

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 18, 2024***SUPREME COURT - ORDERS*****REEVES V. GARY****EN BANC ORDER****ORDER**

Johnny Gary beat Debra Hibbler by fifteen votes in the Democratic primary for Leflore County Chancery Court, and Hibbler contested the results of the primary election. While Hibbler’s challenge was pending, Gary won the November general election and took office. On February 15, 2024, the trial court found that Gary's election should be vacated on the basis of fraud and ordered a new election be set between Gary and Hibbler. On March 6, 2024, Tate Reeves (“the Governor”) issued a writ of election that ordered a special election for Leflore County Chancery Clerk be held between Gary and Hibbler on April 16, 2024, forty-one days after the issuance of the writ. The writ stated “[t]he special election shall be held, and notice shall be given in a manner consistent with Miss. Code Ann. §23-15-835 and the laws of the State of Mississippi governing special elections.” Gary sued for declaratory and injunctive relief, arguing that the Governor exceeded his authority because he was required to follow Mississippi Code Ann. § 23-15-833, which requires special elections for vacancies be held in November, and Mississippi Code Ann. § 23-15-835, which requires ninety days' notice for special elections that fill a vacancy. The trial court found the writ contradicted the ninety-day notice requirement and found it ambiguous for directing the Election Commission to give notice consistent with Miss. Code Ann. § 23-15-835 while also requiring an election be held in forty-one days. The trial court consequently declared the writ null and void. The Governor filed a Miss. R. App. P. 8(c) motion to stay or vacate the trial court’s judgment, arguing that Miss. Code Ann. § 23-15-835 was inapplicable because there were no vacancies, and it applies to special elections for vacant offices. The motion also argued that this special election was ordered pursuant to Miss. Code Ann. § 23-15-937, which does not have an explicit notice requirement. The Supreme Court granted the motion.

OBJECTION

Presiding Justice King argued that the Governor did not demonstrate that he would suffer irreparable injury by the election not taking place on April 16, 2024. He also argued that the writ was internally conflicting by its reference to Miss. Code Ann. § 23-15-835 that contradicted the date set for the election. Finally, he argued that vacating the judgment of the trial court would do harm to the public interest by upholding the contradictory writ. Therefore, he objected to the order vacating the trial court’s judgment.

Granted - 2024-EC-00406-SCT (Apr. 11, 2024)

En Banc Opinion by Justice Ishee - Objection by Presiding Justice King

Briefed by [Madeline Crane](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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SUPREME COURT - CRIMINAL CASES**ROBINSON V. STATE**

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

CRIMINAL LAW - HOMICIDE - SELF-DEFENSE - Pursuant to Miss. Code Ann. § 97-3-15(1)(e), a homicide is justified when committed by any person in resisting an unlawful attempt to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, place of business, place of employment, or the immediate premises thereof in which such person shall be

FACTS

Gail Robinson fatally stabbed Bobby Pruitt multiple times following a physical altercation between them. Detectives found a knife stuck in Pruitt's chest and another knife beside his body. Robinson admitted that she stabbed Pruitt in the back with a knife, and, because the handle of the original knife broke, she stabbed him in the chest with another knife. In a second statement, Robinson stated that she only used one knife. A grand jury indicted Robinson for heat-of-passion manslaughter. At trial, the trial court instructed the jury on heat-of-passion manslaughter, self-defense, and reasonable use of force. The jury convicted Robinson of heat-of-passion manslaughter. Robinson filed a post-trial motion, arguing ineffective assistance of counsel and insufficient evidence to show that she did not act in self-defense. The trial court denied Robinson's post-trial motion. Robinson appealed.

ISSUES

Whether (1) Robinson's trial counsel was ineffective by failing to request a jury instruction regarding her right to stand her ground in self-defense and (2) the State presented sufficient evidence to show that Robinson did not act in self-defense.

