

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 24, 2019***SUPREME COURT - CIVIL CASES*****IN RE TOWN OF LEAKESVILLE****CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION**

PROPERTY - ANNEXATION - SCOPE OF REVIEW - The Supreme Court's standard of review is very limited in annexation matters; it is limited to whether the annexation is reasonable

PROPERTY - ANNEXATION - INDICIA OF REASONABLENESS – Twelve indicia of reasonableness are used to determine whether a proposed annexation is reasonable: (1) the municipality's need to expand; (2) whether the area sought to be annexed is reasonably within a path of growth of the city; (3) potential health hazards from sewage and waste disposal in the annexed areas; (4) the municipality's financial ability to make the improvements and furnish municipal services promised; (5) need for zoning and overall planning in the area; (6) need for municipal services in the area sought to be annexed; (7) whether there are natural barriers between the city and the proposed annexation area; (8) past performance and time element involved in the city's provision of services to its present residents; (9) economic or other impact of the annexation upon those who live in or own property in the proposed annexation area; (10) impact of the annexation upon the voting strength of protected minority groups; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and in the foreseeable future, unless annexed, will, because of their reasonable proximity to the corporate limits of the municipality, enjoy economic and social benefits of the municipality without paying their fair share of taxes; and (12) any other factors that may suggest reasonableness

FACTS

The mayor and board of aldermen of the town of Leakesville, located in southeast Mississippi, adopted an ordinance to extend and enlarge the boundaries of the town. They sought to annex two areas located in Greene County. Area One was located to the east of the town, and Area Two was located to the west. Leakesville filed in the Chancery Court of Greene County a petition for annexation. The Citizens for the Betterment of Leakesville Area and individual Rodney J. Courtney opposed and filed their answer and affirmative defenses. Leakesville entered into a stipulation with some of the objectors, agreeing to remove three areas from its proposed annexation. The settling opponents withdrew their answer and affirmative defenses to the annexation of the remaining areas. The remaining opponents still objected to the annexation, even with its alterations. The proposed area of annexation consisted of 320 residents, some of whom were objectors to the annexation. The areas facing annexation also included a nursing home, a high school, a junior college, a vocational center, an elementary school, and potential commercial areas. The Greene County Chancery Court found the town of Leakesville proved the petition for the enlargement of its boundaries to be reasonable and approved the annexation. The opponents appealed.

ISSUES

Whether the chancellor erred in finding substantial and credible evidence to support the town of Leakesville's proposed annexation.

HOLDING

(1) Because the chancery court's findings to support the annexation proposal were supported by substantial and credible evidence and were reasonable, the chancellor did not err granting the annexation. Therefore, the Supreme Court affirmed the judgment of the Greene County Chancery Court.

Affirmed - 2018-AN-00418-SCT (Oct. 24, 2019)

Opinion by Presiding Justice King

Hon. James D. Bell (Greene County Chancery Court)

Carroll Rhodes for Appellants - J. Chadwick Mask & Jacob Thomas Evans Stutzman for Appellee

Briefed by [Allison Middleton](#)

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THOMPSON V. HOLLIMAN

CIVIL - PERSONAL INJURY

EVIDENCE - EXPERT TESTIMONY - ADMISSABILITY - A trial court must apply a two-pronged inquiry when evaluating the admissibility of expert testimony: (1) is the witness qualified and (2) is the testimony relevant and reliable

EVIDENCE - EXPERT TESTIMONY - RELIABILITY - A trial court has considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable

EVIDENCE - EXPERT TESTIMONY - RELIABILITY - Self-proclaimed accuracy by an expert is an insufficient measure of reliability

FACTS

Dennis Holliman struck Maria Thompson's vehicle with his truck in the parking lot of a privately-owned gas station in Biloxi, Mississippi. Thompson sued Holliman in county court for damages from Holliman's alleged negligent driving. Thompson filed a designation of expert witness, designating Jason Walton as an accident-reconstruction expert. Holliman filed a motion in limine to strike Walton's expert testimony because his report did not provide calculations or data supporting his opinions. The trial court entered an order granting Holliman's motion to strike because it found that Walton's use of a typical vehicle standard was inadequate. Thompson redesignated Walton as her expert witness and provided the court with an amended expert report. In this amended report, Walton measured the average speed of vehicles at the collision site. Holliman filed another motion to strike Walton's testimony. The trial court held a hearing and entered an order granting Holliman's second motion to strike. At trial, the jury found for Holliman. Thompson appealed to the Circuit Court of the Second Judicial District of Harrison County to review the trial court's exclusion of Walton's testimony. The circuit court affirmed the trial court's judgment, holding that without a set of protocols for driving in a parking lot, an opinion as to fault or negligence has no basis. Thompson appealed.

