



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,

vs.
BRADRICK VAIL,
Defendant,

CC-2024-1493
CC-2024-1492
CC-2024-1491

**DEFENDANT VAIL'S MOTION TO VACATE, MOTION FOR JUDGEMENT OF
ACQUITTAL, OBJECTION TO JURY INSTRUCTIONS AND MOTION TO
RENDER STATUTE UNCONSTITUTIONALLY VOID FOR VAGUENESS &
UNCONSTITUTIONAL AS-APPLIED**

Comes now the Defendant, BRADRICK VAIL, by and through undersigned
counsel and hereby files this Motion for Judgment of Acquittal, Motion to Vacate,
Objection to Jury Instructions and Motion to Render the Applicable Statute
Unconstitutional. Defendant offers the following in support thereof:

PROCEDURAL POSTURE

1. On or about May 17, 2024 a Mobile County Grand Jury indicted Defendant, Bradrick Vail on three separate criminal indictments for alleged criminal conduct.
2. On February 24, 2024 this Honorable Court commenced the consolidated jury trial of State of Alabama v. Bradrick Vail. (CC-2024-1491 ; CC-2024-1492 ; CC-2024-1493).
3. The State of Alabama charged the Defendant with three counts of Rape 1st Degree, three counts of Sex Abuse by Force, and one count of Sodomy 1st Degree.

4. Two victims, hereinafter known as K.W. and B.A. testified for the State. Victim K.W. testified regarding alleged criminal acts in the year 2022 and earlier. Victim B.A. testified regarding alleged criminal acts in October of 2023.
5. At the conclusion of the State's case, the Defendant, by and through undersigned counsel, moved this Honorable Court for a Judgement of Acquittal as to all counts of the consolidated indictments. The Defendant's motion was denied.
6. At the conclusion of the Defense's case, the Defendant again moved for a Judgement of Acquittal as to all counts of the consolidated indictments. The Defendant's motion was denied.
7. This Honorable Court determined that the misdemeanor lesser-included-offense of Sexual Misconduct §13A-6-65 to be an appropriate jury instruction and thereafter instructed the jury as to all indicted charges, as well as Sexual Misconduct.
8. Upon thorough deliberation, the jury unanimously returned a guilty verdict, finding the Defendant guilty of all seven counts of the misdemeanor lesser-included-offense of Sexual Misconduct.
9. This Honorable Court polled the jury and determined that the verdict was unanimous, and thereafter docketed Sentencing for April 7, 2025.

MOTION TO VACATE

10. Alabama Code §15-3-2 holds that "Unless otherwise provided, the prosecution of all misdemeanors before a circuit or district court must commenced within 12 months after the commission of the offense." *See* Alabama Code §15-3-2 (1975).
11. Furthermore, "a trial court does not have the statutory authority to adjudicate a misdemeanor offense unless the defendant is indicted, bound over, or a warrant for

his or her arrest has been issued within 12 months of the commission of the offense.

See Money v. State, 138 So. 3d 332 (2012) citing Spears v. State, 12 Ala.App. 376 (1935)

12. In the case in question, it is undisputed that Defendant's alleged conduct resulting in the K.W. allegations occurred in the year 2022 and prior.
13. Defendant was then indicted via secret indictment on or about May 17, 2024—more than one (1) year after the alleged criminal conduct.
14. The Defendant was not subject to any other form of prosecution of these offenses during the interim time. A criminal warrant or summons was never issued in the one year following the alleged criminal conduct on K.W.
15. The K.W. allegations resulted in five (5) criminal convictions of misdemeanor Sexual Misconduct.
16. These five convictions are due to be vacated pursuant to Alabama Code §15-3-2, Money v. State (2012) and Spears v. State (1935).

MOTION FOR JUDGEMENT OF ACQUITTAL

17. The Defendant renews his motion for Judgement of Acquittal as to all seven charges.
18. The evidence presented by the State failed to satisfied the elements of the alleged offenses.
19. The testimony at trial from both K.W. and B.A. was that force was not exerted during the alleged conduct.
20. The testimony at trial was that K.W.'s assessment of the conduct was "Not really rape at all."

21. The testimony at trial was that each victim voluntarily consented to the conduct alleged later to be criminal in nature.

DEFENDANT’S OBJECTION TO JURY INSTRUCTIONS

22. Defendant further objects to the application of the Jury Instructions upon the close of evidence.

23. This Honorable Court instructed the Jury to all criminal charges and the lesser-included-offense of Sexual Misconduct, pursuant to Alabama Code 13A-6-65 (1975).

