

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 9, 2020***SUPREME COURT - CRIMINAL CASES*****MOORE V. STATE****CRIMINAL - FELONY**

CRIMINAL LAW - COMPETENCY HEARING - MENTAL EVALUATION - Where the defendant attributes his behavior to drugs and alcohol, and otherwise understands the court proceedings and their significance, there is no requirement for a competency hearing

CRIMINAL LAW - PROCEEDING IN ABSENTIA - WILLFUL ABSENCE - Where the defendant is absent willfully and deliberately, the trial court is not in error for proceeding in absentia

POST-TRIAL MOTIONS - INEFFECTIVE ASSISTANCE OF COUNSEL - APPARENT FACTS - Where the facts are not fully apparent from the record, ineffective assistance of counsel claims are better reserved for post-conviction relief petitions rather than direct appeals

FACTS

George Jimmerson, an off-duty police officer, observed that a vehicle was parked in the driveway of his ex-wife's home. Knowing that his ex-wife was staying with family at the time, and confirmed by her when asked, Jimmerson investigated. Jimmerson found the door to the house had been kicked in and that several items of personal property had been placed in the vehicle. Jimmerson found Corey Moore hiding in a storage closet attached to the house. Moore claimed that he had known Jimmerson's ex-wife from the Department of Veteran Affairs Medical Center and that she had paid him to work at her house in the past. Moore did not have permission to be in her house at that time or to take her property. Moore was charged with burglary and did not appear until his second day of trial. When addressing the court, Moore claimed he had not met his attorney before, that he suffered from PTSD, and that he wanted to hire his own attorney. The court decided that the trial would proceed, and Moore left during a short recess and did not return. The trial proceeded in absentia and Moore was convicted. At the sentencing hearing, Moore apologized for "running out" and stated that he had been using drugs and alcohol to self-medicate for his PTSD, but he claimed that he had been clean for two months after the trial and two months before sentencing. After sentencing, Moore appealed.

ISSUES

Whether (1) Moore received ineffective assistance of counsel; (2) the trial court erred by failing to conduct a competency hearing; and (3) the trial court erred by trying Moore in absentia.

HOLDING

(1) Because ineffective assistance of counsel claims are usually reserved for post-conviction relief petitions, and because the facts surrounding Moore's claims were not fully apparent from the record, relief was denied on this issue without prejudice to Moore's right to file a future motion for post-conviction relief. (2) Because the court observed that Moore was coherent and could understand the proceedings, and because Moore himself attributed his conduct to drug and alcohol abuse rather than mental illness, the trial court did not err in failing to conduct a competency hearing. (3) Because Moore's absence was the result of a willful, voluntary, and deliberate action to leave during the court's recess, the trial court did not err in proceeding in absentia. Therefore, the Mississippi Supreme Court affirmed the judgment of the Hinds County Circuit Court.

DISSENT

Justice Kitchens argued that Moore should have been given a competency hearing based on his behavior and from information given by an attorney whom Moore had consulted with upon leaving the courtroom proceedings. Because the attorney Moore contacted believed that he was unstable and not in his right mind, and because Moore's behavior provided evidence that his mental condition affected his competency to stand trial, Justice Kitchens would reverse and remand for a mental competency evaluation.

Affirmed - 2018-KA-00121-SCT (Jan. 9, 2020)

En Banc Opinion by Presiding Justice Ishee - Dissent by Justice Kitchens

Hon. Jeff Weill, Sr. (Hinds County Circuit Court)

Thomas W. Powell for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [John Forrest Kelly](#)

[Click here to view the full opinion](#)

NASH V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - PRISONERS - PROHIBITED ITEMS - Miss. Code Ann. § 47-5-193 prohibits any offender confined to a correctional facility from possessing “any weapon, deadly weapon, unauthorized electronic device, contraband item, or cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers”

CRIMINAL LAW - SENTENCING - APPEALS - The general rule in the state of Mississippi is that a sentence cannot be disturbed on appeal so long as it does not exceed the maximum term allowed by statute

CRIMINAL LAW - SENTENCING - PROPORTIONALITY - There is an exception to the general rule which requires the court to perform a three-part test reviewing the proportionality of the sentence that applies when a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality

FACTS

Willie Nash was confined in the Newton County Jail on a misdemeanor charge when he asked the jailor for “some juice.” At that time, Nash slid the jailor a cell phone. Nash later denied that the phone was his, but text messages from the day in question identify the phone as Nash's. A jury convicted Nash of possessing a cell phone in a correctional facility in violation of Miss. Code Ann. § 47-5-1. A violation of this statute “shall be punished by confinement in the Penitentiary for not less than three (3) years nor more than fifteen (15) years.” At his sentencing hearing, the trial judge informed Nash that possessing a cell phone in a correctional facility is a serious offense. In light of the seriousness of the offense combined with the fact that Nash was a habitual offender, the trial court sentenced Nash to twelve years in the custody of the Mississippi Department of Corrections. Nash appealed.

