

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-KA-01427-COA

CHRISTOPHER LAMONT LOGAN

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

George T. Holmes, MSB No. [REDACTED]

301 N. Lamar St., Ste 210

Jackson MS 39201

601 576-4200

Counsel for Appellant

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Christopher Lamont Logan

THIS 5th day of June, 2009.

Respectfully submitted,

Christopher Lamont Logan

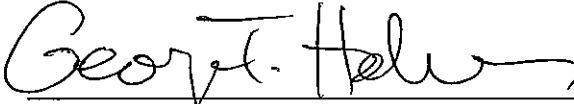
By: 
George T. Holmes,
Mississippi Office of Indigent Appeals

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STATUTES

none

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STATEMENT OF THE ISSUES

- ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED BY ALLOWING
EVIDENCE OF PRIOR ALLEGED BAD ACTS?
- ISSUE NO. 2: WHETHER THE VERDICT IS SUPPORTED BY THE
WEIGHT OF EVIDENCE?

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Forrest County, Mississippi where Christopher Logan was convicted of capital murder in a jury trial conducted June 23-25, 2008. Christopher Logan is presently incarcerated with the Mississippi Department of Corrections with a sentence of life without parole.

FACTS

Jaylon Kelly, a thirteen (13) month old baby boy, died March 6, 2004 in Hattiesburg. [T.161, 364]. When the child was brought in to Forrest General Hospital emergency room the evening of March 6, he had multiple injuries and was not breathing. [T. 362-64]. That morning, Jaylon's mother, Tamika Gamage, left the child with her live-in boyfriend Christopher Logan, the appellant, all day at the Pineview Apartments in Hattiesburg while she went to Ellisville to retrieve an automobile. [T. 156-59].

Tamika departed Hattiesburg late morning, and different people were in and out of the couple's apartment s the remainder of the day and into the evening seeing Logan with the baby, yet, no one noticed anything wrong. [T. 127-28, 156-58, 192, 198-201, 453-57, 462]. At one point, Logan was even seen sitting outside holding the child while sitting on

the steps of the apartment complex.[T. 126, 186–87].

Around 6:30 p. m., Logan went next door and asked for help when the baby stopped breathing. [T. 107, 127-30, 187]. An ambulance was called when resuscitation efforts failed. [T. 108-09,131, 191]. Tamika received a call to come back to Hattiesburg around 8:00 p. m. [T. 160].

An autopsy showed that the cause of Jaylon's death was a "massive liver laceration" and associated internal bleeding. [T. 278-80]. The fatal injury was, according to the pathologist, caused by force, not accident nor disease. [*Id.* , 286–88, 290, 294-95, 305]. Other physicians concurred. [T. 340-42, 353, 355-58, 362-63, 364, 366-68].

Jaylon was also noted to have bruising to the abdomen, face, hands and arms. [T. 109-11, 262-65, 269-71, 276; Exs. 1, 2, 9, 10, 13-22]. Both of the baby's radii were fractured, there was a left metacarpal fracture, and the infant's lungs were collapsed (*numa thorax*). [*Id.*, T. 329-35, 350-51; Ex. 23]. What appeared to be cigarette burns were visible on the child's legs as well. [T. 171-72, 262-65].

Logan told neighbors and police the baby fell down exterior steel and concrete stairs at the apartment complex. [T. 109, 212, 403]. Logan also told neighbors and police a mattress fell on the baby [T. 113-14, 132, 212]. The baby reportedly had a little fever before Tamika left. [T. 163, 174, 492]. Logan testified that he had started cooking some supper when he found out that Tamika would not be returning from Ellisville as planned, and, while he was turned away from Jaylon, the toddler went outside and fell down the

metal and concrete stairs just outside the apartment door. [T. 497-98].

Logan and Tamika had been living together for about six (6) months when the baby passed away. When they met in July 2003, Tamika was living out of her car and in a shelter in Ellisville MS with four children including Jaylon. [T. 143-44, 163, 444]. Logan and Tamika started dating, and shortly thereafter in September 2003 Tamika moved in with the appellant and his mother in Laurel MS, children and all, at Logan's invitation. *Id.* In November or December 2003, Tamika was able to obtain an apartment in Hattiesburg through government assistance at no cost to her. [T. 164-65]. Chris moved to Hattiesburg with Tamika. *Id.*

Logan's mother said she noticed bruising and cigarette burns on Jaylon as soon as Tamika had moved in. [T. 445-46]. Tamika's cousin noticed prior injuries too. [T. 203-04]. The pathologist labeled the cigarette burns and some of the bruises "old". [T. 262].

