

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN JUNE 28, 2016**

[Alvin Brown v. State](#), No. 2014-KA-00331-COA

CASE: manslaughter and four counts of aggravated assault

SENTENCE: 20 years in MDOC for manslaughter, ten each for aggravated assaults. Agg assaults concurrent to each other, consecutive to manslaughter (30 years total)

COURT: Hinds County Circuit Court

TRIAL JUDGE: Hon. William A. Gowan, Jr.

APPELLANT ATTORNEY: Mollie McMillin

APPELLEE ATTORNEY: Lisa Blount

DISPOSITION: Manslaughter affirmed, aggravated assaults reversed and remanded Ishee, J., for the Court. Lee, C.J., Barnes, Carlton, Fair, James and Greenlee, JJ, concur. Wilson, J., concurs in result only without separate opinion. Irving and Griffis, P.JJ., concur in part and dissent in part without opinion.

ISSUES: (1) Speedy trial; (2) whether trial court erred in giving “imperfect self-defense” jury instruction over defense objection; (3) whether the evidence was sufficient to support the convictions for manslaughter and aggravated assault; (4) whether the jury was properly instructed on aggravated assault; (5) pro se claims on flight instruction and double jeopardy.

FACTS: Brown was involved in an altercation with Al Coleman (Westside Al) at the Birdland Nightclub. Brown fired several shots during the altercation, hitting four patrons of the club and killing another. Brown’s defense was that Westside Al was the actual shooter. Brown was charged with four counts of aggravated assault and one count of depraved-heart murder. Brown was arrested in September 2009, indicted in December 2009, and arraigned in early 2010. His first trial did not begin until August 19, 2013. That trial ended in mistrial. A second trial started on January 21, 2014.

HELD: (1) Brown “failed to timely avail himself of the statutory right to a speedy trial” because his demand for speedy trial was filed more than 270 days after his arraignment. As for his constitutional right to speedy trial, delay of nearly four years did not violate Brown’s right to a speedy trial because the court found good cause for the delays, including joint requests for continuance, a crowded docket, and a witness who was deployed overseas. (2) The trial court did not err in granting the lesser-included “imperfect self-defense” manslaughter instruction over defense objection. Brown argued that there was no evidence to support giving the instruction. The COA held that because there was evidence that Coleman was the initial aggressor and threw the first punch, was older and larger than Brown, there was adequate evidence that Brown *may* have shot the gun to protect himself. Furthermore, the jury believed it. (3) The evidence was

sufficient because witnesses saw Brown with the gun and it was undisputed that Coleman attacked Brown. Brown's hands tested positive for gunshot residue. (4) Omission of "serious" bodily injury in aggravated assault jury instructions substantially altered the proof necessary for a conviction and broadened the grounds upon which Brown was convicted. Omission was a constructive amendment to the indictment requiring reversal of the aggravated assault convictions. (5) Pro Se claims: No case law supports Brown's contention that he was entitled to a flight instruction regarding Westside Al's flight from the bar following the shooting. There was manifest necessity for the mistrial, which Brown agreed to, thus there was no double jeopardy violation.

Dwaliues Deon Carter v. State, No. 2013-KA-01927-COA

CASE: two counts of murder, house burglary, conspiracy to commit house burglary, and felony child neglect

SENTENCE: two life without parole sentences for murders, twenty-five for burglary, five for conspiracy and five for child neglect

COURT: Hinds County Circuit Court

TRIAL JUDGE: Hon. Winston L. Kidd

APPELLANT ATTORNEY: George Holmes

APPELLEE ATTORNEY: Barbara Byrd

DISPOSITION: Affirmed. Greenlee, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair and Wilson, JJ., concur. James, J., concurs in part without separate opinion.

ISSUES: (1) whether the trial court erred in allowing the State to introduce bad-act evidence via hearsay; (2) whether evidence of felony child neglect was insufficient; (3) whether instruction S-7 constructively amended the indictment; (4) whether trial court should have suppressed Carter's confession (pro-se argument)

FACTS: The bodies of Robert Carter (Robert) and his fiancée Renita Mark were discovered by a Hinds County sheriff's deputy following up on an abandoned truck registered to Robert. The couple's seven month old baby was found on the floor of the house hungry and dehydrated and in need of a diaper change. Carter became a suspect after neighbors said Carter and Robert had recently fought over a car. Carter initially requested an attorney, but then continued to ask police questions and then said he would talk with them. He waived his *Miranda* rights and confessed to burglarizing Robert and Renita's home with an acquaintance. He admitted that he was supposed to get his brother to open the door; his acquaintance actually pulled the trigger. Renita's twin sister Renata testified that her sister was afraid to stay at the home when Carter was there. Renata also gave hearsay testimony that her sister had told her that Carter attempted to run over Robert and had jumped on Renita. The defense objected but did not request that the jury be

instructed to disregard the statements. Testimony at trial established that Robert and Renita's child had been in the house with their bodies for over a day. The medical examiner testified that the event was likely very traumatic for the child.

