

SUPREME COURT OF MISSISSIPPI

Joseph Dreher Stack v. State of Mississippi

860 So. 2d 687 (Miss. 2003) · No. No. 2001-KA-01905-SCT · Decided October 16, 2003

SUMMARY

The Supreme Court of Mississippi reviewed Joseph Dreher Stack's convictions for the murders of James Thomas and Larry Albert Chopones. The court affirmed the convictions and consecutive life sentences, holding that the trial court did not abuse its discretion in denying a continuance, that Stack failed to establish ineffective assistance of counsel, and that the requested heat-of-passion and Weathersby-related jury instructions were unwarranted.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice; Pittman, C.J.; Smith, P.J.; Waller, J.; Cobb, J.; Easley, J.; McRae, P.J.
JURISDICTION	Mississippi
DECIDED	October 16, 2003
DOCKET	No. 2001-KA-01905-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stack appealed his convictions for two counts of murder and consecutive life sentences entered by the Circuit Court of the Second Judicial District of Harrison County. He challenged the denial of a continuance, the effectiveness of trial counsel, jury instructions, the sufficiency and weight of the evidence, the delay between the crimes and indictment, and cumulative error.
STANDARD OF REVIEW	Denial of a continuance is reviewed for abuse of discretion and will not be reversed absent manifest injustice. Jury-instruction challenges are reviewed by considering the instructions as a whole; an instruction may be refused if it incorrectly states the law, duplicates another instruction, or lacks a foundation in the evidence. Sufficiency of the evidence following denial of a directed verdict or motion for judgment notwithstanding the verdict is reviewed in the light most favorable to the State, with reversal permitted only when reasonable and fair-minded jurors could only find the defendant not guilty. Ineffective-

	assistance claims require deficient performance and prejudice under Strickland.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; majority opinion affirming criminal convictions and sentences.
PARTIES	Joseph Dreher Stack v. State of Mississippi

TOPICS

criminal procedure appellate procedure standard of review jury instructions due process

PRACTICE AREAS

criminal procedure appellate procedure constitutional law evidence jury instructions

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Stack's fifth motion for a continuance made two days before trial.
2. Whether Stack received ineffective assistance of counsel because counsel allegedly lacked preparation, failed to obtain a mental evaluation, and failed to argue self-defense.
3. Whether the trial court erred by refusing a heat-of-passion manslaughter instruction and a Weathersby-based instruction.
4. Whether the trial court erred by denying Stack's motion for a directed verdict or, alternatively, a new trial based on insufficiency or the overwhelming weight of the evidence.
5. Whether the nine-month period between the murders and indictment violated Stack's due-process rights.
6. Whether cumulative error required reversal.

HOLDINGS

1. The trial court did not abuse its discretion in denying Stack's ore tenus motion for a continuance because Stack failed to comply with the statutory procedural requirements, failed to demonstrate concrete prejudice or manifest injustice, and had received substantial prior time and opportunities to prepare and obtain the mental evaluation.
2. Stack failed to establish ineffective assistance of counsel because he did not show deficient performance or a reasonable probability that the alleged deficiencies affected the outcome.
3. The trial court properly refused Stack's requested Weathersby instruction and heat-of-passion manslaughter instruction as to Chopones.
4. The challenge to the denial of a directed verdict or new trial was procedurally barred, and, alternatively, the evidence was sufficient to support both murder convictions.
5. Stack's due-process challenge to the nine-month delay between the murders and indictment was procedurally barred and, alternatively, meritless because he failed to show actual prejudice or that the

State intentionally delayed to obtain a tactical advantage.

6. Cumulative error did not require reversal because the alleged errors were individually without merit.

KEY QUOTATIONS

“The decision to grant or deny a continuance is left to the sound discretion of the trial court.” (860 So. 2d at 691)

“The Weathersby rule ... is not a jury instruction but a guide for the circuit judge in determining whether a defendant is entitled to a directed verdict.” (860 So. 2d at 698)

FACTUAL BACKGROUND

Stack and Gene Livingston left a Veterans Administration hospital, drank with Larry Chopones, and became involved in a confrontation. Stack took a knife from Chopones, stabbed him repeatedly, and slit his throat; when James Thomas intervened, Stack stabbed Thomas as well. Police stopped Stack shortly afterward while he was covered in blood and carrying the knife, and he later gave a recorded statement admitting that he killed both men.

