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Supreme Court – Criminal

Courtney v. State - Right to Speedy Trial – *Barker* Test – Delay in Proceedings – Matthew Blake Courtney was arrested for sexual battery for a crime being committed on November 2, 2012, when he was seventeen years old. DNA test results implicating Courtney were returned to authorities on February 20, 2013. On May 2, 2014, a petition was filed against Courtney in youth court, and his case was transferred to circuit court in July 2015. A grand jury indicted him in September 2015. After a number of continuances were issued, the trial took place on August 15, 2017, and the jury convicted Courtney.

On appeal, Courtney argued that the statute of limitations barred his sexual battery conviction and that the delay in bringing him to trial violated his Sixth Amendment constitutional right to a speedy trial. Being that the record was devoid of evidence that Courtney raised the statute of limitations argument before appeal, that appeal was waived. The court found that that Courtney's arrest date of July 8, 2015, in circuit court served as the first day of the constitutional speedy-trial clock for his criminal proceedings. Speedy-trial claims are analyzed with the factors of the *Barker* test: (1) length of the delay; (2) reasons for the delay; (3) defendant's assertion of his right to a speedy trial; and (4) prejudice to the defendant. A length of delay of 769 days was presumptively prejudicial and triggered a consideration of the rest of the factors. Because Courtney had jointly with the State or solely asked for each continuance, he waived his constitutional and statutory rights to a speedy trial for the applicable time. None of the delay leading up the trial was weighed against the State. Because Courtney asked for continuances along with his speedy-trial request, his requests cannot be viewed to be tried promptly. Courtney did not present argument on how the delay prejudiced him. The court found that there were no merits to Courtney's arguments. Therefore, the Supreme Court affirmed the judgement of the Greene County Circuit Court.

Presiding Justice King argued in his dissent that because the petition filed in youth court was the equivalent of a formal indictment, Courtney's constitutional right to a speedy trial attached then. He would remand the issue to the trial court to determine with a full record whether good cause existed for the delay in transferring jurisdiction from the youth court to the circuit court.

Briefed by [Zachary Flowers](#)

Fairley v. State - Criminal Procedure – Habitual Offender – Ineffective Assistance of Counsel – On May 6, 2015, federal agents Brian Norton, Toby Schwartz, Raphael Bailey, and Justin McLauren arrested Andre Fairley after discovering drugs in his vehicle. Fairley was indicted by a Harrison County grand jury for one count of possessing two or more grams, but less than ten grams of cocaine with intent to distribute, and one count of possessing more than thirty grams, but less than one kilogram, of synthetic cannabinoid, with intent to distribute. Following a jury trial at which Fairley represented himself with the aid of standby counsel,

Fairley was convicted of both counts. The trial court sentenced Fairley, a habitual offender, to twenty years for count one and five years for count two, with the sentences to be served day for day and concurrently. Fairley appealed.

Fairley argued that the trial court erred by (1) admitting the Rule 404(b) evidence without conducting an on-the-record Rule 403 analysis or providing a limiting jury instructions; (2) not granting a mistrial on its own motion after Agent Schwartz testified about Fairley's habitual-offender status; (3) allowing character evidence of witnesses to be admitted; (4) accepting Agent Schwartz as an expert witness and failing to instruct the jury regarding expert testimony; (5) instructing the jury through Jury Instructions S-8, S-9, and S-10; (6) sentencing Fairley as a habitual offender; (7) denying Fairley's request for bond pending appeal; and (8) allowing Fairley's self-representation. He further argued that the State improperly commented on Fairley's right not to testify and that he received ineffective assistance of counsel. Due to Fairley's claims having no merit, the court found that there were no reversible errors. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Whitney J. Jackson](#)

Court of Appeals – Civil

Bradley v. Diamondhead Country Club & Prop. Owners Ass'n Inc. - Personal Injury – Competency & Qualifications of Expert Witnesses – Summary Judgment – Owen Bradley filed a negligence complaint against Diamondhead Country Club and Property Owners Association (“DPOA”) and Warren Paving Co. (“Warren”) after falling on the edge of a pathway at the Diamondhead Country Club due to a drop-off created from the walkway being resurfaced and overlaid with asphalt. Owen had a comminuted left-intertrochanteric femur fracture that required surgery, a weeklong hospital stay, and physical therapy. Owen also filed a loss of consortium claim attached to his lawsuit on behalf of his wife, Margaret Bradley. Owen dismissed Warren from the suit, and DPOA filed a motion for summary judgment and alternative motion for partial summary judgment. Owen countered with two affidavits from his expert witness Charles Turnbow, which the court struck as inadmissible pursuant to M. R. Evid. 403 and 702. DPOA's motion for summary judgment was granted, and Owen appealed.

