

NO. _____

SUPREME COURT OF THE UNITED STATES

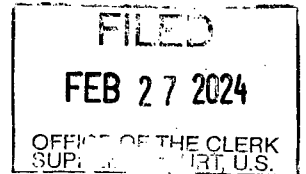
23-7089

STEVEN LEWIS, ORIGINAL

Petitioner, NO. 2021-KA-00472-COA

VS.

State OF MISSISSIPPI,



On Petition for a Writ of Certiorari to
the United States Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Steven Lewis
P.O BOX 1057
Parchman, MS 38738
(662) 745-6611

I. Questions Presented

- Whether the Constitution Permits the retrial of a defendant following a trial in an improper Venue.
- Whether the Constitution Permits the retrial of a defendant following a trial courts' error in denying defense instructions.
- Whether trial courts limitation on cross-examination was a violation of a Constitutional right to be confronted with the witnesses against him, and if so, is it only harmless error.

II. TABLE OF CONTENTS

I. Question Presented	<u>i</u>
II. Table of Contents	<u>ii</u>
III. Table of Authorities	<u>iii</u>
IV. Petition for Writ Of Certiorari	<u>1</u>
V. Opinions Below	<u>1</u>
VI. Jurisdiction	<u>1</u>
VII. Constitutional Provisions Involved	<u>2</u>
VIII. Statement of the Case	<u>3, 4</u>
1. THE Altercation On Mr. Lewis' Property	<u>4, 5, 6</u>
2. Direct Appeal	<u>6, 7, 8, 9</u>
IX. REASON FOR GRANTING THE WRIT	<u>9, 10, 11, 12</u>
A. To avoid erroneous deprivations of the right to confront witness, this court should expound and clarify on; to what extent does a defendant have a right to explore bias to impeach a witness against him in criminal trials.	<u>9, 10</u> <u>13, 14, 15, 16, 17, 18, 19</u>
B. To avoid erroneous deprivations of defendant right to certain defense instructions, this court should address to trial courts the importance of abuse in discretion in regards to denying or granting defense instructions, and trial outcomes being considered fair or unfair.	<u>10, 11, 12</u> <u>13, 14, 15, 16</u>
C. To avoid erroneous Jurisdiction from courts abuse of decreations in proceeding sua sponte in changing of venue during criminal trials. This Court should clarify under what circumstances should a trial court proceed sua sponte in changing a defendant trial venue.	<u>10, 11, 12</u> <u>13, 14, 15, 16</u>
X. CONCLUSION	<u>16, 17, 18, 19</u>
XI. APPENDIX	<u>19</u>
	<u>A, B, C</u>

III. TABLE OF AUTHORITIES CITED

CASES

<u>Baldwin v. State</u> , 732 So. 2d 236, 241 (Miss. 1991)	18
<u>Brown v. State</u> , 39 So. 3d 890, 899 (Miss. 2010)	12
<u>Chinn v. State</u> , 958 So. 2d 1223, 1225 (Miss. 2007)	12, 13
<u>Fisher v. State</u> , 481 So. 2d at 223-24 (Miss. 1995)	7, 19
<u>Giles v. State</u> , 650 So. 2d 846, 849 (Miss. 1995)	11
<u>Hester v. State</u> , 602 So. 2d 869, 872 (Miss. 1992)	14
<u>King v. State</u> , 960 So. 2d 413, 429 (Miss. 2007)	18
<u>Kuebler v. State</u> , 204 So. 3d 1220, 1226 (Miss. 2016)	13
<u>Maye v. State</u> , 49 So. 3d 1124 (Miss. 2010)	18
<u>Maye v. State</u> , 49 So. 3d 1140, 1148 (Miss. Ct. App. 2009)	18
<u>McNeer v. State</u> , 307 So. 3d 508, 514 (14) (Miss. Ct. App. 2020)	14, 15
<u>Nelson v. State</u> , 284 So. 3d 711 718 , (Miss. 2019)	12
<u>Nevels v. State</u> , 325 So. 3d 627 (Miss. 2021)	19
<u>Newell v. State</u> , 49 So. 3d 66, 74 (20) (Miss. 2010)	4
<u>Purvis v. State</u> , 71 Miss. 706, 14 So. 268 (1894)	18
<u>Rutlin v. State</u> , 992 So. 2d 1165 (Miss. 2008)	16, 18
<u>Sanders v. State</u> , 77 So. 3d 497, 502 (19) (Miss. Ct. App. 2011)	11, 13
<u>Saun v. State</u> , 511 So. 2d 144, 148 (Miss. 1987)	10
<u>Thomas v. State</u> , 75 So. 3d 1112, 1115-16 (14) (Miss. Ct. App. 2011)	14
<u>Victory v. State</u> , 83 So. 3d 370, 373 (Miss. 2012)	8, 10
<u>White v. State</u> , 495 So. 2d 1346, 1348 (Miss. 1986)	18

