

APPENDIX

APPENDIX

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APPENDIX A
Opinion of the Court of Appeals of the State of Mississippi

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2023-KA-00771-COA

STATE OF MISSISSIPPI

APPELLANT

v.

**LANE MITCHELL A/K/A LANE DOUGLAS
MITCHELL**

APPELLEE

DATE OF JUDGMENT:	05/23/2023
TRIAL JUDGE:	HON. KENT E. SMITH
COURT FROM WHICH APPEALED:	UNION COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF THE ATTORNEY GENERAL BY: DANIELLE LOVE BURKS
ATTORNEYS FOR APPELLEE:	BO R. BROCK L. N. CHANDLER ROGERS VICTOR ISRAEL FLEITAS CATHERINE REESE NEELY
DISTRICT ATTORNEY:	BENJAMIN F. CREEKMORE
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	REVERSED AND REMANDED - 07/15/2025
MOTION FOR REHEARING FILED:	

EN BANC.

EMFINGER, J., FOR THE COURT:

¶1. A Union County grand jury returned an indictment charging Lane Douglas Mitchell with the attempted murder of Nathan Russell Rogers. After four days of trial in the Union County Circuit Court and after the close of all the evidence, but before the case was submitted to the jury, the trial court found that the defendant’s constitutional right to compulsory process had been violated by the “prosecution team.” As a result, the trial court entered an “Order Granting Defendant’s Motion to Dismiss and Judgment of Acquittal.” The State of Mississippi then appealed.

STATEMENT OF FACTS

¶2. According to Rogers' mother's testimony at trial, Rogers liked to hike at the Holly Springs National Forest. After hiking, he would often visit the Tallahatchie Gourmet restaurant in New Albany, Mississippi. As a result of his frequent visits, the restaurant staff became familiar with Rogers. On February 9, 2019, Rogers apparently visited the restaurant once in the afternoon and then returned later that evening. Some of the witnesses noted that Rogers appeared to be agitated when he returned that evening. The trial testimony revealed that he was being rude and made the staff and other customers feel uncomfortable that evening. In particular, Rogers' behavior was especially disturbing to Alyvia Jeter, a young waitress at the restaurant. Rogers tried to interact with Jeter on several occasions, and the more she tried to avoid him, the more agitated he became. As a result, Jeter was so "distracted" that she had to go outside for a moment to "collect" herself.

¶3. While sitting at the bar, Mitchell overheard bar patrons and staff discussing Rogers' behavior and how he had been making everyone uncomfortable. Around the time of closing, Rogers left the restaurant but said he would return. Rogers' comment caused Mitchell, his father Torrey Mitchell¹ (who was a bartender at the restaurant), and the other patrons concern that he might return with a weapon. Before the staff could lock the front door, Rogers returned with his hands in the pockets of his "big puffy looking jacket" and sat down at the bar.

¹ Mitchell's father's name is spelled "Torrie" throughout the trial transcript. However, pleadings contained in the record show his name spelled "Torrey." For the purpose of this opinion, we spell his name "Torrey."

¶4. Upon Rogers’ return, he confronted Jeter and tried to talk to her. Worried for Jeter’s safety, Torrey told her to get behind the bar, and he asked Rogers to leave. Rogers aggressively approached Torrey with his hands still in his pockets, causing Torrey to believe that Rogers was concealing a weapon. Torrey “grabbed [Rogers’] hands . . . to keep him from pulling whatever he had in his pockets out.” At that point, Mitchell came up behind Rogers and stabbed him in the neck with a paring knife from the bar. Torrey and other patrons rendered medical aid to Rogers until the paramedics arrived. These acts were captured on video and introduced into evidence at trial. Rogers suffered severe injuries and was transported to the hospital in serious condition. Mitchell waited for law enforcement to arrive and was subsequently taken into custody. Dr. Raymond Orgler, the surgeon who treated Rogers at North Mississippi Medical Center that night, stated that Rogers arrived with a life-threatening injury and underwent immediate surgery. Rogers remained in the hospital for twelve days.

PROCEDURAL HISTORY

¶5. On March 27, 2019, a Union County grand jury indicted Mitchell for attempted murder.² On November 12, 2019, the Probate Court of Shelby County, Tennessee, appointed Rogers’ father, Bob Rogers, as Rogers’ emergency conservator.³ A permanent conservatorship was established in January 2020, with medical records placed under seal.

¶6. Over the next three years, Mitchell’s criminal trial was continued six times at his

² See Miss. Code Ann. § 97-3-19(1)(a) (Supp. 2017).

³ To avoid confusion, we will refer to Bob Rogers as the conservator or Rogers’ father.

request. At least twice, the trial was reset by the court. It appears from the record that most of the delay can be attributed to discovery issues. Discovery in this case was complicated by the fact that Rogers had sued The Tallahatchie Gourmet LLC and Torrey Mitchell in the United States District Court for the Northern District of Mississippi in *Russell Rogers v. The Tallahatchie Gourmet LLC et al.*, Civil Action No. 3:19-cv-00142-GHD-JMV. The federal district court entered a “Protective Order” on July 29, 2020, to protect Rogers’ medical records and medical information produced in the civil matter.

¶7. On December 8, 2020, Mitchell filed a motion in his criminal case seeking discovery of materials from the federal case. Meanwhile, the district attorney and Mitchell’s criminal defense attorney signed an “Agreed Order” on that same date concerning the preservation of the medical records, depositions, and other evidence produced in the federal civil case. On July 8, 2021, counsel for Rogers in the federal civil litigation filed a motion in this criminal action seeking to have the trial court dissolve the prior Agreed Order. The motion advised the trial court that no notice had been given to Rogers’ civil attorney of the motion filed in the trial court on December 8. The motion further advised the trial court that at the time the motion was filed and the order was entered on December 8, the civil litigation had concluded by settlement. As a result, the Protective Order in place in federal court required all parties to destroy all privileged information obtained during that litigation or return the information to the producing party within thirty days of the dismissal of the action. The motion noted that such information would still be available from the original sources of the information. Ultimately, the trial court entered an order on May 16, 2022, vacating the Agreed Order and

outlining the course of discovery for the relevant records thereafter.

¶8. On May 31, 2022, the conservator for Rogers filed a “Motion for Partial Reconsideration of Order Vacating.” The motion asked the trial court to reconsider its prior order and require Mitchell to comply with Mississippi Rule of Criminal Procedure 33(c)’s subpoena requirements to obtain Rogers’ “post incident” medical records. This rule requires notice to the party and a hearing by the court to evaluate the merits of the request for records. MRCrP 33(c). The trial court clarified that all parties were required to follow the Mississippi Rules of Criminal Procedure regarding the issuance of subpoenas. Thereafter, the conservator filed several responses in opposition to the issuance of subpoenas, and the court heard those matters on several different dates.

¶9. Four days before the trial was scheduled to begin, on May 4, 2023, Mitchell caused a subpoena to be issued for Rogers.⁴ At the pretrial conference on May 5, Mitchell’s attorney asked the prosecutors if the subpoena could be served at the address for the conservator. The State advised counsel that it was Rogers’ last known address, and if the State had a better address, then the State’s subpoena would have been served.⁵ On Saturday, May 6, 2023, the defense filed a motion for a certificate requiring the attendance of Rogers as an out-of-state

⁴ While the issuance of the subpoena is recorded on the MEC docket, we do not have a copy of the subpoena in the record on appeal. Therefore, we do not know what address was used for service of that subpoena. In a motion filed on May 6, the defense represented that the subpoena was issued for service on Rogers’ conservator. The motion further indicates that the defense was advised by the conservator’s attorney that neither the conservator nor the attorney could accept service of the subpoena on behalf of Rogers.

⁵ The State had been unable to serve Rogers with a subpoena as well.

witness.⁶ In this motion, Mitchell asked the trial court to order that Rogers be taken into custody and delivered to court. On Monday, May 8, the conservator filed a response in opposition to the motion, asking that the court remove the requirement that Rogers be taken into custody.

¶10. The jury trial commenced on May 8, 2023. Prior to jury qualification and voir dire, Mitchell brought his petition for an out-of-state subpoena before the trial court. Although the attorney for the conservator was not present, the State joined in the conservator's request that the certificate for the subpoena be issued without the requirement that Rogers be taken into custody. The trial court judge noted:

And again, if [Rogers is] served, if he's under process and somebody is going to advise the Court that he'll be here at a date, time and place certain, or here at a date and time certain in the Union County Courthouse . . . , the Court is absolutely willing to accommodate that. What I'm not willing to do is rely on the conservator to get him here if he's going to be playing games, in the opinion of the Court, with the Court regarding the victim of this heinous alleged crime. I mean, why isn't he here? I mean, I can't even fathom it. I tell you what, I've been practicing law long enough to know that will end up being an issue that I have to rule that I'm not prepared to rule on right now. But I can't imagine a victim of a crime not appearing at court.

The court then issued a certificate for presentation to a Tennessee court of record in order for the Tennessee court to require that Rogers be taken into custody and delivered by law enforcement to Union County, Mississippi, to attend the trial.

¶11. As will be discussed in more detail below, later on May 8, the defense filed the

⁶ Mitchell attempted to secure Rogers' presence at trial pursuant to the "uniform law to secure the attendance of witnesses from without the state in criminal cases." Miss. Code Ann. §§ 99-9-27 to 99-9-35 (Rev. 2000). But we find no case where this process has sought to require the attendance of a witness who is under a conservatorship.

certificate in the Circuit Court of Shelby County, Tennessee. That circuit court issued a summons for Rogers to appear in that court on May 10, 2023, at 9:30 a.m. for a hearing as to whether he should be taken into custody and delivered to Union County.

¶12. Still on May 8, after the jury was impaneled and the parties made their opening statements, defense counsel asked the trial court (outside the jury's presence):

Your Honor, I'd like to inquire about the State if they have any knowledge of where Nathan Rogers is. The reason I ask that is because as you know, Your Honor, the defense filed a motion on Saturday in order to get process issued through the State of Tennessee. Mr. Brock, my co-counsel, along with Mr. Fleitas, he has been in Tennessee all morning and is presently waiting on an order from a Shelby County court, which he says should be done in the next 30 minutes, which would provide that subpoena process. So we're jumping through a lot of hoops to find [Rogers]. And my understanding from Friday - - and I just wanted the State to confirm - - is that to their knowledge, the only place to serve him would be at the last known address in Shelby County that was on the incident report. So I'm trying to figure out if we know the whereabouts of [Rogers].

The prosecutor replied, "I don't have any idea. . . . I've never met him, never seen him, don't know where he is, never talked to him." The defense argued, "[W]e are being denied Mr. Mitchell's right to compulsory process and we would like the court to conduct an inquiry into the whereabouts of [Rogers]."

¶13. Noting that the State "want[ed] Rogers as bad as they do," the prosecutor told the trial judge that it had informed the conservator (Rogers' father) that if Rogers does not testify, "they're sabotaging my case." Defense counsel then argued:

I have never seen a prosecution team, a police department or anyone who when faced with a recalcitrant and uncooperative witness moved the case forward. . . . And yet here we are doing service for Mr. Bob Rogers and Mr. Nathan Rogers and they can't be bothered to be here. . . . Due process has been violated; *Brady* has been violated; compulsory process has been violated.