ISSUE

Whether the defendant's sentence was grossly disproportionate as compared to the crime and thus violative of the Eighth Amendment.

HOLDING

(1) Because Nash's sentence fell within the statutory range, and because Nash was a repeat offender, his sentence was not grossly disproportionate. Therefore, the Supreme Court affirmed the judgment of the Newton County Circuit Court.

CONCURRENCE

Justice King agreed with the court's result but wrote separately to express his concern regarding the failure of the criminal justice system in this case. He noted the high probability that the Newton County Jail's booking procedures were not followed in this case and the likelihood that Nash was unaware he was not allowed a phone while incarcerated.

Affirmed - 2018-KA-01587-SCT (Jan. 9, 2020)

Opinion by Justice Maxwell - Concurrence by Presiding Justice King

Hon. Mark Sheldon Duncan (Newton County Circuit Court)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Matthew Wyatt Walton (Att’y Gen. Office) for Appellee
Briefed by [Bryant Carlton](#)

[Click here to view the full opinion](#)

TAYLOR V. STATE

CRIMINAL - FELONY

HOMICIDE - PROVOCATION BY ACCUSED - PRE-ARMING INSTRUCTION - Pre-arming instructions are now abolished in the State of Mississippi

FACTS

A Harrison County jury found Dante Taylor guilty of first-degree murder for the death of his uncle, Willie Lee Taylor, despite Taylor’s claim that he acted in self-defense. The events that led to Taylor’s conviction began in September of 2014, when Taylor’s sister notified him that Willie assaulted her after the two got in an argument about her child’s bicycle. Taylor instructed her to call the police. Taylor then spoke with his mother and informed her that he would punish Willie if he put his hands on his sister again. Taylor’s mother told him to stay away from Willie because Willie was looking for him and wanted to kill him. Believing that Willie was a legitimate threat, Taylor armed himself with a pistol. Subsequently, Willie told Taylor’s sister to leave town or he would beat her because she involved the police after the previous incident. On the day of the shooting, Taylor was under the impression that Willie was not in town and went to his sister’s house to drive her out of town due to Willie’s threats. While Taylor was waiting in her driveway, he felt the presence of another individual approaching him and turned to see Willie charging towards him and screaming. Taylor then pulled his pistol and shot Willie. At trial, there was conflict in the evidence as to whether Willie or Taylor was the first aggressor. Nevertheless, the trial court granted the State’s pre-arming instruction. Taylor timely filed a petition for writ of certiorari challenging the Court of Appeals’ decision to affirm the trial court’s grant of a pre-arming jury instruction.

ISSUE

Whether the trial court erred in granting a pre-arming jury instruction.

HOLDINGS

Because Taylor’s intent to initiate a controversy was not overwhelmingly supported by the evidence, the trial court erred by granting the pre-arming instruction. Further, because one should not risk estoppel or forfeiture of his privilege of self-defense merely because he has previously armed himself in anticipation of an attack or a perceived dangerous situation, the pre-arming instruction is abolished in the State of Mississippi. Therefore, the Supreme Court reversed the judgment of the Harrison County Circuit Court.

DISSENT

Chief Justice Randolph argued that a wholesale ban on the use of pre-arming instructions was never presented in the case, and it was improper for the majority to decide it. He argued that the court may only decide issues sua sponte when the court notices a plain error not assigned or distinctly specified in order to prevent manifest miscarriages of justice. In Chief Justice Randolph’s view, the record did not indicate that a manifest miscarriage of justice occurred, and all instructions, when read as a whole, accurately articulated the law. Accordingly, Chief Justice Randolph would affirm the decision of the trial court based off the facts of the case and the established law of the State of Mississippi.

