IN THE COURT OF APPEALS 08/06/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00531 COA

TERRY DONNELL EDWARDS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOSEPH H. LOPER

COURT FROM WHICH APPEALED: MONTGOMERY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

H. LEE BAILEY, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY JEAN SMITH VAUGHN

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL-FELONY

TRIAL COURT DISPOSITION: COUNT I BURGLARY OF AN INHABITED DWELLING; COUNT II KIDNAPING; COUNT III ATTEMPTED RAPE: AS TO COUNT II, SENTENCED TO SERVE 30 YEARS IN THE MDOC; AS TO COUNT I, SENTENCED TO SERVE 8 YEARS IN THE MDOC; AS TO COUNT III, SENTENCED TO SERVE 8 YEARS IN THE MDOC

BEFORE FRAISER, C.J., DIAZ, AND McMILLIN, JJ.

FRAISER, C.J., FOR THE COURT:

Terry Donnell Edwards (Edwards) was tried, convicted, and sentenced in the Montgomery County Circuit Court for burglary of an inhabited dwelling, kidnaping, and attempted rape. He was sentenced to serve thirty years in the custody of the Mississippi Department of Corrections (MDOC) for kidnaping, eight years in the custody of the MDOC for burglary, and eight years in the custody of the MDOC for attempted rape. The sentences in Counts I (burglary of an inhabited dwelling) and III (attempted rape) shall run concurrently with the sentence in Count II (kidnaping). Edwards presents the following issues on appeal:

> I. THE LOWER COURT ERRED IN ALLOWING INTO EVIDENCE A WRITTEN STATEMENT OF NORA DUNN, WHICH WAS CUMULATIVE OF HER TESTIMONY.
>
> II. THE COURT ERRED IN ALLOWING A WITNESS TO TESTIFY FOR THE STATE WHEN THAT WITNESS HAD BEEN PRESENT IN THE COURTROOM FOR PART OF THE TRIAL.
>
> III. THE LOWER COURT ERRED IN FAILING TO GRANT TO DEFENDANT A MISTRIAL ON DEFENDANT'S *BATSON* CHALLENGE THAT THE DISTRICT ATTORNEY WAS EXCLUDING ALL BLACKS ON THE JURY.
>
> IV. THE LOWER COURT ERRED IN OVERRULING APPELLANT'S DEMURRER.
>
> V. THE STATE COMMITTED PROSECUTORIAL MISCONDUCT BY REPEATING A QUESTION AFTER AN OBJECTION WAS SUSTAINED BY THE COURT AND THE COURT ERRED IN FAILING TO INSTRUCT THE PROSECUTION NOT TO ASK THE QUESTION AGAIN AS REQUESTED BY DEFENDANT.
>
> VI. THE LOWER COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE ALLEGED TO HAVE BEEN USED IN COMMISSION OF THE THESE CRIMES.
>
> VII. THE COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE STATE'S EVIDENCE AND AGAIN AT THE CLOSE OF ALL THE EVIDENCE.

VIII. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Finding no error, we affirm.

FACTS

The early morning hours of August 29, 1992, found Nora Dunn asleep on her bed after working her night shift at the local mini-mart. She came in from work and without changing clothes, fell asleep on top of her single bed in her small shotgun house. She was awakened by a loud noise at her back door. At first, she thought the noise was a gun shot, but later discovered that someone had kicked in the door. When Dunn arose to investigate the noise, she was knocked down to the floor by Edwards. Edwards shoved Dunn on the bed, holding her with her head down between the bed and the window. Dunn testified as follows:

> A. He had my head down. Like if this is the bed, there is the window, and the bed is almost like close to the window. And he was holding my head down between the bed and the window. And he just like held me there for a while, and saying he was going to kill me, and then he put--he finally got a pillow case and --
>
> . . . .
>
> A. He took it [the pillow case] and put it over my head and was holding like the back of it, holding it tight like that, and my head was in here.
>
> . . . .
>
> A. He was choking me with the pillow case and talking.
>
> . . . .
>
> A. I'm going to kill you and -- mainly, I'm going to kill you. And sometimes, you know, I remember like, "You stuck up girl, and you proper talking girl. I'm going to kill you." There were other things but those were the basic things that stick out in my mind.
>
> . . . .
>
> A. I kept telling him I couldn't breathe. It was hard for me to breathe after a while, and I asked him who was he, and why was he doing this to me, what did he want, and then I told him I couldn't breathe.