HOLDING

(1) Because the Court could not adequately analyze and address Robinson's claim of ineffective assistance of counsel due to a lack of facts in the record, the Court affirmed Robinson's conviction and indicated she may pursue the claim through a post-conviction relief petition after seeking leave of the Court. (2) Because Robinson continued to attack Pruitt past the point of any reasonable fear of imminent death or great bodily harm, the State presented sufficient evidence that Robinson did not act in self-defense. Therefore, the Supreme Court affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2023-KA-00184-SCT (Apr. 18, 2024)

Opinion by Justice Griffis

Hon. Paul S. Funderburk (Alcorn County Circuit Court)

George T. Holmes & Justin T. Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Jack Furla](#)

Edited by [Robert "Duncan" Jones](#) & [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 16, 2024

COURT OF APPEALS - CIVIL CASES

MCLELLAN V. MCLELLAN

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - In determining a child's best interest, the trial

court considers the following *Albright* factors: (1) the child’s age, health, and sex; (2) the parent with the continuity of care prior to the separation; (3) the parent with the best parenting skills; (4) the parents’ willingness and capacity to provide primary child care; (5) the parents’ employment and the responsibilities of that employment; (6) the parents’ physical and mental health and age; (7) the emotional ties of the parent and child; (8) the parents’ moral fitness; (9) the child’s home, school, and community record; (10) the child’s preference at the age sufficient to express a preference by law; (11) the stability of the parents’ home environments and employment; and (12) other factors relevant to the parent child-relationship

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - The *Albright* factors do not have to be given the same weight, but the *Albright* factors are not to be used in an arbitrary manner

FAMILY LAW - CUSTODY - BEST INTEREST OF THE CHILDREN - Regardless of the attached weight to the preference for keeping siblings together, the chancery court’s decision or evidence in the record should at least provide some reason why a custody order that separates siblings is in the children’s best interest

FACTS

Dawn and Robert (“Robbie”) McLellan married and had three children: Frank, Joe, and Ruth. In 2022, the parties consented to an irreconcilable differences divorce and stipulated that the chancery court would determine custody of their children, visitation, and child support. Before trial, Frank lived with Dawn while Joe lived with Robbie, and Dawn and Robbie alternated custody of Ruth every four days. On the first day of trial, Joe testified that he thought it would be in his and his siblings’ best interest to live with Robbie because he had good parenting skills, helped Joe with his schoolwork, was attentive to Ruth, cooked, and did laundry. Joe was concerned about the prospect of living with Dawn because of her emotional issues and a lack of structure at her house, noting that Frank drank beer, smoked marijuana, and vaped under Dawn’s supervision. Dawn was also involved in multiple verbal or physical altercations at Joe’s and Ruth’s sporting events. Robbie testified that Humphreys Academy’s headmaster notified him that Frank failed a drug test, and the headmaster believed it was in Frank’s best interest to live with Robbie. By the conclusion of the second day of trial, Robbie requested custody of all three children, and Dawn requested the same. The chancery court subsequently entered an opinion and final judgment discussing each *Albright* factor, finding that three factors favored Robbie and that all others were neutral. The chancery court granted Robbie physical custody of Frank and Joe and Dawn physical custody of Ruth. Robbie filed a motion to alter or amend the judgment or for a new trial in which he argued that the chancery court erred by awarding Dawn custody of Ruth despite finding that no *Albright* factors favored Dawn and by separating the siblings without making any findings to justify the separation. The chancery court denied Robbie’s motion, reasoning that there is no “per se rule” against separating siblings and that a “desire to avoid separation of siblings should not override a child’s best interest in a custody determination.” The chancery court also stated that in making its decision, the court considered Dawn’s and Robbie’s temporary custody agreement, the fact that Frank would have likely stayed in Dawn’s custody but for his failed drug test, and that Robbie allowed Joe to continue sports despite failing a science class. Robbie appealed.

