SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI HANDED DOWN MAY 3, 2016

Daniel Roy Snyder v. State, No. 2014-KA-00914-COA (Miss.Ct.App. May 3, 2016)

CASE: Felony Leaving the Scene of an Accident
SENTENCE: 6 years with 5 suspended w/ 5 years PRS

COURT: Jackson County Circuit Court
TRIAL JUDGE: Hon. Dale Harkey

APPELLANT ATTORNEY: W. Daniel Hinchcliff
APPELLEE ATTORNEY: Abbie Eason Koonce
DISTRICT ATTORNEY: Anthony N. Lawrence, III

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

ISSUE: Whether the evidence was sufficient to support the verdict.

FACTS: On February 22, 2013, around 6:40 p.m., Daniel Snyder, an off-duty Pascagoula police officer, was driving home and struck and killed 16-year old Kaytlynn Brann. Brann and Sarah Guy had been walking down Pointe Aux Chenes Road in Jackson County. Brann and her family lived in a subdivision directly off Pointe Aux Chenes Road. Guy testified that Brann was walking in the road at the time of the accident. It was later determined that Snyder was not at fault for the accident. However, witnesses indicated that Snyder left the scene of the accident for as long as 15 minutes. Apparently Snyder stopped his truck immediately after the accident, but did not render aid and left for several minutes before returning. He told one witness, "I didn't see her," and "I dialed 911." Police were on the scene for 7 or 8 minutes before Snyder returned. Deputy Hemakshiben Bhakta testified she asked Snyder why he left. He responded that he did not know what he had hit and he went to turn around. He did not appear to be impaired. Snyder did admit to drinking several beers that day. A portable breath test registered positive. Snyder's blood was later tested and indicated a BAC of .06%. The State theory was that Snyder likely left the scene to cover up evidence that he had been drinking that day. He was convicted and appealed.

HELD: Snyder argued that leaving the scene for a short period should not be a felony, since he did return to the scene and fulfilled the requirements of §63-3-405. Snyder contends that he did not have the intent to evade responsibility. Although Snyder did return, he did leave for as long as 15 minutes. Snyder was aware that he had hit someone. He exited his truck, saw the victim, and then left the scene. The statute requires the driver to provide his name, address, and vehicle registration number, as well as render the victim "reasonable assistance." The evidence was sufficient.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111788.pdf

James Earl Polk Jr. v. State, No. 2014-KA-01497-COA (Miss.Ct.App. May 3, 2016)

CASE: Murder
SENTENCE: Life

COURT: Marion County Circuit Court
TRIAL JUDGE: Hon. Prentiss Greene Harrell

APPELLANT ATTORNEY: W. Daniel Hinchcliff, George Holmes
APPELLEE ATTORNEY: Scott Stuart
DISTRICT ATTORNEY: Haldon J. Kittrell

DISPOSITION: Affirmed. Lee, C.J., for the Court. Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair and Greenlee, JJ., Concur. James, J., Concurs in Part Without Separate Written Opinion. Wilson, J., Concurs in Part and in the Result Without Separate Written Opinion.

ISSUES: (1) Whether his right to confrontation was violated when the trial court admitted statements made by his cousin and codefendant, through the testimony of three witnesses; (2) whether his right to confrontation was violated when the trial court admitted the testimony from a medical examiner who did not perform the autopsy or author the autopsy report; (3) whether his constitutional and statutory rights to a speedy trial were violated; and (4) whether there was cumulative error.

FACTS: In October 1996, James Polk was charged with 1993 murder Kimberly Rowell. However, in January 1997, an order was entered withdrawing the charges, and Polk was released from custody. On February 23, 2012, Polk was again charged with Rowell's murder, along with his cousin, Howard. Howard died prior to trial. The trial judge denied his motion to dismiss for a speedy trial violation for lack of specificity as to actual prejudice. The trial judge also denied a motion in limine to prohibit the testimony of Theresa Dollahan, Benny Blesett, and Brandy Hilburn regarding what Howard told them. Polk argued that Howard's statements were testimonial and were used to inculpate Polk. Polk was subsequently convicted and appealed.

HELD: (1) Dollahan, a family friend, testified that Howard and Polk visited her home on the day after Rowell's murder. She testified Howard admitted to killing Rowell. These comments were more akin to "casual remark[s] to an acquaintance." Therefore, the statements were nontestimonial and did not violate Polk's Sixth Amendment right. Howard's statements to Dollahan inculpate Howard and not Polk.

Blesett was incarcerated in the same unit as Howard at the time of Howard's statements to him. Howard told him he shot Rowell. Howard said he was not alone, but Blesett did not name who was with him. Again, these statements were not testimonial. Polk was not directly implicated.

