

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PERCY BRIDGEMAN

APPELLANT

VS.

NO. 2009-KA-1389-COA

E

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: W. GLENN WATTS
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**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENT	5
ARGUMENT	7
PROPOSITION I	
THERE WAS CREDIBLE EVIDENCE IN SUPPORT OF THE TRIAL	
COURT'S RULING UNDER THE TENDER YEARS EXCEPTION.	7
PROPOSITION II	
THERE WAS CREDIBLE, SUBSTANTIAL EVIDENCE IN SUPPORT	
OF THE DENIAL OF PEREMPTORY INSTRUCTIONS.	11
PROPOSITION III	
THE COURT PROPERLY DENIED A MOTION FOR A NEW TRIAL.	18
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

STATE CASES

Esparaza v. State, 595 So. 2d 418, 426 (Miss. 1992)	16
Fisher v. State, 481 So. 2d 203, 212 (Miss. 1985)	17
Hammond v. State, 465 So. 2d 1031, 1035 (Miss. 1985)	16
Harveston v. State, 493 So. 2d 365, 370 (Miss. 1986)	16
Jackson v. State , 580 So. 2d 1217, 1219 (Miss. 1991)	20
Jones v. State , 635 So. 2d 884, 887 (Miss. 1994)	6, 20
McClain v. State, 625 So. 2d 774, 778 (Miss. 1993)	5, 16
Moore v. State, 508 So. 2d 666, 668 (Miss 1987)	5, 19
Neal v. State, 451 So. 2d 743, 758 (Miss. 1984)	16
Spikes v. State, 302 So. 2d 250, 251 (Miss. 1974)	16
Wetz v. State, 503 So. 2d 803, 807-08 (Miss. 1987)	16, 20
Witherspoon v. State, 767 So 2d 1065, 1067 (M. Ct. App. 2000)	19

STATE STATUTES

M C A. 97-3-65(1)(b). C.P. 6-7	2
---	----------

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PERCY BRIDGEMAN

APPELLANT

VS.

NO. 2009-KA-1389-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On May 14-15, 2008, Percy Bridgeman, "Bridgeman" was tried for two counts of statutory rape before the Circuit Court of Madison County, the Honorable Sumac S. Richardson presiding. R.1. Bridgeman was found guilty and given a twenty five year sentence in the custody of the MDOC. R. 314.

Bridgeman filed a motion for a J. N. O. V. or a New Trial. It was denied. C.P. 56-57; 97.

Bridgeman filed notice of appeal to the Supreme Court. C.P. 115.

ISSUES ON APPEAL

I.

**WAS HEARSAY EVIDENCE IMPROPERLY ADMITTED UNDER
M. R. E. 803(25)?**

II.

**DID THE WEIGHT OF THE EVIDENCE SUPPORT THE
VERDICT?**

III.

**DID 'NEWLY DISCOVERED EVIDENCE' JUSTIFY A NEW
TRIAL?**

STATEMENT OF THE FACTS

On April, 2006, Bridgeman was indicted for two counts of statutory rape of L.H., a seven year old female child, by a Madison County Grand jury under M C A. 97-3-65(1)(b). C.P. 6-7.

On May 14-15, 2008, Bridgeman was tried for two counts of statutory rape before the Circuit Court of Madison County, the Honorable Sumac S. Richardson presiding. R. 1. Bridgeman was represented by Mr. Ross Barnett, Jr.. R. 1.

A hearing was held under the tender years exception, M. R. E. 803(25). R. 61-88. This would be for proposed testimony about statements made by L.H., the alleged victim, to adults. Her statements indicated that she had been allegedly raped. She told them of being raped more than once by her de facto step father. L.H. was a seven year old female Canton elementary school student at the time of the alleged rapes. R. 150. Bridgeman was her sick mother's boyfriend. He lived with them from time to time. .

The trial court heard from Lieutenant Shelby Burnside, Ms. Benae Jackson, and Ms. Rhonda Poe at the hearing. Burnside was with the Canton Police Department, Ms. Jackson, was an employee of the Madison County Department of Human Services, and Ms. Poe was the principal of L.H.'s school, Canton Elementary School. R. 61-87.

After hearing their testimony with cross examination, the trial court admitted the statements of the child victim to others. R. 87-88. The court found there was sufficient evidence for concluding that L.H.'s statements were credible, and reliable. R. 87-88.

