

No. _____

IN THE
Supreme Court of the United States

DERRICK CHATMAN,
Petitioner,
v.

STATE OF MISSISSIPPI,
Respondent.

On Petition for Writ of Certiorari
to the Mississippi Supreme Court

PETITION FOR WRIT OF CERTIORARI

Graham P. Carner
TreMarcus D. Rosemon
CARNER & ROSEMON, PLLC
401 E. Capitol Street, Suite 310
Jackson, Mississippi 39201
T: 601.427.8999
F: 769.233.8941
E: graham@carnerrosemon.com
tremarcus@carnerrosemon.com

Counsel for Petitioner

QUESTION PRESENTED

Does a state court direct-remand rule that infers jury unanimity on a lesser-included offense violate the Sixth Amendment, where the jury's verdict was ambiguous?

PARTIES TO THE PROCEEDING

The parties are named in the caption. The Petitioner, Derrick Chatman, was the Appellant below. The Respondent is the State of Mississippi, Appellee below.

STATEMENT OF RELATED PROCEEDINGS

Trial Court Proceedings

State of Mississippi v. Derrick Chatman; In the Circuit Court of Adams County, Mississippi; Cause No. 22-KR-0002-B. The jury verdict was entered on February 11, 2023, and the Sentencing Order for Mr. Chatman was entered on February 27, 2023.

Appellate Proceedings

Mr. Chatman perfected a timely appeal to the Mississippi Supreme Court.

Derrick Chatman v. State of Mississippi, No. 2023-KA-00583-SCT; In the Supreme Court of Mississippi. The Mississippi Supreme Court's opinion was issued on August 29, 2024, and reversed Chatman's conviction for sexual battery but remanded for retrial on sexual battery or sentencing on the lesser-included offense of gratification of lust, at the option of the prosecution. *Chatman v. State*, 395 So. 3d 991; 2024 Miss. LEXIS 253; 2024 WL 3981194 (Miss. 2024), rehearing denied by *Chatman v. State*, 2024 Miss. LEXIS 317 (Miss. Nov. 14, 2024). The Mandate issued on November 21, 2024.

Following remand, the prosecution elected for Mr. Chatman to be sentenced for gratification of lust in the trial court.

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Derrick Chatman, respectfully submits this petition for a writ of certiorari to review the judgment of the Mississippi Supreme Court.

OPINION BELOW

The Mississippi Supreme Court opinion is published at *Chatman v. State*, 395 So. 3d 991; 2024 Miss. LEXIS 253; 2024 WL 3981194 (Miss. 2024). App. at 1-14.

JURISDICTION

The Judgment was entered by the Mississippi Supreme Court on August 29, 2024. App. at 1-14. That court denied Petitioner's Motion for Rehearing on November 14, 2024 (App. at 15), within 90 days of the filing of this Petition.

The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257(a).

Further, review is proper under Supreme Court Rule 10(c), which provides that certiorari review is considered where "a state court...has decided an important federal question in a way that conflicts with relevant decisions of this Court."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides: "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.” U.S. Const. amend. VI.

The jury trial provision of the Sixth Amendment to the U.S. Constitution applies to the states by way of Section 1 of the Fourteenth Amendment to the U.S. Constitution¹, which provides: “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.” U.S. Const. amend. XIV, Section 1.

STATEMENT OF THE CASE

The Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. *Ramos v. Louisiana*, 590 U.S. 83 (2020).

Here, Derrick Chatman exercised his right to a jury trial on two indicted counts of sexual battery. When the jury was instructed on the two counts being submitted to it, it was given the option on each count of convicting Chatman on sexual battery or a lesser-included offense. The jury was given specific verdict forms for choosing these two options as well as the option of finding Chatman not guilty. The jury

¹ *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968).

was expressly told that any verdict must match one of the forms that it received from the trial court.

And yet, the jury returned a verdict that simply said: "On Count 1 Guilty, On Count 2 Guilty". App. at 18. The jury was discharged without any inquiry into whether its verdict was for sexual battery or the lesser offense of gratification of lust. The true meaning of the jury's verdict was a mystery. But the trial court sentenced Chatman for two counts of the greater offense.

While the Mississippi Supreme Court found that the ambiguity of the verdict would not permit those convictions to stand, that court **inferred** that the jury must have at least found Chatman unanimously guilty of the lesser offense. So, it reversed the convictions but allowed Chatman to be sentenced on the lesser offenses under a "version" of its direct-remand rule, despite the absence of a clear, unanimous jury verdict. On remand, Chatman received essentially the same sentence he received for the two sexual battery convictions.

Because Chatman was convicted and is imprisoned for 30 years on a verdict that was not clearly unanimous as to any specific charge, this Court should grant this Petition.

A. Factual Background.

Derrick Chatman was indicted by a grand jury for two counts of sexual battery. In summary, it was alleged that Chatman engaged in sexual penetration with his stepdaughter, who was under the age of eighteen. Chatman entered a plea of not guilty and the matter proceeded through pre-trial proceedings. A discussion of the facts disputed at trial is not necessary for consideration of this Petition.

B. Trial Court Proceedings.

Derrick Chatman was indicted by a grand jury for two counts of sexual battery under *Miss. Code Ann.* § 97-3-95(2). Under Mississippi law, the offense of sexual battery requires proof of penetration and carries a maximum term of 30 years as punishment. A lesser-included offense of sexual battery is gratification of lust under *Miss. Code Ann.* § 97-5-23. That offense does not require proof of penetration and carries up to fifteen years imprisonment.

