

MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 7, 2024***SUPREME COURT - ORDERS*****IN RE: MISS. RULES OF CIV. PROC. [MISS. R. CIV. P. 62]****EN BANC ORDER****ORDER**

This en banc Order by the Supreme Court granted the Motion to Amend Rule 62 of the Mississippi Rules of Civil Procedure filed by the Supreme Court of Mississippi's Advisory Committee on Rules. The amendments concern the rule on when to grant a stay of proceedings to enforce a judgment. The first substantive amendment in Miss. R. Civ. P. 62(a) expands a judgment execution or enforcement proceeding date from ten days to thirty days after a judgment's entry. The second substantive amendment in Miss. R. Civ. P. 62(b) adds a motion for new trial pursuant to Rule 59 as a reason to stay proceedings to enforce a judgment. The amendments to Miss. R. Civ. P. 62 become effective thirty days after the entry of this Order, on Nov. 30, 2024.

Exhibit A, referenced and attached to the Order, shows the amendments to Miss. R. Civ. P. 62.

Ordered - 89-R-99001-SCT (Oct. 31, 2024)

En Banc Order by Justice Coleman

Briefed by [Alden Wiygul](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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SUPREME COURT - CRIMINAL CASES**CHILDRESS V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - DIRECTED VERDICT - SUFFICIENCY OF EVIDENCE - In reviewing a challenge to the legal sufficiency of the evidence in a criminal trial, the court bases its decision on whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt; the court must view the evidence in the light most favorable to the prosecution and accept all the evidence supporting the verdict as true.

CRIMINAL PROCEDURE - DIRECTED VERDICT - WEATHERSBY RULE - Where the defendant or the defendant's witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge; when the *Weathersby* rule is inapplicable, it then becomes a jury issue as to whether to believe or not believe the defendant's testimony of how the slaying occurred, and to either convict or acquit

CRIMINAL LAW - DELIBERATE-DESIGN MURDER - INFERRED INTENT - Deliberate-design murder involves malice or intent to kill; the jury may infer the intent to kill through the intentional use of any instrument which, based on its manner of use, is calculated to produce death or serious bodily injury

CRIMINAL PROCEDURE - JURY VERDICT - WEIGHT OF THE EVIDENCE - In reviewing a challenge to the weight of the evidence, the court will not disturb the jury's verdict unless it appears to be so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

In August 2021, Jeremy Childress was safely taken into custody by a Neshoba County sheriff's deputy after he was found outside a residence threatening to commit suicide and holding a handgun to his head. The deputy was able to disarm Childress of two weapons, including a Rossi .357 revolver. After being taken into custody, Childress gave a voluntary statement to law enforcement containing a confession to the murder of his girlfriend, Michelle Hester. Childress stated that he had killed Hester by shooting her in the top of her head and indicated the exact location of the victim - a utility room at a residence in Harrison County. He also stated that the wound on his foot might have been self-inflicted and that his relationship with Hester was on the verge of breaking up, and she was going to kick him out of the home. In his statement, Childress did not mention that Hester threatened him with a gun or that she was violent toward him. Harrison County Sheriff's Department found Hester's body in the place indicated by Childress, seated in a pool of blood, unarmed. The autopsy revealed that Hester was killed by a bullet wound to the top of the head, which presented characteristics consistent with a gun being pointed at the head from directly above, and the forensic expert determined that the bullet that killed her was fired from the same Rossi .357 revolver that the Neshoba County deputy recovered from Childress prior to his arrest. At trial, evidence was presented in the form of crime scene photographs, testimony from the crime scene technician, the forensic pathologist who conducted the autopsy, and the forensic firearms expert. The photo evidence showed that the location of the body was consistent with Childress's statement to law enforcement, that there were no weapons of any sort near Hester's body, and that the blood spatter pattern was consistent with the victim being in a seated position when the fatal shot was fired from above her. The firearms expert's testimony showed that the gun that killed Hester had a mechanism that prevented the accidental discharge of the weapon and that three to fifteen pounds of pressure were required in order to successfully pull the trigger. The jury was also provided testimony regarding the location of the bullet wound to Hester's head, the condition of the wound, and the trajectory of the bullet after entry. Childress moved for a directed verdict, arguing that the State failed to prove deliberate-design murder, but his motion was denied. Childress then took the stand, and his testimony had multiple inconsistencies with the voluntary statement he had given law enforcement after he was taken into custody. He claimed that his foot injury was caused by a shard of glass from the broken back door at the crime scene and not a bullet coming from his own weapon, that Hester had first pointed a gun at him before he armed himself with the Rossi .357, and that his gun "just went off" while he was waving it above the victim's head. The jury was presented with a choice of verdict that included first-degree murder, second-degree murder, culpable negligence manslaughter, imperfect self-defense manslaughter, and heat-of-passion manslaughter. The jury concluded that Hester was shot with a deliberate design to kill and convicted Childress of first-degree murder. Childress appealed.