While the trial judge acknowledged that the State had done nothing to “avoid or hide” the victim, he noted that it was “apparent . . . the conservator has or is trying to be an impediment to this case moving forward.” The trial resumed, and the State called its first witness.

¶14. The defense filed a “Motion to Dismiss and for Judgment of Acquittal” on May 9, the second day of trial, requesting that the trial court “dismiss the charges and indictment against [Mitchell] by entering an acquittal on account of the prosecution’s conduct and for a failure of proof by the prosecution.” The court held the motion in abeyance, finding the matter was not yet ripe for consideration. The Tennessee circuit court’s summons was returned not served on May 9, and, as will be discussed below, the Tennessee probate court entered an order finding Rogers incompetent to testify and quashing our trial court’s out-of-state subpoena effort.

¶15. After the State rested its case-in-chief, the defense moved for a directed verdict. The trial court denied the motion. Regarding the defense’s earlier motion to dismiss and for acquittal, the court again found that the motion was not yet ripe. It was at that point that the attorney for the conservatorship produced an order from the Tennessee probate court quashing the trial court’s certificate for presentation for Rogers. In the order, the probate court determined that Rogers was “a disabled person, and his particular mental health disabilities render[ed] him incapable of testifying in any proceedings, much less the criminal trial in which he was the victim of an undisputed near-fatal stabbing.” The trial court stated:

If [the defense] calls . . . Nathan Rogers and he is not here, we need to make an announcement on the record that he’s not here. I’m going to ask the State to respond as to whether you know if he’s coming or not. In my opinion, he is certainly the victim of this crime. And in my opinion, he is, for lack of a better

word, a member of your team.

You, I know have a subpoena issued as well. I don't know if it's been quashed or not, but I want to be able to ask if he intends on coming.

Earlier today I was advised, I believe here at the bench, that he may -- or it was anticipated that he might be here to testify in the morning.

The State replied:

I don't think he's going to be here.

. . . .

As I told the Court, I had it scheduled for [Rogers] to come if he was coming on Wednesday morning. And then we saw we're going to finish early, so I called them and said if he's coming, he better get here today. And then that's when they told me [his mother] was coming to explain.

The defense then called Rogers as its first witness (three times in open court); Rogers did not appear. The court stated for the record: "[Rogers] has not appeared. I don't know if he's been served his subpoenas or not, I don't. . . . I'd say call your next witness." The defense then proceeded to put on its case-in-chief.

¶16. On May 10, 2023, the conservator filed a petition for writ of prohibition with the Mississippi Supreme Court, seeking a stay of the trial to "evaluate the confrontation issue" presented by the defense's motion. When the trial court was apprised of this filing during trial, the court noted, "I maintain the comment that the Court made on the record in chambers that even during this trial, the conservator continues to try to play puppet master or influence this trial or manipulate this trial, in the opinion of this judge." The supreme court found the conservator did not have standing in the criminal proceeding, however, and denied the petition. *See Order, Rogers v. State*, No. 2023-M-00544 (Miss. May 10, 2023).

¶17. After both parties rested, the defense moved for “a directed verdict of acquittal as to the charge of deliberate design attempted murder,” arguing that Mitchell’s actions “are entirely consistent with self-defense” and that there was no evidence of “criminal intent.” The defense also renewed its pending motion to dismiss on the basis that Mitchell’s rights under the Sixth Amendment (compulsory process) were violated. Finding Mitchell’s motion to dismiss and for judgment of acquittal was now ripe for consideration, the trial judge observed that the conservator and Rogers’ attorney had been actively involved in the criminal case (e.g., fighting subpoenas and filing “motions to quash certain things”) prior to trial and had worked “in concert and in tandem with the State[.]” The judge was especially bothered by the fact that Rogers’ conservatorship was finalized in January 2020, yet Rogers “could come down here the summer of 2020 . . . and participate in the depositions” for the federal civil case. The judge stated for the record that “the conservator has caused the filing of three different matters in three different jurisdictions during this case, but he can’t come and his son, the victim, can’t come.”

¶18. For these reasons, the trial court determined that Mitchell’s constitutional rights had been violated. The court then dismissed the jury, holding:

It is the opinion of the court and consistent with the law in the State of Mississippi and the United States of America that the dual angle of our criminal justice system is that guilt shall not escape or innocent suffer. I believe that all criminal defendants are entitled to a fundamental fair trial.

There are things that have happened in this case that I believe ha[ve] violated [Mitchell’s] Fifth, Sixth and Fourteenth Amendment rights. Specifically, the [c]ourt is of the opinion that the compulsory process provisions of the constitution have been violated. The [c]ourt has read many cases and believes that the adversarial system depends upon both parties being able to present

evidence and explore relevant facts on a particular case.

This is not -- for the record more than for the jury, it's not a confrontation clause issue. We all hear the phrase you have a right to confront your accuser. Well, in this particular case, the State of Mississippi is bringing the matter forward, but the victim has not appeared. He has been -- there has been process or a subpoena issued for his appearance.

. . . .

You did see his mother appear to testify a couple of days ago in trial, but [Rogers] hasn't appeared. And there are certain issues that have been presented to the [c]ourt that make the [c]ourt of the opinion that the compulsory process provision of the [C]onstitution has been violated. The [c]ourt is of the opinion that Lane Mitchell's due process rights have been violated. And they work together, the compulsory process and due process rights. And the [c]ourt is of the opinion that his due process rights have been violated.

. . . But based on some jurisdictional issues and such as that, based on my interpretation of the law as I know, to the facts that I know have been established now that the case is over, I just felt that it was the correct, fair and just thing to do under these facts and under the law to not give it to [the jury], to take it and enter an order dismissing the case and a judgment of acquittal.

On May 23, 2023, the trial court entered its written order nunc pro tunc, granting Mitchell's motion to dismiss, holding:

IT IS THEREFORE ORDERED AND ADJUDGED that the Indictment returned against Lane Douglas Mitchell for the crime of attempted murder be, and the same is hereby, Dismissed for the violations of his Constitutional rights discussed above.

IT IS FURTHER ORDERED AND ADJUDGED that a Judgment of Acquittal be entered by the Clerk as to the disposition of the charges.

The State appeals from the trial court's judgment.

ANALYSIS

¶19. This case presents the Court with unique facts and procedural issues. Rogers, the

alleged victim, is a Tennessee resident. After Rogers was severely injured in this event, a conservator was appointed for Rogers by a Tennessee probate court.⁷ Rogers did not give a statement to law enforcement, and the prosecutors did not speak to him prior to trial. The State indicated that while it would like for him to testify at trial, the prosecution could proceed without him. Mitchell decided, at some point, that he needed to call Rogers as a defense witness. The defense, however, did not start the out-of-state-subpoena process to secure Rogers' appearance until four days before the trial was scheduled to begin. Although Mitchell presented his petition to a Tennessee circuit court, the summons for Rogers to appear for the required statutory hearing in that court was returned not served. Meanwhile, the conservator petitioned the probate court to quash the out-of-state subpoena effort. Finding it had exclusive jurisdiction over its ward and that Rogers was "unfit and incompetent to testify," the probate court refused to require Rogers to attend the trial. An order was entered by the probate court on May 9, 2023, declaring the certificate issued by the Circuit Court of Union County, Mississippi void *ab initio*. While Mitchell's defense was given notice of the order, there is no evidence that the defense attempted to appeal the decision of the Tennessee probate court. Mitchell did not move for a continuance to secure Rogers' appearance at trial and did not move for a mistrial after the ruling by the probate court. The trial continued, and at the close of all the evidence but before the case was submitted to the jury for its consideration, the trial court entered its "Order Granting Defendant's Motion to Dismiss and

⁷ The order appointing the conservator is not in the appellate record, but subsequent orders show that Rogers was diagnosed with post-traumatic stress disorder (PTSD) as a result of the alleged offense.

Judgment of Acquittal.”

¶20. We will divide our consideration of the issues presented into two parts below. First, we will address the issue of appellate jurisdiction, and then we will address whether the trial court erred by entering the order to dismiss the indictment.

I. Appellate Jurisdiction

¶21. The Mississippi Supreme Court has held “that the State may not appeal a criminal case except where specific statutory authority grants it the right to do so.” *State v. Hicks*, 806 So. 2d 261, 263 (¶8) (Miss. 2002) (quoting *State v. Parks*, 415 So. 2d 704, 705 (Miss. 1982)). Further, “[i]n criminal cases, the State ‘is allowed to take an appeal only to the extent that a statute confers the right.’” *State v. Parkman*, 106 So. 3d 378, 381 (¶9) (Miss. Ct. App. 2012) (quoting *State v. Insley*, 606 So. 2d 600, 602 (Miss. 1992)). The Mississippi Legislature made provisions for the prosecution to appeal rulings of a circuit court in criminal cases in Mississippi Code Annotated section 99-35-103 (Rev. 2020), which reads as follows:

The state or any municipal corporation may prosecute an appeal from a judgment of the circuit court in a criminal cause in the following cases:

(a) From a judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime; but such appeals shall not bar or preclude another prosecution of the defendant for the same offense.

(b) From a judgment actually acquitting the defendant where a question of law has been decided adversely to the state or municipality; but in such case the appeal shall not subject the defendant to further prosecution, nor shall the judgment of acquittal be reversed, but the Supreme Court shall nevertheless decide the question of law presented.

(c) From a ruling adverse to the state or municipality in every

case in which the defendant is convicted and prosecutes an appeal; and the case shall be treated as if a cross appeal had been formally presented by the state. All questions of law thus presented shall be decided by the Supreme Court.

This statutory authority for criminal appeals by the State was described in *Jamison v. City of Carthage*, 864 So. 2d 1050, 1053 (¶7) (Miss. Ct. App. 2004):

Appeals by the prosecution are severely limited, granted only in situations which can generally be divided into two basic groups: **(a) appeals permitted in order to determine a question of law; and (b) appeals permitted so long as the traditional concept of double jeopardy is not violated.** *State v. Insley*, 606 So. 2d 600, 602 (Miss. 1992).

(Emphasis added).

¶22. With that law in mind, section 99-35-103(a) provides for appeals in those instances where a charging instrument is dismissed before a decision is made concerning the merits of the charge. Such a dismissal *does not* prevent a subsequent prosecution for the same offense.⁸ Section 99-35-103(b) allows for appeals as to questions of law in those instances where the defendant is actually acquitted by the judge or jury (a decision on the merits of the case, which we discuss below), and it *does* prevent a subsequent prosecution for the same offense.⁹ Section 99-35-103(c) provides for appeals in those cases where a defendant is found guilty and perfects an appeal. Subsection (c) allows for the prosecution to “cross appeal” from a ruling on a question of law that had been decided adversely to the prosecution.¹⁰ It is clear that the State cannot proceed pursuant to subsection (c) because the defendant was not

⁸ See *Parkman*, 106 So. 3d at 381 (¶10).

⁹ *Id.* at (¶11).

¹⁰ *Id.* at 381 n.1

convicted, and the defendant did not appeal.

