

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 16, 2020**SUPREME COURT - CIVIL CASES****AT&T CORP. V. MISS. DEPT. OF INFO. TECH. SERVS.****CIVIL - STATE BOARDS & AGENCIES**

CONTRACTS - BIDDING - NONCONFORMING TERMS - Under Mississippi law, an agency will be found to have acted arbitrarily and capriciously if it accepted a bid on terms other than those authorized

CONTRACTS - INTERPRETATION - MUTUAL ASSENT - The court's duty is to read a contract as written, and the contract must be examined as a whole to determine the parties' intent

CONTRACTS - INTERPRETATION - MUTUAL ASSENT - Language that might be susceptible of being construed to conflict must, if possible, be harmonized to effectuate the parties' intent

FACTS

The Mississippi Department of Information Technology Services ("ITS") issued a Request for Proposals ("RFP") for telecommunications services. After vendors responded, ITS selected the proposal submitted by Telepak Networks, Inc., d/b/a C Spire ("C Spire") for a statewide voice and data network. AT&T Corp. ("AT&T") protested the award, arguing that ITS's award of the contract to C Spire was erroneous because C Spire's proposal did not match the specifications set forth in the RFP. ITS denied AT&T's challenge, and it appealed. The trial court affirmed, finding that ITS's award of the contract to C Spire was not arbitrary and capricious or unsupported by substantial evidence. AT&T appealed.

ISSUE

Whether the chancery court erred in failing to find ITS's selection of C Spire's proposal arbitrary and capricious because the proposal did not meet the specifications set forth in the RFP.

HOLDING

Because ITS's decision that C Spire's proposal matched the RFP specifications was at least fairly debatable, ITS's selection of C Spire's proposal was not arbitrary and capricious and was supported by substantial evidence. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2019-CC-00353-SCT (Apr. 16, 2020)

Opinion by Presiding Justice Kitchens

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

Michael B. Wallace, Rebecca Hawkins, & Mark F. McIntosh for Appellant - Tommy D. Goodwin, James E. Woods Jr., & Paul E. Barnes (Att'y Gen. Office) for Appellee

Briefed by [Sarah Schofield](#)

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MISS. BAR V. MAYERS**CIVIL - BAR MATTERS**

BAR MATTERS - DISCIPLINE - RECIPROCAL DISCIPLINE - A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the State of Mississippi

BAR MATTERS - DISCIPLINE - RECIPROCAL DISCIPLINE - The sole issue to be determined in a reciprocal disciplinary proceeding in the State of Mississippi is the extent of the final discipline to be imposed upon the attorney in this State, which may be more or less severe than the discipline imposed by the other jurisdiction

BAR MATTERS - DISCIPLINE - RECIPROCAL DISCIPLINE - When determining reciprocal discipline, the sanction imposed in Mississippi generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify, or support variance from the foreign jurisdiction's sanction

FACTS

A disciplinary complaint arose in Tennessee against Urura W. Mayers, an attorney licensed to practice law in Tennessee and Mississippi. Mayers presented a check drawn on her trust account to a court clerk's office for payment of a filing fee before the client funds covering the cost of the filing fee had been deposited into her trust account. This resulted in an overdraft on the account. An investigation by the Board of Professional Responsibility of the Supreme Court of Tennessee ("the Board") revealed that Mayers failed to properly supervise a legal assistant, who used the trust account to pay personal expenses. The Board determined that Mayers violated two Tennessee Rules of Professional Conduct related to safekeeping property and funds, and responsibilities regarding nonlawyer assistants. Mayers was publicly censured for these violations. The Mississippi Bar filed a formal complaint against Mayers under Rule 13 of the Rules of Discipline for the Mississippi State Bar because she was an active member of the Mississippi Bar during the time of the underlying conduct.

ISSUE

Whether Mayers should be appropriately disciplined under Rule 13 of the Rules of Discipline for the Mississippi State Bar.

HOLDING

Because Mayers admitted that the two violations asserted in the public censure by the State of Tennessee were accurate and could constitute grounds for the imposition of discipline, and because there was no actual or potential injury resulting from the misconduct, the Mississippi Supreme Court found it unnecessary to impose a more severe sanction than the Tennessee Supreme Court. Therefore, the Supreme Court granted the Mississippi Bar's request for discipline, ordered that Mayers be publicly reprimanded, and assessed all costs and expenses to Mayers.

Affirmed - 2019-BD-01229-SCT (Apr. 16, 2020)

En Banc Opinion by Justice Ishee

Melissa Selman Scott for Appellant - *Pro se* for Appellee

Briefed by [Bryant Carlton](#)

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MISS. DEP'T OF TRANSP. V. MUSGROVE

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - IMMUNITY - STATE BOARDS & AGENCIES - Under the Mississippi Emergency Management Law, the state and its agencies shall not be liable for their actions when dealing with emergencies, except when such actions constitute willful misconduct

CIVIL PROCEDURE - IMMUNITY - STATE BOARDS & AGENCIES - The Mississippi Torts Claim Act does not supersede the Mississippi Emergency Management Law and the two statutes should be read in conjunction with each other

CIVIL PROCEDURE - NEGLIGENCE - WILLFUL MISCONDUCT - Willful misconduct is misconduct committed voluntarily and intentionally

FACTS

On January 27, 2014, Mississippi Governor Phil Bryant issued a state of emergency due to an approaching winter storm. Acting under its emergency responsibilities, the Mississippi Department of Transportation ("MDO'T") placed limestone

materials on roadways in an effort to prevent hazardous driving conditions. Four days later, Kenneth and Latasha Musgrove were severely injured when Kenneth lost control of his car and wrecked. Kenneth claimed he lost control due to the limestone applied as the highway led into a curve. The Musgroves filed a complaint in Covington County Circuit Court, alleging MDOT was responsible for their injuries due to its placement of the limestone material and its failure to warn drivers of the limestone's presence. MDOT filed a motion for summary judgment, asserting tort liability immunity under the Mississippi Emergency Management Law ("MEML"), which requires that MDOT committed willful misconduct, rather than ordinary negligence, to be liable for its placement of the limestone. The trial court dismissed MDOT's summary judgment motion and applied the lower immunity standard under the Mississippi Torts Claim Act ("MTCA"). MDOT timely filed a petition for interlocutory appeal, which was subsequently granted.

ISSUES

Whether (1) MDOT was immune from liability for acts undertaken under the MEML and (2) the trial court erred by applying the MTCA immunity standard rather than the MEML willful-misconduct standard.