ISSUES

Whether (1) the trial court erred in denying Childress's motion for directed verdict on the first degree murder charge, based on the sufficiency of evidence supporting deliberate design; and (2) the weight of the evidence supported a conviction for first-degree murder as opposed to a manslaughter conviction.

HOLDING

(1) Because Childress's testimony was so inconsistent as to render it both unreasonable and contradicted by the physical evidence, and because the jury had sufficient evidence to infer deliberate design, the trial court did not err in denying Childress's motion for directed verdict of acquittal. (2) Because the jury rejected Childress's inconsistent and contradictory testimony, and because the evidence allowed a rational trier of fact to reconstruct the events surrounding the crime and to assess the credibility and weight of the testimony, the conviction for first-degree murder was not contrary to the overwhelming weight of the evidence. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2023-KA-01323-SCT (Nov. 7, 2024)

Opinion by Justice Beam

Hon. Randi Peresich Mueller (Harrison County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Katy Taylor Sarver (Att'y Gen. Office) for Appellee

Briefed by [Mira Radu](#)
Edited by [Katie Shaw](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 5, 2024
COURT OF APPEALS - CIVIL CASES

McDILL V. SCOTT CTY. SCH. DIST.

CIVIL - PERSONAL INJURY

PERSONAL INJURY - DISCRETIONARY-FUNCTION IMMUNITY - PURPOSE - Under *Moses v. Rankin County*, discretionary-function immunity only applies in decisions that are policy-based by nature

PERSONAL INJURY - DISCRETIONARY-FUNCTION IMMUNITY - APPLICABILITY - Under, *Bailey v. City of Pearl*, courts must distinguish between policy decisions regarding government decisions and normal negligence in applying discretionary-immunity

PERSONAL INJURY - DISCRETIONARY-FUNCTION IMMUNITY - SATISFACTION - Under *Federinko v. Forrest County*, a two-part test must be satisfied for discretionary-function immunity to apply: (1) the activity being assessed must involve choice or judgment and (2) such a choice must have involved social, economic, or political policy considerations

FACTS

Tiffany McDill sued on behalf of her son, Donald Bo McDill (“Bo”), a student at Sebastopol Attendance Center in the Scott County School District (“the District”). Bo was a member of the seventh and eighth grade football team. Shortly before the team’s return from the Christmas holiday, they engaged in weight training. During one exercise focused on squatting with maximum weight, Bo was engaged as a spotter for one of his teammates who was attempting to squat two-hundred-and-ninety-five pounds. Safety clamps were not in place on the forty-five-pound bar, thereby leaving the one-hundred-and-twenty-five pounds of weighted plates on each side of the bar unsecured. During the lift, the barbell tilted towards Bo, causing his finger to be injured by the sliding plates. The then-empty side of the bar he was holding subsequently struck him in the face. Bo was taken to a dental office to have his teeth reset before being transported to the hospital for further treatment. McDill sued the District for negligence, with the circuit court later deciding the thrust of her argument was the failure of the coaches to use safety clamps. The District moved for summary judgment under the Mississippi Torts Claims Act (“MTCA”), arguing the coaches’ choices in the weight room regarding McDill’s claim involved an element of choice and constituted social and public-policy considerations under the MTCA. The circuit court granted the District’s motion. McDill appealed.

ISSUE

Whether the circuit court erred in applying discretionary-function immunity to McDill’s claim.

HOLDING

Because there was no policy function in the choice of the coaches to not use weight clamps, and because McDill’s claim was predicated on negligence and not on protected policy considerations, the circuit court erred in applying discretionary-function immunity to McDill’s claim. Therefore, the Court of Appeals reversed and remanded the judgment of the Scott County Circuit.

