

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00649 COA**

**WALTER GLEN THOMPSON A/K/A WALTER
GLENN THOMPSON**

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

DATE OF JUDGMENT:	05/12/95
TRIAL JUDGE:	HON. KEITH STARRETT
COURT FROM WHICH APPEALED:	LINCOLN COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CHESTER ALLEN NICHOLSON GAIL D. NICHOLSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY
DISTRICT ATTORNEY:	DUNN LAMPTON
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	SENTENCED TO 6 MONTHS IN THE CUSTODY OF LINCOLN COUNTY SHERIFF; DEFENDANT TO SERVE FIRST 5 DAYS IN THE LINCOLN JAIL, WITH THE BALANCE OF SENTENCE SUSPENDED FOR 2 YEARS GOOD BEHAVIOR.
DISPOSITION:	REVERSED AND REMANDED - 10/21/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/24/97

BEFORE THOMAS, P.J., DIAZ, AND HINKEBEIN, JJ.

HINKEBEIN, J., FOR THE COURT:

Walter Glen Thompson [hereinafter Thompson] was convicted in the Lincoln County Circuit Court

of contributing to the delinquency or neglect of a minor. For his offense Thompson was sentenced to six months in the custody of the Lincoln County sheriff, the first five days to be served in the Lincoln County Jail, with the remainder suspended for a period of two years good behavior probation. Aggrieved by his conviction, Thompson appeals on the following grounds:

I. WALTER GLYNN THOMPSON'S CONVICTION OF THE LESSER-INCLUDED OFFENSE OF CONTRIBUTING TO THE DELINQUENCY OF A MINOR IS NOT SUPPORTED BY THE EVIDENCE ADDUCED AT TRIAL.

II. THE TRIAL JUDGE'S REFUSAL TO ALLOW CONFRONTATION OF THE PURPORTED VICTIM IN THIS CASE WITH REGARD TO HER PENDING CIVIL SUIT FOR DAMAGES VIOLATED WALTER GLYNN THOMPSON'S SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES AGAINST HIM.

III. THE STATE'S INTRODUCTION OF UNCONVICTED MISCONDUCT IN THE REBUTTAL PORTION OF THEIR CASE WAS MORE PREJUDICIAL THAN PROBATIVE AND THUS IN VIOLATION OF WALTER GLYNN THOMPSON'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FOURTEENTH AMENDMENT.

IV. THE STATE INFLAMED THE JURY IN CLOSING ARGUMENT BY UTILIZING A PUBLIC POLICY ARGUMENT INVOKING THE "JURY'S DUTY TO PROTECT OUR MOST VALUABLE RESOURCE, OUR CHILDREN."

Because we hold Thompson's third assignment of error to be of merit, we must reverse his conviction and remand for a new trial. We also direct the trial court's attention to Thompson's second assignment of error, which may have ramifications upon his new trial.

FACTS

In December of 1993 Thompson was accused by a thirteen year-old girl [hereinafter victim] of placing his hands on her breasts. The victim was a student at the school where Thompson taught remedial math. According to the testimony at trial, the victim and two of her friends went to Thompson's classroom so that he could assist her in using a computer located there. The victim stated that she wanted to use the computer to generate a banner for her mother's upcoming birthday. It is uncontroverted that once the three girls arrived at Thompson's classroom, he instructed the victim's friends to leave the classroom and "go to recess." Thompson then closed the door to his classroom. This left Thompson and the victim alone in his classroom, behind a closed door. Thompson testified that he shut the door in order to keep out the noise generated by a group of high school students who were congregated outside.

According to the victim, while she was using the computer Thompson came up from behind her and put his hands on her shoulders. The victim stated that this behavior did not make her feel uncomfortable. The victim, however, also alleged that Thompson then moved his hands down to her chest area, where he placed his hands on her breasts and pressed against them. The victim claims that Thompson kept his hands pressed against her breasts for approximately five seconds, without saying anything. The victim stated that this touching made her feel "weird" and "uncomfortable," and that

the touching was not an accident. Thompson denied touching the victim in any manner, accidentally or intentionally. At some point during these events the victim's friends allegedly returned from recess to find the door to Thompson's classroom closed and locked. The friends claimed that they knocked on the door and requested to be let in, only to have Thompson tell them to "go back to recess." Thompson denied these allegations.