HOLDING

(1) Because MDOT's placement of the limestone material and its failure to warn of the limestone's presence did not constitute willful misconduct, MDOT was immune from liability under the MEML. (2) Because MDOT was acting during a declared state of emergency, the trial court erred by applying the MTCA immunity standard rather than the MEML willful-misconduct standard. Therefore, the Mississippi Supreme Court reversed and rendered the judgment of the Covington County Circuit Court.

Reversed and Rendered - 2018-IA-01139-SCT (Apr. 16, 2020)

Opinion by Presiding Justice Kitchens

Hon. Eddie H. Bowen (Covington County Circuit Court)

Michael D. Goggans, B. Adam Hays, & Christopher O. Massenburg for Appellant - Michael V. Ratliff, Oby T. Rogers, & Corey D. Gibson for Appellees

Briefed by [Charles Matranga](#)

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PEAK V. COHEE

CIVIL - PERSONAL INJURY

TORTS - LIABILITY - INTIMATELY CONNECTED DOCTRINE - Under the intimately connected doctrine, liability is not generally imposed on an owner who contracts with another to perform work, and the contractor or its employee suffers injuries either arising out of or intimately connected with the work

TORTS - INTIMATELY CONNECTED DOCTRINE - EXCEPTION - The lone exception to the intimately connected doctrine applies to arrangements where the project owner maintains any right of control over the performance of the aspect of the work that has given rise to the injury

TORTS - INTIMATELY CONNECTED DOCTRINE - APPLICABILITY - Although issues involving the intimately connected doctrine typically arise in construction or repair cases, its application is not limited solely to those contexts

TORTS - PREMISES LIABILITY - DUTY TO INVITEES - An owner is not liable for injuries caused by conditions that are not dangerous or that are, or should be, known or obvious to the business invitee

FACTS

After a storm caused damage to the roof of Henry Peak's house, Peak filed a claim with his insurer, Allstate Insurance Company ("Allstate"). Allstate contracted with Pilot Catastrophe Services, Inc. ("Pilot") to inspect the damage. Pilot sent Michael Cohee, an independent adjuster for Allstate, to inspect and evaluate the roof. During the inspection, Cohee fell through a decayed or rotten section of the roof, which caused injuries serious enough to keep him from working for more than a year. Cohee filed suit in Amite County Circuit Court against Peak, claiming Peak failed to make the

premises safe or warn him about the roof's condition. Peak moved for summary judgment, arguing that he was not liable for Cohee's injuries that arose from or were intimately connected to the work Peak's insurance company had hired Cohee to perform. Peak also pointed to Miss. Code Ann. § 11-1-66, and alternatively argued he was not liable to Cohee, an independent contractor, who knew or reasonably should have known about the roof damage. The trial judge denied Peak's motion for summary judgment, finding material fact issues existed about whether Cohee knew or should have known of the danger and whether that danger was intimately connected to Cohee's work. Discovery continued, and Peak deposed Cohee. In his deposition, Cohee admitted he was there to identify preexisting damage and to distinguish it from storm damage. He also confirmed he had four decades of experience. Peak again moved for summary judgment, raising the intimately connected doctrine and arguing that Miss. Code Ann. § 11-1-66 barred Cohee's lawsuit. The trial court again denied summary judgment, finding a material fact issue existed over whether Cohee knew or should have known about the roof's condition. Peak petitioned for and was granted an interlocutory appeal.

ISSUE

Whether the trial court erred in denying Peak's motion for summary judgment under the intimately connected doctrine.

HOLDING

Because an owner is not liable for injuries caused by conditions that are not dangerous or which are, or should be, known or obvious to the business invitee, because Cohee was aware of the rotting areas of the roof, and because the intimately connected doctrine does not impose liability on property owners for injuries suffered by independent contractors arising from or intimately connected to the work they were contracted to perform, the trial court erred in denying Peak's motion for summary judgment. Therefore, the Supreme Court reversed the judgment of the Amite County Circuit Court.

Reversed - 2019-IA-00045-SCT (Apr. 16, 2020)

Opinion by Justice Maxwell

Hon. Forrest A. Johnson Jr. (Amite County Circuit Court)

Grafton Eric Bragg & Cory Louis Radicioni for Appellant - Wayne Dowdy for Appellee

Briefed by [Frank Wood](#)

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TAYLOR CONSTR. CO., INC. V. SUPERIOR MAT CO., INC.

CIVIL - CONTRACT

CIVIL PROCEDURE - JURISDICTION - VENUE - Pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), the county where a substantial alleged act or omission occurred is a permissible venue for a plaintiff to choose

CIVIL PROCEDURE - VENUE - SUBSTANTIAL ACT - A substantial act or event is one that bears more than a mere incidental relationship to the plaintiff's cause of action; rather, a substantial act is one that bears real relevance to the plaintiff's claim

CIVIL PROCEDURE - VENUE - CREDIBLE EVIDENCE - A plaintiff must demonstrate credible evidence supporting the factual basis for the claim of venue

FACTS

Michael Montgomery, an employee of Taylor Construction Company, Inc. ("Taylor Construction") working as a trucking dispatcher, called Superior Mat Company ("Superior") to rent mats for Taylor Construction's construction use. Taylor Construction employees picked up more than 700 mats from Superior in their Covington County location. After Taylor Construction returned the mats, Superior alleged several mats were still dirty or, in some cases, damaged beyond repair. Taylor Construction paid Superior for the mats, but Superior billed Taylor Construction for mats it alleged Taylor Construction did not return. Taylor Construction initially paid the invoices but eventually stopped payment. Superior filed suit against Taylor Construction in the Covington County Circuit Court, alleging breach of contract, open account,

quantum meruit, and bad-faith breach of contract. Taylor Construction filed its answer along with a motion to transfer venue. After hearing arguments, the circuit court denied Taylor Construction's motion. Taylor Construction appealed.

ISSUE

Whether the trial court abused its discretion by denying Taylor Construction's motion to transfer venue.

HOLDING

Because the mat rental and return occurred in Covington County, a substantial alleged act occurred in Covington County, and the circuit court did not abuse its discretion by denying Taylor Construction's motion to transfer venue. Therefore, the Supreme Court affirmed the judgment of the Covington County Circuit Court.

CONCURRENCE

Justice Griffis argued that the use of the word "real" in attempting to define the word "substantial" did not assist in the interpretation of "substantial" used in the venue statute. He argued that the terms "important," "essential," or "fundamental" would better assist in the interpretation of a "substantial act" as used in the venue statute.

