

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-KA-00366 COA**

**JAMES ALBERT JONES**

**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:	03/03/94
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	LOWNDES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ROBERT B. PRATHER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED III
DISTRICT ATTORNEY:	FORREST ALLGOOD
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I KIDNAPPING: SENTENCED TO 25 YRS IN MDOC; CT III SEXUAL BATTERY: SENTENCED TO 25 YRS IN THE MDOC; SAID SENTENCE IS TO RUN CONSECUTIVE WITH SENTENCE IN CT I, FOR A TOTAL OF 50 YRS
DISPOSITION:	AFFIRMED-2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

KING, J., FOR THE COURT:

James Albert Jones was convicted of kidnaping and sexual battery in the Lowndes County Circuit Court and sentenced to serve a term of twenty five years on each conviction, with each sentence to run consecutively, in the custody of the Mississippi Department of Corrections. Jones assigns the following errors on appeal:

- (1) A verdict for the defendant is the only verdict that reasonable men and women engaged in the search for truth could have returned.**
- (2) The verdict of the jury is against the overwhelming weight of the evidence and is the result of bias, passion and prejudice.**
- (3) The verdict of the jury did not respond to reason and is against the overwhelming weight of the evidence.**
- (4) The verdict of the jury is not supported by a preponderance of the credible evidence.**
- (5) The court erred in not excluding the evidence offered by Dr. Thomas Aycock as he was not qualified as an expert.**
- (6) The defendant was a disruptive defendant and should have been excluded from the courtroom as the trial judge admonished him several times, but did nothing about it.**

We affirm the convictions and sentences of kidnaping and sexual battery.

## **FACTS**

On the morning of March 8, 1993, Jones grabbed Laura<sup>(1)</sup>, a ninth grade student, as she walked to her school bus stop in Columbus, Mississippi. Teakilasha Williams and Shemeka Harrison, two of Laura's friends, witnessed Laura struggle with Jones as he took her up the street to a vacant house. Teakilasha stated that because some bushes blocked her view she could not see Jones very well, but she heard Laura holler at Jones to "Stop". Shemeka saw Jones grab Laura around the waist and "tote" her down the street kicking and screaming. Upon arrival at school, Shemeka reported the incident to her principal. Shemeka and Teakilasha later identified Jones in a police picture line-up.

Laura testified at trial that Jones forced her to stay in the attic of the vacant house. She stated that Jones forced her to have vaginal and anal intercourse with him. After keeping her in the house until the early afternoon, Jones released her. Despite Jones' claims that he would kill her if she spoke of the incident, Laura told her parents when she arrived home. Laura's mother took her to the hospital where a nurse completed a rape victim examination. An emergency room physician examined her also, determining that she had sustained a tear in her anal ring.

Subsequently, Jones was indicted for kidnaping, rape and sexual battery. He denied all charges, claiming that he and Laura had been dating, and she consented to going with him to the vacant house to have sexual intercourse. A trial was held and the jury convicted Jones only of kidnaping and sexual battery. Jones' motions for new trial and judgment notwithstanding the verdict were denied. Jones now appeals his convictions and sentences.

## **DISCUSSION**

### *Qualification of Dr. Aycock as an Expert*

Jones argues that Dr. Aycock, the emergency room physician, was never qualified as an expert witness at trial and therefore his testimony should have been excluded. We agree with Jones'

argument that Dr. Aycock was not properly qualified as an expert witness. However, after careful review of the record, we find that Jones' motion was untimely thereby presenting a procedural bar to this issue.

The record reveals that the procedure of first qualifying and then tendering Dr. Aycock as an expert witness was not followed by the state in the case sub judice. *Sample v. State*, 643 So.2d 524, 529-530 (Miss.1994). The state's efforts at qualification were limited to requests for his name, occupation, and place and length of employment. Questions regarding his educational background, experience and specialized training were not proposed. The state questioned Dr. Aycock about the cause of Laura's anal tear and vaginal redness, but did not tender Dr. Aycock as an expert witness before seeking these expert opinions. It was incumbent upon the State to properly qualify and tender Dr. Aycock as an expert witness. However, we find that it was also incumbent upon the defense to make a timely objection to Dr. Aycock's testimony.

