IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHRISTOPHER LAMONT LOGAN — APPELLANT

VS. — NO. 2008-KA-1427

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Procedural History

Christopher Lamont Logan was convicted in the Circuit Court of Forrest County on a charge of capital murder and was sentenced to a term of life in the custody of the Mississippi Department of Corrections. (C.P.76-77) Aggrieved by the judgment rendered against him, Logan has perfected an appeal to this Court.

Substantive Facts

Tamika Gammage was the mother of a daughter and three sons, the youngest of whom was the victim in this case, Jaylon Kelly, who was 13 months old at the time of his death. Jimmy Kelly was the father of her sons. (T.142-45)

In August 2003, Ms. Gammage began dating Christopher Logan. In late November or early December of that year, Logan moved into Ms. Gammage's apartment at the Pineview Apartments in Hattiesburg. At about the same time, they began experiencing problems in their relationship. According to Ms. Gammage, "We got into it about me going to stay at my mom's house in Ellisville. He didn't like Ellisville." She went on to explain that Logan believed that she was using trips to Ellisville as a ruse to see her sons' father, who lived in Laurel. (T.145)

"[A]round Thanksgiving," Ms. Gammage and Logan "were in Ellisville." When Logan prepared to leave, Ms. Gammage replied that she "wasn't ready to go" and attempted to retrieve her car keys from him. Logan refused to return the keys; Ms. Gammage "hit him"; and he struck her. When she was asked, "What was the starting point of this problem?" she answered, "Cause he felt like when I was in Ellisville I was trying to be with my kids' father." (T.153-54)

After this row, Ms. Gammage and Logan "split up for a few days" and then reconciled. According to her, "everything was going good until around Christmastime," when "he got mad because I was trying to go to Ellisville." Again, he was angry because he thought she was planning a rendezvous with Jimmy Kelly. As Ms. Gammage was preparing to go to Ellisville, he punched her "on the side of the face." Again, they "split up," this time "for about a week and a half." They resumed their relationship in early January 2004. (T.154-56)

On March 6, 2004, Ms. Gammage and Logan began their morning routine. Logan changed Jaylon and gave him a bottle. Ms. Gammage washed her hair, and as she was "wrapping it," McGillberry's daughter, a resident of Ellisville, arrived at the apartment. Ms.

Gammage negotiated sharing a ride with her back to Ellisville. At this point, two of Ms. Gammage's children were "already in Ellisville"; only her oldest son, Jimmy, and Jaylon were in the apartment with her that morning. Ms. Gammage intended to take both Jimmy and Jaylon with her, but Jaylon was not dressed in time to catch their ride. Logan "said he'd get him ready" and drop him off with Ms. Gammage on his way to Laurel. At this time, approximately 11:00 a.m., Jaylon "was in good condition," sucking on a bottle, playing, showing no sign of sickness. Ms. Gammage left the apartment, leaving only Logan and Jaylon there. (T.156-58)

Ms. Gammage arrived in Ellisville at about 11:30, and then accompanied her mother to Laurel. When she returned to her mother's house between 1:00 and 1:30 p.m., she telephoned Logan "to see where he was." He told her that he had not left Hattiesburg. She "called him again around 4 or 4:30, and he said that he was still waiting on them [his friends] to come and pick him up." When they spoke again between 5:00 and 5:30, Logan asked her when she planned to return home. She replied that she did not have transportation until Sunday. At that point, Logan "got mad" and told her that she should not have left without knowing that she had "a ride home." She asked him to come to Ellisville, but he replied that his friends had forgotten "to come back and get him." The argument escalated. According to Ms. Gammage, Logan "was pretty mad" because he thought she was with her sons' father. (T.158-60)

Between 8:00 and 8:30, Logan, who "was mad," told Ms. Gammage over the telephone, "You need to hurry up and get your ass home; come get this fucking baby before I leave him." Finally, Logan called Ms. Gammage to report that Jaylon had stopped breathing. He did not explain what had happened. (T.161)

Ms. Gammage went on to testify that just before his death, Jaylon was walking "[a] little bit." She did not think he was capable of pulling a mattress off a bed. (T.161)