¶23. Mitchell argues on appeal that he was acquitted by the trial court because of “blatant violations of his constitutional rights.” He contends that there is no statutory authority for the State to appeal his acquittal and argues that the appeal should be dismissed. Mitchell’s basic argument is that the trial court’s ruling presents a mixed question of law and fact. Therefore, citing *State v. Hudson*, 351 So. 3d 995 (Miss. Ct. App. 2022), *Kemper County v. Parks*, 281 So. 3d 208 (Miss. Ct. App. 2019), and *State v. Ashley*, 194 Miss. 110, 11 So. 2d 832 (1943), Mitchell contends the State cannot appeal the trial court’s decision. In the alternative, “[a]ssuming *arguendo* that the State’s appeal is proper,” Mitchell contends, citing *McGraw v. State*, 688 So. 2d 764 (Miss. 1997), that the State cannot seek retrial on the attempted murder charge without violating his constitutional protection against double jeopardy. Mitchell then argues that subsection 99-35-103(a) applies *only* “to cases in which the trial court prematurely dismisses an indictment in *pre-trial* proceedings. Mitchell reasons that *if* the State has a right to appeal, then it must be considered under subsection 99-35-103(b) because he was acquitted by the trial judge at the conclusion of the trial.

¶24. To determine whether the State has a statutory right to appeal pursuant to either subsection (a) or (b), we must first decide whether the trial court’s order in this case is an “acquittal.” As stated in *Jamison*, section 99-35-103 includes “appeals permitted so long as the traditional concept of double jeopardy is not violated.” *Jamison*, 864 So. 2d at 1053 (¶7). Here, the trial court used the phrase “Judgment of Acquittal” as part of the title of its order, but we find this alone does not invoke the Fifth Amendment protection against double

jeopardy.

¶25. In *Smith v. United States*, 599 U.S. 236, 253 (2023), the Supreme Court stated:

[R]etrial is permissible when a trial terminates “on a basis unrelated to factual guilt or innocence of the offence of which [the defendant] is accused.” *Scott*, 437 U.S. at 99, 98 S. Ct. 2187. For example, the Double Jeopardy Clause is not triggered when a trial ends in juror deadlock, see *Blueford v. Arkansas*, 566 U.S. 599, 610, 132 S. Ct. 2044, 182 L. Ed. 2d 937 (2012), or **with a judgment dismissing charges because of a procedural issue** like preindictment delay, see *Scott*, 437 U.S., at 84, 98 S. Ct. 2187. In these circumstances, the termination of proceedings is perfectly consistent with the possibility that the defendant is guilty of the charged offense.

(Emphasis added). In *United States v. Scott*, 437 U.S. 82, 96-97, 100 (1978), the Supreme Court explained:

We have previously noted that “the trial judge’s characterization of his own action cannot control the classification of the action.” *Jorn*, 400 U.S., at 478 n. 7, 91 S. Ct., at 554 (opinion of Harlan, J.), citing *United States v. Sisson*, 399 U.S. 267, 290, 90 S. Ct. 2117, 2129, 26 L. Ed. 2d 608 (1970). See also *Martin Linen*, 430 U.S., at 571, 97 S. Ct., at 1354; *Wilson*, 420 U.S., at 336, 95 S. Ct., at 1018. Despite respondent’s contentions, an appeal is not barred simply because a ruling in favor of a defendant “is based upon facts outside the face of the indictment,” *id.*, at 348, 95 S. Ct., at 1024, or because it “is granted on the ground . . . that the defendant simply cannot be convicted of the offense charged,” *Lee*, 432 U.S., at 30, 97 S. Ct., at 2146. **Rather, a defendant is acquitted only when “the ruling of the judge, whatever its label, actually represents a resolution [in the defendant’s favor], correct or not, of some or all of the factual elements of the offense charged,”** *Martin Linen*, supra, 430 U.S., at 571, 97 S. Ct., at 1355. Where the court, before the jury returns a verdict, enters a judgment of acquittal pursuant to Fed. Rule Crim. Proc. 29, appeal will be barred only when “it is plain that the District Court . . . evaluated the Government’s evidence and determined that it was legally insufficient to sustain a conviction.” 430 U.S., at 572, 97 S. Ct., at 1355.

....

We think the same reasoning applies *in pari passu* where the defendant, instead of obtaining a reversal of his conviction on appeal, obtains the

termination of the proceedings against him in the trial court without any finding by a court or jury as to his guilt or innocence. He has not been “deprived” of his valued right to go to the first jury; only the public has been deprived of its valued right to “one complete opportunity to convict those who have violated its laws.” *Arizona v. Washington*, [434 U.S. 497, 509 (1978)]. **No interest protected by the Double Jeopardy Clause is invaded when the Government is allowed to appeal and seek reversal of such a midtrial termination of the proceedings in a manner favorable to the defendant.**

(Emphasis added). In *McGraw*, 688 So. 2d at 766-67, the Mississippi Supreme Court identified the circumstances where double jeopardy protection would prevent a retrial:

Double jeopardy serves to protect a defendant from being twice prosecuted for the same offense. A defendant’s double jeopardy right not to be re-prosecuted for the same offense accrues instantly upon the happening of some event in criminal proceedings against him. **There are only three possible jeopardy terminating events:** (1) an acquittal; (2) a trial court determination of insufficiency leading to a directed verdict of acquittal; and (3) an unreversed determination on direct appeal that there was insufficient evidence to support the conviction. *Vanderbilt v. Collins*, 994 F. 2d 189, 195 (5th Cir. 1993), citing *Hudson v. Louisiana*, 450 U.S. 40, 101 S.Ct. 970, 67 L. Ed. 2d 30 (1981) (trial court determination of insufficiency); *Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978) (unreversed determination on direct appeal of insufficiency).

(Emphasis added). Based upon the above law, the transcript of the trial court’s reasoning for its ruling, and the language in the trial court’s order, we find that the trial court dismissed the indictment and terminated the trial based upon the court’s finding that Mitchell’s right to compulsory process had been violated. The trial court did not find that the State’s evidence was legally insufficient or that Mitchell was factually not guilty. Because this appeal is not from an order “actually acquitting” Mitchell, the State’s appeal cannot be justified pursuant to section 99-35-103(b).

¶26. Having found that subsections (b) and (c) do not provide a basis for this appeal, we

consider the State’s argument that this appeal is proper under subsection 99-35-103(a). Citing *Hicks v. State*, 806 So. 2d 261 (Miss. 2002), Mitchell argues that section 99-35-103 should be strictly construed, and he contends that this Court’s acceptance of the State’s position that the appeal is authorized by subsection (a) would “modify the policy of Miss. Code Ann. § 99-35-103 in contravention of the constitutional rights of Lane Mitchell and to wholly disregard the plain language of the statute in disregard of the princip[le] of strict construction.” Mitchell contends that subsection (a) specifically applies “to cases in which the trial court prematurely dismisses an indictment in *pre-trial* proceedings.” Because the trial court’s order came after jeopardy had attached and after the close of all the evidence, Mitchell argues that subsection (a) cannot apply. We find Mitchell’s interpretation of the statute unnecessarily narrow and wrong.

¶27. In *In re Guardianship of Duckett*, 991 So. 2d 1165, 1181-82 (¶37) (Miss. 2008), the supreme court stated:

If a statute is plain and unambiguous, there is no need for this Court to engage in statutory interpretation. *DuPree v. Carroll*, 967 So. 2d 27, 30 (Miss. 2007) (citation omitted). On the other hand, if a statute is ambiguous or **silent on a specific issue**, statutory interpretation is appropriate. *Id.* “The primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein.” *Bailey v. Al-Mefty*, 807 So. 2d 1203, 1206 (Miss. 2001) (quoting *Clark v. State ex rel. Miss. State Med. Ass’n*, 381 So. 2d 1046, 1048 (Miss. 1980)). But “the [C]ourt, in determining the legislative intent, may look not only to the language used but also to its historical background, its subject matter, and the purposes and objects to be accomplished.” *Id.* **“Unthought of results must be avoided if possible, especially if injustice follows, and [an] unwise purpose will not be imputed to the Legislature when a reasonable construction is possible.”** *Evans v. Boyle Flying Serv., Inc.*, 680 So. 2d 821, 825 (Miss. 1996) (internal quotation and citation omitted).

(Emphasis added). We find that subsection 99-35-103(a) is “plain and unambiguous.” In the case at bar, the trial court granted (sustained) the defendant’s motion to dismiss (quash) the indictment. This is exactly the situation covered by subsection (a): the dismissal of a charging instrument before a decision is reached on the merits of the case. Any attempt to limit the scope of subsection 99-35-103(a) to *pretrial* motions to dismiss (quash) an indictment that allege *defects on the face of the indictment* is not justified by the plain language of the statute. We find that subsection 99-35-103(a) does not contain any such limitation. Instead, it plainly and unambiguously applies to all efforts to dismiss a charging instrument, for any reason, at whatever time it may be filed. *See State v. Woodall*, 801 So. 2d 678, 687 (¶32) (Miss. 2001) (reversing dismissal of indictment for speedy trial violation, reinstating the indictment, and remanding for trial); *Parkman*, 106 So. 3d at 381 (¶9) (involving the motion to dismiss alleging prosecution was barred by a two-year statute of limitations); *State v. Delaney*, 52 So. 3d 348, 351 (¶11) (Miss. 2011) (involving motion seeking to dismiss indictment because pre-indictment probable cause hearing was not conducted pursuant to Mississippi Code Annotated section 99-3-28 (Rev. 2007)). In these cases, appellate jurisdiction was based on subsection 99-35-103(a) despite the fact that there was no claim of any defect on the face of the indictment.

¶28. The fact that (1) the motion was filed after the jury was impaneled; (2) that the motion was not heard and ruled upon until the close of all evidence; and (3) that the motion and ruling were not based upon a defect in the indictment should not enable such a ruling by the trial court to avoid appellate review. While the statute may be silent on this “specific issue,”

to interpret the statute to allow the dismissal of an indictment charging attempted murder to escape review under these circumstances would be to impute an “unwise purpose” to the Legislature and would lead to an unjust result in this case and future cases. *See Duckett*, 991 So. 2d at 1182 (¶37). We find that we have appellate jurisdiction to consider the State’s appeal pursuant to subsection 99-35-103(a).

II. Order Dismissing Indictment

¶29. Having found that this Court has appellate jurisdiction to consider the State’s appeal pursuant to subsection 99-35-103(a), we now consider whether the trial court erred by terminating the trial of this matter and dismissing the indictment. It is clear that the trial judge believed that the conservator for Rogers and the conservator’s attorney were obstructing the court’s effort to provide Mitchell with a fair trial. The trial judge found that these persons were part of the “prosecution team” and that their conduct should be attributed to the State. We find that the trial court erred in this regard.

¶30. In addition to a conservator having been appointed for Rogers in the Probate Court of Shelby County, Tennessee, civil litigation concerning this event was ongoing in the United States District Court for the Northern District of Mississippi. The record is clear, as shown above, that during the pendency of this criminal proceeding, from March 2019 until trial in May 2023, there were several hotly contested issues involving the civil proceeding, the criminal proceeding, and the conservatorship. These are the types of disputes that the trial court had to deal with in an effort to move this indictment to trial.

¶31. It appears from the record that the defense first sought to secure the attendance of

Rogers at trial by starting the process to obtain an out-of-state subpoena four days before the trial was set to begin.¹¹ The defense filed a petition in the Circuit Court of Shelby County, Tennessee, on May 8, 2023, causing a civil summons to be issued from that court. The summons required Rogers to appear on May 10, 2023, at 9:30 a.m. for a hearing to determine whether he should be taken into custody and delivered to Union County, Mississippi, to attend the trial of this matter. However, that civil summons was returned not served on May 9, 2023, stating that Rogers could not be found.

