

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIAM THOMAS ROLLINS

APPELLANT

VS.

NO. 2007-KA-0282

STATE OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

- I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING DEFENDANT'S MOTION FOR MISTRIAL.

STATEMENT OF FACTS

The Defendant, William Rollins [hereinafter "Rollins"], was indicted and tried for: Count I - Sexual Battery, Count II - Touching a Child for Lustful Purposes, Count III - Contributing to the Delinquency of a Minor, and Count IV - Contributing to the Delinquency of a Minor. The two minors involved were Rollins' twelve-year-old son "TR" and his twelve-year-old half sister "SR."

On the State's motion, the judge agreed that the two minors would testify at trial in chambers with the testimony being broadcast via closed circuit television to the jury. The judge described, for the record, the procedure, in pertinent part, as follows:

We had just taken testimony in chambers from two child witnesses. The testimony was taken in the presence of a representative from the District Attorney's office and Defense counsel, the judge, and court reporter. The defendant was in an adjacent room and was able to communicate with his attorney by telephone. And in order to satisfy the confrontation issues . . . Defense counsel was allowed to leave the room and confer with his client at various times upon his request during the testimony and

before cross-examination. And there was not - - and the cameras were set in such a way so it was not apparent to the jury that the defendant was not in the room. A camera was trained on the witnesses, and the other participants in the room were not visible. . . . the court was in touch with the court administrator in the courtroom at all times. So when the [audio] problems arose, I was informed of it and could take corrective measures. I don't believe there was any such communication problem with the sound system the defendant was listening to. I could hear the echo from that, sitting in chambers, while we were taking the testimony. Those speakers functioned. . . .

(Transcript p. 244 - 248).

During the testimony of the two minor children, the jury learned that Rollins played strip poker with TR and SR. (Transcript p. 187 and 223). During the game, the three would get completely naked and make dares in which there was "touching, kissing, and everything else." (Transcript p. 187 - 189 and 223 - 224). Rollins dared TR to touch SR on "her parts and everywhere" including her "female and tidies." (Transcript p. 189 and 226). Rollins also touched SR on her female parts with his finger and also put his penis in SR's mouth. (Transcript p. 190 and 192 and 226). TR was dared to put his finger inside SR's privates and to rub SR's breasts. (Transcript p. 194). The three also watched movies in which the people did "basically the same dares that we had. Acts like that." (Transcript p. 193). Rollins told SR and TR that they needed to do the dares the way the people on the movies did them. (Transcript p. 193).

After the conclusion of the above described testimony and after the testimony of five other witnesses and after both the State and Defense rested, the Defendant moved for a mistrial based on Mississippi Rule of Evidence 617(d) stating that the Defendant had no method in which to view the minor witnesses during their testimony. (Transcript p. 384 - 385). The trial court denied the motion and noted that:

First, the Court removed the defendant from or allowed the defendant to be removed from the courtroom rather than watching it on the TV with the jurors because the Court did not want to highlight the fact that the defendant was being separated from

jurors
got to
view it.

the witness. And went to great length to insure that the defendant was not prejudiced by the procedure and that the defendant had audio/visual feed of the testimony of the child witness, plus instant communication with counsel. That the defendant was seated on the other side of a wall, ten feet from Defense counsel. And the Court allowed Defense counsel to confer liberally with his client. If there was a technical difficulty with the defendant actually observing the testimony, certainly, it should have been brought to the Court's attention in a manner that would have enable to the Court to deal with that, rather than brought up at this point... . . . The Court will deny the motion for mistrial, and I find the objection untimely. Again, the time to have raised that would have been while it was going on, while the Court could address it. There was a clear audio feed and there was communication and frequent consultation between defendant's counsel and his client during that testimony.

(Transcript p. 386 - 387).

Rollins was ultimately convicted of all four counts brought against him and sentenced to life in prison for Count I, 15 years for Count II, 364 days for Count III, and 364 days for Count IV with the sentences to run consecutively.

SUMMARY OF ARGUMENT

not appealing Motion for Mistrial. Failure to Grant Motion for New Trial.
The trial court did not abuse its discretion in denying Defendant's Motion for Mistrial as the motion was untimely and as there was substantial compliance with the purposes behind the Confrontation Clause. Further, the Defendant failed to show how he was prejudiced as a result of his not being able to view the minor witnesses' testimony.

ARGUMENT

Rollins argues that he "was illegally denied his constitutional rights under the Confrontation Clause" as he "received no video feed to witness the minor witnesses and the failure of audio equipment kept the defendant and the jury from adequately hearing the testimony." (Appellant's Brief p. 6). As discussed above, after the testimony of the two minor children and after the testimony of five other witnesses and after both the State and Defense rested, the Defendant moved for a mistrial based on Mississippi Rule of Evidence 617(d) stating that the Defendant had no method in

which to view the minor witnessed during their testimony. (Transcript p. 384 - 385). The trial judge considered Rollins' Motion for Mistrial untimely and it was denied. (Transcript p. 386 - 387).

A trial court's decision to grant or deny a mistrial is reviewed under an abuse of discretion standard. *Williams v. State*, 919 So.2d 250, 253 (Miss. Ct. App. 2005) (citing *Horne v. State*, 487 So.2d 213, 214 (Miss. 1986). "The trial judge is permitted considerable discretion in determining whether a mistrial is warranted since the judge is best positioned for measuring the prejudicial effect." *Id.* Further, this Court has held that a motion for mistrial must be timely made:

Can a
waive this
constitutional
objection?