After the defense inquired into the matter on cross-examination, the prosecution on redirect examination asked Ms. Gammage about the bruising and cigarette burns "on the baby." As to the first injury, Ms. Gammage testified that on one occasion she had left Jaylon with Logan. On her return, Logan told her that Jaylon had fallen down the "first two or three steps of the landing." However, she testified that when she observed Jaylon, he did not have the bruises in question. Regarding the cigarette burns, Ms. Gammage testified that she had left Jaylon with Logan while she went to the store. When she returned, Logan, who had been alone with the baby, told her that the child had sat on burning cigarette butts. (T.180-82)

Ms. Gammage also testified that while she and Logan were living together in the apartment in Hattiesburg, he was not working; nor was he contributing in any way to paying the bills of the household. (T.179-80)

On March 6, 2004, Melody Walker and her cousin, Di Anysia Varnado, were visiting Ms. Gammage's next-door neighbor, Reikita Maxwell. Also present were Ms. Maxwell's mother and brother. At one point, Ms. Walker went to the kitchen to prepare food. When she came out, she heard Ms. Maxwell's mother say something to the effect of, "This was not supposed to happen." Ms. Walker went next door, where she saw Ms. Maxwell, Ms.

Maxwell's mother, Ms. Varnado, and Logan.[1] She then observed "the baby" lying 'on the couch." Logan reported that the baby was not breathing. Ms. Walker picked Jaylon up but put him down again quickly. At that point, Logan "started giving the baby CPR," but when "all that stuff started coming out of the baby's nose and mouth," Ms. Walker "told him to stop. He was doing it wrong." Ms. Walker observed "all those bruises on the baby's stomach" and asked Logan, "How did the baby get all those bruises?" According to her, "He said, 'The baby done fell down the stairs chasing after the other kids.'" He also said that Jaylon and fallen off the bed, "and the mattress landed on him." Finally, Logan "stopped" attempting CPR and "jumped up off the floor and ran and punched a hole in the wall." He was "scared, shaking." (T.105-14)

Ms. Varnado testified that at some point during the evening, she went to Ms. Gammage's apartment to use the restroom because, according to her, "Reikita's plumbing was bad." Logan let her in and pointed her in the direction of the bathroom. At this point, Logan was sitting on the couch, smoking a cigarette and talking on the phone. A few minutes after Ms. Varnado returned to Ms. Maxwell's apartment, Logan, who was "frantic," knocked on the door and said, "Jaylon is not breathing." According to Ms. Varnado, "Everyone in K-8 ran over to K-7 where the baby was laying on the couch." (T.127-30)

Ms. Varnado corroborated Ms. Walker's testimony about the ensuing events and about the fact that Logan had been alone in the apartment with Jaylon. She added that

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[1]When Ms. Walker arrived at Ms. Gammage's apartment, Logan was alone with the baby, except for the residents of and visitors from of Ms. Maxwell's apartment. (T.111)

Ms. Maxwell had called the police, and that Logan had punched a hole in the wall after he heard the sirens. (T. 130-33)

Ms. Maxwell testified that Logan had come to her door "in a panic" to report that the baby had "stopped breathing." She, her mother and her guests then ran next door to Ms. Gammage's apartment. Although Ms. Maxwell "stayed at the door," she saw the baby lying on the couch "foaming and all of that." Ms. Maxwell "ran back home" and telephoned the police. (T.187-88)

Mona McGilberry, Jaylon's paternal aunt, testified that she and her young daughter went to Ms. Gammage's apartment "around eight o'clock" on March 6, 2004. The little girl ran ahead of her and knocked on the door. Logan "kind of cracked the door open just a little bit. ... He wouldn't let her in." Ms. McGilberry asked him where Ms. Gammage was. Logan replied, "I guess the bitch is in Ellisville to see your brother." According to Ms. McGiberry, "[H]e seemed like he was just frustrated. Yeah, he was angry." She and her daughter left the apartment complex. Shortly thereafter, she "could hear a lot of people saying that somebody had died." After she "made it back to Ellisville," she "found out it was Jaylon." (T.198-201)

Sergeant Peggy Sealy was dispatched to the Forrest General Hospital that night. At the emergency room, she "met with two of the Hattiesburg Police Officers and was informed of the incident of a possible child abuse." After a technician escorted her to the "family room," she encountered Logan, who "was down on the floor making these very loud crying sounds." When he finally lifted his head to look at her, she saw that "he had no tears. ... There was no emotion." (T.208-11) According to Sergeant Sealy,

