

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00414 COA**

**WILLIE "COCHISE" REDD A/K/A WILLIE L.
"COCHISE" REDD**

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:	2/15/96
TRIAL JUDGE:	HON. WARREN HINES
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	CLEVE MCDOWELL
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: PAT FLYNN
DISTRICT ATTORNEY:	FRANK CARLTON
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED TWO COUNTS SEXUAL BATTERY AND SENTENCED AS HABITUAL OFFENDER, LIFE ON EACH COUNT W/O PAROLE, SENTENCES TO RUN CONCURRENTLY.
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

BRIDGES, C.J., FOR THE COURT:

Willie L. "Cochise" Redd was indicted, tried, and convicted in the Sunflower County Circuit Court of one count attempted sexual battery and one count sexual battery. He was sentenced as an habitual offender to serve a term of life on each count without parole, sentences to run concurrently. On appeal to this Court, he presents the following issues:

**I. WHETHER OR NOT THE JURY VERDICT WAS AGAINST THE
OVERWHELMING WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.**

**II. WHETHER THE COURT ERRED IN OVERRULING APPELLANT'S
OBJECTION TO THE HEARSAY TESTIMONY OF STATE'S WITNESS YOLANDA
CANNON.**

**III. WHETHER THE COURT ERRED IN OVERRULING THE APPELLANT'S
OBJECTION TO THE HEARSAY TESTIMONY OF STATE'S WITNESS MARGARET
STUCKEY.**

Finding no error, we affirm.

FACTS

On the night of May 15, 1995, Redd was at his home with his live-in girlfriend's daughter, J.B. (because of the victim's minority her identity will not be disclosed.) J.B., her brother, and her mother all lived with Redd. That particular evening, J.B.'s mother was out and J.B. and Redd were at home by themselves. J.B. sat in the living room playing Nintendo until she fell asleep. Redd picked J.B. up and took her to his bedroom. J.B. testified that Redd began feeling and licking her between her legs, touching her breasts and saying that he loved her. Redd also put baby oil on his penis and tried to penetrate J.B., but was unable to. J.B. was told that if she did not tell anyone that Redd would give her some money. She was ten years old at the time.

Redd took J.B. to a nearby convenience store for a soft drink and then to a friend's house where they found J.B.'s mother. As J.B. and her mother left the friend's house J.B. told her mother what Redd had done to her. J.B.'s mother went to the police department that night and reported that Redd had raped her daughter. When officer Bill Taylor came to the house to investigate the complaint, Redd was hiding in the closet. J.B. went and stayed with her aunt, Margaret Stuckey, for the next week.

The day after the sexual battery, J.B.'s grandmother noticed that she was walking very strangely, with her legs open. J.B. would not tell her grandmother what was wrong. J.B.'s sister, Yolanda Cannon, asked her why she was walking that way and if somebody had messed with her. According to Yolanda, J.B.'s eyes were full of tears and she was very scared, but she told Yolanda what Redd had done to her. J.B. then told her aunt and grandmother what had happened. Stuckey, J.B.'s aunt took J.B. and her mother to the doctor in Indianola, but J.B.'s mother got frustrated and did not want to wait. Stuckey took J.B. back to the doctor a week after the sexual battery occurred. Dr. Walter Pritchard examined J.B. the best he could, but J.B. would not let him perform a complete internal exam because she was so upset. However, Dr. Pritchard saw redness, irritation, and swelling of the labia. He also found injuries inside the labia majora, the opening to the vagina. He testified that his findings were consistent with sexual battery and attempted penetration.

Redd was the only witness on his behalf. He denied all the charges against him.

**I. WHETHER OR NOT THE JURY VERDICT WAS AGAINST THE
OVERWHELMING WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.**

Redd complains that he is entitled to a new trial because J.B.'s testimony was the only evidence of the alleged crime and therefore not enough to support a conviction. We disagree. J.B. testified clearly and consistently about the events of that night. Her behavior and demeanor observed by others after the incident were consistent with the sexual battery. Her family members noticed the next day that J.B. was walking with her legs open as if it hurt to close them. J.B. told her family members about the incident and her story to each one was consistent with the others. Additionally, the doctor who examined J.B. testified that he found her genitalia in a red, swollen, and irritated condition consistent with her claim of sexual battery. Dr. Pritchard also testified that there was evidence of attempted sexual penetration.