ISSUES

Whether the trial court abused its discretion by excluding Thompson's expert witness.

HOLDING

Because there are no laws governing gas station parking lots, and because Walton could not connect the facts to a finding of fault without the parties' estimated speeds, the trial court did not abuse its discretion in finding Walton's testimony unreliable and excluding him as an expert witness. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Presiding Justice Kitchens argued that common law applies in the absence of statutory authority and requires the operator of a motor vehicle to exercise ordinary, reasonable or due care toward others. Walton reasonably assessed and applied these driving protocols, made findings respecting whether Holliman maintained a proper lookout to prevent a collision and examined whether Holliman prudently acknowledged the observable flow of traffic in the gas station parking lot. Justice Kitchens concluded that this is the conduct required of reasonable drivers exercising ordinary care and that these duties, defined in our common law, may serve as the basis for an expert's opinion about whether they were observed or breached. Because Walton was prevented from testifying about these findings, he believed the trial court abused its discretion in failing to respect the basic threshold for admitting an expert's opinion.

Affirmed - 2018-CA-01225-SCT (Oct. 24, 2019)

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

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court)

Michael Scott Bishop & Susan Christina Dehghani-Sanich for Appellant - Robert W. Atkinson & Myles Ethan Sharp for Appellees

Briefed by [Michael Stirgus](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 22, 2019

COURT OF APPEALS - CIVIL CASES

IN RE ESTATE OF KOLF

CIVIL - WILLS, TRUSTS, & ESTATES

ESTATE LAW - GIFTS - ELEMENTS OF VALID GIFTS - In Mississippi, the requirements of a valid gift are: (1) that the donor be capable of making the gift, (2) that the act is voluntary on the donor's part, (3) that the donor intends to make the gift, (4) that the gift is complete with nothing left to be done, (5) that the property be delivered by the donor and accepted by the donee, and (6) that the gift be gratuitous and irrevocable

CIVIL PROCEDURE - APPEALS - CLEARLY ERRONEOUS REVIEW - The chancellor, as the trier of fact, is the judge of the credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation

CIVIL PROCEDURE - ATTORNEY'S FEES - BASIS FOR RECOVERY - Where a party's intentional misconduct causes the opposing party to expend time and money needlessly, then attorney's fees and expenses should be awarded to the wronged party

FACTS

Peter and Dorothea Kolf were married on June 2008. During their marriage, the couple maintained two joint accounts: one at The First Bank and one at Hancock Bank. After Dorothea was diagnosed with lung cancer in 2016, Peter withdrew some money from her Fidelity Investments ("Fidelity") IRA and transferred it to the joint account at The First Bank. Of the money withdrawn, Peter transferred \$3,250 to Dorothea's personal account. When Dorothea died, the estate sued Peter asserting that the IRA funds as well as certain personal property, including a diamond ring that had belonged to Peter's first wife and new home appliances belonged to the estate. The chancery court awarded the estate all the IRA funds that Peter had withdrawn observing that Dorothea lacked capacity to make informed decisions after her diagnosis. Additionally, the chancery court awarded the estate attorney's fees and held that the diamond ring and the appliances were gifts to the estate. Peter appealed.

ISSUES

Whether the chancery court erred in (1) awarding the estate the IRA funds; (2) failing to give Peter credit for certain expenditures made from The First Bank account; (3) awarding the estate the diamond ring and appliances; and (4) awarding the estate half of its attorney's fees.