After the alleged touching occurred the victim left Thompson's room, as her banner was complete. The victim soon found her friends and related her story to them. The victim told her mother of the incident when she got home from school. After reporting the incident to school officials, the victim and her mother met with the school principal to discuss the matter. Thompson was subsequently indicted by the grand jury of Lincoln County for the felony of touching a child for lustful purposes. After a mistrial on the felony charge Thompson was tried again; however, at his second trial an instruction on the misdemeanor offense of contributing to the delinquency or neglect of a minor was submitted to the jury. Although the jury was again unable to find Thompson guilty of touching a child for lustful purposes, it did convict him of the misdemeanor of contributing to the delinquency or neglect of a minor. It is from this conviction that the instant appeal is taken.

I. WALTER GLYNN THOMPSON'S CONVICTION OF THE LESSER-INCLUDED OFFENSE OF CONTRIBUTING TO THE DELINQUENCY OF A MINOR IS NOT SUPPORTED BY THE EVIDENCE ADDUCED AT TRIAL.

Thompson argues that the trial court committed reversible error in denying his post-trial motion for JNOV, wherein he challenged the sufficiency of the evidence supporting his conviction. Thompson claims that, even viewing the evidence in the light most favorable to the prosecution, there was not sufficient evidence that he committed an act toward the victim which would subject him to criminal liability. Thompson contends that any criminal liability he might incur out of the allegations against him would be premised solely upon a jury finding that he put his hands on the victim's breasts, an allegation that he denied at trial. Implicit to Thompson's argument on appeal is the proposition that by not finding him guilty of touching a child for lustful purposes, the jury must have concluded that he did not put his hands on the victim's breasts. Accordingly, Thompson contends that because the touching of the victim's breasts was the only act he was accused of committing, if the jury could not find that he touched the victim's breasts so as to be liable for touching a child for lustful purposes, then the alleged touching could not serve as the act underlying his conviction for contributing to the delinquency of a minor. Thompson does not assign error to the trial court's granting of a jury instruction that characterized the misdemeanor offense of contributing to the delinquency or neglect of a minor as a lesser-included offense of the felony of touching a child for lustful purposes. The State responds by contending that there was sufficient evidence presented at trial so that reasonable and fair-minded jurors might have reached different conclusions, thereby placing the jury's verdict beyond this Court's authority to disturb.

Directed verdict and JNOV motions challenge the legal sufficiency of the evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). With regard to the legal sufficiency of the evidence, all credible evidence consistent with the defendant's guilt must be accepted as true and the prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *McClain*, 625 So. 2d at 778. This Court is authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and

fair-minded jurors could only find the accused not guilty. *Wetz v. State*, 503 So. 2d 803, 808 (Miss. 1987). Where there is in the record "substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict is thus placed beyond our authority to disturb." *Garrett v. State*, 549 So. 2d 1325, 1331 (Miss. 1989).

Thompson's assignment of error is premised upon the logical fallacy that by not convicting him of touching a child for lustful purposes, the jury implicitly found that none of his behavior during the incident at issue could contribute to the neglect or delinquency of a child. We decline to adopt this "all or nothing" approach. Merely because the jury was unable to find that the elements of one crime were not satisfied beyond a reasonable doubt does not mean that the jury was precluded from finding that the evidence before them was sufficient to satisfy the elements of a different offense.

The trial record indicates that four witnesses, in addition to the victim, testified as to the victim's behavior and statements arising out of the incident at issue. Two of the witnesses were the victim's friends, who observed her demeanor and heard her version of the events in question only minutes after the alleged misconduct occurred. The victim's friends were also personally involved in the incident, having been the children whom Thompson directed to leave his classroom so that he could be alone with the victim, and also being the persons who allegedly later returned to the classroom to find the door locked, with Thompson and the victim alone inside. The other two witnesses were the victim's mother and the principal of her school. Both of these witnesses heard the victim recount the events in question and were able to observe her demeanor and the emotional impact these events appeared to have upon her. All of the witnesses testified that, in their opinion, the victim was emotionally disturbed by whatever events transpired behind the closed door of Thompson's classroom.

At trial both Thompson and the victim testified that he instructed the victim's two friends, who had accompanied her to his classroom, to leave the premises and "go to recess." This left Thompson alone with the victim, with the door to the classroom closed. Thompson testified that he wanted to work alone with the victim because he "had to put [his] attention on what [he] was doing so we'd get [the banner] done and get her on out of there." Thompson further stated that although he was prepared to help any of the children use the computers in his classroom to make banners, "[he] could only run it with one at a time because [he] had to put [his] attention on it." Thompson acknowledged that on no other occasion did he conduct class with only a single student, although to do so would not be against school policy. The victim's two friends testified that when they returned to Thompson's classroom from recess, they found the door locked. The friends testified that they asked to be allowed in but that Thompson spoke to them from behind the locked door, telling them to "go back to recess." Thompson contends that at no time was the door locked and that to do so would have been improper under the circumstances. Thompson claims that he closed the door because high school students were outside making noise, and he did not want to be disrupted.