ISSUES

Whether the chancery court erred by (1) awarding Dawn custody of Ruth despite finding that no *Albright* factors favored Dawn and (2) separating the siblings without making any findings to justify the separation.

HOLDING

(1) Because the chancery court did not explain why it was in Ruth’s best interest to be in Dawn’s custody despite an *Albright* analysis that favored Robbie, the chancery court’s application of *Albright* was arbitrary and an abuse of discretion. (2) Because the chancery court did not provide some logical reason for separating the children, the decision was arbitrary and an abuse of discretion. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Leflore County Chancery Court.

Reversed, Rendered, & Remanded - 2022-CA-01006-COA (Apr. 16, 2024)

Opinion by Presiding Judge Wilson

Hon. Willie James Perkins Sr. (Leflore County Chancery Court)

Jonathan Ryan Taylor for Appellant - A. Lee Abraham Jr. & Jacob Michael Jenkins for Appellee

Briefed by [Jarius Colley](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

COURT OF APPEALS - POST-CONVICTION RELIEF

CLEMONS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - EIGHTH AMENDMENT - MILLER FACTORS - When separating juveniles who may be sentenced to life without parole from those who may not, the court must afford the defendant a hearing where youth and its attendant characteristics are considered as sentencing factors; the sentencer should then consider the *Miller* factors, which include (1) the defendant’s chronological age and the hallmark features among that age; (2) the defendant’s family and home environment; (3) the circumstances of the offense; (4) the defendant’s ability to deal with the legal system; and (5) the possibility of rehabilitation

CRIMINAL PROCEDURE - EIGHTH AMENDMENT - EVIDENTIARY BURDEN - While *Miller* does not impose a formal factfinding requirement and provides that sentencers are afforded wide discretion in determining the weight to be given relevant mitigating evidence, the burden rests with the juvenile offender to convince the sentencer that *Miller* considerations are sufficient to prohibit a sentence of life without parole, even though the sentencer is to consider factors and evidence relevant to such

FACTS

In 1996, Kenneth Clemons and his brother murdered three members of the Mississippi Band of Choctaw Indians. Clemons and his brother planned the murders earlier that day, intending to rob the victims. Clemons shot and killed all three victims, while his brother shot at least one of them. Clemons was convicted of three counts of murder and sentenced to three life sentences without parole. In 2013, the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory life sentences without parole for juvenile offenders are unconstitutional. Clemons, who was a juvenile at the time of the crimes, filed a motion to vacate his sentence based on the *Miller* ruling. The trial court held an evidentiary hearing on his motion. Clemons did not testify at the hearing but presented the testimony of his mother and forensic psychologist Dr. Criss Lott. Clemons’s mother testified that his father was an alcoholic and very abusive at times. She also testified that Clemons was easily influenced at the time of the murders and that she believed he matured in prison. Lott interviewed Clemons eight times as part of his *Miller* evaluation, but he did not review the transcript of Clemons’s trial. Lott testified that, although Clemons had received numerous rule violation reports in prison, there was a potential for or possibility of rehabilitation in Clemons’s case. The trial court denied Clemons’s request for parole eligibility after considering the *Miller* factors. Clemons appealed.

ISSUE

Whether the trial court erred by denying Clemons parole under *Miller*.

HOLDING

Because Dr. Lott’s opinions about Clemons relied on Clemons’s own account of the murders instead of the trial record and transcript, because Clemons’s mother’s testimony about his father was not determinative under *Miller*, because the circumstances of the crime overwhelmingly support the three sentences of life without parole, because there was no evidence to support anything less than the three murder charges, and because the evidence was insufficient to show that Clemons could be rehabilitated, the trial court did not err in denying Clemons parole under *Miller*. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2022-CA-00700-COA (Apr. 16, 2024)

Opinion by Presiding Judge Wilson

Hon. Caleb Elias May (Neshoba County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Margaret Gardner](#)