Dunn continued to testify about Edwards' attack and explained that she figured out who he was by touching his hair, listening to his voice, and finally seeing his face when he took the pillow case off her head. Edwards indicated that he intended to rape Dunn and told her as much, and she begged him not to. She began to fight him, and he grabbed a pair of scissors. Dunn was cut and nicked in various spots by the scissors but eventually kicked them out of Edwards' hands. Edwards held Dunn down on the bed and again stated that he was going to rape her. In order to try to escape, Dunn asked Edwards if she could retrieve a condom from across the room. She made it as far as the living room before Edwards caught her and slammed her head through a window. Dunn was dragged back into the bedroom. Edwards placed a belt around her neck to choke her. He told Dunn that he was going to kill her. In a vain attempt to appear cooperative, Dunn stated that she would do whatever he said and would no longer fight him. As Edwards was undressing to rape Dunn, she pulled his pants down over his shoes so that he could not run, and exited the house. Dunn stood hidden outside her house partially clothed until Edwards left the premises. Dunn then reentered her house, put on some clothes and ran to the nearby Junior Food Mart (JFM). Reverend Samuel Burnside testified that he drove to the JFM that morning to drink coffee. When he pulled up, "[S]he was there and when I saw her she seemed like she was frightened or scared or had been hurt or something. And she asked me to take her home." He took Dunn to the home of James Butts, her boyfriend. Reverend Burnside related Dunn had bruises or scratches on her face and she looked as if she had been hurt.

James Butts (Butts), Dunn's boyfriend, testified that when Dunn arrived at his house the morning of the attack, she was crying and told him that Edwards had tried to rape her and kill her. Butts drove Dunn to the police station to report the incident.

> I. THE LOWER COURT ERRED IN ALLOWING INTO EVIDENCE A WRITTEN STATEMENT OF NORA DUNN, WHICH WAS CUMULATIVE OF HER TESTIMONY.

During cross-examination, Edwards' counsel asked Dunn about certain statements she made to Officer Winbush the day of the incident. On redirect, the State sought to introduce the entire statement so that the jury would not be misled by excerpts of her statement taken out of context. Edwards objected on the grounds that the statement was cumulative. The trial judge overruled the objection and allowed the statement to be introduced. Edwards places much emphasis on the following language about the rule of admissibility of prior statements from *Smith v. State*, 394 So. 2d 882, 885 (Miss. 1981) (citations omitted):

> The rule regarding the admissibility of a rape victim's complaint and hearsay exceptions to a rape complaint are [sic] stated in *Carr v. State*, 208 So. 2d 886, 888 (Miss. 1968):
>
> > The rule on this subject in Mississippi and in most of the United States is that the testimony of the prosecutrix, or other witness, is admissible to corroborate her testimony to show that shortly after the commission of the alleged offense she made a complaint, and when, where and to whom it was made. This evidence is not admitted as proof that the crime was committed, but merely to

rebut the inference of consent that might be drawn from her silence.

> By the great weight of authority, evidence of the prosecutrix's complaint must be confined to the bare fact that a complaint was made and the details or particulars of the complaint are not admissible as substantive testimony to bolster the testimony of the prosecutrix as to the guilt of the accused. The rule has been modified in this state so as to permit the prosecutrix to "identify the time and place with that of the one charged." This modification in the rule does not permit the officers to add opinion testimony to bolster the testimony of the prosecutrix.

More recently the Mississippi Supreme Court addresses the admissibility of prior consistent statements in response to a challenge of the witnesses' veracity:

> This Court has held that admission of a prior consistent statement of a witness where the veracity of the witness has been attacked is proper but "should be received by the court with great caution and only for the purpose of rebuttal so as to enable the jury to make a correct appraisal of the credibility of the witness."