¶32. About the same time, the conservator for Rogers filed an emergency motion in the probate court asking the court to quash the out-of-state subpoena. The probate court found that Rogers suffers from PTSD as a result of the injuries he sustained in the alleged murder attempt. The court also found that the purpose of the probate court and the conservator is to protect the person and property of a disabled person. The probate court further found:

The Ward is a disabled person, and his particular mental health disabilities render him incapable of testifying in any proceeding, much less the criminal trial in which he was the victim of an undisputed near-fatal stabbing. Irreparable damage to the Ward's mental health would result if this Court did not provide relief from the Certificate.

As a result, the court ordered:

[T]he Certificate Concerning Attendance of Out-of-State Witness issued by the Circuit Court of Union County, Mississippi is void *ab initio* and thus quashed or otherwise denied because it seeks to exercise jurisdiction over the Ward's

¹¹ Mitchell's defense counsel announced "ready for trial" even though they knew that they had not secured Rogers' appearance at trial. The defense should have requested a continuance in order to assure the out-of-state subpoena had been served and approved by the Tennessee courts. Once the defense found that the Tennessee court had denied the subpoena, they should have requested a mistrial because, as discussed later, dismissal of the indictment was not an available remedy.

person when this Court has sole jurisdiction over the Ward's person. . . . [T]he Ward is unfit and incompetent to testify.

This order was entered on May 9, which was the second day of trial, with instructions that a copy be delivered to the Circuit Court of Union County, Mississippi.

¶33. After the State had rested its case-in-chief, Mitchell moved for a directed verdict, which the trial court denied. Still on May 9, before the defense began its case, the transcript reflects that the defense, the prosecution, and the trial court were given a copy of the probate court's order. Having been made aware of the probate court's denial of the request for an out-of-state subpoena for Rogers, there is no evidence in the record that the defense attempted to appeal the decision. The defense did not seek a continuance in order to appeal the probate court's decision and did not request a mistrial. Instead, the defense went forward with its case-in-chief.

¶34. The defense called Rogers as its first witness, and the record reflects that Rogers did not appear. Over the next two days, the defense called fourteen witnesses to testify in Mitchell's behalf. At the close of its case-in-chief, the defense renewed its motion for a directed verdict, which the trial court denied. Then, after the State rested in rebuttal, the defense again renewed its motion for a directed verdict and raised the "Motion to Dismiss and Judgment of Acquittal" that had been filed on May 9. The trial court had delayed ruling on this motion until the close of all the evidence, finding that the motion was not "ripe" until both sides had rested. While the court did not rule on Mitchell's third motion for a directed verdict, the trial court found that Mitchell's constitutional right to compulsory process to require Rogers' presence at trial had been violated. As a result, the court dismissed the

indictment and ordered that a judgment of acquittal be entered.

¶35. We find that Mitchell’s right to compulsory process was not violated. When the defense requested an out-of-state subpoena, the trial court issued the subpoena on the same day, and the statutory process was followed. As provided by statute, however, the Tennessee court refused to require Rogers to attend the trial.¹² The bottom line is that the probate court found that Rogers was “unfit and incompetent to testify” and that testifying in the criminal trial would not be in his best interest. As noted, Mitchell did not appeal that decision.¹³

¶36. The only court that denied Mitchell’s effort to secure Rogers’ attendance at trial was the Tennessee probate court. The Tennessee probate court, the conservator, and the conservator’s attorney had the duty and responsibility to safeguard Rogers’ well-being. That may well have been at odds with the State’s interest in proceeding with the prosecution of this case. Under these facts, we find that the conservator and his attorney were not part of the prosecution team, and their conduct cannot be imputed to the State of Mississippi. Concerning who is a part of the “prosecution team,” the supreme court stated in *Manning v. State*, 158 So. 3d 302, 306 (¶11) (Miss. 2015), that courts have “declined to draw a distinction between different agencies under the same government, focusing instead upon the

¹² Mississippi Code Annotated section 99-9-33 (Rev. 2020) gives the court in Tennessee the responsibility to decide whether to require the witness’s attendance. While we find no case where another state has refused to honor a subpoena request, clearly the statute allows for that possibility.

¹³ We find that Mitchell did not timely begin the out-of-state subpoena process. Had this effort begun sufficiently in advance of trial, an appeal of the probate court’s decision could have been undertaken and the trial delayed to await the results. Mitchell’s defense decision not to appeal the probate court’s order must be considered a strategic decision, as was the decision not to seek a continuance or a mistrial.

‘prosecution team’ which includes both investigative and prosecutorial personnel.” (Emphasis omitted) (quoting *United States v. Antone*, 603 F. 2d 566, 569 (5th Cir. 1979); *King v. State*, 656 So. 2d 1168, 1176 (Miss. 1995)). The supreme court continued:

King may overstate who may be state actors, for the quoted language used is derived from a footnote in the special concurrence of *Box*, joined by only two justices. *King*, 656 So. 2d at 1174-75 (quoting *Box [v. State]*, 437 So. 2d [19,] 25 n.4 [(Miss. 1983)]). **For the purposes of *Brady*, the “prosecution” depends on the particular facts of a case.**

Id. at 306 n.2 (emphasis added).

¶37. The trial court did everything the defense asked to secure Rogers’ attendance at trial. Mitchell was not denied his Sixth Amendment right to compulsory process. In any event, there is no precedent cited by Mitchell or the trial court that would provide authority for the dismissal of an indictment under the circumstances presented by the facts of this case. While we have found no case that matches the circumstances of the case at bar, both the United States Supreme Court and the Mississippi Supreme Court have reversed convictions and remanded cases for new trials where the courts found violations of the constitutional right to compulsory process. Neither court dismissed the indictment or prevented a new trial. *See Hentz v. State*, 542 So. 2d 914, 917 (Miss. 1989); *Washington v. Texas*, 388 U.S. 14, 23 (1967).

CONCLUSION

¶38. We reverse the trial court’s “Order Granting Defendant’s Motion to Dismiss and Judgment of Acquittal” and remand this matter to the Union County Circuit Court for a new trial.

¶39. **REVERSED AND REMANDED.**

WILSON, P.J., LAWRENCE, McCARTY AND ST. PÉ, JJ., CONCUR. BARNES, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY CARLTON, P.J., WESTBROOKS AND McDONALD, JJ. WESTBROOKS, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY McDONALD, J. WEDDLE, J., NOT PARTICIPATING.

BARNES, C.J., DISSENTING:

¶40. The State does not have the statutory authority to appeal the trial court’s judgment in this case. Accordingly, I would dismiss the appeal for lack of jurisdiction.

Discussion

¶41. The two relevant provisions from Mississippi Code Annotated section 99-35-103 provide that the State may appeal (a) “[f]rom a judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime,” or (b) “[f]rom a judgment actually acquitting the defendant where a question of law has been decided adversely to the state or municipality.” Miss. Code Ann. § 99-35-103(a)-(b) (Rev. 2020). The Mississippi Supreme Court has held that “[a] close reading of [section] 99-35-103 reveals a clear statutory prohibition, *with only limited exceptions*, against the State taking an appeal in criminal cases.” *State v. Hicks*, 806 So. 2d 261, 265 (¶14) (Miss. 2002) (emphasis added).

A. Mississippi Code Annotated section 99-35-103(a)

¶42. The State characterizes Mitchell’s “pre-evidentiary” motion “as a motion to dismiss the indictment” and argues that “this appeal should proceed under section 99-35-103(a).” As discussed, section 99-35-103(a) allows the State to appeal *only* “[f]rom a judgment sustaining

a demurrer to, or a motion to quash an indictment[.]”¹⁴

¶43. Mississippi Code Annotated section 99-7-23 (“Motions to Quash”) provides: “All objections to an indictment for any defect . . . shall be taken by motion to quash the indictment, and not otherwise, *within the time allowed for demurrer*, and with the right to amend . . .” Miss. Code Ann. § 99-7-23 (Rev. 2020) (emphasis added). Mississippi Code Annotated section 99-7-21 (“Demurrers”) states that an objection “to an indictment for a defect appearing on the face thereof, shall be taken by demurrer to the indictment, and not otherwise, before the issuance of the venire facias in capital cases, and *before the jury shall be impaneled in all other cases, and not afterward*.” Miss. Code Ann. § 99-7-21 (Rev. 2020) (emphasis added); *see also Gandy v. State*, 438 So. 2d 279, 284-85 (Miss. 1983) (finding defendant’s failure to “demur to the indictment *before* the jury [was] impaneled *and not afterward*” waived his challenge to a defect in the indictment (emphasis added)).¹⁵

¶44. Mitchell’s motion to dismiss did not allege any defect of the indictment. In fact, as he notes, his motion was not filed until “[a]*fter* the commencement of trial, *after* the jury was sworn and empaneled, and *after* opening statements.” (Emphasis in original). In *Clarke v. State*, the Mississippi appellate court held that a district attorney “had the power to enter a

¹⁴ Under the statute, “such appeals shall not bar or preclude another prosecution of the defendant for the same offense.” Miss. Code Ann. § 99-35-103(a).

¹⁵ Mitchell’s motion to dismiss did not allege any defect in the indictment. Mitchell had filed a separate motion to quash the indictment and in opposition to the State’s motion to amend the indictment on July 15, 2021, claiming the indictment was defective for failing to contain a material element of the offense. The record does not indicate that the trial court expressly ruled on the July 15, 2021 motion to quash, except to grant the State’s request to amend the indictment on July 1, 2022. That ruling is not at issue in this appeal.

nolle prosequi, or quash the indictment, if he saw fit to do so, *until the defendant was arraigned and put upon his trial on that indictment.*” *Clarke v. State*, 23 Miss. 261, 262 (1852). This reasoning is due to double-jeopardy concerns once the trial has commenced. As this Court noted in *State v. Parkman*, 106 So. 3d 378, 382 (¶14) (Miss. Ct. App. 2012), “an appeal from a *pretrial* dismissal of an indictment does not offend double-jeopardy princip[les].” (Emphasis added). The supreme court has held, “Jeopardy attaches when a jury is impaneled or a trial commences where a determination of guilt may be imposed.” *Lee v. State*, 759 So. 2d 390, 393 (¶11) (Miss. 2000). “Without risk of a determination of guilt, jeopardy does not attach, and neither an appeal nor further prosecution constitutes double jeopardy.” *Parkman*, 106 So. 3d at 382 (¶14) (quoting *Serfass v. United States*, 420 U.S. 377, 391-92 (1975)).

¶45. As noted, Mitchell’s motion to dismiss was not made until the second day of trial, after the jury had been empaneled and opening statements were made, creating a “risk of determination of guilt.” *See id.* The motion to dismiss alleged violations of Mitchell’s constitutional rights under the Sixth and Fourteenth Amendments due to the victim’s failure to appear as a witness and requested that the trial court “dismiss the charges and indictment against him by entering an acquittal on account of the prosecution’s conduct and for a failure of proof by the prosecution.” Furthermore, the court did not rule on the motion until all the evidence had been presented. I find it evident from the trial judge’s ruling—dismissing the case “based on my interpretation of the law as I know, to the facts that I know have been established *now that the case is over*” (emphasis added)—and from consideration of the

relevant statutes and caselaw that the trial court’s order is not “a judgment sustaining a demurrer to, or a motion to quash an indictment,” *as contemplated by the statute*.