Under Mississippi law "[a]ny parent, guardian or other person who willfully commits any act . . . which . . . contributes to or tends to contribute to the neglect or delinquency of any child or which . . . results in the abuse and/or battering of any child, as defined in Section 43-21-105(m) of the Youth Court Law . . . shall be guilty of a misdemeanor . . ." Miss. Code Ann. § 97-5-39(1) (Rev. 1994). Section 43-21-105(m) defines an "abused child" as one whom "any person responsible for his care or

support . . . has caused or allowed to be caused upon said child sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment." Miss. Code Ann. § 43-21-105(m) (Rev. 1993). These code sections, read together, are commonly referred to as the misdemeanor offense of "contributing to the delinquency or neglect of a minor." The felony with which Thompson was charged was that of touching a child for lustful purposes, as defined by Section 97-5-23 of the Mississippi Code. Section 97-5-23 defines the lustful touching of a child as when:

[a]ny person above the age of eighteen (18) years, who, for the propose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of fourteen(14) years, with or without the child's consent

Miss. Code Ann. § 97-5-23 (Rev. 1994).

It is the holding of this Court that the record of the proceedings below contains substantial evidence so that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors might have reached different conclusions from the evidence. Merely because the jury did not find Thompson guilty of touching a child for lustful purposes does not mandate that the jury was precluded from finding that Thompson's conduct amounted to contributing to the delinquency or neglect of a minor. It is the opinion of this Court that the jury had before it substantial evidence, in the form of the testimony of several witnesses, from which it could reasonably conclude that Thompson's conduct contributed to the delinquency or neglect of the victim. Because Thompson has failed to demonstrate that reasonable men could not have found beyond a reasonable doubt that he was not guilty of contributing to the delinquency of a minor, the jury's verdict is beyond this Court's power to disturb. This assignment of error is without merit.

II. THE TRIAL JUDGE'S REFUSAL TO ALLOW CONFRONTATION OF THE PURPORTED VICTIM IN THIS CASE WITH REGARD TO HER PENDING CIVIL SUIT FOR DAMAGES VIOLATED WALTER GLYNN THOMPSON'S SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES AGAINST HIM.

Thompson argues that the trial court erred in sustaining the State's objections to his attempts to question the victim and her mother regarding their pending civil suit against him. Thompson contends that because the victim's civil suit (arising out of the same transaction as the criminal matter at bar) would be "aided"⁽¹⁾ by a criminal conviction, the victim's testimony might be biased. Thompson argues that preventing him from questioning the victim as to her knowledge of the civil suit, and also preventing him from questioning the victim's mother as to what information regarding the civil suit she had provided to the victim, was a violation of Rule 616 of the Mississippi Rules of Evidence. Thompson further contends that the trial court's rulings were not merely evidentiary issues, but rather, amounted to a violation of his Sixth Amendment right to confront witnesses against him and his right to due process of law under the Fourteenth Amendment. Thompson concludes his argument by contending that because of "the constitutional magnitude of this error," this Court should proceed under a de novo standard of review, rather than the abuse of discretion standard normally employed when reviewing a trial court's evidentiary rulings.

The State responds that pursuant to Mississippi Rule of Evidence 611(a) the trial court had considerable discretion in making its evidentiary rulings, so as to "exercise reasonable control over

the mode and order of trial testimony." The State argues that the appropriate standard of review in this matter should be that of whether the trial court's rulings amounted to an abuse of discretion, and that no constitutional issues were implicated by the trial court's evidentiary ruling. The State further argues that even if the trial court had erred in its rulings, any error found would be harmless because the rulings had no significant effect on Thompson's right to a fair trial, or any other substantial right he enjoyed.

