BriefServ[SM]

Weekly Newsletter
Mississippi Cases Editor: Katie Humphries

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 25, 2019

SUPREME COURT - CIVIL CASES

JAMES V. WESTBROOKS

CIVIL - ELECTION CONTEST

JUDICIAL ETHICS - ELECTIONS - ENDORSEMENTS - Miss. Code Ann. § 23-15-976 provides that a judicial office is a nonpartisan office and a candidate for election is prohibited from campaigning or qualifying for such an office based on party affiliation
JUDICIAL ETHICS - ELECTIONS - CAMPAIGNING - Canon 5A(1) of the Mississippi Code of Judicial Conduct provides that a candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket
JUDICIAL ETHICS - ELECTIONS - CAMPAIGNING - Canon 5A(1) of the Mississippi Code of Judicial Conduct provides that attending or speaking at a political party gathering on the judge's own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering

FACTS

Former Mississippi Court of Appeals Judge Ceola James lost the 2016 election for District 2, Position 2 to Judge Latrice Westbrooks. After the election, James contested the results, alleging that Westbrooks improperly aligned her campaign with Representative Bennie Thompson's campaign. James requested that the trial court void the 2016 election and declare James to be the winner under Miss. Code Ann. § 23-15-973. Alternatively, James requested that the trial court order a new election and disqualify Westbrooks from running. Attached to James's partition were sample ballots that listed names of candidates including Thompson and Westbrooks. In the ballots, the word "Democrat" was listed above Thompson's name and the words "Nonpartisan Judicial Election" was listed above Westbrooks's name. The phrase "Paid For By Friends of Bennie Thompson" also appeared on the sample ballots. Westbrooks then filed a motion to dismiss, or in the alternative, a motion for summary judgment, arguing that James failed to state a claim, arguing that Canon 5A(1) of the Code of Judicial Conduct authorized the use of the sample ballot and that any violation was beyond the scope of Miss. Code Ann. § 23-15-973. Westbrooks also claimed Miss. Code Ann. §§ 23-15-973 and 23-15-976 were unconstitutional but failed to provide the required notice to the Mississippi Attorney General. At a hearing on Westbrooks's motion, the court granted the motion and concluded that James failed to offer any evidence that would create a genuine issue of material fact to warrant a trial. James appealed.

ISSUE

Whether the trial court erred in granting Westbrooks's motion for summary judgment.

HOLDING

Because James failed to offer evidence that Westbrooks approved that her name be placed on the sample ballots or instructed the ballots to be circulated, there was no discernible campaign violation by Westbrooks. Therefore, the Supreme Court affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2018-EC-00469-SCT (Apr. 25, 2019)
Opinion by Chief Justice Randolph
Hon. Stephen B. Simpson (Warren County Circuit Court)
Pro se for Appellant - Willie Griffin for Appellee
Briefed by Ryan Overturf

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MISS. COMM'N ON JUDICIAL PERFORMANCE V. BURTON

CIVIL - JUDICIAL PERFORMANCE

PROFESSIONAL RESPONSIBILITY - JUDICIAL MISCONDUCT - INTERFERENCE - Willful misconduct may exist when a judge interferes in matters before another judge has a clear conflict of interest, but still remains involved in the case

PROFESSIONAL RESPONSIBILITY - JUDICIAL MISCONDUCT - SANCTIONS - Judicial sanctions must be based on the six factors which include: (1) the length and character of the judge's public service; (2) whether there is any prior case law on point; (3) the magnitude of the offense and the harm suffered; (4) whether the mistake is an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and (6) the presence or absence of mitigating or aggravating circumstances

PROFESSIONAL RESPONSIBILITY - JUDICIAL MISCONDUCT - SPOLIATION - Miss. Code Ann. § 97-11-1 prohibits falsifying or erasing public records

FACTS

Judge Burton, a justice court judge for the Southern District of Coahoma County, filed an affidavit claiming his former girlfriend had stolen money and personal property from him. Another justice court judge issued an arrest warrant for Judge Burton's former girlfriend. Before the warrant was served, Judge Burton changed his mind and instructed the clerk's office to rescind the warrant. The deputy clerk replaced Judge Burton's former girlfriend's name with Jane Doe and instructed the sheriff's office not to execute it. The Mississippi Commission on Judicial Performance ("the Commission") filed a formal complaint against Judge Burton, who cooperated. The Commission filed a motion for approval for the recommendation of a sanction of a public reprimand and a $500 fine.

