

Nathaniel Cooper, No. 2015-KA-00355-COA (Miss. Ct. App. August 16, 2015)

CASE: Dog Fighting and Conspiracy to Fight Dogs
SENTENCE: Count I - 3 years, Count II - 5 years, as a habitual offender, with sentences to run consecutively

COURT: Rankin County Circuit Court

TRIAL JUDGE: Hon. William E. Chapman, III

APPELLANT ATTORNEYS: Thomas Jon-William Bellinder

APPELLEE ATTORNEY: Jeffrey A. Kingfuss

DISTRICT ATTORNEY: Michael Guest

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

ISSUE: (1) Did trial court abuse its discretion in refusing to grant a proffered circumstantial-evidence instruction; (2) Did the trial court improperly exclude certain jurors and impede public access to voir dire; (3) Did prosecutorial misconduct violate Cooper's due-process rights to a fair trial; (4) Did the trial court err in allowing the State to introduce extrinsic evidence; (5) Did the trial court err in failing to grant a mistrial; and (6) Was the evidence insufficient to sustain a guilty verdict.

FACTS: Officers responded to a 911 call reporting dog fighting. Officers arrive at residence and saw about 18 cars at house. Officer saw people dragging dogs into the woods. A dog fighting pit was in the backyard with several items commonly found in dog-fighting: i.e. a digital scale hanging from a tree, bottles of injectable B-12 vitamins marked "for animal use only", dog chew treats and toys, and a treadmill that had board to hold a dog for exercising. Cooper arrested. Made jailhouse phone call to his brother which prosecution used as evidence of Cooper's knowledge.

HELD: (1) **Circumstantial Evidence Instruction** - Court found it was not warranted because Cooper's jailhouse admission to his brother was direct evidence, (2) **Voir dire** - The bailiff turned away several people who arrived late for jury duty. Court found no intentional or systematic exclusion of potential jurors based on status or category. No prejudice. (3) - **Objections to Testimonial Evidence** - Defense argued that sergeant over animal control shouldn't have been allowed to give expert opinion that items found at residence were usual items found at dog-fighting scenes. During trial, defense objected to testimony and court sustained - instructing jury to disregard certain statements. Jury presumed to have followed court's direction. (4) **Brady Violation** - Defense argued that State failed to provide entirety of indictments, charges and plea agreements of co-conspirators and others who gave testimony against Cooper. Court ruled that

Cooper failed to show any suppression by State of any favorable evidence material to either Cooper's guilt or punishment. Cooper also alleged the court failed to remedy coercive interrogation practices of Rankin County Sheriff's Dept. Out of 4 witnesses identified in Cooper's motion, only one testified at trial and the court allowed defense to impeach witness regarding his testimony that Cooper was co-conspirator. No abuse of discretion. (5) **Extrinsic Evidence** - Cooper argued that court shouldn't have allowed evidence and testimony of other crimes, such as the "break stick" that was found in someone's car on the property. State argued that all items found were necessary to describe scene at Cooper's residence. MS Supreme Court has already recognized that items such as "a treadmill, 2 sets of weighing scales, various dietary supplements and medications, and 3 wooden break sticks" constitutes items that are indicative of dog fighting. No abuse of discretion. (6) **Perjury by Co-Defendant** - Witness was arrested on the stand and charged with perjury on second day of trial. Copper argued this prejudiced his right to a fair trial. Witness was not arrested in presence of jury and court made special effort to send witness out of a door that would not be visible to jury. No error. (7) **Sufficiency of the Evidence** - Cooper argued that only physical evidence against him was circumstantial evidence. Court found that no abuse in failing to grant circumstantial evidence instruction. State had direct evidence in jailhouse recording where Cooper admitted connection. Record also contained numerous photos of physical evidence found at Cooper's residence to support State's case. Jury heard from veterinarian about dog aggressive behavior being indication of a learned behavior. Sufficient evidence to sustain conviction.