STATUTES AND RULES

Miss. Code Ann § 97-3-15 (4)	11
Miss. Code Ann § 99-15-35 (Rev. 2020)	3, 7, 16, 18, 19
Miss. Const. Art 3, § 26 (1890)	3, 17
M.R.E. 611 (b) Miss. R.E.V.	10

Constitutional Provisions

United States Constitution Amendment V	2
United States Constitution Amendment VI	2, 4
United States Constitution Amendment XIV	2

IV. Petition for Writ of Certiorari

Steven L. Lewis, an inmate currently incarcerated at (M.S.P.) in Parchman, Ms Pro Se, respectfully petitions this court for a Writ of certiorari to review the judgment of the Supreme Court of Mississippi.

V. Opinion Below

The decision by the Miss. Court of App. denying Mr. Lewis' direct appeal is reported as Steven L. Lewis aka Steven Lewis v. State of Mississippi Court of Appeals Case #2021-KA-00472-COA / Trial Case #3462 (Miss. App. April 25, 2023). Supreme Court of Miss. Crt. App Sep 12, 2023 denied. Mr. Lewis' petition for hearing Nov. 29, 2023. Denied

VI. Statement of Jurisdiction

Mr. Lewis' petition for hearing to the Miss. Supreme Court was denied on Nov 29, 2023. Mr Lewis invokes this Court's Jurisdiction under 28 U.S.C § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Miss. Supreme Court's Judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

NO person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of Life or Limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. NO state shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

V III. Statement of the Case

Miss. Code Ann §99-15-35 (Rev. 2020) "An application for a change of venue must conform strictly to this statute. Section 99-15-35 requires a Motion for change of venue be in writing, sworn to by the prisoner, made to the court; supported by the affidavits of two or more credible persons... in part.

This case presents the question of whether defendant got what he wanted, once courts denied his motion and defendant decides to exercise his constitutional rights outlined in Miss. Const. art 3. § 26 (1890)

M.R.E 611 (b) Scope of Cross-Examination. The Court may not limit cross-examination to the ~~subject~~ subject matter of the direct examination and matters affecting the witness's credibility.

This rule then expressly allows wide-open cross-examination. Additionally, "the right to confrontation and cross-examination extends to and includes the right to fully cross-examine the witness on every material point relating to the issue to be determined that would have bearing on the credibility of the witness and the weight and worth of his testimony".

This case presents the question of whether trial courts limitation on cross-examination deprives a defendant of his VI Amendment Constitutional right to confront witness.

The Supreme Court has explained that "a defendant is entitled to have jury instructions given which present his theory of the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly else where in the instructions, or is without foundation in the evidence". *Newell v. State*, 49 So.3d 66, 74 (20) (Miss. 2010) And "when serious doubt exists as to whether an instruction should be included, the doubt should be resolved in favor of the accused." Finally in homicide cases, the trial court should instruct the jury about a defendant's theories of defense, justification, or excuse that are supported by the evidence, no matter how meager or unlikely."