> At that time he explained that he left the room, he put the baby down to sleep and believed that the baby was asleep,

> and he heard some sounds coming from the room. He went back to check on the baby, and at that time he found the mattress on top of the child.
>
> (T.212)

Later, when he was asked about some of the bruises on the baby's face, "he explained a couple of days prior the child fell down ... like one or two steps." (T.212)

While she was in the family room gathering information, Sergeant Sealy "was called back to the trauma room by a Forrest General police officer who was standing by the medical room." At that point, she observed bruising on the child's stomach area and arms. Sergeant Sealy testified that light of her "experience and being around kids, the mattress did not cause these bruises because of the linear bruises across the child's stomach and multiple bruises." She went back to the family room, where Logan "still stated the mattress fell on the child." Upon notification that the child had died, she called her supervisor, Lieutenant Rusty Keyes, who arrived at the hospital shortly afterward. Logan was taken into custody for further questioning. (T.213-14)

Shane Tucker, an investigator for the Hattiesburg Police Department, "met with Jeff Byrd and Lieutenant Rusty Keyes" at the hospital that night. After Detective Tucker was briefed, he and his fellow officers "entered the trauma room where the infant was." After midnight, Detective Tucker, crime scene investigator Jeff Byrd and other officers executed a search warrant on Ms. Gammage's apartment. (T.221-27) Investigator Byrd processed the scene and collected evidence, including a coat hanger which had been found "up against the wall." (T.370-83)

After the defense on cross-examination questioned Detective Turner about the possibility of the injuries having been caused by a fall down the landing stairs, the

prosecution on redirect examination conducted this colloquy:

> Q. All right, sir. Now, do you remember her [defense counsel] asking you about these stairs?
>
> A. Yes, sir.
>
> Q. Do you notice anything uneven about the surface of those stairs?
>
> A. Are you talking about the diamond plating or–
>
> Q. The diamond plating.
>
> A. Yes, sir.
>
> Q. Tell us what diamond plating is.
>
> A. Well, it's a pattern that you see in the metal of the stairs that would more than likely leave a distinct pattern.
>
> Q. Did you see any diamond plating on that child?
>
> A. No, sir.
>
> Q. Did you see any marks that looked like diamond plating on that child?
>
> A. No, sir.
>
> Q. Counsel asked you about the marks, and you indicated that you didn't believe that that could happen on stairs, and I believe you went bumpity, bumpity, bumpity– that he would have to go down on his abdomen the whole way; is that correct?
>
> A. Correct.
>
> Q. And she kept asking you about the bruises in the back. Did you see any bruises or anything you could identify as a bruise on the back?
>
> A. I don't remember any bruising on the back, and I didn't note any of those in the report. What I noted in the report was actually what I remembered seeing, which was the bruising under the eyes– his right and left wrists of arm areas

and hands and, of course, the abdomen was very prominent.

Q. One thing is left out. The legs. Did you see any bruising, scraping, or any of those type of diamond marks on the legs?

A. No, sir.

Q. None at all?

A. No.

(T.243-44)

Dr. Robert Martin, accepted by the court as an expert in the field of emergency room medicine, testified that he was working at Forrest General Hospital on March 6, 2004. He remembered that "a code was called" and he went into the emergency room, where he found a child with severe injuries which "didn't correlate with the story of the kid falling out of the bed." (T.361-63)

Dr. Lance Faler, accepted by the court as an expert in the field of radiology, testified that he had assisted a technologist at Forrest General Hospital "in performing a skeletal survey on a deceased patient," Jaylon Kelly. His review of that survey and the CAT scan led him to conclude that Jaylon had suffered fractures of the forearms, wrists and hands. The fracture to the second metacarpal in the hand was, in his opinion, an unusual injury to find in a child just over a year old. According to Dr. Faler, "In an adult [it] usually involves somebody punching a wall. In a child, usually it's a pinch or a crush injury," or "a child slamming their hand in a car door or dropping a really heavy object on top of their hand." (T.326-33) Additionally, Jaylon had suffered a numa thorax, commonly referred to as a collapsed lung. In Dr. Faler's words, "Trauma is about the only thing in that age group that commonly causes a numa thorax." (T.334)

