



MISSISSIPPI PUBLIC
DEFENDERS
CONFERENCE
SPRING 2017
APPELLATE COURT UPDATE



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I.
UNITED STATES SUPREME
COURT CASES

(or, "how a court with 8 people does not get a lot accomplished")



PEÑA-RODRIGUEZ V. COLORADO (MARCH 6, 2017)

Miguel Peña-Rodriguez had asked a state trial court for a new trial after two jurors told his lawyers that a third juror had made racially biased remarks about Peña-Rodriguez and his main witness, who are both Hispanic.

The state trial court rejected Peña-Rodriguez's request, citing a state evidentiary rule that generally bars jurors from testifying about statements made during deliberations that might call the verdict into question.



The Court acknowledged that Colorado's "no impeachment" rule – which mirrors similar rules in the federal system and around the country – serves important purposes:

It allows "full and vigorous discussions" among jurors, who do not need to worry about later efforts to pry into those deliberations, and it "gives stability and finality to verdicts."



Those considerations, however, must yield when there is evidence that a juror has relied on racial stereotypes or prejudice to convict a defendant.

Racial bias is different and more serious than the concerns that led the court to reject proposed exceptions to the "no impeachment" rule in its earlier cases.

Racial bias in jury deliberations threatens not only the proceeding in which it occurs but also the administration of justice more broadly.

“
[A] constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after the verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right.”


HOWEVER!
A defendant does have a high bar when alleging racial bias.


“Not every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry...”
A defendant must show “that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury’s deliberations and resulting verdict. To qualify,”
“the statement must tend to show that racial animus was a significant motivating factor in the juror’s vote to convict.”



MOORE V. TEXAS (MARCH 28, 2017)

Bobby James Moore was convicted and sentenced to death for shooting a supermarket employee during a 1980 robbery.

Moore argued that he was exempt from execution because he was intellectually disabled.



- » He failed first grade twice.
- » He did not grasp basic principles like telling time at the age of 13.
- » He had suffered a “debilitating” injury when he was hit in the head with a chain and a brick during the battle over integrating public schools.



The Texas Court of Criminal Appeals rejected Moore's challenge .

It relied on its decision in previous case, using a set of 1992 standards for evaluating intellectual disability, along with several “evidentiary factors” that take into account, among other things, whether the people who knew the inmate best when he was growing up regarded him as intellectually disabled.



The Court acknowledged that its recent decisions on intellectual disability and the death penalty give the States the primary responsibility for “the task of developing appropriate ways to enforce” the Constitution’s bar on executing intellectually disabled inmates.

But, the Court explained, those decisions do not give the states free rein: Although states do not have to follow every detail of the most recent medical guide on intellectual disabilities, they cannot disregard the standards in those guides either.



The Court concluded, the Texas court’s ruling was wrong in multiple respects.

First, the Texas court should not have focused just on Moore’s IQ score of 74. Instead, the Texas court should have also considered the standard error of measurement – that is, the amount that scores could fluctuate around a “true” score. Looked at that way, Moore’s score would range from 69 to 79, which would have required the Texas court to consider other evidence of his possible intellectual disability.



The Texas court’s decision was also flawed, because it did not consider current clinical standards when evaluating how well Moore could handle the demands of everyday life, which is a key factor in determining whether someone is intellectually disabled.

For example, the Texas court emphasized Moore’s strengths – such as that he “lived on the streets, mowed lawns, and played pool for money” – when clinical standards indicate that it should have focused on his deficits.



The Texas court made the problem even worse when it looked to the "evidentiary factors" outlined in the previous case.

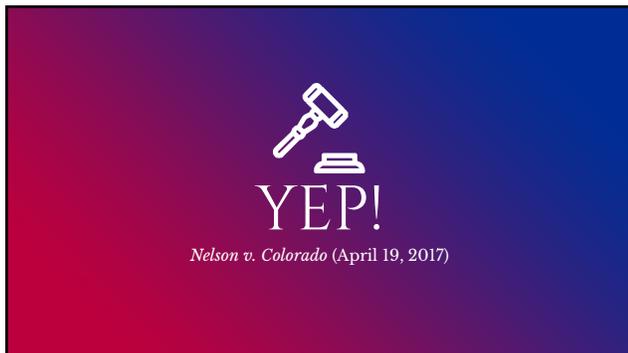
Those factors were essentially invented by the Texas court, without any basis in either medicine or law; indeed, even Texas itself does not use them to determine whether someone is intellectually disabled in other contexts.



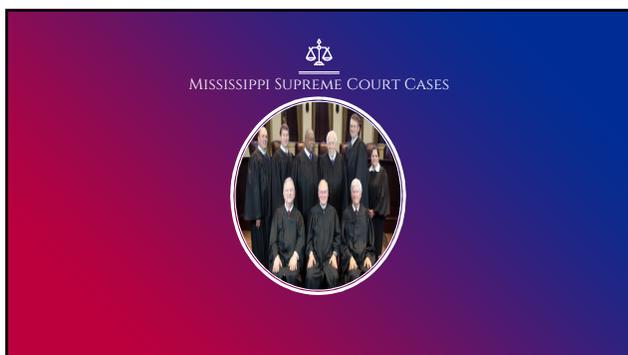
HEY! HERE'S A QUESTION!