White v. State, 616 So. 2d 304, 308 (Miss. 1993). Such is the situation in the case sub judice. Edwards' counsel brought up the statement during cross-examination and by only extracting parts of it inferred that Dunn was framing Edwards. Edwards questioned Dunn about her statement to Officer Winbush that she hid behind her house and waited until Edwards had "time to escape." Edwards questioned Dunn about having consensual sex with Edwards and then being caught by her boyfriend. Edwards' counsel used an out of context excerpt of her statement to imply deception and attack her veracity. On redirect, the State was justified in rebutting such implications and introducing the prior consistent statement, not for any inadmissible purpose, but "to enable the jury to make a correct appraisal of the credibility of the witness." *White*, 616 So. 2d at 308 (citation omitted). The State was not attempting to bolster Dunn's testimony as Edwards charges on appeal. There was no error.

> II. THE COURT ERRED IN ALLOWING A WITNESS TO TESTIFY FOR THE STATE WHEN THAT WITNESS HAD BEEN PRESENT IN THE COURTROOM FOR PART OF THE TRIAL.

As the State began its examination of Butts (Dunn's boyfriend), Edwards objected and asked to approach the bench. Edwards sought to exclude Butts' testimony on the ground that he was present in the courtroom during certain testimony in violation of the sequestration rule. The State explained that Butts was called as a rebuttal witness and as soon as the State realized that it was going to call him, it removed him from the courtroom. In chambers, Butts explained that he had been in the courtroom and heard part of Dunn's testimony. The trial judge allowed Butts to testify as a rebuttal witness to the Defendant's testimony. On appeal, Edwards complains that violation of the sequestration rule requires reversal. The following case law sets our standard of review:

> We have recognized that the witness sequestration rule "serves to discourage a witness's tailoring her testimony to what she has heard from the stand" and to "facilitate exposing false testimony." In *Douglas v. State*, 525 So. 2d 1312 (Miss.1988), this Court held that, "[w]hen [a] violation of the sequestration rule is assigned as error on appeal, the failure of the judge to order a mistrial or to exclude testimony will not justify reversal on appeal ... absent a showing of prejudice sufficient to constitute an abuse of discretion."

Powell v. State, 662 So. 2d 1095, 1098 (Miss. 1995) (citations omitted).

> [A]pplication of the sequestration rule is a matter residing within the trial court's discretion. Nothing here suggests that the lower court abused its discretion by allowing these witnesses to testify. The assignment of error has no merit.

Baine v. State, 604 So. 2d 258, 263 (Miss. 1992).

> Under existing Mississippi law the court has the discretion to exclude the offending witness from testifying. The trial judge should not permit a witness who has violated the rule to testify unless he has first determined that the adversary would not be prejudiced by the violation of the rule. A careful review of the Comments shows that the appellants neglected to cite the following:
>
> Other remedies might be to strike the testimony of a witness who violated the rule, cite the witness for contempt, or allow a "full-bore" cross-examination.

Gerrard v. State, 619 So. 2d 212, 217 (Miss. 1993). In Edwards' case, Butts was called to rebut Edwards' testimony about the events that took place at Curtis Currie's (Currie) house the morning of the attempted rape. The trial judge examined Butts to determine what and how much testimony he heard. The only testimony Butts heard while he was in the courtroom was Dunn's. The trial judge determined that Butts had not heard any testimony that would affect his rebuttal of Edwards. The trial judge correctly determined that Edwards would not be prejudiced by Butts testimony, but as a safeguard, allowed a full-bore cross-examination. No abuse of discretion occurred, and there is no merit in Edwards' appellate contention.

> III. THE LOWER COURT ERRED IN FAILING TO GRANT TO DEFENDANT A MISTRIAL ON DEFENDANT'S *BATSON* CHALLENGE THAT THE DISTRICT ATTORNEY WAS EXCLUDING ALL BLACKS ON THE JURY.

During the selection of the jury, Edwards asked the trial court to have the district attorney under *Batson v. Kentucky*, 476 U. S. 79 (1986), explain his challenges to five black jurors. The State

responded that even though it felt that there had not been the requisite showing required by *Batson*, it would go ahead and state its reasons.