HOLDING

(1) Because Peter acted unilaterally in transferring the funds into the joint account, and because there was substantial evidence indicating that the transfer of the IRA funds was not done with Dorothea's free consent, the chancery court did not error in awarding the IRA funds to the estate. (2) Because the estate paid for all medical and funeral expenses, Peter was not entitled to a credit of those expenditures, but because Peter transferred \$3,250 in IRA funds to Dorothea's savings account, the court erred in failing to award Peter that amount. (3) Because the chancellor, as the trier of fact, found that the ring and the appliances were gifts, the items were the property of the estate and there was no err in the chancellor's findings. (4) Because Peter's withdrawal of the IRA funds was a misappropriation of Dorothea's assets, the

chancery court did not error in awarding attorney's fees to the estate. Therefore, the Court of Appeals affirmed in part, and reversed and rendered in part the judgment of the Hancock County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2017-CA-01627-COA (Oct. 22, 2019)

Opinion by Chief Judge Barnes

Hon. Sanford R. Steckler (Hancock County Chancery Court)

Michael Joseph Yentzen for Appellant - Clement S. Benvennutti for Appellee

Briefed by [Charity Karanja](#)

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IN RE WILL OF MCINTOSH

CIVIL - WILLS, TRUSTS, & ESTATES

CRIMINAL LAW - WEAPONS - POSSESSION - Persons with federal criminal convictions cannot have any firearms or other deadly weapons in his possession or under his control

CONTRACT LAW - VALIDITY - ELEMENTS - A valid contract is formed when the following elements are present: (1) two or more contracting parties; (2) consideration; (3) an agreement that is sufficiently definite; (4) parties with legal capacity to make a contract; (5) mutual assent; and (6) no legal prohibition precluding contract formation

CONTRACT LAW - ELEMENTS - CONSIDERATION - Consideration is an act other than a promise; a forbearance; the creation, modification or destruction of a legal relation; or a return promise, bargained for and given in exchange for the promise

FACTS

Dan McIntosh IV (“Mac”) transferred a vast collection of guns, ammunition, and shooting accessories to his father Dan McIntosh III (“Dan”), through a bill of sale and after Mac’s death, his mother, Beverly Quick was named executrix of his estate and she challenged the validity of the bill of sale claiming the gun collection should be returned to Mac’s estate. Prior to the execution of the bill of sale, Mac was arrested for shooting into an occupied dwelling. Dan represented Mac in court for this charge. Mac pled guilty to a favorable resolution of the federal charges against him, and Dan later notified Mac that he successfully got the state criminal charges dismissed. However, with federal criminal convictions, Mac was not allowed to have any firearms or deadly weapons in his possession or under his control. Mac made it very clear that he did not want the federal government to have access to his gun collection. Following this conviction, Mac and Dan entered into a bill of sale for the gun collection. Beverly testified that Mac told her he never signed the bill of sale; however, Jason Graham, a friend of Mac’s, testified that he witnessed Mac signing the bill of sale. Further, Beverly claimed that no consideration existed to support the bill of sale being a binding contract and is therefore invalid. The chancellor disagreed and made eleven findings of fact that supports the bill of sale being an enforceable document thus giving Dan ownership to the gun collection. Beverly appealed.

ISSUE

Whether valid consideration existed to support the bill of sale creating an enforceable contract.

HOLDING

Because it is undisputed that Mac did not want the government to have access to all or part of his gun collection, this created a motive for Mac to contract with his father. Further, consideration existed through Dan’s successful representation of Mac in his criminal matters by receiving the benefit of the legal services, which led to his lenient dispositions of his dual criminal matters. Therefore, the Court of Appeals affirmed the judgment of the Covington County Chancery Court.

DISSENT

Judge Lawrence argued that the chancellor never completed an analysis of the essential elements of a contract nor an analysis of whether the exchange of the collection constituted a valid gift. Judge Lawrence stated that the chancellor’s

eleven findings of fact could point to either a contract or a gift, but he never conducted a proper analysis of either. The chancellor failed to articulate proof of all the essential elements of a contract and neglected to consider Mac's mental state at the time the bill of sale was executed. Ultimately, the facts do not exist in the record to sufficiently establish that the bill of sale was intended to operate as a contract, with consideration, without further fact finding by the chancellor.

