IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01345 COA

TERRANCE JOHNSON APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT LOUIS GOZA, JR.

COURT FROM WHICH APPEALED: MADISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RICHARD FLOOD

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: TOMMY SAVANT

NATURE OF THE CASE: CRIMINAL - FELONY - RAPE

TRIAL COURT DISPOSITION: RAPE: SENTENCED TO SERVE 25 YEARS IN THE CUSTODY OF MDOC

MANDATE ISSUED: 9/30/97

BEFORE BRIDGES, C.J., HINKEBEIN, AND KING, JJ.

HINKEBEIN, J., FOR THE COURT:

Terrance Johnson [Johnson] was convicted in the Madison County Circuit Court of rape. For his crime Johnson was sentenced to serve twenty-five years in the custody of the Mississippi Department of Corrections. Aggrieved by his conviction, Johnson raises the following assignments of error:

I. THAT THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANT THE OPPORTUNITY TO REHABILITATE A POTENTIAL JUROR WITH RESPECT TO THE USE OF MEDICAL/SCIENTIFIC EVIDENCE IN DETERMINING GUILT.

II. THAT THE TRIAL COURT ERRED WHEN IT SUSTAINED THE STATE'S OBJECTION AS TO WHETHER OR NOT THE ALLEGED VICTIM RECALLED IF THE DEFENDANT WAS CIRCUMCISED.

III. THAT THE TRIAL COURT ERRED IN ALLOWING THE TESTIMONY OF OFFICER MCNEILL'S INFERENCE AS TO THE DEFENDANT NOT GIVING ANY STATEMENT.

IV. THAT THE TRIAL COURT ERRED WHEN IT INTERRUPTED THE DEFENDANT'S CLOSING STATEMENT, WITHOUT OBJECTION BY THE STATE, WHEN THE DEFENDANT WAS ARGUING THE REASONABLE INFERENCES WHICH COULD BE DRAWN FROM THE TESTIMONY OF OFFICER MCNEILL.

V. THAT THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S OBJECTION TO THE STATE'S "GOLDEN RULE" ARGUMENT DURING CLOSING STATEMENTS.

VI. THAT THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S OBJECTION TO THE STATE'S REMARKS THAT "CRIMINALS HAVE WEAPONS," DURING

CLOSING STATEMENTS.

VII. THAT THE TRIAL COURT ERRED WHEN IT ADMONISHED THE JURY CONCERNING A FAIR TRIAL TO BOTH THE STATE AND THE DEFENDANT.

VIII. THAT THE CUMULATIVE EFFECT OF THE ABOVE ERRORS DENIED THE DEFENDANT A FUNDAMENTALLY FAIR TRIAL.

Holding these assignments of error to be without merit, we affirm the judgment of the circuit court.

FACTS

On June 19, 1994 the victim was traveling south on U.S. Interstate 55, in Madison County, Mississippi. Because of mechanical difficulty with her automobile, the victim exited the interstate and parked her car outside the Amoco filling station at the Gluckstadt exit. The victim was subsequently approached by a man who offered to take her to his home and introduce her to his uncle, allegedly a mechanic who could perform repair work on her automobile. The victim accepted the offer and got into Johnson's automobile with him and his friend, Moses Wheat [Wheat], and drove to Johnson's family home in nearby Canton.

Upon arriving at the Johnson residence the party went to Johnson's apartment behind the family home, where they discussed repairing the car. At some point Wheat and Johnson exited the apartment, leaving the victim alone. Johnson subsequently returned to the apartment without Wheat. At this point Johnson allegedly closed and locked the door to the apartment, removed the victim's car/home/office keys from her purse, and threw them across the room, away from the victim. Johnson then allegedly forced the victim to move onto his bed, forced her to undress, and proceeded to touch her genital area with his fingers and to penetrate her with his penis. Johnson allegedly told the victim to remain quiet and that he would put a pillow over her head if she attempted to cry out. The victim then allegedly told Johnson (untruthfully) that she was infected with a sexually transmitted disease and that he might catch it if he continued to penetrate her. This ruse apparently persuaded Johnson to withdraw, but his attention then allegedly turned to other matters. In lieu of sexual intercourse, Johnson allegedly forced the victim to perform oral sex on him. The victim testified that she was crying and requesting Johnson to "stop" throughout the events in question, beginning at the point when he ordered her onto his bed.