ISSUE

Whether Judge Burton committed misconduct and what an appropriate sanction is.

HOLDING

Because this was Judge Burton's first disciplinary matter in his twenty-seven years of service, and because of his full admission and cooperation with the Commission, the court agrees with the Commission's recommendation to publicly reprimand Judge Burton and to fine him $500. Therefore, the Supreme Court agrees with the recommendation of the Mississippi Commission on Judicial Performance.

Public Reprimand & Fine - 2018-JP-01537-SCT (Apr. 25, 2019)
En Banc Opinion Justice Maxwell
Hon. Kent McDaniel (Mississippi Commission on Judicial Performance)
Darlene D. Ballard, Rachel Wilson Michel, & Meagan Courtney Brittain for Appellant - Richard B. Lewis for Appellee
Briefed by Catherine Pettis

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STOVER V. DAVIS

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - UNDUE INFLUENCE - PRESUMPTION - Contestants of a will raise a presumption of undue influence by showing existence of a confidential relationship between the testator and a beneficiary under the will, along with suspicious circumstances

WILLS & ESTATES - UNDUE INFLUENCE - BURDEN OF PROOF - When a presumption of undue influence arises, the proponent bears the burden to rebut the presumption with clear and convincing evidence that the will was not the result of undue influence

WILLS & ESTATES - UNDUE INFLUENCE - REBUTTING THE PRESUMPTION - To rebut the presumption, the proponent must show: (1) good faith on the part of the beneficiary; (2) the testatrix's full knowledge and deliberation of the consequences of her actions; and (3) the testatrix received the advice of a competent person disconnected from the beneficiary and devoted wholly to him

FACTS

Tamora Robinson died in October 2013. Before her death, she executed a last will and testament in June 1993, a first codicil in October 2000, and a second codicil in May 2013. In November 2013, Marquan D. Stover filed a motion to contest the second codicil on the ground that it had been the product of undue influence by Elaine Davis. The second codicil changed the disposition of thirty acres of land to Davis and made Davis the executrix. Robinson had a stroke in early 2013 and suffered from dementia. Davis visited Robinson on May 20, 2013, in her nursing home. That day, the two talked about Robinson's will, and Davis called Robinson's attorney saying that Robinson wanted to make changes to her will. Robinson's attorney came by the nursing home and met privately with Robinson. After meeting with Robinson, Robinson's attorney drafted the second codicil, and it was subsequently executed. At trial, the chancellor found that Stover had not satisfied his burden of showing that the second codicil was the result of undue influence and dismissed the motion to contest. Stover appealed.

ISSUE

Whether the trial court erred in holding that a presumption of undue influence did not exist.

HOLDING

Because a presumption of undue influence is raised by showing the existence of a confidential relationship between the testator and the beneficiary under the will along with suspicious circumstances, and because Stover successfully raised this presumption by showing that Robinson and Davis had a confidential relationship, that suspicious circumstances were present because of Robinson's physical and mental states, and Davis had contacted Robinson's attorney concerning changes to the will, the trial court erred in holding that a presumption of undue influence did not exist. Therefore, the Supreme Court reversed the judgment of the Hinds County Chancery Court and remanded the case for further proceedings not inconsistent with this judgment.

