

Serial: 235931

## IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-M-01245

VICTOR HURNS

*Petitioner*

v.

STATE OF MISSISSIPPI

*Respondent*ORDER

Before the panel of Randolph, C.J., Beam and Chamberlin, JJ., is the “Application for Leave to Proceed in the Trial Court with His Motion for Postconviction Relief” filed by Victor Hurns.

This Court affirmed Hurns’s murder conviction and life sentence, and the mandate issued in April 1993. *Hurns v. State*, 616 So. 2d 313, 322 (Miss. 1993). Since then, he has filed at least 15 applications for leave to seek post-conviction relief. *See Order, Hurns v. State*, No. 2018-M-00633, at \*1 (Miss. July 29, 2020).

The Court has restricted his *in forma pauperis* status, directing the Clerk of this Court not to “accept for filing any further applications for post-conviction collateral relief (or pleadings in that nature) from [him] that are related to this conviction and sentence unless he pays the applicable docket fee.” Order, *Hurns v. State*, No. 2018-M-00633, at \*3 (Miss. Sept. 12, 2019). He paid the applicable docket fee to file this application.

He raises two issues: (1) His double-jeopardy rights were violated, and (2) counsel was ineffective for failing to raise the issue.

Double jeopardy is a recognized exception to the time, waiver, and successive-writ bars. *Rowland v. State*, 98 So. 3d 1032, 1036 (Miss. 2012) (quoting *Rowland v. State*, 42 So. 3d 503, 508 (Miss. 2010)), *overruled on other grounds by Carson v. State*, 212 So. 3d 22 (Miss. 2016). And in exceptional circumstances, an ineffective-assistance claim might

be excepted from the procedural bars. *Chapman v. State*, 167 So. 3d 1170, 1174-75 (Miss. 2015); *Bevill v. State*, 669 So. 2d 14, 17 (Miss. 1996); *Brown v. State*, 187 So. 3d 667, 671 (Miss. Ct. App. 2016). To merit waiving the bars, however, the claim must have some arguable basis. *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010).

After due consideration, we find that Hurns's claims are insufficient to merit waiving the bars. He relies, in part, on *Harris v. State*, 723 So. 2d 546 (Miss. 1997). But "simple murder is a lesser[-]included offense of capital murder." *Wheeler v. State*, 536 So. 2d 1341, 1344 (Miss. 1988) (citing *Bell v. Watkins*, 692 F.2d 999, 1003 (5th Cir. 1982)). "*Harris* dealt with a lesser offense and has no bearing on a lesser-included offense . . . ." *State v. Shaw*, 880 So. 2d 296, 303 (Miss. 2004) (emphasis omitted) (citing *Wolfe v. State*, 743 So. 2d 380, 387 (Miss. 1999)); *see also Hall v. State*, 127 So. 3d 202, 206 (Miss. 2013) (stating that *Harris*'s error, i.e., deeming aggravated assault a lesser-included offense of murder, "vitiates" its holding).

IT IS THEREFORE ORDERED that Hurns's "Application for Leave to Proceed in the Trial Court with His Motion for Postconviction Relief" is denied.

SO ORDERED.

DIGITAL SIGNATURE  
Order#: 235931  
Sig Serial: 100003388  
Org: SC  
Date: 03/09/2021

  
Robert P. Chamberlin, Justice

2 P-30

Appendix "B"

CAPITAL MURDER - MCA 997-3-19(2) (e) and MCA 999-19-81

THE STATE OF MISSISSIPPI  
BOLIVAR COUNTY

CIRCUIT COURT

Second Judicial District Prior to May Term, 19 90 No. 7250

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful citizens of said County, Judicial District, and State aforesaid, duly elected, empanelled, sworn and charged to inquire in and for said County, Judicial District, and State aforesaid, at the November 1989 Term of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That

VICTOR HURN, a/k/a Victor Hurns,  
AND DERRICK LOWERY

late of the County and Judicial District aforesaid, on or about the 25th day of June, in the year of our Lord, 19 89, in the County, Judicial District and State aforesaid, and within the jurisdiction of this Court, ~~XXXXXXXXXXXXXX~~ while acting in concert with each other, and with Eddie Lee Robinson, did unlawfully, wilfully, feloniously, without the authority of law, kill and murder Robert Anderson, Jr., a human being, during a period of time in which they, the said VICTOR HURN, a/k/a Victor Hurns, and DERRICK LOWERY, while acting in concert with another or others, aided, abetted, or encouraged in the commission of the crime of sexual battery of the said Robert Anderson, Jr., in violation of Section 97-3-95(a) and Section 97-3-95(b), all in violation of Section 97-3-19(2)(e) of the Mississippi Code of 1972, as amended,

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi. Indictment against defendant Victor Hurn continued. (See attachment)

AFFIDAVIT: This indictment was concurred in by twelve (12) or more members of the Grand Jury, and at least fifteen (15) were present during all deliberations.