¶46. I therefore respectfully dissent from the majority’s finding that section 99-35-103(a) “plainly and unambiguously applies to all efforts to dismiss a charging instrument, for any reason, at whatever time it may be filed” and that the State is authorized to appeal under section 99-35-103(a). The supreme court held in *Hicks*, “As criminal proceedings are brought by the State, that expression of policy *is not subject to modification by this Court* except as may be necessary to protect the constitutional rights of the accused.” *Hicks*, 806 So. 2d at 265 (¶14) (emphasis added). Here, the State is not authorized to appeal the judgment under subsection (a) of the statute.¹⁶

B. Mississippi Code Annotated section 99-35-103(b)

¶47. The State initially appealed from the court’s judgment under subsection (b) of section 99-35-103, which concerns “a judgment actually acquitting the defendant where a question of law has been decided adversely to the state[.]” Miss. Code Ann. § 99-35-103(b). Belatedly realizing that an appeal under this subsection would not authorize further prosecution of Mitchell for the indicted crime, the State now argues in its amended supplemental brief that the trial court’s order is not a judgment of acquittal because it was “unrelated to factual guilt or innocence.” (Quoting *Evans v. Michigan*, 568 U.S. 313, 319

¹⁶ The State also cited this Court’s holding in *Parkman* “that a trial judge has no discretion to dismiss an indictment, nor any of its counts, *prior to trial*, where a defendant’s sole claim is a lack of evidentiary support.” *Parkman*, 106 So. 3d at 381 (¶8) (emphasis added). Based on the facts of the case, I find *Parkman* is not relevant to the State’s argument, and the State has acknowledged that Mitchell’s motion to dismiss – raised after the parties’ opening statements – “did not challenge the sufficiency of the evidence.”

(2013)).¹⁷ Mitchell, however, contends that “the trial court, in practice, for all intents and purposes, effectively acquitted Lane Mitchell after a full trial, regardless of the label[.]”¹⁸

¶48. I find the State does not have authority to appeal the judgment under section 99-35-103(b). If the trial court’s order is not an acquittal, as asserted by the majority, the State is afforded no relief because neither subsection of the statute is applicable to the trial court’s ruling. If the trial court’s order has the same effect as an acquittal, the court’s ruling was

¹⁷ Under this subsection, “the appeal shall not subject the defendant to further prosecution, nor shall the judgment of acquittal be reversed, but the Supreme Court shall nevertheless decide the question of law presented.” Miss. Code Ann. § 99-35-103(b).

¹⁸ While there is no Mississippi precedent addressing the singular procedural posture of this case, there is one factually similar case from Florida instructive to analysis of this issue. In *State v. Bolick*, 512 So. 2d 960 (Fla. 2d Dist Ct. App. 1987), Florida Second District Court of Appeals held,

An order dismissing all or part of an indictment or information is among those from which the state is permitted an interlocutory appeal. Fla. R. App. P. 9.140(c)(1)(A). Generally, however, such orders will be entered prior to trial or retrial, that is, before jeopardy has attached. . . . Once jeopardy has attached, however, the state’s right of redress is extremely limited. For example, the state is not permitted to appeal from a judgment of acquittal. . . . Neither may a defendant be retried after a mistrial is declared over his objection, except in cases of “manifest necessity” or misconduct on the part of the defendant. . . . Although in the present case the court did not characterize its ruling as a judgment of acquittal, it served as the functional equivalent thereof. When a court has withdrawn criminal charges from consideration by a sworn jury, the effect is the same as an acquittal and further prosecution is barred. *Brown v. State*, 130 Fla. 479, 178 So. 153 (1938).

Id. at 961. In *Bolick*, the appellate court considered whether a trial court’s dismissal of charges against the defendant—“[a]fter the jury was sworn and several witnesses had testified”—was an appealable ruling. *Id.* at 960-61. The trial court did not grant a directed verdict because the State had not yet rested, and the defendant would not agree to a mistrial. *Id.* The trial court later granted the defendant’s oral motion to dismiss without a written order. *Id.* at 961. The case was “essentially a non-appealable judgment of acquittal.” *Id.* at 961 n.2.

based on a mixed question of facts and law, which likewise bars it from appellate review. *See State v Hudson*, 351 So. 3d 995, 1000 (¶25) (Miss. Ct. App. 2022) (holding that “[s]ection 99-35-103(b) does not authorize an appeal by the State when the ‘question involved on the ruling of the trial court may be a mixed one of law and fact’”). The trial court’s order was based on the court’s finding that the actions by “the prosecution team (conservator)” in “concealing a material witness’s whereabouts” had deprived Mitchell “of his constitutional, fundamental right to a fair trial.” The trial judge further explained that his decision “was based on my interpretation of the law as I know, to the facts that I know have been established *now that the case is over.*” (Emphasis added). The judge considered the applicable constitutional law *and the circumstances surrounding Rogers’s failure to appear at trial* and made his ruling accordingly. “Because we are not presented with a question of law only, the relief requested [by the State] on appeal is moot and outside of our realm for consideration.” *Kemper County v. Parks*, 281 So. 3d 208, 210 (¶6) (Miss. Ct. App. 2019).

Conclusion

¶49. As the majority recognizes, this case involves “unique facts and procedural issues.” Reviewing the record, I find that the trial court’s order was neither based on the sufficiency of the indictment (Miss. Code Ann. § 99-35-103(a)), nor the sufficiency of the evidence adduced at trial (Miss. Code Ann. § 99-35-103(b)). Interpreting section 99-35-103 as argued by the majority is to disregard Mitchell’s constitutional rights and the plain language of the statute. Therefore, as the State is without recourse under section 99-35-103, the Court should dismiss the appeal for lack of jurisdiction.

**CARLTON, P.J., WESTBROOKS AND McDONALD, JJ., JOIN THIS
OPINION.**

WESTBROOKS, J., DISSENTING:

¶50. I concur fully with Chief Judge Barnes’s dissent taking the position that this Court lacks jurisdiction to hear this appeal under Mississippi Code Annotated section 99-35-103(a)-(b) (Rev. 2020). I write separately to emphasize the sound constitutional and procedural rationales behind the trial court’s authority to enter a judgment of acquittal when a defendant’s Sixth and Fourteenth Amendment rights are violated by a “chief” witness’s failure to testify. When dismissing the jury, the trial court held: “There are things that have happened in this case that I believe has violated [the defendant’s] Fifth, Sixth, and Fourteenth Amendment rights. Specifically, the [c]ourt is of the opinion that the compulsory process provisions of the constitution have been violated . . . [T]he adversarial system depends upon both parties being able to present evidence and explore relevant facts on a particular case.”

¶51. “The Sixth Amendment affords a defendant the right ‘to have compulsory service for obtaining witnesses in his favor.’” *Patton v. State*, 109 So. 3d 66, 79 (¶39) (Miss. 2012) (quoting U.S. Const. amend. VI). “Few rights are more fundamental than that of an accused to present witnesses in his own defense.” *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). Further, and as appropriately highlighted in depth by Chief Judge Barnes’s dissent, the majority’s categorization of Mitchell’s motion as falling under section 99-35-103(a), which applies to motions to quash indictments, implicates double jeopardy concerns. The protection against double jeopardy attaches when the jury is impaneled, at which time the opportunity to move to quash an indictment has passed. *See Montgomery v. State*, 253 So. 3d 305, 310

(¶22) (Miss. 2018); *see also* U.S. Const. amend. V.

¶52. The Sixth Amendment right to compulsory process applies to witnesses who provide “relevant and material testimony.” *Patton*, 109 So. 3d at 79 (¶39) (quoting *Hentz v. State*, 542 So. 2d 914, 916 (Miss. 1989)). The State identified Rogers, the victim, as a “witness in chief,” and both the State and the defense unsuccessfully tried to subpoena him. It is the State’s responsibility to ensure its primary witness is available and present to testify. Rogers did not testify at trial, give a statement to the police, appear at any pre-trial proceeding, or make himself available for service of process by the State. I emphasize that the State did not arrest Rogers as a means of compelling his attendance at trial, yet a trial may proceed in the defendant’s absence if the defendant fails to appear. *See* Miss. Code Ann. § 99-17-9; *Wilson v. State*, 267 So. 3d 264, 271 (¶32) (Miss. 2019). We allow a double standard today that should not be applied to permit the State to avoid the consequence of an acquittal if the State cannot compel the testimony necessary to satisfy the burden of proof, especially from the State’s main witness.

¶53. The trial court should not be hindered from entering a non-appealable judgment of acquittal on Sixth Amendment grounds when the jury has been impaneled, all evidence has been presented, and the State cannot produce its chief witness. Rogers voluntarily appeared at his civil trial and went on vacation to Europe while the State was trying to get in contact with him to testify for the criminal trial. Rogers chose to actively participate in a civil trial where financial compensation was at issue, but he was absent to assist the State in making a showing of guilt beyond a reasonable doubt at Mitchell’s criminal trial.

¶54. Consistent with the constitutional and procedural underpinnings of section 99-35-103(b), the trial court's entry of acquittal is not reversible. The majority's refusal to properly recognize the limits of our jurisdiction over an acquittal turns decades of constitutional law and criminal procedure on its head. Accordingly, I dissent.

McDONALD, J., JOINS THIS OPINION.

APPENDIX B

Order Denying Motion for Rehearing (October 28, 2025)

Electronic Document

Oct-28-2025 13:31:00.

2023-KA-00771-COA

Pages: 1

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October 28, 2025

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 28th day of October, 2025.

Court of Appeals Case # 2023-KA-00771-COA
Trial Court Case # 73CI1:19-cr-00129

State of Mississippi v. Lane Mitchell a/k/a Lane Douglas Mitchell

The motion for rehearing is denied. Barnes, C.J., Carlton, P.J., Westbrook and McDonald, JJ., would grant. Weddle, 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."

APPENDIX C

Applicant's Petition for Writ of Certiorari to the Supreme Court of Mississippi (November 25, 2025)

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2023-KA-00771-SCT

Pages: 14

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2023-KA-00771-COA**

STATE OF MISSISSIPPI

APPELLANT

VS.

LANE MITCHELL

APPELLEE

PETITION FOR WRIT OF CERTIORARI

ON APPEAL FROM THE CIRCUIT COURT OF UNION COUNTY, MISSISSIPPI

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STATEMENT OF ISSUES

The following issues are presented to this Court for *certiorari* review based on the conflict between the Court of Appeals' decision with prior decisions of this Court, prior decisions of the Supreme Court of the United States, and both the Mississippi Constitution and the United States Constitution.

1. Did the Court of Appeals wrongly decide that the State had statutory authority to appeal a judgment of acquittal under Miss. Code Ann. § 99-35-103(a), and determine that Lane Mitchell can be retried in violation of his constitutional protections of double jeopardy under the Fifth Amendment and compulsory process under the Sixth Amendment?
2. Did the Court of Appeals disregard the requirement of strict statutory construction under § 99-35-103 and this Court's precedent interpreting the same, specifically *Hicks v. State*?
3. Did the Court of Appeals err in determining that the trial court's ruling, which was a mixed question of fact and law, can be reviewed on appeal in direct contradiction to the plain statutory language of § 99-35-103?