Three of Tamika's children including Jaylon were fathered by Jimmy Kelly from Ellisville. [T. 144-45]. The state's theory was that Logan was jealous when Tamika would go to Ellisville thinking there was a rendezvous between Tamika and Mr. Kelly, and that Logan took his frustrations out on the victim. [T. 148, 543-44]. Logan denied all culpability and presented character witnesses as well as an eye witness who visited several times on the day in question without seeing anything unusual.[T. 416-46,, 449-62, 479-81, 492-513].

SUMMARY OF THE ARGUMENT

Logan was prejudiced by an erroneous admission of alleged bad character evidence and the weight of evidence does not support the verdict.

ARGUMENT

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED BY ALLOWING EVIDENCE OF PRIOR ALLEGED BAD ACTS?

Logan filed a motion *in limine* to exclude evidence that in November and December 2003, there were two instances of physical altercations between the appellant and Tamika [R. 50-52; T.147-56]. In November 2003, Tamika started a fight by punching Logan, and he allegedly hit her back. [T. 147-53]. Another time, in December 2003, Logan allegedly got mad and hit Tamika. *Id.*

The trial court allowed a limited portions of this evidence. [T. 152-55]. There was no finding in the record that the evidence was probative of any material fact, nor any finding that the evidence was not more prejudicial than probative of any material fact. *Id.*

There was no evidence that Logan was violent toward Jaylon or any other children. [T. 151, 167-68, 177, 189, 418-19, 424, 430, 434-35, 443, 458, 481]. Logan suggests that evidence of alleged violence between him and Tamika was irrelevant and far more prejudicial than probative of any material issue. According to Miss. R. Evid. Rule 401:

“Relevant Evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence.

Even if there is some relevancy, there should be a determination by the trial court of the quality and quantity of foreseeable prejudice:

Relevant evidence is admissible where its probative value is substantially outweighed by, *inter alia*, the danger of unfair prejudice. MRE 403. Determining whether evidence is prejudicial requires a balancing test. *Foster v. State*, 508 So. 2d 1111, 1117 (Miss. 1987). Thus, the more probative the evidence, the less likely that the existence of prejudice will outweigh its value. *Blue v. State*, 674 So. 2d 1184, 1222 (Miss. 1996).

“Prejudicial evidence that has no probative value is always inadmissible.”

Roberson v. State, 595 So. 2d 1310, 1315 (Miss. 1992). See also *Smith v. State*, 530 So. 2d 155, 160-61 (Miss. 1988).

Usually, evidence of another crime or prior bad act is not admissible. *Ballenger v. State*, 667 So.2d 1242, 1256 (Miss.1995).¹ However, where another crime or act is so interrelated to the charged crime so as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences, proof of the other crime or act is admissible. *Townsend v. State*, 681 So. 2d 497, 506 (Miss. 1996). Improperly admitted character evidence constitutes reversible error. *Rose v. State*, 556 So.2d 728, 732 (Miss. 1990).

¹

Mississippi Rule of Evidence 404(b):

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.

When an objection under Miss. R. Evid. 404(b) is overruled, there is an automatic invocation of the right to a Miss. R. Evid. 403 balancing analysis. *Palmer v. State*, 939 So.2d 792, 795 (Miss.2006), *Brown v. State*, 890 So.2d 901, 912 (Miss.2004). Under Rule 403, even relevant evidence must be excluded if there is a risk that any prejudice from the evidence will outweigh its probative value. See also *Simmons v. State*, 813 So.2d 710, 716.(Miss. 2002). In this case, the trial court did not conduct the required balancing test. [T.152-53].

It is Logan's position that evidence of the unrelated fights was irreparably harmful because of the obvious unfavorable effect the information would have on the jury. Since the trial court allowed the evidence, the jury was influenced by it during their deliberations. The alleged fights with Tamika were not associated with Jaylons' death.

The prophylactic purpose of Rule 404(b) is "to prevent the State from suggesting that, since a defendant has committed other crimes previously, the probability is greater that he is also guilty of the offense for which he is presently charged." *Jasper v. State*, 759 So. 2d 1136, 1141 (¶23) (Miss. 1999).

In *Robinson v. State*, ___ So. 3d ___ (Miss. Ct. App. 2009) (2007-KA-2202 COA) (¶13), the court found a clear demarcation between threats and violence against a third person not the victim of the crime under consideration and the current victim. The probative value of such evidence is zero, and its potential prejudice great, because, "[t]hat evidence does not tend to demonstrate a continuing or escalating pattern of violence

against [the present victim]. Instead, it tends to persuade the jury that, because [the defendant] was violent with [other people] he was more likely to have been violent with [the current victim].” In *Robinson*, even though the evidence was erroneously admitted, it was harmless because of overwhelming evidence.