The trial of Mr. Chatman's case was hotly contested, with both sides putting on proof. After both sides rested, jury instructions were given by the trial court that, in part, consisted of instructions S-1-A (elements of Count 1), S-2-A (elements of Count 2), S-9 (Form of Verdict for Count 1), and S-10 (Form of Verdict for Count 2).

S-1-A instructed the following as to the elements of Count 1:

Count 1

Derrick Chatman is charged in count 1 with sexual battery.

If you find beyond a reasonable doubt from the evidence in this case that: 1. On or about between 2014 up through and including June 2021, in Adams County; 2. Derrick Chatman unlawfully engaged in oral sexual penetration with Alice; and 3. When Derrick Chatman unlawfully engaged in oral sexual penetration with Alice; A. Derrick Chatman was a stepparent to Alice and not married to Alice; and B. Alice was less than 18 years old, then

you shall find Derrick Chatman guilty as charged of Sexual Battery.

Definition(s) in this Instruction: In this instruction, “sexual penetration” means any penetrating a person’s anal, genital, or oral openings by the defendant or by the defendant inserting an object into a person’s anal, genital, or oral openings.

If the State did not prove any one of the above listed elements beyond a reasonable doubt, then you shall find Derrick Chatman not guilty of Sexual Battery and continue your deliberations as to the lesser included offense of Gratification of Lust.

Gratification of Lust is the lesser included charge of Sexual Battery. If you find beyond a reasonable doubt from the evidence in this case that: 1. Between 2014 and June 2021, in Adams County; 2. Derrick Chatman was 18 years old or older; 3. Derrick Chatman unlawfully touched/handled/rubbed Alice with Derrick Chatman’s penis in order to satisfy his sexual desires or lust, and A. Derrick Chatman was a stepparent to Alice and not married to Alice; and B. Alice was less than 18 years old, then you shall find Derrick Chatman guilty of the lesser included offense of Gratification of Lust.

If the State of Mississippi did not prove any one of the above listed

elements beyond a reasonable doubt, then you shall find Derrick Chatman not guilty in Count 1.

S-2-A instructed the same as the above, as to the elements of Count 2, with the exception that for sexual battery, it did not include the word “oral” immediately prior to “sexual penetration” in the elements section.

Regarding the form of the verdict for Count 1, S-9 instructed:

Count 1

If you, the jury, find the Defendant, Derrick Chatman, guilty of the crime of Sexual Battery in Count 1, then your verdict should read: “We, the jury, find the defendant Guilty of Sexual Battery in Count 1.”

If you, the jury, find the defendant, Derrick Chatman, guilty of the crime of Gratification of Lust in Count 1, then your verdict should read: “We, the jury, find the Defendant Guilty of Gratification of Lust in Count 1.”

If you, the jury, find the defendant, not guilty of the crime of Gratification of Lust in Count 1, then your verdict should read: “We, the jury, find the Defendant not guilty in Count 1.”

S-10 instructed the same as the above as to the form of the verdict for Count 2. The court specifically told the jury, “[a]lso in your instructions when you render your verdict, the form of the verdict has to be written as it’s put forth in these instructions.”

The jury retired to the jury room to deliberate. Less than two (2) hours into the deliberations, the jury sent a question to the court, asking for a "breakdown of the charges." The court concluded that it would answer this question from the jury by writing, "you should refer to the two jury instructions that list the elements of the two crimes." This was a reference to instructions S-1-A and S-2-A discussed above.

A full hour then passed when the announcement was made that the jury had reached a verdict. In the transcript, the following is then recorded:

(The jury is brought into the courtroom, and hands the verdict to the deputy clerk who reads the verdict of guilty on count one and count two. The Court polls the jury and receives an affirmative response from all twelve jurors. The following was then made of record, to-wit:)

BY THE COURT: Let the record reflect that the jury having been polled, I believe that completes our work here. Ladies and gentlemen of the jury, I would ask before you leave to give your buttons to the bailiffs. If you need an excuse, you can get it downstairs from Ms. Givens this afternoon or you can get it from her on Monday. I thank you for your service. I know it's been a long day, and I hope you enjoy the rest of your weekend.

(The jury is excused.)

App. at 16-17.

The written verdict form consists of the following: “On Count 1 Guilty, On Count 2 Guilty”. App. at 18. Other than the stamp of the Circuit Clerk, there is no other writing contained on the written jury verdict.

Chatman’s sentencing was set for a later date. In the trial court’s sentencing order, dated February 27, 2023, it was declared that “[t]he jury found the defendant guilty of two counts of Sexual Battery, pursuant to *Miss. Code Ann. § 97-3-95.*” Chatman was sentenced to 30 years with 15 of those years suspended on each count, with the sentences ordered to run consecutively. Thus, Chatman was given a 30-year day for day sentence. He must also register as a sex offender.

Chatman filed a post-trial motion asserting a variety of grounds, which the trial court denied in short order. Chatman timely perfected his appeal to the Mississippi Supreme Court.

C. Appellate Proceedings.

On direct appeal to the Mississippi Supreme Court, Chatman raised one issue: whether his convictions must be vacated and a new trial ordered since the jury verdict was ambiguous. Simply put, Chatman argued that it could not be determined that the jury unanimously found him guilty of either the indicted offense of sexual battery or the lesser-included offense of gratification of lust. Since the jury instructions on Counts 1 and 2 referenced sexual battery and the lesser-included offense of gratification of lust, the written verdict “Guilty Count 1, Guilty Count 2” was unclear. Because the verdict was ambiguous and not clearly unanimous as to either offense, Chatman argued that no conviction could be upheld and he was entitled to a new trial.