“

When a criminal conviction is invalidated by a reviewing court, and no retrial will occur, is the State obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, his conviction?”








KUEBLER V. STATE (NOVEMBER 10, 2016)




Tammy Stuckey was shot and killed on Kuebler's couch. Kuebler was charged with and convicted of murder.

The Court of Appeals originally affirmed Kuebler's conviction, the Supreme Court granted certiorari and reversed.

It's a complicated opinion with several parts.


First, the Court found that Kuebler was improperly denied an opportunity to assert his theory of defense.

The trial court denied Kuebler's accident defense instruction, finding no evidence to support it on the record.



This Court previously has held that "in homicide cases, the trial court should instruct the jury about a defendant's theories of defense, justification, or excuse that are supported by the evidence, no matter how meager or unlikely." *Brown v. State*, 39 So. 3d 890, 899 7 (Miss. 2010) (quoting *Evans v. State*, 797 So. 2d 811, 815 (Miss. 2000)). Thus, precedent demands that even meager evidence warrants an instruction on the defendant's theory of defense.

The Court listed several reasons why the instruction was warranted.



IMPORTANT!

"While Kuebler did not testify at trial, a defendant should not be forced to testify in order to be able to present his defense theory to the jury."



Part 2 of the opinion found the trial court in error for granting the State's flight instruction.

Kuebler, out on bond, had fled a traffic stop in Louisiana, some 10 months after the incident.

Kuebler informed the trial court that, while out, he had been in a car accident. Officers told him then that he was going to go back to jail. He told the trial court that he feared going back to jail because he had been beaten.



A trial court should deny a flight instruction when the trial court is "aware of an explanation."

It was error for the trial court to require Kuebler to present proof to support his explanation, but, even then, Kuebler did so.



KNOW THIS!

"Because the standard is simply what is known to the trial court, the representations of the attorney—an officer of the court—certainly were enough to preclude a flight instruction."



The Court further found that the flight did not have "considerable probative value," as required by precedent.

Moreover, the trial court erred in excluding evidence obtained by Kuebler attempting to explain his flight. The State objected and the trial court ruled the evidence to be irrelevant.

The Supreme Court held this was "clearly error."



WILLIE V. STATE (DEC. 12, 2016)

In Willie's trial for murder, the jury sent a question to the trial court.

"Sir, can we say he is guilty of having the gun without saying he is guilty of murder?"

The trial court simply responded, "No."



The Supreme Court found the trial court committed plain error in answering the question.

The response allowed for the jury to convict Willie of murder if they found him "guilty" of possessing the firearm.

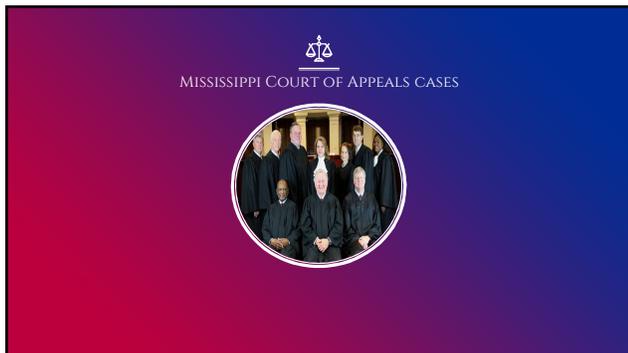
Perhaps the most interesting aspect of Willie is the dissent from Justice Kitchens which outlines some of the major concerns with firearm testimony.



Carson v. State (November 17, 2016) - constitutionally deficient performance to not request an accomplice-testimony instruction when a co-defendant testifies.

Miles v. State (December 1, 2016) - Trial court has no authority to transfer venue over a defendant's objection.

Gary v. State (December 1, 2016) - Because Gary questioned the voluntariness of his confession, he had a due-process right a suppression hearing.



BIRKLEY V. STATE (NOVEMBER 11, 2016)

Birkley was charged with robbing a gas station.

At trial, the State sought to introduce evidence of his two prior armed robbery convictions. The State argued that the robberies were admissible to show aidentity/modus operandi, i.e. the prior robberies also involved purchasing a small value item before committing the robbery.

The trial court admitted Birkley's prior convictions.

The Court of Appeals found that Birkley's prior armed robberies were not so "peculiar and distinctive" to establish that he had committed a "signature" crime, and were therefore inadmissible under 404(b).

Also, hearsay evidence of a non-testifying officer's identification of Birkley as the person who committed the robbery was error.



LITTLE V. STATE (NOVEMBER 22, 2016)

Marlon Little was convicted of armed robbery.