Affirmed - 2018-IA-01279-SCT (Apr. 16, 2020)

En Banc Opinion by Chief Justice Randolph - Concurrence by Justice Griffis

Hon. Eddie H. Bowen (Covington County Circuit Court)

Craig N. Orr for Appellant - Herman M. Hollensed, Jr. for Appellee

Briefed by [John Forrest Kelly](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 14, 2020

COURT OF APPEALS - CIVIL CASES

ESTATE OF SUMRALL V. SINGING RIVER HEALTH SYS.

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - STANDARD OF CARE - It is generally not required that an expert testifying in a medical malpractice case be of the same specialty as the doctor about whom the expert is testifying; however, the expert must demonstrate satisfactory familiarity with the doctor's specialty before the expert is permitted to testify and offer opinions regarding the standard of care owed to the plaintiff patient

CIVIL PROCEDURE - WEIGHT OF THE EVIDENCE - REVIEW - The decision of a trial judge sitting without a jury may only be reversed on review when the trial judge's findings are manifestly wrong or clearly erroneous

CIVIL PROCEDURE - CUMULATIVE - ERROR DOCTRINE - Multiple errors, which alone may not require reversal, may constitute reversible error if the cumulative effect of the errors resulted in an unfair trial

FACTS

In 2012, Della Sumrall underwent surgery to remove her gallbladder and a central venous catheter ("central line") was placed in her external jugular vein. The surgery was successful, but after the nurse removed the central line, Sumrall went into respiratory arrest. The respiratory arrest resulted in anoxic brain injury with a degree of permanent impairment. The Sumralls filed a medical malpractice claim against Singing River Health Systems, alleging the nurse that removed the central line was "substandard and negligent" in the removal of the central line, causing an air embolus, respiratory arrest, and anoxic brain damage. After a bench trial ("*Sumrall I*"), the circuit court entered judgment in favor of Singing River. The Court of Appeals reversed and remanded the case, finding the circuit court abused its discretion by allowing Singing River's expert witness, Dr. Corder, to testify outside the scope of his designation. After a second bench trial ("*Sumrall II*"), the circuit court again entered judgment in favor of Singing River. Sumrall appealed.

ISSUES

Whether (1) Dr. Corder was qualified to testify as to the nursing standard of care; (2) Dr. Corder's testimony was consistent with his pretrial disclosures; (3) the circuit court's findings of fact and conclusions of law were against the overwhelming weight of the evidence; (4) the circuit court did not follow the remand directives of *Sumrall I*; and (5) there was cumulative error.

HOLDING

(1) Because a medical doctor is qualified to testify to the applicable nursing standard of care, and because the standard of care regarding central line removal for nurses and physicians are the same, Dr. Corder was qualified to testify as to the nursing standard of care. (2) Because Singing River's pretrial disclosures identified Dr. Corder as an expert, gave notice of the subject matter in which he was to testify, stated his opinions, and included a summary of how he came to those conclusions, Dr. Corder's testimony was consistent with his pretrial disclosures. (3) Because the testimony and evidence at trial supported a finding that Singing River did not breach the standard of care, the circuit court's finding of fact and conclusions of law were not against the overwhelming weight of the evidence. (4) Because the evidence showed that the circuit court complied with the mandate in the first trial, the circuit court followed the remand directives of *Sumrall I*. (5) Because the effect of the alleged errors was without merit and they did not amount to an unfair trial, there was no cumulative error. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2018-CA-01260-COA (Apr. 14, 2020)

Opinion by Judge Greenlee

Hon. Robert P. Krebs (Jackson County Circuit Court)

Robert W. Smith for Appellants - Brett K. Williams & James Everett Lambert III for Appellee

Briefed by [Winston Hudson](#)

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GASKIN V. GASKIN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - MARITAL PROPERTY - FERGUSON FACTORS - The court is to consider the following factors when dividing marital property: (1) substantial contribution to the accumulation of property; (2) the degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of such assets; (3) the market value and the emotional value of the assets; (4) the value of assets not ordinarily subject to such distribution; (5) tax and other economic consequences, and contractual or legal consequences to third parties; (6) the extent to which property division may be used to eliminate periodic payments and other potential sources of future friction between the parties; (7) the needs of the parties for financial security with due regard to the combination of assets, income, and earning capacity; and (8) any other factor which in equity should be considered

FAMILY LAW - MARTIAL PROPERTY - INHERITED INTERESTS - Inter vivos gifts and inheritances are considered nonmarital property unless they have been commingled

FAMILY LAW - MARITAL PROPERTY - ALIMONY - When one party will suffer a deficit after the marital property has been equitably divided, the court should consider the *Armstrong* factors in order to determine whether alimony is warranted

FACTS

Allison Gaskin and Michael Anthony Gaskin ("Tony") married in 2000 and Tony filed for divorce in March 2017, with Allison counterclaiming for divorce on the ground of uncondoned adultery. The couple had three children together, the eldest of whom was emancipated by the time the divorce action was filed. During their marriage, Tony operated his plumbing company and Allison was a public-school teacher until she retired in 2017 due to her disability. After retiring, Allison cashed in her PERS retirement account for \$43,582.04. At trial, Tony offered a certified public accountant, Joseph Hines, to provide expert testimony about the true value of her PERS account. Hines valued Allison's PERS account at \$188,118.58. The chancellor found Hines's valuation to be highly speculative and concluded that the best estimate of Allison's PERS present value was \$43,582.04. The chancellor also found that, despite Tony's occasional use

of the property, a sixty-five-acre parcel of land that Allison inherited during the course of the marriage was nonmarital property. Next, the chancellor conducted a *Ferguson* analysis and distributed the marital property accordingly. After the chancellor divided the marital property, the value of Tony's marital assets totaled \$960,964.07 and Allison's portion of the marital estate was valued at \$612,080.57; a difference of \$348,883.50 in Tony's favor. To balance the parties' shares of the marital estate, the chancellor ordered Tony to pay Allison lump-sum alimony of \$174,441.75. Next, the chancellor applied the *Armstrong* factors, concluded that periodic alimony was warranted, and ordered Tony to pay \$1,000 per month in periodic alimony. Additionally, the chancellor ordered Tony to continue to maintain a \$900,000 life insurance policy to guarantee the support of the minor children until their emancipations. Lastly, the chancellor found that each party was responsible for their own attorney's fees and expert witness fees. Tony appealed.

ISSUES

Whether the chancellor erred in (1) determining that Tony's expert's testimony regarding the valuation of Allison's PERS retirement account was highly speculative; (2) ordering Tony to maintain his existing \$900,000 life insurance policy for the benefit of his minor children; (3) determining that Allison's inherited property was not marital property; (4) dividing the marital estate; (5) awarding alimony; and (6) ordering the parties to pay their own expert witness fees.