24. To this end, the Court instructed, *“a person commits the crime of sexual misconduct if he or she does any of the following:*

- *(1) Engages in sexual intercourse with another person without his or her consent, under circumstances other than those covered by Sections 13A-6-61 (Rape 1st Degree) and 13A-6-62 (Rape 2nd Degree) or with consent was obtained by the use of fraud or artifice.*
- *(2) Engages in sodomy with another person without his or her consent, under circumstances other than those covered by Sections 13A-6-63 (Sodomy 1st Degree) and 13A-6-64 (Sodomy 2nd Degree) or with consent was obtained by the use of fraud or artifice.*
- *(3) Engages in sexual contact with another person without his or her consent, under circumstances other than those covered by Sections 13A-6-66 (Sexual Abuse 1st Degree) and 13A-6-67 (Sexual Abuse 2nd Degree) or with consent was obtained by the use of fraud or artifice. “*

25. The Court did not instruct the Jury as to the definition of **“the use of fraud or artifice.”**

26. The Defendant hereby objects to the incompleteness of the Jury Instruction, which likely and/or reasonably confused the Jury and/or failed to adequately inform the Jury of the standard of proof or the elements necessary to find guilt.

**DEFENDANT’S MOTION TO RENDER SEXUAL MISCONDUCT AS FACIALLY
UNCONSTITUTIONAL (VOID FOR VAGUENESS)**

27. The Sexual Misconduct Statute is *Void for Vagueness* and therefore Facially Unconstitutional.
28. Generally speaking, “Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed.” See Contreras v. State, 328 So.3d 911 (2020) citing United States v. Harriss, 347, U.S. 612 (1954).
29. There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act, or in regard to the applicable tests to ascertain guilt. See Winters v. New York, 333 U.S. 507 (1948).
30. The statute in question offers three avenues of criminal conduct under Subjection (a)(1).
 - *A person commits the crime of sexual misconduct if he:*
 - i. *Engages in sexual intercourse with another, under circumstances other than Rape 1 (forcible Rape)*
 - ii. *Engages in sexual intercourse with another, under circumstance other than Rape 2 (statutory Rape).*
 - iii. *Was obtained by the use of Fraud or Artifice*
31. The statute repeats this three-pronged standard with respect to Sodomy and Sexual Abuse--each of which contains parallel nebular definitions.
32. Essentially, sexual misconduct is couched as a “catch-all” sexual offense, whose primary “*actus reus*” element is lacking definition.

33. It is unclear how a Defendant could conceivably commit a criminal sexual intercourse with another that isn't forcible rape or statutory rape.
34. It is equally unclear how a Defendant might commit (non-Rape) criminal sexual intercourse using Fraud or Artifice.
35. In any event, it is incumbent upon the State to adequately apprise and inform the Defendant of the criminal conduct alleged—which cannot be accomplished within the confines of the Sexual Misconduct statute as currently drafted.
36. A Defendant need not be forced to guess under which subsection his Non-Rape criminal sexual intercourse is being prosecuted.
37. For these reasons, the Defendant moves this Honorable Court to render the Sexual Misconduct Statute articulated in Alabama Code 13A-6-65 to be Unconstitutionally Void for Vagueness.

**DEFENDANT'S MOTION TO RENDER SEXUAL MISCONDUCT UNCONSTITUTIONAL AS-
APPLIED TO DEFENDANT'S PROSECUTION**

38. The Defendant further moves this Honorable Court to render the application of the Sexual Misconduct statute to Defendant's case as Unconstitutional "As-Applied."
39. In this case, the State of Alabama failed to adequately apprise the Defendant under which subsection it intended to prosecute the Defendant.
40. The state appears to have three primary options to elect:
 - *Criminal Sexual Intercourse, but not Rape 1st*
 - *Criminal Sexual Intercourse, but not Rape 2nd*
 - *Criminal Sexual Intercourse via Fraud or Artifice*
41. The State neither offered the Court nor the Defense any explanation as to which subsection it intended to prove.

42. Furthermore, the Jury did not receive any instruction as to the definition of Criminal Non-Rape Sexual Intercourse or Sexual Intercourse via Fraud/Artifice.

43. In this case, the application of the Sexual Misconduct statute was insufficient to adequately apprise the Defendant of the criminal offense alleged, or to appropriately instruct the Jury as to definition of the offense. For these reasons, the Defendant moves this Honorable Court to render the Sexual Misconduct Statute as unconstitutional as-applied in State of Alabama v. Bradrick Vail.

WHEREFORE, premises considered, the Defendant hereby moves this Honorable to Vacate the Appropriate convictions, to grant the Defendant's Motion for Judgment of Acquittal and/or to render the Sexual Misconduct Facially Unconstitutional, and Unconstitutional As-Applied to this case.

Respectfully submitted this 1st day of April, 2025.

s/ David M. Allen
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(ALL109)

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CERTIFICATE OF SERVICE

I do hereby certify that on 1st day of April, 2025, a copy of the foregoing pleading was served on opposing counsel, either through U.S. Mail, electronic mail, fax, or through the Alafile system.

/s/ David M. Allen
David M. Allen
Attorney at Law