Hilburn, an acquaintance of Howard's, testified Howard showed him a 9mm pistol and claim it was the weapon he used to kill Rowell. These statements were also nontestimonial. The testimony from all three witnesses does not concern Polk and only relates to Howard.

(2) The trial judge did not err in allowing Dr. Mark LeVaughn to testify even though he did not perform the autopsy. Dr. Emily Ward, who conducted the autopsy, was unavailable for health reasons. The autopsy report prepared by Dr. Ward was not admitted into evidence at Polk's trial. Dr. LeVaughn merely testified regarding his own independent opinion as an expert in forensic pathology as to the circumstances and cause of Rowell's death. Dr. LeVaughn's testimony did not violate Polk's right to confrontation.

(3) Polk's constitutional and statutory rights to a speedy trial were not violated. Polk claimed that he suffered actual prejudice due to a missing crime-scene video and the deaths of the chief investigator, two investigators, and Howard. However, Polk was unable to offer any proof that the lost evidence or inaccessible witnesses impaired his ability to mount a defense or impaired a fair-trial outcome. There was no statutory violation as Polk was arraigned on September 15, 2014, and his trial commenced the same day.

(4) There was no cumulative error.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111801.pdf

Kevin D. Boudreaux, Jr. v. State, No. 2015-KA-00588-COA (Miss.Ct.App. May 3, 2016)

CASE: Murder
SENTENCE: Life

COURT: Hancock County Circuit Court
TRIAL JUDGE: Hon. Roger T. Clark

APPELLANT ATTORNEY: George T. Holmes
APPELLEE ATTORNEY: LaDonna C. Holland
DISTRICT ATTORNEY: Joel Smith

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

ISSUES: (1) Whether the jury was properly instructed on deliberate design; (2) whether the trial court erred in excluding evidence of the victim's level of intoxication; (3) whether the evidence supports a manslaughter conviction; and (4) his trial counsel was ineffective.

FACTS: On February 10, 2013, Kevin Boudreaux, Jr., returned to his mobile home in Hancock County, after attending a Mardi Gras parade. Boudreaux was with his sister, Janell Boudreaux, along with other relatives and friends. There was testimony that Boudreaux had been drinking alcohol during the parade, was asleep in the car when the group arrived home, and then had to be helped out of the car. Brittany Ellis, Boudreaux's ex-girlfriend, was sitting in her car on the property when Boudreaux arrived home. Brittany testified Boudreaux he had asked her to come to his house after the parade. When Boudreaux saw her, and he began hitting her with his fists. Janell and his

other sister, Tandra, tried to pull Boudreaux off Brittany. Boudreaux then started hitting both Janell and Tandra. A cousin, Jeffrey Hoda, tried to calm Boudreaux down, but they began fighting. At one point, Jeffrey had pinned Boudreaux to the ground. Brittany left the scene. Tandra's boyfriend, Jacob Tillman testified Boudreaux freed himself from Jeffrey and began walking toward the mobile home. Jacob heard Boudreaux state that he was going inside to get a gun. Jeffrey and his girlfriend left the scene. Boudreaux exited his mobile home carrying a gun. Boudreaux walked towards Janell and began hitting her on the head with the gun. He then shot her in the head. As Jacob turned to leave, he saw Boudreaux walk back to his mobile home. Jacob then heard another gunshot. Boudreaux did not claim self-defense as a theory of defense. Boudreaux was convicted of deliberate design murder and appealed.

HELD: (1) The trial judge properly instructed the jury on deliberate design. The instruction told the jury that if deliberate design "exists in the mind of the defendant but for an instant before the fatal act..." it was sufficient for murder. This did not confuse the jury simply because a manslaughter instruction was given. The SCT has upheld a similar instruction as a proper statement of the law.

(2) The trial judge did not err in excluding evidence of the victim's alcohol and marijuana consumption reported in a toxicology report. Janell's BAC was .144%. However, Boudreaux never claimed he acted in self-defense. Boudreaux's defense was heat-of-passion manslaughter. The victim's toxicology report was therefore irrelevant.

(3) Boudreaux argued that there was no premeditation to commit murder; therefore, he should have been convicted of manslaughter. Although he suggests imperfect self-defense, this was never argued at trial. Whether Boudreaux had the intent to commit murder was a jury question. After fighting with several people, he entered his mobile home to retrieve a gun. After retrieving the gun, Boudreaux hit Janell several times on her head with the gun, and then shot her in the head.