Reversed & Remanded - 2023-CA-00956-COA (Nov. 5, 2024)

Opinion by Judge Smith

Hon. Caleb Elias May (Scott County Circuit Court)

William T. May & Rimen Brar Singh for Appellant - William Robert Allen & Lance Wesley Martin for Appellee

Briefed by [Grant Hughes](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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MORGAN V. RIVERBOAT CORP. OF MISS.

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - SUMMARY JUDGMENT - ISSUES OF MATERIAL FACT - Summary judgment shall be granted when there are no genuine issues of material fact

TORTS - PREMISES LIABILITY - UNREASONABLY DANGEROUS CONDITIONS - The owner of a premises is not required to anticipate an unusual and improbable result

FACTS

Mary Morgan was injured in the pool of the Golden Nugget Hotel and Casino after being hit in the head by two large cushions. These cushions were picked up off “daybeds” by strong winds. Morgan filed a personal injury action against Riverboat Corporation of Mississippi (“Riverboat”), the owner of the Golden Nugget, claiming that the cushions constituted an unreasonably dangerous condition. Morgan claimed that Riverboat had constructive knowledge of this condition and was negligent in failing to address it. Riverboat moved for summary judgment, presenting the court with evidence that the cushions had never taken flight before. Morgan responded with evidence that Velcro strapping was available to secure some cushions, but Riverboat refuted this by showing that the daybeds in question did not come fitted with such straps. The trial court granted summary judgment in favor of Riverboat. Morgan appealed.

ISSUE

Whether summary judgment was properly granted.

HOLDING

Because the large cushions had never before blown off their platforms, and because there was no reason for Riverboat’s employees to anticipate such an unprecedented event, the daybeds were not an unreasonably dangerous condition, and no genuine issue of material fact existed. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge Westbrook argued that the unsecured daybed cushions constituted an unreasonably dangerous condition. She presented evidence that the daybed purchase order included velcro straps. Judge Westbrook further argued that the purchase order noted that the velcro was included for attaching the cushions to the frames of the daybeds. Therefore, she believed a genuine issue of material fact existed and that summary judgment was improper.

Affirmed - 2023-CA-00379-COA (Nov. 5, 2024)

En Banc Opinion by Presiding Judge Wilson - Dissent by Judge Westbrook

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, Second Judicial Dist.)

Rogen K. Chhabra & Kathryn Caroline Boyd for Appellant - Sheldon G. Alston & Robert Lane Bobo for Appellees

Briefed by [Kennedy Guest](#)

Edited by [Robert “Duncan” Jones](#) & [William Davis](#)

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SLADE V. CITY OF LUMBERTON

CIVIL - PERSONAL INJURY

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - IMMUNITY - Pursuant to Miss. Code Ann. § 11-46-9(1)(c) (Rev. 2019), a governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury

TORTS - INTENTIONAL TORTS - RECKLESS DISREGARD - The standard of reckless disregard embraces willful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act, usually accompanied by a conscious indifference to consequences and is a higher standard than gross negligence

TORTS - RECKLESS DISREGARD - TOTALITY OF THE CIRCUMSTANCES - To determine if a police pursuit was done with reckless disregard for the public's safety, a court must examine the totality of the circumstances

TORTS - TOTALITY OF THE CIRCUMSTANCES - BRISTER/RICHARDSON FACTORS - To guide trial courts in evaluating the totality of the circumstances, the Mississippi Supreme Court has developed the *Brister/Richardson* factors; these factors include: (1) length of chase, (2) type of neighborhood, (3) characteristics of the roads traveled, (4) vehicular and pedestrian traffic, (5) road conditions, (6) offense for pursuit, (7) whether the officer proceeded with sirens and blue lights, (8) alternatives to pursuit, (9) pursuit policy, and (10) rate of speed

PROFESSIONAL RESPONSIBILITY - CONFLICT OF INTEREST - RECUSAL - An appellate court presumes that a trial judge is qualified and unbiased, and this presumption may only be overcome by evidence which produces a reasonable doubt about the validity of the presumption; when a judge is not disqualified under the constitutional or statutory provisions, the decision is left up to each individual judge and is subject to review only in a case of manifest abuse of discretion