The initial description of the suspect was a clean-shaven, stocky African American male in his mid-to-late twenties.

Little was eventually identified as a suspect, and the victim was shown a lineup. He identified Little.



The victim testified that he recognized Little in part because the attacker had pronounced nasolabial folds. Little was the only person in the photo lineup with 2 pronounced nasolabial folds.

Little is forty years old, tall and thin, with gold teeth, and normally wears a goatee. The police did not conduct any investigation other than presenting the victim with the photo lineup.



The Court of Appeals reversed Little's conviction finding it was against the overwhelming weight of the evidence.

"We find, on the facts of this case, that the weight of the evidence preponderates heavily against the verdict where the sole substantive proof presented at trial was the testimony of the victim identifying the defendant, and the victim's initial description of the attacker to the police was inconsistent with that identification. We therefore reverse and remand for a new trial."



MAY V. STATE (DECEMBER 13, 2016)

May was a passenger in a vehicle that was pulled over. The driver was patted down. When officers found drugs on the driver, the driver admitted the drugs were his.

Officers asked May for his driver's license. He did not have one, so he sat on the side of the road. Officers noticed May was "fidgety" and that he was holding onto his right shoe.

Officers asked May to remove his shoe, May acquiesced, and a Zippo fell out of his shoe.



Police opened the Zippo, and found marijuana a small amount of cocaine.

The Court of Appeals found that the scope of the consent extended to the shoe but not to the lighter in the shoe.

Because police exceeded the scope of consent, the Court of Appeals turned to whether there was probable cause to search the lighter.



The Court found that the officer merely testified that he became suspicious that May could have something illegal in his shoe because May acted nervous and looked at and held onto his right shoe as he sat on the ground.

But to establish probable cause, an officer must have "information reasonably leading [the] officer to believe that then and there contraband or evidence material to a criminal investigation would be found."



MEADOWS/CREWS V. STATE (FEBRUARY 14, 2017)

Meadows and Crews were both charged and convicted of manslaughter in the beating death of Crew's mother's boyfriend. Both defendants were 17 at the time of the incident.

The two were indicted and convicted in circuit court.

There was never a transfer from youth court.



Mississippi's youth court statute provides exclusive original jurisdiction in all cases involving juveniles that are not capital offenses or do not involve deadly weapons.

Because the case was never transferred to circuit court by the youth court, the circuit court lacked jurisdiction to hear the case.

The Court of Appeals reversed.



WHITE V. STATE (FEBRUARY 14, 2017)

White was convicted of two counts of gratification of lust and one count of statutory rape.

The Court of Appeals opinion that followed was an exhaustive dressing down of a prosecutor due to her repeated misconduct.



- The prosecutor made an inflammatory speaking objection: "Objection to the relevance of where [MM] was living. We are here because [White] was raping her." Court said it was inflammatory, improper, and served only to prejudice the jury against White.
- During cross-examination, the prosecutor improperly inserted her own opinion as to White's guilt into her questioning.

“

The district attorney's blatant projection of guilt onto White, in the presence of the jury, is so inflammatory, unfairly prejudicial, and extremely improper that in this circumstance defense counsel's lack of objection and does not bar the issue from our consideration on appeal.”



- The prosecutor was improperly allowed to "randomly" ask if White had been unfaithful to his first wife. The prosecutor, when asked where this line of questioning was going, admitted "To person, to him." This was clearly improper character evidence.
- The prosecutor mischaracterized evidence and fact during cross-examination, and the trial court merely responded "jury will recall the testimony." The prosecutor then said "The jury remembers" and "The jury knows."



- The State's closing argument was riddled with inflammatory and impermissible comments.
1. Comments on facts not in evidence.
 2. Improper comments about white's character.
 3. Improper comments on the credibility of witnesses and the veracity of their testimony.
 4. Improper comments vilifying White: "Who does that? A pedophile does it. Tell you who else did it? Curtis White."



There is little other purpose for calling a defendant, who is accused of sexual acts with minors, a pedophile than to inflame the jury, prejudice the defendant, and taint the constitutionally guaranteed right of a fair trial. As such, we find this to be plain error that warrants reversal standing alone."



MURRY V. STATE (APRIL 18, 2017)

During Murry's trial, a juror initiated improper contact with Murry's fiancée. The juror sent several explicit text messages including a nearly naked picture of himself.

The circuit court conducted a post-trial evidentiary hearing, but did not overturn the jury's verdict.



The Court of Appeals found that the circuit court abused its discretion by misapplying relevant caselaw.

The proper standard is whether "it was reasonably possible that the commination altered the verdict."

The trial court improperly focused on the timing of the disclosure and whether the fiancée initiated the contact.

A split Court reversed and remanded for a new trial.



Stewart v. State (February 7, 2017) - for the purposes of the facts of the case, fondling merged with sexual battery.

Haynes v. State (December 13, 2016) – Haynes was improperly tried *in absentia*.



FIN