A TRUE BILL

Leon Gillespie  
Foreman of the Grand Jury

Before me personally appeared the above-named Grand Jury Foreman who made the above affidavit.

SWORN TO AND SUBSCRIBED before me this the 24th day of April, 19 90.

CIRCUIT CLERK, BOLIVAR COUNTY, MS BY: Ronald F. Finis

Circuit Clerk

WITNESSES:

Billy Joe Estes

James S. Hall

District Attorney

Filed 24th day of April, 19 90

Ronald F. Finis Clerk.

IN THE CIRCUIT COURT OF BOLIVAR COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT

STATE OF MISSISSIPPI

VS.

VICTOR HURNS

NO. 7250

DEFENDANT

JUDGMENT AND SENTENCE

This cause coming on this day to be heard, it being a regular day of the May, 1990, Term of this Court, and the District Attorney who prosecutes for and on behalf of the State and the Defendant Victor Hurns in his own proper person and represented by counsel being present in open court, and the cause being called, the Court finds and adjudges as follows:

That the Defendant having heretofore been indicted and arraigned and having entered a plea of not guilty to the charge of Capital Murder as shown in the indictment in this cause and the case having come on for trial, whereupon both the State and the Defendant announcing ready for trial, came a jury of good and lawful citizens composed of Bill A. Castle and eleven other good and lawful jurors of Bolivar County, Mississippi, who were accepted by both the State and the Defendant, and having been specially sworn to try the issue joined and after hearing the evidence, instructions of the Court, and the argument of counsel, retired to consider their verdict and presently returned into open court with the following verdict:

"We, the jury, find the Defendant guilty of Murder."

STATE OF MISS. BOLIVAR COUNTY  
Certified A True Copy  
This 14 Day of June, 1990  
ROSE S. SIMMONS, Circuit Clerk  
By \_\_\_\_ D.C.

That pursuant to judgment previously entered in this cause, the Court adjudged the Defendant Victor Hurns

FILED 6/1/90  
MM-554 ROSE S. SIMMONS  
Circuit Clerk

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Rosemary Hurns (P-68 of 69) (50)

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~~APPENDIX R~~

APPENDIX R

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his attorneys and the State is represented by the district attorney's office. The State has just rested its case at this point, and the Court is in chambers to hear any motions that the defense may have at this time.

BY THE COURT: Now, do you all think that these motions will take any appreciable length of time? If you do, we might as well let the jury go on back to the motel?

BY MR. PEARSON: I think we should because even after the motions we are going to have to have a little time for a conference to discuss our--

BY THE COURT: --All right. (Looking at the deputy sheriff) Charles, you can take the jury on back to the motel. We will try to start back at 1:15.

BY DEPUTY SHERIFF ANDERSON: All right. I'll have them back here at 1:15.

BY THE COURT: All right. Mr. Atkinson or Mr. Pearson you can proceed with your motions.

BY MR. PEARSON: Our first one is, Your Honor, comes now the defendant and moves the Court to direct the jury to return a verdict in favor of the defendant as to the charge of capital murder or alternatively to dismiss the capital murder portion on the grounds that there are not sufficient evidence to sustain a verdict that the death of the decedent was occasioned by a blow or a wound or a trauma that occurred during the commission of a sexual battery. And, Your Honor, before I make the argument, it might be best if I refer the Court to two cases that I think probably adequately sets out the law on it. The

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BY THE COURT: Members of the jury, before we do start the defense testimony, the Court, and the reason it has taken so long it was a serious motion before the Court, and the Court has concluded under the law that the defendant Victor Burns in this case cannot properly be charged with the crime of Capital Murder. So you will be considering the crime of Murder for the rest of this trial. In other words, rather than being a capital murder case, it is now a murder case. You will be instructed on the elements of the crime of murder and that is what you will decide at the conclusion of the testimony. All right. Mr. Pearson, you can call--

BY MR. ATKINSON: --One final thing, Your Honor.