After the alleged rape, Johnson and the victim left the apartment to go "hang out" with his parents and some family friends in the Johnson home. The victim was allegedly crying and visibly upset during this time, yet allegedly no one in the Johnson home inquired as to why she was disturbed. The victim subsequently left the Johnson home with Wheat (who told her that "he knew what had happened") and his girlfriend, who transported her back to the Amoco filling station at the Gluckstadt exit. At this point the victim called the local "911" operator to alert law enforcement authorities that she had been raped. The responding officers transported the victim to Madison General Hospital where she was treated and released. Acting upon the victim's description of the perpetrator and his location, the officers went to Johnson's home and placed him under arrest. Johnson was subsequently

indicted and tried for rape; although his first trial ended in a mistrial, his second trial resulted in the rape conviction at issue on this appeal.

ANALYSIS

I. THAT THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANT THE OPPORTUNITY TO REHABILITATE A POTENTIAL JUROR WITH RESPECT TO THE USE OF MEDICAL/SCIENTIFIC EVIDENCE IN DETERMINING GUILT.

With this so-called "assignment" of error Johnson is apparently contending that, during voir dire, he should have been given an opportunity to "rehabilitate" a potential juror who was dismissed from the case. Johnson's assignment of error, however, presents nothing for this Court to review, as he freely admits that the error he complains of is not contained in the trial court record. Because there is no record of the alleged error, Johnson states that he "must abandon this point on appeal." The State's brief does not address this assignment of error. This Court is at a loss as to why, if Johnson recognizes that the record does not contain the alleged error, he has chosen to include this allegation in his appellate brief. In any event, because Johnson states that he is "abandon[ing] this point on appeal," there is nothing for this Court to address. This assignment of error is without merit.

II. THAT THE TRIAL COURT ERRED WHEN IT SUSTAINED THE STATE'S OBJECTION AS TO WHETHER OR NOT THE ALLEGED VICTIM RECALLED IF THE DEFENDANT WAS CIRCUMCISED.

Johnson contends that the trial court's sustaining of the State's objection to this question, regarding whether the victim could recall if he was circumcised, amounts to reversible error. Johnson states that in asking this question he sought to attack the credibility of the victim. It is Johnson's argument that the victim's answer to his question "could easily have swayed one or more of the jurors on the credibility issue." The State responds that Johnson's question was irrelevant because the victim had already identified him as the perpetrator, and that whether he was circumcised was not relevant to whether he was guilty of raping the victim. The State further notes that even if the trial court committed error in not allowing Johnson's question, any error was not so prejudicial to his defense as to necessitate a reversal of his conviction. We agree with the State.

In reviewing a trial court's rulings as to the admissibility of evidence, we are ever mindful that "the admissibility of evidence rests within the trial court's discretion." *Baine v. Mississippi*, 606 So. 2d 1076, 1078 (Miss. 1992); *Johnston v. State*, 567 So. 2d 237, 238 (Miss. 1990) (holding that "[t]he relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused."). Despite the considerable discretion afforded trial courts in making evidentiary rulings, our supreme court has made it clear that the trial court's "discretion must be exercised within the scope of the Mississippi Rules of Evidence and reversal will only be had when an abuse of discretion results in prejudice to the accused." *Parker v. State*, 606 So. 2d 1132, 1137-38 (Miss. 1992). In order for an evidentiary ruling to constitute reversible error, "a denial of a substantial right of the defendant must have been affected by the court's evidentiary ruling." *See Jackson v. State*, 645 So. 2d 921, 924 (Miss. 1994) (holding that "[w] e are not required to reverse a case based solely upon the showing of an error in evidentiary ruling.").

Mississippi Rule of Evidence 402 explicitly states that "[e]vidence which is not relevant is not admissible." M.R.E. 402.

