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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HUDSON EDGET

APPELLANT

V.

NO. 2009-KA-1527-COA

STATE OF MISSISSIPPI

APPELLEE

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. Hudson Edget, Appellant
3. Honorable Doug Evans, District Attorney
4. Honorable Clarence E. Morgan, III, Circuit Court Judge

This the 9th day of December, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

- I. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT, AND THE TRIAL COURT ERRED IN DENYING EDGET'S MOTIONS FOR DIRECTED VERDICT AND JNOV .**
- II. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

STATEMENT OF THE CASE

This case proceeds from the Circuit Court of Grenada County, Mississippi, and a judgment of conviction for attempted burglary of a dwelling entered against Hudson Edget following a jury trial on August 19, 2009, the Honorable C.E. "Cem" Morgan, III, Circuit Judge, presiding. (C.P. 103-05, R.E. 4-6). The trial court adjudged Edget a habitual offender under Mississippi Code Annotated Section 99-19-81 and ordered him to serve a term of twenty-five (25) years in the custody

of the Mississippi Department of Corrections. (C.P. 104-05, Tr. 227-29, R.E. 5-7). The trial court denied Edget's motion for judgment notwithstanding the verdict or, in the alternative, motion for a new trial. (C.P. 108-10, R.E. 8-10). Edget is presently incarcerated and now appeals to this Honorable Court for relief.

STATEMENT OF THE FACTS

Linda Townes ("Townes") lived next door to Hudson Edget ("Edget") on Lynn Street in Grenada, Mississippi. (Tr. 117). According to Townes trial testimony, Edget came to her house and rang the doorbell at about 9:30 p.m. or 9:45 p.m., on April 5, 2008. (Tr. 120). She asked Edget what he wanted, and he said, "I want you." (Tr. 120). Townes asked him to leave, and Edget then "started grabbing at the door and grabbed [her] arm, and [they] were struggling with the door." (Tr. 120-21). Townes pushed him back and shut and locked the glass storm door.¹ (Tr. 121, 127). Townes testified that Edget started saying "You know I want you; I want to fuck you. You know I want you." (Tr. 121, 127). She told Edget to leave and that she was going to tell his mother, Tara, who was a friend of Townes'. (Tr. 121). Townes closed and locked the wooden door, and Edget walked back toward his house next door. (Tr. 121, 127-28).

Townes went to get the phone to call 911, and, as she was dialing 911, she saw Edget come back. (Tr. 128). He began ringing the doorbell and asking Townes to let him in. (Tr. 129). After a few minutes, Edget left. (Tr. 130). However, he came back to Townes' house a few minutes later, but he went to a side window of the house instead of the door. (Tr. 130). Townes testified that she

¹ The doorway at issue consisted of a wooden inner door and a glass storm door. (Tr. 126-27).

heard a sound at the window.² (Tr. 130, 134). She stated that Edget was at the window for “two or three minutes” until police arrived. (Tr. 152-53).

Officer Charles Ellis (“Officer Ellis”) of the Grenada Police Department arrived at the scene, he observed Edget in Townes’ yard, inside the fence, walking away from Townes’ house and toward his house. (Tr. 168-69, 174, Ex. S-1). Officer Ellis told Edget to come to the patrol car; Edget complied; and Officer Ellis detained him, while other officers investigated the scene. (Tr. 169-71).

At trial, a picture of the window was introduced, showing that the screen had been bent; Townes testified that the damage to the window did not exist prior to the day in question. (Tr. 133-35, Ex. S-5, S-6, S-7). Townes testified that she checked the window two days before the incident because “[she] always checks [her] windows. Always.” (Tr. 147). She acknowledged that one of the other windows was damaged (cracked) by her son playing ball outside. (Tr. 148).

Townes’ boyfriend, John Hubbard (“Hubbard”) testified that he was at Townes’ house a few days after the incident, and Edget came to the house “to apologize about something.” (Tr. 178). Hubbard stated that he followed Edget back to his (Edget’s) house and started a confrontation that ended without turning physical and without the police being called. (Tr. 178-81).

At the close of the State’s case-in-chief, the defense made a motion for a directed verdict and argued essentially that the evidence was insufficient to prove that Edget intended to rape Townes. (Tr. 181-82). Specifically, the defense argued that the evidence showed, at most, that Edget asked Townes for sex, which is not against the law, and Edget was guilty only of willful trespass. (Tr. 181-

² On direct examination, Townes appeared to claim that Edget had something in his hand, but she could not tell what it was; she could only hear a sound at the window. (Tr. 130). However, on cross-examination, Townes clarified that she did not see anything in Edget’s hands; it was too dark for her to see; and she assumed he had something in his hands at the window. (Tr. 146-47). She also testified that the curtains to that window were drawn at the time. (Tr. 148).