Reversed & Remanded - 2016-CT-01605-SCT (Apr. 25, 2019)
En Banc Opinion by Justice Beam
Hon. William H. Singletary (Hinds County Chancery Court, Second Judicial Dist.)
Pro se & Rick D. Patt for Appellant - Jack G. Moss for Appellee
Briefed by Zachary Flowers

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SUPREME COURT - ORDERS

BURRELL V. STATE

COURT ORDER

ORDER

Freddie Doug Burrell filed an Application for Leave to Proceed in the Trial Court with Motion for Order to Show Cause and to Vacate Illegal Sentence. Burrell was convicted and sentenced to life in prison in December 1998. That verdict was affirmed on direct appeal. Since then, Burrell filed numerous applications for leave, and none were granted. Burrell challenged the State's evidence of prior convictions used to prove the habitual offender enhancement on direct

appeal. The court found no merit to the claim, and res judicata bars the claim from being brought now. Burrell had previously been sanctioned for frivolous filings. The court found the current filing to be frivolous as well and ordered that Burrell is warned against future frivolous filings, which may result in more monetary sanctions and a restriction of filing applications for post-conviction collateral relief.

OBJECTION

Presiding Justice King disagreed with the court's decision to bar Mr. Burrell from filing any further motions for post-conviction relief in forma pauperis. He argued that this bar punishes and precludes defendants from their lawful right to appeal.

Denied - 2013-M-01083 (Apr. 23, 2019)
En Banc Order by Chief Justice Randolph - Objection by Presiding Justice King
Briefed by Yance Falkner

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 23, 2019

COURT OF APPEALS - CIVIL CASES

ESTATE OF ROOSA V. ROOSA

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - FORFEITURE PROVISION - GOOD FAITH EXCEPTION - For a will presenting a forfeiture provision to be valid, the provision must include a good faith exception to be enforceable; if a good faith exception is not included, the court must reform the provision to include an exception for good faith actions by beneficiaries

CIVIL PROCEDURE - INTERVENTION - MOTION TO INTERVENE - A party may be permitted to intervene as of right if shown that the party (1) made a timely application; (2) had an interest in the subject matter of the action; (3) was so situated that disposition of the action may as a practical matter impair or impede his ability to protect his interest; and (4) his interest was not already adequately represented by existing parties

FACTS

Joan Roosa had four children: Christopher, Rosemary, Stuart, and John. Roosa died leaving a valid will with two codicils. Under the terms of the will and the first codicil, all of the children and grandchildren were to receive some proceeds under the will. In contrast, under the second codicil, the bulk of the estate was left to the benefit of Rosemary alone. Rosemary filed the second codicil for probate. During this litigation, Rosemary's attorneys ceased representing her and accepted an assignment by Rosemary of part of her distribution from Roosa's estate equaling the amount of Dornan's legal fees and expenses. The jury found the second codicil to be invalid. Roosa's will also had a forfeiture provision that Christopher sought to enforce against Rosemary since she filed the second codicil for probate, claiming that she interfered with Roosa's wishes. However, the chancery court did not enforce the forfeiture clause against Rosemary. Christopher appealed.

ISSUES

Whether the court erred in (1) finding that the forfeiture provision was not enforceable against Rosemary; (2) refusing to give the jury interrogatories; (3) allowing Rosemary to use Joan's car while waiting to settle Joan's estate; and (4) allowing Rosemary's former attorneys to intervene.

HOLDING

(1) Because there was sufficient evidence to lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful, there was probable cause to contest the will.

(2) Because submitting interrogatories to the jury is improper when considering the validity of a codicil, and because the jury's only role was to determine whether the codicil was valid and not whether Rosemary exhibited good faith in submitting it, the issue was without merit. (3) Because allowing Rosemary to retain possession of the car for a deduction of the car's value from her share in the estate was equitable relief, the issue was without merit. (4) Because Rosemary's former attorneys were assigned part of Rosemary's share of the estate for legal services provided thereby acquiring an interest in the subject of the action, the attorneys' request to intervene was properly granted.

Affirmed - 2017-CA-01707-COA (Apr. 23, 2019)
Opinion by Judge McCarty
Hon. Carter O. Bise (Harrison County Chancery Court, First Judicial Dist.)
John G. McDonnell & Courtney McDonnell Snodgrass for Appellants - Paul M. Newton Jr. for Appellee
Briefed by Drey Russell

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McInturff v. Yellow Roadway Corp.