"A motion for new trial is discretionary with the trial judge and this Court will not order a new trial unless it is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Johnson v. State*, 642 So. 2d 924, 928 (Miss. 1994) (citations omitted). In reviewing a challenge to the weight of the evidence, this Court must accept as true "the evidence which supports the verdict and will reverse only when convinced that the trial court has abused its discretion in failing to grant a new trial." *Id.*

Factual disputes are to be resolved by the jury and do not warrant a new trial. *Id.* As far as Redd's contention that J.B.'s testimony was insufficient, the Mississippi Supreme Court has held in several cases that the uncorroborated testimony of a rape victim is enough to sustain a conviction for rape. *Allman v. State*, 571 So. 2d 244, 250 (Miss. 1990) citing *Barker v. State*, 463 So. 2d 1080, 1082 (Miss. 1985); *Christian v. State*, 456 So. 2d 729, 734 (Miss. 1984). "The purpose of our justice system in allowing a minor to testify in a case such as the one at hand is to hear what she has to say and let the jury weigh her testimony, together with all the other witnesses." *Allman*, 571 So. 2d at 253. In *Sanders v. State*, 586 So. 2d 792, 794 (Miss. 1991), the supreme court affirmed the conviction of sexual battery on a fourteen-year-old girl with less evidence than the instant case. In *Sanders*, "[t]he evidence against Sanders consisted of the victim's testimony and the testimony of the authorities to whom she reported the incident. There was no physical evidence." *Id.* The supreme court affirmed.

In Redd's case, the jury heard the uncontradicted testimony of the victim, as well as the testimony of the doctor that examined her. Additionally, family members recollected without conflict or contradiction the story J.B. told them after the incident. "It is enough to say that the jury, and not the reviewing court, judges the credibility of the witnesses as well as the weight and worth of their [] testimony." *Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993). The verdict in this case is not against the overwhelming weight of the evidence and Redd is not entitled to a new trial.

II. WHETHER THE COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE HEARSAY TESTIMONY OF STATE'S WITNESS YOLANDA CANNON.

Outside the presence of the jury, J.B.'s sister, Yolanda Cannon, recounted the story J.B. told her after Cannon questioned her about the strange way she was walking. J.B. told her about the sexual battery done to her by Redd. Redd objected to the testimony as inadmissible hearsay. The State claimed that the testimony was admissible under Mississippi Rule of Evidence 803(25), the tender years exception to the hearsay rule. **M.R.E. 803(25)** states the following:

A statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if: (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability; and (b) the child either (1) testifies at the proceeding; or (2) is unavailable as a witness: provided, that when the child is unavailable as a witness such statements may be admitted only if there is corroborative evidence of the act.

The **comment to Rule 803(25)** lists twelve factors to be considered in determining sufficient indicia of reliability:

(1) whether there is an apparent motive on declarant's part to lie; (2) the general character of the declarant; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; (5) the timing of the declarations; (6) the relationship between the declarant and the witness; (7) the possibility of the declarant's faulty recollection is remote; (8) certainty that the statements were made; (9) the credibility of the person testifying about the statements; (10) the age or maturity of the declarant; (11) whether suggestive techniques were used in eliciting the statement; and (12) whether the declarant's age, knowledge, and experience make it unlikely the declarant fabricated.

After Cannon testified outside the presence of the jury, the trial judge considered each of the twelve factors cited in the comment to Rule 803(25) on the record and asked for response from each attorney. After careful consideration in what we consider to be an excellent example of how this type of hearing should be conducted, the trial judge ruled the testimony admissible under the tender years exception to the hearsay rule. Redd has failed to prove that the trial judge erred. This issue is meritless.

III. WHETHER THE COURT ERRED IN OVERRULING THE APPELLANT'S OBJECTION TO THE HEARSAY TESTIMONY OF STATE'S WITNESS MARGARET STUCKEY.

Redd devotes less than a third of a page in his brief to his third and final argument. He cites no case law but instead refers the Court to his previous argument on the inadmissibility of Yolanda Cannon's testimony. However, Margaret Stuckey's testimony of which he complains in this argument was different from Cannon's and was admitted for completely different reasons than Cannon's. Stuckey's testimony consisted of J.B.'s telling her that she was hurting between her legs a week after the incident. The trial judge allowed the testimony under M.R.E. 803(3), "Then Existing Mental, Emotional, or Physical Condition" exception to the hearsay rule.

Redd cites no authority and makes no argument in support of his contention that the trial judge erred in allowing Stuckey's testimony. This Court is under no obligation to consider Redd's position in the absence of any argument on the issue and in light of his failure to cite any authority. *Burk v. State*, 506 So. 2d 993, 993 (Miss. 1987).

THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT OF CONVICTION OF COUNT I ATTEMPTED SEXUAL BATTERY AND COUNT II SEXUAL BATTERY, SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT THE POSSIBILITY OF PAROLE ON EACH COUNT,

SENTENCES TO RUN CONCURRENTLY, IS AFFIRMED. COSTS OF THIS APPEAL TAXED TO SUNFLOWER COUNTY.

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