This case presents the question of whether the jurisprudence of this state demands that a theory of defense be instructed if the evidence warrants.

1. The Altercation on Mr. Lewis' Property

On Nov 27, 2017 Mr. Lewis was blocked in his driveway by Alex Jennings Sr. and Alex Jennings Jr. who ~~was~~ during a heated argument about Mr. Lewis asking Alex Jr. to leave his property. The three men got into a scuffled in which Mr. Lewis was shot by Alex Jennings Jr. Mr. Lewis ended up killing the father and son duo. Mr. Lewis was airlifted

to Jackson Ms hospital for the injuries he sustained. He was later arrested on 2 counts of first degree Murder and one count of being in poss. of a fire-arm by a convicted felon. At some point during pretrial Motions filed for a change of venue, which was denied by circuit Court, then granted after jury wasn't able to be seated during a time of the covid. outbreak within Sharkey County where the offense took place. The courts then moved the venue to Warren County on it's own motion. During Trial counsel for Mr. Lewis attempted to cross-examine States Main witness Drake McKnight in regards to being under indictment for poss. of fire-arm charges he was facing. Also about an affair McKnight may have had with defendant's wife to explore bias and untruthfulness that may be occurring within his testimony, as well as any favour in exchange for his testimony. McKnight was attempted to be asked about his testimony of him witnessing Mr. Lewis bringing the fire-arm and Mr. Lewis shooting himself. The trial Judge decided to stop counsel from asking McKnight about if he was indicted or under indictment for drugs and being in poss. of a fire-arm by a convicted felon, as well as other related questions concerning his Testimony. Mr. Lewis being under a 2 count 1st degree Murder indictment and poss. of a fire-arm by a convicted felon request. for a castle doctrine and stand your ground instruction to be given separately for both

Counts on the two separat. murder charges and Lewis request for a defense of necessity on the poss. of a fire-arm by a convicted felon. The trial Judge granted the requested ~~the~~ defense of necessity instruction, but denied the two defense instruction on both the first degree homicides. Mr. Lewis was convicted on both counts of Murder, and Acquitted on poss. of a fire-arm by a convicted felon. Mr. Lewis was sentence to Life for the 1st degree Murder of Alex Jenning Sr., and received 40 yrs. for 2nd degree Murder of Alex Jenning Jr. to run consecutive. The state stated during sentencing phase that these where two separate crimes which happend at two separate times, yet during jury instructions deliberations, courts deemed defense instructions shouldn't be given because Mr. Lewis at some point gave Alex Sr. access to go up unto his porch, before he told both Men to leave his property. This was error in deciding whether to give jury instructions concerning both Counts. Mr. Lewis contends Jury should have had the chance to consider defense instructions for both Men on the separate counts.

2. Direct appeal

On direct appeal, Lewis renewed his arguments that the trial court erred in transferring venue to Warren County without proper application for a change of Venue. That the trial court erred in denying Lewis's proffered jury instructions D-4, D-5, and D-11, instructing the Jury

that he had no duty to retreat from his home during altercation with the two men (Ace and Mookey).

Both Lewis and trial Court agreed that the affidavits were required to grant Motion for Venue change in compliance with section 99-15-35. Appeal Court held Lewis's motion for change of venue waived his right to a trial in the county where his crimes occurred. Lewis argued that only if the pro-se motion was granted it would have waived his right, but it was denied. Lewis argued after motion for venue change was denied no one asked for reconsideration and so the trial court on its own change venue, and they can not waive right for defendants. State Argued Lewis's motion for change of venue did not adhere to section 99-15-35 is of no consequence. Lewis ask the question of why is the requirements in the statute and is it ok to not comply with the law. The Supreme Court has said that "If a motion for change of venue has been denied and if on voir dire the trial judge becomes of the opinion that his earlier ruling was in error, he has the Authority to reverse himself and grant a change of Venue... sua sponte". Fisher, 481 So.2d at 223-24. The state said the trial court's authority to change venue sua sponte defeats Lewis's argument. In Lewis's case the ruling wasn't in error. It was a matter of law and the authority only come in if the earlier rule was in error. Lewis argues (7) that the trial court