INTRODUCTION

On July 15, 2025, the Mississippi Court of Appeals ("COA"), sitting *en banc*, reversed and remanded the Union County Circuit Court's Order acquitting the Defendant, Lane Mitchell. The COA reached its decision by finding (1) that the State satisfied the requirements of Miss. Code Ann. § 99-35-103(a) (Rev. 2020) and could appeal the trial court's decision; (2) that the Circuit Court's Order was not an actual acquittal, but instead, a dismissal of Lane's indictment; and (3) that the State could retry Lane Mitchell. The COA's ruling disregards the Defendant's valid constitutional protections of double jeopardy and compulsory process and disregards the requirement of strict statutory construction under § 99-35-103.

The dissenting opinions, authored by Chief Judge Barnes and Judge Westbrook, highlight the errors in the majority opinion's ruling and analysis. As noted by Chief Judge Barnes, "[t]he State does not have the statutory authority to appeal the trial court's judgment in this case." **Op.**

Dissent ¶40. Therefore, this appeal should have been dismissed for lack of jurisdiction. Chief Judge Barnes correctly found that the Defendant’s Motion to Dismiss was not a demurrer to, or a motion to quash an indictment, thus barring it from appellate review under subsection (a); that double jeopardy concerns certainly arise in this case should Lane be retried; that the trial court’s ruling was based on a mixed question of fact and law, thus barring it from appellate review, under subsection (b); and that to rule otherwise “disregard[s] Mitchell’s constitutional rights and the plain language of the statute.” **Op. Dissent ¶49.**

The Appellee seeks a writ of *certiorari* to overturn the ruling of the COA by showing that the State cannot satisfy appellate jurisdiction under the statute; that the trial court’s judgment is a mixed question of fact and law and evades appellate review; that Lane was actually acquitted and cannot be retried without violating double jeopardy; and that Lane’s constitutional right to compulsory process was violated through no fault of his own. The only correct outcome under the applicable statute and caselaw is dismissal of this appeal.

ARGUMENT

I. Errors and Omissions from the Record

In the COA’s opinion, there were factual errors and/or misstatements. In ¶¶ 9, 12, 13, 15 and 19, the COA makes much ado about the Defense’s late issuance of a subpoena for Russell Rogers and the Defense’s failure to either appeal the Tennessee Probate Court’s decision or move for a continuance of the trial based on Rogers’s absence. The COA misstated the facts. A detailed outline of those errors and a timeline are produced in Appellee’s Motion for Rehearing, attached as an exhibit to this Petition, at **2–9. The misstatement of facts weighs most significantly on the majority opinion’s Sixth Amendment compulsory process analysis.

II. Appellate Jurisdiction under Miss. Code Ann. § 99-35-103.

The State of Mississippi has very limited rights of appeal in a criminal case. Those rights are codified at Miss. Code Ann. § 99-35-103, which provides:

The state or any municipal corporation may prosecute an appeal from a judgment of the circuit court in a criminal cause in the following cases:

(a) From a judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime; but such appeals shall not bar or preclude another prosecution of the defendant for the same offense.

(b) From a judgment actually acquitting the defendant where a question of law has been decided adversely to the state or municipality; but in such case the appeal shall not subject the defendant to further prosecution, nor shall the judgment of acquittal be reversed, but the Supreme Court shall nevertheless decide the question of law presented.

(c) From a ruling adverse to the state or municipality in every case in which the defendant is convicted and prosecutes an appeal; and the case shall be treated as if a cross appeal had been formally presented by the state. All questions of law thus presented shall be decided by the Supreme Court.

In appeals brought by the State, this Court has held:

A close reading of § 99-35-103 reveals a clear statutory prohibition, with only **limited exceptions**, against the State taking an appeal in criminal cases. This prohibition is a clear legislative pronouncement of the policy of this State regarding the conduct of criminal proceedings. As criminal proceedings are brought by the State, that expression of policy is **not subject to modification by this Court except as may be necessary to protect the constitutional rights of the accused**. . . This result is dictated by the principles of strict construction of the statutes and by judicial prudence.

Hicks v. State, 806 So. 2d 261, 265 (Miss. 2002) (emphases added).

The State does not have appellate jurisdiction to bring this appeal under any subsection of the statute. The COA erroneously determined the State could appeal via subsection (a). The COA's analysis simply does not work, nor does it square with this Court's precedent and strict statutory construction.

In ¶22, the COA states, "section 99-35-103(a) provides for appeals in those instances where a charging instrument is dismissed before a decision is made concerning the merits of the

charge.” First, subsection (a) *only* applies to a “demurrer to, or a motion to quash an indictment.”

As the dissent points out, the Mississippi Code defines these two terms distinctly:

Mississippi Code Annotated § 99-7-23 (Rev. 2020) Motions to Quash.

“All objections to an indictment for any defect de hors the face thereof, presenting an issue to be tried by the court, shall be taken by motion to quash the indictment, and not otherwise, **within the time allowed for demurrer**, and with the right to amend, as provided in the last preceding section.”

Mississippi Code Annotated § 99-7-21 (Rev. 2020) Demurrers.

All objections to an indictment for a defect appearing on the face thereof, shall be taken by demurrer to the indictment, and not otherwise, before the issuance of the venire facias in capital cases, and **before the jury shall be impaneled in all other cases**, and not afterward. The court for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended, and thereupon the trial shall proceed as if such defect had not appeared.

Because the motion to dismiss did not allege facial defects, neither statutory definition applies.

Second, subsection (a) specifically applies to *pretrial* proceedings. The COA found the Defense’s “interpretation of the statute unnecessarily narrow and wrong.” **Op. ¶26**. But the statute itself is intentionally narrow, limited, and “dictated by the principles of strict construction.” *Hicks*, 806 So. 2d at 265. Accordingly, based on its plain language, subsection (a) applies **only** to dismissals of an indictment that occur (1) before the venire is summoned in capital cases or (2) before the jury is impaneled in all other cases. There is no other way to interpret the statute and the applicable definitions under strict construction. The *Hicks* court expressly stated there is to be no modification “by this Court except as may be necessary to protect the constitutional rights of the accused,” which in this case is Lane Mitchell. *Id.*

The COA erroneously concluded that the statute “‘plainly and unambiguously applies to all efforts to dismiss a charging instrument, for any reason, at whatever time it may be filed.’” *See State v. Woodall*, 801 So. 2d 678, 687 (¶32) (Miss. 2001) []; [*State v. Van Parkman*, 106 So. 3d, [378,] 381 (¶9) [(Miss. Ct. App. 2013)] []]; *State v. Delaney*, 52 So. 3d 348, 351 (¶11) (Miss. 2011)

[].” **Op. ¶ 27.** The cases the COA cites in support of its interpretation are easily distinguishable and favor Lane’s statutory interpretation.

In *State v. Woodall*, the trial court granted the defendant’s motion to dismiss before trial began; on appeal, this Court reversed and remanded, reinstating the indictment, because the defendant had raised an issue on appeal for the first time; after a hearing on the new motion to dismiss the indictment, the trial court once again dismissed the indictment for speedy trial violations. *Woodall*, 801 So. 2d at 687. The State appealed that second, **pretrial** dismissal, and the Court granted the requested relief. *Id.* This case and *Woodall* are entirely different facts and circumstances, *the most obvious being that the motion was made by Woodall pretrial, decided by the court pretrial, and appealed by the State pretrial.* Thus, Woodall was not protected by the statute from re-prosecution. *Woodall* is starkly different from this case, which proceeded through an entire multiple day jury trial and a judgment from the trial court.

In *State v. Van Parkman*, the trial court granted a defendant’s **pretrial** challenge to the sufficiency of the evidence and dismissed the indictment. *Van Parkman*, 106 So. 3d at 380. Again, there was no trial. That case concerned a trial court’s erroneous dismissal of an indictment after a **pretrial** hearing. *Id.* The COA reversed and remanded for trial, holding “a trial judge has no discretion to dismiss an indictment, nor any of its counts, *prior to trial*, where a defendant’s sole claim is a lack of evidentiary support.” *Id.* at 381 (emphasis added).

In *State v. Delaney*, the trial court granted a defendant’s **pretrial** motion to dismiss his indictment. *Delaney*, 52 So. 3d at 351. Importantly, the issue before the court was to interpret Miss. Code Ann. § 99-3-28 which pertains to probable cause hearings prior to the issuance of warrants. Not once is the applicable code section in the case at bar cited in that opinion. Nonetheless, that case, concerned **pretrial** motions and proceedings. The COA cites to no other

authority to support its proposition that subsection (a) “plainly and unambiguously applies to all efforts to dismiss a charging instrument, for any reason, *at whatever time it may be filed.*” **Op.**

¶27. The timing of the motions clearly matters.

In *State v. Parks*, a motion to suppress evidence was sustained by the trial court “on the ground that the law enforcement officers were without justification for seizing Parks’ automobile and that there was no probable cause to inventory the trunk of the automobile.” *State v. Parks*, 415 So. 2d 704, 705 (Miss. 1982). The State appealed. *Id.* The Court there determined that the State’s appeal was unauthorized by statute because the appeal did “not fall within any of the categories authorized by section 99-35-103. There was no judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime. Nor was there a judgment rendered acquitting or convicting defendant.” *Id.* at 706. The Court dismissed the appeal. *Id.* The case at bar falls squarely within that reasoning. If the judgment of the trial court is not an acquittal, as determined by the COA in its opinion, then “the State is afforded no relief because neither subsection of the statute is applicable to the trial court’s ruling.” **Op. Dissent ¶48.**

Third, the COA’s analysis regarding the validity of the trial court’s ruling is erroneous. The COA focused on the Sixth Amendment compulsory process issue and assigned error to the trial court for concluding that right was violated. **Op. ¶¶36–37.** As discussed in great detail in the Motion for Rehearing, the COA’s resuscitation of the facts is flawed and, likewise, its analysis of the Sixth Amendment. Though an acquittal of Lane may be a less-than-ideal outcome for the State, this Court has long recognized strict statutory construction and precedent in defining the contours of compulsory process and double jeopardy in a manner harmonious to, and not anathema to, the Constitution.

Fourth, the COA concludes by stating that the Mississippi and United States Supreme Courts' decisions "have reversed convictions and remanded cases for new trials where the courts found violations of the constitutional right to compulsory process. Neither court dismissed the indictment or prevented a new trial." **Op.** ¶37. The COA is plainly wrong. The COA cites *Hentz v. State*, 542 So. 2d 914, 917 (Miss. 1989) and *Washington v. Texas*, 388 U.S. 14, 23 (1967).

In *Hentz*, the defendant had issued subpoenas for multiple witnesses. *Id.* at 915. The State filed a motion to quash those subpoenas, and the trial court granted the motion. *Id.* The defendant appealed, arguing that his constitutional right to compulsory process had been violated. *Id.* This Court found that Hentz's right to compulsory process had been violated by the trial court and the State, and he had a right to defend himself. *Id.* at 917. This Court reversed and remanded for a new trial, warning, "[o]n retrial, we trust that the state will follow the discovery rules." *Id.* at 918. This Court reversed and remanded in favor of the *defendant*, **not** the State, so that he could receive a fair trial. That is consistent with *Hicks*.

In *Washington v. Texas*, the United States Supreme Court recognized the criminal defendant's fundamental, constitutional right to compulsory process under the Sixth Amendment. There, the defendant was denied the right to have a co-defendant testify on his behalf under Texas law. *Washington*, 388 U.S. at 17. The Supreme Court reversed, finding that "[j]ust as an accused has the right to confront the prosecution's witnesses . . . he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." *Id.* at 19. Once again, the Court reversed *in favor of the accused*. *Id.* at 15–17. This too is consistent with the *Hicks* opinion.