82). The trial court denied the motion and stated that, “because of the language he used, [the jury] can infer that the crime he wanted to commit inside was a sexual battery of some kind in there.” (Tr. 182).

The defense rested without calling any witnesses, and the jury was instructed on attempted burglary of a dwelling with the intent to rape, and the lesser crime of wilful trespass. (Tr. 193-200, C.P. 85-94). The jury returned a verdict finding Edget guilty of attempted burglary of a dwelling. (Tr. 221, C.P. 103, R.E. 4).

SUMMARY OF THE ARGUMENT

The evidence was insufficient to support the verdict, and the trial court erred in denying Edget’s motion for directed verdict and motion for judgment notwithstanding the verdict. The State chose to indict Edget for attempted burglary of a dwelling with the intent to commit the crime of rape. Accordingly, the State undertook the burden of proving beyond a reasonable doubt that Edget attempted to break and enter Townes’ home with the intent to rape her. The only evidence that suggests that Edget intended to rape Townes was/were his statements “You know I want you; I want to fuck you” and his grabbing at Townes’ arm and/or the door. While this evidence may establish that Edget wanted to have sexual relations with Townes, it falls short of establishing beyond a reasonable doubt that Edget intended to actually forcefully rape Townes if he were to gain access into her house.

Moreover, the trial court’s ruling on Edget’s motion for directed verdict—that the jury could infer that Edget intended to commit a sexual battery of some kind—was based on an incorrect legal standard, which broadened the State’s burden by allowing it to prove the charge by presenting evidence that Edget intended to commit “a sexual battery of some kind,” as opposed to rape, the underlying crime which the State specifically charged in the indictment.

Accordingly, Edget respectfully contends that he is entitled to have this Court reverse and render his conviction, sentence and fines for attempted burglary of a dwelling with intent to rape. And, if this Court sees fit, render a judgment of conviction for the lesser included offense of willful trespass under the direct remand rule.

Alternatively, in the event this Court determines that the evidence was sufficient to support the verdict, Edget contends that the verdict was against the overwhelming weight of the evidence, and, therefore, the trial court erred in denying his motion for a new trial. This Court would sanction an unconscionable injustice were it to affirm Edget's conviction on such weak, speculative evidence. Therefore, Edget respectfully contends that he is entitled to have this Court reverse his conviction sentence and fines, and remand this case for a new trial.

ARGUMENT

I. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT, AND THE TRIAL COURT ERRED IN DENYING EDGET'S MOTIONS FOR DIRECTED VERDICT AND JNOV.

In reviewing the sufficiency of the evidence, the relevant inquiry is whether, "viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Bush v. State*, 895 So. 2d 836, 843 (Miss. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, (1979)). The verdict will not be disturbed where the evidence so reviewed is such that "reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense." *Id.* (citing *Edwards v. State*, 469 So. 2d 68, 70 (Miss.1985)). However, the proper remedy is to reverse and render where the evidence "point[s] in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty[.]" *Id.*

The crime of burglary of a dwelling is addressed in Mississippi Code Annotated, which states as follows:

(1) Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by imprisonment in the Penitentiary not less than three (3) years nor more than twenty-five (25) years.

Miss. Code Ann. § 97-17-23 (Rev. 2006).

In the indictment, the State chose to charge that Edget attempted to break and enter Townes' home "with the wilful, unlawful, and felonious *intent to rape* the said Linda Townes. . ." (C.P. 2) (emphasis added). Therefore, the State was required to prove that Edget intended to rape Townes at the time he attempted to break and enter her home. *See e.g., Quang Thanh Tran v. State*, 962 So. 2d 1237, 1242 (¶19) (Miss. 2007) (citation omitted); *Moore v. State*, 344 So. 2d 731, 735 (Miss. 1977); *Fondren v. State*, 253 Miss. 241, 251-52, 175 So. 2d 628, 631-32 (Miss. 1965); *Thames v. State*, 221 Miss. 573, 578, 73 So. 2d 134, 136 (Miss. 1954). To this end, it should be noted from the outset that the trial court's ruling on Edget's motion for directed verdict—that the jury could infer that Edget intended to commit a sexual battery of some kind—was based on an incorrect standard, which broadened the State's burden by allowing it to prove the charge by presenting evidence that Edget intended to commit "a sexual battery of some kind," as opposed to rape, the underlying crime which the State specifically charged in the indictment.

In any event, the evidence was insufficient to establish that Edget intended to rape Townes. Intent is determined by the expressions and acts of the alleged offender, the surrounding circumstances, and inferences fairly deducible from the circumstances. *See e.g., Wright v. State*, 9 So. 3d 447, 453 (¶20) (Miss. Ct. App. 2009) (quoting *Newburn v. State*, 205 So. 2d 260, 265 (Miss.