Reversed & Remanded - 2017-CT-01596-SCT (Jan. 9, 2020)

En Banc Opinion by Justice Beam & Justice Maxwell - Dissent by Chief Justice Randolph

Hon. Christopher Louis Schmidt (Harrison County Circuit Court)

George T. Holmes & Glenn F. Rishel Jr. (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Breland Parker](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 7, 2020

COURT OF APPEALS - CIVIL CASES

BURRELL V. BURRELL

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - REMEDIES - ALIMONY - When there has been no averment pertaining to or prayer for permanent or temporary alimony, the chancellor has considerable discretion in allowing or not allowing permanent alimony

DIVORCE - EQUITABLE DISTRIBUTION - ARMSTRONG FACTORS - (1) The income and expenses of the parties; (2) the health and earning capacity of the parties; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence or absence of minor children in the home, which may require that one or both of the parties either pay or personally provide, child care; (7) the age of the parties; (8) the standard of living of the parties, both during the marriage and at the time of the support determination; (9) the tax consequences of the spousal support order; (10) fault or misconduct; (11) wasteful dissipation of assets by either party; or (12) any other factor deemed by the court to be just and equitable in connection with the setting of spousal support

DIVORCE - ALIMONY - CHEATHAM FACTORS - (1) Substantial contribution to accumulation of total wealth of the payor either by quitting a job to become a housewife, or by assisting in the spouse's business; (2) a long marriage; (3) whether recipient spouse has no separate income or separate estate is meager by comparison; and (4) whether without the lump sum award the receiving spouse would lack any financial security

FACTS

Cheryl Burrell filed a “Complaint for Divorce and Temporary Relief” against her husband of twenty-six years, Geoffrey Burrell, in the Chancery Court of Lamar County on the grounds of habitual cruel and inhuman treatment, adultery, and, alternatively, irreconcilable differences. The parties have one child, John, who is an adult. Cheryl alleged in her complaint that John was disabled. The chancellor entered a temporary order granting Cheryl temporary possession and use of the marital home. The matter proceeded to trial, and the court entered an opinion and final judgment granting an unequal distribution of the marital assets favoring Cheryl. She was granted use and possession of the marital home pending sale, half of Geoffrey's retirement account, reimbursement for dissipated marital funds, and the majority of the couple's marital assets. Geoffrey was ordered to assume sole liability for the marital debts, including the ongoing mortgage note, but the court found that Cheryl was not entitled to spousal or child support. The court noted that Cheryl failed to request permanent alimony or spousal support in any of her pleadings. The court further explained that any relief not requested could not be granted and therefore deemed an analysis under *Armstrong* and *Cheatham* unnecessary. Regarding John, the court noted that he was (1) not a minor; (2) not a party to the suit; (3) not adjudicated as a vulnerable adult; (4) not under any guardianship or conservatorship; and (5) receiving Social Security benefits. The court determined it had no jurisdiction to order child support be paid for his benefit. Cheryl then moved for reconsideration of the court's final judgment and argued that the court's failure to award her the marital home and support payments for the benefit of their disabled son was inequitable. The court held a hearing and entered an order denying Cheryl's motion. Cheryl appealed.

ISSUES

Whether the trial judge erred (1) in granting Geoffrey's request for equitable division of the marital estate and (2) by not awarding Cheryl child support and the permanent use and possession of the marital residence for the benefit of their adult son, John.

HOLDING

(1) Because there had been no averment pertaining to or prayer for permanent or temporary alimony, the chancellor had the discretion to not allow permanent alimony even though temporary alimony had been granted. (2) Because John was not a party to the divorce proceedings and was not under a guardianship or conservatorship at the time of the trial, he was not considered in the chancellor's distribution analysis, and the issue is without merit. And because the chancellor's equitable distribution of the parties' property shall only be disturbed if there was an abuse of discretion, which there was none, said distribution was affirmed. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Chancery Court.