In the case at bar Johnson has failed to demonstrate that he was prejudiced in any manner by not being allowed to question the victim on this matter. In his brief, the closest Johnson has come to demonstrating undue prejudice resulting from the trial court's ruling is to make a rather cursory speculation as to how the jury "could" have reacted to the victim's response to his question. Because it may be subject to dispute as to whether such questioning was relevant to the issue before the lower court we will assume, *arguendo*, that the trial court's ruling was erroneous. Accordingly, the focus of our analysis is upon whether Johnson suffered undue prejudice resulting from the evidentiary ruling. *See Gollott v. State*, 672 So. 2d 744, 751 (Miss. 1996) (stating that assertions of error without showing of prejudice to accused do not trigger reversal). Because Johnson has failed to demonstrate that he suffered undue prejudice when the trial court prevented him from eliciting a response to his question, this assignment of error is without merit. *See Parker*, 606 So. 2d at 1137-38 (holding that error in admission or exclusion of evidence warrants reversal of conviction only "when an abuse of discretion results in prejudice to the accused").

III. THAT THE TRIAL COURT ERRED IN ALLOWING THE TESTIMONY OF OFFICER MCNEILL'S INFERENCE AS TO THE DEFENDANT NOT GIVING ANY STATEMENT.

Johnson asserts that the trial court committed reversible error in its handling of his objection to a question asked by the State. At trial the State asked a witness, who was one of the law enforcement officers working the case, "[d]id you take a statement from the defendant?" Before the witness could answer, Johnson objected to the question and was sustained by the trial court. The State then proceeded with different questions, never again attempting to ask the objected-to question. On appeal Johnson is apparently contending that the question itself amounted to an improper comment on his exercise of his Fifth Amendment right against self-incrimination. Significantly, after his objection was sustained Johnson did not request the judge to admonish the jury to disregard the question, nor did he move for a mistrial. Additionally, Johnson does not argue that the trial court had a duty to, *sua sponte*, declare a mistrial because of the State's question.

The State responds that this assignment of error is without merit because Johnson "presents [this Court] with no authority indicating that the question itself constitutes reversible error [or was] a comment on [Johnson's] right to remain silent." The State argues that if Johnson had suffered undue prejudice as a result of the question, he should have requested the trial court to admonish the jury to disregard the question or have made a motion for a mistrial.

Under Mississippi law "[i]f the argument is improper, and the objection is sustained, it is the further duty of trial counsel to move for a mistrial." *Johnson v. State*, 477 So. 2d 196, 210 (Miss. 1985), *rev'd on other grounds, Johnson v. Mississippi*, 486 U.S. 578 (1988); *Saucier v. State*, 328 So. 2d 355, 358 (Miss. 1976) (holding that if defendant regarded sustaining of his objection as insufficient to remove "any supposed harmful effect which may have resulted from the district attorney's remark to the court," it was necessary that he immediately move for mistrial). Furthermore, it is presumed that the sustaining of an objection causes the jury to disregard the objected-to material. *Lanier v. State*, 533 So. 2d 473, 482 (Miss. 1988). Accordingly, if Johnson had felt the trial court's sustaining of his

objection was insufficient to cure any undue prejudice caused by the State's question, he should have asked the trial court to admonish the jury or requested a mistrial. This assignment of error is without merit.

IV. THAT THE TRIAL COURT ERRED WHEN IT INTERRUPTED THE DEFENDANT'S CLOSING STATEMENT, WITHOUT OBJECTION BY THE STATE, WHEN THE DEFENDANT WAS ARGUING THE REASONABLE INFERENCES WHICH COULD BE DRAWN FROM THE TESTIMONY OF OFFICER MCNEILL.

Johnson contends that the trial court committed reversible error when it, *sua sponte*, interrupted his closing argument and instructed him to confine his argument to "within the record of this case." Johnson argues that the trial court erred again when, after he completed his closing argument, the trial judge admonished the jury that his interruption of Johnson's closing argument was not meant "to be taken by you as a comment by me on the evidence o[r] the argument presented to you." It is Johnson's position that his argument was merely "expressing to the jury his version of [O]fficer McNeil's reactions[,] based upon her relationship with [Johnson's mother]." The State responds that the trial court was within its discretion to admonish Johnson because his argument had grossly departed from the evidence in the case. The State further contends that even if the trial court's remarks were erroneous, any resulting prejudice was cured when the trial court gave a curative instruction to the jury on this point.

