

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOSHUA BUCKNER

APPELLANT

V.

CAUSE NO. 2012-CA-00868

STATE OF MISSISSIPPI

APPELLEE

PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT FOR GRANT OF CERTIORARI

The Court of Appeals' decision effectively overrules *Mayfield v. State*, 612 So. 2d 1120, 1128 (Miss. 1992) by holding that a legislative amendment clarifying an ambiguous statute altered this Court's analysis regarding the prohibition against double jeopardy.

In *Mayfield* this Court held that the subject statute: 1) was ambiguous as to legislative intent and 2) in any event, criminalized the act of drunk driving, not the act of killing or maiming. *Mayfield*, 612 So. 2d at 1127. As to the ambiguity, the *Mayfield* Court reasoned that the rule of lenity applied such that only one conviction could stand for each act of drunk driving. *Id.* at 1128. However, *Mayfield* also separately held that the prohibition against double jeopardy prohibited multiple convictions for a single act, because the statute criminalized the act of drunk driving, not the act of injuring others. *Id.*

When the Legislature amended the statute after *Mayfield*, it clarified the ambiguity but left the statute otherwise intact. The reasoning of *Mayfield*, that the statute criminalizes drunk driving not injuring others, was not altered by the statutory amendment. Other than clarification of the ambiguity, the statute is substantively the same today as it was when analyzed by the Court in *Mayfield*.

Mayfield is still the law in this State but has not been followed by the Court of Appeals. Because the Legislature did not alter the substance of the statute, the analysis of *Mayfield* still controls. The Court of Appeals cases holding that the Legislature overruled *Mayfield* are incorrect and fail to consider the entire holding of *Mayfield*.

Certiorari should be granted in this case to reverse the Court of Appeals and make clear that *Mayfield* is controlling law in Mississippi.

STATEMENT OF FACTS

Appellant Joshua Buckner (“Buckner”) was indicted on one (1) count of leaving the scene of an accident and three (3) counts of “Aggravated DUI” in violation of Miss. Code Ann. § 63-11-30(5). (C.P. p. 11-12). The criminal charges against Buckner stemmed from a single automobile crash which occurred on April 26, 2008, and resulted in the death of one passenger and injuries to two (2) other passengers. (*Id.*) Buckner subsequently filed Petitions to enter a plea of guilty as to all four (4) counts in the Indictment. (C.P. p. 87-90). Buckner appeared before the trial court on January 28, 2009, to offer pleas of guilty. (C.P. p. 13-21). The Court accepted Buckner’s guilty pleas and deferred sentencing until February 2, 2009. (C.P. p. 21).

After hearing witnesses called by the State and by Buckner the trial court rendered sentence as follows:

- a. On Count One (Leaving the scene of an accident), Buckner was sentenced to a term of five (5) years incarceration.
- b. On Count Two (Aggravated DUI), Buckner was sentenced to a term of twenty (20) years incarceration.
- c. On Count Three (Aggravated DUI), Buckner was sentenced to a term of ten (10) years incarceration.
- d. On Count Four (Aggravated DUI), Buckner was sentenced to a term of ten (10) years of incarceration.

(C.P. p. 91-96).

Buckner subsequently filed a Petition for Post-Conviction Relief in the Circuit Court, challenging his plea and sentences generally based on *Mayfield v. State*, 612 So. 2d 1120, 1128 (Miss. 1992). (C.P. p. 2-10). The Trial Court denied the Petition. (C.P. p. 104-05). Buckner appealed and the Court of Appeals affirmed. (*See* Appx. 1).