The Mississippi Supreme Court began its analysis by acknowledging that “there is uncertainty as to the unanimity of the jury’s verdict” in light of the general nature of the announced verdict and the fact that the jury received instructions on two separate offenses for each count. App. 2. Because of this uncertainty, the Court stated that Chatman’s conviction for sexual battery could not stand. App. 2. But the Court went on to fashion a remedy that ignored the ambiguity of the verdict.

The Mississippi Supreme Court’s factual recitation of the manner in which the jury verdict was announced and received matches what Chatman sets forth in the preceding section. App. 3-5. Indeed, the facts of this matter were not in dispute on direct appeal and are not now.

The Mississippi Supreme Court then addressed the State of Mississippi’s first argument: that Chatman had waived any appeal of the form of the verdict by not objecting at the trial court. App. 5-6. That court agreed that the claim was procedurally barred and that Chatman could only be granted relief if there was plain error. App. 6. To support his plain error argument, Chatman relied on a state rule of criminal procedure that tasks the trial judge with ensuring that the form of the verdict is fully responsive to the instructions given to the jury. App. 6-7. Since the trial court did not do so, Chatman argued that it was impossible to determine whether the jury unanimously convicted Chatman of a particular offense, in violation of *Ramos v. Louisiana*, 590 U.S. 83 (2020).

The Mississippi Supreme Court concluded: “we agree that the verdicts returned by the jury were not fully responsive” to the verdict forms issued by the

trial court. App. 8. And because the jury instructions submitted referred to both the counts of indictment (sexual battery) and a lesser-included offense for each count (gratification of lust), the Mississippi Supreme Court was unable to discern the jury's meaning when it returned a verdict that simply said "On Count 1 Guilty, On Count 2 Guilty". App. 8-9. The Mississippi Supreme Court then conceded that it had not found a single Mississippi case where something similar had occurred. App. 9.

The Mississippi Supreme Court's struggle with the jury's ambiguous verdict culminated with this pronouncement: "[T]here is uncertainty as to the unanimity of the jury's verdict with regard to the sexual-battery charges. And we find nothing in the record that alleviates it. Therefore, we agree with Chatman that his convictions for sexual battery cannot stand. The question now becomes what remedy should apply." App. 9.

The Mississippi Supreme Court noted Chatman's argument that the ambiguous jury verdict was a nullity that required vacation of his convictions. App. 9-10. The court also noted that Mississippi's criminal procedural rules would require a mistrial if a defective verdict was returned after the defect was called to the attention of the jury. App. 10. But since neither party nor the court brought attention to the defective verdict at trial, the Mississippi Supreme Court found that rule did not apply. App. 10.

The court then settled on its remedy: employing "a version of this Court's direct-remand rule". App. 10. The Mississippi Supreme Court began by defining its "direct-remand rule": " 'when the jury convicts of a greater offense, which is invalidated on appeal for want or sufficiency of the evidence, no new

trial is required and the defendant may be remanded for sentencing upon the lesser[-]included offense where the proof establishes proof of the lesser offense.” App. 10-11 (citing *Shields v. State*, 722 So.2d 584, 585 (Miss. 1998)). The rule as traditionally employed in Mississippi is “‘grounded on the fact that guilt of a true lesser included offense is implicitly found in the jury’s verdict on the greater offense.’” App. 11 (citing *Shields*, 722 So.2d at 585).

The Mississippi Supreme Court then stated that other jurisdictions follow the direct-remand rule and that the rule is constitutionally firm under this Court’s case of *Rutledge v. United States*, 517 U.S. 292 (1996). The court conceded that Mississippi’s direct-remand rule had never been applied in any context other than “when the evidence supports a lesser-included offense but not the greater offense.” App. 12. Notwithstanding the novelty of applying the direct-remand rule to Chatman’s circumstances, the Mississippi Supreme Court held it to be the appropriate remedy. App. 13.

“The uncertainty or doubt with the unanimity of the jury’s verdict on the sexual-battery charges requires reversal of Chatman’s conviction on those charges.” App. 13. But the Mississippi Supreme Court ruled that it “can infer jury unanimity on the two [lesser-included offenses] of gratification of lust.” App. 13. Because the court said it “can say with certainty that the jury, at least, unanimously found Chatman guilty of gratification of lust,” it remanded the case for either a new trial on sexual battery or sentencing on the lesser offense. App. 13-14. The choice at remand would be up to the prosecution. App. 14.

The Mississippi Supreme Court opinion was handed down on August 29, 2024. App. at 1-14. Chatman timely-filed a Motion for Rehearing, which was denied on November 14, 2024. App. at 15.

D. Post-Remand Proceedings.

On remand, the prosecution elected for Chatman to be sentenced on the lesser offenses. He was sentenced to a total of 30 years (the maximum 15-year sentence per count, to run consecutively). Thus, Chatman's sentence, for all practical purposes, was unchanged by the reversal of his convictions for sexual battery.

REASONS FOR GRANTING THE PETITION

This case presents a conflict between two precedents of this Court, *Ramos v. Louisiana*, 590 U.S. 83 (2020) and *Rutledge v. United States*, 517 U.S. 292 (1996). *Ramos* unequivocally requires a unanimous jury verdict in serious criminal cases, a principle upheld by this Court for over a century and solidified recently in *Ramos*. *Rutledge* permits an appellate court to enter judgment "for a lesser included offense when a conviction for a greater offense is reversed on grounds that affect only the greater offense." 517 U.S. at 306. That procedure was **not** employed in *Rutledge* to uphold a verdict that was ambiguous. And counsel has not located a case where it has been so employed before this one.