HOLDING

(1) Because it was within the chancellor's discretion to rely on PERS documentation instead of Hines's expert testimony to value Allison's account, the chancellor did not err in disregarding Tony's expert's testimony as highly speculative. (2) Because parents may be ordered to pay additional amounts over and above child support for additional expenses, such as life insurance, the chancellor did not abuse his discretion in ordering Tony to maintain a \$900,000 life insurance policy prior to his boys' emancipations. (3) Because the Court of Appeals does not substitute its own judgment for that of the chancellor, the chancellor did not abuse his discretion in finding that the sixty-five-acre property inherited by Allison remained nonmarital property. (4) Because of Tony's connections to the certain property, and because the chancery court conducted a detailed *Ferguson* analysis and there was no error in the chancellor's *Ferguson* findings, the chancellor acted within his discretion in awarding these assets to Tony. (5) Because the chancery court carefully and thoroughly applied the *Armstrong* factors, the chancellor did not err in awarding periodic alimony to Allison. (6) Because both parties retained their own experts to value the marital estate, and because no evidence suggested either party was unable to pay, the chancellor did not err in ordering the parties to bear their own attorney and expert witness fees. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2018-CA-01201-COA (Apr. 14, 2020)

Opinion by Judge C. Wilson

Hon. John S. Grant III (Rankin County Chancery Court)

B. Ruth Johnson & Michele Dawn Biegel for Appellant - Mark A. Chinn & Janeah Ray Sakalaukus for Appellee

Briefed by [Haley Nutt](#)

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THORNTON V. PURVIS

CIVIL - REAL PROPERTY

APPELLATE REVIEW - STANDARD OF REVIEW - SUCCESSOR JUDGES - A successor judge may use the record and trial transcript to make findings of fact and render a decision so long as it is a full and complete record
PROPERTY - EASEMENTS - PRESCRIPTION - To prove an easement by prescription, one must show, by clear and convincing evidence, that the use is (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for ten years; (5) exclusive; and (6) peaceful

PROPERTY - EASEMENTS - PRESCRIPTION - A claim for an easement by prescription fails if the claimant fails to prove even one of the six elements

FACTS

Steve Thornton, as trustee of the J.P. Thornton Family Trust (“Trust”), filed suit in the Simpson County Chancery Court seeking a declaration of a prescriptive easement over properties owned by Jimmy and Janet Purvis, Paul and Teresa Overby, Timothy and Betsy Patterson, and Sue Turner (“the defendants”). After a bench trial, Judge Joe Dale Walker, the original judge, resigned before rendering a decision and the case was reassigned to Judge Gerald Martin. The parties agreed that Judge Martin should render a decision based on the record and transcript taken during the bench trial without further testimony. The property at issue was a private gravel road known as “Alvie Rankin Road.” The Purvises and the Overbys resided next to each other along the north side of the road, and the Pattersons and Sue Turner resided next to each other along the south side of the road. Because all of their properties ran with the roadbed, each party owned parts of Alvie Rankin Road. The road ended on the Overby property near the boundary line of the Trust’s property, which was east beyond the end of the road. The Trust’s property could be accessed by a public road, but a creek cut off part of the property. Although the property on the other side of the creek could be accessed by a tractor or truck, or, more conveniently, by Alvie Rankin Road. In 2006, Thornton informed the Pattersons that he was going to use the road for logging, but Patterson denied this request. In 2010, he asked again and was denied. Thornton hired loggers who would use the road despite the denial, but Patterson installed a gate to prevent the use. One of Thornton’s relatives took the gate down himself. The Pattersons and Purvises called the sheriff’s department and the dispute led to this suit. Thornton brought several witnesses that testified to the Thornton family using the road for their farming purposes and for access to their property at various points from the 1950s into the 1990s. The defendants testified that during part of the time that Thornton testified his family was using the road, the road was more of a trail and that vehicles did not use it, only tractors. It wasn’t until the late 1970s that the trail was widened and gravel was put down by an oil company to accommodate drilling. Another witness corroborated that the road was not used for row crops or pastures. The defendants did not believe the Thorntons wanted to use the road until 2006 when they originally asked for a prescriptive easement. Judge Martin found that Thornton failed to prove that his family’s use of the easement was “open, notorious, and visible;” “hostile;” “under claim of ownership;” or “exclusive.” Thornton appealed.

ISSUES

Whether (1) the chancellor’s decision should be reviewed on appeal under the substantial evidence/manifest evidence test and (2) the chancellor erred in denying Thornton’s claim for a prescriptive easement.

HOLDING

(1) Because Judge Martin, the successor judge, did not vacate any of Judge Walker’s findings, and because Judge Martin was provided a full and complete transcript of the record, the standard of review of the substantial evidence/manifest error test was properly used. (2) Because all six elements of a prescriptive easement must be proved by clear-and-convincing evidence, and because Thornton failed on the “open, notorious, and visible” element, the chancellor did not err in denying Thornton’s claim. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Chancery Court.

Affirmed - 2018-CP-00928-COA (Apr. 14, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Gerald Marion Martin (Simpson County Chancery Court)

Pro se for Appellant - John Raymond Tullos for Appellees

Briefed by [Liza Linginfelter](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BELL V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 99-39-5(2), in the case of a guilty plea, a petitioner’s motion for post-conviction relief must be made within three years after entry of the judgment of conviction

APPELLATE PROCEDURE - POST-CONVICTION RELIEF - PROCEDURAL BAR - In order to overcome a procedural bar, the movant must prove that an exception applies

POST-CONVICTION RELIEF - GUILTY-PLEA PETITION - FAILURE TO SIGN - The burden of proof is on the defendant to prove that his plea is invalid; there is no rule that requires a defendant to sign a guilty-plea petition before the court can accept a guilty plea, and the absence of a guilty-plea petition does not automatically invalidate the plea

FACTS

Sylvester Bell pled guilty to statutory rape and was sentenced as a habitual offender to serve thirty years in the Mississippi Department of Corrections. Bell filed two previous motions for post-conviction relief (“PCR”), which the trial court denied, and the Court of Appeals affirmed the trial court’s denials. Bell filed his third motion PCR in 2018, claiming that he did not sign his 2007 guilty-plea petition, and that the circuit court violated Miss. Unif. Rules Cir. & Cty. Prac. R. 5.02 by not having available the transcript of his plea hearing. The Tunica County Circuit Court dismissed Bell’s motion, finding that it was procedurally barred by the three-year statute of limitations. Bell appealed.

ISSUES

Whether (1) the trial court erred by dismissing Bell’s motion for post-conviction relief because it was time-barred; (2) Bell’s guilty-plea petition was invalid because he did not sign it; and (3) the trial court violated Bell’s due process rights by failing to provide a complete record.