Affirmed - 2018-CA-00760-COA (Jan. 7, 2020)

Opinion by Judge Westbrook

Hon. M. Ronald Doleac (Lamar County Chancery Court)

Anna Marie Chandler for Appellant - Brandon Larue Brooks for Appellee

Briefed by [Frank Wood](#)

[Click here to view the full opinion](#)

HOWARD V. CITY OF COLUMBUS

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - APPEALS - ADMINISTRATIVE AUTHORITY - Pursuant to Miss. Code. Ann. § 21-31-23, a commission is authorized to reverse a city's disciplinary action if it was made for political reasons, religious reasons, or was not made in good faith for cause

CIVIL PROCEDURE - APPEALS - STANDARD OF REVIEW - Intertwined with the question of whether or not the action of the Civil Service Commission was made in good faith is the question of whether or not there was substantial evidence before the Civil Service Commission to support its order and whether it was arbitrary, unreasonable, confiscatory, and capricious

FACTS

Toni Howard, a full-time police officer with the Columbus Police Department, was suspended fourteen days without pay as a result of two separate incidents. The first incident occurred on September 9, 2017, when Howard left her assigned beat without permission, during which time a burglary occurred that may have been prevented had she not abandoned her beat. The second incident occurred on September 11, 2017, when Howard failed to follow police-department procedures when she used abusive language and improperly deployed her taser against a detained arrestee. The Mayor and the Columbus City Council ("the City") unanimously adopted Howard's police chief's recommendation of a three-day suspension for the first incident and a fourteen-day suspension for the second incident but allowed the suspensions to run concurrently. Howard appealed the City's decision to the Columbus Civil Service Commission ("the Commission"). The Commission considered extensive testimony from six individuals, including Howard, evidence of Howard's prior similar incidents, and also consulted the disciplinary action section of the City's personnel handbook. On January 24, 2018, the Commission affirmed the City's decision. Howard then appealed the Commission's decision to the Lowndes County Circuit Court, which subsequently affirmed the Commission's decision after considering the file and hearing oral arguments. Howard appealed.

ISSUES

Whether the Commission's decision to affirm the City's suspension of Howard for fourteen days was (1) supported by substantial evidence or (2) made in an arbitrary or capricious manner.

HOLDING

(1) Because Howard admitted that she abandoned her beat and that she used abusive language and profanity regarding the first and second incidents, respectively, and because she failed to present any evidence that the Commission's use of the personnel handbook and the duration of her suspension was made for political or religious reasons, or was not made in good faith for cause, there was substantial evidence to support the Commission's affirmation of Howard's

fourteen-day suspension without pay. (2) Because the disciplinary section of the City's personnel handbook provided sufficient guidelines for Howard's punishment, and because a certain amount of discretion is both necessary and appropriate for the City to issue sanctions on a wide variety of circumstances, the Commission's decision was not made in an arbitrary or capricious manner. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2018-CC-01350-COA (Jan. 7, 2020)

Opinion by Presiding Judge Carlton

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Francis Starr Springer for Appellant - Jeffrey Johnson Turnage for Appellee

Briefed by [Charles Matranga](#)

[Click here to view the full opinion](#)

WILSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PAROLE - ELIGIBILITY - The defendant committed a violent crime pursuant to Miss. Code Ann. § 97-3-2(1) which, according to the Mississippi Supreme Court opinion in *Fogleman v. State*, means that the defendant is not eligible for parole

POST-CONVICTION RELIEF - PLEAS - VOLUNTARINESS - A defendant's plea is voluntary if the defendant is advised concerning the nature of the charge[s] against him and the consequences of his plea

POST-CONVICTION RELIEF - COUNSEL - INEFFECTIVE ASSISTANCE - To prove ineffective assistance of counsel, the defendant must show that (1) his counsel's performance was deficient and (2) there is a reasonable probability that but for his counsel's errors, the result of the proceeding would have been different

FACTS

Romello Wilson was indicted for armed robbery and kidnapping as a result of an incident that occurred in April of 2016. Wilson pled guilty to both charges and was sentenced to fifteen years in prison for both counts, thirty years total, to be served consecutively. Wilson was ineligible for parole pursuant to Miss. Code Ann. § 97-3-2(1). Further, throughout his hearing, Wilson repeatedly affirmed his desire to plead guilty. Wilson ultimately filed a motion for post-conviction relief arguing that the trial court did not make him aware of the fact that he was ineligible for parole and that he was, therefore, wrongfully denied parole. In addition, Wilson argued that he received inefficient assistance of counsel relating to the voluntariness of his guilty plea. The trial court denied Wilson's motion. Wilson appealed.

ISSUES

Whether (1) the trial court wrongfully denied Wilson the right to parole; (2) the trial court failed to properly notify Wilson that his right to parole was being denied; and (3) Wilson received ineffective assistance of counsel.