WHEREUPON, THE ATTORNEYS APPROACHED THE BENCH FOR A BRIEF CONFERENCE OUT OF THE HEARING OF THE JURY.

(BENCH CONFERENCE: BY MR. ATKINSON: Your Honor, would the Court consider going on and telling the jury that, therefore, they would not have to, in this trial, consider the death penalty because there are some people on there that do not understand that. BY THE COURT: We normally tell them at the beginning, anyway. As I recall, it is automatic. They just decide the guilt or innocence--  
BY MR. ATKINSON: --Yes, sir, but can they be so instructed?  
BY THE COURT: Yes, I just want to be sure I don't mis-instruct them. BY MR. ATKINSON: Thank you, Your Honor.)

BY THE COURT: Also, that being the case, and the attorneys have asked me to point this out to you, and I think they were correct in doing so, you will not be determining the sentence -- there will be no death penalty in this case and the jury will be considering only guilt or innocence as to the charge against the defendant. All right.

(Exhibit B)

INSTRUCTION NO. 7250-S-1-B

The defendant, VICTOR HURNS, has been charged by indictment with the crime of capital murder of Robert Anderson, Jr. However, the Court instructs you that you may not consider the crime of capital murder, but should consider whether the defendant, VICTOR HURNS, has committed the crime of murder.

If you find from the evidence in this case beyond a reasonable doubt that:

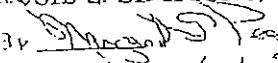
- (1) Robert Anderson, Jr., was on or about June 24 or June 25, 1989, a living person, and
- (2) the defendant, VICTOR HURNS, while acting in concert with or aiding and abetting or encouraging others, did wilfully and without authority of law cause the death of Robert Anderson, Jr., by hitting and kicking him, and if you find that these acts were eminently dangerous to others and evincing a depraved heart, regardless of human life; although without any premeditated design to effect the death of Robert Anderson, Jr., then you shall find the defendant, VICTOR HURNS, guilty of murder.

If the state fails to prove beyond a reasonable doubt any one or more of these elements, then you shall find the defendant not guilty of murder.

Given:

J.S.

FILED 6-1-70  
ROSIE S. SIMMONS  
Circuit Clerk  
By  D.C.

GIVEN by the COURT and filed  
ROSIE S. SIMMONS, Clerk  
By  D.C.  
(6-1-70)

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616 So.2d 313  
Supreme Court of Mississippi.

Victor HURN  
v.  
STATE of Mississippi.

No. 90-KA-1068.

|  
April 1, 1993.

#### Synopsis

Inmate was convicted in the Circuit Court, Bolivar County, John L. Pearson, J., of murder. Inmate appealed. The Supreme Court, Smith, J., held that: (1) delay of 334 days did not violate constitutional right to speedy trial; (2) autopsy photo showing brain and large amount of blood in skull was admissible; and (3) inmate did not commit negligent manslaughter.

Affirmed.

Banks, J., concurred in result and filed opinion joined by Hawkins, C.J., and Dan M. Lee, P.J.

#### Attorneys and Law Firms

\*314 Boyd P. Atkinson, Cleveland, Thomas H. Pearson, Clarksdale, for appellant.

Michael C. Moore, Atty. Gen., Jackson, Charles W. Maris, Jr., Special Asst. Atty. Gen., Jackson, for appellee.

Before PRATHER, P.J., and PITTMAN and SMITH, JJ.

#### Opinion

SMITH, Justice, for the court:

On October 25, 1989, the grand jury of Bolivar County, Mississippi, indicted the appellant, Victor Hurns, along with Derrick Lowery and Eddie Lee Robinson for capital murder in connection with the June 25, 1989, death of Robert Anderson. Victor Hurns was arraigned on November 20, 1989. One of the co-defendants requested and was granted a continuance on December 7, 1989. Hurns, *pro se*, filed a motion to dismiss for failure to provide a speedy trial, on December 28, 1989.