abused its discretion in refusing his proffered instructions on the castle doctrine (Jury Instruction D-4; D-5, and D-11), instructing the jury that he had no duty to retreat from the altercation, which related to his theory of the case that he acted in self-defense. On appeal the trial court failed to give any real explanation on why it refused Lewis's instructions on his right to stand his ground during the conflict with Ace and Mooker. The state argued he was not entitled to the instruction because he was involved in illegal activity or because nobody had gone into his house forcibly or because he could have run from the altercation. Whether to grant or deny proposed jury instructions is within the sole discretion of the circuit court, and appellate courts review those decisions for an abuse of discretion. *Victory v. State*, 83 So.3d 370, 373 (Miss. 2012).

Lewis on direct appeal renewed his argument that the trial court abused its discretion in refusing his proffered instructions on the castle doctrine and instructing the jury that he had no duty to retreat from the altercation, which related to his theory. On rehearing Lewis's motion was denied as well in renewing his arguments on both issues. Lewis filed a petition for writ of certiorari.

to the Miss. Supreme Court challenging the ruling on these issues that was denied.

IX. REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of the right to confront witness, this court should ~~expound~~ on, to what extent does a defendant have a right to explore bias to impeach a witness against him in criminal trials.

The court of appeals found error in the trial court's limitation on cross-examination of McKnight, but determined that the error was harmless because other witnesses testified that Lewis shot and killed both men. (OP. 77). But the question for the jury was not whether Lewis shot and killed the two men, but whether he acted in self-defense. McKnight was with Lewis leading up to the shootings and was present when the altercation began. McKnight provided testimony that Lewis was always arguing with somebody (Tr. 797), that Lewis was not limping after killing the Jenningses. (Tr. 803-04). These facts, among others, were what the State used to refute Lewis's claims that he acted in self-defense and was himself shot during the altercation. By limiting Lewis's cross-examination of McKnight, the trial court prevented Lewis from fully developing a theory of defense and showing the jury that McKnight might have something to gain from testifying against Lewis. This is an error of "revers-

(9)

ible proportions". See *Gaun v. State*, 511 So. 2d 144, 148 (Miss. 1987).

This case presents this court with an opportunity to clarify Rule 611(b), Miss. R.Ev., and its function of the confrontation clauses of federal and state constitutions.

B. To avoid erroneous deprivations of defendant right to certain defense instructions, this court should address to trial courts the importance of abuse in discretion in regards to defense instructions, and trial outcomes being considered fair or unfair.

Lewis offered instructions D-4, D-5, and D-11, which related to his theory of the case that he acted in self-defense (C.P. 333-34, 336). The trial court denied Lewis's instructions on his right to stand his ground during the conflict with Ace and Mokep, without any real explanation. But the State had argued that he was not entitled to the instruction because he was involved in illegal activity; or because nobody had gone into his house forcibly; or because he could have run from the altercation. Nothing in evidence points to Lewis being involved in any illegal activities only that he was returning property to Alex Jennings Sr. (Ace) at the time of the shooting.

"Whether to grant or deny proposed jury instructions is within the sole discretion of the circuit court," and appellate courts review those decisions for an abuse of discretion. *Victory v. State*, 83 So. 3d 370, 373 (Miss. 2012). This Court must review the jury instructions "as a whole to determine whether an error has occurred." "A defendant is entitled to have jury instructions given which present his theory of

the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instruction, or is without foundation in the evidence". If the instructions fairly announce the law of the case and create no injustice, no reversible error will be found." *Id.* "A defendant is entitled to have every legal defense he asserts to be submitted as a factual issue for determination by the jury under proper instruction of the court." *Senders v. State*, 77 So.3d 497, 502 (19) (Miss. Ct. App. 2011) (quoting *Giles v. State*, 650 So.2d 846, 849 (Miss. 1995)).

