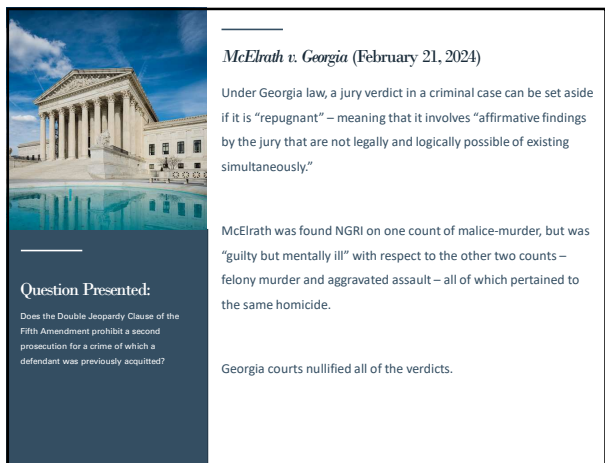


Mississippi Public Defenders Conference

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Appellate Update
Spring 2024

1



McElrath v. Georgia (February 21, 2024)

Under Georgia law, a jury verdict in a criminal case can be set aside if it is “repugnant” – meaning that it involves “affirmative findings by the jury that are not legally and logically possible of existing simultaneously.”

McElrath was found NGRI on one count of malice-murder, but was “guilty but mentally ill” with respect to the other two counts – felony murder and aggravated assault – all of which pertained to the same homicide.

Georgia courts nullified all of the verdicts.

Question Presented:
Does the Double Jeopardy Clause of the Fifth Amendment prohibit a second prosecution for a crime of which a defendant was previously acquitted?

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McElrath (cont.)

The Double Jeopardy Clause protects individuals from being tried or punished more than once for the same offense, establishing that a verdict of acquittal is final and prohibits any future prosecution for the same offense. An acquittal includes any decision demonstrating the prosecution’s failure to provide sufficient evidence for criminal liability.

Holding: The verdict of not guilty by reason of insanity was an acquittal. It signifies the insufficiency of the prosecution’s evidence for criminal liability.

The validity of an acquittal remains unaffected by the consistency of jury verdicts or any speculation about the jury’s reasoning.

3



Be on the Lookout

Does the Confrontation Clause of the Sixth Amendment permit the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst?

Smith v. Arizona (Argued January 10, 2024)

Smith was charged with multiple felonies related to drug possession. At trial, a forensic scientist testified that the seized substances were illegal drugs.

However, this scientist merely relied on testing conduct by another scientist, who did not testify. This is a classic case of surrogate testimony that we see in Mississippi quite often.

The Justices appeared sympathetic to Smith's claims.

Horizontal lines for notes.

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Mississippi Supreme Court

Hathorne v. State (November 9, 2023)

On PCR, Hathorne challenged the sufficiency of his indictment, arguing that the indictment was defective because it failed to allege that he possessed an illegal drug. The Court of Appeals agreed that Hathorne's indictment did not allege a crime but said that the challenge to the sufficiency of the indictment was procedurally barred because it was waived.

Essentially, the Court of Appeals concluded that even though Hathorne was convicted of a crime that does not exist and was sentenced to two decades in the custody of the Mississippi Department of Corrections, he was out of luck.

The Mississippi Supreme Court unanimously disagreed with the Court of Appeals.

Horizontal lines for notes.

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Mississippi Supreme Court Cases


Hathorne (cont.)

Substantive sufficiency of the indictment cannot be waived and was thus not procedurally barred.

"Following the guidance of this Court's precedent, Hathorne's challenge to the substantive sufficiency of his indictment cannot be waived. To hold otherwise in this case would preclude relief from a person, who we have determined was never charged with a crime, serving twenty years in prison, day-for-day. Granting relief in this extraordinary case is the only just outcome—to keep Hathorne in prison under no legal requirement would certainly constitute "cruel or unusual punishment" and an "excessive fine[]," which is expressly prohibited under our Constitution. Miss. Const. art. 3, § 28."

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MISSISSIPPI SUPREME COURT BUILDING
SUPREME COURT OF MISSISSIPPI
OF APPEALS OF THE STATE OF MISSISSIPPI

Mississippi Supreme Court Cases


Archie v. State (April 4, 2024)

There is a widespread belief amongst the bench and the bar that to assert an alibi defense and to obtain an alibi instruction, a defendant must put on corroborating evidence or call a witness.

MSSC precedent, however, shows that corroboration is not always required to obtain an instruction.

When a defendant takes the witness stand in his or her case-in-chief, is subjected to cross-examination, and testifies that he or she was not present and was somewhere else at the time of the crime, Mississippi law allows for an alibi instruction.