HOLDING

(1) Because Wilson committed a crime pursuant to Miss. Code Ann. § 97-3-2(1), and because such crimes are not eligible for parole under *Fogleman v. State*, he was not wrongfully denied the right to parole. (2) Because Mississippi does not recognize a defendant's right to parole, and because a review of the record showed that Wilson was informed that he was being denied the right to parole, the plea was not involuntary. (3) Because Wilson affirmed his desire to plead guilty in the trial court hearing, he could not prove that he received ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the ruling of the Madison County Circuit Court.

Affirmed - 2018-CP-01159-COA (Jan. 7, 2020)

Opinion by Judge Tindell

Hon. John Huey Emfinger (Madison County Circuit Court)

Pro se for Appellant - Darrell Clayton Baughn (Att'y Gen. Office) for Appellee

Briefed by [Matthew Russ](#)

COURT OF APPEALS - POST-CONVICTION RELIEF

HARRIS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - PRIMA FACIE CASE - There is no automatic right to an evidentiary hearing under the Mississippi Uniform Post-Conviction Collateral Relief Act; once a prima facie case is established, the trial court may still summarily deny a petitioner's motion if, after the answer has been filed and discovery completed, it appears that no evidentiary hearing is warranted

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - The denial of a post-conviction relief motion is a final judgment and bars subsequent requests for post-conviction relief unless (1) there are issues with the defendant's supervening insanity prior to the execution of a death sentence; (2) there has been an intervening decision of the United States Supreme Court or of the Mississippi Supreme Court, which would require a different outcome or sentence; (3) there is newly discovered evidence, which was not previously discoverable, that would have been practically conclusive if it were available at trial; (4) the defendant claims that his sentence has expired, or his probation, parole, or conditional release has been unlawfully revoked; or (5) a fundamental constitutional right has been violated

CRIMINAL PROCEDURE - APPEALS - PLAIN ERROR - Where a party fails to preserve his objection for appeal, he can assert the error on appeal only by arguing there was plain error; a party is protected by the plain error rule when (1) he has failed to perfect his appeal and (2) when a substantial right is affected

FACTS

Antonio Harris was charged with burglary of an automobile. While out on bond he began a sexual relationship with a twelve-year-old minor. The minor relayed that there had been seven or eight instances of sexual intercourse. Harris was charged with statutory rape. Again, while out on bond, Harris committed burglary of an automobile. Harris withdrew from the plea deal he had entered regarding the statutory rape for which he would have received the recommendation by the State of a minimum twenty-year sentence. He later accepted a new plea agreement under which the State would recommend concurrent sentences for the statutory rape and the automobile burglaries, and the State would not appeal if Harris were sentenced to a term lower than the minimum. However, the State made clear that it did agree to a particular sentence and would not remain silent at sentencing. Harris was sentenced to twenty years to be served day-for-day for the statutory rape charge and three years for each of the burglary convictions. These sentences were to be served concurrently. Thirteen years later, Harris filed a motion for post-conviction collateral relief arguing that the sentencing was too harsh. Without an evidentiary hearing, the trial court summarily dismissed the motion as being time-barred. Harris appealed.

ISSUES

Whether the trial court erred by (1) determining Harris's motion for post-conviction collateral relief was time barred; (2) failing to grant Harris an evidentiary hearing; (3) violating Harris's fundamental right to due process during sentencing; and (4) allowing evidence of Harris's Youth Court record during sentencing.

HOLDING

(1) Because Harris's motion for post-conviction collateral relief was filed thirteen years after he was sentenced, exceeding the three-year allowance, and no statutory exception was met, Harris's motion was time-barred. (2) Because the trial court has wide discretion in determining whether to grant an evidentiary hearing, and because Harris's motion failed to show that he was entitled relief, the trial court did not err in denying an evidentiary hearing. (3) Because the terms of the plea agreement were not violated; Harris knowingly, intelligently, and voluntarily agreed to the deal; and the trial court acted within its authority in sentencing, Harris's fundamental rights to due process were not infringed surrounding

the plea agreement during sentencing. (4) Because Harris’s mother testified on direct examination that Harris had never been in trouble with the law, the door was opened on cross-examination to inquire about Harris’s juvenile record and to impeach his mother’s credibility. Further, because Harris’s counsel failed to object to the questioning and Harris did not establish plain error on appeal, the trial court did not err in allowing evidence of Harris’s Youth Court record during sentencing. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2018-CA-01535-COA (Jan. 7, 2020)