(4) Boudreaux claimed his counsel was ineffective for failing to request an accident instruction. He submits there was an evidentiary foundation for the instruction since there was some testimony Jacob tried to knock the gun out of Boudreaux's hand and it could have got off by accident. Although Jacob may or may not have tried to grab the gun from Boudreaux, the evidence was clear that Boudreaux went directly to Janell, began hitting her with the gun, then shot her in the back of the head. There was no testimony that Jacob or anyone else was interfering with Boudreaux once he began hitting Janell in the head such that the jury could infer the gun was accidentally discharged. This claim is without merit.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111785.pdf

Zachary Cozart v. State, No. 2014-KA-01741-COA (Miss.Ct.App. May 3, 2016)

CASE: Manslaughter
SENTENCE: 30 years, with 15 suspended and 10 years PRS

COURT: DeSoto County Circuit Court

TRIAL JUDGE: Hon. Gerald W. Chatham. Sr.

APPELLANT ATTORNEY: Ralph Stewart Guernsey
APPELLEE ATTORNEY: Jeffrey A. Klingfuss
DISTRICT ATTORNEY: John W. Champion

DISPOSITION: Affirmed. Irving, P.J., for the Court. Lee, C.J., Griffis, P.J., Barnes, Ishee, Carlton, Fair and Greenlee, JJ., Concur. Wilson, J., Concurs in Part and in the Result Without Separate Written Opinion. James, J., Concurs in Part and Dissents in Part Without Separate Written Opinion.

ISSUES: (1) Whether he was erroneously sentenced under §97-3-25(2)(b), which provides a maximum sentence of 30 years for the homicide of a child under 18 by a person over the age of 21, rather than under §97-3-25(1), which provides a 20-year sentence for manslaughter; (2) whether the verdict is against the sufficiency and overwhelming weight of the evidence; and (3) whether he received ineffective assistance of counsel.

FACTS: On July 1, 2010, Ethan Conner, the minor child of Maria Christina Sierra, Zachary Cozart's then girlfriend, died as a result of what authorities suspected was child abuse. Sierra testified that after waking up on June 25, 2010, she went to Conner's room and looked in on him as he slept, stating that she did not notice anything unusual and that he was breathing. Sierra then went to take a shower. A few minutes after she got into the shower, Cozart came in "yelling that [Conner] was not breathing." At that point, Sierra rushed out of the shower to find Conner on the hallway floor right outside of his bedroom. Sierra stated that she asked Cozart what happened and then called 911. Cozart informed her that "[Conner] fell out of the bed, and he found him on the floor of his bedroom next to his bed." Sierra admitted that she never saw Conner on the floor next to his bed. Expert medical testimony established Conner suffered an acute subarachnoid hemorrhage. Conner's subsequent death appeared to be a case of "shaken baby syndrome," which is now referred to as "abusive head trauma." Cozart was later indicted for capital murder of the child. At one point, the State offered a manslaughter plea to Cozart. The court entered an agreed order reducing the charge to heat of passion manslaughter under §97-3-35. Cozart He entered in *Alford* plea, but later sought to withdrawn the plea. The court allowed him to withdraw his plea, but the order neglected to set aside the previously entered order that reduced the charges from capital murder to manslaughter. During his capital murder trial, Cozart's trial counsel offered an instruction for manslaughter as a lesser-included offense. The instruction contained the elements for child homicide as defined in §97-3-25(2)(a)(i)-(ii). The jury convicted him of manslaughter and he appealed.

HELD: (1) Cozart argued his conviction violated the ex post facto clause, as the lesser-included-offense jury instruction offered by his trial counsel, altered his indictment and subjected him to a harsher penalty. He argued he could only be tried for heat of passion manslaughter because the agreed order reducing the charge from capital murder to manslaughter was never set aside.

It is clear from the record that the reduction of the charge to manslaughter was contingent on Cozart's guilty plea. The agreed order and the plea agreement were filed on the same day. The State

clearly pursued a capital murder conviction, and Cozart and his counsel never objected. The jury instructions clearly allowed the jury to consider capital murder.

Further, Cozart's argument that he could not be sentenced for child homicide because the crime of child homicide did not exist when Conner was killed, was waived by submission of the instruction to the jury. Counsel did not offer a jury instruction on heat-of-passion manslaughter. Cozart waived his right to assert an ex post facto violation.

(2) Although circumstantial, the evidence was sufficient to support the verdict. Sierra and Cozart were the only people in the house with Conner. Sierra did not dispute that Cozart had comitted the abuse. Although both expert witnesses gave a broad timeline while defining "acute," both witnesses agreed that the injury was "very recent." In addition, Dr. Karen Lakin referred to Conner's injuries as abusive head trauma, dispelling that it could have been second-impact syndrome, which is what Cozart tried to prove was the cause of death.