The instruction is based on Mississippi Code Ann. Section 97-3-15(4), which provides:

A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force... if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

Miss. Code Ann. §97-3-15(4).

Instructions D-4 and D-5 are the same, except that one applies to Ace and the other to Mookie. Instruction D-4 states:

Steven Lewis's act of killing Alex Jennings, Jr. is justifiable if Steven Lewis killed Alex Jennings, Jr. while resisting Alex Jennings, Jr.'s attempt to unlawfully kill Steven Lewis or to commit a serious crime against Steven Lewis and while Steven Lewis was in his dwelling or the immediate area of a dwelling. Steven Lewis is presumed to have reasonably feared death, great bodily harm, or a serious crime being committed against him if Alex Jennings, Jr. was unlawfully

and forcibly entered Steven Lewis' dwelling, or the immediate area of a dwelling.

This presumption does not apply if Alex Jennings, Jr. had a right to be in the dwelling or the immediate area of a dwelling or if Steven Lewis was committing a criminal act.

If you find from the evidence in this case that Steven Lewis's act of killing Alex Jennings, Jr. was committed while resisting Alex Jennings, Jr.'s attempt to unlawfully kill Steven Lewis or commit a felony against Steven Lewis and while Steven Lewis was in the dwelling or the immediate area of a dwelling, then you shall find Steven Lewis not guilty of first Degree Murder.

(C.P. 334, Instruction D-5).

Instruction D-11 states:

While the danger that justifies one person taking another person's life must be immediate, pending, and present, such danger does not need to be unavoidable except by killing in self defense. Steven Lewis is not required to flee from the danger to his body or life. If Steven Lewis was in a place where he had a right to be and Steven Lewis was not the initial aggressor or provoker, then Steven Lewis had no duty to flee or retreat and does not lose his right to self defense (C.P. 336).

The supreme court has "emphasized that Miss. law provides that 'every accused has a fundamental right to have their theory of the case presented to a jury, even if the evidence is minimal.'" *Nelson v. State*, 284 So. 3d 711, 718 (Miss. 2019)

(quoting *Chinn v. State*, 958 So. 2d 1223, 1225 (Miss. 2007)).

Further, "in homicide cases, the trial court should instruct the jury about a defendant's theories of defense, justification, or excuse that are supported by the evidence, no matter how meager or unlikely." *Id.* (quoting *Brown v. State*, 39 So. 3d 890, 899 (Miss. 2010))

In *Sanders v. State*, 77 So.3d 497 (Miss. Ct. App. 2011), the Miss. Ct. App. reversed Edna Mae Sanders's conviction and sentence for murder because the trial court refused to instruct the jury that Sanders had no duty to retreat from an attack in her own home. The Court held that the jury in the case was "completely unaware that Sanders did not have a duty to retreat from her home, but instead, she had the right to remain in her home and defend herself and her children to whatever degree necessary to avoid the great bodily harm and imminent death that Sanders testified she feared from Sherman". *Sanders*, 77 So.3d at 503 (23).

Because the jury was not properly instructed, "the jury was improperly allowed to consider Sanders's failure to retreat as evidence that her use of force was unnecessary, excessive, or unreasonable." *Id.* at (24). The same is true here. The State questioned Lewis about why Lewis had not retreated when the altercation began. The State gave weight to the fact that Lewis did not retreat and no witness testified that either Ace or Moolkey had attempted to enter the house or to forcibly remove anyone from the home. But Lewis had a right to stand his ground under the law.

"It is, of course, an absolute right of an accused to have every lawful defense he asserts, even though based upon meager evidence and highly unlikely, to be submitted as factual issue to be determined by the jury under proper instruction of the court. The Court said "it will never permit an accused to be denied this fundamental right." *Kuebler v. State*, 204 So.3d 1220, 1226 (Miss. 2016) (quoting *Chinn*, 958 So. 2d at 1225). "In essence, the jurisprudence of this State demands that

(13)

a. theory of defense must be adequately instructed if the evidence warrants". *McNeer v. State*, 307 So.3d 508, 514 (14) (Miss. Ct. App. 2020).