The Supreme Court of Mississippi has stated that in making closing arguments "there are certain well-established limits beyond which counsel is forbidden to go; he must confine himself to the facts introduced in evidence and to the fair and reasonable deductions and conclusions to be drawn therefrom, and to the application of the law, as given by the court, to the facts." *Davis v. State*, 530 So. 2d 694, 701 (Miss. 1988) (citing *Clemons v. State*, 320 So. 2d 368, 372 (Miss. 1975)). In *Clemons* the court held that "[s]o long as counsel in his address to the jury keeps fairly within the evidence and the issues involved, wide latitude of discussion is allowed." *Clemons*, 320 So. 2d at 371-72. The court, however, cautioned that when counsel "departs entirely from the evidence in his argument, or makes statements intended solely to excite the passions or prejudices of the jury, or makes inflammatory and damaging statements of fact not found in the evidence, the trial judge should intervene to prevent an unfair argument." *Id.* at 372.

Under the facts at bar it may be subject to dispute as to whether Johnson had in fact departed from the evidence so grossly as to warrant intervention by the trial court judge. It is the opinion of this Court, however, that making such a determination was within the sound discretion of the trial court. As such, the trial court's actions in this matter would be subject to an abuse of discretion standard of review. However, even if the trial judge had abused his discretion in making the initial admonishment, we conclude that his curative instruction to the jury was sufficient to correct any error that may have been committed. *See Shoemaker v. State*, 502 So. 2d 1193, 1195 (Miss. 1987) (holding that because jurors are presumed to follow trial judge's instructions, curative instruction by judge was sufficient to remove prejudice caused by improper remarks). Additionally, even were we to accept Johnson's assertion that both admonishments by the trial court were erroneous, he has provided this Court with absolutely no evidence that he suffered any undue prejudice as a result of the trial court's actions. Because of Johnson's failure to demonstrate any prejudice resulting from the allegedly erroneous

actions of the trial court, this assignment of error is without merit. *See Gollott v. State*, 672 So. 2d 744, 751 (Miss. 1996) (stating that assertions of error without showing of prejudice to accused do not trigger reversal).

V. THAT THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S OBJECTION TO THE STATE'S "GOLDEN RULE" ARGUMENT DURING CLOSING STATEMENTS.

Johnson contends that the State used an impermissible "golden rule" type closing argument when it asked the jury to "put yourself in [the victim's] position." The State responds that the prosecutor's statement was not a golden rule argument, and that even if it had been, any error was insignificant in the overall context of the case.

The Mississippi Supreme Court has held that "it is improper to permit an attorney to tell the jury to put themselves in the shoes of one of the parties . . . ." *Chisolm v. State*, 529 So. 2d 635, 640 (Miss. 1988). The idea behind this rule is that "[a]ttorneys should not tell a jury, in effect, that the law authorizes it to depart from neutrality and to make its determination from the point of view of bias or personal interest." *Chisolm*, 529 So. 2d at 640. Such arguments that seek to have the jurors "forget their oaths" have been held to constitute reversible error. *Alexander v. State*, 520 So. 2d 127, 130 (Miss. 1988). This type of argument is commonly referred to as a "golden rule" argument. *See Ormond v. State*, 599 So. 2d 951, 961 (Miss. 1992) (referring to arguments that are "highly prejudicial and calculated to appeal to the sympathy of the juror" to be impermissible "golden rule" arguments). In determining if a prosecutor's use of a golden rule type argument is grounds for reversal of a criminal conviction, the test is "whether the natural and probable effect of the improper

argument of the prosecuting attorney is to create an unjust prejudice against the accused as to result in a decision influenced by the prejudice so created." *Ormond*, 599 So. 2d at 961.