COURT OF APPEALS - CRIMINAL CASES

BRADFORD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - WAIVER - The failure to contend an issue on direct appeal bars the accused from raising that issue on a later appeal

EVIDENCE - DISCOVERY VIOLATIONS - BRADY TEST - Under *King v. State*, to show that a *Brady* violation has taken place, the defendant must prove: (a) that the State possessed evidence favorable to the defendant (including impeachment evidence); (b) that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence; (c) that the prosecution suppressed the favorable evidence; and (d) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel’s performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

FACTS

Raphvell Bradford shot and killed his neighbor Michael Yarber. At trial, an officer testified that he observed Yarber's body at the crime scene between Yarber's shed and Bradford's trailer, and that he found blood in the shed. Bradford objected to the testimony and admission of the photos of the bloody shed, but the trial court overruled his objections. The officer further testified that investigators found three bullet casings near the shed. Bradford admitted he shot Yarber but claimed he did so in self-defense after Yarber broke into his trailer. However, the officer found no signs of a forced entry or damaged items in the trailer. The jury found Bradford guilty of first-degree murder and the trial court sentenced him to life with eligibility for parole. Bradford filed a motion for a new trial, alleging that (1) one of the jurors was related to the victim, resulting in prejudice to the defense; (2) the trial court erred in giving a particular jury instruction; (3) another jury instruction was an incorrect statement of the law; (4) there were several violations of his due process and constitutional rights; and (5) the trial court erred in questioning and removing members of the venire without defense counsel and the defendant present. The trial court denied this motion. Bradford appealed.

ISSUES

Whether (1) a juror was a relative of the victim; (2) the trial court erred in denying the defense’s objections based on *Brady v. Maryland*; (3) the trial court erred by failing to instruct the jury properly; (4) the trial court erred by allowing allegedly gruesome cumulative photographs of the victim to be admitted into evidence; (5) the trial court erred by refusing to allow the defense to question an officer regarding the victim’s allegedly violent criminal history; (6) Bradford received ineffective assistance of trial counsel; (7) the trial court erred by denying Bradford’s motion for a directed verdict; and (8) cumulative error required a new trial.

HOLDING

(1) Because Bradford presented no evidence to the trial court in support of his claim that a juror was related to Yarber or that he was somehow prejudiced by that juror’s presence on the jury, the trial court did not err in denying Bradford's motion as to this issue. (2) Because Bradford did not show that the State either suppressed or possessed any allegedly exculpatory evidence, and because Bradford failed to show how any of the pieces of evidence at issue would have

affected the outcome of the proceedings, no *Brady* violation occurred. (3) Because the jury instructions fairly announced self-defense, and because Bradford failed to raise the issue of the "Castle Doctrine" instruction at the trial court level, the trial court did not err in its jury instruction and the issue was procedurally barred. (4) Because Bradford failed to object on the basis that the photos were gruesome or inflammatory, Bradford waived the issue on appeal. (5) Because Bradford failed to proffer any evidence regarding the victim's allegedly violent criminal history, Bradford did not preserve the issue for appeal. (6) Because the trial record was insufficient to affirmatively demonstrate whether Bradford's claims were without merit, his claims of ineffective assistance of counsel were denied without prejudice. (7) Because the State provided evidence sufficient for a reasonable juror to conclude that Bradford killed Yarber with deliberate design and without authority of law, the trial court did not err in denying Bradford's motion for a directed verdict. (8) Because no individual errors required reversal, the argument of cumulative error was without merit. Therefore, the Court of Appeals affirmed the judgment of the Humphreys County Circuit Court.

Affirmed - 2022-KA-00493-COA (Apr. 16, 2024)

Opinion by Chief Judge Barnes

Hon. Barry W. Ford (Humphreys County Circuit Court)

Robert Fred Lingold Jr. & Cameron Leigh Benton for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee

Briefed by [Hunter Seidler](#)

Edited by [Brandon Peterson](#) & [William Davis](#)

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