Civil - Workers' Compensation

WORKERS' COMPENSATION - STATUTE OF LIMITATIONS - NOTICE - Under Miss. Code Ann. § 71-3-35(1), the statute of limitations for workers' compensation claims is two years, regardless of notice, unless an exception applies

WORKERS' COMPENSATION - STATUTE OF LIMITATIONS - PAYMENT IN LIEU OF COMPENSATION - An employer who continues to pay an injured employee while expecting little to no labor from the employee may be found to have made payment in lieu of compensation, which can count against the employee's workers' compensation claim, but which also tolls the statute of limitations for filing the claim

WORKERS' COMPENSATION - EVIDENCE - FINDER OF FACTS - For workers' compensation claims, the Mississippi Workers' Compensation Commission is the ultimate finder of facts

FACTS

On June 17, 2013, Jimmy and Sandra McInturff were injured in an automotive accident while driving a truck for Yellow Roadway Corporation ("Yellow"). Yellow paid for the McInturff's medical expenses, and the couple used vacation and sick days to receive pay while recovering. In early 2016, the McInturffs inquired about disability benefits and were advised that the statute of limitations had run for their claims. In April of 2016, the McInturffs filed petitions to controvert, alleging that they had relied upon the advice of their supervisor to take vacation and sick days and that they had received wages in lieu of compensation, thereby tolling the statute of limitations. A hearing on Yellow's motion to dismiss was held before an administrative judge, who granted the motion, finding that the statute of limitations had run on the McInturff's claims and that Yellow had not paid them wages in lieu of compensation. The McInturffs appealed to the Mississippi Workers' Compensation Commission (the "Commission"), which affirmed the ruling of the administrative judge ("AJ"). The McInturffs appealed.

ISSUES

Whether the Commission erred in deciding that (1) the statute of limitations had run on the McInturff's claims and (2) no facts or circumstances had tolled the statute of limitations.

HOLDING

(1) Because the statute of limitations for workers' compensation claims in Mississippi is two years from the date of the injury, and because the McInturffs filed their claims more than two years after the date of their injuries, the Commission did not err in deciding that the statute of limitations had run on their claims. (2) Because the Commission is the ultimate finder of facts in workers' compensation cases, and because the Commission's findings were supported by substantial evidence, the Commission did not err in deciding that no facts or circumstances had tolled the statute of limitations. Therefore, the Court of Appeals affirmed the decision of the Mississippi Workers' Compensation Commission.

Affirmed - 2018-WC-01085-COA (Apr. 23, 2019)
Opinion by Judge McCarty
Mississippi Workers' Compensation Commission
Joel W. Howell III for Appellants - William Bienville Skipper for Appellees
Briefed by Jon-Paul Bushnell

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Sun South LLC v. Bayou Vista LLC

Civil - Contract

CIVIL PROCEDURE - SERVICE OF PROCESS - Under Miss. R. Civ. P. 4(d)(4), service of process is perfected upon an entity by delivering a copy of the summons and of the complaint to an officer, a managing partner or general agent, or to any other agent authorized by appointment or by law to receive service of process
AFFIRMATIVE DEFENSES - INSUFFICIENT SERVICE OF PROCESS - WAIVER - To effectively waive a defense of insufficient service of process and submit to the jurisdiction of a particular court, a defendant must (1) enter an appearance and (2) file an answer or otherwise defend the merits of the case in some way