The pertinent portion of the closing argument at issue was as follows:

BY THE STATE: [R.A.] is the victim. She made one mistake on that day and that was trusting her fellow man, that is her mistake and I bet she will never do it again. Are you going to penalize her because she didn't try harder to get away? What I ask you to do is to put yourself in her position.

BY THE DEFENSE: Objection.

BY THE COURT: Overruled.

BY THE STATE: I ask you to put yourself in her position. You are in a strange place, never been here before, there are at least five people that you know are associated with the rapist. What are you going to do? What was she to do? What was this young lady suppose to do? It is no less a rape because she didn't run away. That is the same as saying it is not a house burglary because you are not

at your house twenty four hours a day making sure the place is not broken into. If that is the state of the law, the law is wrong. A person doesn't have to hold a gun to your head, a person doesn't have to hold a knife to your throat. Forcibly rape and ravish. Think about the threats and the force, think about it. The defendant, a man, larger than her, threw her keys across the room, told her to shut up, what was this young lady to do? That is force. She doesn't know whether he has a gun or not.

It is the opinion of this Court that the State's remarks were not a violation of the prohibition against golden rule type arguments. It should be clear from the authority cited above that a golden rule argument is one that seeks to sway the jury's opinion via an appeal to the emotions of the jury, by asking the jurors to make a decision based upon how they would feel if the crime at issue had been committed against them personally. This is simply not what the State was attempting to accomplish with its argument. We hold that the State was merely trying to remove any doubt from the juror's minds that the victim might have consented to, or was in any manner at fault for, her rape. When the State asked the jurors "to put [themselves] in her position," it was addressing the reasonableness of her actions taken after the rape had occurred, not how the jurors would feel if they were the victim. We hold that the State was simply trying to illustrate that the victim had no reasonable opportunity to flee the crime scene after the rape had been committed and, therefore, no weight should be given to the fact that she did not immediately flee the area. This assignment of error is without merit.

VI. THAT THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S OBJECTION TO THE STATE'S REMARKS THAT "CRIMINALS HAVE WEAPONS," DURING CLOSING STATEMENTS.

Johnson contends that the trial court committed reversible error in overruling his objection to a comment made by the State during closing argument. Johnson argues that the State's comment that "other criminals carry guns, carry knives . . ." etc., was a reference to "crimes not identified in the indictment" and was an insinuation that "the State knew something bad about [Johnson] that had not gotten into the record." The State responds that its remark was not intended to refer to other crimes Johnson may have committed, that it was within the considerable latitude afforded attorneys in making closing arguments, and that even if erroneous, it resulted in no prejudice to Johnson.

The remark in question was made as part of the State's discussion as to why Wheat did not attempt to force his way into Johnson's residence when he suspected that Johnson was in the process of raping the victim. The remark was as follows:

BY THE STATE: Why didn't Moses [Wheat] stop this? Moses is a big man, big man. Moses testified that the door was locked. He couldn't get in there first of all. He didn't know what [Johnson] had in there. He could have had a gun, knife, anything. Moses is a criminal. He knows that other criminals carry guns, carry knives, and to be careful.

BY THE DEFENSE: Objection.

BY THE COURT: Overruled.

When the State resumed its closing argument it stated that Wheat was a "criminal" because he had been convicted of robbery, for which he had served time in the state penitentiary.

In its closing argument the State was, apparently, arguing that because Wheat thought that Johnson was committing rape (therefore making Johnson a criminal), Johnson might have some sort of weapon on his person because "criminals have weapons." The State seems to contend that it would be natural for Wheat (as a criminal) to think that if he attempted to interrupt another criminal's work-in-progress, the other criminal might react by attacking Wheat with a weapon if one were available. Although this Court is unsure as to exactly why the State was concerned with whether Wheat should or could have prevented/interrupted the rape, we are certain that addressing such issues was well within the prosecutor's discretion in making closing argument.