In order for a defendant to raise a *prima facie* case that the state has improperly struck a potential juror on the basis of race, it must be shown (1) that he is "a member of a cognizable racial group"; (2) that the defendant is entitled to rely on the fact that peremptory challenges allow "those to discriminate who are of a mind to discriminate"; and (3) that "these facts and any other relevant circumstances raise an inference that the [State] used that practice to exclude the veniremen from the petit jury on account of their race." *Batson*, 476 U.S. at 96; *Powers v. Ohio*, 499 U.S. 400, 416 (1991). For purposes of our analysis, we assume that Edwards makes a *prima facie* case in light of the prosecution striking five black jurors. Additionally, where, as here, a trial court has accepted a prosecutor's explanations as valid race-neutral reasons, the reviewing court will assume the *prima facie* requirement has been met. *Lockett v. State*, 517 So. 2d 1346, 1349 (Miss. 1987), *cert. denied*, 487 U.S. 1210 (1988).

Accordingly, we are faced with determining whether the trial judge properly accepted the prosecution's reasons for striking the five black potential jurors. The trial judge is afforded ample discretion to determine whether the prosecution was motivated by a discriminatory motive when it struck the potential black jurors. The determination of discriminatory intent will likely turn on a trial judge's evaluation of a presenter's credibility and whether an explanation should be believed. *Hernandez v. New York*, 500 U.S. 352, 365 (1991); *Batson*, 476 U.S. at 98. We will not overturn the judge's determination absent clear error. *Chisolm v. State*, 529 So. 2d 630, 633 (Miss. 1988).

The prosecution's reasons for striking five black jurors are as follows:

> 1) Juror No. 4, Ms. Shelia Brooks- "[T]he reason is that she went to school with the Defendant and it appeared that they were close friends during that time."
>
> 2) Juror No. 6, Mr. Richard Brown- "[H]e's related to a law enforcement officer in Grenada. He is also related to a person, he has a brother named Will Brown, who has been charged with the commission of a crime in Montgomery County."
>
> 3) Juror No. 17, Mr. Charlie Tyson- "[H]e served on a hung jury and in the way he responded acted like he was proud that the jury was hung."
>
> 4) Juror No. 20, Mr. Richard Campbell- "has it appears relatives that may be in prison for this same type of crime if Mark Campbell is a relative. Law enforcement officials feel that he is, but regardless of that issue, the victim in this case stated that Richard Campbell has a niece that is also the niece of the Defendant, Terry Edwards, in this cause."
>
> 5) Juror No. 11, Mrs. Ozzie Johnson- "[S]he has a son that has recently died that has been in trouble with the law. He has also been charged specifically with the crime of burglary,

which is one of the crimes that this defendant is charged with."

The trial court accepted these reasons as valid, race-neutral reasons. We are unable to say that the trial court abused its discretion in accepting the prosecutor's reasons.

IV. THE LOWER COURT ERRED IN OVERRULING APPELLANT'S DEMURRER.

Before trial, the trial court heard argument on Edwards' demurrer to the indictment. The demurrer stated (1) Count I of the indictment alleged the wrong address as the site of the burglary; (2) Count II of the indictment (kidnaping) was void because any confinement was incidental to a lesser crime alleged in the indictment; and that (3) Count III of the indictment (attempted rape) was void because the statute alleged to have been violated, section 97-3-65 of the Mississippi Code of 1972, does not contemplate raping, ravishing and/or carnally knowing a female above the age of 14 years, except those to whom a substance was administered to produce a stupor, which has not been alleged. The prosecution moved to amend the indictment to reflect the correct address with no objection. The trial court denied the demurrer.

On appeal, Edwards only addresses his claim concerning Count II of the indictment, kidnaping. Essentially, he argues that the State failed to prove the elements of kidnaping, and therefore the demurrer should have been granted. The law is well settled that a demurrer to an indictment is not the proper place to challenge the legal sufficiency of the evidence. The Mississippi Supreme Court stated as much in *State v. Grady*, 281 So. 2d 678, 680 (Miss. 1973): "It is well settled in this state that neither a motion to quash nor any other pretrial pleading can be employed to test the sufficiency of the evidence to support the indictment." Additionally, "[i]f from a reading of the indictment as a whole the accused is in fact given fair notice of that with which he has been charged, the indictment is legally sufficient." *Harbin v. State*, 478 So. 2d 796, 798 (Miss. 1985). The indictment in the case sub judice was legally sufficient. Edwards' appellate complaint is without merit.