After hearing the proffered testimony of both the victim and her mother, the trial court ruled that Thompson would not be allowed to question either of them about the pending civil litigation. The trial court did allow Thompson to question both of these witnesses, in front of the jury, as to all other relevant matters. Regarding the trial court's ruling as to Thompson's attempt to question the victim, the trial court found that "any significant knowledge" the victim had about the civil suit came from information supplied by Thompson at a deposition. The trial court then noted that "it would be improper for the defendant's attorney to provide bias or prejudice to [the victim] in order to use it for cross-examination purposes." Importantly, the trial court found that the information about the pending civil action that was made available to the victim was "very sparse," and merely served to put the thirteen year-old victim on notice that her parents were suing Thompson because of what he allegedly did to her in his classroom. The trial court then sustained the State's objection, ruling that

Thompson would not be allowed to cross-examine the victim as to what knowledge she had of the pending civil litigation.

Regarding the trial court's ruling on Thompson's attempt to question the victim's mother as to what information concerning the civil suit she had made the victim aware of, the trial court again sustained the State's objection. The trial court initially held that the mother's testimony would be admissible, but only for the purpose of showing bias or to impeach the testimony of the victim. However, after hearing the proffered testimony of the victim's mother, the trial court concluded that because the inconsistencies between her proffered testimony and that of the victim were "very minor," under Rule 403 the prejudicial effect of allowing the jury to hear such testimony far outweighed any probative value it might have. The trial court then held that it did not find "that the testimony of the [victim] ha[d] been impeached by [the mother's] testimony"; therefore, Thompson could not question the victim's mother about the civil litigation as her testimony would not be relevant.

In reviewing evidentiary rulings by a trial court this Court will reverse only "when an abuse of discretion results in prejudice to the accused." *Parker v. State*, 606 So. 2d 1132, 1138 (Miss. 1992); *Jackson v. State*, 645 So. 2d 921, 924 (Miss. 1994) (holding that evidentiary ruling constitutes reversible error only where denial of substantial right of defendant was affected by court's evidentiary ruling). Accordingly, it is clear from our supreme court's precedent that evidentiary rulings are subject to an abuse of discretion standard of review. *Tillis v. State*, 661 So. 2d 1139, 1142 (Miss. 1995) (stating that appellate courts review trial court evidentiary rulings by applying "the standard of clear abuse of discretion").

Under Mississippi Rule of Evidence 616 a party is entitled to impeach the credibility of a witness "by showing bias, prejudice, or interest of the witness for or against any party to the case." *Tillis*, 661 So. 2d at 1142 (quoting M.R.C.P. 616 cmt.). However, it should be kept in mind that "Rule 616 must be interpreted as it relates to other rules of evidence, particularly M.R.E. 104, 401 and 402." *Id.* Also of

interest in the case at bar is Rule 611(a) and, of course, the ever present "filter through which all evidence must flow," Rule 403. Under Rule 611(a), "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." M.R.C.P. 611(a). As should be obvious from its text, Rule 611(a) gives the judge discretion to limit cross-examination so as to make the examination effective for ascertaining the truth and to avoid the waste of time. *Johnston v. State*, 618 So. 2d 90, 93 (Miss. 1993).

While Rule 611(a) clearly gives trial court judges considerable discretion over the mode and scope of examination, we feel that this discretion ends where it begins to deprive a defendant of the ability to show possible bias in a witness who is testifying against him. Although we are unaware of any decision of the Mississippi Supreme Court directly on point to this issue, other courts have held it reversible error to prohibit the cross examination of a witness regarding whether he has an interest in a civil action arising out of the incident for which he is on trial. *See, e.g., Brooks v. Alabama*, 393 So. 2d 486,487 (Ala. 1980) (stating that case law consistently holds "the institution of a civil suit arising out of the same facts as a criminal prosecution to be within the permissible scope of cross-examination to show bias on the part of the witness").

It is this Court's conclusion that if a witness testifying against Thompson had an interest in a civil action arising out of the same facts as Thompson's criminal prosecution, such interest would be relevant to the credibility of that witnesses' testimony. Thompson should, therefore, be permitted to examine the victim and her mother as to possible bias resulting from their interest in a civil action against him. This examination should be limited in scope so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. The jury may then decide for itself how much weight/credibility to give to the witnesses' testimony.

Additionally, we hold that Thompson's rather vague claim that his Sixth Amendment right to confront witnesses against him and/or his Fourteenth Amendment right to due process of law were implicated by the trial court's ruling to be without merit. The trial record clearly indicates that Thompson was allowed to cross-examine all of the witnesses who testified against him. Unless Thompson can direct this Court to specific authority delineating how a simple ruling on the relevance of evidence violated his constitutional rights, this Court will not dignify his vague generalizations with an exposition of the various protections afforded criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution.