Even "meager" evidence warrants a jury instruction on a theory of defense. In *Hester v. State*, 602 So.2d 869, 872 (Miss. 1992), the supreme court stressed that "even though based on meager evidence and highly unlikely, a defendant is entitled to have every legal defense he asserts to be submitted as a factual issue for determination by the jury under proper instruction of the court." *Hester*, 602 So.2d at 872. This is true even when the defendant's version of events differs from the State's evidence, as long as he has established an "evidentiary predicate for the defenses contained in his requested but refused instructions". *Id.* at 873.

In *Thomas v. State*, 75 So.3d 1112, 1115-16 (14) (Miss. Ct. App. 2011), the court reversed Thomas's conviction because the trial court refused Thomas's instruction on section 97-3-15(4), finding that there was a factual basis for the castle doctrine instruction, even though there were questions about whether the defendant was the initial aggressor. ~~The~~ court determined that whether Thomas was the initial aggressor, was a question of fact for the jury and instruction should have been given. *Thomas*, 75 So.3d at 1115-16. And, trial courts should resolve any serious questions about whether to give an instruction in favor of the defendant. *Id.* Further, in *McNeer*, this Court held that

(14)

"trial courts should be careful not to 'eviscerate' a self-defense claim by failing to adequately or fully instruct the jury as to all issues of self-defense, especially where a factual issue exists". McNeer, 307 So.3d at 516-17 (24).

The error in denying the stand-your-ground instructions is significant. The jury's verdicts-guilty of second-degree murder of Mookie, guilty of first-degree murder of Ace, and not guilty of being a felon in possession of a firearm-show that the jury was not convinced that Lewis possessed a gun when the altercation started. Rather, it suggests that they were persuaded that the gun used in the shootings was brought to the scene by Mookie. Had they been properly instructed that Lewis had no duty to retreat from the altercation, if they found that he was not the initial aggressor, not involved in illegal activity, and was where he had a legal right to be, the jury might have reached different conclusions on the two murder charges.

The Miss. Supreme Court erred in applying the legal standard for a defense instruction, and finding that the trial court did not abuse its discretion when denying defense instructions in Lewis's case.

This case presents this Court with an opportunity to clarify to what extent a judge's abuse in discretion could prejudice a defendant, and the outcome in criminal trials. Absent intervention by this Court, the Mississippi Court

Of Appeal's published decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent decades developing.

C. To avoid erroneous jurisdiction from courts abuse of discretion in proceeding sua sponte in changing of venue during criminal trials. This Court should clarify under what circumstances should a trial court proceed sua sponte, in changing a defendant's trial venue.

Appellate courts review a trial court's decision to grant or deny a change of venue for abuse of discretion. *Ruffin v. State*, 992 So.2d 1165 (Miss. 2008). The trial court erred in transferring Lewis's case to Warren County when no proper motion for change of venue had been filed in this case. Lewis filed a prose motion for change of venue on May 20, 2020. (C.P. 125). The motion was addressed at a hearing on September 24, 2020. (Tr. 214). The State objected to the motion because it was not in "strict compliance" with Mississippi Code Ann. section 99-15-35, which governs changes of venue. (Tr. 214). The State argued that the motion failed as a matter of law, and Lewis agrees with the State. The trial court denied the motion on September 25, 2020, because "the motion was not supported by the affidavits of two or more credible persons as required by Miss. Code Ann. § 99-15-35 (Rev. 2015)." (C.P. 259). This denial was three₁₆ days prior to first trial.

Lewis's first trial began on September 28, 2020. But after jury qualification and voir dire, the court was not left with an adequate number of jurors to try Lewis's case. The trial court declared a mistrial (Tr. 388).