L.H. testified that she was in the fifth grade at Canton Elementary School. R. 92. She was eleven at the time of trial, but was seven when she was first allegedly sexually penetrated. Her birthday was April 11, 1997. R. 92.

L.H. testified that she lived with her mother and two siblings in Canton. Bridgeman was frequently in her home with her mother. She testified that the first time that Bridgeman penetrated her vagina, "my

private part,” was at her grandparent’s house. She was alone with Bridgeman. She testified clearly that “his private part,” or penis, went “inside” her private part. R. 99. The last time the penetration occurred was in a hotel in Canton. She remembered it was in January, 2006 because this was when “my mom died.” R. 101.

L.H. testified that there were other times when this occurred. Bridgeman followed the same modus operandi. He had L.H. undress. He would first penetrate her vagina with his finger, and then with his private part, or penis. L.H. identified Bridgeman in the court room as the person who did this to her. R. 104-105. L.H. testified to being afraid of telling her family about this abuse. She was afraid of Bridgeman. She decided to tell her best friend, Alexis Gibson. R. 104-105.

Ms. Rhonda Poe, the principal of L.H.’s elementary school in Canton, testified. R. 115-120. She testified that L.H. told her of being “inappropriately touched” by her “stepfather.” R. 116.

Ms. Benae Jackson, a social worker with the Madison County Department of Human Services, testified. R. 120-140. She investigated possible charges of sexual abuse. L.H. was reluctant to speak to her at her school. Jackson went to the elementary school after being contacted by the principal, Ms. Poe. Jackson testified to hearing L.H. reveal in the presence of the principal that she had been sexually abused by Bridgeman. Jackson arranged for L.H. to stay with relatives. L.H. was examined by Dr. Bacon, a physician. R. 120-141.

Lieutenant Shelby Burnside with the Canton Police Department also testified. R. 148-174. He testified that L.H. told of being penetrated in her “private part.” She was penetrated by Bridgeman’s private part. R. 154. She could also reveal details about the circumstances and times under which these sexual assaults would occur.

Dr. Janice Bacon, M. D., a pediatrician, testified that she examined L.H.. R. 174-192. She testified that although there was no physical evidence indicating harm to L.H.’s vagina, she believed, based upon her examination, that L.H. was being truthful about sexual abuse. Dr. Bacon also testified that she found

through lab work that L.H. suffered from a sexually transmitted disease, chlamydia. Bacon testified that L.H. would have contracted this disease through sexual contact. R. 181-182.

Dr. Robert Fose, M. D., a family medicine practitioner, testified that he treated Bridgeman in the past. R. 195-209. He testified that Bridgeman came to the emergency room at the hospital. This was in December 26, 2005. He complained of pain and swelling of his testes. He also had a urethral discharge. R. 197. Bridgeman had tested positive for "STD", a "sexually transmitted disease," in the past. R. 198. Chlamydia can cause "swelling of the testicles." R. 201. Dr. Fose testified that Bridgeman had been non-compliant in the past. This would indicate not taking medications for his infection.

The trial court denied a motion for a directed verdict. R. 213.

Mr. Bridgeman testified in his own behalf. R. 239-270. Bridgeman admitted that he was "forty two years old" at the time of trial. R. 239. Bridgeman denied having raped L.H.. R. 242-243. Bridgeman denied having been diagnosed with chlamydia. He testified, "I could never get no diagnosis." R. 250. He admitted to going to the emergency room for medical treatment for pain in his penis. Medications allegedly cleared up his problem. R. 251-252.

On cross examination, he admitted that he was alone with L.H. at a Canton Motel. R. 269. While he denied having ever been diagnosed with chlamydia, he admitted to being treated for some type of venereal disease. R. 269. He also denied having been tested for gonorrhea. R. 253. He admitted to having a burning sensation in his penis, and a brown discharge. R. 254. This was why he sought medical advice in both Canton and Jackson.

Mr. Bridgeman was found guilty and given a twenty five year sentence in the custody of the M. D.O. C.. R.314.

Bridgeman's counsel filed a motion for a JNOV or a New Trial. It was denied. C.P. 56-57; 97-98.

Bridgeman filed notice of appeal to the Supreme Court. C.P. 115.

