

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00990 COA**

EARNEST LEE ALLEN A/K/A ERNEST LEE ALLEN **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	09/04/96
TRIAL JUDGE:	HON. ELZY JONATHAN SMITH JR.
COURT FROM WHICH APPEALED:	COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ALLAN D. SHACKLEFORD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: PAT S. FLYNN
DISTRICT ATTORNEY:	LAWRENCE Y. MELLEN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I KIDNAPPING: CT II TOUCHING A CHILD FOR LUSTFUL PURPOSES: CT'S I & II EACH SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE, PROBATION, REDUCTION OR SUSPENSION; CT I CONSECUTIVE TO ANY PREVIOUS; CT II CONCURRENT CT I; SENTENCED AS A HABITUAL OFFENDER.
DISPOSITION:	AFFIRMED - 11/04/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE THOMAS, P.J., HINKEBEIN, KING, AND HERRING, JJ.

PER CURIAM:

Earnest Lee Allen, a/k/a Ernest Lee Allen, was convicted as a habitual offender of kidnapping a minor child, on count I and touching a child for lustful purposes, on count II, in the Circuit Court of Coahoma County. Allen was sentenced to serve life imprisonment on each count, with the sentence for count II to run concurrently with that of count I, without the possibility of probation, parole, reduction, or suspension.

Allen was identified in a photo line-up by Jane, David, and Toby as the man who grabbed Jane from her aunt's yard in the late afternoon of March 30, 1996.⁽¹⁾ Allen's landlord, Wilbert Phillips, later testified that he saw Allen with Jane in his arms on the day of the kidnapping. Jane also made an in-court identification of Allen as well. She testified that Allen took her to an alley behind a house, removed her shirt, pulled her dress up, and rubbed the top of her leg. She stated that he told her that God told him to do those things to her. Jane's aunt testified that she later found her screaming and running down a nearby street.

Allen presented two witness who testified that he was at a fishfry until around 5:00 p.m. on that day. Allen did not present testimony to account for his whereabouts after he left the cookout. Subsequently, the jury convicted Allen, and he now appeals his conviction alleging that the verdict is against the overwhelming weight of the evidence.

The weight and credibility of testimony is determined by the jury. *Williams v. State*, 463 So. 2d 1064, 1069 (Miss. 1985). Our review of the jury's determination is done by accepting as true the evidence which supports the verdict, and we will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989). Based upon the record in this case, we do not find that the circuit court abused its discretion and therefore, we affirm Allen's conviction and sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTIONS ON COUNT I FOR KIDNAPPING AND COUNT II FOR TOUCHING A CHILD FOR LUSTFUL PURPOSES AND SENTENCE AS AN HABITUAL OFFENDER TO A TERM OF LIFE FOR COUNT I AND A TERM OF LIFE FOR COUNT II TO BE SERVED CONCURRENT WITH COUNT I TO RUN CONSECUTIVE TO ANY OTHER SENTENCE PREVIOUSLY IMPOSED, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

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

1. Because the children are minors, we have given them fictitious names to protect their privacy.