FACTS

Officer Philippe Ducksworth was on duty in a vehicle when he saw Justin Brown drive by without wearing his seat belt. Ducksworth subsequently pulled Brown over. After Ducksworth exited his vehicle and approached Brown's vehicle, Brown fled in his vehicle. Ducksworth pursued at high speeds. The chase eventually led to a rural area, where Ducksworth reduced his speed, as he was unfamiliar with the area. During the chase, Brown collided head-on with Cory S. Slade's vehicle. According to Ducksworth, the roads were dry, the distance from the first stop to the accident site was between three and four miles, and the pursuit lasted approximately three to four minutes. Ducksworth encountered only three other vehicles while the pursuit occurred and all three pulled over to the side of the road. Also, no buses were on the road and the pursuit was not near a school zone. Additionally, Ducksworth had his siren and blue lights on the entire time of the pursuit. When Ducksworth arrived at the scene, Slade was screaming about his leg. Slade filed a complaint against the City of Lumberton and Ducksworth under the provisions of the Mississippi Tort Claims Act ("MTCA"). Lumberton moved for summary judgment. During the hearing on Lumberton's motion for summary judgment, the circuit judge disclosed to both parties that he had previously represented the City of Lumberton in his capacity as a private attorney. The judge explained that he had not represented the City of Lumberton during the time period relevant to the instant litigation and that he was not familiar with any of the parties involved in the case. Slade filed a motion for recusal and advised the circuit court of his "grave concerns about potential impartiality." The court denied the motion. The circuit court subsequently determined that, based on the totality of the circumstances, there was no genuine issue of material fact as to whether Ducksworth acted with reckless disregard for the safety of Slade or the general public. Accordingly, the circuit court determined that Lumberton was exempt from liability by sovereign immunity under the MTCA. The parties entered into an agreed order that dismissed Ducksworth from the case and summary judgment was found in favor of Lumberton. Slade appealed.

ISSUES

Whether the circuit court erred in (1) granting summary judgment in favor of Lumberton and (2) denying Slade's motion to recuse.

HOLDING

(1) Because there was no conflicting evidence under the *Richardson/Brister* factors about the length of the chase, the type of neighborhood, the characteristics of the roads where the pursuit and accident occurred, the traffic at that time, the road conditions, Ducksworth's use of his siren and blue lights, and his general speed, and because all but one of those

factors favored Lumberton, the circuit court did not err in granting summary judgment in favor of Lumberton. (2) Because Slade failed to produce any evidence to raise a reasonable doubt as to the circuit court's impartiality, the circuit court did not err in denying Slade's motion to recuse. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

DISSENT

Judge McDonald argued that the circuit court erred in its assessment of the *Brister/Richardson* factors and that several of those factors favored Slade. Furthermore, Judge McDonald argued that Ducksworth's decision to pursue Brown over a seatbelt violation was arguably unreasonable. Therefore, Slade should have been allowed to present his case at trial.

Affirmed - 2023-CA-00830-COA (Nov. 5, 2024)

Opinion by Judge Emfinger - Dissent by Judge McDonald

Hon. Brad Ashley Touchstone (Lamar County Circuit Court)

Michael Scott Bishop for Appellant - L. Clark Hicks Jr. & R. Lane Dossett for Appellee

Briefed by [Kyra Childress](#)

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

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UNIV. OF MISS. MED. CTR. V. REDD

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - ELEMENTS - A plaintiff is required to prove the following elements to establish a prima facie case of medical malpractice: (1) the existence of a duty on the part of the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the standard required of the defendant; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant; for a plaintiff to properly establish medical malpractice of a physician, an expert witness is required to articulate a specific, objectively-determined standard of care

TORTS - MEDICAL MALPRACTICE - LOST CHANCE OF RECOVERY - The lost chance of recovery doctrine governs when a patient alleges that a medical provider failed to administer proper care and that the failure allowed an already existing injury to deteriorate; the claim of the doctrine requires proof of causation to a degree of reasonable medical probability that, absent the alleged malpractice, a significantly better result was probable, or more likely than not (i.e., a greater than fifty percent chance of a substantially better outcome than was in fact obtained)

TORTS - CAUSATION - LOST CHANCE OF RECOVERY - Medical experts are not required to conclusively establish the cause of injury; rather, expert testimony must, at a minimum, show that deviations from the standard of care caused or contributed to the injury

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - The general rule as to expert testimony in medical malpractice actions is that a specialist in a particular branch within a profession will not be required, as most courts allow a doctor to testify if they are satisfied of his familiarity with the standard of a specialty