Affirmed - 2018-CA-00520-COA (Oct. 22, 2019)

En Banc Opinion by Judge Westbrook - Dissent by Judge Lawrence

Hon. William R. Barnett (Covington County Chancery Court)

Michael Clayton Barefield & William H. Jones for Appellant - *Pro se* for Appellee

Briefed by [Robert M. Rhea](#)

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LAURENT V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - JURISDICTION - An appellant must seek permission from the Supreme Court before filing his PCR petition in trial court

FACTS

Leo Laurent Jr. was convicted of murdering his wife and sentenced to life in prison. The Mississippi Court of Appeals affirmed his conviction. Laurent twice sought permission to file a PCR petition as required by law, but the Mississippi Supreme Court denied his requests. Undeterred, Laurent filed his PCR petition in the trial court. The trial court denied the petition for lack of jurisdiction. Laurent appealed.

ISSUE

Whether the trial judge erred in dismissing Laurent's PCR petition.

HOLDING

Because the Supreme Court denied Laurent permission to file his PCR petition, the trial court properly dismissed Laurent's petition for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2018-CP-01548-COA (Oct. 22, 2019)

Opinion by Judge McCarty

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

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

Briefed by [John Forrest Kelly](#)

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LAWRENCE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - LIMITATIONS - APPEAL - Pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act, a motion for post-conviction relief following a guilty plea must be filed within three years after the entry of the judgment of conviction

POST-CONVICTION RELIEF - LIMITATIONS - EXCEPTIONS - Although ineffective assistance of counsel can constitute an exception to the post-conviction relief procedural time bars, there must at least appear to be some basis for the truth of the claim before the procedural bar will be waived

POST-CONVICTION RELIEF - LIMITATIONS - SUCCESSIVE WRITS - A movant seeking post-conviction relief must place before the court all claims known to him or to which he should have had knowledge, the failure to do so results in a loss of his claims for a second or successive petition

FACTS

In 2003, an Oktibbeha County grand jury indicted Bruce Lawrence for murder and felony DUI. In 2004, Lawrence pled guilty to murder. At the plea hearing, the court thoroughly instructed Lawrence of the consequences of pleading guilty to murder. In his petition to plead guilty, Lawrence acknowledged that his counsel had done everything he could to assist him throughout the course of the proceedings and that he was pleading guilty freely and voluntarily. Yet, Lawrence subsequently filed a motion for post-conviction relief (“PCR”) requesting the court to set aside his guilty plea on the grounds that his plea was involuntary, and his counsel was ineffective, which the trial court denied. In 2018, Lawrence filed a second PCR motion, which the trial court denied on the grounds that the motion was both time-barred and successive-writ-barred. Lawrence appealed.

ISSUE

Whether the trial court erred in denying Lawrence’s second motion for PCR.

HOLDING

Because the PCR motion was filed long after the three-year limitations period, and because it was Lawrence’s second PCR motion, the trial court did not err in finding that the motion was both time-barred and successive-writ-barred. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

Affirmed - 2018-CP-01585-COA (Oct. 22, 2019)

Opinion by Judge McDonald

Hon. Lee J. Howard (Oktibbeha County Circuit Court)

Pro se for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Breland Parker](#)

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COURT OF APPEALS - CRIMINAL CASES

BROOKS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - INDIGENT DEFENDANTS - Under *Lindsey*, a specific procedure governs where appellate counsel represents an indigent criminal defendant and does not believe his or her client’s case presents any arguable issues on appeal

CRIMINAL PROCEDURE - APPEALS - INDIGENT DEFENDANTS - Under *Lindsey*, appellate counsel must first file and serve a brief in compliance with Miss. R. App. P. 28(a)(1)-(5), (8)

CRIMINAL PROCEDURE - APPEALS - INDIGENT DEFENDANTS - Under *Lindsey*, counsel must second certify in his or her brief that there are no arguable issues supporting the client’s appeal, and he or she has reached this conclusions after scouring the record thoroughly, specifically examining: (a) the reason for the arrest and the circumstances surrounding arrest; (b) any possible violations of the client’s right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing

CRIMINAL PROCEDURE - APPEALS - INDIGENT DEFENDANTS - Under *Lindsey*, counsel must third send a copy of his brief to the defendant, inform the defendant that no appealable issues were found, and advise the defendant of the right to file a pro se brief

