only then did it resume the investigation. Regina also informed Jack of the incident and he was emotionally upset. According to Regina, Jack apologized for what he did to his daughter. Jack, however, acknowledged that he was very upset over his daughter's attempted suicide. He denied ever apologizing to Regina because of any sexual abuse.

Following Regina's contact, the sheriff's department resumed its investigation and on January 29, 2008, Detectives Donald Kirk, III and Detective Greg Mitchell picked Jack up from his parents' house for questioning. The detectives did not take Jack to the sheriff's department, instead they questioned Jack at an old furniture building formerly known as the Wild Rose².

According to Jack, the officers would not tell him about the nature of the interrogation until after he signed the Miranda Rights acknowledgment form and waiver of rights. According to Det.

²The County Board of Supervisors allowed the sheriff's department to use the Wild Rose manufacturing building as an office space for the Narcotics Division and as a space to contact interviews and debriefings.

Kirk, Jack began to confess to the alleged abuses of his daughter about halfway through the interrogation. Det. Kirk wrote out Jack's confession and had Jack sign the statement once he was finished. Det. Kirk and Det. Mitchell then signed the statement as witnesses.

Jack, however, maintained that when he signed the statement form, the page was blank and that he never signed a page with his alleged confession. Jack said he instructed the police to take him home mid-way through the interrogation and the police informed him that he would not be able to leave until the confession was given. Jack then told the police to write whatever they wanted on the form so he could go home. The police complied and wrote his "confession" after he left. According to Jack, he never saw his statement until the time of his arraignment.

SUMMARY OF THE CASE

Jack Moore was not a perfect parent, but he is not a child molester. In 2006, Regina Ward, Jack's ex-wife, contacted police and told them that Jack had molested the couple's daughter. Jack was not interviewed regarding these allegations until January 2008. It was during this meeting that Jack "confessed" to the allegations. There were no video or audio recordings of the interrogation and the police admit that Jack's "statement" was really transcribed by one of the interrogating officers. There was no neutral, third party present to transcribe the statement and the daughter, not Jack provided the key details of the statement.

The overwhelming weight of the evidence shows that Jack's guilty verdict is based on weak and tenuous evidence and, for this reason, the trial court should have granted Jack's motion for a new trial.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

i. Standard of Review

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

ii. Moore's conviction was based on extremely weak and tenuous evidence.

a. The Source of the Complaint

Jack's ex-wife, Regina Ward, testified that she first informed the sheriff's office about her daughter's allegations in February 2006. According to Trish, the alleged abuse occurred from the time that her parents divorced in 2003 until the time she reported the abuse to her mother in 2006. Trish said the abuse always happened at night and the abuse occurred every time she visited her father. What is peculiar, however, is that Trish did not report being at the house alone with her

father during these alleged abuses. Jack exercised visitation with all three of his children so Trish would not have been at the house alone with her father during these overnight stays. In fact, Trish admitted that in December 2003, she was asleep in the room with her father's girlfriend's two daughters at the time the alleged abuse occurred. In both of Trish's accounts, she mentioned no less than four or five people present in the home at the time of the abuse. If this abuse occurred every time she visited with her father, well over a three-year period, one would imagine that someone would have seen, heard, or noticed something out of the ordinary inside the home.

b. The Investigation

The Sheriff Department's investigation into Trish's allegations were dismal from the very beginning. In February 2006, Regina informed DHS and the sheriff's department about the alleged abuse. DHS interviewed the family and the police began an investigation. It was not until Regina contacted the police again in November 2007 that Det. Kirk interviewed Moore. This unexplained lapse in time is just one example of the law enforcement's less than vigorous investigation into the alleged acts.

Another example of the officers' sub-par investigation occurred during the police interrogation in January 2008. Jack was not interviewed in the sheriff's office, rather he was interviewed in an off-site law enforcement facility. He was no interviewed by a team of detectives that were well aware of the case, rather he was interviewed by Det. Kirk and Det. Mitchell. First, Det. Mitchell had no experience in handling sex assault cases, yet Det. Kirk invited Det. Mitchell to assist in the interrogation of Jack. Everything Det. Mitchell knew of the case prior to the interrogation came from Det. Kirk. Det. Mitchell did not even prepare a police report about the interrogation until one year after the interview.

Then there is the confession. It is disputed whether or not Jack signed the statement of facts form prior to Det. Kirk writing his statement. What is undisputed, however, is that Det. Kirk, not Jack, wrote the statement of facts. What is also undisputed is that Det. Kirk relied on the dates given to him by Trish when he asked coercive and leading questions to Jack about the time frame of the abuse. There were no video or audio recordings of the interrogation. There was no stenographer present - a neutral third party - that recorded Jack's alleged confession. The only contemporaneous recording of Jack's statement was written by Det. Kirk in the statement of facts that he purported was Jack's confession.

c. The Evidence

Finally, there was no physical evidence that Trish was sexually molested by her father, Jack Moore. The prosecution's case rested on Jack's alleged confession, coupled with statements that the prosecution characterized as admissions by a party-opponent. Regina testified that Jack apologized to her on two occasions for the abuse of his daughter. Trish testified that her father wrote her a letter and apologized for the abuse.

In turn, Jack presented evidence these apologies were not admissions that he molested his daughter. Jack explained that he, like any other father, expressed tremendous sorrow because of his daughter's behavior - i.e. the suicide attempt, behavior problems. Jack's letter to his daughter was simply an apology for not being present in her life after his attempt to discipline her backfired on his relationship with her.

Then there was Jack's alleged statement to police. This statement was unreliable at best. Jack maintained that he signed the statement of facts on the police form BEFORE the police officer wrote the information on the form. Jack established the police had alternative resources for obtaining the information contained in the report. For instance, the statements regarding Jack's illicit drug abuse

would have been in the realm of knowledge of Det. Mitchell, the narcotics agent in the interviewing room. There was also a list of dates in which the abuse happened. Detective Kirk admitted that he relied the dates that Trish provided for him when he questioned Jack about the time frames of events.

Throughout the trial, Jack maintained that he did not abuse his daughter but, despite this assertion, the jury found Jack guilty of both charges. Based on all of the overwhelmingly conflicting evidence in this case, the trial court should have granted Jack's motion for a new trial.

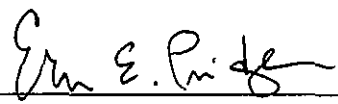
CONCLUSION

Jack Moore's conviction was against the overwhelming weight of the evidence and the trial court erred in granting Moore's request for a new trial. Moore petitions this Court to correct this error by reversing the trial court's decision and remanding this case for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Jack Moore, Appellant

By:


Erin E. Pridgen, Miss. Bar No. [REDACTED]
Counsel for Appellant

CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Jack Moore, 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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This the 16th day of November, 2009.



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