FACTS

On November 4, 2018, Johvontaye Jefferson had a closed reduction performed on his left ankle at the University of Mississippi Medical Center ("UMMC") after a vehicle accident, ten hours after arriving to the hospital. After a CT scan, he also had an open reduction performed by Dr. Patrick Wright, a pediatric orthopedic surgeon at UMMC. Wright discharged Jefferson and told him to return in three weeks. On November 14, 2018, Jefferson went to a scheduled ophthalmologist appointment and complained of worsening pain in his ankle and an odor, so an ambulance was called, and Jefferson was transported to the UMMC emergency room. At UMMC, a first-year resident, Dr. Justin Badon, treated Jefferson. Jefferson's cast was removed, inspected, and recasted, and Jefferson was sent home. Jefferson had fracture blisters from the skin breakdown. Badon gave him medicine for pain and to prevent infection, and he was the only doctor that treated Jefferson. Jefferson returned to UMMC seven days later because the pain, smell, and swelling worsened. There, doctors removed Jefferson's cast and told Jefferson that he had a major infection. The infection

eventually led to Jefferson's below-the-knee amputation. In March 2020, Sonja Redd, Jefferson's mother, filed a medical negligence lawsuit against UMMC on Jefferson's behalf. Prior to trial, Jefferson's attorney deposed Dr. Renato Bosita as an expert witness. Bosita testified that it was not reasonable for Badon to have sent Jefferson home from the hospital in his condition. Additionally, Bosita explained a more aggressive workup should have been ordered to figure out why Jefferson's foot was so swollen and painful. In his opinion, early diagnosis and treatment would have reduced significantly the likelihood of the amputation and additional surgical procedures. Bosita also testified that, based off the medical record, Badon never had an attending doctor examine Jefferson's leg, which was the most important thing he said someone in Badon's position should have done. Bosita testified that if Jefferson had received care from an attending surgeon in the areas of podiatry, pediatrics, or trauma, if the infection or compartment syndrome were diagnosed earlier, and if definitive treatment had occurred sooner, hopefully, Jefferson would still have his leg. At trial, Jefferson's attorney also called Wright to testify. Wright did not see the need for additional laboratory tests or a vascular consult. Wright also said that Jefferson did not need to be admitted to the hospital because he was appropriately treated with a cast change and superficial wound care. Finally, at trial, a deposition of Dr. Chad Hosemann of Capital Ortho was introduced. Hosemann testified that Jefferson's injury was one of the worst pediatric fractures that he had seen. When shown the picture of Jefferson's leg from November 14, Hosemann said he did not see anything concerning. When he looked at the medical records, Hosemann testified that he did not see anything that indicated Jefferson had an infection or compartment syndrome on November 14. Furthermore, Hosemann testified that there was no breach in the standard of care by UMMC. The court found that Hosemann and Bosita were qualified in the field of orthopedic surgery, but the court found Bosita's testimony more persuasive. The court held that Jefferson's complaints of malodor, swelling, and severe pain in his left ankle on November 14 should have warranted more from Badon. The court held that ordering lab work and/or further testing would have revealed the infection and likely prevented the amputation. The court then entered a judgment against UMMC in the amount of \$500,000. UMMC appealed.

ISSUES

Whether (1) the trial court's finding that Badon breached the standard of care by not "ordering lab work and/or further testing" was not based on substantial evidence; (2) the trial court's finding that "ordering lab work and/or further testing would have revealed the infection and likely prevented the amputation" was speculative and not supported by substantial evidence; and (3) Bosita was qualified to establish the standard of care for the diagnosis or treatment of a post-operative *Enterobacter cloacae* infection in a foot or ankle to establish causation.

HOLDING

(1) Because Bosita particularly explained what UMMC could have done to comply with the standard of care, the trial court's finding that Badon breached the standard of care by not "ordering lab work and/or further testing" was based on substantial evidence. (2) Because precedent did not require the plaintiff's expert to testify to causation with absolute certainty but to a degree of reasonable medical probability, and because it was the province of the trial court to determine the credibility of the witnesses, the trial court's finding that "ordering lab work and/or further testing would have revealed the infection and likely prevented the amputation" was not speculative and was supported by substantial evidence. (3) Because Bosita was the same specialty as Wright and was certainly familiar with the standards of care for an orthopedic surgeon, and because he testified that he was qualified to see a patient in the emergency room and make an assessment regarding infection, Bosita was qualified to establish the standard of care for the diagnosis or treatment of a post-operative *Enterobacter cloacae* infection in a foot or ankle to establish causation. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2023-CA-00711-COA (Nov. 5, 2024)