CRIMINAL PROCEDURE - APPEALS - INDIGENT DEFENDANTS - Under *Lindsey*, the appellate court will determine if there is any arguable issue, and if so, the court will require appellate counsel to submit supplemental briefing on that issue regardless of the probability of the defendant's success on appeal

FACTS

Jason Ron Brooks was driving under the influence when he struck Marion McCulloch's car. As a result, McCulloch was severely injured. Security-camera footage captured the wreck, and a ten-second clip from the recording was shown to the jury. At a pre-trial hearing, Brooks sought to suppress the video evidence or, in the alternative, present the video in its entirety. The motion to suppress was denied, and Brooks was granted permission to show the video in mitigation, which he declined to do. Next, Brooks challenged the validity of the intoxilyzer test results, but the trial court found that the intoxilyzer test was properly administered. Lastly, Brooks asserted that he never received his *Miranda* rights and sought to suppress any statements made while he was in custody and being questioned. The trial court found the officer properly administered *Miranda*. After his conviction and sentence, Brooks filed a motion for a judgment notwithstanding the verdict and an alternative motion for a new trial, both of which were denied. Brooks's appeal was subsequently assigned to the Mississippi Office of Indigent Appeals. After his counsel filed a brief pursuant to *Lindsey*, representing that they "scoured the record" and were unable to find any appealable issues, Brooks was granted an additional forty days to file a supplemental pro se brief, but he did not file a brief.

ISSUE

Whether there were any arguable issues warranting reversal of Brooks's conviction.

HOLDING

(1) Because a thorough and independent review of the record, including the indictment, all pretrial and post-trial motions, the trial transcript, and the trial exhibits, revealed that no arguable issues existed warranting reversal, Brooks's conviction and sentence were upheld. Therefore, the Court of Appeals affirmed the decision of the Choctaw County Circuit Court.

Affirmed - 2018-KA-00468-COA (Oct. 22, 2019)

Opinion by Judge McCarty

Hon. George M. Mitchell Jr. (Choctaw County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Laura Tedder Sharp (Att'y Gen. Office) for Appellee

Briefed by [Sarah Schofield](#)

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JOHNSEY V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - TRIALS - JURY INSTRUCTION - A lesser-included offense instruction should be granted unless the trial judge can say, taking the evidence in the light most favorable to the accused and considering all reasonable favorable inferences which may be drawn in favor of the accused from the evidence, that no reasonable jury could find the defendant guilty of the lesser-included offense

CRIMINAL LAW - TRIALS - JURY INSTRUCTION - The combination of not knowing the homeowner, clear evidence of breaking and entering, along with a clear intent to steal is enough for a court to refuse a lesser-included offense instruction for trespass

CRIMINAL LAW - JURY INSTRUCTION - EVIDENCE - When considering whether to give a jury instruction, trial courts are tasked with considering only the evidence before them at the time they are considering the issue of whether to give or refuse the instruction

FACTS

Danny Freeny owned a home in Leake County, Mississippi, where he stored cattle. Freeny checked on the otherwise vacant property twice a week. One day, Freeny checked the home and noticed there was a car parked in the carport.

Freeny parked his tractor behind the car and approached the vehicle after noticing someone was in the front seat. The passenger in the car, Tasha Vicker, then proceeded to honk the car's horn. At that moment, Jacob Johnsey exited the home's utility room and got into the vehicle, and soon after, Tasha's brother, Troy, ran from the utility room and jumped in the car's window. The car drove away, but Freeny was able to provide police with the car's license plate. Sheriff's Deputy Vince Carter performed an investigation in which he noticed the doorframe to the home was damaged. Johnsey was later arrested and charged with burglary of an unoccupied dwelling. At trial, Deputy Carter testified that the door appeared to be damaged by someone attempting to pry it open and that the drawers and cabinets looked as if someone was looking through them. Johnsey testified that he was at the house on this day but that he never opened the door because it was already open. Johnsey also testified that he was only at the house to ask for directions. At the close of trial, the defense proposed a lesser-included offense jury instruction for trespass. The court refused to issue this instruction. The jury found that the evidence did not support Johnsey's story and found him guilty of burglary of an unoccupied dwelling. Johnsey appealed.

ISSUE

Whether the circuit court erred in refusing to instruct the jury on the lesser-included offense of trespass.