PROCEDURAL HISTORY

Stack was indicted on July 1, 1999, for the murders of James Thomas and Larry Albert Chopones. After several defense continuances, the trial court denied an ore tenus motion for another continuance shortly before trial. A jury convicted Stack on both counts, and the court imposed consecutive life sentences. The Mississippi Supreme Court affirmed the convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- Hatcher v. Fleeman, 617 So. 2d 634, 639 (Miss. 1993)
- Johnson v. State, 631 So. 2d 185, 187 (Miss. 1994)
- Wallace v. State, 607 So. 2d 1184, 1191 (Miss. 1992)
- Morris v. State, 595 So. 2d 840, 840, 843 (Miss. 1991)
- Fisher v. State, 532 So. 2d 992, 998 (Miss. 1988)
- Gray v. State, 799 So. 2d 53, 58 (Miss. 2001)
- Burns v. State, 729 So. 2d 203, 213 (Miss. 1998)
- Atterberry v. State, 667 So. 2d 622, 631 (Miss. 1995)
- Jackson v. State, 538 So. 2d 1186 (Miss. 1989)
- Edwards v. State, 594 So. 2d 587, 591 (Miss. 1992)
- Gates v. State, 484 So. 2d 1002, 1005-06 (Miss. 1986)
- Smith v. State, 278 So. 2d 454, 455 (Miss. 1973)

- Hughey v. State, 512 So. 2d 4, 6 (Miss. 1987)
- Cole v. State, 405 So. 2d 910, 911-12 (Miss. 1981)
- Speagle v. State, 390 So. 2d 990, 992 (Miss. 1980)
- Shaw v. State, 378 So. 2d 631, 633-34 (Miss. 1979)
- Garner v. State, 202 Miss. 21, 30 So. 2d 413, 414 (1947)
- Boyington v. State, 389 So. 2d 485 (Miss. 1980)
- Brown v. State, 252 So. 2d 885 (Miss. 1971)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Stringer v. State, 454 So. 2d 468, 477 (Miss. 1984)
- Finley v. State, 725 So. 2d 226, 238 (Miss. 1998)
- Foster v. State, 687 So. 2d 1124, 1130 (Miss. 1996)
- Mohr v. State, 584 So. 2d 426, 430 (Miss. 1991)
- Cabello v. State, 524 So. 2d 313, 315 (Miss. 1988)
- Neal v. State, 525 So. 2d 1279, 1281 (Miss. 1987)
- Davis v. State, 743 So. 2d 326, 334 (Miss. 1999)
- Woodward v. State, 843 So. 2d 1, 7 (Miss. 2003)
- Reed v. State, 536 So. 2d 1336, 1339 (Miss. 1988)
- Leatherwood v. State, 473 So. 2d 964, 969 (Miss. 1985)
- Humphrey v. State, 759 So. 2d 368, 380 (Miss. 2000)
- Heidel v. State, 587 So. 2d 835, 842 (Miss. 1991)
- Weathersby v. State, 165 Miss. 207, 147 So. 481 (1933)
- Blanks v. State, 547 So. 2d 29, 33-34 (Miss. 1989)
- Thomas v. State, 818 So. 2d 335, 349-50 (Miss. 2002)
- Griffin v. State, 495 So. 2d 1352, 1355 (Miss. 1986)
- Harveston v. State, 493 So. 2d 365 (Miss. 1986)
- Shipp v. State, 847 So. 2d 806, 811-12 (Miss. 2003)
- Esparaza v. State, 595 So. 2d 418, 426 (Miss. 1992)
- Spikes v. State, 302 So. 2d 250, 251 (Miss. 1974)
- Neal v. State, 451 So. 2d 743, 758 (Miss. 1984)
- Gathright v. State, 380 So. 2d 1276, 1278 (Miss. 1980)
- Alexander v. State, 759 So. 2d 411, 418 (Miss. 2000)
- Jones v. State, 606 So. 2d 1051, 1058 (Miss. 1992)
- Crenshaw v. State, 520 So. 2d 131, 134 (Miss. 1988)
- Ponder v. State, 335 So. 2d 885, 886 (Miss. 1976)
- Howard v. State, 507 So. 2d 58, 63 (Miss. 1987)
- Hooker v. State, 516 So. 2d 1349, 1351 (Miss. 1987)
- United States v. Hendricks, 661 F.2d 38, 40 (5th Cir. 1981)

- De La Beckwith v. State, 707 So. 2d 547, 569 (Miss. 1997)
- McFee v. State, 511 So. 2d 130, 136 (Miss. 1987)
- Barnes v. State, 249 So. 2d 383, 384-85 (Miss. 1971)
- Yates v. State, 251 Miss. 376, 169 So. 2d 792 (1964)
- Green v. State, 631 So. 2d 167, 172 (Miss. 1994)

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