1967)); *Bright v. State*, 986 So. 2d 1042 (Miss. Ct. App. 2008).

In the instant case, the only evidence that suggests that Edget specifically possessed the intent to rape Townes (as opposed to the intent to commit another crime) are his statements “You know I want you; I want to fuck you” and his act in grabbing at Townes’ arm and/or the door. As detailed below, an examination of prior similar cases reveals that the evidence regarding Edget’s intent to commit the crime of rape is/was far less compelling than the evidence which previous cases have found sufficient.

In *Moore v. State*, 344 So. 2d 731, 735 (Miss. 1977), the Mississippi Supreme Court rejected the defendant’s argument that the State failed to prove that he intended to rape the victim. *Moore*, 344 So. 2d at 735. In *Moore*, the evidence established, among other things, that the victim was found with her hands tied behind her and with a gag in her mouth; two hairs found near the victim’s pubic possessed the same characteristics as the defendant’s hair; and the victim’s vagina contained sperm. *Id.* at 733, 735-36.

In *Thames v. State*, 221 Miss. 573, 578, 73 So. 2d 134, 136 (Miss. 1954), the defendant contended that the proof was insufficient to establish an intent to rape on his part. *Thames*, 221 Miss. at 577-78, 73 So. 2d at 136. However, the court found the evidence sufficient to establish an intent to ravish because the State presented evidence that the defendant broke into the victim’s house and stood within three feet of her bed with his pants unfastened and his privates exposed. *Id.*

In *Fondren v. State*, 253 Miss. 241, 251-52, 175 So. 2d 628, 631-32 (Miss. 1965), the court rejected the defendant’s challenge to the sufficiency of the evidence where the defendant rang the victim’s doorbell, entered her house, grabbed her by the shoulders and around the body, and told her that he had a gun. *Fondren*, 253 Miss. at 247, 175 So. 2d at 630.

In the instant case, the only evidence tending to suggest however slightly that Edget intended

to rape Townes was his statements that he wanted to have sex with her and his act of grabbing at Townes' arm and/or the door. While his statements clearly establish that he wanted to have sex with Townes, they do not establish beyond a reasonable doubt that Edget intended to fulfil his desire by forcefully raping Townes once inside her house. His act(s) in grabbing at Townes' arm and pulling on the door, may very well establish that Edget attempted to break and enter Townes' house and that he attempted to or actually committed an assault. However, the State was bound to prove that Edget intended to rape Townes, and it requires quite a leap in logic to conclude from this evidence that Edget intended to actually rape Townes; it is not merely a reasonable inference.

Consequently, the evidence was insufficient to prove beyond a reasonable doubt that Edget was guilty as charged for the crime of attempted burglary of a dwelling with the intent to rape, and this Court should reverse and remand Edget's conviction for this crime.

II. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Should this Court reject Edget's contention that the State presented insufficient evidence to support his conviction for attempted burglary of a dwelling with intent to rape, Edget asserts, in the alternative, that such a finding was against the overwhelming weight of the evidence.

In reviewing a challenge to the weight of the evidence, the verdict will be only be disturbed "when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush*, 895 So. 2d 836 at 844. The evidence is viewed in the light most favorable to the verdict. *Id.* (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss.1997)). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983 So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing *Bush*, 895 So. 2d at 844 (¶18)). "If, in this position, the Court disagrees with the verdict of the jury, 'the proper remedy is to grant a new trial.'" *Id.*

As explained above in the argument pertaining to the sufficiency of the evidence, the evidence established only that Edget wanted to have sex with Townes. While the evidence of his grabbing Townes' arm and/or the door may have established that he attempted to break and enter her home and that he may have intended to (or arguably did) commit an assault, it did not establish beyond a reasonable doubt that Edget intended to actually rape Townes.

In light of the above, the verdict reached in the instant case, if supported by sufficient evidence, is so contrary to the overwhelming weight of the evidence (or rather, the overwhelming lack of evidence) that allowing it to stand would sanction an unconscionable injustice. Therefore, the trial court erred in denying Edget's motion for a new trial, and this Court should reverse Edget's conviction and remand this case for a new trial.

CONCLUSION

Based on the propositions briefed and the authorities cited above, together with any plain error noticed by the Court which has not been specifically raised, Edget respectfully requests that this honorable Court reverse and render the conviction, sentence and fines entered against him in the trial court, or, in the alternative, to reverse his conviction, sentence and fines and remand this case for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Hunter N Aikens
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Hudson Edget, 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:

Honorable Clarence E. Morgan, III
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This the 9th day of December, 2009.



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CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Hudson Edget, 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 amended pages of the Brief of the Appellant to the following:

Honorable Clarence E. Morgan, III
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