The trial court on January 8, 1990, acting on a motion, granted severance to the co-defendants. On February 22, 1990, Robinson's case went to trial first and Hurns, pursuant to his request, was allowed by the trial court to attend the proceeding. On April 2, 1990, Hurns filed another motion to dismiss, alleging speedy trial grounds. The motion was denied.

Hurns was re-indicted on April 24, 1990. He filed another motion to dismiss on speedy trial grounds, which the lower court dismissed and his trial commenced May 28, 1990. At the conclusion of the State's case-in-chief, Hurns moved to dismiss the capital portion of the case alleging the State had failed to prove that the victim's death occurred as a result of actions taken during the commission of a sexual battery. The lower court agreed and allowed the case to proceed to the jury on simple murder. Hurns was found guilty of murder by the jury, and the lower court entered judgment against Hurns finding him to be an habitual offender and sentenced him to life without possibility of parole under Miss. Code Ann. § 99-19-81 (Supp.1990), with his custody given to the Mississippi Department of Corrections. Aggrieved by the trial court judgment, Hurns appeals to this Court alleging the following assigned errors for review:

#### I. THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT SINCE THE STATE OF MISSISSIPPI VIOLATED THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL.

#### II. THE TRIAL COURT COMMITTED ERROR IN THAT IT FAILED TO SUSTAIN A DEFENSE MOTION TO DISALLOW THE INTRODUCTION OF GRUESOME, HIGHLY PREJUDICIAL PICTURES OF THE DECEASED THEREBY DENYING THE DEFENDANT A FAIR TRIAL.

#### III. THE TRIAL COURT ERRED IN THAT IT FAILED TO GRANT DEFENDANT'S JURY INSTRUCTION D-3, A CULPABLE NEGLIGENCE MANSLAUGHTER INSTRUCTION.

#### IV. THE TRIAL COURT ERRED IN OVERRULING THE DEFENSE MOTION TO DISMISS THE CHARGE OF MURDER AND RELEASE THE JURY PANEL BECAUSE THE EVIDENCE OF THE UNDERLYING FELONY CHARGE OF SEXUAL BATTERY HAD BEEN RECEIVED PRIOR TO

Leroy Perry testified next for the State. He testified that Hurns was the "chief head man" of the "posse" and that Hurns had become very upset two days before this incident when he had been sentenced. When he returned to his cell from sentencing, Hurns said, "Somebody must die." Hurns gave Perry the option of receiving a "blanket party" or fighting Anderson. Perry admitted that he was a member of the "posse," but only because he had to be. He admitted hitting Anderson during the "blanket parties," but claimed that he did not hit him as hard as he could. Perry further testified that he saw Hurns jump off the bed in cell four and hit Anderson in the head with his knee and that Anderson just lay there on the floor, face down and shaking. He further testified that he observed Hurns and Derrick Lowery take Anderson to his cell and lay him on the concrete floor. Finally, Perry testified that, during the final "blanket party," Eddie Lee Robinson grabbed Anderson and forced his head into the wall four or five times.

The next State witness was Mark Ferretti. Ferretti testified that when the "blanket parties" were held, fifteen to twenty people would all crowd into cell four, because that was the only cell in the jail that was not monitored by a camera. Ferretti testified that on Friday, June 23rd, and Saturday, June 24th, "they" made M.C. Robinson and Anderson fight many times. He further testified that Hurns chose who got the "blanket parties." After each fight, they brought Anderson to cell four for a "blanket party." Ferretti said that Anderson was forced to have sex with eight to nine other people. He did see Hurns hit Anderson with an elbow. After Anderson was found dead, Ferretti heard Hurns tell inmates that they needed to make up and report a story that M.C. and Anderson must have gotten into another fight that night after lockdown, as they were in the same cell.

Cedric Coleman was called by the State and testified basically to the same facts relating to the "posse" and "blanket parties" as other inmates had. He testified that Hurns forced Anderson and M.C. Robinson to fight and that Anderson received three to four "blanket parties" that night. Further, Anderson was forced by Hurns to perform oral sex on Leroy Perry and Willie Drummer. Coleman stated that at the last "blanket party" he saw Hurns hit Anderson once in the back and once with his elbow when he dropped down on him like a wrestler. He further testified that Hurns put all the inmates up to the story about M.C. Robinson and Anderson fighting.