ARGUMENT FOR CERTIORARI

This Court addressed the issue of multiple convictions for a single instance of aggravated DUI involving multiple injuries or deaths in *Mayfield v. State*, 612 So. 2d 1120, 1128 (Miss. 1992). The *Mayfield* opinion has two (2) holdings: first, the Court held that the subject statute proscribes the act of drunk driving, not the act of homicide or injuring another, such that a single act of drunk driving resulting in multiple injuries or deaths can be the basis for only one criminal conviction. *Mayfield*, 612 So. 2d at 1128. Second, the *Mayfield* opinion also held that the subject statute (section 63-11-30) was “hopelessly ambiguous” because it did not specifically provide whether a defendant could be convicted of multiple felonies for a single instance of Aggravated DUI. *Id.*

The *Mayfield* Court held that since the statute proscribed aggravated DUI, not homicide, a conviction for multiple injuries from one act of driving while drunk was barred by the Double Jeopardy Clause of the State and Federal Constitutions. The *Mayfield* Court noted that the emphasis of section 63-11-30 is “clearly on drunk driving not on the effect on ‘another person.’” *Mayfield*, 612 So. 2d at 1127. The term “violation” in the statute refers to the act of drunk driving, not injuring others. *Id.* Also, the Court noted that:

It is curious that § 63-11-30(4) prescribes the same punishment regardless of whether the victim suffers death or a relatively minor injury. A person who drives drunk and negligently causes the mutilation or disfigurement of a victim's "tongue, eye, lip, nose or any other limb or member" (including, one may presume, a pinkie or earlobe) is subject to five years imprisonment just as if the victim had died. ***This lumping together of death and injury indicates a legislative intent to treat such incidents as collateral to the principal offense of drunk driving. If so, then Mayfield is correct in arguing that he violated § 63-11-30(4) only once on the occasion of the fatal crash.***

Id.

The Court reversed the convictions in *Mayfield* for two reasons. *Id.* at 1127-28. As to

the ambiguity of the statute, the Court reversed holding that the rule of lenity required the lesser penalty to be imposed in the event of an ambiguous statute. *Id.* However, separate from this, the Court also held that the defendant's "second conviction constitutes double jeopardy and must be reversed." *Id.* at 1128.

After the *Mayfield* decision, the Mississippi Legislature amended section 63-11-30 in 2004. The 2004 Amendment provided that a violator shall "be guilty of a separate felony for each such death, mutilation, disfigurement or other injury." MISS. CODE ANN. § 63-11-30(5). This language replaced the former language providing that an offender was "guilty of a felony." *Id.*

Since the 2004 amendment, the Court of Appeals has concluded that because the ambiguity was resolved, a defendant may now be convicted of a separate count of aggravated DUI for each death or injury arising out of a single incident. *Moreno v. State*, 967 So. 2d 701, 703 (Miss. Ct. App. 2007); *Tetson v. State*, 44 So. 3d 977, 985 (Miss. Ct. App. 2008); *Sills v. State*, 105 So. 3d 1189, 1191 (Miss. Ct. App. 2013). The Court of Appeals generally concluded in these cases that the 2004 Legislative Amendment superseded *Mayfield*. *See Moreno*, 967 So. 2d at 703 (holding that the defendant was properly convicted of separate felonies with no discussion of *Mayfield*).

However, none of those decisions, nor the decision in this case, directly address the issue. The Court of Appeals did not address how *Mayfield* should apply to the Legislative Amendment. The current version of Miss. Code Ann. § 63-11-30(5) remains generally the same as the version which was at issue in *Mayfield*. The only meaningful difference was the Legislature's insertion of language providing that each injury shall be a separate felony.

The 2004 Legislative Amendment cured the ambiguity in the statute addressed in

Mayfield. However, the Amendment did not, and could not alter the Double Jeopardy Clauses of the State and Federal Constitutions. The statute remains, as analyzed in *Mayfield*, a statute which criminalizes the act of drunk driving. The statute was not changed in this respect and remains in the same form as it was when addressed by the Supreme Court in *Mayfield*.

As a consequence, although the Legislature amended the statute to purportedly make each injury or death a separate felony, such an application of the statute nevertheless violates the Double Jeopardy Clauses of the State and Federal Constitutions. That is, the reasoning of *Mayfield* as to the double jeopardy issue remains applicable to Miss. Code Ann. § 63-11-30(5) although *Mayfield's* reasoning as to the ambiguity of the statute is inapplicable based on the Legislative Amendment.

The Mississippi Constitution provides as follows:

No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.

MISS. CONST. ART. III, § 22. The United States Constitution similarly provides that no person may “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. CONST. AMEND. V. The Federal Constitution’s double jeopardy clause is incorporated to the States through the due process clause of the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969).