FACTS

On June 9, 2009, Sun South, LLC executed a promissory note in which it agreed to pay almost $700,000 to Bayou Vista, LLC. Sun South is comprised of two members, Michael Halford and Ted Smith. On April 5, 2012, Bayou Vista filed a complaint with the Lafayette County Circuit Court to collect on the amount owed. The complaint stated that Sun South could be served with process through Smith, its registered agent. In attempting service of process, Bayou Vista first mailed a copy of the summons and complaint to Smith's address. Then, Bayou Vista hired a process server who delivered a copy to Halford's wife at their house. Sun South filed no response to the complaint. On May 16, 2012, Bayou Vista filed a motion for summary judgment and asked the court to issue a default judgment against Sun South. On the motion, Bayou Vista attached an affidavit from Smith, stating that to his knowledge no payment had been made on the 2009 promissory note. The affidavit did not address the lawsuit or service of process in any way and did not state that he was testifying on Sun South's behalf. On July 20, 2012, the Lafayette County Circuit Court entered a final judgment of default against Sun South. Sun South had not answered or otherwise appeared in the action. On November 30, 2012, the court issued writs of execution against Sun South's property. On October 27, 2015, the court entered an order directing a sale of Sun South's property, and the writs of execution relating to the sale were personally served on Halford on November 19, 2015. This was the first time Sun South officially received notice of any default judgment levied against it. On November 21, 2017, Sun South filed a motion for relief from judgment, arguing that Bayou Vista failed to properly serve Sun South, which voided the judgment for lack of personal jurisdiction. The Lafayette County Circuit Court denied the motion. Sun South appealed.

ISSUES

Whether the trial court erred by ruling that Sun South (1) was sufficiently served with process and (2) waived its affirmative defense of insufficient service of process.

HOLDING

(1) Because Bayou Vista did not comply with the service of process requirements by delivering a copy of the summons and complaint to an actual officer of Sun South, Sun South was not properly served with process. (2) Because Sun South neither appeared before the court nor defended the merits of the case in any way, Sun South did not waive its affirmative defense of insufficient service of process. Therefore, the Court of Appeals reversed the judgment of the Lafayette County Circuit Court.

Reversed & Rendered - 2018-CA-00259-COA (Apr. 23, 2019)
En Banc Opinion by Judge Tindell
Hon. John Andrew Gregory (Lafayette County Circuit Court)
Walter Alan Davis for Appellant - Arthur F. Jernigan Jr., William M. Vines, & Cory T. Wilson for Appellee

Briefed by Davis Pigg

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COURT OF APPEALS - CRIMINAL CASES

HICKS V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - DISCRETION - The trial judge is empowered with the discretion to consider and to decide what evidence is admissible, and unless this judicial discretion is so abused as to be prejudicial to the accused, then the ruling of the lower court must be affirmed

EVIDENCE - ADMISSIBILITY - PRIOR CRIMES - Under Miss. R. Evid. 404(b), evidence of prior crimes cannot be introduced for fear that the defendant will be judged by the jury on those past crimes and not the crime for which the defendant actually stands trial

EVIDENCE - ERROR - PRESERVATION - Under Miss. R. Evid. 103, error is usually preserved for appeal once a motion to strike or limit the evidence is filed, heard, and definitively ruled on by the court

FACTS

In April 2015, a truck was stolen from Stamper Trucking Company. Seventeen days after, the Simpson County Sheriff's Department executed an arrest warrant against Mark Hicks. While executing the warrant, investigators found the stolen truck. The truck was running, and Hicks was beside the vehicle. At trial, both investigators who executed the warrant against Hicks testified that they met Hicks while executing an "arrest warrant." Hicks's counsel did not object. Hicks was sentenced as a habitual offender to serve five years in the custody of the Mississippi Department of Corrections. Hicks filed a motion for a judgement notwithstanding the verdict or a new trial. The circuit court denied the motion. Hicks appealed.

ISSUE

Whether the circuit court improperly allowed evidence of past crimes in violation of Miss. R. Evid. 404(b) by allowing the investigators to use the term "arrest" to describe the warrant served on the day of Hicks's arrest.

HOLDING

Because Hicks's counsel did not make a contemporaneous objection when investigators uttered "arrest warrant," Hicks's claim is barred under Miss. R. Evid. 103. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

CONCURRENCE

Judge McCarty argued that Hicks's conviction should be affirmed but did not agree that the issue was not sufficiently preserved for appeal. Under a plain language reading of Miss. R. Evid. 103, a further objection during trial is not required to preserve the issue for appeal.

