

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-KA-01082-SCT

*DEX HUNTER STONE a/k/a DEX H. STONE a/k/a
DEX STONE*

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT: 06/11/2019
TRIAL JUDGE: HON. CHARLES W. WRIGHT, JR.
TRIAL COURT ATTORNEYS: BILBO MITCHELL
PHILIP SCOTT WEINBERG
LISA J. HOWELL
J. STEWART PARRISH
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER
BY: JUSTIN T. COOK
GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: ASHLEY LAUREN SULSER
DISTRICT ATTORNEY: KASSIE ANN COLEMAN
NATURE OF THE CASE: CRIMINAL - FELONY
DISPOSITION: AFFIRMED - 10/22/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. Dex Hunter Stone was indicted for sexual battery and lustful touching of a child. A Lauderdale County jury acquitted him of sexual battery but found him guilty of lustful touching of a child. The Circuit Court of Lauderdale County sentenced Stone to ten years in the custody of the Mississippi Department of Corrections with six years suspended and five

years of probation. Stone appeals from the denial of his motion for a new trial. He argues that the verdict was against the overwhelming weight of the evidence and that newly discovered evidence entitled him to a new trial. We find no error and affirm.

FACTS

¶2. The trial occurred six years after the events in question.¹ Sixteen-year-old Jimmy Brown² testified that, when he was ten years old, he was living temporarily with his aunt and uncle, Robert and Lisa Perkins. Brown's thirteen-year-old sister, Lindsey Brown, and his cousin, Michael Perkins, also lived there. On the afternoon of January 21, 2013, twenty-four-year-old Dex Stone visited the Perkinses' trailer home. Jimmy Brown testified that he, Michael, and Stone spent the afternoon and evening on the living room couch watching television and videos on Stone's cell phone. Brown testified that, when his aunt, uncle, and sister were outside, Stone began rubbing Brown's leg, then placed his hand in Brown's pants and touched his penis. Brown said that they heard Lindsey by the door, and Stone removed his hand as Lindsey walked into the living room from outside. Brown testified that later that evening after his aunt, uncle, and sister had gone to bed, Stone unbuttoned Brown's pants and put his mouth on his penis for a few minutes. Brown could not identify Stone in court.

¶3. Jimmy Brown's family reported the alleged incident to the police. Gypsi Ward, a former sex crime investigator with the Lauderdale County Sheriff's Department,

¹ The record contains numerous trial court orders granting continuances to the defense due to ongoing plea negotiations and ordering mental evaluations of Stone.

² The Court has used pseudonyms throughout for the names of the minor child victim and his relatives.

investigated. Brown told Ward that Stone had touched his penis. Olga Kahle, formerly a psychological counselor at Wesley House, a child advocacy center in Meridian, interviewed Brown on February 14, 2013. A video of the interview was played for the jury.³ In the interview, Brown said that Stone had touched his private area with his mouth and his hand. He said that Stone had touched him with his hand at his aunt and uncle's house when he, Stone, and his cousin Michael were watching television in the living room and everyone else was outside. Although at first Brown was unable to say when oral touching occurred, later he said it had occurred after dark. Brown told Kahle that he had seen Stone touch Michael in the same manner. He said that Stone had told him not to tell anyone.

¶4. Lindsey Brown testified that, on January 21, 2013, she was outside with her aunt and uncle while Stone, her little brother Jimmy, and her cousin Michael were on the couch in the living room. At one point, Lindsey came inside and, as she walked through the door, she observed that Stone had his hand in her brother's pants. She saw Stone remove his hand as she walked in. Lindsey Brown provided an in-court identification of Stone as the person she had seen with his hand in Jimmy Brown's pants. Lindsey Brown testified that, later on, she confronted Stone with what she had seen, and he admitted that he had touched and sucked

³ Stone did not object to admission of the interview or Kahle's testimony about the interview. Later, Stone objected to playing the entire video of the interview on the ground that Brown described Stone's sexual abuse of Brown's cousin Michael. Stone argued that if the court played the entire video, he should be able to show that Stone's sexual battery charge involving Michael had been dismissed. The trial court agreed. It admitted the entire video and allowed the defense to introduce certified copies of an order of *nolle prosequi* in the Michael Perkins case and a judgment acquitting Stone of a similar charge involving another child.

on her little brother's private parts. When Lindsey Brown told Stone that he would get in trouble, Stone responded that no one would know about it if she did not say anything.

¶5. Stone presented no witnesses in defense. Through cross-examination and argument, defense counsel sought to cast doubt on the State's case by showing that the investigation had been inadequate and that Stone had been falsely accused as part of a plot against him by neighborhood children. The jury acquitted Stone of sexual battery but convicted him of lustful touching of a child.

¶6. Stone filed a motion for judgment notwithstanding the verdict (JNOV) or a new trial. He attached an accident report documenting his December 2, 2012, motorcycle accident and medical records showing that, on January 21, 2013, his left hand had been in a hard cast due to an injury received in the accident. Stone argued that the verdict was against the weight of the evidence. Stone contended that his new medical evidence showed that it would have been impossible for him to have molested Jimmy Brown with his left hand because it had been in a cast. Stone averred that the medical evidence had been available before trial but that he had not known its relevance until he had heard the trial testimony.⁴

¶7. The trial court denied the motion for a JNOV or for a new trial noting that, although Brown had not provided an in-court identification of Stone, Brown's sister had. The trial court found that Stone's accident report and medical records had been available to the defense before trial and were not newly discovered evidence.