SUMMARY OF ARGUMENT

1. The record reflects the trial court did not abuse its discretion. There was credible, substantial evidence in support of admitting testimony under “the tender years exception,” M. R. E. 803(25). The record reflects the trial court found based upon the twelve 803(25) factors that this testimony would be “reliable” and that “the credibility of the witness” was “very high.” R. 87-88. The record from the hearing provides sufficient credible, corroborated testimony in support of the trial court’s ruling. R. 62-88. **Grimes v. State** 1 So.3d 951, 956 (Miss. App. 2009).

2. The record reflects there was credible, substantial partially corroborated evidence in support of the jury’s verdict and the trial court’s denial of all post conviction motions. R. 214; C.P. 97. **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993). There was medical evidence as well as corroboration of the victim who consistently identified Bridgeman as the person who had sexually abused her. R. 104-105. He did so on numerous occasions. R. 127; 127; 180; 201; 210. L.H. testified that Bridgeman penetrated her vagina with his penis and finger on the two specific occasions mentioned in her testimony. R. 97, 99, 100, 104-105.

Her testimony was corroborated by others to whom she spoke. R. 150; 177; 180. That this seven year old child did not initially fully disclose what had happened to her does not indicate any lack of credibility. It merely indicated the inherently divisive and painful situation she found herself in at the time. Her severely ill mother’s live in boy friend was her assailant. He also threatened her to remain silent. R. 104-105.

3. The record reflects that the trial court denied relief. The trial court found that the alleged newly discovered evidence could have been discovered with due diligence, and that the testimony of Ms. Jackson was corroborated by other witnesses. C.P. 97-98. **Moore v. State**, 508 So. 2d 666, 668 (Miss 1987). Ms. Jackson testified that Lieutenant Burnside and Erica Foster were present when she interviewed L.H.. R. 322. She testified that her prior felony conviction played no role in her testimony. She reaffirmed that her

testimony about what L.H. revealed to her, as well as to others in her presence, was truthful. R. 322. There is credible, substantial partially corroborated evidence in support of the trial court's ruling. **Jones v. State**, 635 So. 2d 884, 887 (Miss. 1994).

ARGUMENT

PROPOSITION I

THERE WAS CREDIBLE EVIDENCE IN SUPPORT OF THE TRIAL COURT'S RULING UNDER THE TENDER YEARS EXCEPTION.

Mr. Bridgeman argues the trial court erred in admitting testimony from the victim through witnesses under the tender years exception to the admission of hearsay. Bridgeman thinks that the alleged child victim, L.H., provided unreliable, and inconsistent stories. He argues there was a lack of spontaneity as well as an alleged recantation involved in her accounts of what allegedly happened to her. He argues the trial court improperly weighed some of the twelve applicable factors included in M. R. E. 803(25). Appellant's brief page 4-6.

The record reflects that the trial court found that there was sufficient evidence for determining that "the credibility" of L.H. was "very high." R. 88. This was based upon the twelve factors included under M. R. E. 803(25).

After hearing testimony from Lieutenant Shelby Burnside, Ms. Benae Jackson, and Ms. Rhonda Poe, the trial court issued its ruling. R. 62-88. Mr. Burnside was an Officer with the Canton Police Department, Ms. Jackson was a social worker with the Madison County Department of Human Services, and Ms. Poe was the Principal at L.H.'s elementary school in Canton. R. 61-86.

Lieutenant Bridgeman testified that L.H. identified Bridgeman as the person who had penetrated her vagina with his penis more than once. R. 65; 154. L.H. had no difficulty remembering where this occurred, and approximately when. When revealing this information, L. H. was upset and emotional but coherent. L.H. was also given an appointment with a physician, Dr. Bacon, for a medical examination. Dr. Bacon testified to believing L. H.'s account of being sexually abused. R. 180. As a result of L. H.'s examination, it was discovered that L.H. had a sexually transmitted disease, chlamydia. R. 180.

As stated in the trial court's ruling:

Court: Okay. The statements will be admitted. The Court finds that there is sufficient, and I always have a hard time with this word, indicia. I'll just say indicators. **There's enough there that it's reliable, it's consistent, and spontaneous, the credibility of the witness and it's the opinion of the court, very high. So based on all the 12 factors, I'm going to allow the statements to be admitted through witnesses or the statements of the victim to be admitted through these witnesses.** R. 87-88. (Emphasis by appellee).