HOLDING

(1) Because Bell did not file his PCR motion until more than ten years after his guilty plea, and because no procedural bar exception applied, Bell’s motion was time-barred. (2) Because a PCR movant carries the burden of proving that their guilty plea is invalid, and because there is not a rule that requires a defendant to sign a guilty-plea petition before the court can accept a guilty plea, the absence of a guilty plea does not automatically invalidate the plea. (3) Because, although the transcript was unavailable due to the court reporter’s death, the judgment of conviction specifically stated that Bell and the district attorney appeared before the trial court and that Bell was duly advised of his legal and constitutional rights, Bell’s due process rights were not violated. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2019-CP-00187-COA (Apr. 14, 2020)

Opinion by Chief Judge Barnes

Hon. Linda F. Coleman (Tunica County Circuit Court)

Pro se for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Matthew Russ](#)

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CARTER V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS - A sufficient factual basis for the purpose of accepting a defendant’s guilty plea may be established when either the defendant or the prosecution testifies to factual matters during a guilty-plea hearing

CRIMINAL PROCEDURE - INDICTMENT - ELEMENTS - An indictment for the charge of murder must include an essential element of murder, and the court regards “malice aforethought,” “premeditated design,” and “deliberate design” as synonymous

CRIMINAL PROCEDURE - INDICTMENT - ELEMENTS - Miss. Code Ann. § 99-7-37(1) provides that, in an indictment for homicide, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused

APPELLATE REVIEW - POST-CONVICTION MOTION - DISMISSAL - A trial court possesses the authority to summarily dismiss a PCR motion without an evidentiary hearing if it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief

FACTS

Cedric Carter was indicted for one count of first-degree murder (“Count I”) and one count of aggravated assault (“Count II”). He submitted a “Petition to Enter a Guilty Plea” to the circuit court and pled guilty to Count I’s lesser-included offense of second-degree murder. Count II was dismissed on the State’s motion. At his hearing, Carter engaged in a lengthy plea colloquy with the circuit court, in which the State provided the circuit court with a detailed account of Carter’s crime. The circuit court accepted Carter’s guilty plea and sentenced him to serve forty years in the custody of the Mississippi Department of Corrections. Carter then filed a motion for post-conviction collateral relief (“PCR”) with the circuit court challenging his indictment and guilty plea. After reviewing the record, the Noxubee County Circuit Court entered an order denying Carter’s PCR motion without holding an evidentiary hearing. Carter appealed.

ISSUES

Whether (1) there was a sufficient factual basis for the circuit court to accept Carter’s guilty plea; (2) Carter’s indictment was defective for failing to use the phrase “malice aforethought” and failing to state the manner of death; and (3) the circuit court erred by failing to hold an evidentiary hearing prior to the denial of Carter’s PCR motion.

HOLDING

(1) Because of Carter’s own admission and the State’s presentation of the facts surrounding the murder, the circuit court had an ample factual basis to accept Carter’s guilty plea and this issue was without merit. (2) Because Carter’s indictment charged that he acted with “deliberate design,” and the court regards “malice aforethought” as synonymous with “deliberate design,” and because, per Miss. Code Ann. § 99-7-37(1), the cause of death is not an essential element of murder, Carter’s indictment included the essential elements as required by precedent and statute and this issue was meritless. (3) Because a review of Carter’s indictment, signed plea petition, and sworn colloquy provided the circuit court with ample evidence to determine that his PCR motion lacked merit, the circuit court did not err by denying Carter’s PCR motion without an evidentiary hearing. Therefore, the Court of Appeals affirmed the judgment of the Noxubee County Circuit Court.

Affirmed - 2019-CP-00133-COA (Apr. 14, 2020)

Opinion by Judge Westbrook

Hon. Lee Sorrels Coleman (Noxubee County Circuit Court)

Pro se for Appellant - Matthew Wyatt Walton (Att’y Gen. Office) for Appellee

Briefed by [Melissa Fenwick](#)

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DEDEAUX V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - PROCEDURAL BAR - Pursuant to the Uniform Post-Conviction Collateral Relief Act, in the case of a guilty plea, a PCR motion must be filed within the three-year period following the entry of the judgment of conviction

CIVIL PROCEDURE - POST-CONVICTION RELIEF - PROCEDURAL BAR EXCEPTION - Claims involving “errors affecting fundamental constitutional rights” are excepted from the procedural bars imposed by the Uniform Post-Conviction Collateral Relief Act

CRIMINAL PROCEDURE - INDICTMENT - REQUIREMENTS - Indictments shall contain the essential facts constituting the offenses charged and shall fully notify the defendant of the nature and cause of the accusation

FACTS

In 1989, John Joseph Dedeaux plead guilty to one count of burglary of a dwelling and was sentenced to ten years in the custody of the Mississippi Department of Corrections. Dedeaux's conviction was later employed as an underlying cause to charge him as a habitual offender in a subsequent case, which resulted in a thirty-year sentence in 1994. Nearly thirty years later, Dedeaux filed a post-conviction relief ("PCR") motion with the Hancock County Circuit Court. He alleged that the indictment for his 1989 conviction was deficient and did not confer jurisdiction to the circuit court to preside over his case because the indictment did not set forth the essential elements of the offense for which he had been charged. The circuit court denied Dedeaux's PCR motion. Dedeaux appealed.

ISSUE

Whether the circuit court erred in denying Dedeaux's PCR motion based on a defective indictment.

HOLDING

Because there were no defects in Dedeaux's indictment, and therefore no violation of Dedeaux's fundamental constitutional right, Dedeaux's claim was procedurally barred and without merit. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2019-CP-00319-COA (Apr. 14, 2020)

Opinion by Judge Westbrook

Hon. Roger T. Clark (Hancock County Circuit Court)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Allison Middleton](#)

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THOMPSON V. TURNER

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURE - PROPER VENUE - The proper venue for the filing of a post-conviction relief motion is the circuit court in which the defendant was convicted

POST-CONVICTION RELIEF - JURISDICTION - INCARCERATION - A county fails to acquire jurisdiction of a petitioner's claim merely because the petitioner was incarcerated in the county at the time of filing

FACTS

Paul Thompson pled guilty to sexual battery in the Oktibbeha County Circuit Court. Thompson was sentenced to twenty years in the custody of the Mississippi Department of Corrections with five years of post-release supervision. He filed an action in Sunflower County Circuit Court, the county of incarceration, entitled "Motion for State Writ." Thompson claimed he was entitled to have his conviction and sentence vacated due to newly discovered evidence. The Sunflower County Circuit Court treated the motion as one for post-conviction relief and dismissed for lack of jurisdiction. Thompson appealed.