The next witness for the State was Roosevelt Hunter. Hunter testified that Anderson received four to five "blanket parties" on June 24, 1989. Hunter testified that at the last "blanket

party" when Anderson went down on the floor, Hurns began constantly dropping elbows on him just as in wrestling. He saw one blow hit Anderson on the back of the neck. Hunter further noticed that Anderson was breathing loudly. Hunter also testified that Hurns told the others to tell the investigators that Anderson and M.C. Robinson fought all night. Finally, Hunter stated that he saw Eddie Lee Robinson bump Anderson's head into the iron rail of the bed.

Stevoris Franklin testified about the "posse" and Hurns' domination of the jail. He stated that Anderson received three or four "blanket parties" that night, and admitted hitting Anderson himself. He remembered Hurns jumping off of the top bunk and hitting Anderson with his forearm while Anderson lay on the floor on his back. Franklin stated that Anderson started foaming and bleeding out of the mouth \*317 and shaking and that Anderson never got up after that. Franklin remembered Eddie Lee Robinson ramming Anderson's head into the bars. He remembered Hurns and Lowery dragging Anderson back to his cell about thirty minutes before lockdown. Franklin and Coleman put Anderson in his bunk lying on his back, and the next morning they found Anderson swollen and changing colors. He further confirmed that Hurns told everyone to say that M.C. Robinson was responsible. He admitted that he had given two different versions through his statements, but stated that he told the truth after Hurns was removed from the jail.

In an attempt to show that the fatal blow or blows could not be traced to Hurns' actions and that neither Hurns nor any of the other inmates had the intent to kill, the defense called Ricky Haywood, the jailer. Haywood testified that he made roll call the morning following the fight at 6:00 or 6:15 a.m. He testified that as he passed by Anderson's cell, he reached into the cell and touched Anderson's feet, and Anderson responded by moving them. He testified that he woke M.C. Robinson and asked him what had happened and M.C. stuttered in response. Haywood stated that Clinton Burns was standing up and told him that M.C. Robinson and Anderson had been fighting.

Clinton Burns, also an inmate at the jail, shared a cell with Anderson, Ernest Walker, Jr., and M.C. Robinson. Burns testified that he was in the cell about thirty minutes before lockdown on June 24, 1989, when Hurns dragged Anderson into the cell and told him to keep a rag to Anderson's face. Burns stated that he sat beside Anderson all night and that he could see "old brown stuff" running out of his mouth all night. He tried to call to Anderson but he would not respond. He admitted that he gave a statement to Deputy Estes that M.C.

to a speedy trial. Hurns was extremely experienced with the criminal justice system and it is conceivable that he realized six months had passed and that the delay was about to become presumptively prejudicial. This factor should be weighed against the State.

#### D. Prejudice to the Defendant

The Court in *Barker* stated:

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

*Barker v. Wingo*, 407 U.S. at 532, 92 S.Ct. at 2193, 33 L.Ed.2d at 118 (1972).

Hurns maintained that he had increased anxiety due to the delay. The fact that he was already incarcerated takes out subpart (i). Hurns does not even attempt to show particularized prejudice, and none is self-evident from the record, taking out subpart (iii). It is conceivable that Hurns may have suffered increased "anxiety" due to the fact that this was a death penalty case. All factors considered, this prong of *Barker* weighs in favor of the State.

Overall, Hurns' right to a speedy trial seems to have been respected. More importantly, this Court finds that Hurns has not even attempted to show any prejudice from the record because none exists. The reasons for the delay are mostly neutral as the result of overcrowded court dockets and trial schedules. As in *Barker* this was no ordinary street crime but one with very serious complex circumstances. Hurns alludes to an alleged violation of the 270 day rule under Miss.Code

Ann. § 99-17-1 (Supp.1990). However, from the date of his original arraignment on November 20, \*319 1989, to time of trial, we find the time to be less than 270 days.

This issue has no merit.

#### II.

The next issue is whether the lower court committed error in failing to sustain a defense motion to disallow the introduction of alleged gruesome, highly prejudicial pictures of the deceased which denied Hurns a fair trial. It is well settled that admission of photographs into evidence rests within the sound discretion of the trial court. *Ladner v. State*, 584 So.2d 743, 753-54 (Miss.1991) (cert den. 502 U.S. 1015, 112 S.Ct. 663, 116 L.Ed.2d 754) (citing *Marks v. State*, 532 So.2d 976, 980 (Miss.1988); *McFee v. State*, 511 So.2d 130, 134-35 (Miss.1987)).