Regarding the injury to the right forearm, Dr. Faler testified that Jaylon had suffered a "buckle deformity," i.e. an incomplete fracture, of the distal radius. He explained, "In kids, their bones are not as brittle ... They're harder to break, and a lot of times they ... will collapse almost like you're crushing a can rather than a complete break." Additionally, he had observed evidence of a "splenic injury," usually caused by trauma. Finally, he testified that Jaylon had "a large amount of dilated small bowel, which is unusual in children." This phenomenon would have been the result of severe trauma or the swallowing of a large amount of air, perhaps if the child had been crying uncontrollably. (T.335-38)

Asked whether to a reasonable degree of medical certainty he could say that any of these fractures could have been caused by a child's falling out of bed onto a linoleum floor, Dr. Faler answered, "No." He explained, "Because a child that age, their bones are too soft. It usually takes a tremendous amount of force to break a child's bones. It takes more than a fall from a bed." When he was asked whether, to a reasonable degree of medical certainty, he could say that the injuries might have been caused by a fall down stairs, he replied, "The distal radius fracture might me. The metacarpal fracture would be highly doubtful." (T.338-39)

Dr. Paul Rocconi, another radiologist accepted by the court as an expert, also read Jaylon's X-rays at the hospital that night. He corroborated Dr. Faler's testimony about the nature and locations of Jaylon's fractures. Regarding the fracture of the second metacarpal, which he characterized as "extremely unusual ... at any age," Dr. Rocconi testified, "About the only time we see this type of fracture is from direct trauma to this area." (T.348-52) When he was asked, "Have you seen this type of injury in children before?" he gave an answer set out below in pertinent part:

> I, in all my years of practice, have not seen this particular injury in a young child.
>
> * * * * *
>
> This is what we commonly call a boxer's fracture if it was an adult ... In a child of this age, they really don't have the muscular strength to cause this type of injury. Their muscles are just not strong enough to propel their arm at the speed to cause this injury, so we would have to presume that it was from some outside force.
>
> (T.352)

Dr. Rocconi testified that while he could not say that it was "impossible" for a child to sustain such injuries from falling down stairs, he did say that "[i]t would be unusual." When he was asked whether there were "anything about those injuries" that he had seen before from a child's having fallen out of a bed, Dr. Rocconi answered, "To have that [fractures of this nature] occur in two separate extremities with this type pattern would be extremely unusual." In fact, the only time he had seen "this type of injury is when a child has been in a car wreck and hasn't been restrained, and he's literally bounced around inside the car," i.e., experienced blunt force trauma. (T.353-54)

Dr. Steven Timothy Hayne, accepted by the court as an expert in the field of forensic pathology, testified that he had performed the autopsy on Jaylon's body. (T.258-60) His initial, external examination revealed "some old injuries, ... predominantly some scarring located on the back of the right thigh." Measuring approximately a half-inch, they appeared "consistent with old cigarette burns." He also found "some small scars over the forehead" and "some bruising that showed some mild aging located around the right eye, also under the left eye ..., then also over the back part of the left cheek, and there was also one located just behind the left ear" as well as "a small bruise located over the back top or right

side of the scalp." Dr. Hayne also found "a large contusion or bruise located over the abdominal area." Furthermore, he discovered bruising over the right forearm, on the back of the right arm, over the back of the left fingers, and over the front and back surfaces of the left forearm. "There were areas of sparing where there was no injury. Those were located over the front, back, inside, outside of the legs, feet, toes, ankles, and also over the back ... " (T.262-63)

Dr. Hayne estimated that the injuries consistent with cigarette burns "had to be at least a month old, or they could have been much older than that." The facial bruises were "possibly a day or two [old] but no more than that." Regarding the injuries to the abdomen and forearms, however, Dr. Hayne testified, "I saw no significant aging on those." Thus, he concluded that those had been inflicted "at or about the time of death." (T.263-64)

Dr. Hayne went on to testify that Lieutenant Keyes, who "was in attendance at the time of the autopsy," had brought with him some items seized from Ms. Gammage's apartment, including a coat hanger, "to see if that could have been used to inflict injuries on the external surface of the decedent." Dr. Hayne concluded that this coat hanger "was consistent with producing those types of injuries." (T.267-69)