V. THE STATE COMMITTED PROSECUTORIAL MISCONDUCT BY REPEATING A QUESTION AFTER AN OBJECTION WAS SUSTAINED BY THE COURT AND THE COURT ERRED IN FAILING TO INSTRUCT THE PROSECUTION NOT TO ASK THE QUESTION AGAIN AS REQUESTED BY DEFENDANT.

The following exchange took place during the State's cross-examination of Edwards:

Q. And you know that the only reason you're sitting up here telling this Jury that you did have sex is you know that if the act of sex was committed then that is a defense to attempted sex, don't you?

A. No, sir. That's the truth.

Q. You know that that is a defense to that crime, don't you?

BY MR. BAILEY: Your Honor, I object again. He's calling for this witness to give a conclusion of law.

BY MR. EVANS: Your Honor, I have reason to believe that this witness knows the answer to that and I would ask him to answer if he does.

A. No, sir.

BY MR. BAILEY: Just a moment. May I have a ruling, Your Honor?

BY THE COURT: I will sustain the objection. But he had already answered a couple of times before you objected.

Q. The only reason that you want this Jury to believe that you had sex with her is because that would be an absolute defense to the crime of Attempted Rape?

BY MR. BAILEY: Judge, I object. And I would request the Court to instruct the District Attorney not to ask this question any more.

BY MR. EVANS: Your Honor, if this is something he has knowledge of he can answer it.

BY THE COURT: He's already answered it anyway a couple of times.

The district attorney did not ask the question again. On appeal, Edwards contends that the court, by allowing the State to ask the question more than once, committed reversible error because it deprived him of a fair trial. Edwards argues that "[i]t is the duty and responsibility of the trial judge to control and channel the interrogation and arguments of attorneys so as to insure an efficient and orderly trial." We agree, and after reviewing the record, are convinced that the trial judge fulfilled his duty and did not commit error. The trial court sustained the objection after noting its untimeliness. The State had already asked Edwards the question and received an answer. The State was not seeking to introduce inflammatory or prejudicial evidence, but was attempting to test Edwards' credibility. While Edwards cries prosecutorial misconduct, he has not provided any proof of prejudice resulting from the State's question. This issue has no merit.

VI. THE LOWER COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE

ALLEGED TO HAVE BEEN USED IN COMMISSION OF THE THESE CRIMES.

In a suppression hearing before the start of the trial , Edwards moved to suppress the physical evidence of the crime: the pillowcase, the belt, and the scissors. These items were not taken by the police and remained in Dunn's custody until trial. The trial court denied Edwards' motion to suppress. On appeal, Edwards claims that the trial judge abused his discretion in allowing the three items to come in because it was likely that they had been tampered with. At trial, Dunn incorporated the items into her testimony to clarify how Edwards had used them. It is well established that questions as to the chain of custody come within the discretion of the trial court:

> The test is whether or not there is any indication or reasonable inference of probable tampering with the evidence or substitution of the evidence. In *Wright v. State*, 236 So. 2d 408 (Miss. 1970), this Court held the introduction of demonstrative evidence without requiring preliminary proof of the condition of such evidence from time of seizure until time of examination by an expert witness is:
>
> > (U)sually determined within the sound discretion of the trial judge, and, unless this judicial discretion had been so abused as to be prejudicial to the defendant, this Court will not reverse the ruling of the trial court. . . .
>
> We hold that the trial judge did not abuse his discretion in permitting the introduction of the substance in evidence which was identified as marijuana because there is no suggestion whatsoever in the record that the substance was tampered with or another substance substituted therefor.