This Court should grant this Petition to make clear that the procedure permitted by *Rutledge* has limits—and those limits certainly include not allowing it to be used to excuse anything less than an unambiguously unanimous jury verdict.

A. The Jury Verdict Was Not Unambiguously Unanimous

In *Ramos*, this Court solidified that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. 590 U.S. 83. In doing so, this Court analyzed the history and structure of the Sixth Amendment and the meaning of a “trial by jury” before and at the time of ratification of that amendment. *Id.* at 89-91. That historical survey found the unanimity requirement to be “long and widely accepted,” including this Court’s commentary on the requirement “no fewer than 13 times over more than 120 years”. *Id.* at 91-92.

Notwithstanding that long and well-documented history of the unanimity requirement, *Ramos* was necessary because of outlier opinions that had permitted two states (Louisiana and Oregon) to utilize non-unanimous verdicts in felony cases. *See Apodaca v. Oregon*, 406 U.S. 404 (1972); *Johnson v. Louisiana*, 406 U.S. 356 (1972).

In reviewing the various opinions from *Ramos*, the controversy was not over the Sixth Amendment’s requirement of unanimous jury verdicts. Rather, the difficult issue with which the Court’s members wrestled in *Ramos* was *stare decisis*: whether to overrule *Apodaca* and *Johnson* in light of their long tenures as precedent and the reliance at least two states had placed upon them. In the end, the Sixth Amendment’s command of unanimous jury verdicts in serious criminal cases won the day.

A lengthy exposition on *Ramos* is not needed to make clear these two points that emerge from it: (a) the Sixth Amendment requires clear, unanimous jury verdicts to convict a defendant of a serious crime

and (b) this Court rejected the type of cost/benefit analysis performed in *Apodaca* to justify allowing non-unanimous jury verdicts. Simply put, post-*Ramos*, a jury verdict that is not clearly unanimous cannot stand even if it disrupts judicial economy.

Applying those principles to Mr. Chatman's case, it is clear that his conviction and sentence run afoul of the Sixth Amendment's unanimity requirement. The Mississippi Supreme Court's opinion agrees that "there is uncertainty as to the unanimity of the jury's verdict" as to sexual battery. App. 2, 9. On top of that, the Mississippi Supreme Court scoured the record and found nothing to "alleviate" that uncertainty. App. 9. Thus, the court ruled that Chatman's sexual battery convictions could not stand. App. 9.

But then, the Mississippi Supreme Court applied its direct-remand rule in a novel way to infer the jury's unanimity on the lesser offense of gratification of lust. App. 10, 13. There is nothing in this Court's precedent—and certainly not in *Ramos*—that permits an inference of a unanimous verdict. That the jury unanimously found Chatman guilty of the lesser offense is no more supported by the record than the proposition the Mississippi Supreme Court rejected: that the jury had unanimously found him guilty of sexual battery. This is because the jury's verdict in light of the instructions that it received is impossible to decipher.

Could the jury have unanimously found Chatman guilty of sexual battery? Perhaps. Could it have unanimously found him guilty of gratification of lust? Also, perhaps. Could some members of the jury have found him guilty of sexual battery and the remainder gratification of lust, and the jury believed

this was sufficient to simply find him guilty? Again, perhaps. Finally, is it possible the jury felt he was guilty of **some** crime but perhaps not even the two options offered to them in the jury instructions? While rare, this is not unheard of either. *See Pace v. State*, 242 So. 3d 107, 116-17 (Miss. 2018) (vacating and rendering a conviction for a crime for which the defendant was not indicted and on which the jury was not instructed as a lesser-included offense).

The lack of a clear, unanimous verdict dooms Chatman's convictions under *Ramos*. And while it may preserve judicial economy for an appellate court to infer that the jury must have at least unanimously agreed he was guilty of the lesser-included offense, such a result does violence to the Constitution. Our criminal justice system punishes defendants for serious crimes when juries unanimously find them guilty of a particular offense—not when appellate judges infer their guilt from an ambiguous verdict.

This Court should grant this Petition to vindicate the Sixth Amendment's requirement of an unambiguously unanimous jury verdict.

B. The Mississippi Supreme Court's Use of the Direct-Remand Rule In This Case Does Not Comport With This Court's Precedent

While correctly finding that the jury verdict in Chatham's trial was ambiguous, the Mississippi Supreme Court avoided the requisite new trial by employing an alternative remedy. While Chatman urged that his conviction for sexual battery must be vacated and a new trial ordered, the Mississippi Supreme Court found a third way by employing "a version" of its "direct-remand rule". App. 10-14.

The Mississippi Supreme Court's employment of its direct-remand rule starts from a suspect place given the facts of this case. That is because, as the court acknowledged, that rule has previously been used by it " 'when the jury convicts of a greater offense, which is invalidated on appeal for want or sufficiency of the evidence....' " App. 10-11 (citing *Shields v. State*, 722 So.2d 584, 585 (Miss. 1998)). This is why Mississippi's direct-remand rule has only ever been used in circumstances where guilt of the lesser-included offense was implicit in a jury's unanimous verdict on a greater offense which was not permitted to stand because of a defect unique to the greater offense.

That is not what happened in this case.

The defect in Chatman's case—as detailed above—is that the jury's verdict was completely ambiguous. Nobody knew what it mean when it was rendered. And nobody can know what it means today. This is not a situation where the convictions for sexual battery had to be invalidated because of lack of evidence. In fact, the Mississippi Supreme Court said that a "review of the record shows that more than sufficient evidence was presented to support a conviction for either offense." App. 10.