Of utmost importance, a judge can only make a determination of prejudice if the defendant makes a timely objection and motion for mistrial. Timeliness means the objection and motion must be made contemporaneously with the alleged improper [conduct]. This is well-known as the "contemporaneous objection rule." Contemporaneousness is critical because it allows the judge to avert a mistrial, if possible. . . .

Herrington v. State, 690 So.2d 1132, 1139 (Miss. 1997) (quoting *Meena v. Wilburn*, 603 So.2d 873 (Miss. 1992)).

Moreover, "this Court has repeatedly held that the only way to preserve the right to have such matter reviewed on appeal is by objection at the proper time and moving for a mistrial, in the event the court fails to take such action as may be necessary to neutralize the effect of such improper [conduct]." *Coburn v. State*, 168 So.2d 123, 127 (Miss. 1964). See also *Baker v. State*, 327 So.2d 288, 292-93 (Miss. 1976) (holding that "[a]n objection to the testimony of a witness, conduct of opposing counsel or a remark of the court should be made contemporaneously with the occurrence or matter complained of so that the court may, when possible, correct the error. . ."); *Brown v. State*, 764 So.2d 484, 487 (Miss. Ct. App. 2000) (holding that "[a]n objection must be made on the first occasion when it appears to counsel that there are grounds therefor. . ."); and *Knight v. State*, 751 So.2d 1144, 1154 (Miss. Ct. App. 1999) (holding that "a trial judge can only render a determination

didn't
appear
to counsel
at the time
b/c turned
off during
breaks.

of prejudice if the party makes a timely objection and motion for mistrial.”).

In the case at

hand, Counsel for Defendant acknowledged that at the time of the testimony of the minors, “Counsel and Defendant did not observe any visual feed in the room . . .” (Transcript p. 387). Clearly, both Defendant and Counsel were aware of the problem, yet chose not to mention the problem until after both sides rested.

However, as noted by the court, if the judge would have been notified immediately of the lack of visual feed, the problem could have been fixed before the testimony of the two minors. (Transcript p. 387). Thus, the trial court was not given an opportunity to resolve the problem as it was not brought to his attention until the end of trial. Accordingly, the issue was waived. See *Nix v. State*, 763 So.2d 896, 901 (Miss. Ct. App. 2000).¹

Regardless of this waiver, Defendant’s inability to view these witnesses was not reversible error. Mississippi Rule of Evidence 617 states as follows:

(d) Closed circuit television testimony may be taken by any method not inconsistent with the Confrontation Clauses of the Constitution of the United States and of the State of Mississippi, the Mississippi Rules of Civil Procedure, the Mississippi Uniform Criminal Rules of Circuit Court Practice, and these Rules. In the case of a criminal prosecution, after a determination that the defendant’s presence would cause a substantial likelihood of serious traumatic emotional or mental distress to the child, the trial court may excluded the defendant from the room where the testimony is taken. In any such, case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by appropriate private electronic or telephonic method throughout the questioning. The defendant, the court, and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

Again, as noted by the judge and as stipulated by Counsel for Defendant, Rollins was in continual contact with his counsel. (Transcript p. 387). Further, the jury was able to observe the demeanor

¹ Rollins also contends that the problems with the audio feed kept the jury from adequately hearing the testimony. However, the trial judge noted on the record that his court administrator was present in the courtroom with the jury and notified him immediately when there were problems with the jury hearing the testimony. The record reflects that when these problems arose, steps were immediately taken to correct the problem and previous testimony was repeated.

of the minor witnesses during testimony, even though, unbeknownst to the court, the Defendant was unable to observe the demeanor of the minor witnesses. However, the United States Supreme Court has stated that “[w]e have never held . . . that the Confrontation Clause guarantees criminal defendants the absolute right to a face-to-face meeting witnesses against them at trial.” *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990). Moreover, “the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose testimonial infirmities such as forgetfulness, confusion, or evasion through cross-examination, thereby calling to the attention of the fact finder the reasons for giving scant weight to the witness’ testimony.” *Id.* (quoting *Delaware v. Fensterer*, 474 U.S. 15, 22, 106 S.Ct. 292, 295, 88 L.Ed. 2d 15 (1985) (per curiam)). Thus, the purposes behind the confrontation clause were substantially complied with as the minor witnesses were cross-examined by Defendant’s counsel during which time the Defendant had continual contact with his counsel and audio feed of the testimony and as the jury was able to view the demeanor of the child witnesses.

Additionally, Rollins failed to show how he was prejudiced as a result of not being able to view the minor witnesses’ testimony. This Court has held that “[a]ssertions of error without prejudice do not trigger reversal.” *Jones v. State*, 912 So.2d 973, 977 (Miss.2005). Therefore, Rollins’ argument is without merit.


CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm Rollins' conviction and sentence as his Motion for Mistrial was untimely, as there was substantial compliance with the purposes behind the Confrontation Clause, and as Rollins failed to show any prejudice as a result of his not being able to view the minor witnesses' testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

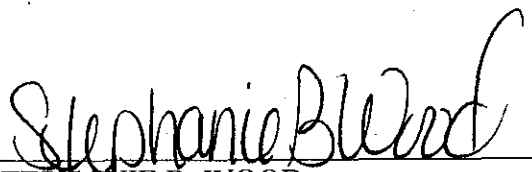
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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