HOLDING

Because Johnsey did not know the victims, and because there was clear evidence of a breaking and entering, along with evidence of a clear intent to steal, the trial court did not err in refusing to give the lesser-included offense instruction for trespass. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2018-KA-00756-COA (Oct. 22, 2019)

Opinion by Judge Lawrence

Hon. Christopher A. Collins (Leake County Circuit Court)

Justin Taylor Cook & Phillip W. Broadhead (Pub. Def. Office) for Appellant - Mathew W. Walton & Steven Simeon Kilgore (Att'y Gen. Office) for Appellee

Briefed by [Bryant Carlton](#)

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KINNEL V. STATE

CRIMINAL - FELONY

EVIDENCE - TESTIMONY - LAY WITNESS - Any opinion offered by a lay witness must meet the requirements of Miss. R. Evid. 701

EVIDENCE - TESTIMONY - LAY WITNESS - Miss. R. Evid. 701 permits the introduction of non-expert opinion evidence if the opinion is rationally based on the perception of the witness and is helpful to the clear understanding of the determination of a fact in issue

EVIDENCE - VIDEO SURVEILLANCE - NARRATION BY WITNESS - It is permissible for a witness to narrate video evidence when the narration simply describes what is occurring in the video

FACTS

Derrick Phillips and Barry McCray were shooting dice at the Horseshoe Casino in Tunica. Phillips noticed a man (later identified as Cortez Watts) and a woman (later identified as Tanyatta Kinnel) at the blackjack table behind him. Cortez asked Phillips for a cigarette, and Phillips handed him one and said "[I am] a boss." Cortez disappeared, and Kinnel gave Phillips a napkin with her phone number on it. Phillips and McCray left the casino around 3 a.m. and stopped at a gas station, where Phillips called Kinnel so she would have his number. Kinnel told Phillips that she had lost all of her money at the casino and asked if he would bring her a Sprite from the gas station. Phillips purchased a Sprite, cigarettes, and condoms, and Kinnel gave him directions to a nearby apartment complex -- Kirby Estates. When they arrived at the apartment complex, Kinnel and another man (later identified as Javonta Watts) approached Phillips's vehicle. Kinnel asked Phillips to get out of the car so that he could give her a hug. When Phillips got out of the vehicle, Cortez appeared

and said, “You say you’re the boss, right? Let me get that money you just won.” After a skirmish ensued, Cortez fell to the ground, pulled out a gun, and shot Phillips in the neck. Bernadette Logan, captain of investigations for the Tunica County Sheriff’s Office, requested surveillance footage from the Horseshoe Casino, which was admitted into evidence without objection at trial. Investigator Logan testified that when she viewed the footage, she observed Kinnel inside the casino. The video was then played for the jury, and as the video was playing, Investigator Logan testified that the footage appeared to show Cortez and Kinnel. Investigator Logan also testified that the footage showed the parking lot of the Horseshoe Casino, and at that point, defense counsel objected to “a running commentary as to what’s depicted.” The court overruled the objection but allowed for a continuing objection. Investigator Logan testified that the footage showed Phillips with a black shirt on at the end of a table and identified McCray, who was wearing a red shirt. The prosecutor asked whether Investigator Logan could identify anyone else in one specific portion of the video, and she answered “Tanyatta Kinnel and Cortez Watts.” In another portion of the video, Investigator Logan again identified Kinnel and Phillips. Kinnel was convicted of conspiracy to commit armed robbery and attempted armed robbery. Kinnel appealed.

ISSUE

Whether the trial court erred by allowing Investigator Logan to narrate part of the surveillance video while it was being played for the jury.

HOLDING

Because any error in admitting Investigator Logan’s testimony did not affect a substantial right of Kinnel, and because by the time counsel objected, Investigator Logan had already testified that when reviewing the surveillance footage she observed Kinnel in the casino, and because Kinnel seemingly admitted to being at the casino and the apartment complex, the trial court did not err by allowing Investigator Logan to narrate part of the surveillance video while it was being played for the jury.

Affirmed - 2018-KA-00769-COA (Oct. 22, 2019)

Opinion by Judge Greenlee

Hon. Charles E. Webster (Tunica County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Jordan Thomas](#)

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