Turning to the damage to the left forearm, hand, wrist and fingers, Dr. Hayne testified that he "thought that there were injuries to the bone structures themselves." Dr. Hayne characterized defined these "as consistent with defensive posturing injuries," i.e., injuries sustained when the victim is attempting to ward off injury to the face, neck, and chest. (T.269-72)

Regarding the injuries to the right arm, Dr. Hayne testified that these were "suffered sometime at or about the time of death." These, too, were "consistent with defensive

posturing injuries." (T.273-74)

The prosecutor then asked Dr. Hayne, "[W]ould you tell us about the internal examination?" (T.278) Dr. Hayne answered,

> The most significant finding was a massive laceration of the liver. It measured approximately 5-1/2 inches long and went to a depth of approximately 2 inches. That would produce massive internal bleeding. There is also bleeding around the right and left kidneys and also ... around the area of the spleen. Those were the significant internal injuries.
>
> (T.278)

Dr. Hayne found no external injuries such as a stab wound which would have produced this organ damage. (T.278-79) To the contrary, Dr. Hayne testified,

> No, sir, this is application of force to the abdominal wall producing a depression of the abdominal wall and that, in turn, would deliver force to the outer surface of the liver. And if enough force is delivered, it will tear the outer capsule of the liver. The outer capsule is a relative thin layer of connective tissue that can easily be torn. Commonly torn in motor vehicle crashes. The spleen and the liver are very vulnerable organs. They don't have good rib cage covering over those structures, so if you put enough force on the abdominal wall, you will subsequently tear an organ in the abdominal cavity.
>
> (T.279)

In Dr. Hayne's opinion, a moderate to significant amount of force would have been required to inflict these injuries. (T.279)

Dr. Hayne concluded that the cause of death was "[laceration of the liver secondary to blunt force trauma." The manner of death was homicide. (T.280)

Dr. Hayne went on to testify that the severe injury to the liver was not consistent with having occurred during the attempt at cardiopulmonary resuscitation (CPR). Furthermore, the injuries to the extremities were not consistent with having been sustained by the child's

falling down stairs or out of bed. There were "too many sparing areas," and the injuries were too localized to render that theory plausible. Furthermore, Dr. Hayne saw no evidence of strangulation or choking, or of a broken neck or fractured skull. He observed no injury to or disease of the heart; nor did he find any evidence of infection. Finally, he testified, "I saw no evidence of any other disease or trauma that would produce death or significant impairment other than what I specifically identified as the injury to the liver." (T.281-86)

Shane Hales, chief of the toxicology section of the Mississippi Crime Laboratory, was accepted by the court as an expert in the field of forensic toxicology. (T.39-93) Mr. Hales testified that the result of his analysis of samples of Jaylon's blood were negative for alcohol and prescription drugs, illegal drugs, and over-the-counter medications. (T.396)

Lieutenant Keyes testified that he arrived at the hospital at about 10:20 p.m. on March 6. Having been briefed by other officers already on the scene, and having spoken with an emergency room doctor and a radiologist, Lieutenant Keyes "instructed Sergeant Sealy to have Mr. Chris Logan arrested and transported to the Hattiesburg Police Department Detective Division." Shortly afterward, Lieutenant Keyes "proceeded to the detective division as well." When he walked past the open door of the interview room, Logan saw him and asked to speak to him. Lieutenant Keyes responded that since Logan had requested counsel, he could not speak with him. Lieutenant Keyes then "read him his rights again," and Logan signed an acknowledgment "that those rights were read to him." Logan did not appear to be under the influence of alcohol or drugs. He was not given any hope of reward in return for a statement; nor was he threatened or coerced in any way. Ultimately, Logan told Lieutenant Keyes that the child had fallen down some steps.

Lieutenant Keyes answered that that story was not consistent with what he had "already heard and the injuries that was on the child." At that point, Logan "asked for an attorney," and Lieutenant Keyes "terminated the interview." (T.398-403)

SUMMARY OF THE ARGUMENT

First, the state submits the trial court did not abuse its discretion in allowing the state to introduce evidence of prior bad acts which were probative of the defendant's motive and intent. The trial court implicitly found that M.R.E. 403 did not require the exclusion of this evidence, and no error has been shown in that finding. Logan's first proposition should be denied.