Affirmed - 2018-KA-00176-COA (Apr. 23, 2019)
En Banc Opinion by Judge Westbrooks - Partial Concurrence by Judge McCarty
Hon. Stanley Alex Sorey (Simpson County Circuit Court)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee
Briefed by Katelin Davis

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Pettis v. State

Criminal - Felony

CRIMINAL LAW - ROBBERY - ELEMENTS - Under Miss. Code Ann. § 97-3-73, every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery
CRIMINAL LAW - ROBBERY - FEAR - Fear may be put into the victim after the actual taking but before the crime has concluded

FACTS

Larenzo Pettis was exiting a Walmart with a television for which he did not pay. Joseph Albert, the store's assistant manager, confronted Pettis at the exit, blocking him from leaving. Pettis reached in his pocket and threatened Albert, stating, "this is not worth dying for, . . . getting shot over, . . . [or] getting cut." Pettis then grabbed the television from the cart and ran out of the building. During trial, Albert testified that he was unsure whether Pettis had a gun or knife in his pocket but was scared by Pettis's threats and believed that Pettis meant to leave with the television "by any means." Pettis testified that Albert approached him at the store's exit and asked if he had a receipt. Pettis said he reached toward his pocket to act like he was reaching for a receipt but never verbally threatened Albert. Following deliberations, the jury found Pettis guilty of robbery. Pettis filed a motion for a judgment notwithstanding the verdict or in the alternative, a motion for a new trial, which was denied. Pettis appealed.

ISSUE

Whether the evidence was sufficient for the jury to convict Pettis of robbery or the verdict was against the overwhelming weight of the evidence.

HOLDING

Because Albert was a Walmart employee who had custody over store merchandise and only relinquished the television upon Pettis's threats, and because the taking was complete when Pettis ran from the store with the unpaid-for television, the evidence was sufficient for the jury to convict Pettis of robbery, and the verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge Westbrooks argued that a reasonable jury could not have believed Albert was in fear of some immediate injury to his person beyond a reasonable doubt. She stated that Albert's testimony, along with the surveillance video, failed to demonstrate he was under duress when he confronted Pettis; thus, the verdict should have been overturned.

Affirmed - 2018-KA-00208-COA (Apr. 23, 2019)
Opinion by Judge Greenlee - Dissent by Judge Westbrooks
Hon. Christopher Louis Schmidt (Harrison County Circuit Court)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee
Briefed by Luke Phillips

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Richards v. State

Criminal - Felony

EVIDENCE - WITNESS TESTIMONY - PRIOR CONSISTENT STATEMENT - Evidence of prior consistent statements made by the witness is not evidence of the fact testified to by the witness, but may be offered for the sole purpose of supporting the testimony of the witness whose veracity has been attacked

CRIMINAL PROCEDURE - INDICTMENT - SUFFICIENCY - An indictment is generally sufficient if it tracks the language of the relevant criminal statute, however using the exact language from the statute is not necessary if the words used have substantially the same meaning and the indictment is specific enough to give the defendant notice of the charge against her

EVIDENCE - PRIOR BAD ACTS - SEXUAL ABUSE - In sexual abuse cases, prior bad acts may be admissible to show the defendant's intent, plan, preparation, motive, and opportunity to "groom" the victim to allow the defendant better access and opportunity to commit the sexual acts upon a child

FACTS

Floyd Richards was indicted for attempted sexual battery of his stepdaughter, M.A., who was fourteen at the time of the disclosure of the allegations. M.A. reported the abuse to her teacher, who then referred the incident to the Department of Human Services ("DHS"). DHS caseworker Marie Frison, a forensic interviewer, generated a three-page forensic interview summary detailing M.A.'s intake information and a summary of her statements. M.A.'s mother, Latoya Richards, was jointly indicted with Floyd on a separate charge of contributing to the neglect and delinquency of a child. At the joint trial, Frison testified to clarify the timeline of the "Jeep incident," which M.A. had testified was an instance of sexual abuse. Additionally, M.A. testified as to the incident that led to Floyd's indictment, as well as prior incidents of physical and sexual abuse. After the trial, Floyd was convicted of the lesser offense of touching a child for lustful purposes, and Latoya was convicted of the crime charged. Latoya and Floyd appealed.