Simply put, the defect in Chatman's conviction was not unique to the greater offense of sexual battery. As discussed above, the defect is equally present with respect to the lesser-included offense. This is why the Mississippi Supreme Court had to rely on a judicial inference of a unanimous jury verdict of guilt on the lesser offense—because the record is wholly ambiguous on the meaning of the jury's verdict.

In defending its novel application of a “version” of its direct-remand rule, the Mississippi Supreme Court said it was on constitutionally sound ground because of *Rutledge v. United States*, 517 U.S. 292 (1996). A bare review of this Court’s opinion in *Rutledge* shows that this is not so.

At its core, *Rutledge* decided the question of whether a 21 U.S.C.A. § 846 conspiracy charge was a lesser-included offense of a charge of conducting a continuing criminal enterprise under 21 U.S.C.A. § 848. 517 U.S. at 294-300. This Court concluded that it was. *Id.* at 300. Having decided this foundational question, the *Rutledge* Court then engaged in a discussion of how that ruling might impact imposing separate punishments for a defendant convicted of both offenses. In the midst of that discussion, this Court said that “federal appellate courts appear to have uniformly concluded that they may direct the entry of judgment for a lesser included offense when a conviction for a greater offense is **reversed on grounds that affect only the greater offense.**” *Id.* at 306 (emphasis added). It is this language from *Rutledge* that the Mississippi Supreme Court relied upon to say it had this Court’s blessing to employ its direct-remand rule as it did in this case.

Two observations from *Rutledge* stand out when its principles are applied to this case.

First, the Mississippi Supreme Court’s use of it violates the plain meaning of this Court’s precedent. *Rutledge* says that an appellate court may enter judgment on a lesser offense when the reversal grounds “affect only the greater offense.” *Id.* at 306. Again, that is not what happened in this case. The ground for the Mississippi Supreme Court’s reversal of Chatman’s sexual battery convictions was the

ambiguity of the jury's verdict. As discussed above, that ground applies with equal force to the lesser-included offenses of gratification of lust.

Second, this Court in *Rutledge* made plain that it was not defining the limits of a "direct-remand rule": "There is no need for us now to consider the precise limits on the appellate courts' power to substitute a conviction on a lesser offense for an erroneous conviction of a greater offense." *Id.* at 306. This Court should take this opportunity to set at least one limit: such a procedure cannot be employed in a way that violates the jury unanimity requirement of the Sixth Amendment as solidified in *Ramos*.

Because of the ambiguity of the jury's verdict in this case, there was only one proper remedy: vacating Chatman's conviction and remanding the case for a new trial. The Mississippi Supreme Court's use of a version of its direct-remand rule—which it said enjoyed this Court's constitutional stamp of approval because of *Rutledge*—allowed a felony conviction to stand despite the absence of a clear, unanimous finding of guilt by a jury.

This Court should grant this Petition to vindicate the unanimity requirement of the Sixth Amendment and define the contours of the direct-remand procedure authorized by *Rutledge*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
Graham P. Carner
TreMarcus D. Rosemon
CARNER & ROSEMON, PLLC
401 E. Capitol Street
Suite 310
Jackson, Mississippi 39201
T: 601.427.8999
F: 769.233.8941
E: graham@carnerrosemon.com
tremarcus@carnerrosemon.com

Counsel for Petitioner

February 12, 2025

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2023-KA-00583-SCT

DERRICK CHATMAN

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT: 02/27/2023

TRIAL JUDGE: HON. DEBRA W. BLACKWELL

TRIAL COURT ATTORNEYS:
AISHA ARLENE SANDERS
NOAH MANASEH DRAKE
IKEEICA LORAL COLENBERG
EVERETT T. SANDERS
LYIDA ROBERTA BLACKMON
PAUL DRAUGHN SULLIVAN
MATTHEW DILLARD BUSBY
SHAMECA SHANTE' COLLINS

COURT FROM WHICH APPEALED: ADAMS
COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:
LANCE O'NEAL MIXON
JOSHUA MICHAEL CASSIDY

ATTORNEY FOR APPELLEE:
OFFICE OF THE ATTORNEY GENERAL
BY: DANIELLE LOVE BURKS

DISTRICT ATTORNEY: SHAMECA SHANTE' COLLINS

NATURE OF THE CASE: CRIMINAL – FELONY

DISPOSITION: REVERSED AND REMANDED - 08/29/2024

MOTION FOR REHEARING FILED:

BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.

BEAM, JUSTICE, FOR THE COURT:

¶1. Derrick Chatman was convicted of two counts of sexual battery following a jury trial in the Adams County Circuit Court. The only issue asserted by Chatman on appeal is that the jury's verdict was ambiguous and "not fully responsive" to the verdict forms submitted, which included the lesser-included offense of gratification of lust for both sexual-battery counts. Chatman claims the jury's verdict is ambiguous and the trial court erred by not directing the jury to retire for further deliberations in accordance with Mississippi Rule of Criminal Procedure 24.3.

¶2. We agree that there is uncertainty as to the unanimity of the jury's verdict with regard to the sexual-battery counts given that the jury also was instructed on the lesser-included offense of gratification of lust for both sexual-battery counts. Thus, Chatman's conviction for both sexual-battery counts cannot stand.

¶3. We reverse and remand for either a new trial on the sexual-battery charges or for resentencing on two counts of gratification of lust, at the option of the State.

PROCEDURAL HISTORY

¶4. Chatman was indicted on two counts of sexual battery for numerous alleged acts of sexual abuse against his minor stepdaughter, occurring between 2014 through June 2021. At the conclusion of trial, the jury was instructed on the elements of sexual battery for both counts via jury instructions S-1-A (count one) and S-2-A (count two). Both instructions also included the elements of gratification of lust, a lesser-included charge of sexual battery.