Lieutenant Burnside testified that L.H. used language common for a eight year old child. She stated that "he put his private part into her private part." R. 65. She had no difficulty remembering details of what occurred. R. 65. The first "penetration" occurred at her home before she was eight years old. R. 64. The second penetration occurred when her family went to a Canton motel on a week end. R. 64.

Q. Okay. Did she use language that was common for an eight year old?

A. **Yes. She said that he put his private part into her private part.** R. 65.

Q. And did you discover any apparent motive or reason for her to lie about there statements she had given to you?

A. No. R. 66.

Ms. Jackson testified that she did not use any suggestive techniques. R. 72. This was during her interview with L.H.. L.H. had no difficulty remembering details of what occurred. Her statements seemed spontaneous, and she had no apparent motive to lie. She was emotionally disturbed, and fearful. She was biting her nails when she disclosed what had happened to her. R. 73.

Q. Are you aware that she made the same disclosure to other individuals as well?

A. Yes.

Q. And who was that?

A. **She made the disclosure to Ms. Poe, to Dr. Bacon, and Shelby Burnside. He was present when we were actually interviewing her, and to my supervisor.**

Q. And how old was this victim?

A. Eight.

Q. Okay. And were any suggested techniques used in eliciting the information?

A. No.

Q. And you followed that protocol?

A. Yes. R. 72.

Q. Have you found any reason for her to lie about these acts that she disclosed to you?

A. No.

Q. Was there any apparent motive to lie?

A. No. R. 73. (Emphasis by appellee).

In **Grimes v. State** 1 So.3d 951, 956 (Miss. App. 2009), relied upon by Bridgeman, the Court affirmed the trial court in finding that A.B.'s statements to others about sexual abuse were admissible under M. R. E. 803(25). Although there were some inconsistencies in A.B.'s accounts of what occurred, the victim was extremely fearful. She was fearful not just for her future but also for the future of her mother and her other siblings. The trial court considered the twelve factors and found A. B.'s accounts of sexual abuse were credible, and reliable.

¶ 16. The trial court weighed its concerns with A.B.'s credibility against the other circumstances, closely following the factors outlined in **Wright**, and found substantial indicia of reliability in the victim's hearsay statements. It is apparent from our review of the record that the trial court did have substantial, credible evidence upon which to make this finding, and we cannot state with a definite and firm conviction that it reached the wrong result. Accordingly, the trial court did not abuse its discretion in allowing the aforementioned hearsay testimony. This issue is without merit.

The appellee would submit that there was credible, substantial evidence in support of the trial

court's ruling. There was sufficient evidence from the testimony for determining that L.H.'s reports of abuse were credible, and reliable. R. 61-87. The appellee would submit that this issue is lacking in merit.

PROPOSITION II

THERE WAS CREDIBLE, SUBSTANTIAL EVIDENCE IN SUPPORT OF THE DENIAL OF PEREMPTORY INSTRUCTIONS.

Bridgeman argues that the weight of the evidence did not support the jury's verdict. Bridgeman argues there was no physical evidence which would have been available if L.H.'s clothing had been tested. The jury's request for additional medical information indicated to him some doubt on their part. And he believes L.H.'s report of sexual abuse allegedly in a room with five people present was not credible. Appellant's brief page 7-9.

The record reflects that L. H. clearly identified Bridgeman as the person who had "penetrated" her "private part" on more than one occasion. R. 104-105. She testified she was seven years old when first penetrated. R. 92; 100. She also testified to not revealing this to her mother out of fear of Bridgeman. R. 104. She eventually told her friend at school. L.H. was then interviewed by school officials, a police officer, a social workers and a pediatric physician. They corroborated her identification testimony.

In addition, medical tests indicated that L.H. had the same or a similar type sexually transmitted disease as Bridgeman during this time frame. L.H. testified and was cross examined about the circumstances under which she was raped. She testified that when she was penetrated in the motel, she was alone with Bridgeman. R. 111. In other words, the record reflects that the rape did not occur in the presence of her mother and her three siblings. Bridgeman admitted that he was alone with L.H. in a motel room in Canton. R. 242; 244.