ISSUE

Whether the trial court erred in dismissing Thompson's motion for post-conviction relief for lack of jurisdiction.

HOLDING

Because a motion for post-conviction relief must be filed in the trial court where the sentence was initially imposed, and because Thompson filed his action in Sunflower County, where he was incarcerated, instead of Oktibbeha County, where he pled guilty, the trial court did not err by dismissing the action for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2018-CP-00323-COA (Apr. 14, 2020)

Opinion by Judge Westbrook

Hon. Richard A. Smith (Sunflower County Circuit Court, Fourth Judicial Dist.)

Pro se for Appellant - Lisa L. Blount & Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [David Boydston](#)

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WHEELER V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - PRECLUSION - RES JUDICATA - A cause of action may not be relitigated once it has been judged on the merits

POST-CONVICTION RELIEF - PRECLUSION - SUCCESSIVE-WRIT BAR - Pursuant to the Uniform Post-Conviction Collateral Relief Act, any order dismissing the petitioner’s motion or otherwise denying relief under this article is a final judgment unless reversed and it shall be a bar to a second or successive motion under this article; the successive-writ bar does not prohibit PCR motions that raise fundamental-rights violations for the first time

POST-CONVICTION RELIEF - FILING - TRIAL COURT - Pursuant to the Uniform Post-Conviction Collateral Relief Act, a PCR motion is to be filed as an original civil action in the trial court except in cases where the conviction and sentence have been affirmed on appeal or the appeal has been dismissed—in this instance the motion shall not be filed in the trial court but must first have been presented to a quorum of Justices of the Supreme Court of Mississippi and an order granted allowing the filing of such motion in the trial court

FACTS

Johnnie Earl Wheeler was sentenced to life imprisonment in 1970 when a jury found him guilty of murder, but could not agree on a punishment. Wheeler challenged his conviction on appeal, but it was dismissed because he had escaped from jail and was still a fugitive at the time the case was called for a hearing. Wheeler was paroled several times after returning to custody, but promptly reoffended when he was released. He filed post-conviction relief (“PCR”) motions in 2004, 2013, 2016, and 2018, challenging parole revocations. In November 2014, Wheeler was released on parole and arrested a couple months later for shoplifting. His parole was revoked in March 2015, which he challenged with a “Motion to Dismiss Revocation Proceedings” with the circuit court. The circuit court entered an order dismissing the case in January 2016 for lack of jurisdiction. Wheeler appealed from that decision, but the Mississippi Supreme Court dismissed the matter, finding the circuit court’s order was not appealable. However, the dismissal was without prejudice to Wheeler’s right to challenge the parole revocation through a petition for post-conviction relief. In April 2016, he filed for writ of habeas corpus in the Mississippi Supreme Court, again challenging his parole. The Mississippi Supreme Court dismissed the petition. Wheeler then filed a “Motion for Declaratory Judgment to Seek This Court’s Recommendation for Parole Reinstatement for Failure to Prosecute” in the circuit court, claiming he would not have committed the shoplifting charges if he had received proper medical attention. The circuit court denied the motion and there was no record indicating Wheeler appealed. Wheeler challenged the 2015 parole revocation again by filing a “Petition for Writ of Habeas Corpus Post-Conviction Relief” in the circuit court. In November 2016, the circuit court denied the petition, finding that the same issues had been raised in the motion for declaratory judgment, which precluded re-litigation under the doctrine of res judicata. Wheeler did not appeal. In May 2018, Wheeler filed the latest PCR motion challenging the 2015 parole revocation, alleging his Fifth and Fourteenth Amendment rights were violated. The circuit court dismissed the motion in November 2018, finding that Wheeler raised identical issues in his previous filings. Along with his appeal, Wheeler filed two other pleadings challenging his murder conviction with the Mississippi Supreme Court, which were later found to be time-barred and/or waived. Wheeler appealed.

ISSUES

Whether the circuit court erred in denying Wheeler’s challenges to his (1) murder conviction and (2) 2015 parole revocation.

HOLDING

(1) Because Wheeler filed his latest PCR motion concerning his murder conviction with the circuit court without obtaining prior Mississippi Supreme Court approval to do so, and because the Mississippi Supreme Court had specifically considered Wheeler’s arguments relating to his murder conviction twice before denying him relief, the circuit court did not have jurisdiction to consider Wheeler’s arguments on those issues and, even if it did, it was correct in finding that Wheeler’s PCR claims relating to his murder conviction and sentencing were time-barred or waived. (2) Because Wheeler raised identical issues in prior filings requesting the court overturn his parole revocation which were substantially reviewed and decided, the circuit court did not err in its denial because his challenge was procedurally barred by the successive-writ bar and by the doctrine of res judicata. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Judge McCarty argued that claims challenging violations of fundamental rights are never barred by the doctrine of res judicata, even when they appear to be repetitive or redundant. He would have excepted Wheeler’s constitutional-rights claims from the procedural bar.

Affirmed - 2018-CP-01437-COA (Apr. 14, 2020)

Opinion by Judge McDonald - Concurrence in Part/Dissent in Part by Judge McCarty
Hon. Michael M. Taylor (Lincoln County Circuit Court)
Pro se for Appellant - Laura Hogan Tedder (Att’y Gen. Office) for Appellee
Briefed by [Kaitlin Bethay](#)

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WILDE V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - PAROLE - AUTHORITY - The Mississippi Parole Board, not the courts, has exclusive authority over the grant or denial of parole

CONSTITUTIONAL LAW - EQUAL PROTECTION - PAROLE - Equal protection-violation cases require proof of a racially discriminatory purpose

FACTS

In 1981, Arthur Wilde was sentenced to life imprisonment in the custody of the Mississippi Department of Corrections after pleading guilty to murder and aggravated assault. Wilde made several unsuccessful attempts to attack his plea via filings for post-conviction relief. Wilde then shifted from attacking his conviction to seeking parole. Both Wilde’s request for parole and his subsequent motion for injunctive relief in 2013 were denied. Wilde was eligible for parole again in 2018, but the Mississippi Parole Board (“the Board”) denied his request. Following the denial, Wilde filed a handwritten request in the Warren County Circuit Court, arguing that the Board’s decision to deny him parole was racially motivated. The trial court denied his request. Wilde appealed.

ISSUE

Whether the trial court erred in denying Wilde’s requested relief from incarceration.

