

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00616 COA**

**LEE PEARSON**

**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

DATE OF JUDGMENT:	09/22/95
TRIAL JUDGE:	HON. SHIRLEY C. BYERS
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	CLEVE MCDOWELL
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEIRDRE MCRORY
DISTRICT ATTORNEY:	HALLIE GAIL BRIDGES
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT'S 1 & 2 15 YRS EACH CT; CT 2 CONCURRENT CT 1; PAY \$663.00 COURT COSTS & \$500.00 TO VICTIM COMPENSATION FUND; \$1,163.00 JUDGMENT AGAINST DEFENDANT IN FAVOR OF SUNFLOWER COUNTY
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE McMILLIN, P.J., HINKEBEIN, AND SOUTHWICK, JJ.

HINKEBEIN, J., FOR THE COURT:

Lee Pearson was convicted in the Sunflower County Circuit Court for sexual battery and attempted sexual battery of his live-in girlfriend's ten-year-old daughter. Following his bench trial, Pearson was sentenced to serve two concurrent fifteen year terms of imprisonment in the custody of the Mississippi Department of Corrections. Feeling aggrieved by the judgment against him, Pearson appeals his conviction on only the following ground:

I. THE VERDICT IS AGAINST THE WEIGHT OF THE EVIDENCE AND CONTRARY

## TO LAW.

We find the issue raised by Pearson does not warrant a reversal of his conviction. Accordingly, we affirm the judgment of the trial court.

## FACTS

During August 1994, ten-year-old "Christy" spent a Saturday afternoon with her aunt. When the time arrived for the child to return home, she expressed reluctance to do so. She cited fear of her mother's live-in boyfriend, our appellant, as her reason. With some coaxing, she then recounted a brief summary of the previous night's events. According to Christy, Pearson arrived home that Friday night around 11:00 to find her alone and asleep. He awoke the child, inquiring as to the whereabouts of her mother. Upon learning of his girlfriend's absence, he sexually abused the girl. He first attempted to have vaginal intercourse with her. However, when Pearson was unable to penetrate her immature body, he forced Christy -- under the threat of physical reprisal -- to engage in oral sex.

Although her mother arrived shortly thereafter, Christy said nothing of Pearson's abusive behavior for fear of Pearson's retribution. Her terror continued into the next day, quelling any thoughts of mentioning the event to those whom she encountered. She finally broke her silence only when faced with the possibility of returning home to find herself alone once again with her attacker.

Upon hearing this disturbing report, Christy's aunt took the child to her mother (Christy's grandmother). At her grandmother's home, the child recounted essentially the same facts again for the two women. Later, at the emergency room, she again gave a consistent, albeit more detailed, account to an on-duty nurse practitioner. Then, after an examination uncovered physical injuries consistent with attempted vaginal intercourse, she was transported to the police station. Upon her arrival, Christy *again* described her ordeal in virtually the same fashion to a Department of Human Services social worker. Only days later, Pearson was indicted for sexual battery, attempted sexual battery, and fondling. At a subsequent bench trial Sunflower Circuit Court Judge Shirley C. Byers found Pearson guilty of sexual battery and attempted sexual battery, noting the merger of fondling into the sexual battery charge.

## ANALYSIS

Following his conviction, Pearson moved for a new trial claiming that the verdict was contrary to the law and the weight of the evidence. The motion was denied. On appeal, Pearson reasserts his request by attacking Christy's credibility. In support, Pearson relies on an alleged retaliatory motive for the child's accusations as well as perceived inconsistencies in her testimony. The State contends that there is in the record substantial evidence of such quality and weight to support Pearson's conviction. We agree with the State.

The Mississippi Supreme Court has repeatedly held that the fact finder, whether it be a trial judge sitting as such or a jury, bears sole responsibility for determining the weight and credibility of evidence. *May v. State*, 460 So. 2d 778, 781 (Miss. 1985); *Atterberry v. State*, 667 So. 2d 622, 625 (Miss. 1995) (citations omitted). Therefore this Court will reverse as to the factual findings of a trial judge sitting without a jury only where such are clearly erroneous. *Amerson v. State*, 648 So.2d 58, 60 (Miss. 1994)(citations omitted).

The record reveals the untenable nature of the alibi defense Pearson presented at trial. He claimed to have spent the evening in question at a local nightclub with friends. Three individuals each took the witness stand and in turn testified to having been with Pearson that night. But each admitted that the group spent countless evenings drinking alcohol and dancing at the nightclub. And each conceded difficulty in recalling precisely when the group arrived and departed from the establishment on the night of the incident.

In contrast, the prosecution presented the testimony of Christy, her aunt, the nurse practitioner, and the social worker. As to Christy, her trial testimony is not entirely eloquent and not as detailed as we might like. The record is replete with unintelligible answers, instructions by both prosecution and defense to speak louder, and her frequent refusal to answer at all. Additionally, Christy acknowledged her pre-existing personal dislike for Pearson, blaming her feelings toward him in part on the frequent "whippings" he administered. But as a whole, instead of conjuring speculation as to spitefulness, the transcript paints a picture of a terrified little girl attempting to answer questions which she had rather not. Under the circumstances, we could not reasonably expect differently. Moreover, despite her understandable timidity, Christy conveyed the basic information outlined above in age-appropriate terms and with no internal inconsistencies. She also clearly and without hesitation denied each and every suggestion of falsity. A reasonable fact-finder might well have found Pearson guilty beyond a reasonable doubt of sexual battery as well as attempted sexual battery based on this evidence alone. *Nash v. State*, 278 So. 2d 779, 780 (Miss. 1973)(finding that the testimony of a single witness is sufficient to sustain a conviction even though there may be additional witnesses testifying to the contrary).

In addition, this prosecutor chose to proceed with caution by presenting the testimony of three corroborating witnesses. Christy's aunt, the emergency room nurse, and the assigned social worker each recalled in detail the description given to them by Christy the night after the attack. Her aunt did acknowledge enduring dislike for Pearson, blaming his abusive treatment of her sister. Nevertheless, each witness's account was consistent not only with the other but with Christy's testimony at trial and the physical evidence gathered during her emergency room visit. Because Pearson was afforded ample opportunity to question the reliability of these witnesses before the trial judge, we cannot on appeal characterize the resulting finding of guilt as clearly erroneous. This assignment of error is therefore without merit.

**THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY OF CONVICTION OF COUNT I OF SEXUAL BATTERY AND SENTENCE OF FIFTEEN YEARS; COUNT II OF ATTEMPTED SEXUAL BATTERY AND SENTENCE OF FIFTEEN YEARS WITH EACH TO RUN CONCURRENTLY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO SUNFLOWER COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**