Opinion by Judge Lawrence

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

Leah Nichols Ledford & Robert V. Greenlee for Appellant - Ken R. Adcock & James M. Mars II for Appellee

Briefed by [Andrew Grant](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

PATTON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - SUCCESSIVE MOTIONS - Pursuant to Miss. Code Ann. § 99-39-23(6), any order dismissing or otherwise denying a motion for post-conviction relief is a final judgment and shall be conclusive until reversed, and any second or successive motions are barred

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief must be made within three years after the entry of the judgment of conviction

CRIMINAL PROCEDURE - INDICTMENT - CAPITAL MURDER - Unless the underlying felony is burglary, the underlying felony that elevates a crime to capital murder must be identified in the indictment along with the section and subsection of the statute under which the defendant is being charged; no further detail is required

FACTS

In July 1994, a grand jury indicted Jeremiah Patton for capital murder with the underlying felony of armed robbery. Patton entered a guilty plea and was sentenced to life imprisonment. In February 2012, Patton filed his first post-conviction collateral relief (“PCR”) motion in the trial court. The motion was denied, and that denial was not appealed. Two years later, Patton filed another PCR motion with the Supreme Court, which was dismissed without prejudice. In September 2021, Patton again filed a motion for PCR in the trial court, alleging that he was denied due process of law because his capital murder indictment did not allege all of the elements of armed robbery. The trial court summarily dismissed the claim as both successive and untimely. Further, the trial court found that because the underlying felony was armed robbery, it was not necessary to set forth the elements in the indictment. Patton appealed.

ISSUES

Whether the trial court erred by dismissing Patton’s motion because (1) the motion was barred as successive and untimely and (2) Patton was not entitled to relief based upon the face of his claim.

HOLDING

(1) Because Patton’s 2012 PCR motion was denied and no appeal followed, because Patton’s 2021 PCR motion was not filed within three years of his guilty plea and conviction, and because Patton failed to allege any exceptions to the statutory bars, Patton’s 2021 motion was barred as successive and untimely. (2) Because Patton’s indictment sufficiently identified the underlying felony as armed robbery, and because the indictment sufficiently charged Patton with capital murder, Patton was not entitled to any relief based upon the face of his PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Wayne County Circuit Court.

Affirmed - 2023-CP-00618-COA (Nov. 5, 2024)

Opinion by Judge Emfinger

Hon. Robert Thomas Bailey (Wayne County Circuit Court)

Pro se for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Anna Stack](#)

Edited by [Katie Shaw](#) & [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 7, 2024
COURT OF APPEALS - CRIMINAL CASES

ALEXANDER V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - MOTION IN LIMINE - A motion in limine should be granted only if: (1) the material or evidence in question will be inadmissible at a trial under the rules of evidence, and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury

EVIDENCE - APPELLATE REVIEW - ABUSE OF DISCRETION - When a trial court abuses its discretion on evidentiary issues, the appellate court reverses only where a substantial right of a party is affected

CRIMINAL PROCEDURE - APPELLATE REVIEW - MISTRIAL - A trial judge possesses the authority to declare a mistrial where the prosecutorial conduct substantially deflects the attention of the jury from the issues that it has been called upon to decide or appeals to bias, passion, or prejudice, and therefore, significantly impairs a defendant's right to a fair trial

CRIMINAL PROCEDURE - DIRECTED VERDICT - REASONABLE DOUBT - The relevant question in determining whether a directed verdict should be granted is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

CRIMINAL PROCEDURE - SENTENCING - PROPORTIONALITY - Pursuant to Miss. Code Ann. § 97-5-35, persons convicted under Miss. Code Ann. § 97-5-33 shall be imprisoned for no less than five (5) years nor more than forty (40) years