Opinion by Judge McCarty

Hon. Lester F. Williamson Jr. (Lauderdale County Circuit Court)

James A. Williams for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Liza Linginfelter](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - CRIMINAL CASES

DAVIS V. STATE

CRIMINAL - FELONY

FACTS

Olevia Davis was convicted of possession of a firearm by a convicted felon and sentenced to eight years in prison. Davis engaged in an altercation with another guest at Elks Lodge. Elzy, the lodge security guard, escorted Davis off the premises, but again saw Davis arguing with the same guest outside, heard Davis claim he would be back, and saw Davis return with a gun. Elzy called 911, then witnessed Davis shoot the gun in the air. When the police showed up, Elzy identified Davis as the man who fired the gun. Davis was arrested but found unarmed. The police found the gun behind the house that Elzy testified Davis had run behind. Davis appealed.

ISSUE

Whether there were any arguable issues that warranted reversal.

HOLDING

Because there are no arguable issues that would warrant reversal, Davis’s conviction and sentence is affirmed. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2019-KA-00213-COA (Jan. 7, 2020)

Opinion by Judge McCarty

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, Second Judicial Dist.)

George T. Holmes & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Jennifer Lee](#)

[Click here to view the full opinion](#)

JACKSON V. STATE

CRIMINAL - FELONY

CRIMINAL - ADMISSIBILITY - OBJECTIONS - Under Miss. law, an objection to evidence “must be made as soon as it appears that the evidence is objectionable, or as soon as it could reasonably have been known to the objecting party

CRIMINAL - RIGHT TO COUNSEL - INVOCATION - Under Miss. law, when a suspect invokes his right to counsel, all custodial interrogation must cease until the lawyer is present, unless the suspect himself initiates further communication, exchanges, or conversations with the police

CRIMINAL - RIGHT TO COUNSEL - AMBIGUOUS INVOCATION - Under Miss. law, when there is ambiguity in the request for counsel, the court must apply a three-step test to determine whether the trial judge correctly decided whether to admit or suppress a defendant’s statements to a law enforcement officer that considers: (1) whether counsel was ambiguously requested; (2) if the request for counsel was ambiguous, whether the appropriate questions to identify the counsel requested were asked; and (3) if the interrogation continued without counsel, whether there was a valid Miranda waiver

CRIMINAL - RIGHT TO COUNSEL - HARMLESS ERROR - Under Miss. law, the admission of statements taken in violation of an accused’s Fifth Amendment rights is subject to harmless error analysis, during which the court must determine that the violation was harmless beyond a reasonable doubt, thus excusing the error as harmless

FACTS

Michael Jackson was a music teacher and choir director at Columbus High School. K.B. attended Columbus High School but was not one of Jackson’s students. From November to December 2013, Jackson messaged K.B. and offered him money in exchange for engagement in sexual acts. Although no sexual contact occurred, K.B. told his mother about the messages, and they went to the police station and met with Investigator Tabertha Hardin. Jackson was arrested and Hardin prepared a search warrant for Jackson’s home and cell phone. A forensic analysis of Jackson’s phone showed the text messages between Jackson and K.B., including some deleted messages. Investigator Timothy Jenkins met with Jackson, who immediately requested a lawyer. Jenkins read Jackson his Miranda rights, and Jackson signed a waiver. At that point, the interrogation ceased, and Jenkins left, but, a few hours later, Jackson requested to speak again with Jenkins. Though Jackson expressed that he would rather suspend the interview until he was accompanied by a lawyer, Jackson eventually signed a second Miranda waiver and confessed to offering K.B. \$275 for oral sex from him. Jackson filed a motion to suppress statements given to the police and evidence seized in connection with those statements. The court ruled against suppression and a jury found Jackson guilty of exploitation of a minor. Jackson appealed.

ISSUES

Whether the circuit court erred in (1) failing to provide Jackson a probable cause hearing under Miss. Code. Ann. § 99-3-28; (2) failing to suppress Jackson’s confession; (3) failing to suppress evidence obtained from Jackson’s home; (4) limiting Jackson’s theory of defense; (5) refusing Jackson’s proposed jury instructions; (6) allowing witness testimony that violated the rules of discovery; and (7) refusing to grant Jackson’s motion for a new trial.