Ms. Larquiesha Hunter, L.H. , identified Bridgeman as the person who had penetrated her vagina with his finger and penis, "private part," more than once. L.H. was eleven years old at trial, but seven when she was first sexually assaulted. R. 104-105. She testified that she was too scared to tell her mother about this abuse.

However, after getting tired of these painful penetrations by Bridgeman, L.H. told her best friend, Alexis. Alexis Gibson then informed others. Eventually, L.H. went to reveal the abuse to her Canton Elementary School Principal.

Q. His private part touched you on the outside or the inside of your private part?

A. The inside.

Q. Did you tell him to stop this time as well?

A. Yes.

Q. What did he do?

A. He stopped.

Q. He did?

A. Yes.

Q. Did this happen every time you went to the hotel?

A. Yes.

Q. So you've told us about the first time and the very last time, but there were other times in between; is that correct?

A. Yes.

Q. Did it happen the same way every time?

A. Yes. R. 103. (Emphasis by appellee).

...

Q. Why didn't you ever tell your mom or your grand-mom?

A. Because I was scared.

Q. And who did you finally tell?

A. My friend.

Q. What is her name?

A. Alexis Gibson.

Q. And why did you finally tell Alexis?

A. Because I got tired of it.

Q. Larquiesha, has anybody else ever touched you in your private part before?

A. No.

Q. Do you see Percy Bridgeman in the courtroom today?

A. Yes. R. 104.

...

On cross examination, L.H. testified that when she was penetrated, she was alone with Bridgeman.

Q. Okay. Are you sure that your mother left you with Percy alone or did you go with your mother and your brother and your sister to the doctor, all four of you? Or do you remember?

A. I was alone with Percy Bridgeman. R. 111.

Dr. Janice Bacon, M.D., testified that based upon her examination and communication with L.H., she believed that L.H. had been sexually abused. Dr. Bacon also testified that medical tests determined that L.H. had chlamydia, which is a sexually transmitted disease. R. 180.

Q. After conducting your exam, talking to Larquiesha, were you able to make an opinion of whether or not she was sexually assaulted?

A. I was.

Q. And what was that opinion?

A. My opinion was she had been sexually abused. R. 180.

Q. Okay. Now, you said you took some blood cultures?

A. We collect some blood.

Q. Okay. Did you base your opinion prior to those results coming back?

A. Yes.

Q. Okay. Now tell us about the results.

A...**So those are the tests that we obtained for her. And of those tests, she had one that was posi**

Q. Okay. Now, what exactly is chlamydia?

A. **Chlamydia is an organism that's primarily obtained by sexual contact.** R. 180.

...

Q. So, in your opinion, how is it that she (L. D.) was get the disease transmitted?

A. **Sexual. Sexual abuse. Sexual transmission.** R. 181. (Emphasis by appellee).

Dr. Robert Foose, M.D., testified that he examined Bridgeman in the past. Bridgeman was determined to have "chlamydia." R. 195-212. He also had been "noncompliant," or he had not been taking the antibiotic drugs needed for preventing this sexually transmitted disease.

Q. **And from reviewing his records and knowing that he had previously tested positive for chlamydia, did you know that he had been noncompliant with his medication at times in the past?**

A. ...**My recollection is that his second visit there was a record to him not having been in compliance with the one before that, this is, he didn't take his medicine, yes, ma'am.** R. 202.

...

Q. And what are the symptoms of chlamydia for men?

A. **A discharge from the penis is the principal one or discomfort with urinary discharge.** R. 203.

Q. And when you gave him the medication for the orchitis, was that to treat the orchitis that you believed to have been caused most statistically, in your medical opinion, by chlamydia?

A. Right. He got also an injection of a shot when I saw him as well which would have covered gonorrhea.

...

Q. **And did you treat him for both gonorrhea and chlamydia on the date that you saw**

him?

A. Yes, ma'am. R. 210. (Emphasis by appellee).

While Bridgeman testified that he did not rape L.H., he admitted that he was alone with her at the motel room. R. 242; 244. This corroborates L.H.'s testimony and provides an opportunity for his sexual assault and rape. Mr. Bridgeman admitted to being forty two years old. R. 239.

