

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00369 COA**

**RICO D. MALONE**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

AZKI SHAH

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: DEWITT ALLRED, WAYNE SNUGGS

DISTRICT ATTORNEY: LAWRENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: FELONY, MURDER

TRIAL COURT DISPOSITION: CT 1 MURDER: LIFE IMPRISONMENT; CONSECUTIVE TO ANY & ALL PREVIOUSLY IMPOSED; CT 2 & CT 3 AGGRAVATED ASSAULT: CT 2 20 YRS; CONSECUTIVE TO CT 1; CT 3 3 YRS; CONCURRENT TO CT 2

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PER CURIAM:

Rico Malone was convicted from a three-count indictment for murder and two aggravated assaults. He was sentenced to life in prison and two twenty year terms to be served concurrently with each other, but consecutive to the life term. Aggrieved by this conviction, Malone appeals asserting that the trial court erred in allowing the State to elicit testimony concerning Malone's membership in a gang during re-direct examination.

#### ARGUMENT AND DISCUSSION OF THE LAW

##### I. DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO ELICIT TESTIMONY CONCERNING MALONE'S GANG MEMBERSHIP ON RE-DIRECT EXAMINATION?

Malone argues that the court erred in allowing the State to elicit testimony that he was a member of the "Vice-Lords." During trial, the State called as a witness Sean Jones, one of the victims. While examining him, the State made no reference to his gang affiliation or any person's participation in gang related activity. On cross-examination, Malone's attorney repeated and extensively questioned Jones about the fact that he and Malone's brother were "gangsters," or "Vice Lords." The State contends that this line of questioning was either to suggest that Malone's brother, not Malone himself, had a motive for the shooting, or possibly for the secondary purpose of diminishing Jones's credibility by branding him a "gangster." To clear up the misrepresentation, on redirect, the State brought out the fact that Malone was also a member of the Vice Lords. The defense objected to this line of questioning, which the court overruled.

The trial court was faced with the issue of whether the matter inquired into by the State on redirect was fairly within the scope of the content brought out by defense counsel during cross-examination. The Mississippi Supreme Court has explained many times that the scope and extent of re-direct examination are matters committed to the trial court's discretion and will not be disturbed unless there is a clear abuse of discretion. *Blue v. State*, 674 So. 2d 1184, 1212 (Miss. 1996); *Evans v. State*, 499 So. 2d 781, 782 (Miss. 1986); *Weeks v. State*, 493 So. 2d 1280, 1285 (Miss. 1986); *West v. State*, 463 So. 2d 1048, 1055 (Miss. 1985) (citations omitted). This scope of redirect examination, while largely within the discretion of the trial court, is limited to matters raised during cross-examination. *Blue*, 674 So. 2d at 1212. Furthermore, this Court will not disturb a trial court's ruling on matters pertaining to redirect examination unless there has been a clear abuse of discretion, which in this case we do not find. We find the Appellant's issue to be without merit and, we affirm the lower court.

**THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT ON COUNT I OF MURDER AND SENTENCE OF LIFE IMPRISONMENT CONSECUTIVE TO ANY AND ALL PREVIOUSLY IMPOSED SENTENCES; COUNT II OF AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS TO RUN CONSECUTIVELY TO COUNT I; COUNT III OF AGGRAVATED ASSAULT AND SENTENCE OF THREE YEARS TO BE**

**SERVED CONCURRENTLY WITH SENTENCE IN COUNT II, BUT CONSECUTIVELY WITH THE LIFE SENTENCE IN COUNT I, ALL TO BE SERVED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**