III. THE STATE'S INTRODUCTION OF UNCONVICTED MISCONDUCT IN THE REBUTTAL PORTION OF THEIR CASE WAS MORE PREJUDICIAL THAN PROBATIVE AND THUS IN VIOLATION OF WALTER GLYNN THOMPSON'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FOURTEENTH AMENDMENT.

Thompson assigns as error two instances in which the jury was made aware of a prior act of child molestation allegedly committed by him. The first instance complained of was when a witness blurted out that "[another student] had been touched at one time." The second instance complained of was

the trial court's ruling which allowed the State to introduce the testimony of another student at the victim's school, who alleged that Thompson improperly touched her the week before he allegedly touched the victim. Thompson argues that even if this evidence was properly admitted under Rule 404(b) of the Mississippi Rules of Evidence, the undue prejudice resulting from its admission far outweighed any probative value; therefore, it should have been excluded pursuant to Rule 403. In so arguing Thompson relies heavily upon the case of *Mitchell v. State*, 539 So. 2d 1366 (Miss. 1989), urging that it controls the question of whether an alleged prior bad act involving a victim different from the victim in the instant case may be introduced without violating Rule 403 of the Mississippi Rules of Evidence.

The State responds to the first instance by pointing out that the witness' outburst was not solicited by the prosecution, but rather was made voluntarily by the witness, of his own initiative. The State notes that Thompson's objection to the witness' outburst was immediately sustained and the jury instructed to disregard it. Concerning the second instance complained of, the State argues that the evidence of an alleged prior occasion of child molestation was properly admitted under Mississippi Rule of Evidence 404(b), as showing Thompson's opportunity and planning for the incident at bar. The State further contends that even if the admission of the alleged prior bad act had violated the undue prejudice balancing test mandated by Rule 403, any such error was cured by the limiting instruction submitted to the jury on this point.

The first reference to an alleged prior act of child molestation occurred when the school principal, Billy Britt [hereinafter Britt] was on the witness stand. As part of his answer to one of the State's questions, Britt volunteered the fact that one of the victim's fellow students had allegedly "been touched [by Thompson] at one time." Thompson immediately objected to the remark and was sustained. The trial court instructed the jury to disregard the remark and that they were not to take it into consideration when rendering their verdict. The trial court then asked each juror to indicate if he or she could follow the court's instruction. Upon receiving unanimous assent from the jury, the trial was allowed to continue.

The Mississippi Supreme Court has held that "where a trial judge sustains an objection to testimony interposed by the defense in a criminal case and instructs the jury to disregard it, the remedial acts of the court are usually deemed sufficient to remove any prejudicial effect from the minds of the jurors." *Davis v. State*, 530 So. 2d 694, 697 (Miss. 1988); *Wright v. State*, 540 So. 2d 1, 4 (Miss. 1989) (holding that "[a]bsent unusual circumstances, where objection is sustained to improper questioning or testimony, and the jury is admonished to disregard the question or testimony, we will not find error"). We adhere to this approach because we presume the jury to have followed the directions of the trial judge. *Davis*, 530 So. 2d at 697. In the case at bar we find no "unusual circumstances" requiring us to deviate from the general rule, principally due to the extremely brief nature of the outburst. The brevity of the outburst, coupled with the fact that as discussed *infra*, the evidence upon which Thompson predicates this assignment of error was subsequently deemed admissible, dictates that this portion of Thompson's assignment of error is without merit.

Regarding the second incident complained of by Thompson, where the trial court allowed one of the victim's friends [hereinafter M.T.] to testify that Thompson had touched her approximately a week before his alleged improper touching of the victim, we hold our supreme court's opinion in *Mitchell v. State* to be controlling. In *Mitchell* the Mississippi Supreme Court rejected the State's argument

that evidence of a defendant's prior sexual misbehavior with other children was admissible to show "the system of criminal action and lustful disposition of [the defendant] toward children." *Mitchell*, 539 So. 2d at 1372. The court held that to allow "testimony that shows a defendant's character of lustful behavior toward children in general, not just [toward the victim at issue]," would "not be consistent with the purpose of M.R.E. 404(b)." *Id.* The court concluded that under Rule 404(b) "evidence of other sexual relations [should be limited] to those between the defendant and the particular victim [at issue]." *Id.* The court explained that to admit evidence of prior bad acts involving victims other than the one for whom the defendant was on trial would be "[in]consistent with the notion that a defendant is on trial for a specific crime and not for generally being a bad person." *Id.* Accordingly, it is this Court's understanding that *Mitchell* requires an identity of victims in sexual abuse cases, i.e., the prior bad act sought to be admitted must have been committed upon the same victim that the defendant is currently on trial for having allegedly harmed. Consequently, if the evidence of prior bad acts concerns acts committed upon victims other than the one involved in the instant case, the prior bad acts evidence is not admissible under the Mississippi Rules of Evidence.