Under Mississippi law it is well settled that "attorneys on both sides in a criminal prosecution are given broad latitude during closing arguments." *Ahmad v. State*, 603 So. 2d 843, 846 (Miss. 1992). Furthermore, both the State and defense counsel should "be given wide latitude in their arguments to the jury," and "the court should . . . be very careful in limiting free play of ideas, imagery, and personalities of counsel in their argument to [the] jury." *Ahmad*, 603 So. 2d at 846. In order for an allegedly improper argument to necessitate the reversal of a defendant's conviction, "the natural and probable effect of the prosecuting attorney's improper argument [must have been to] create[] unjust prejudice against the accused resulting in a decision influenced by prejudice." *Dunaway v. State*, 551 So. 2d 162, 163 (Miss. 1989).

We hold that the State's argument was not improper because, by impliedly referring to Johnson as an "other criminal," the State was doing nothing more than arguing its theory of the case, i.e., that Johnson committed rape and was therefore a criminal who should be incarcerated. There is nothing in the State's argument to suggest that it was referring to any crimes, other than the rape, that Johnson may have committed; clearly it was a reference to the State's contention that Johnson was a criminal because he raped the victim. This assignment of error is without merit.

VII. THAT THE TRIAL COURT ERRED WHEN IT ADMONISHED THE JURY CONCERNING A FAIR TRIAL TO BOTH THE STATE AND THE DEFENDANT.

With this assignment of error Johnson is attempting to address, for a second time, the propriety of the trial judge's admonition that he confine his argument to "within the record of this case," and the judge's subsequent curative instruction to the jury. This issue has already been addressed in our discussion concerning Johnson's fourth assignment of error, where we held that the curative instruction was sufficient to remedy any error that might have occurred. However, with his seventh assignment of error Johnson raises a new point regarding the trial judge's curative instruction, claiming that it "fixed in the minds of the jury the potential that one or more of the jurors would believe that the [d]efendant had engaged in some sort of 'dirty trick.'"

This precise issue was addressed in *Shoemaker v. State*, 502 So. 2d 1193, 1195 (Miss. 1987), where our supreme court discussed the issue of curative instructions having "the effect of drawing the jury's attention to the impermissible statement and emphasizing it." In *Shoemaker* the court rejected the

defendant's argument that a reversal and new trial were necessary because the curative instruction might have served to draw the jury's attention to the impermissible statement and emphasize it. The court held that to agree with the defendant's argument "would put trial judges in a no-win situation once incompetent and inflammatory [material] had been offered" *Shoemaker*, 502 So. 2d at 1195. According to the court, to reverse a trial judge for failing to admonish the jury to disregard impermissible statements, yet also reverse him for addressing the impermissible statement when giving a curative instruction to remedy it, would make the judge "damned if he did and damned if he didn't." *Id.* The *Shoemaker* court held that trial judges are in the best position to "assess the amount of prejudice resulting from an [improper statement];" therefore, curative measures will ordinarily be presumed to remedy any improper comments. *Id.* In concluding its analysis the *Shoemaker* court held that if "it can be said with confidence that the inflammatory material had no harmful effect on the jury," then a mistrial is not warranted. *Id.*

As discussed in Johnson's fourth assignment of error, we hold that the trial judge was not in error for having given the jury a curative instruction for the purpose of ensuring that his remarks during Johnson's closing argument were not misinterpreted. However, we also hold, for arguments sake, that even if we assumed the trial judge's admonition to have been erroneous, any prejudice was removed by the curative instruction he gave to the jury. In light of the *Shoemaker* holding regarding curative instructions, because Johnson has produced no evidence to demonstrate that the admonition or curative instruction had a harmful effect on the jury so as to result in prejudice to his defense, we are unpersuaded that either of these remarks from the bench were in any way improper. This assignment of error is without merit.

VIII. THAT THE CUMULATIVE EFFECT OF THE ABOVE ERRORS DENIED THE DEFENDANT A FUNDAMENTALLY FAIR TRIAL.

Because there can be no "cumulative effect" of errors that do not exist, Johnson's final assignment of error must be rejected as having no merit.

THE JUDGMENT OF THE MADISON COUNTY CIRCUIT COURT OF CONVICTION OF RAPE AND SENTENCE OF TWENTY FIVE (25) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED AGAINST MADISON COUNTY.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., NOT PARTICIPATING.