¶5. The jury was provided verdict forms submitted by the State for count one and count two, S-9 and S-10, respectively. Instruction S-9 reads as follows:

If you, the jury, find the Defendant, Derrick Chatman, guilty of the crime of Sexual Battery in Count 1, then your verdict should read: "We, the jury, find the defendant Guilty of Sexual Battery in Count 1."

If you, the jury, find the Defendant, Derrick Chatman, guilty of the crime of Gratification of Lust in Count 1, then your verdict should read: "We, the jury, find the defendant Guilty of Gratification of Lust in Count 1."

If you, the jury, find the defendant[] not guilty of the crime of Gratification of Lust in Count 1, then your verdict should read: “We, the jury, find the Defendant not guilty in Count 1.”

¶6. Jury instruction S-10 reads the same as S-9, except “Count 1” is replaced with “Count 2.”

¶7. Before retiring the jury to the jury room for deliberations, the trial court told the jury, “Also in your instructions when you render your verdict, the form of the verdict has to be written as it’s put forth in these instructions.”

¶8. During deliberations, the jury sent out a question to the trial court saying, “we need a breakdown of the charges[.]” After discussion with trial counsel for both parties, the trial court informed the jury that “you should refer to the two jury instructions that list the elements of the two crimes.”

¶9. Approximately one hour later, the jury announced that it had reached a verdict. According to the transcript, the jury was brought in to the courtroom “and hand[ed] the verdict to the deputy clerk who read[] the verdict of guilty on count one and count two.” “The [c]ourt poll[ed] the jury and receive[d] an affirmative response from all twelve jurors.” The jury was then excused. The handwritten verdict contained in the record reads, “On Count 1 Guilty”; “On Count 2 Guilty.” The record does not indicate how the jury was polled.

¶10. Two weeks later, the trial court sentenced Chatman on count one to thirty years in the custody of the Mississippi Department of Corrections (MDOC), with fifteen years suspended and fifteen years to serve. On count two, the trial court sentenced Chatman to thirty years in the custody of the MDOC, with fifteen years suspended and fifteen years to serve. The trial court ordered that both sentences are to run consecutively, day-for-day.¹

¶11. Chatman thereafter filed a motion for judgment notwithstanding the verdict, or, in the alternative, a motion for a new trial. He claimed that the evidence was insufficient to support his convictions for sexual battery. Chatman further claimed that he was entitled to a new trial based on numerous errors by the trial court. The trial court denied the motion.

¶12. For the first time on appeal, Chatman claims that the jury's verdict was ambiguous and "not fully responsive" and that the trial court erred by not "directing the jury to retire for further deliberations" in compliance with Mississippi Rule of Criminal Procedure 24.3.

¶13. The State contends that Chatman's claim is procedurally barred. The State cites *Thorson v. State*, 895 So. 2d 85, 100 (Miss. 2004), which held that because the defendant did not object "to the

¹ The maximum sentence for sexual battery as charged in this case under Mississippi Code Section 97-3-95(2) (Rev. 2020), is thirty years. Miss. Code Ann. § 97-3-101(1) (Rev. 2020). The maximum sentence for gratification of lust is fifteen years. Miss. Code Ann. § 97-5-23(2) (Rev. 2020).

form of the verdict returned by the jury[,]” his claim on appeal that the verdict was not responsive to the instructions submitted was procedurally barred.

¶14. The State further contends that procedural bar notwithstanding, Chatman’s claim is without merit. The State submits that the jury’s verdicts “can only mean it found Chatman guilty of sexual battery” on both counts.

DISCUSSION

¶15. We agree with the State that because no objection was made to the form of the verdict when the verdict was returned, Chatman is procedurally barred from raising the matter on appeal. *Jordan v. State*, 786 So. 2d 987, 1003 (Miss. 2001) (citing *Edwards v. State*, 737 So. 2d 275, 306-07 (Miss. 1999)). Accordingly, Chatman must otherwise demonstrate plain error. *Spiers v. State*, 361 So. 3d 643, 657 (Miss. 2023). “The plain error doctrine has a two-part test which requires: (i) an error at the trial level and (ii) such error resulted in a manifest miscarriage of justice.” *Stephens v. State*, 911 So. 2d 424, 432 (Miss. 2005) (citing *Gray v. State*, 549 So. 2d 1316, 1321 (Miss. 1989)).

¶16. Chatman cites Mississippi Rule of Criminal Procedure 24.3 to argue that the trial court erred by not directing the jury to retire for further deliberations. Rule 24.3 provides as follows:

Forms of verdicts shall be contained in the jury instructions for each offense charged and, where warranted by the

evidence, the trial judge may instruct for any or all lesser-included or attempt offenses as provided in Mississippi Rule of Criminal Procedure 24.2(d). The defendant may not be found guilty of any offense for which no form of verdict has been submitted to the jury. If the verdict returned is not fully responsive, the court shall direct the jury to retire for further deliberations. The court may correct or complete the verdict, as to form only, in open court in the presence of the parties and the jury.

¶17. Chatman argues that because the jury verdict was ambiguous and not fully responsive to the specific instructions that the jury received, the trial court had an obligation to direct the jury to retire for further deliberations.

¶18. Chatman contends that it is impossible to know whether the jury unanimously found him guilty of sexual battery or gratification of lust. Chatman cites the recent United States Supreme Court case *Ramos v. Louisiana*, 590 U.S. 83, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), which held that the Sixth Amendment right to a jury trial, as applied to the states by way of the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense.