III. Actual Acquittal and Double Jeopardy

It bears repeating that the State does not have the statutory authority to appeal under subsection (a), (b), or (c), and the appeal should be dismissed. Further, even if it were appealable under subsection (b), this appeal should be dismissed because the trial court's ruling was based on a mixed question of facts and law, barring appellate review. *See State v. Hudson*, 351 So. 3d 995, 1000 (¶25) (Miss. Ct. App. 2022). Nonetheless, Appellee contends that the trial court's ruling was an acquittal and double jeopardy prevents a retrial for the following reasons.

The two Motions pending before the trial court at the conclusion of the trial, prior to jury instructions, were the (1) Motion to Dismiss and Judgment of Acquittal and (2) Motion for Directed Verdict. Both of these Motions were made *after* commencement of trial, *after* the jury was sworn and empaneled, and *after* opening statements. The Motion for Directed Verdict was made at the conclusion of the State's case-in-chief and renewed at the conclusion of trial.

The Motion at issue on appeal was made the second day of trial and stated, "the actions of the prosecution team necessitate this Honorable Court finding that Lane Douglas Mitchell's constitutional right to compulsory process has been violated and Lane Douglas Mitchell moves this Court to dismiss the charges and indictment against him by *entering an acquittal on account of the prosecution's conduct and for a failure of proof by the prosecution*." (emphasis added). The Defense put the issue of factual guilt or innocence squarely before the trial court and double jeopardy attached. This Court has determined that "[j]eopardy attaches when a jury is impaneled or a trial commences where a determination of guilt may be imposed." *Lee v. State*, 759 So. 2d 390, 393 (Miss. 2000). In *Van Parkman*, the Court of Appeals noted:

The other mentioned provision, section 99-35-103(b), which restricts further prosecution, is apparently premised on jeopardy concerns. The supreme court has noted this avenue applies only when a case has **proceeded to trial**, and the State appeals "*a judgment actually acquitting a defendant*." *State v. McDowell*, 72 Miss. 138, 139, 17 So. 213, 213 (1894) (quoting Miss. Code § 39(2) (1892)) (emphasis added).²

We find this particular section also governs appellate review when a judge sustains a defendant's request for a directed verdict and grants a judgment of acquittal during trial at the close of the State's case.

Van Parkman, 106 So. 3d at 382 (emphasis added). Footnote 2, cited in the excerpt above, states that “[i]n *McDowell*, the supreme court determined a ‘judgment actually acquitting defendant’ for purposes of State’s right to appeal under paragraph 2, section 39, Code of 1892—the virtually identical predecessor to section 99-35-103(b)—means acquittal after a trial on the merits.” *Id.* (citing *McDowell*, 17 So. at 213).

Here, a trial on the merits fully commenced. At the time of the trial court’s ruling, both prosecution and defense had rested, the Motion for Directed Verdict had been renewed, the case was ready for submission to the jury and the determination of guilt or innocence was hanging in the balances. Had the trial court *not* ruled on the Motion, then that determination would have been immediately submitted to the jury. It was the trial court’s decision to grant or deny either pending Motion, and the Defense had no control on which Motion the trial court ruled. What is clear though is that the trial court’s ruling contemplated the facts, the law, and the affirmative defenses raised during the course of the trial on the merits. The trial court stated his decision “was based on [his] interpretation of the law as [he] know[s], to the facts that [he] know[s] have been established now that the case is over.” Undoubtedly, the trial court’s intent was to acquit the defendant based on both the facts and law pertaining to this case. The fact that he said “motion to dismiss” does not negate that intention. An acquittal, in and of itself, is a dismissal of a case against a criminal defendant. Even in cases where a trial enters a midtrial ruling adverse to the state, the law requires such rulings to be analyzed under the lens of double jeopardy.

In *Smith v. Massachusetts*, 543 U.S. 462 (2005), the United States Supreme Court determined that a midtrial dismissal of an indictment “meets the definition of acquittal that our

double-jeopardy cases have consistently used: It ‘actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.’ *Martin Linen, supra*, at 571; accord, e. g., *Price v. Vincent*, 538 U. S. 634, 640 (2003); *Burks v. United States*, 437 U. S. 1, 10 (1978).” *Id.* at 468. When the trial “has proceeded to the defendant’s presentation of his case, the possibility of prejudice arises.” *Id.* at 471-72. “The Double Jeopardy Clause’s guarantee cannot be allowed to become a potential snare for those who reasonably rely upon it. If, after a facially unqualified midtrial dismissal of one count, the trial has proceeded to the defendant’s introduction of evidence, the acquittal must be treated as final, unless the availability of reconsideration has been plainly established by pre-existing rule or case authority expressly applicable to midtrial rulings on the sufficiency of the evidence.” *Id.* at 473.

Akin to *Smith*, Lane Mitchell reasonably relied on the court’s ruling to be a terminating, final judgment of the court. His reliance was further predicated on the fact that the prosecution preemptively objected to a continuance of the trial when broached in the trial proceedings; during arguments on the Motions before the trial court, the State acknowledged, “at this stage, certainly jeopardy has attached and any dismissal would necessarily have to be with prejudice,” C.P. 1549, L:12-14; and that the State’s initial brief before the COA only argued for appeal under subsection (b). The bait-and-switch utilized in the State’s tactical decision to reverse course and pursue this appeal under subsection (a) prejudices the defendant who has believed himself to be a free man since the conclusion of this case in 2023. At all times, Lane Mitchell was at risk of a determination of guilt; therefore, jeopardy attached and prevents a retrial. *Lee*, 759 So. 2d at 393.

CONCLUSION

For the reasons stated above, this appeal should be dismissed for lack of jurisdiction, and the defendant should not be subjected to retrial.

RESPECTFULLY SUBMITTED, this the 25th day of November, 2025.

LANE MITCHELL,

s/ C. Reese Neely

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CERTIFICATE OF SERVICE

I, C. Reese Neely, co-counsel for Lane Mitchell, do hereby certify that I have this date served, via electronic mail and MEC notification, a true and correct copy of the above and foregoing to:

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Hon. Kent E. Smith
Circuit Court Judge
Post Office Box 670
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judgekentsmith@gmail.com

SO CERTIFIED, this the 25th day of November, 2025.

s/ C. Reese Neely
C. REESE NEELY

APPENDIX D

En Banc Order of the Supreme Court of Mississippi (June 15, 2026)

Serial: **263066**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-CT-00771-SCT

STATE OF MISSISSIPPI

FILED

Appellant

v.

JUN 15 2026

***LANE MITCHELL A/K/A LANE
DOUGLAS MITCHELL***

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

Appellee

EN BANC ORDER

The instant matter is before the Court, en banc, on the petition for writ of certiorari filed by counsel for Lane Mitchell. The petition was granted by order of the Court on February 11, 2026. Upon further consideration, the Court finds that there is no need for further review and that the writ of certiorari should be dismissed.

IT IS, THEREFORE, ORDERED that the writ of certiorari is hereby dismissed on the Court's own motion.

SO ORDERED, this the 15 day of June, 2026.


JOSIAH DENNIS COLEMAN,
PRESIDING JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

APPENDIX E

Order Granting Defendant's Motion to Dismiss and Judgment of Acquittal (May 23, 2023)

Case: 73CI1:19-cr-00129 Document #: 270 Filed: 05/23/2023 Page 1 of 11

IN THE CIRCUIT COURT OF UNION COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. CR2019-129

LANE MITCHELL

DEFENDANT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND JUDGMENT OF ACQUITTAL

THIS CAUSE came on for trial beginning May 8, 2023 in the Union County Courthouse, New Albany, Mississippi. A jury of twelve qualified citizens along with two alternates were chosen, sworn, and duly empaneled to hear the case. After four days of trial and after both sides had finally rested, the Court entered a ruling on the record granting the defendant's Motion to Dismiss and for a Judgment of Acquittal based upon the finding of fact and law as follows:

FACTUAL AND PROCEDURAL BACKGROUND

On the night of February 9, 2019, at the Tallahatchie Gourmet restaurant in New Albany, Mississippi, Lane Douglas Mitchell (Mitchell) stabbed Nathan Russell Rogers (Rogers) in the neck. Mitchell was indicted on March 24, 2019 for the crime of attempted murder. As a defense, Mitchell raises self-defense and/or the defense of others. Numerous pretrial hearings have been held. The State, the defense, and Mr. Bob Rogers, Rogers' father and legally appointed conservator, consistently appeared. However, the victim, Russell Rogers, never appeared at any of the proceedings, never spoke with law enforcement, and never met with nor communicated with the rest of the prosecution team. On the other hand, the conservator was in constant communication with the rest of the prosecution team, investigating officers, and his own legal team. During trial, the conservator even advised the New Albany Police Department about the

FILED
MAY 23 2023
BY RHOLIS STANFORD D.C.

whereabouts of a possible rebuttal witness, yet he would not produce his son (Ward of the conservatorship) to testify.

Prior to trial, the State issued a subpoena for Rogers but was unable to have him served. The State, during the trial and on the record, announced that a subpoena had been issued by the State and that the State intended to call Rogers to testify if he appeared. However, the State further advised that the conservator told the State that Rogers had been in Europe but was anticipated to return prior to trial. Additionally, at the noon recess on Tuesday during the trial, the State advised the Court that it hoped Rogers would appear to testify the following morning. Later that day, the State announced that Rogers would not be appearing to testify, but that his mother would appear in his place and stead to testify.

On May 6, 2023, the Defense filed a Motion for a Certificate concerning the attendance of Rogers, an out of state witness. The conservator, through counsel, filed a Response in Opposition to the issuance of the Certificate. The Court considered the Motion as well as the Response and issued the Certificate. Counsel for the Defendant went to Shelby County, Tennessee and had process issued by the Circuit Court of Shelby County, Tennessee. Meanwhile, during the trial on May 9, 2023, the conservator, through other counsel in Tennessee, had the Probate Court issue an ex parte Order quashing the Mississippi Certificate. Shelby County law enforcement process servers attempted to serve Rogers at his home address, the same as his parents and conservator, but Rogers was not to be found.

Thus, a problem exists. Rogers is a material witness to this trial. He is the complaining victim. Both the State of Mississippi and the defense announced their desire and intent to call Rogers as a witness at trial. Nevertheless, he appears to be intentionally unavailable even though

the Court is of the opinion that Mitchell has a fundamental right to call Rogers as a witness at trial and to examine him at trial in the presence of the jury.

Next, on May 10, 2023, the conservator, through yet another law firm, caused a Petition for Writ of Prohibition to be filed in the Mississippi Supreme Court. The Mississippi Supreme Court denied the Petition stating that neither the conservator, nor the victim, had standing to make such a request. Therefore, the trial proceeded even though it appeared the conservator was attempting to manipulate and obstruct the pursuit of the trial process.

Once both sides finally rested, the Court, at the request of the defense, took up the Motion to Dismiss and for Judgment of Acquittal. The Motion, which had been filed earlier during the trial, and held in abeyance, was now ripe for consideration.