ISSUES

Whether (1) the trial court erred in allowing Frison to testify to M.A.'s reported time frame of the "Jeep incident"; (2) the indictment was sufficient to charge Latoya with permitting the continuing sexual abuse of a minor for whom she was a parent or guardian; (3) evidence of Floyd's prior bad acts violated Miss. R. Evid. 404(b); (4) the State's evidence was sufficient to convict him of touching a child for lustful purposes; (5) the jury's verdict was against the overwhelming weight of the evidence and the circuit court erred in denying his motion for a new trial; and (6) the errors, cumulatively, warrant reversal.

HOLDING

(1) Because the defense used Frison's prepared document to attack M.A.'s credibility, the door was opened for the State to use other parts of the same document to rehabilitate her; thus, there was no abuse of discretion in the court's admittance of M.A.'s prior consistent statement. (2) Because holding that the indictment failed to notify Latoya of the charges against her, due to the use of the word "allow" instead of the word "permit," would put form over substance and create an unnecessarily burdensome precedent, the indictment was sufficient to fully notify Latoya of the "nature and cause of the accusation" against her. (3) Because Miss. R. Evid. 404(b) allows other victims' testimonies into evidence, the same reasoning allows the present victim to describe the bad acts suffered at the hands of the defendant if offered to prove plan, intent, or motive; therefore, the court did not abuse its discretion in admitting evidence of Floyd's prior bad acts of M.A. (4) Because when considering the evidence in the light most favorable to the State, the essential elements of touching a child for lustful purposes could have been found by a rational juror based on the evidence presented at trial, sufficient evidence existed to convict Floyd of touching a child for lustful purposes. (5) Because when accepting the evidence supporting the jury's verdict as true, the verdict was not so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would sanction an unconscionable injustice, the court did not err in denying Floyd's motion for a new trial. (6) Because there were no identifiable individual errors, there can be no cumulative error. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2017-KA-00809-COA (Apr. 23, 2019)
Opinion by Judge Lawrence
Hon. Albert B. Smith III (Bolivar County Circuit Court, Second Judicial Dist.)
W. Daniel Hinchcliff & Nick Crawford (Pub. Def. Office) for Appellants - Laura Hogan Tedder (Att'y Gen. Office) for Appellee
Briefed by Natalie McCarty

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WALLACE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - TRAFFIC STOP - PERMISSIBILITY- Pursuant to *Floyd*, an investigatory traffic stop is only permissible when an officer has reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a felony . . . or as long as the officers have some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity
CRIMINAL PROCEDURE - PROBABLE CAUSE - SEARCH & SEIZURE - Pursuant to *Dies*, if an officer clearly smells contraband, such as marijuana, that smell can give rise to the probable cause necessary to search a vehicle and its passengers
CRIMINAL PROCEDURE - PROBABLE CAUSE - TOTALITY OF CIRCUMSTANCES - Probable cause for a traffic stop is evaluated objectively, using a "totality of the circumstances" approach regarding the officer's knowledge of the facts at the time of the stop. The totality of circumstances factors are (1) whether the informant is known by law enforcement; (2) whether the informant has provided reliable information in the past or is paid by law enforcement to provide information; (3) the extent of detail and specificity provided in the tip, to include the crime committed, how the informant came to be aware, the location, and/or the individuals involved; and (4) whether the officer has further investigated the tip for corroboration