Finally, the state contends the verdict is based on legally sufficient evidence. The trial court did not err in denying the motion for j.n.o.v.

PROPOSITION ONE:

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE STATE TO INTRODUCE EVIDENCE OF PRIOR BAD ACTS

Logan first contends the trial court committed reversible error in allowing the state to introduce evidence that he had previously committed acts of violence against Ms. Gammage. On the day of trial, the defense filed a motion in llimine to exclude this evidence. (T.50-51) For obvious reasons, the motion was not heard until the state sought to introduce this testimony during its direct examination of Ms. Gammage. At that point, the jury was excused, and the prosecutor stated,

> Judge, the defense has a motion in limine filed based on prior bad acts, and we're now about to get into three incidents **the State believes shows motive and intent** where Mr. Logan hit and beat Ms. Gammage as it relates to her going to see the father of her children or going to Laurel, as he believed she was going to see the father of the kids and this–

(emphasis added) (T.147)

The defense stated that "we filed a motion to prevent anything like that coming in because we think that it will have more prejudicial than probative value... " (T.148) The court then directed the state to "[a]sk the questions" that it intended to ask before the jury, and the state did so.[2] The prosecutor then argued that this evidence would show "a pattern of conduct and a pattern of rage that led to the event on March 6 when he believed that she was there with the baby's father. He got enraged and took it out on the baby." Defense counsel countered, "Your Honor, I still think it's more prejudicial than probative because she's not saying that he hit the kids." The prosecutor maintained that "it goes to intent and motive and not prejudicial as the defense states." Ultimately, the court ruled, "I'm going to allow limited exploration of it, but I'm not going to give you much leeway." (T.148-53)

Out the outset, the state submits that M.R.E. 404(b) "states in part that evidence of 'other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *Hudson v. State*, 977 So.2d 344, 347-48 (Miss.2007). At the hearing on this issue, the prosecution argued that this evidence was relevant to show motive and intent. The defense did not expressly contest this assertion; rather, its position was that the proof was more prejudicial than probative and therefore

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[2]The substance of that testimony is recounted under the Statement of Substantive Facts; it need not be repeated here.

was barred by M.R.E. 403.[3]

Because the defense did not contest the relevance of the testimony under Rule 404(b), the state contends the only issue properly before this Court is whether the trial court committed reversible error in refusing to exclude the evidence pursuant to Rule 403. See *Goldman v. State*, 9 So.3d 394, 399 (Miss.2008) (objection on specific ground is considered a waiver of all other grounds). Accordingly, the following standard of review applies here:

> An appellate court does not conduct a de novo review on the admissibility of evidence under Rule 403. *Jones v. State*, 904 So.2d 149, 152(¶ 7) (Miss. 2001). Trial courts have the discretion to determine whether potentially prejudicial evidence possesses sufficient probative value. Id. This determination on admissibility is highly discretionary because Rule 403 "does not mandate exclusion but rather provides that the evidence may be excluded." Id. Our review is confined to "simply determine whether the trial court abused its discretion in weighing the factors and in admitting or excluding the evidence." Id.; see also *Jackson v. State*, 784 So.2d 180, 183(¶ 9) (Miss.2001). A Rule 403 analysis "asks only that a judge rely on his/her own sound judgment." *Jones v. State*, 920 So.2d 465, 476-77(¶ 33) (Miss. 2006) (citing *Jenkins v. State*, 507 So.2d 89, 93 (Miss.1987)).
>
> *Hudson*, 977 So.2d at 347.

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[3]This, of course, is not the standard. M.R.E. provides that relevant evidence *may* be excluded "if its probative value is **substantially outweighed** by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (emphasis added) Thus, the question is not whether the evidence is "more prejudicial than probative." Rather, the issue is whether its probative valued is *substantially outweighed* by the danger of *unfair* prejudice.