(3) Cozart alleged that his trial counsel's introduction of and failure to object to a jury instruction based on child homicide was ineffective assistance of counsel. Cozart also alleges that his trial court counsel's failure to object to his being tried for capital murder constitutes "professional misfeasance." Finally, Cozart further alleges that counsel's initial trial strategy of proving that Conner's death was caused by second-impact syndrome was not used due to the retirement of his expert, causing him to default to a strategy that presented no reasonable hypothesis for Conner's death. It is clear that Cozart's trial counsel had clearly studied the case and effectively prepared for both pretrial and trial matters. Cozart has failed to prove that his trial court counsel's performance was deficient.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO113097.pdf

David Jackson v. State, No. 2015-CP-00521-COA (Miss.Ct.App. May 3, 2016)

CASE: PCR – Possession of Cocaine with intent to distribute
SENTENCE: 30 years as an habitual offender

COURT: Madison County Circuit Court
TRIAL JUDGE: Hon. John Huey Emfinger

APPELLANT ATTORNEY: David Jackson (Pro Se)
APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISPOSITION: Appeal from the denial of a motion for transcripts and records dismissed. James, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, Wilson and Greenlee, JJ., Concur.

ISSUE: Whether the trial judge erred in dismissing Jackson’s motion for records.

FACTS: David Jackson was convicted in 1997 of possession of cocaine with intent to distribute. Jackson has filed numerous petitions over the years for post-conviction relief and has been sanctioned by the Court. Undeterred, Jackson filed a motion for records and transcripts in circuit court on February 23, 2015. On March 9, 2015, the circuit court denied Jackson's motion and stated that he was not entitled to discovery. Jackson timely filed a notice of appeal.

HELD: A prisoner does not have the right to institute an independent, original action for a free transcript or other documents. Jackson did not file his request as part of a PCR. Because Jackson's independent motion for transcripts and records was unrelated to any pending PCR motion, his appeal was dismissed for lack of jurisdiction.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO112159.pdf

Akiva Kareem Clark v. State, No. 2014-CP-01810-COA (Miss.Ct.App. May 3, 2016)

CASE: PCR – Accessory after the fact to armed robbery, Conspiracy to commit armed robbery, Possession of a firearm by a convicted felon, Possession of stolen property, and Sale of a controlled substance x4
SENTENCE: 5 years each for accessory and conspiracy, to run consecutively to each other, with 2 years on Count I and 3 years on Count II suspended. He was also sentenced to 3 years on the felon in possession charge, and 10 years on the possession of stolen property charge, to run consecutively to each other, with one year on Count I and seven years on Count II on PRS. Finally, 20 years on each drug count, with the sentences to run concurrently, with 10 years suspended. The trial court also ordered Clark banished from the state upon release from the MDOC.

COURT: Pike County Circuit Court
TRIAL JUDGE: Hon. David H. Strong, Jr.

APPELLANT ATTORNEY: Akiva Kareem Clark (Pro Se)
APPELLEE ATTORNEY: Lisa L. Blount

DISPOSITION:

ISSUES: (1) Whether his right to a "speedy sentence" was violated; (2) whether the trial court erred in banishing him from the state; (3) whether his sentences exceed the maximum; and (4) whether his 2005 sentencing proceeding was illegal.

FACTS: In 2005, Akiva Clark pled guilty to four different charges set forth in two indictments. In 2014, he was charged with 4 drug offenses. On March 4, 2014, he pled guilty and was sentenced to 20 years on each count, with the sentences to run concurrently, and ordered to serve ten years, with the remaining ten years suspended. He waived revocation on his remaining time on his 2005 sentences, admitting he violated his PRS. He was revoked, but he was ordered to serve his revoked time concurrently with his 2014 charges. In October 2014, Clark filed eight separate PCRs addressing each of his prior 2005 and 2014 convictions. The trial court issued an order finding the

sentencing court's order of banishment was improper and vacated that portion of Clark's sentence. The trial court dismissed the remainder of Clark's PCR motions with prejudice. He appealed.

HELD: (1) There was no delay in sentencing Clark. The trial court imposed a sentence at the time of Clark's guilty plea in 2005. The banishment may not have been enforced, but this did not trigger any due-process concerns. Since the trial court vacated the banishment portion of the 2005 sentence, this issue without merit.

(2) Since the trial court vacated the banishment portion of Clark's sentence in 2014, this issue moot.

(3) Clark claims the sentences imposed during his revocation exceeded the maximum allowed by statute. Even after his revocations, he total time to serve was 10 years. Clark's sentences, including time spent on PRS, fell within the statutory guidelines.

(4) Clark argued his 2005 sentences were "undefined as to PRS and banishment." However, the 2005 sentencing orders clearly set out Clark's sentences in regard to the length of time he was ordered to serve, the suspended portions of the sentences, and PRS. Further, the banishment provision was vacated. This issue is without merit.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111782.pdf

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