HOLDING

Because the Board had the exclusive authority to grant or deny parole, and because Wilde did not establish a claim that the Board’s treatment violated his right to equal protection, the trial court did not err in denying his requested relief from incarceration. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2019-CP-00416-COA (Apr. 14, 2020)

Opinion by Judge McCarty
Hon. M. James Chaney Jr. (Warren County Circuit Court)
Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Nicole Broussard](#)

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YOUNG V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - MILLER FACTORS - Under *Miller v. Alabama*, a trial court is not required to make a finding of fact regarding a child's incorrigibility

CRIMINAL LAW - JUVENILES - BURDEN OF PROOF - The burden rests with the juvenile offender to convince the sentencing authority that *Miller* considerations are sufficient to prohibit a sentence of life without parole

APPELLATE REVIEW - INEFFECTIVE ASSISTANCE OF COUNSEL - ADEQUACY OF REPRESENTATION - Courts will address ineffective assistance of counsel claims on direct appeal when (1) the record affirmatively shows ineffectiveness of constitutional dimensions or (2) the parties stipulate that the record is adequate and the appellate court determines that the findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed

FACTS

In 2005, seventeen year old Cornelius Young was found guilty of murder and sentenced to a term of life in prison without possibility of parole. Following the United States Supreme Court's decision in *Miller v. Alabama*, Young filed a pro se motion for post-conviction relief, in which he sought to be re-sentenced to life in prison with eligibility for parole. Young was appointed an attorney and his re-sentencing hearing was held before the Yazoo County Circuit Court. At Young's *Miller* re-sentencing hearing, Young's counsel failed to present the certificates Young earned for completing or participating in rehabilitative programs in prison, offered no other mitigating evidence relating to Young's capability for rehabilitation, and also failed to address this factor in closing arguments at the hearing or rebut the State's argument that there was no evidence of Young's possibility of rehabilitation. After conducting the re-sentencing hearing, the circuit court ruled that Young was not entitled to relief under *Miller*. Young appealed.

ISSUES

Whether (1) Young was denied his due process right to a procedure addressing and resolving whether he was permanently incorrigible; (2) the circuit court erred in failing to take into account how each *Miller* factor counseled against a life-without-parole sentence; (3) Young's trial counsel provided ineffective assistance of counsel at his *Miller* re-sentencing hearing by failing to present the circuit court with evidence of Young's rehabilitation in prison; and (4) the state and federal constitutions barred the practice of sentencing juveniles to life without eligibility for parole.

HOLDING

(1) Because *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility, Young was not deprived of his due process right in this regard. (2) Because the circuit court issued a written order addressing the evidence presented and the application of the *Miller* factors to this case, the circuit court applied the correct legal standard. (3) Because there was no conceivable strategic basis for Young's counsel to withhold readily available evidence, Young's trial attorney did provide ineffective assistance of counsel by failing to address Young's capability of rehabilitation in closing arguments and failing to rebut the State's argument that no such evidence existed. (4) Because both the Mississippi Supreme Court and the United States Supreme Court have already decided that the non-mandatory sentencing of juveniles to life without eligibility of parole is not barred by the 8th Amendment, Young's argument was without merit. Therefore, the Court of Appeals reversed and remanded the judgment of the Yazoo County Circuit Court.

Reversed & Remanded - 2018-CA-00929-COA (Apr. 14, 2020)

Opinion by Presiding Judge Carlton

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)

Stacy L. Ferraro (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss & Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Cristofor Taylor](#)

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COURT OF APPEALS - CRIMINAL CASES

ALLEN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTION - REFUSAL - While a defendant is entitled to a jury instruction that presents his or her theory of the case, a proposed instruction should be refused if it lacks foundation in the evidence presented

APPELLATE REVIEW - EVIDENCE - SUFFICIENCY - When addressing sufficiency of the evidence, the appellate court must affirm a conviction if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

APPELLATE REVIEW - EVIDENCE - WEIGHT - The appellate court views the evidence in the light most favorable to the verdict and disturbs the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

Joshua Melton and Roosevelt Holmes got into an argument at Walmart with Christian Allen. Later, Holmes and Melton and a group of their associates, including Brandon Smith, met Allen and a group of his associates in the parking lot. As different parties moved between cars, Allen fired several shots. Smith was shot and killed, and Holmes and Melton were shot and taken to the hospital. After a mistrial, Allen was retried without his co-defendant and the jury found Allen guilty of first-degree murder and both counts of aggravated assault. The court sentenced Allen to life imprisonment for murder and two consecutive terms of twenty-five years for the assault convictions. Allen filed a motion for judgment notwithstanding the verdict or for a new trial, which was denied. Allen appealed.

ISSUES

Whether (1) the trial judge erroneously refused Allen's proposed jury instructions on self-defense and accident; (2) there was sufficient evidence to convict Allen of any of the three counts; and (3) the jury's verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because the offered jury instruction on self-defense was not materially different from that chosen by the trial judge, and because there was no basis for an accident instruction, the trial judge did not erroneously refuse these proposed jury instructions. (2) Because Allen shot Smith six times, shot Melton, and shot Holmes, there was sufficient evidence to support Allen's convictions on all three counts. (3) Because multiple witnesses identified Allen as the shooter, and because Allen provided no evidence to contradict the State's case, the jury's verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2017-KA-01661-COA (Apr. 14, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Albert B. Smith III (Coahoma County Circuit Court)

Brandon Isaac Dorsey for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Joshua Crownover](#)

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CRUZ V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - JURY INSTRUCTION - IMPERFECT SELF-DEFENSE - Under the theory of imperfect self-defense, an intentional killing may be considered manslaughter if done without malice but under a bona fide belief that it was necessary to prevent death or great bodily harm

CRIMINAL LAW - FELONY MURDER - AGGRAVATED DOMESTIC VIOLENCE - There is no known constitutional limitation upon a state's prerogative to define as a crime the killing of a human being while in the course of the act of aggravated domestic violence

CRIMINAL LAW - FELONY-MANSLAUGHTER INSTRUCTION - CAPITAL MURDER - A judge in a capital murder case may grant an instruction for the State or the defendant which instructs the jury as to their discretion to convict the accused of an offense not specifically set forth in the indictment

FACTS

Melissa Cruz killed her boyfriend, Larry Keith Phillips, by running him over in her truck. Afterward, Cruz confessed that she intentionally ran him over following an earlier argument between them. A jury found Cruz guilty of first-degree felony murder for killing Phillips while engaged in the crime of aggravated domestic violence. The circuit court sentenced her to life imprisonment. Cruz appealed.

ISSUES

Whether: (1) the trial judge erred in refusing to instruct the jury on imperfect self-defense; (2) the State was allowed to use aggravated domestic violence as the underlying felony in a felony murder prosecution; (3) Cruz's attorney's failure to request a jury instruction on felony manslaughter constituted ineffective assistance of counsel; (4) the State established the corpus delicti of the charged crimes; and (5) the trial judge erred in finding that Cruz's *Miranda* waiver and statements were voluntary, knowing, and intelligent.