HELD: (1) Renata's testimony about Carter's prior bad acts was relevant to show motive and intent and therefore admissible. The trial court sustained defense objections to hearsay, and the defense did not request an instruction to the jury to disregard the hearsay statements. Further, any error would be harmless because the jury could have arrived at no other verdict than guilty. (2) The State presented sufficient evidence of "substantial harm" to the Robert and Renita's child. The Court contrasted substantial harm with serious harm. Substantial harm does not require substantial risk of death. (3) There was no constructive amendment to the conspiracy count of the indictment by a jury instruction that gave the jury the option of convicting Carter based on two conspirators; the indictment alleged a conspiracy between three men involved in the crime. The variance in the instruction and the indictment did not substantially alter the elements of proof necessary for the conviction. (4) The trial court did not err in denying Carter's motion to suppress his confession. Officers ceased their interrogation when Carter initially requested an attorney. They resumed only after Carter signed a waiver of *Miranda*.

John Edward Young, Jr. v. State, No. 2015-KA-00116-COA

CASE: Sexual battery of eleven year old

SENTENCE: twenty years in the MDOC

COURT: Adams County Circuit Court

TRIAL JUDGE: Hon. Forrest A. Johnson, Jr.

APPELLANT ATTORNEY: Damon Ramon Stevenson

APPELLEE ATTORNEY: LaDonna Holland

DISPOSITION: Affirmed. Wilson, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Ishee, Carlton, Fair, and Greenlee concur. Barnes, J., concurs in part and in result w/o separate written opinion.

ISSUES: whether the trial court erred by (1) refusing to excuse a juror for cause whose daughter had been sexually assaulted; (2) allowing child's uncle to testify that Young said he had prior felonies; (3) refusing to allow testimony about child's past behavior/alleged dishonesty; (4) giving an elements instruction that did not require a unanimous verdict; and (5) whether trial counsel was ineffective for failing to proffer testimony about child's past behavior.

FACTS: Young was staying with his uncle Glenn and Glenn's wife and step-daughter. Young was 36. At some point in the night, he went into the room of the eleven-year-old child, KM. KM left the room and came back to find Young wearing only his boxers. Young threw KM on the bed, covered her mouth, and put his penis into her vagina. KM said Young wore a condom. She tried to scream. Young stopped, KM tried to leave, and then Young penetrated KM anally.

KM left the room and went to the living room and cried. Young followed, saying he was sorry. KM went into her mother and step-father's room screaming that Young had touched her. Young followed saying, "KM, tell the truth, Tell the truth. I got felonies."

Young's defense was that he fell asleep in KM's bed and awoke to find KM on top of him and having sex with him. He said he did not know whether he penetrated her. He made KM stop as soon as he realized what she was doing. He claimed that a condom that he kept in his wallet (seriously) was missing and that he did not know where it was.

HELD: (1) The record did not show that Young exhausted all of his peremptory challenges and the juror in question did not serve on the jury. Young's argument is without merit. (2) Testimony that Young said "I got felonies" was relevant. Further, the danger of unfair prejudice did not outweigh the probative value of the evidence. The nature of his prior felonies was not disclosed to the jury, so it is hard to see how it could be used to show that he "acted in conformity therewith." (3) The trial court's exclusion of testimony from KM's uncle that she "has done stuff" and has been dishonest in the past was procedurally barred because trial counsel failed to make a proffer. (4) Court will not address ineffective assistance of counsel for failing to make a proffer because it is not apparent from the record whether Young suffered prejudice. Issue should be raised in motion for post-conviction relief. (5) Elements jury instruction that allowed jury to convict Young if it found that he inserted "his penis into her vagina **and/or** anus" did not deprive him of a properly instructed jury and his right to a unanimous verdict. Argument is procedurally barred because there was no objection, and there is no plain error. The "method of achieving sexual penetration is not an element of the offense of sexual battery."