On direct examination, Bridgeman testified that he did not know if he had chlamydia, allegedly because he did not get a diagnosis. R. 250. However, on cross he admitted to seeing a doctor for venereal disease. The symptoms he admitted having, a burning sensation and a brownish discharge were the symptoms for chlamydia. R. 254. These are the known symptoms for chlamydia.

On cross examination of Bridgeman, he admitted to seeking medical assistance for problems with his penis. He admitted that these problems including swelling, and a brownish discharge.

Q. I'm going to show you this. Do you see that this is the Madison County Medical Center on 10-5-04? Do you see that?

A. Yes, ma'am.

Q. All right. Okay. And you went because you were having something coming out of your penis?

A. Yes, ma'am.

Q. And that you called it a burning sensation?

A. Yes, ma'am.

Q. —private area with brownish discharge.

A. Yes, ma'am.

Q. It says, "Rent STD." What does it say right there?

A. They never did tell me that. R. 254. (Emphasis by appellee).

The record reflects that the trial court denied a motion for a directed verdict. R. 214.

In response to the motion for a directed verdict the prosecution pointed out that they had presented evidence for all the elements of statutory rape. This included testimony indicating proof that Bridgeman was more than 24 years older than the female child. R. 92;150; 239. It also included testimony, and supporting medical evidence, that on the two occasions clearest in the mind of L.H. her vagina had been penetrated by Bridgeman's penis.

Mansell: The state would state that the state of Mississippi has, in fact, proved all the elements of the offense in the indictment in court I alleged happened January 1, 2006 and January 31, 2006. We have proven the dates of both the defendant and the victim in this case and that he was more than 24 years older than the child at the time. Also we have proven that the insertion of the penis into the vagina and in count II, we have proven the date of January 31, 2005 through April 11, 2005, the same thing as age of the defendant and victim proven, that he put his penis inside her vagina and that he's more than 24 months at that time and both of these occurred in Madison County, Mississippi.

Court: The motion will be denied. R. 213-214.

In **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993), the Court stated that when the sufficiency of the evidence is challenged, the prosecution was entitled to have the evidence in support of its case taken as true together with all reasonable inferences. Any issue related to credibility or the weight of the evidence was for the jury to decide, not an appeal's court.

The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. **Wetz v. State**, 503 So. 2d 803, 807-08 (Miss. 1987). In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. **Esparaza v. State**, 595 So. 2d 418, 426 (Miss. 1992); *Wetz* at 808; **Harveston v. State**, 493 So. 2d 365, 370 (Miss. 1986);...The credible evidence consistent with McClain's guilt must be accepted as true. **Spikes v. State**, 302 So. 2d 250, 251 (Miss. 1974). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wetz*, at 808, **Hammond v. State**, 465 So. 2d 1031, 1035 (Miss. 1985); *May* at 781. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. **Neal v. State**, 451 So. 2d 743, 758 (Miss. 1984);.. We are

authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty. *Wetz* at 808; *Harveston* at 370; **Fisher v. State**, 481 So. 2d 203, 212 (Miss. 1985).

When the testimony and evidence cited and summarized above was taken as true with reasonable inferences, there was sufficient credible, partially corroborated evidence in support of Bridgeman's conviction. L. H. clearly and consistently identified him as the person who had sexually abused her on the two occasions mentioned in her testimony. R. 104-105. She was corroborated by the persons who interviewed her about the circumstances under which she had been penetrated. R. 116; 154; 177.

In addition, medical tests determined that L.H. had a sexually transmitted disease, chlamydia. R. 127, 180. There was also forensic testimony indicating that Bridgeman had been treated for chlamydia, and gonorrhea during this same relevant time period. R. 201. This was corroborating medical evidence consistent with L.H.'s testimony.

There was sufficient evidence for establishing that L.H. was under the age of fourteen, and was twenty four months of more younger than Bridgeman, who admitted to being 42 at the time of trial. R. R. 92; 100; 150; 239.

The appellee would submit, that based upon the record cited, this issue is also lacking in merit.

PROPOSITION III

THE COURT PROPERLY DENIED A MOTION FOR A NEW TRIAL.

Mr. Bridgeman argues that he should have been granted a new trial. He should have been granted a new trial because state witness, Ms. Benae Jackson, a social worker, who testified for the prosecution was discovered to have been convicted of an embezzlement, a crime of dishonesty. This conviction was allegedly not known until after the verdict had been rendered against Bridgeman. Appellant's brief page 8-9.