The Court notes that Rogers was severely injured when Mitchell stabbed him in the neck. Based upon his injuries and mental health issues, a conservatorship was established over the person of Rogers, the Ward, on an emergency basis in November 2019 and then on a permanent basis in January 2020. Nevertheless, Rogers was able to travel to Union County, Mississippi numerous times during 2020, **after** the conservatorship was established, to participate in civil litigation regarding the incident for which Mitchell is standing trial. However, Rogers could not/would not appear at the criminal trial, yet he could travel abroad in Europe. Based upon Rogers' failure to appear at trial to testify after the defendant caused process to be issued so that Rogers would appear as a witness in order that the defendant could further develop the facts surrounding the incident in support of his defense of the defense of others and the reasonableness thereof, the Court finds that the 5th, 6th, and 14th Amendments were violated. The Court further finds that the defendant's constitutional rights to a fair trial, due process, and compulsory process

have been violated and that a dismissal of the charges contained in the Indictment is warranted based upon these facts and the applicable law.

LAW AND ANALYSIS

“The dual aim of our criminal justice system is ‘that guilt shall not escape or innocence suffer.’” *United States v. Nobles*, 422 U.S. 225, 230 (1975) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). To that end, “[w]hile the adversary system depends primarily on the parties for the presentation and exploration of relevant facts, the judiciary is not limited to the role of a reference or supervisor. Its compulsory processes stand available to require the presentation of evidence in court or before a grand jury.” *Id.* (citing *United States v. Nixon*, 418 U.S. 683, 709 (1974) (additional citations omitted)).

The United State Supreme Court in *Nobles* quoted the *Nixon* Court and its opinion that:

[t]he need to develop all relevant facts in the adversary system is both fundamental and comprehensive. **The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.** To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.'

Id. at 230-231 (quoting *United States v. Nixon*, 418 U.S. 683, 709 (1974) (emphasis added))

"The Fifth and Sixth Amendments to the Constitution give an accused the right to present the testimony of relevant witnesses." *United States v. Miller*, 47 M.J. 352, 359 (1997). The United States Supreme Court in *Washington v. Texas*, 388 U.S. 14 (1967), has further determined, regarding the right to compel the attendance of material witnesses at trial, to be "a

fundamental element of due process of law.” *Id.* at 19.

The Supreme Court in *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982) recognized that “[t]he prosecution may not deny access to a witness by hiding him out.” *Id.* at 866 (citing *Freeman v. State of Georgia*, 599 F.2d 65 (5th Cir. 1979) (police detective concealed location of witness)).

Having borrowed much of our reasoning with respect to the Compulsory Process Clause of the Sixth Amendment from cases involving the Due Process Clause of the Fifth Amendment, we have little difficulty holding that at least the same materiality requirement obtains with respect to a due process claim. Due process guarantees that a criminal defendant will be treated with “that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial.” *Lisenba v. California*, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed. 166 (1941). In another setting, we recognized that Jencks Act violations, wherein the Government withholds evidence required by statute to be disclosed, rise to the level of due process violations only when they so infect the fairness of the trial as to make it “more a spectacle or trial by ordeal than a disciplined contest.” *United States v. Augenblick*, 393 U.S. 348, 356, 89 S.Ct. 528, 534, 21 L.Ed.2d 537 (1969)

The *Valenzuela-Bernal* Court opined that in balancing the right to compulsory process guaranteed by the Sixth Amendment with the due process rights as set forth in *Brady*, it is the suppression “by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 868 (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)).

The Due Process Clause “guarantees that a criminal defendant will be treated with ‘that fundamental fairness essential to the very concept of justice.’” *United States v. Piper*, 912 F.3d 847, 854 (5th Cir. 2019) (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872, 102

S.Ct. 3440, 73 L.Ed.2d 1193 (1982) (quoting *Lisenba v. California*, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941)); U.S. CONST. AMEND. V.

“Due process includes the right to present witnesses to establish a defense.” *Id.* (citing *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)). Thus, “[t]o demonstrate a constitutional violation under either due process or compulsory process based on the deprivation of witness testimony, a defendant ‘must make some plausible showing of how the testimony would have been both material and favorable to his defense.’” *Id.* (citing *United States v. Villanueva*, 408 F.3d 193, 200 (5th Cir. 2005) (quoting *Valenzuela–Bernal*, 458 U.S. at 867, 102 S.Ct. 3440). The Court finds that Mitchell has made such a showing.

The issue before this Court is the absence of Nathan Russell Rogers from this trial. He is a key, material witness to Lane Douglas Mitchell’s defenses and could provide favorable testimony to the defense.

Lane Douglas Mitchell, in order to receive a fair trial, is entitled for the jury to see Nathan Russell Rogers in-person, on the stand, so that they can gauge him and judge his demeanor and credibility. Mitchell has a fundamental right to question and cross examine Rogers in the presence of the jury about Rogers’ behavior at Tallahatchie Gourmet restaurant on February 9, 2019. This testimony goes directly to the questions of the reasonableness of Lane Douglas Mitchell’s actions and who was the initial aggressor.

Lane Douglas Mitchell has a fundamental right to have Rogers “stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.” *Mattox v. United States*, 156 U.S. 237, 243-244 (1895). Moreover, he has a fundamental right to force Rogers to “submit

to cross-examination - **the greatest legal engine ever invented for the discovery of truth.**” *Maryland v. Craig*, 497 U.S. 836, 846 (1990) (emphasis added)). It is only with the “combined effect of these elements of confrontation, physical presence, oath, cross-examination, and observation of demeanor by the trier of fact—serves the purposes of the Confrontation Clause by ensuring that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo-American criminal proceedings.” *Id.* (internal citations omitted).

The Sixth Amendment to the United States Constitution provides, “In all criminal prosecutions the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor.” U.S. Const. amend. VI.22. “The Sixth Amendment guarantee[s] that those accused have compulsory process for obtaining witnesses for their defense.” *Trump v. Vance*, 140 S. Ct. 2412, 2422 (2020) (citing *United States v. Burr*, 25 F.Cas. 30, 33–34 (No. 14,692d) (CC Va. 1807)).

In *Washington v. Texas*, 388 U.S. 14 (1967), the Supreme Court observed that “[t]he right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.” *Id.* at 18–19. It is a violation of the Compulsory Process Clause if the “state arbitrarily denied [a defendant] the right to put on the stand a witness who was physically

and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense.” *Id.* at 23.

In *Chambers v. Mississippi*, 410 U.S. 284 (1973), the Supreme Court pointed out that few rights are more fundamental than that of an accused to present witnesses in his own defense. Further, it held that the rights to confront and cross-examine witnesses and to call witnesses in one’s own behalf have long been recognized as essential to due process. *Id.* at 294.

In *Pennsylvania v. Ritchie*, 480 U.S. 39, 55 (1987), the United States Supreme Court recognized as far back at 1807 that **“the right to the accused to the compulsory process of the court contains no exception whatever.”** *Id.* (discussing *U.S. v. Burr*, 25 F. Cas. 30, 34-35 (C.C.D. Va. 1807) (emphasis added)). It further stated, “our cases establish, at a minimum, that criminal defendants have the right to the government’s assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt.” *Id.* at 56, 107.

In *Holmes v. South Carolina*, 547 U.S. 319 (2006), the United State Supreme Court again recognized the fundamental right of a defendant to compel witnesses in establishing a defense and that such right is recognized that whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment. *Id.* at 324. Such right is necessary in giving a defendant “a meaningful opportunity to present a complete defense.” *Id.* (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)).

The Fifth Circuit has opined that to make the right to compulsory process mean anything at all, “it has been extended to proscribe the government’s making a witness unavailable and thereby preventing a defendant from interviewing the witness and determining whether he will

subpoena and call the witness in his defense.” *United States v. Henao*, 652 F.2d 591, 592 (5th Cir. 1981).

Further, the prosecution team has the obligation to cooperate regarding the disclosure and availability of prosecution witnesses. In determining who comprises the prosecution team, the Mississippi Supreme Court has recognized:

The State, in the present context, is a team consisting of the attorney, the law enforcement officers of the jurisdiction in which the case is brought, all other cooperating law enforcement officials--municipal, county, state or federal, the prosecution witnesses, and any other persons cooperating in the investigation and prosecution of the case. What is known or available to any one or more is deemed to be known by or available to the State. All are collectively "the State" for present purposes. See *United States v. Deutsch*, 475 F.2d 55, 57 (5th Cir. 1973).

Box v. Mississippi, 437 So.2d 19, 25-26 n.4 (Miss. 1983) (quoting *Gallion v. Mississippi*, 396 So.2d 621, 622, 624 (Miss. 1981) (emphasis added)).

Here, the prosecution team consists of the attorneys representing the State of Mississippi and Nathan Russell Rogers and his court-appointed conservator, Robert Rogers, who has worked in tandem with the State of Mississippi in its prosecution of this case since the beginning. Further, the conservator has been represented by counsel at all critical stages of this case and, in fact, has fought the disclosure of evidentiary materials sought by the defense.

As the *Box* Court demands, actions of one member of the prosecution team are imputed to the entire prosecution team. A such, *Box* follows black-letter law that “if a member of the prosecution team has knowledge of *Brady* material, such knowledge is imputed to the prosecutors.” *United States v. Antone*, 603 F.2d 566, 569 (5th Cir.1979); *Schneider v. Estelle*, 552 F.2d 593, 595 (5th Cir.1977).

In *Freeman v. State of Georgia*, 599 F.2d 65 (5th Cir. 1979), the Fifth Circuit addressed

if the personally motivated actions of a government witness could be imputed to the prosecution team for the purposes of a *Brady* violation. *Id.* at 69. The Fifth Circuit found that the willful and intentional efforts of an officer to conceal a witness, even if personally and not professionally motivated, prejudiced the defense and was attributable to the State. *Id.*

It is the opinion of the Court that Nathan Russell Rogers' unknown whereabouts is not by accident. To permit the prosecution team (conservator) to interfere with justice in this way is an intentional violation of Lane Douglas Mitchell's right to compulsory process under the Sixth Amendment. These tactics, in concealing a material witness's whereabouts, are meant to deprive Lane Douglas Mitchell of his constitutional, fundamental right to a fair trial.

The rights afforded to Lane Douglas Mitchell under the Sixth Amendment are "unlike the other protections, however, which affect witnesses only incidentally, the compulsory process clause is principally designed to enhance the defendant's ability to present a case through witnesses. It rests on the premise that a major imbalance of advantage in favor of the state with respect to the presentation of its case through witnesses is likely not only to be unfair, but to frustrate the ultimate pursuit of truth." *See*, Peter Westen, *The Compulsory Process Clause*, Michigan Law Review, Volume 73, Issue 1 (1974), p. 180. In fact, "compulsory process is more important to the accused than confrontation because in most cases it can substitute for confrontation." *Id.* at 183.

IT IS THEREFORE ORDERED AND ADJUDGED that the Indictment returned against Lane Douglas Mitchell for the crime of attempted murder be, and the same is hereby, **DISMISSED** for the violations of his Constitutional rights discussed above.

IT IS FURTHER ORDERED AND ADJUDGED that a Judgment of Acquittal be

entered by the Clerk as to the disposition of these charges.

The clerk is directed to provide a copy of this Order to all counsel of record.

SO ORDERED and ADJUDGED, this the 22nd day of May, 2023

NUNC PRO TUNC to May 11, 2023.


KENT E. SMITH
CIRCUIT COURT JUDGE

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FILED
MAY 23 2023
PHYLLIS STANFORD
BY  D.C.