HOLDING

(1) Because there was no evidence that Cruz had a bona fide belief that her actions were necessary to prevent death or great bodily harm, the trial judge did not err in refusing to instruct the jury on imperfect self-defense. (2) Because of the plain language of the felony murder statute, the State was allowed to use aggravated domestic violence as the underlying felony in a felony murder prosecution. (3) Because Cruz was not entitled to a felony-manslaughter instruction, Cruz's attorney's failure to request a jury instruction on felony manslaughter did not constitute ineffective assistance of counsel. (4) Because Cruz confessed to the murder and independent evidence corroborated her confession, the State established the corpus delicti of the charged crimes. (5) Because the totality of the evidence presented to the trial judge was sufficient, the trial judge did not err in finding Cruz's *Miranda* waiver and statements were voluntary, knowing, and intelligent. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2018-KA-00277-COA (Apr. 14, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) & *Pro se* for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Philip Lott](#)

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EDWARDS V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - FIRST AMENDMENT - OVERBREADTH DOCTRINE - Under the First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech; overbreadth is substantial in both an absolute sense and relative to the statute's plainly legitimate sweep

CONSTITUTIONAL LAW - FIRST AMENDMENT - FREE SPEECH - Speech does not lose its protection under the First Amendment merely because a speaker or writer is motivated by hatred or ill will or because its purpose or intent is to cause injury

FACTS

William Edwards created a Facebook page called "The Cipher," which he used to post live videos and messages discussing topics such as crime and corruption in local government. The videos included his personal opinions, as well as information obtained from sources in local government and concerned citizens. Roderick Richardson, a local pastor, confronted Edwards at his place of employment about Edwards's support for a candidate in the Jackson mayoral race. This encounter grew heated and Richardson was asked to leave. Soon after Richardson left, Edwards posted a new, live video on The Cipher Facebook page, in which he accused Richardson of having sex with a young girl who was a member of Richardson's church. Edwards further stated that he would show Richardson "what real beef looks like" and that he was "coming to [Richardson's] church on Sunday." Edwards mentioned Richardson's wife and children, stated Richardson's business address, and warned Richardson to be careful. Edwards posted additional Facebook live videos, in which he claimed that Richardson was "the queen" of all "undercover" homosexuals in Jackson and indicated that Richardson had been fired by another church amidst allegations of sexual misconduct. Richardson sued Edwards for posting injurious messages, claiming that he had lost at least fifteen paid speaking engagements, his church's attendance and revenue declined after the videos were posted, and he had received counseling to help him deal with the negative impact of Edwards's videos. Pursuant to Miss. Code Ann. § 97-45-17, which states it is a felonious offense to "post a message for the purpose of causing injury . . . through the use of any medium of communication, including the Internet," the Madison County Circuit Court found Edwards guilty of the crime of posting injurious messages. Edwards appealed.

ISSUE

Whether Miss. Code Ann. §97-45-17 was unconstitutionally overbroad in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

HOLDING

Because the statute criminalized any communication, whether true or untrue, intended to cause injury to any person, and because the term "injury" was undefined and therefore would include physical, reputational, and emotional injuries, and because speech does not lose its First Amendment protection merely because the speaker was motivated by hatred or ill will, Miss. Code Ann. § 97-45-17 criminalizes a great variety and substantial amount of constitutionally protected speech and is thus unconstitutionally overbroad in violation of the Free Speech Clause of the First Amendment to the United States Constitution. Therefore, the Court of Appeals reversed and rendered the judgment of the Madison County Circuit Court.

Reversed & Rendered - 2018-KA-01341-COA (Apr. 14, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Jennifer Lee](#)

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EVANS V. STATE

CRIMINAL - FELONY

EVIDENCE - SEQUESTRATION ORDER - VIOLATION - Failure to comply with a sequestration order, pursuant to Miss. R. Evid. 615, does not automatically render a witness's testimony inadmissible; rather, the decision to exclude the witness's testimony rests within the trial court's sound discretion

APPEALS - PROFFERED TESTIMONY - PRESERVATION - When testimony is not allowed at trial, a record of the proffered testimony must be made in order to preserve the point for appeal

EVIDENCE - WITNESS TESTIMONY - EXCLUSION - Absent a proffer of the proposed testimony, a trial court will not be found to have abused its discretion by excluding testimony

FACTS

Anthony Brown worked as a maintenance man for the Claiborne County Sheriff's Department and owned a lawn service. Brown hired Lorenzo Evans to assist him with the lawn service on an as-needed basis, and in October 2018, Brown enlisted Evans's assistance for a lawn job. After returning from work for the day, Brown and Evans returned to Brown's truck and he paid Evans for the day's work. Brown subsequently rode off with acquaintances while his truck remained parked in the parking lot and Brown testified that he locked his truck and closed his glove compartment before leaving. When Brown returned to his truck later that night, he found the back window of his truck shattered and the glove compartment opened. Investigator James Jefferson was assigned Brown's case and, based on video evidence from the parking lot, Evans was arrested in connection with the automobile burglary. Jefferson testified that Evans admitted to breaking into Brown's truck. Evans told Jefferson that he was in fear for his life and that he broke into the truck to look for a gun. At trial, Evans rescinded his admission and claimed that he only slid the back window open to get his money and cigars. Evans also claimed that Jefferson coerced him into making his earlier statement. At Evans's request, Miss. R. Evid. 615 was invoked at trial, requiring the sequestration of witness at trial. Before calling the proposed witness ("Michelle"), Evans's attorneys acknowledged that Michelle had been in the courtroom and thus had violated the sequestration rule. The trial court did not allow her to testify and Evans's trial counsel did not attempt to proffer Michelle's testimony. In January 2019, Evans was found guilty of burglary of an automobile and the trial court later denied his motion for judgment notwithstanding the verdict or, alternatively, a new trial. Evans was sentenced to serve three years in the Mississippi Department of Corrections, along with partaking in a drug and alcohol abuse program. Evans appealed.

ISSUE

Whether the trial court erred in excluding Michelle's testimony.

HOLDING

Because Evans's counsel did not give or request a proffer of Michelle's proposed testimony, the trial court did not abuse its discretion by excluding Michelle's testimony. Therefore, the Court of Appeals affirmed the judgment of the Claiborne County Circuit Court.

Affirmed - 2019-KA-00288-COA (Apr. 14, 2020)

Opinion by Judge Westbrook

Hon. Tomika Harris Irving (Claiborne County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Jack Byrd](#)

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