

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHARLES STACY RIMMER

APPELLANT

VS.

NO. 2009-KA-1039-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUE

- I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT OF GUILTY OF COUNT I SEXUAL BATTERY.
- II. THE JURY'S VERDICT OF GUILTY OF COUNT I SEXUAL BATTERY IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

In the summer of 2005, thirteen-year-old S.B. was introduced to thirty-five-year-old Charles Stacy Rimmer by S.B.'s twenty-one-year-old sister, Sheena. T. 276, 279. By all accounts, S.B.'s family life was tragic. S.B.'s father was a crack addict and her mother, Peggy, not only drank alcohol, smoked pot, and popped pills, but also allowed S.B. to do the same. T. 277-78, 293. Rimmer took full advantage of S.B.'s lack of parental guidance. S.B. first started visiting Rimmer at his home when she accompanied Peggy, who would clean his apartment in exchange for money or drugs. T. 277. Afterward, the three would smoke weed together at the kitchen table. T. 277. Peggy would often drink and pop pills that were provided by Rimmer until she passed out. T. 278.

Rimmer would also buy S.B. clothes, makeup, and anything else she wanted. T. 277. Rimmer once raised the eyebrows of hairstylist Gina Baker when Rimmer brought S.B. into her salon and paid for her to have anything she wanted done. T. 447. Baker would later testify that she and a co-worker were suspicious of the adult man who brought in an unrelated then fourteen-year-old girl to get five hours and \$150 worth of beauty services, while Rimmer stayed the whole time. T. 447, 449. However, Rimmer's gifts did not come without a price.

S.B. eventually started spending time with Rimmer without her mother's accompaniment. After Rimmer began lavishing S.B. with gifts and providing her with drugs and alcohol, he outright asked her if she was going to have sex with him. T. 279. S.B. told him that she was not going to have sex with an older man. T. 279. Soon thereafter, S.B. and her eleven-year-old best friend, Shannon Davis, went with Sheena and Sheena's boyfriend to Rimmer's apartment to "hang out" with Rimmer and his cousin Jeremy Broughton. T. 280, 424. When Sheena decided it was time to go home, S.B. and Shannon left with her, as they were spending the night with her that night. T. 280. However later that night, Jeremy talked the girls into sneaking out after Sheena went to sleep. T. 280. When S.B. and Shannon went back to Rimmer's home that night, he gave the eleven and thirteen-year-old girls the designer drug ecstasy, which neither girl had taken before. T. 280-81, 425. S.B. would later testify that the drug made her "feel like not myself," and "weird and hyper." T. 281. After the ecstasy took effect, S.B. and Shannon started dancing. T. 281, 425. Rimmer and his adult male cousin convinced the girls to take their clothes off, and the grown men stuffed money into their bras and panties while they danced. T. 281, 425. The party ended up in Rimmer's bedroom. T. 426. Rimmer then took S.B. into his son's bedroom, leaving Shannon with Jeremy. T. 426.¹ Shannon

¹The son, who lived primarily with his mother, was not present at the time.

began to feel uncomfortable in the bedroom alone with Jeremy, and decided to look for S.B. T. 426. Shannon went into the son's bedroom and saw Rimmer "licking [S.B.'s] private." T. 426. After a mortified Shannon slammed the door, Rimmer and S.B. emerged soon thereafter, and the girls left. T. 426. S.B. testified that this first incident of sexual battery occurred in the summer of 2005 before her fourteenth birthday. T. 287.

S.B. also described at trial four later incidents in which Rimmer had sexual intercourse with her. T. 286-91. According to S.B. the usual pattern was that she and her mom would be at Rimmer's house drinking and doing drugs to the point where Peggy passed out. T. 286-291. At some point in the night, he would slip S.B. ecstasy behind Peggy's back. T. 286-291. Rimmer would put Peggy on the couch and walk S.B. into his son's room, leaving the door open to where he could hear or see Peggy if she regained consciousness. T. 286-291. Rimmer would then have sexual intercourse with S.B. T. 286-291. S.B. testified, "I didn't want to, but I would listen to everything he would tell me to do because I was afraid of him." T. 289. S.B. also testified that she did not tell her mother about the sexual contact because he threatened to kill her and her family if she told. T. 286, 287.