As explained by this Court in *Mayfield*, and even after the 2004 Legislative Amendment, Miss. Code Ann. § 63-11-30(5) punishes the act of drunk driving, not the act of killing or injuring. The Supreme Court in *Mayfield* succinctly explained that “[i]n our view, it is fairly clear that section 63-11-30 proscribes the act of drunk driving, not the act of killing.” *Mayfield*, 612 So. 2d at 1128.

The 2004 amendment did nothing to change this, and the statute continues to “fairly clearly” punish the act of drunk driving, not the act of killing or injuring. A comparison between the text of the pre-2004 statute and the 2004 amendment is telling:

Pre-Amendment Language	Post-Amendment Language
<p>Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb or member of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the State Department of Corrections for a period of time not to exceed five (5) years.</p>	<p>Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.</p>

MISS. CODE ANN. § 63-11-30 and as amended effective 2004. The bill to Amend section 63-11-30 makes clear exactly what was, and what was not, changed in the statute. The Legislation provided:

Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye,

lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a [A] SEPARATE <A] felony [A] FOR EACH SUCH DEATH, MUTILATION, DISFIGUREMENT OR OTHER INJURY <A] and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years [A] FOR EACH SUCH DEATH, MUTILATION, DISFIGUREMENT OR OTHER INJURY, AND THE IMPRISONMENT FOR THE SECOND OR EACH SUBSEQUENT CONVICTION, IN THE DISCRETION OF THE COURT, SHALL COMMENCE EITHER AT THE TERMINATION OF THE IMPRISONMENT FOR THE PRECEDING CONVICTION OR RUN CONCURRENTLY WITH THE PRECEDING CONVICTION. ANY PERSON CHARGED WITH CAUSING THE DEATH OF ANOTHER AS DESCRIBED IN THIS SUBSECTION SHALL BE REQUIRED TO POST BAIL BEFORE BEING RELEASED AFTER ARREST. <A]

2004 Miss. Advance Legislative Service 503 (emphasis in original).¹

The post-2004 version of the statute is thus identical to the version at issue in *Mayfield*, other than the clarification of Legislative intent. The same reasons that the *Mayfield* Court found that the statute proscribes drunk driving, not killing or maiming, should apply in this case and render multiple convictions for a single violation of the statute unconstitutional.

The statute remains unchanged from the one at issue in *Mayfield*, other than the clarification of Legislative intent. If ambiguity of Legislative intent was the sole basis for the *Mayfield* decision, this would end the issue. However, it was not. *Mayfield* made clear that a textual analysis of the statute compelled the conclusion that the statute punished the act of DUI, not the act of killing or injuring others, thus multiple convictions for a single criminal act were barred by the prohibition against double jeopardy. The statute reads the same now as it did in *Mayfield* in this respect. Thus, consistent with the doctrine of *stare decisis*, the reasoning of *Mayfield* should still apply.

Respectfully, the Court of Appeals decisions in the post-amendment cases and the

¹ The text in all-caps and surrounded by the “>A” notations is the text which was added to the statute by the 2004 amendment.

decision in this case are simply wrong. The Court of Appeals opinions fail to consider the full analysis of *Mayfield*, in favor of a simple conclusion that the Legislature's amendment resolved the issue. This simplistic view is inconsistent with *Mayfield* and ignores the heart of the *Mayfield* opinion. The Court of Appeals' opinion in this case, and the opinions in the other post-amendment cases, are irreconcilable with this Court's opinion in *Mayfield*.

Accordingly, for these reasons, this Court should grant *certiorari* and should reverse the decision of the Court of Appeals and the Circuit Court.

RESPECTFULLY SUBMITTED, this the 11th day of March, 2014.

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CERTIFICATE OF SERVICE

I, R. Shane McLaughlin, do hereby certify that I have this day by United States mail, postage prepaid, forwarded a true and correct copy of the above and foregoing document to:

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**Honorable Lee J. Howard
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THIS, the 11th day of March, 2014.

/s/ R. Shane McLaughlin