¶19. This Court has held that

[t]he general rule, as found in the texts, is that ordinarily the verdict is sufficient in form if it expresses the intent of the jury so that the court can

understand it, or that the test of the validity of a verdict is whether or not it is an intelligible answer to the issues submitted to the jury.

Thorson, 895 So. 2d at 100 (alteration in original) (quoting *Wilson v. State*, 197 Miss. 17, 19 So. 2d 475 (1944)).

¶20. We agree that the verdicts returned by the jury were not fully responsive to what verdict forms S-9 and S-10 instructed. The trial court expressly told the jury that “in your instructions when you render your verdict, the form of the verdict has to be written as it’s put forth in these instructions.” What resulted, however, were two verdicts of guilty as to counts one and two.

¶21. Historically, this Court has recognized “that a general verdict of guilty is a finding upon all the material averments of the bill of indictment” *Cook v. State*, 49 Miss. 8, 16 (1873). This Court has further recognized that when a jury is instructed on a lesser offense of the offense charged in the indictment and “the jury returns a general verdict of guilty as charged,” the verdict “will be regarded as a conviction of [the higher offense] alone.” *Clanton v. State*, 211 Miss. 568, 52 So. 2d 349 (1951) (citing *Roberts v. State*, 55 Miss. 421 (1877)). Review of these cases, however, shows that the jury verdicts clearly referred to the charges set forth in the indictment.

¶22. The situation here is different given the verdict forms, S-9 and S-10, submitted to the jury. As mentioned, instructions S-9 and S-10 each refer to

both sexual battery and gratification of lust as being part of counts one and two.

¶23. We have been unable to locate a similar Mississippi case in which this has occurred. In *Thorson*, it was claimed that the jury's verdict as to an aggravating factor in a capital murder case was unresponsive to the instructions submitted. *Thorson*, 895 So. 2d at 100. The jury was instructed to consider whether the "capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody." *Id.* The jury returned its verdict, finding that "[t]he offense was committed with the purpose of covering up and hiding evidence." *Id.* (alteration in original) (emphasis omitted) (internal quotation marks omitted). This Court concluded that, procedural bar notwithstanding, the claim was without merit because "[a] fair reading of the verdict convinces us that the jury's decision was unambiguous . . ." *Id.* at 101.

¶24. In the instant case though, there is uncertainty as to the unanimity of the jury's verdict with regard to the sexual-battery charges. And we find nothing in the record that alleviates it. Therefore, we agree with Chatman that his convictions for sexual battery cannot stand. The question now becomes what remedy should apply.

¶25. Chatman does not request or argue for any remedy other than vacation of his convictions and sentences. He simply claims that the jury's verdict "is a nullity" and that this Court "must vacate the

trial court's entry of judgment of convictions and its sentence[s] imposed upon Derrick Chatman."

¶26. Nor does Chatman challenge the sufficiency of the evidence presented at trial for either sexual battery or gratification of lust. And though not at issue, review of the record shows that more than sufficient evidence was presented to support a conviction for either offense.

¶27. We point out that under Criminal Rule of Criminal Procedure 24.6, when a defective verdict occurs at trial, the trial court "shall, with proper instructions, direct the jurors to reconsider the verdict." MRCrP 24.6(a). Afterwards, "[i]f the jury persists in rendering [a] defective verdict[], the court shall declare a mistrial." *Id.*

¶28. But in this instance, neither the trial court nor the parties realized that a defective verdict had occurred. Thus, Rule 24.6 was not invoked. And we are now faced with the matter for the first time on appeal.

¶29. Having considered the issue, we find that a version of this Court's direct-remand rule should apply in this case.

¶30. The "direct[-]remand rule" was termed by this Court in *Shields v. State*, 722 So. 2d 584, 585 (Miss. 1998) (internal quotation marks omitted) (citing *Washington v. State*, 222 Miss. 782, 77 So. 2d 260, 263 (1955)). *Shields* noted a series of cases from this Court that had held: "when the jury convicts of a greater offense, which is invalidated on appeal for

want of sufficiency of the evidence, no new trial is required and the defendant may be remanded for sentencing upon the lesser[-]included offense where the proof establishes proof of the lesser offense.” *Id.* (citing *Yates v. State*, 685 So. 2d 715 (Miss. 1996), *overruled on other grounds by Buffington v. State*, 824 So. 2d 576 (Miss. 2002); *Alford v. State*, 656 So. 2d 1186 (Miss. 1995); *Bogard v. State*, 624 So. 2d 1313, 1320 (Miss. 1993); *Dedeaux v. State*, 630 So. 2d 30, 33 (Miss. 1993); *Clemons v. State*, 473 So. 2d 943 (Miss. 1985); *Biles v. State*, 338 So. 2d 1004, 1005 (Miss. 1976); *Anderson v. State*, 290 So. 2d 628, 628-29 (Miss. 1974); *Wells v. State*, 305 So. 2d 333, 337-38 (Miss. 1974)).

¶31. *Shields* explained that the “logical underpinnings for this rule . . . have long been grounded on the fact that guilt of a true lesser included offense is implicitly found in the jury’s verdict of guilt on the greater offense.” *Id.* (citing *Washington*, 222 Miss. 782, 77 So. 2d at 263).

¶32. *Shields* also noted that the direct-remand rule has been followed by other jurisdictions, “with varying rationales, either statutory, rule based or inherent power.” *Id.* *Shields* added that “any constitutional infirmity in the rule” was resolved in *Rutledge v. United States*, 517 U.S. 292, 116 S. Ct. 1241, 134 L. Ed. 2d 419 (1996), in which the Supreme Court stated:

[F]ederal appellate courts appear to have uniformly concluded that they may direct the entry of judgment for a lesser included offense when a conviction for a

greater offense is reversed on grounds that affect only the greater offense. This Court has noted the use of such a practice with approval.