For S.B., the straw that broke the camel's back came in the form of a Valentine's Day present from Rimmer in 2007. Rimmer sent S.B. a dozen roses and a huge gift basket. T. 294. According to S.B., "It grossed me out." T. 294, 378. Her parents, or at least her father, finally became suspicious about exactly what kind of relationship had developed between S.B. and Rimmer. T. 294. When S.B.'s father asked Rimmer about the Valentine gift, Rimmer insisted, "I'm like a second daddy to her." T. 294. The answer apparently pacified the father for the time being, but he was still puzzled as to why Rimmer was spending so much money on S.B. T. 294. Both Peggy and S.B.'s father began asking her if Rimmer was having sex with her, but S.B. denied it. T. 294. The next

month, however, S.B. revealed to her parents that Rimmer had been having sex with her. T. 295. The revelation came in the wake of feelings of guilt, where S.B. thought that maybe it was her fault “because I was letting him do that to me.” T. 295.

Rimmer was ultimately indicted on five counts of Sexual Battery and two counts of felony child abuse. C.P. 7-9. A Calhoun County Circuit Court jury found Rimmer guilty of Count I Sexual Battery and Count VII child abuse. C.P. 99-100. He was acquitted on the remaining counts. Rimmer was sentenced to thirty years with five suspended and twenty-five to serve on Count I and ten years with three suspended and seven to serve on Count VII. with the sentences running concurrently. C.P. 148.

SUMMARY OF THE ARGUMENT

The State proved each element of Count I Sexual Battery beyond a reasonable doubt. Although inconsistencies arose in the evidence, the jury properly resolved those inconsistencies in favor of the State. The verdict is not against the weight of the evidence. It must be affirmed.

ARGUMENT

I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY’S VERDICT OF GUILTY OF COUNT I SEXUAL BATTERY.

The majority of Rimmer’s legal sufficiency argument actually contemplates the weight of the evidence. To the extent that Rimmer has presented a legal sufficiency argument, the State would show that it presented legally sufficient evidence on each element of the crime of sexual battery.²

Evidence is legally sufficient to sustain a conviction when any rational juror could have found that the State proved the essential elements of the crime charged beyond a reasonable doubt. *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 315

²Rimmer does not challenge the weight and sufficiency of his felony child abuse conviction.

(1979)). The reviewing court accepts as true all evidence which supports the guilty verdict, and the State is given the benefit of all reasonable inferences that may be drawn from the evidence. *Wash v. State*, 931 So.2d 672, 673 (¶5) (Miss. Ct. App. 2006). “Only where the evidence, as to at least one of the elements of the crime charged, is such that a reasonable and fair minded jury could only find the accused not guilty, will this Court reverse.” *Derouen v. State*, 994 So.2d 748, 751-52 (¶8) (Miss. 2008) (quoting *Withers v. State*, 907 So.2d 342, 351 (Miss. 2005)).

The crux of Rimmer’s legal sufficiency argument is his proposition that where a sex crime victim’s testimony is either uncorroborated or contradicted, some additional evidence is either required “or at least heavily preferred.” Appellant’s brief at 15-16. First, this assertion is in direct conflict with well-established case law. “The testimony of a single uncorroborated witness is sufficient to sustain a conviction, even though there may be more than one person testifying to the contrary.” *Williams v. State*, 512 So.2d 666, 670 (Miss. 1987) (internal citations omitted). More importantly, S.B.’s testimony regarding Count I Sexual Battery *was* corroborated by an eyewitness to the sexual battery. Any argument that Rimmer has regarding the alleged inconsistencies between S.B.’s and Shannon’s version of events surrounding the sexual battery is properly addressed in a weight of the evidence analysis.

In accordance with Mississippi Code Annotated § 97-3-95, the State had to prove that Rimmer engaged in sexual penetration with S.B. when S.B. was under the age of fourteen and Rimmer was twenty-four or more months older than S.B. Miss. Code Ann. § 97-3-95(1)(d). Sexual penetration is defined by statute to include the act of cunnilingus. Miss. Code Ann. § 97-3-97(a). Not only did the victim testify that Rimmer performed oral sex on her, but also Shannon Davis, an inadvertent eye witness, testified that she saw Rimmer performing oral sex on S.B. T. 282, 426. S.B. testified that this act occurred prior to her fourteenth birthday, which was July 3, 2006. T. 287.

Shannon's testimony confirmed that the incident occurred when S.B. was thirteen years old. Shannon remembered that it was June and she was eleven years old. T. 428, 435. As Shannon's date of birth is September 11, 1994, Shannon was eleven in June of 2006, which was prior to S.B.'s fourteenth birthday. T. 422. The final element the State was required to prove was that Rimmer was twenty-four or more months older than S.B. at the time of the sexual battery. It was stipulated by the parties that Rimmer's date of birth is September 24, 1969. T. 243.