The defense's motion to exclude Dr. Aycock's testimony actually occurred at the *completion of redirect examination*. It appears that the defense attempted to make this motion at the conclusion of Dr. Aycock's cross-examination but the trial judge ruled that he would entertain it at the conclusion of Dr. Aycock's redirect examination. Even presuming that the motion was made at the completion of cross-examination, it would still have been untimely. It is the opinion of this court that since no contemporaneous objection [was] made, the error, if any, [was] waived." **M.R.E. 103(a)**. The defense clearly acquiesced to Dr. Aycock's status as an expert by completing cross-examination before questioning his qualifications as an expert. *Mack v. State*, 650 So.2d 1289, 1314 (Miss.1994). Because the defense failed to timely object to Dr. Aycock's testimony, this issue is therefore procedurally barred.

### *Weight and Credibility of the Evidence*

Jones contends that the evidence in the case at bar is against the overwhelming weight of the credible evidence. We disagree. "In determining whether or not a jury verdict is against the overwhelming weight of the evidence, [we] must accept as true the evidence which supports the verdict and will reverse only when it is convinced that the circuit court has abused its discretion in failing to grant a new trial." *Isaac v. State*, 645 So.2d 903, 907 (Miss.1994).

**Section 97-3-53 of the Mississippi Code Annotated (Rev.1994)** defines kidnaping as unlawful, forcible seizure and confinement of another person with intent to cause such person to be secretly confined or imprisoned against his or her will. The record reveals that both Teakilasha and Shemeka testified that they witnessed Jones grab Laura near the bus stop and force her to go with him up the street. Shemeka reported the incident to the school principal and along with Teakilasha, later identified Jones as the perpetrator. Laura testified that Jones grabbed her, took her to a vacant house, and forced her to stay in the house against her will. Conversely, Jones was the only witness who testified that he did not force Laura to go to the vacant house. He argues that because he and Laura were dating, she voluntarily met him in front of the vacant house. Yet, witnesses who testified on behalf of both Jones and the State stated that they were not aware that Jones and Laura had ever dated. In light of the aforementioned facts, we find that this verdict was not a result of bias, passion or prejudice nor against the overwhelming weight of the evidence.

**Section 97-3-95 of Mississippi Code Annotated** defines sexual battery as an act of sexual

penetration with another person without his or her consent. Jones admitted that he engaged in sexual intercourse with Laura. Though he contends that it was consensual, Laura testified that it was without her consent. Laura's testimony, standing alone, was sufficient to support the guilty verdict of sexual battery. Like the verdict of kidnaping, we do not find that the evidence was against the overwhelming weight of the evidence nor a result of bias, passion or prejudice.

Jones contends that the verdict is against a preponderance of the credible evidence. After review of the record, we find that Laura made some statements that were contradictory in nature. However, the State is allowed to receive the benefit of all favorable inferences that can be drawn from Laura's as well as the other witnesses' testimonies. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993). Ultimately, issues regarding weight and credibility of the evidence are for the jury to resolve, and we defer to the jury's decision to render a guilty verdict. *Id.* Considering the testimony of Jones, Laura's two friends, Laura, and other witnesses testifying for Jones and the State, we find that the guilty verdicts of kidnaping and sexual battery were not against a preponderance of the credible evidence. We affirm the circuit court's judgment.

#### *Defendant's Courtroom Behavior*

Jones fails to brief or cite authority in support of his contention that he was a disruptive defendant and should have been excluded from the courtroom. It is the duty of an appellant to provide authority in support of an assignment of error. *Brown v. State*, 534 So.2d 1019, 1023 (Miss.1988). We are under no obligation to consider assignments of error when no authority is cited. *Id.* Therefore, we will not address this issue.

**THE JUDGMENT OF THE LOWNDES COUNTY CIRCUIT COURT OF CONVICTION OF COUNT I OF KIDNAPING AND SENTENCE OF TWENTY-FIVE (25) YEARS AND COUNT III OF CONVICTION OF SEXUAL BATTERY AND SENTENCE OF TWENTY-FIVE YEARS, WITH SAID SENTENCE TO RUN CONSECUTIVELY TO COUNT I, BOTH IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LOWNDES COUNTY.**

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

1. In the interest of the victim's privacy, her name has been changed.