Shields, 722 So. 2d at 586 (alteration in original) (quoting *Rutledge*, 517 U.S. at 306).

¶33. Neither this Court nor the Court of Appeals has applied the direct-remand rule in any other situation except when the evidence supports a lesser-included offense but not the greater offense. But other jurisdictions have done so.

¶34. For example, a Michigan case noted by this Court in *Shields* reiterated that under Michigan law,

[w]here a trial court improperly fails to include an instruction regarding a lesser included offense, the remedy is to remand for entry of a conviction of the lesser included offense and for resentencing or, if the prosecution desires, for a retrial on the charge for which the defendant was convicted.

Shields, 722 So. 2d at 585 (quoting *People v. Cummings*, 580 N.W.2d 480, 485 (Mich. Ct. App. 1998)).²

² The Michigan Supreme Court reversed Michigan Court of Appeals' decision after finding that the trial court did not err by refusing the lesser-included-offense instruction. *People v. Cummings*, 585 N.W.2d 299 (Mich. 1998).

¶35. We find that to be an appropriate remedy here. The uncertainty or doubt with the unanimity of the jury's verdict on the sexual-battery charges requires reversal of Chatman's conviction on those charges. Chatman remains subject to retrial on the sexual-battery charges given that there is no issue as to sufficiency of the evidence regarding those charges. *See, e.g., Beckwith v. State*, 615 So. 2d 1134, 1147 (Miss. 1992) ("Defendants may be repeatedly retried . . . following mistrials granted because the jury was deadlocked and could not reach a unanimous verdict." (citing *Watts v. State*, 492 So. 2d 1281 (Miss. 1986); *Wallace v. State*, 466 So. 2d 900 (Miss. 1985); *State v. Moor*, 1 Miss. 134 (1823))).

¶36. But while we cannot infer unanimity from the jury's verdict as to the sexual-battery offenses, we can infer jury unanimity on the two counts of gratification of lust submitted to the jury under Section 97-5-23.

¶37. This Court has recognized that gratification of lust under Section 97-5-23 can be considered a lesser-included offense of sexual battery under Mississippi Code Section 97-3- 95 (Rev. 2020). *Jenkins v. State*, 131 So. 3d 544, 550 (Miss. 2013) (citing *Friley v. State*, 879 So. 2d 1031, 1034-35 (Miss. 2004)). The *Friley* Court stated that "a plain reading of [Sections 97-5-23 and 97-3-95] shows that sexual battery (penetration) includes molestation (touching). It is impossible to penetrate without touching." *Friley*, 879 So. 2d at 1035.

¶38. Given how the jury was instructed, along with the facts of the case, we can say with certainty that

the jury, at least, unanimously found Chatman guilty of gratification of lust.

¶39. Accordingly, we reverse Chatman's conviction of two counts of sexual battery. We remand the case to the trial court for a new trial on the sexual-battery charges, or, at the option of the State, for resentencing under Section 97-5-23(2).

CONCLUSION

¶40. We reverse and remand for further proceedings consistent with this opinion.

¶41. REVERSED AND REMANDED.

KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., NOT PARTICIPATING.

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

November 14, 2024

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 14th day of November, 2024.

Supreme Court Case # 2023-KA-00583-SCT
Trial Court Case # 22-KR-0002-B

Derrick Chatman v. State of Mississippi

The motion for rehearing filed by the appellant is denied. Randolph, C.J., not participating.

*NOTICE TO CHANCERY/CIRCUIT/COUNTY
COURT CLERKS *

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found by visiting the Court's website at: <https://courts.ms.gov>, and selecting the appropriate date the opinion was rendered under the category "Decisions."

IN THE CIRCUIT COURT OF ADAMS COUNTY,
MISSISSIPPI

NO. 22-KR-0002

STATE OF MISSISSIPPI

v.

DERRICK CHATMAN

TRANSCRIPT OF THE PROCEEDINGS HAD
AND DONE IN A TRIAL IN THE ABOVE STYLED
AND NUMBERED CAUSE, BEFORE THE
HONORABLE DEBRA W. BLACKWELL, JUDGE
OF THE COURT AFORESAID, AND A JURY OF
TWELVE MEN AND WOMEN, DULY
IMPANELED, ON THE 9TH OF FEBRURARY, 2023,
IN THE CIRCUIT COURTROOM OF THE ADAMS
COUNTY, MISSISSIPPI COURTHOUSE

Reporting and Announcement of Jury Verdict

(The jury is brought into the courtroom, and hands the verdict to the deputy clerk who reads the verdict of guilty on count one and count two. The Court polls the jury and receives an affirmative response from all twelve jurors. The following was then made of record, to-wit:)

BY THE COURT: Let the record reflect that the jury having been polled, I believe that completes our work here. Ladies and gentlemen of the jury, I would ask you before you leave to give your buttons to the

bailiffs. If you need an excuse, you can get it downstairs from Ms. Givens this afternoon or you can get it from her Monday. I thank you for your service. I know it's been a long day, and I hope you enjoy the rest of your weekend.

(The jury is excused.)

(Transcript at 574-575).

Written Jury Verdict

RECEIVED
AND FILED
Feb 11, 2023
Eva J. Givens, Circuit Clerk
By: District Clerk

On count 1 Guilty

On count 2 Guilty

(Clerk's Papers at 243).