When viewing the evidence in the light most favorable to the verdict, it cannot be said that a reasonable and fair minded jury could only find the accused not guilty of Count I Sexual Battery. The State presented legally sufficient evidence to support the jury's verdict of guilty of Count I Sexual Battery. Accordingly, Rimmer's first assignment of error must fail.

II. THE JURY'S VERDICT OF GUILTY OF COUNT I SEXUAL BATTERY IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

A reviewing court will only disturb a verdict based on a challenge to the weight of the evidence where the verdict is so contrary to the overwhelming weight of the evidence that allowing the verdict to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005) (citing *Herring v. State*, 691 So.2d 948, 957 (Miss.1997)). It solely within the province of the jury to determine the credibility of each witness and to resolve conflicting testimony accordingly. *Turner v. State*, 818 So.2d 1181, 1185 (¶9) (Miss. 2002).

Rimmer argues that his conviction for sexual battery must be reversed due to inconsistencies in S.B.'s testimony regarding the date of the offense and inconsistencies between S.B. and Shannon's testimony regarding the date of the offense. S.B. testified at a pretrial hearing that the oral sex incident occurred on November 1, 2006, whereas at trial she testified that it occurred in the summer of 2005. T. 310, 312. Defense counsel rigorously cross-examined the victim on this issue. S.B.

explained that she did not realize that she was going to be testifying at the bond hearing until after she arrived at the courthouse. T. 312. She further explained that she had not thought out the time line prior to testifying. T. 312.

While S.B. remembered the oral sex incident occurring in the summer of 2005, Shannon believed that it occurred in June of 2006. T. 428. Shannon was sure that the incident occurred in June of 2006, because she remembered that she was baptized the next day. T. 428. As the jury found Rimmer guilty only of the count of sexual battery to which there was an eyewitness, and because that eyewitness had good reason to remember the date and major event which occurred the day after what she witnessed, it is likely that the jury found Shannon's memory as to the date more reliable. The verdict is not against the weight of the evidence simply because the victim's time line may have been blurred. At trial, defense counsel skillfully used the victim's drug activity against her. The jury was well aware of the victim's drug use. In being instructed on its exclusive duty to determine the weight and credibility of each witness's testimony, the jury was instructed that in part as follows. "In weighing a discrepancy or conflicting statement by a witness or between witnesses, you should consider whether it resulted from an innocent mistake or a deliberate falsehood, and whether it pertains to a matter of importance or an unimportant detail." C.P. 280. The jury very well could have believed that the victim was wrong about the date due to her rampant drug use, rather than as the result of a deliberate falsehood. Regardless of whether the jury believed that the sexual battery occurred in the summer of 2005 or June 2006, the victim was under the age of fourteen at either date. It is not the function of the reviewing court to determine whose testimony to believe. *Smith v. State*, 945 So.2d 414, 421 (¶21) (Miss. Ct. App. 2006) (citing *Taylor v. State*, 744 So.2d 306, 312 (¶17) (Miss. Ct. App. 1999). So long as substantial credible evidence supports the jury's verdict, the verdict must be affirmed. *Id.*

Aside from the date, Shannon's version of events corroborated both the circumstances surrounding the sexual battery and the criminal act itself. Both girls testified that they were at Rimmer's home with Sheena and Sheena's boyfriend on the night in question. T. 280, 424. Both girls testified that they sneaked back out that night and went back to Rimmer's apartment. T. 280, 425. Both girls testified that they were given ecstasy and began dancing unclothed with each other while Rimmer and his cousin stuffed money in their undergarments. T. 280-81, 425. Both girls testified that Rimmer took S.B. into another room, leaving Shannon with his adult male cousin. T. 281, 426. Both girls described Shannon walking in on Rimmer as he performed oral sex on the victim. T. 282, 426.

Both girls were rigorously cross-examined and were adamant that the night of drugging and sexual battery occurred. Defense counsel also put forth the theory that the victim fabricated the sexual battery in response to Rimmer showing Peggy how to view S.B.'s text messages. The jury clearly rejected that theory. Because substantial credible evidence supports the jury's verdict, the verdict must be affirmed. While some inconsistencies arose from the evidence, the jury resolved those inconsistencies in finding that the State had in fact proven the elements of the crime charged beyond a reasonable doubt. The verdict does not represent an unconscionable injustice. It must, therefore, be affirmed.


CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Rimmer's convictions and sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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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