Because of our supreme court's holding in *Mitchell* we must reverse Thompson's conviction, as the trial court erred in allowing a different victim (M.T.) to testify as to the bad acts that Thompson allegedly perpetrated upon her on a prior occasion not at issue in the case at bar.

IV. THE STATE INFLAMED THE JURY IN CLOSING ARGUMENT BY UTILIZING A PUBLIC POLICY ARGUMENT INVOKING THE "JURY'S DUTY TO PROTECT OUR MOST VALUABLE RESOURCE, OUR CHILDREN."

Thompson contends that the State's closing argument referring to children as a "valuable resource" to society was inflammatory to the jury. Thompson argues that this portion of the State's remarks amounted to a "public policy closing argument," and was an attempt to influence the jury to return a guilty verdict "as a matter of community service." Thompson states that his objection to this argument was made (and overruled) at a sidebar conference, therefore accounting for the absence of an objection in the record. The State responds that its argument was well within the considerable discretion afforded parties in making their closing arguments. The State rejects Thompson's characterization of its closing remarks as a so-called "public policy argument" designed to inflame the jury against Thompson. The State argues that Thompson has failed to demonstrate how the allegedly improper closing argument resulted in prejudice to him; therefore, any error that might be assigned to the State's comments would not constitute reversible error.

In the case at bar the record before this Court does not indicate that Thompson made an objection to the now complained-of remarks. However, the record does reflect a request by Thompson to allow the attorneys to approach the bench, immediately after the remarks at issue were made. After the discussion at the bench the State concluded its remarks about children being a valuable resource, without any interference by Thompson. Based upon the transcript and the parties' briefs, we feel it reasonable to assume that Thompson did in fact object to the State's comments while he and the prosecutor were before the bench. It also seems apparent that the trial court must have overruled Thompson's objection, due to the State's uninterrupted resumption of the same argument. Accordingly, we are satisfied that Thompson made a contemporaneous objection on this issue, therefore preserving it for appeal. *See Livingston v. State*, 525 So. 2d 1300, 1307 (Miss. 1988) (holding that contemporaneous objection must be made to alleged erroneous comments in closing

argument or point is waived and may not be raised for first time on appeal). The argument that Thompson complains of is recorded in the trial transcript as follows:

BY THE STATE: Children are without a doubt our most important, our most precious, and should be our most protected resource. They are very, very valuable to us --

BY DEFENSE COUNSEL: Your Honor, excuse me, I hate to interrupt. Can we approach the bench?

BY THE COURT: Yes, Ma'am.

(DISCUSSION AT BENCH OUT OF HEARING OF JURY AND COURT REPORTER)

BY THE STATE : I don't think there's any question that children are a valuable, valuable resource that we have.

After this incident, the State made no further reference to children as a precious resource.

Under Mississippi law the attorneys on both sides of a criminal prosecution are given broad discretion in making closing arguments. *Ahmad v. State*, 603 So. 2d 843, 846 (Miss. 1992) In reviewing a trial court's ruling as to allegedly improper closing remarks, this Court looks to see "whether the natural and probable effect of the prosecuting attorney's improper argument created unjust prejudice against the accused resulting in a decision influenced by prejudice." *Dunaway v. State*, 551 So. 2d 162, 163 (Miss. 1989). Considering Thompson's argument, this Court would first note that we do not find that the complained-of remarks were improper. Even assuming, however, that the remarks were improper, Thompson never alleges that he was prejudiced by them, much less does he put forth any evidence of how these remarks resulted in undue prejudice to his defense. Because of Thompson's failure to demonstrate prejudice resulting from the allegedly improper remarks, this assignment of error is without merit.

THE JUDGMENT OF THE LINCOLN COUNTY CIRCUIT COURT IS REVERSED AND REMANDED FOR A NEW TRIAL. COSTS ARE ASSESSED AGAINST LINCOLN COUNTY.

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

1. Presumably, Thompson is referring to the collateral estoppel effect a criminal conviction would have upon his defense to the victim's civil action against him.