Lonnie Sims a/k/a "Turk" v. State, No. 2014-KA-01174-COA

CASE: armed robbery

SENTENCE: thirty years in MDOC with five years suspended, five on post-release supervision

COURT: Forrest County Circuit Court

TRIAL JUDGE: Hon. Robert B. Helfrich

APPELLANT ATTORNEY: George Holmes & Sims (pro se)

APPELEE ATTORNEY: Scott Stuart

DISPOSITION: Affirmed. James, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, Wilson and Greenlee, JJ., concur.

ISSUES: (1) Whether the verdict is against the overwhelming weight of the evidence. (2) Whether Lefan's testimony was "duplicitous" and "impermissibly suggestive." (3) Whether Sims was denied his constitutional right to a fair and impartial jury. (4) Whether he received ineffective assistance of counsel. (5) Newly discovered evidence requiring reversal.

FACTS: Tyler Lefan was robbed by two men outside a Minit Mart in Hattiesburg. Lefan

testified at trial that it was Sims and Jeremy Walker who robbed him. Lefan had just cashed his and his girlfriend's pay checks and stopped in the Minit Mart to get a drink and cigarettes. Sims and Walker offered to sell him marijuana as he walked in the store. He declined. When he came out of the store, they asked him for a ride to Wendy's, and Lefan said he would not drive them. The two men then got in his car with him, demanding a ride to Wendy's. Lefan said Sims, who was in the back seat, put a gun to his head while Walker took his money and driver's license. The men ran to a wooded area and Lefan called police.

The men were arrested. Lefan identified Sims from a photo lineup. He was not able to identify Walker. A pistol was later found in a shed near the Minit Mart. A fingerprint on the gun matched Walker's print.

Sims testified that he got into Lefan's car to sell drugs. He said Walker attached Lefan and snatched his money. Sims got out of the car and ran because he was scared. He denied seeing or handling a gun at any time during the encounter.

HELD: (1) Jurors resolve conflicting testimony and conflicting testimony does not evince overwhelming evidence. Verdict is not against the overwhelming weight of the evidence. (2) Sims argued pro se that Lefan's lied when he claimed he was never convicted of a felony. There is nothing in the record to support Sims's assertions that Lefan lied, that the prosecution withheld exculpatory evidence or that the lineup was suggestive. (3) The trial court did not err in accepting the State's race-neutral reasons for striking potential black jurors and thus he was not denied his constitutional right to a fair and impartial jury. (4) Sims's claims of ineffective assistance of counsel can't be determined without information outside the record. It should be raised later in a PCR motion. (4) Sims's "newly discovered evidence" was an affidavit purportedly signed by Jeremy Walker and mirrors Sims's trial testimony. Sims cannot meet all four requirements for seeking a new trial based on newly discovered evidence: new evidence discovered after trial, could not have been discovered prior to trial through due diligence, evidence is material to the issue and not merely cumulative or impeachment, would probably produce a different result or verdict.

[Charlie Henderson v. State](#), No. 2015-KA-00164-COA

CASE: accessory after the fact to murder

SENTENCE: five years in MDOC, two suspended, followed by 5 years probation

COURT: Lauderdale County Circuit Court

TRIAL JUDGE: Hon. Robert Walter Bailey

APPELLANT ATTORNEY: Mollie McMillin

APPELLEE ATTORNEY: Laura Hogan Tedder

DISPOSITION: Affirmed. Barnes, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Ishee, Carlton, Wilson and Greenlee, JJ., concur. Fair, J., concurs in part and in result. James, J., concurs in part.

ISSUES: Whether the trial court erred in admitting a YouTube rap video made by Henderson and others because it was irrelevant, confusing, and prejudicial.

FACTS: Henderson was convicted of helping his friends cover up the accidental shooting of Aaron Coleman. The shooter, William Michael Jordan, was drunk at a party at his house. He was pointing a gun at people and swinging it recklessly. The gun fired, and Coleman was shot in the stomach. Testimony at trial showed that Henderson and his friends hid Coleman's body and abandoned his car. One of the men present for the shooting, Bobby Baker, later came forward to police. Shortly afterward, he became aware of a rap video featuring Henderson and another rapper. Baker interpreted the video as a threat against him. It involved killing a snitch. The video was played for the jury, though it did not depict any of the events dealing with the killing or disposal of Coleman.

HELD: Henderson's argument that the video was irrelevant was without merit. It was posted after Baker and another witness gave incriminating statements, but before the trial. The Court held that the video could be interpreted as a threat by Henderson to intimidate Baker. The video has substantial probative value to show Henderson's consciousness of guilt.