⁴ Stone argued in his motion for a new trial that Lindsey had testified that she saw Stone's left hand in Brown's pants. But Lindsey gave no such testimony; she did not specify which of Stone's hands had been in her brother's pants. Jimmy Brown testified that he had been sitting on Stone's left side during the touching.

DISCUSSION

Whether the trial court abused its discretion by denying Stone's motion for a new trial.

¶8. Mississippi Rule of Criminal Procedure 25.1 governs motions for a new trial. MRCrP 25.1. Among other listed grounds, the defendant may move for a new trial arguing that the verdict is against the weight of the evidence or on the basis of newly discovered evidence. MRCrP 25.1(b). On appeal, Stone argues that the trial court's denial of his motion for a new trial was an abuse of discretion because the verdict was against the overwhelming weight of the evidence and because he presented newly discovered evidence.

¶9. On review of a challenge to the weight of the evidence, "this Court reviews the evidence in the light most favorable to the verdict to determine whether the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would amount to an unconscionable injustice." *Cyrus v. State*, 248 So. 3d 760, 761-62 (Miss. 2018) (citing *Little v. State*, 233 So. 3d 288, 289 (Miss. 2017)). "Jury verdicts should only be overturned and new trials granted . . . in exceptional cases in which the evidence heavily outweighs the verdict." *Redmond v. State*, 288 So. 3d 314, 316 (Miss. 2020) (citing *Lindsey v. State*, 212 So. 3d 44, 45 (Miss. 2017)). This Court reviews the trial court's decision for abuse of discretion. *Little*, 233 So. 3d at 292.

¶10. Stone contends that the guilty verdict for lustful touching of a child was against the overwhelming weight of the evidence because the State's witnesses were impeached substantially. He notes that Jimmy Brown could not identify Stone in court. He complains that, during the interview by Olga Kahle, Brown failed to mention that his sister had come

inside the living room while Stone was touching him. Stone argues that the investigation was incomplete because the police did not visit and photograph the crime scene and because the State acknowledged that the investigation probably was not ideal. He argues also that the testimonies of Lindsey Brown and Jimmy Brown did not agree about when Stone had departed.

¶11. We find that the evidence did not preponderate so heavily against the verdict that a new trial is required to avoid sanctioning an unconscionable injustice. Brown testified that Stone had touched him during the day while they were sitting on the couch at his aunt and uncle's trailer home. Brown's sister, Lindsey Brown, corroborated this testimony. She said that, during the day, she came inside and observed Stone with his hand in her brother Jimmy's pants. Although the trial occurred six years after the events, Brown's statements during the Kahle interview substantially tracked his trial testimony, except he omitted that his sister had come inside during the fondling. At the trial, he explained that he had not thought to mention it during the interview because he had been younger, and it had not seemed significant.

¶12. Regarding Brown's failure to identify Stone in court, this Court has rejected a challenge to the weight of the evidence based on the lack of an in-court identification when the other evidence was such that the lack of an in-court identification did not undermine the verdict. *Stevenson v. State*, 283 So. 3d 697, 700 (Miss. 2019). Here, although Jimmy Brown could not identify Stone, his sister, an eyewitness, provided an in-court identification.

Considering all of the evidence in the light most favorable to the verdict, we hold that the verdict was not against the overwhelming weight of the evidence.

¶13. Next, Brown argues that newly discovered evidence entitled him to a new trial. Rule 25.1(b)(3) provides for a motion for a new trial on the ground that “new and material evidence has recently been discovered which probably would produce a different result at a new trial and, by reasonable diligence, such evidence could not have been discovered sooner[.]” MRCrP 25.1(b)(3). The trial court found that the evidence that Stone’s left hand had been in a cast could have been discovered before the trial. Stone avers that the evidence did exist before the trial but that he could not have known its significance until the State’s witnesses testified.

¶14. According to the records attached to his motion, Stone injured his left hand on December 2, 2012. Stone’s September 25, 2013, lustful touching indictment charged him with “placing his hands down [Jimmy Brown’s] pants and fondling his genitals” on January 21, 2013. Therefore, Stone was on notice before the trial that the charged conduct involved his hands. Brown testified in the State’s case-in-chief that Stone had fondled him while he was sitting on Stone’s left side. Stone had the opportunity during the trial to present in defense the evidence that his left hand had been in a cast on January 21, 2013. Instead, he rested his case and did not bring up the accident report and medical records until his posttrial motion. We find that the trial court did not abuse its discretion by ruling that Stone’s additional evidence was not newly discovered.

CONCLUSION

¶15. Because the trial court did not abuse its discretion by denying Stone's motion for a new trial, we affirm.

¶16. **AFFIRMED.**

**RANDOLPH, C.J., KING, P.J., COLEMAN, MAXWELL, BEAM,
CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.**