FACTS

Bobby Bailey, a deputy for the Jefferson County Sheriff's Department, received a direct phone call from a confidential informant that he knew personally. The informant told Deputy Bailey that there was an SUV parked at a gas station in Fayette, and it reeked so badly that it had a "loud odor" of what the caller believed to be marijuana. The informant was not sure of the exact make or model of the SUV but told the deputy that it was either a white Tahoe or a white Yukon and that there were three people inside. Deputy Bailey immediately called four other deputies for backup and drove to the gas station. En route to the gas station, Deputy Bailey noticed a white SUV coming his direction. The window of the SUV was down, and the deputy clearly saw that the driver was not wearing a seatbelt. Bailey then turned his car around, followed the white SUV for 150 yards, and initiated a traffic stop. The deputy inquired about the scent coming from the car. The driver, Carl Wallace, replied that it came from his "personal stash" and displayed two small bags of what appeared to be marijuana. Deputy Bailey then informed Wallace that he was going to search the SUV. Bailey found more drugs including, .38 grams of cocaine, 19.97 grams of a synthetic cannabinoid called NM2201M, 15 dosage units of methamphetamine, two digital scales, and a drug cleaning kit. Bailey also found a .22 Taurus pistol with matching bullets that was hidden in a dash console within reach of the driver. Wallace was arrested and convicted of two charges: possession with the intent to distribute a variety of controlled substances and possession of a firearm by a felon. Wallace appealed.

ISSUE

Whether the trial court erred in admitting evidence of the controlled substances and firearm seized during the traffic stop because the initial traffic stop was not based on reasonable suspicion or probable cause.

HOLDING

Because the tip received was reliable and from a known source, and because Deputy Bailey had an independent basis for the traffic stop beyond the informant's tip, the trial court did not err in admitting evidence of the controlled substances and firearm seized during the traffic stop based upon the totality of the circumstances. Therefore, the Court of Appeals affirmed the judgment of the Jefferson County Circuit Court.

Affirmed - 2019-KA-01072-COA (Apr. 23, 2019)
Opinion by Judge McCarty
Hon. Lamar Pickard (Jefferson County Circuit Court)
Cynthia Ann Stewart for Appellant - Laura Hogan Tedder & Alexander C. Martin (Att'y Gen. Office) for Appellee
Briefed by Whitney Jackson

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Ware v. State

Criminal - Felony

CRIMINAL - CONFLICTING STATUTES - APPLICABILITY - The definition of a crime is controlled by the relevant criminal statute in place at the time the crime was committed

CRIMINAL - INFORMANTS - JURY INSTRUCTION - There is no abuse of discretion to refuse a cautionary jury instruction regarding a confidential informant where the informant's arrangement with the prosecution is disclosed to the jury and the informant is subject to cross-examination on the subject

FACTS

David Ware was convicted of selling a controlled substance by the Chickasaw County Circuit Court when he sold .49 grams of crack cocaine to a confidential informant named Allen Hunter. Ware was caught on camera selling the cocaine in an operation run by Chief Deputy Keith Roberson. However, despite conflicting statutes and issues over the jury instruction, Ware was sentenced to thirty years with ten years suspended. Ware appealed.

ISSUES

Whether the trial court erred by (1) failing to apply the ameliorative provisions of Miss. Code Ann. §41-29-139(b)(1)(A) and (2) denying his cautionary jury instructions regarding the testimony of the confidential informant.

HOLDING

(1) Because the amendment to the statute, which added in a quantity element to the crime of sale of a controlled substance, did not constitute a completely new crime, the ameliorative provisions were not necessary, and Ware was correctly sentenced under the provisions of the statute effective at the time he committed the crime. (2) Because the informant's arrangement with the prosecution was disclosed to the jury, and because the informant was subject to cross-examination, the trial court did not abuse its discretion regarding a cautionary instruction. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Judge McCarty argued that the denial of the cautionary jury instruction was an abuse of the court's discretion. He argued that there is longstanding precedent stating that the testimony of informants and snitches is inherently unreliable and should be met with caution and suspicion. Furthermore, he argued that allowing the instructions was not only correct but was easy for the court to do.

Affirmed - 2018-KA-00319-COA (Apr. 23, 2019)
Opinion by Chief Judge Barnes Concurrence in Part/Dissent in Part by Judge McCarty
Hon. John Andrew Gregory (Chickasaw County Circuit Court, Second Judicial Dist.)
Justin Taylor Cook (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen.) Office for Appellee
Briefed by Brandon H. Wilson

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