

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-KA-00869 COA**

**CLYDE CAMPBELL**

**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:	08/07/95
TRIAL JUDGE:	HON. LILLIE BLACKMON SANDERS
COURT FROM WHICH APPEALED:	ADAMS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PAMELA A. FERRINGTON
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	RONNIE HARPER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTION OF AGGRAVATED ASSAULT
DISPOSITION:	AFFIRM-10/21/97
MOTION FOR REHEARING FILED:	11/5/97
CERTIORARI FILED:	1/27/98
MANDATE ISSUED:	4/16/98

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

KING, J., FOR THE COURT:

Campbell was convicted of aggravated assault for throwing gasoline on his girlfriend and setting her afire. He was sentenced as an habitual offender under §99-19-83 Miss.Code Ann. (Rev.1994). Campbell contends the trial court erred by (1) sentencing him to life imprisonment without the benefit of parole and (2) admitting into evidence photographs of the victim's injuries. Finding only harmless error, we affirm.

**FACTS**

On August 14, 1989, Campbell threw gasoline on his girlfriend, Barbara Dukes, and set her afire with a cigarette lighter. A trial was held and the circuit court judge admitted into evidence photographs of Dukes' second degree burns on her arms and legs. The jury found Campbell guilty of aggravated assault, and he was subsequently sentenced as an habitual offender to life imprisonment without benefit of parole under § 99-19-83 of the Mississippi Code, Annotated (Rev.1994). On December 4, 1974, Campbell was indicted in cause numbers 6628, 6629, and 6630. Cause numbers 6628 and 6629

were remanded to the files, but Campbell pled guilty to his first felony, assault and battery with intent to kill in cause number 6630. He was sentenced to five years and served more than one year in the custody of the State Department of Corrections. On July 28, 1981, Campbell was convicted of his second felony, carrying a concealed weapon as a convicted felon. He was again sentenced to five years and served more than one year in the custody of the State Department of Corrections. Campbell appeals his conviction and sentence as an habitual offender to this court.

## ISSUES AND ANALYSIS OF THE LAW

### I. THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT TO LIFE IMPRISONMENT WITHOUT BENEFIT OF PAROLE UNDER 99-19-83 OF THE MISSISSIPPI CODE ANNOTATED (REV.1994) BECAUSE THE HABITUAL PORTION OF THE INDICTMENT WAS FAULTY.

Campbell contends that the Grand Jury indictment improperly indicates he was convicted in cause number 6629 instead of 6630. Thus, he contends the error in the indictment was fatal since the indictment did not state with particularity and specificity his previous convictions. In the instant case, the variance between the indictment and the proof is harmless error. *Corley v. State*, 536 So.2d 1314, 1316 (Miss.1988); *Upshaw v. State*, 350 So.2d 1358, 1362 (Miss.1977); *Stone v. State*, 242 So.2d 127, 128 (Miss.1970). Copies of the previous felony convictions and the indictment were submitted in the record. In the indictment, the cause number for aggravated assault with attempt to kill was entered as 6629 instead of 6630. However, the type of felony, the date of conviction, and the amount of time served were entered correctly. Campbell was convicted of two prior felonies which were listed in the indictment. The judge properly sentenced him as an habitual offender.

### II. THE TRIAL COURT ERRED IN ADMITTING GRAPHIC PHOTOGRAPHS OF THE VICTIM'S INJURIES INTO EVIDENCE WHEN THE DEFENDANT STIPULATED THAT THE VICTIM HAD BEEN BURNED AND THERE WAS NO PURPOSE IN THE ADMISSION OF SUCH PHOTOGRAPHS OTHER THAN TO AROUSE THE PASSION AND PREJUDICE OF THE JURY.

"It is well settled in this state that the admission of photographs is a matter left to the sound discretion of the trial judge and that his decision favoring admissibility will not be disturbed absent a clear abuse of that judicial discretion . . . . A photograph, even if gruesome, grisly, unpleasant, or even inflammatory, may still be admissible if it has probative value and its introduction into evidence serves a meaningful evidentiary purpose." *Hart v. State*, 637 So.2d 1329, 1335 (Miss.1994). Although Dukes, several eyewitnesses, and a police officer testified at trial about Dukes' injuries, we find that the photographs had additional probative value. The trial judge did not abuse his discretion by admitting the photographs into evidence.

**THE JUDGMENT OF THE CIRCUIT COURT OF ADAMS COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF LIFE AS AN HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO ADAMS COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, DIAZ, HERRING,**

**HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**