FACTS

Terrance Alexander opened the Jubilee Performing Arts Center (“JPAC”) in Pike County with locations in Summit and Brookhaven. After JPAC’s closure, allegations surfaced that Alexander had sexually exploited some students while they attended the school. The first report came from Latoya Ross who claimed her husband, Matthew Jackson, was made to engage in sexual acts as a child at JPAC while Alexander and another teacher watched. Investigator John Glapion interviewed Jackson, whose statements led to further allegations. In a police interview, Alexander admitted to witnessing and facilitating sexual acts between students. He allegedly coached students on how to perform sexual acts, encouraged nudity, and incorporated bizarre religious practices, such as making students shave their bodies and dividing them into religious “groups” that affected their status and duties at school. A ten-count indictment was filed against Alexander. Alexander filed a “Motion to Sever Counts,” and the trial court agreed to sever counts One, Two, Three, and Ten but left the remaining six counts of child exploitation to be tried together. Alexander also filed a motion to exclude prior bad acts, but the motion included little detail. Glapion was the first witness to testify during trial followed by Jonathan Davidson. Davidson, who was taken in by Alexander, described being taught by Alexander to masturbate and watch pornography. Davidson testified that Alexander, whom he considered a father figure, taught him inappropriate behaviors and manipulated him using religious claims. Melissa Jacobs recalled Alexander’s emotional manipulation and favoritism towards male students. Peter Anthony described how Alexander used spiritual claims to isolate and manipulate students, alleging that Alexander coerced him into sexual activities with other students. Kenneth Brown and Nelson Mason reported similar incidents of forced participation in sexual activities, and Brown revealed that Alexander exploited his vulnerability about past abuse. Former student Knox Cross shared that Alexander accused him of being a “sex addict” and coerced him into believing that his pride would ruin him, enforcing rigid, cult-like social divisions among the students. Throughout the trial, Alexander’s counsel raised fourteen objections which were overruled. Alexander was found guilty of each of the six counts of child exploitation and sentenced to forty years for each count,

with each count to run consecutively, for a total of 240 years in the custody of the Mississippi Department of Corrections (“MDOC”). Alexander appealed.

ISSUES

Whether the trial court erred in (1) denying Alexander’s pretrial motions; (2) overruling the defense’s objections during the trial; (3) denying Alexander’s motion for a mistrial; (4) denying Alexander’s motion for a directed verdict for lack of sufficient evidence; (5) denying Alexander’s post-trial motion requesting a new trial; and (6) sentencing Alexander to 240 years in MDOC custody.

HOLDING

(1) Because the six counts of child exploitation were interwoven when viewed together, the trial court did not err by denying Alexander’s motion to sever counts four through nine, and because Alexander’s motion in limine was generic in nature, the trial court did not err by reserving a ruling on the motion until Alexander could direct the court’s attention to specific testimony from particular witnesses. (2) Because the evidence presented, including testimonies, photographs, and religious ideologies, was relevant to the charges, because the State’s questioning was appropriate, and because Alexander failed to show prejudice or harm caused to him from the admission of certain testimony, the trial court did not err in overruling Alexander’s objections during the trial. (3) Because Alexander did not argue before the trial court that the use of the words “sexually abused” would be confusing to the jury, the trial court did not err in denying Alexander’s motion for a mistrial. (4) Because Alexander did not state with specificity as to how the State failed to make a prima facie case, and because Alexander’s crimes were commenced in Pike County, the trial court’s denial of Alexander’s motion for directed verdict and post-trial motion were proper, and there was ample proof for a reasonable juror to find that Alexander’s scheme and conduct in exploiting children arose in Pike County to alleviate jurisdiction concerns raised in oral argument. (5) Because the trial court properly instruct the jury, because the jury heard all of the testimony presented at trial, and because the jury unanimously found Alexander guilty, the jury verdicts were not contrary to the overwhelming weight of evidence. (6) Because Alexander’s sentence fell within the statutory guidelines, Alexander’s sentence was proper and not grossly disproportionate. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

DISSENT IN PART

Judge Emfinger argued that Pike County Circuit Court did not have jurisdiction over the conduct charged on the three counts of Alexander’s indictment, and that there was no authority cited to support a “course of conduct” theory of jurisdiction that applied to the Code cited. He also argued there was no evidence in the record to show that Alexander made any effort to “advise, persuade, and solicit” the two children to engage in sexually explicit conduct on the trips to New York or St. Louis. Therefore, the jury verdicts as to the three counts should be reversed and rendered.

Affirmed - 2023-KA-00331-COA (Nov. 7, 2024)

En Banc Opinion Part One by Judge Emfinger - Opinion Part Two by Judge McCarty - Dissent in Part to Part Two by Judge Emfinger

Hon. Michael M. Taylor (Pike County Circuit Court)

John R. Reeves for Appellant - Danielle Love Burks (Att’y Gen. Office) for Appellee

Briefed by [Senneca Evans](#) & [Elizabeth Murphree](#)

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