When the court declared a mistrial, the State responded that it would be best "as soon as possible" to "try to act a motion of venue or if the defendant is going to go forward with that, try to get that done as quick as possible" (Tr. 388). Christopher Green represented Lewis at that time, and he responded that he "imagined" that the defense would "redo another motion for venue with...the sufficient things to accompany it." (Tr. 388). NO proper motion for change of venue was filed after Lewis's mistrial, due to Mr. Green's representation, Lewis hired a different defense team. In fact, no proper motion for change of venue was ever filed in this case. On October 16, 2020, the trial court entered an order granting change of venue and transferred the case to Warren County. C.C.P. 266J. The order notes that the change of venue had previously been denied "due to the pleading being insufficient." The order states that the trial court "has since had the opportunity to question prospective jurors in Sharkey County. The Court Sua Sponte found that the change of Venue was proper. C.C.P. 266J.

"In all criminal prosecutions the accused shall have a right to ... a speedy and public trial by an impartial jury of the county where the offense was committed." Miss. Const. art. 3, section 26. "Similar rights to be heard

'by an impartial Jury of the State and district wherein the crime shall have been committed...'are secured by the Sixth and fourteenth Amendments to the United States Constitution". *Maye v. State*, 49 So. 3d 1140, 1148 (Miss. Ct. App. 2009), vacated on other grounds, 49 So. 3d 1124 (Miss. 2010).

Trial courts may change venue "only if the defendant makes a satisfactory showing that he cannot receive a fair and impartial trial where the offense is charged." *Ruffin*, 992 So. 2d at 27 (citing *King v. State*, 960 So. 2d 413, 429 (Miss. 2007)). "Proper application" for a change of venue raises a rebuttable presumption that a defendant cannot receive an impartial trial, and the State has the burden of rebutting the presumption. *Id.* (quoting *White v. State*, 495 So. 2d 1346, 1348 (Miss. 1986)). In *Ruffin*, the supreme court held that "'Proper application' is met by complying with the change-of-venue statute" set out in section 99-15-35. Section 99-15-35. Section 99-15-35 requires the motion or application be "in writing, sworn to by the prisoner, made to the court.... supported by the affidavits of two or more credible persons, that, by reason of prejudgment of the case, or grudge or ill will to the defendant in the public mind, he cannot have a fair and impartial trial in the county where the offense is charged to have been committed...." § 99-15-35.

"An application for change of venue must strictly comply with this statute." *Id.* (citing *Baldwin v. State*, 732 So. 2d 236, 241 (Miss. 1999)) (see also *Purvis v. State*, 71 Miss. 706, 14 So. 268 (1894)). Lewis's motion for change of venue was not "sworn by the prisoner" nor did it include affidavits in support

of the motion. Thus, the motion for change of venue was never properly brought before the court.

In *Fisher v. State*, the Supreme court included a procedural note in its analysis of a change of venue claim, noting that the trial court can reverse its ruling on a change of venue after *voir dire* "upon the renewed motion of the defendant or *sua sponte*". *Fisher v. State*, 481 So. 2d 203, 224 (Miss. 1985), overruled on other grounds by *Nevels v. State*, 325 So. 3d 627 (Miss. 2021). But there was never a "proper application" in this case for the trial court to change venue. Further, the trial court's prior ruling was that the motion did not comply with the statute, not that a fair trial could not be had in Sharkey County.

Lewis's right to be tried in the county where the crime occurred was violated by the trial court's change of venue without proper adherence to section 99-19-35. The Mississippi Supreme Court also erred in upholding the trial court's erroneous decision in violation of the United States law § 99-15-35.

This case presents this Court with an opportunity to clarify to courts under what circumstances should a trial court proceed *sua sponte* to avoid erroneous jurisdiction and abuse of discretion in criminal trials.

X. CONCLUSION

For the foregoing reasons, Mr. Lewis respectfully requests that this Court issue a writ of certiorari to review the judgment of the **MISSISSIPPI SUPREME COURT OF APPEALS**.

Dated this _____ day of Feb, 2024

Respectfully submitted,

Steven L. Lewis

P.O. Box 1057

Parchman, MS 38738

(662) 745-6611