Grady v. State, 274 So. 2d 141, 1423(Miss. 1973). The Mississippi Supreme Court elaborated on the law in the recent case of *Nalls v. State*:

> This Court has held that the test with respect to whether there has been a break in the chain of custody of evidence is whether there is an indication of probable tampering. Furthermore, this Court has also held that matters regarding the chain of custody of evidence are largely left to the discretion of the trial judge and will not be disturbed unless there appears to be an abuse of discretion.

Nalls v. State, 651 So. 2d 1074, 1077 (Miss. 1995) (citations omitted). Edwards' claim fails because there is no indication of tampering or substitution of the evidence. Dunn testified that she kept the items at her house after the police instructed her so. The trial judge did not abuse his discretion in admitting the evidence.

> VII. THE COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE STATE'S EVIDENCE AND AGAIN AT THE CLOSE OF ALL THE EVIDENCE.

VIII. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Edwards' two final issues challenge the sufficiency and weight of the evidence. We first examine the issue of sufficiency of the evidence. Edwards contends the trial court erred in overruling his motion for directed verdict at the close of the State's evidence and his motion JNOV at the close of the trial. The standard of review for challenges to the sufficiency of the evidence is set forth in *McClain v. State*:

> 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. 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. The credible evidence consistent with McClain's guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. 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.

McClain v. State, 625 So. 2d 774, 778 (Miss. 1993). We review the ruling on the last occasion the challenge was made: Edwards' motion for acquittal notwithstanding the verdict. Edwards claims the State failed to prove the elements of attempted rape.

> The crime of attempt consists of three elements: 1) an intent to commit a particular crime; 2) a direct ineffectual act done toward its commission, and 3) failure to consummate its commission.

Pruitt v. State, 528 So. 2d 828, 830 (Miss. 1988). Edwards' intent was evidenced by his statement to Dunn that he was going to rape her and kill her. His direct ineffectual acts done towards the commission of the rape were holding Dunn down on the bed, putting the belt around her neck and using scissors against her to control her. Edwards failed in his attempt to rape Dunn because she escaped. The State put on proof of these facts with Dunn's testimony. Edwards testified to a different story, one of consensual sex. However, Edwards' testimony and ultimate defense do not negate the State's proof of the elements of attempted rape. The differing testimony between Dunn and Edwards

created a fact question for the jury. The State met its burden of proof. There was no error.

For the first time, Edwards contends the State's failure to prove Dunn's age warrants reversal. Raising an issue for the first time on appeal results in procedural bar. Additionally, this issue is without merit.

Edwards' last issue on appeal claims that the verdict was against the overwhelming weight of the evidence. Our standard of review is dictated by *McClain:*

> [T]he challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. . . New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.
>
> . . . .
>
> The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed.

McClain v. State, 625 So. 2d 774, 780 (Miss. 1993). There was direct testimony from Dunn relating Edwards' attack from the time he broke into her house, the extent to which he threatened and injured her, her confinement against her will, and his attempts to rape her. The Reverend Burnside testified about assisting Dunn at the JFM. He described her mental state as frightened and testified that she looked hurt. Burnside dropped Dunn off at her boyfriend's house. Butts testified to Dunn's state of mind when she came to his house, and he testified about taking her to the police station to report the crime. The jury was provided ample testimony, and it was the province of the jury to weigh the

credibility of the witnesses. The trial court did not abuse its discretion in overruling Edwards' motion for a new trial.

All of Edwards' issues are without merit, and we affirm.

THE JUDGMENT OF THE MONTGOMERY COUNTY CIRCUIT COURT OF CONVICTION ON COUNT I, BURGLARY OF AN INHABITED DWELLING AND SENTENCE OF EIGHT (8) YEARS; COUNT II, KIDNAPING AND SENTENCE OF THIRTY (30) YEARS; AND COUNT III ATTEMPTED RAPE AND SENTENCE OF EIGHT (8) YEARS ALL TO BE SERVED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. THE SENTENCES IN COUNTS I AND III TO RUN CONCURRENTLY WITH SENTENCE IN COUNT II AND CONSECUTIVELY TO ANY SENTENCE PREVIOUSLY IMPOSED. COSTS ARE TAXED TO MONTGOMERY COUNTY.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.