HOLDING

(1) Because Miss. Code. Ann. § 99-3-28(1)(a) applies only to teachers acting in their official duties, the circuit court did not err in declining to provide Jackson a probable cause hearing. (2) Because there was no Fifth Amendment violation, the circuit court did not err in declining to suppress Jackson’s confession. (3) Because the police would have discovered the information without Jackson’s statement, the circuit court did not err in declining to suppress evidence obtained from Jackson’s home. (4) Because the evidence was irrelevant, the circuit court did not abuse its discretion when limiting Jackson’s theory of defense. (5) Because there was no evidence that Jackson intended to abuse, threaten, or harass K.B., the circuit court did not abuse its discretion in refusing Jackson’s proposed jury instructions (6) Because Jackson did not claim he needed additional time or prejudice after his opportunity to interview Fenster, he was barred from doing so on appeal; thus, the circuit court did not abuse its discretion in allowing Fenster’s testimony. (7) Because the verdict against Jackson did not sanction an unconscionable injustice, the circuit court did not abuse its discretion in denying Jackson’s motion for new trial. Therefore, the Court of Appeals affirms the decision of the Lowndes County Circuit Court.

COUNCURRENCE IN PART & DISSENT IN PART

Judge Westbrook agreed that the weight of the evidence against Jackson was solidly overwhelming and agreed that the violation of a Jackson’s constitutional right may have constituted a harmless error. However, Judge Westbrook

disagreed, because there was ambiguity as to Jackson's request for a lawyer. Therefore, it was a violation of Jackson's right to counsel for Jenkins to proceed with any questions outside the scope of obtaining an attorney for Jackson.

Affirmed - 2018-KA-00927-COA (Jan. 7, 2020)

Opinion by Judge Lawrence - Concurrence in Part & Dissent in Part by Judge Westbrook

Hon. Lee Sorrels Coleman (Lowndes County Circuit Court)

Christopher E. Kitchens for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Sarah Schofield](#)

[Click here to view the full opinion](#)

WILLIAMS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONDUCT OF TRIAL - CLOSING STATEMENTS - To determine whether there was prosecutorial misconduct during closing arguments, the court must ask whether the natural and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created

CRIMINAL LAW - EVIDENCE - MATTERS NOT SUSTAINED BY EVIDENCE - A prosecutor is not allowed to state facts which are not in evidence or appeal to the prejudices of men by injecting prejudices not contained in some source of the evidence

FACTS

Wilton Williams was involved in a car accident in which he fled the scene. After law enforcement apprehended Williams, they suspected that he may have also been driving under the influence of drugs or alcohol. Once at the station, the officers administered a field sobriety test that Williams ultimately failed. Officers then collected a urine sample from Williams and charged him with driving under the influence ("DUI"), fourth offense. During trial in the Pike County Circuit Court, it was revealed that Williams's urine tested positive for cocaine and marijuana metabolites. The prosecutor used Williams's test results in his closing statement, stating that because the metabolites were present in his system, this showed that Williams was intoxicated while operating the vehicle. The defense objected to this statement and requested a mistrial, which was denied; instead, the court instructed the jury to disregard any statement with no basis in the evidence. Williams was subsequently convicted for DUI, fourth offense. Williams appealed.

ISSUE

Whether there was prosecutorial misconduct during closing arguments that prejudiced Williams's case.

HOLDING

Because the jury was properly instructed and the prosecutor's statement did not have the natural or probable effect of creating an unjust prejudice against Williams that resulted in a decision influenced by prejudice, there was no prosecutorial misconduct. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

Affirmed - 2018-KA-01185-COA (Jan. 7, 2020)

Opinion by Judge Lawrence

Hon. David H. Strong Jr. (Pike County Circuit Court)

Mollie Marie McMillan (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Cristofor Taylor](#)

[Click here to view the full opinion](#)

MISSISSIPPI CASES EDITOR

KATIE HUMPHRIES

ASSOCIATE CASES EDITORS

JAMES ADAMOLI

BAXTER GEDDIE

CORBAN SNIDER

BRANDON WILSON

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Katie Humphries, newsletter@mississippilawjournal.org

All subscribers to BriefServ traditionally receive access to our website with archived case briefs since January 2007. Currently, our digital database is under construction. Requests for previous editions of the Newsletter can be made to Katie Humphries, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org