Additionally, the trial court, as well as the appellate court on review, must look at Mississippi Rule of Evidence 403 which states: "[A]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." This is the proper criteria for the trial court to consider in making its decision whether to admit photographs or not. Hurns contends the lower court abused its discretion in applying Rule 403, citing *Sudduth v. State*, 562 So.2d 67 (Miss.1990). In *Sudduth*, this Court held that photographs of a murder victim should not ordinarily be admitted where the "killing is not contradicted or denied, and the corpus delicti and identity of victim have been established." *Id.* at 70 (citing *Davis v. State*, 551 So.2d 165, 173; *Shearer v. State*, 423 So.2d 824, 827 (Miss.1982)).

The Court in *Sudduth*, however, went on to say that photographs of bodies may nevertheless be admitted into evidence in criminal cases where they have probative value and where they are not so gruesome or used in such a way as to be overly prejudicial or inflammatory. *Davis*, 551 So.2d at 173; *Griffin v. State*, 504 So.2d 186, 191 (Miss.1987); Miss.R.Evid. 403; *Sudduth*, 562 So.2d at 70. In the case at bar, the photo in question, State's exhibit 11,

Stated from a defense perspective, the Court has often held that a defendant is entitled to an instruction on his theory of the case where it is supported by the evidence and correctly states the law. *Hester v. State*, 602 So.2d 869 (Miss.1992). Thus, an instruction in this case would have been proper only if the court had found that the evidence would support a finding by the jury that the defendant was guilty either of culpable negligence manslaughter or of the greater crime charged.

Ultimately the State requested that the jury be instructed on murder under Miss.Code Ann. § 97-3-19(1)(b) (Supp.1990):

(1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases:

.....

(b) When done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual.

Culpable negligence is defined in Miss.Code Ann. § 97-3-47 (1972) as "negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life." This crime requires, and should, a much lesser showing \*321 of culpability than that required by the depraved heart murder section. This Court has noted that prior cases for all practical purposes coalesced the two murder statutes so that § 97-3-19(1)(b), the depraved heart statute, subsumes (1)(a), the deliberate design statute.

*Mallett v. State*, 606 So.2d 1092, 1095 (Miss.1992).

The evidence in this case shows intentional, not negligent, acts committed by Hurns. The evidence does not support a finding that Hurns possessed only the lesser degree of culpability covered by the culpable negligence statute. We hold that the lower court correctly refused to grant instruction D-3. This issue is totally without merit.

#### IV.

Hurns contends that the lower court erred in allowing the trial to continue on a murder charge after the jury had received evidence of the underlying felony charge of sexual battery pertaining to the original capital murder indictment. As a result of this alleged error, Hurns contends the jury was prejudiced and he was denied a fair trial.

The defense merely asked that the jury be instructed that the case was no longer capital and that the death penalty would not be considered. The court instructed the jury properly. Quite simply, the defense did not seek an instruction from the court for the jury to disregard the testimony about the sexual activity that went on in the jail.

Additionally, Hurns argues that he was entitled to a ruling under M.R.E. 404(b) on the issue of the admission of evidence of other crimes, wrongs or acts. We find that the evidence was admissible under Rule 404(b) to relate the complete story of the crime by showing that Hurns had total domination over all the inmates in the facility. Rule 404(b) states that:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

This Court has held that other crimes or acts may be proven where "integrally related in time, place and fact" to the crime charged. *Wheeler v. State*, 536 So.2d 1347, 1352 (Miss.1988). *Wheeler* quoted from a prior case of this Court: "[w]e are concerned here with the State's legitimate interest in telling a rational and coherent story of what happened." *Id.* quoting

*Neal v. State*, 451 So.2d 743, 759 (Miss.1984). Both of these cases recognize that the focus of Rule 404(b) is on the prohibition of character evidence offered to prove conduct in conformity therewith, not simply a blanket prohibition of evidence of other actions which might be relevant in another manner. The rationale of *Wheeler* applies to the present case. The evidence of the sexual activity greatly enhanced the State's theory of the case that Hurns so dominated the other inmates that they would do absolutely anything he said, even