To the contrary, the record indicates there was credible, substantial partially corroborated testimony and evidence in support of the trial court's denial of relief. There was record support for the trial court finding that the allegedly newly discovered evidence would not have changed the outcome of Mr. Bridgeman's trial.

At the hearing on Bridgeman's motion for a new trial, Ms. Benea Jackson testified that she had not been asked about her prior conviction by anyone prior to her testimony.

In addition, she testified that she had nothing to do with the misspelling of her name on the order affirming her prior conviction. She also testified that this prior conviction did not affect her testimony in the instant cause and that two other people were present when she interviewed L.H.. R. 315-324. As she testified:

Q. So any mistake in the name was not yours?

A. No.

Q. In fact, the original judgment of conviction has your correct name?

A. Yes.

Q. And then however, the second two amended orders, an order of sentencing, somehow they were typed Benae Johnson?

A. Yes.

Q. Your testimony that you gave in the Percy Bridgman case, was it the truth?

A. Yes.

Q. Okay. And is there anything about the fact that you have a prior felony conviction that in any way, shape, or form would affect your testimony in the Percy Bridgeman case?

A. No.

Q. And from my understanding in that case, you were present and interviewed the child involved in this case?

A. Yes.

Q. And there were other people present at that interview also?

A. Yes.

Q. There was Shelby Burnside?

A. Erica Foster. R. 322. (Emphasis by appellee).

The record reflects that the trial court denied the motion, finding it was not well taken. C.P. 97-98.

As stated in the order denying relief:

In the instant case, the newly discovered evidence would not change the result, could have been discovered before trial by exercising due diligence, is not material to the issue, and is merely impeaching. This Court finds that the defendant has not met its burden in showing that a different result or verdict would be sufficiently probable and defendant's motion is hereby. Furthermore, the evidence provided by Benae Jackson at trial was corroborated by other testimony and evidence, and the absence of Benae Jackson's testimony of a conviction would not change the outcome of the trial. Benae Jackson was not the only witness at trial, other witnesses provided identical information concerning the child's disclosure of sexual abuse, and the absence of Benae Jackson's conviction for embezzlement would not change the outcome of the trial. 97-98.

In **Witherspoon v. State**, 767 So 2d 1065, 1067 (M. Ct. App. 2000), relying upon **Moore v. State**, 508 So. 2d 666, 668 (Miss 1987), the Court found five criteria that must be met to be granted a new trial on grounds of allegedly newly discovered evidence.

To warrant the granting of a new trial on the ground on newly discovered evidence, it must appear that the evidence 1) will probably change the result if a new trial is granted, 2) has been discovered since trial, 3) could not have been discovered before the trial by the exercise of due diligence, 4) is material to the issue and 5) is not merely cumulative or impeaching.

As shown with cites to the record, Ms. Jackson interviewed L.H. in the presence of two other persons. One of those persons, Lieutenant Burnside testified and corroborated Ms Jackson as to the identification of Bridgeman as the person L.H. indicated had “penetrated her” private part. R. 64. Likewise, Ms. Jackson testified that her prior felony did not influence her testimony in this case, which was “the truth.” The truth was her testimony about L.H.’s report of being sexually assaulted by Bridgeman. R. 322.

In **Jones v. State** , 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that a motion for a new trial should be denied unless doing so would result in 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 appellee would submit that the trial court did not abuse its discretion in denying a motion for a new trial. This issue is also lacking in merit.

CONCLUSION

Mr. Bridgeman's conviction should be affirmed for the reasons cited in this brief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



W. GLENN WATTS

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

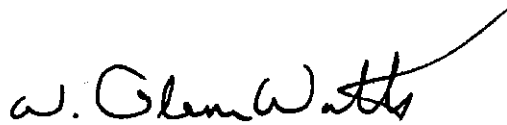
I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson
Circuit Court Judge
Post Office Box 1885
Brandon, MS 39043

Honorable Michael Guest
District Attorney
Post Office Box 121
Canton, MS 39046

George T. Holmes, Esquire
Attorney at Law
301 North Lamar Street, Suite 210
Jackson, MS 39201

This the 26th day of January, 2010.



W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL

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