The state submits Logan has not shown that the trial court abused its discretion in overruling his Rule 403-based objection. During the hearing, the state contended that the evidence was probative of motive and intent. The defense countered simply that the proof was "more prejudicial than probative." Having heard arguments from both parties, the court allowed "limited exploration" of these prior acts. Thus, the court "implicitly determined that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence, even though the trial judge failed to use the 'magic words.'" *Hudson*, 977 So.2d at 348, citing *Hoops v. State*, 681 So.2d 521, 530 (Miss. 1996). Accord, *Pollard v. State*, 932 SO.2d 82, 88 (Miss. App. 2006)

For the sake of argument, the state addresses Logan's current contention that the evidence was not admissible under Rule 404(b). To support that position, he relies primarily on *Robinson v. State*, __ So.3d __ (Miss. App. 2009) (2007-KA-2202-COA), and *Lester v. State*, 692 755, 784 (Miss.1997), each of which is readily distinguishable. In *Robinson*, the defendant stood convicted of murdering his girlfriend. At trial, the state was allowed to introduce evidence that Robinson had made a prior threat against a previous romantic interest. This Court held that the evidence was not relevant to the charge for which the defendant had been convicted, but essentially tended to show nothing more than propensity for violence, which of course is forbidden. Thus, this Court held that the trial court had erred, although harmlessly, in admitting this proof. Similarly, in *Lester*, the Mississippi Supreme Court held that the trial court had erred in allowing evidence, in a murder case, of a prior unrelated assault.

The state contends the proof at issue here was not unrelated to the charged offense, but was probative of the defendant's motive and intent. Even though prior bad

acts were committed against a different victim, the state's theory– and we submit it was a reasonable one– was that they showed a pattern of conduct which led to the murder of Jaylon. The common thread was the defendant's anger about Ms. Gammage's trips to Ellisville, which arguably brought out feelings of jealousy and fear of losing his "meal ticket." On the first two instances, Ms. Gammage was physically present to take the brunt of Logan's wrath. On the third, she was away; Logan had no transportation to get to her; and he was alone with the baby. A reasonable inference is that he "took it out on the baby," as the prosecutor argued.[4] Thus, it cannot be said that these prior acts were "unrelated" to the crime charged. The state therefor submits Logan's reliance on *Robinson* and *Lester* is unavailing.

In any case, for the sake of argument, the state contends any arguable error in the admission of these prior acts is harmless. The evidence, while circumstantial, was substantial and compelling. See *Kolberg v. State*, 829 So.2d 29, 51 (Miss. 2002). Thus, Logan cannot show that the court's ruling affected a substantial right. See *White v. State*, 962 So.2d 728 (Miss. App. 2007).

For these reasons, the state submits Logan's first proposition should be denied.

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[4]Introduction of evidence of these prior acts of violence was particularly relevant in the wake of defense counsel's rhetorical question during opening statement, "Now, why would you take on that kind of responsibility if you were the kind of monster that would beat a defenseless baby to death?" (T.91) Indeed, the jury might well have wondered what would motivate anyone to do such a thing. The state was entitled to present its theory thereon.

PROPOSITION TWO:

THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF

Logan finally contends the trial court erred in denying his motion for j.n.o.v inasmuch as the evidence is legally insufficient to sustain the verdict. To prevail, he must satisfy the following rigorous standard of review:

> In reviewing the sufficiency of the evidence, the standard of review is quite limited. *Clayton v. State*, 652 So.2d 720, 724 (Miss. 1995). All of the evidence is to be considered in the light most consistent with the verdict. *Id*. The prosecution is given the benefit of "all favorable inferences that may reasonably be drawn from the evidence." *Id*. This Court will not reverse unless the evidence with respect to one or more of the elements of the offense charged is such that reasonable and fairminded jurors could only find the accused not guilty. *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993).
>
> *Brown v. State*, 796 So.2d 223, 225 (Miss. 2001).

Accord, *Carle v. State*, 864 So.2d 993, 998 (Miss. App. 2004).

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial, indeed, overwhelming evidence of Logan's guilt of capital murder. The only rational explanation for the baby's injuries was that they were caused blunt force trauma. The most rational inference is that Logan is the only person who could have inflicted such trauma on the child, and his explanations for the injuries were patently unreasonable. *Kolberg*. 829 So.2d at 51. The trial court did not err in denying the motion for j.n.o.v. Logan's final proposition should be denied.

CONCLUSION

The state respectfully submits that the arguments presented by Logan have no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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:

Honorable Robert B. Helfrich
Circuit Court Judge
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Hattiesburg, MS 39403

Honorable Jon Mark Weathers
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This the 15th day of September, 2009.

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