In the present case, the evidence was circumstantial and not overwhelming. Here Logan was prejudiced by the incompetent evidence, and respectfully requests a new trial.

The *Robinson* opinion is on solid ground. The Supreme Court in *Lester v. State*, 692 So.2d 755, 784 (¶51) (Miss. 1997), reversed the child abuse related capital murder conviction because of wrongfully admitted evidence about fights between the defendant and the deceased child’s mother, stating:

It was error for the trial court to admit evidence of a prior assault not connected with the crime charged, having the effect of portraying Lester as a violent man. See *Buchanan v. State*, 204 Miss. 304, 37 So.2d 318, 318 (1948) (improper for prosecutor to ask questions concerning prior assault with the effect of portraying defendant as violent and quarrelsome); *Herman v. State*, 75 Miss. 340, 22 So. 873, 873-74 (1898) (error for trial court to admit evidence of a prior assault by the defendant); *Raines v. State*, 81 Miss. 489, 33 So. 19, 20-21 (1902) (evidence of prior abusive acts unconnected with the crime charged was incompetent and irrelevant); Miss. R. Evid. 404(b).

If the admission of fights was error in *Lester*, it is error here. The prejudice to Logan is exacerbated by the lack of a limiting instruction on the use of the character evidence.²

2

Trial courts are no longer required to give a limiting instruction *sua sponte* and defense counsel is not ineffective for not requesting a limiting instruction. *Moss v. State*, 977 So.2d

ISSUE NO. 2:

**WHETHER THE VERDICT IS SUPPORTED BY THE
WEIGHT OF EVIDENCE?**

Clearly, Jaylon was being abused prior to Christopher Logan ever laying an eye on him. [T. 203-04, 262, 445-46]. With as many people around Logan and the child on the date at issue, his version of the demise of the child is more persuasive than a circumstantial possibility that he could have harmed the child through violent abuse. [T. 126-28, 156-58, 186-87, 192, 198-201, 453-57, 462]. The autopsy of Jaylon was arguably not complete as there was no microscopic examination of the evidence, which should reasonably have been required since the child was physically ill before his death. [T. 163, 174, 299-300, 492].

To determine whether trial evidence is sufficient to sustain a conviction “the critical inquiry is whether the evidence shows ‘beyond a reasonable doubt that [the] accused committed the act charged, and that he did so under such circumstances that every element of the offense existed.’” *Bush v. State*, 895 So.2d 836, 843(¶ 16) (Miss. 2005) (quoting *Carr v. State*, 208 So.2d 886, 889 (Miss.1968)). The deciding factor is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* If the minimum conclusion is reached that, “reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions

1201, 1212-14 (¶¶22-25,29-32) (Miss. Ct. App.,2007).

on every element of the offense,” the evidence is sufficient. *Id.*

The state is bound to prove the elements and methodology of commission of a crime charged in an indictment returned by the grand jury. *Quick v. State*, 569 So.2d 1197, 1200 (Miss. 1990). Here, the state failed to reach this burden because, the appellant really never had the inclination nor opportunity to harm Jaylon as alleged.

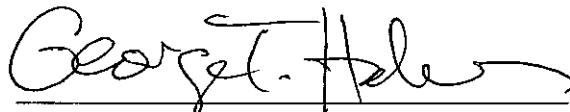
In the present case, the evidence was all circumstantial and inconclusive, there were other hypotheses consistent with innocence. The trial court should have granted a JNOV, because, the evidence was inadequate. See *Pittman v. State*, 836 So.2d 779, 785 (Miss. App. 2002).

CONCLUSION

Christopher Logan is entitled to have his conviction reversed with remand for a new trial.

Respectfully submitted,
CHRISTOPHER LOGAN

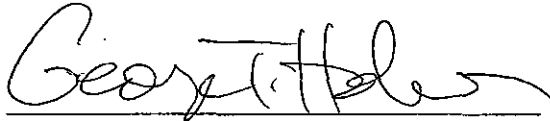
By:



George T. Holmes,
Mississippi Office of Indigent Appeals

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 5th day of June, 2009, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Robert B. Helfrich, Circuit Judge, P. O. Box 309, Hattiesburg MS 39403, and to Hon. John Mark Weathers, Dist. Atty. , P. O. Box 166, Hattiesburg MS 39043, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.


George T. Holmes

MISSISSIPPI OFFICE OF INDIGENT APPEALS
George T. Holmes, MSB No [REDACTED]
301 N. Lamar St., Ste 210
Jackson MS 39201
601 576-4200