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MISSISSIPPI SUPREME COURT BUILDING
SUPREME COURT OF MISSISSIPPI
OF APPEALS OF THE STATE OF MISSISSIPPI

Mississippi Supreme Court Cases

Archie (cont.)


In this case, Archie did just that, but the trial court denied his alibi instruction.

This was error.

However, the MSSC ultimately ruled the error was harmless, because in order to find Archie guilty, the Jury had to find Archie was present, and it did, therefore, the denial was harmless.

Ugh.

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MISSISSIPPI SUPREME COURT BUILDING
SUPREME COURT OF MISSISSIPPI
OF APPEALS OF THE STATE OF MISSISSIPPI


Mississippi Supreme Court Cases

Quick Hits

Davis v. State (January 18, 2024) – it was plain error to apply the firearm enhancement of section 97-3-21(1) to a conviction for first-degree murder.

Wakefield v. State (March 28, 2024) – Under the unit of prosecution test, the State may charge multiple violations of accessory after the fact for each felony committed by the principal.

9



Court of Appeals Cases


Nichols v. State (December 12, 2023)

Nichols was convicted of first-degree murder. At trial, Nichols's castle doctrine instruction was denied. The COA reversed, concluding that he was entitled to have the jury instructed.

The killing occurred in the immediate premises of Nichols's home. Nichols testified that he closed the gate and positioned a chain and lock to make the gate appear to be locked. There was also a "no trespassing" sign present.

Nichols testified that the decedent opened the gate and parked his truck in Nichols's driveway approximately ten yards from the house. The decedent banged on the door.

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Court of Appeals Cases

Allen v. State (March 5, 2024).


In a five-count statutory rape case, the State's proposed jury instructions for each count contained the elements of gratification of lust, not statutory rape.

The State withdrew its instructions and accepted defense instructions which excluded, among other things, the element that the child be twenty-four or more months younger than the accused and not be the accused's wife.

Reversible error.

There's some discussion about the "invited error," which doesn't apply in cases where the jury is not instructed on the elements of the offense.

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Court of Appeals Cases

Allen v. State (cont.)

"The jury instructions in this case failed to properly instruct the jury as to the State's burden of proof and the essential elements of each of the crimes. First, the jury was not instructed that the State must prove all of the elements of each offense beyond a reasonable doubt. Second, Instruction No. 3 did not inform the jury of the elements the State was required to prove beyond a reasonable doubt in order for the jury to return guilty verdicts; it only instructed the jury that it must return verdicts of "not guilty" if the State failed to prove certain elements. Additionally, the jury was not instructed that the State had to prove beyond a reasonable doubt that Allen had sexual intercourse with Amy between the dates set forth in each count of the indictment. Nor was the jury properly instructed that the State must prove beyond a reasonable doubt that Amy was younger than fourteen years old at the time of each of the offenses. Likewise, the jury was not instructed that the State had to prove beyond a reasonable doubt that Allen was more than twenty-four months older than Amy. Finally, the jury was not instructed that the State must prove beyond a reasonable doubt that each of the offenses occurred in Yazoo County, Mississippi."

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Court of Appeals Cases

Marshall v. State (March 5, 2024)

A *Batson* case! The State made a *Batson* challenge concerning Marshall exercising peremptory strikes on white venirepersons.


Race Neutral Reasons:

Juror 2: Had an Apple Watch. Was inattentive. Trial court found it was "not a viable excuse" and placed Juror 2 back on the jury.

Nope! That's race-neutral.

Trial court erred.

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Court of Appeals Cases


Marshall v. State (cont.)

Juror 25: Had voted guilty before. Trial court rejected the reasoning and was particularly dismissive:

"I don't count that as a race neutral reason. I am going to put her back . . . I don't think what they voted before is any type of reason. I think it's a stupid question to ask."

But, the Mississippi Supreme Court has recognized jury service as a race-neutral reason. See *Hardison v. State*, 95 So. 3d 1092, 1095 (Miss. 2012). So, trial court erred.

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Court of Appeals

Quick hits:

Washington v. State (November 7, 2023) – the State offered no testimony or documentary proof at sentencing for the amount of harm suffered. The COA vacated and reversed the restitution portion of Washington's "full restitution" sentence and remanded for resentencing. Plain error was applied.

Fox v. State (January 30, 2024) – in criminal cases, culpable negligence requires a greater showing of gross negligence than in civil cases. Based on the evidence presented at trial, a reasonable juror could not find Fox guilty of culpable-negligence manslaughter beyond a reasonable doubt. There was further error in denying Fox's accident instruction.

Quinn v. State (February 20, 2024) – State failed to prove venue.

Jones v. State (February 27, 2024) – State presented no direct or circumstantial evidence to show that Jones knew that a firearm had been stolen.

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