The Mississippi Supreme Court has held that a judge has as much power to resolve doubts on qualifications of proffered experts during the summary judgment stage as he has during the trial stage. The trial judge did not abuse his discretion in disallowing Turnbow's affidavits, so the issue was without merit. Further, the party opposing summary judgment must set forth specific facts showing a genuine issue for trial, and that evidence must be admissible at trial. Owen's only evidence in response to PDOA's motion for summary judgment was Turnbow's testimony, which was inadmissible; thus, summary judgment was proper. Therefore, the Court of Appeals affirmed the judgment of the Hancock Country Circuit Court.

Judge McDonald concurred, noting that the court should be mindful of holding expert witnesses in civil cases to a higher *Daubert* standard than those in criminal cases.

Briefed by [Lauren Rogers](#)

Hadley v. FedEx Ground Package Sys. Inc. - Civil Procedure – Service of Process – Tolling of Statute of Limitations – On January 31, 2014, a car accident occurred when Steve Otto, while driving a truck owned by FedEx, rear-ended William K. Hadley. On January 31, 2017, Hadley filed a complaint against Otto and FedEx in the Desoto County Circuit Court, precisely one day before the statute of limitations expired. Hadley attempted to serve FedEx on its Mississippi registered agent, CT Corporation System, via certified mail, and

after much difficulty in locating Otto, attempted to serve Otto via publishing notice in the *Desoto Times Tribune* for three consecutive weeks. Hadley nonetheless failed to serve either of the defendants within the 120-day deadline prior to the expiration of the statute of limitations. On July 20, 2017, FedEx and Otto filed motions to dismiss Hadley's complaint for want of service. Hadley filed a motion for additional time to serve the parties along with a motion for leave to amend the complaint to add J. Delivery Services, Otto's actual employer at the time of the accident, as a party to the action. The circuit court granted the defendant's motion to dismiss, finding that Hadley had failed to properly serve the defendants and failed to show good cause for invalid service. The circuit court also denied Hadley's motion for leave to amend his complaint. Hadley appealed.

According to Miss. R. Civ. P. 4(h), plaintiffs are required to serve defendants with a copy of the complaint and summons within 120 days of filing the complaint in order to effectively put defendants on notice of a pending lawsuit. Because service was not perfected within that time period, the statute of limitations expired, so dismissal of the plaintiff's case with prejudice was warranted. Hadley failed to serve FedEx because the only attempt to serve FedEx was by certified mail upon its registered agent, CT Corporation System, and under Miss. R. Civ. P. 4(d)(4), service of process is proper by delivery to its registered agent, not by certified mail. Further, there was no evidence that Hadley attempted personal service or service by mail to any of Otto's listed addresses. His attempts to locate Otto did not fall under any of the "diligent inquiry" requirements of Miss. R. Civ. P. 4(c)(4)(A) lending to the availability of service by publication; thus, Otto was never properly served. Finally, because Hadley failed to properly serve Otto and FedEx, thereby dismissing his complaint as time-barred, the motion for leave to amend the complaint to add J. Delivery Services as an additional party was moot. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Briefed by [Carson Phillips](#)

[Hudspeth Reg'l Ctr. v. Mitchell](#) - Workers' Compensation – Wage-Earning Capacity – Rebuttable Presumption – Linda Mitchell was employed at Hudspeth Regional Center as a nurse supervisor. In September 2011, Mitchell injured her back while at work but returned to the same job six weeks later. After her return to work, Mitchell testified she had the same job role, duties, expectations, and pay as prior to her injury. On June 4, 2012, Mitchell was given notice that she would be terminated due to her refusal to administer care to a patient and multiple other reprimands. Mitchell searched for other jobs but admitted her prior termination made it difficult for her to find a replacement job. In October 2012, she filed a workers' compensation claim. The Administrative Judge ("AJ") found she had experienced a total loss of wage-earning capacity as a result of her injury and awarded her permanent total disability benefits, which was then affirmed by the full Commission and by the Court of Appeals.

The Supreme Court reversed the AJ's decision because the Commission erred by failing to apply a rebuttable presumption of no loss of wage-earning capacity. Where an injured employee returns to work and receives the same or greater earnings as those prior to his injury, there is a rebuttable presumption that he has suffered no loss in his wage-earning capacity. The Supreme Court reversed and remanded to the Commission with the direction to apply the correct legal standard. Instead of applying the standard as directed, the AJ differentiated Mitchell's case. The Court of Appeals found the Commission's findings clearly erroneous and contrary to the overwhelming weight of evidence and reversed and rendered the Commission's decision.

Briefed by [Karen Lott](#)

[Keever v. Miss. Insts. of Higher Learning](#) - Mississippi Tort Claims Act – Notice of Claim Requirements – Appellate Procedure – After a business meeting with the University of Mississippi's Athletic Association on March 8, 2013, Joy Keever and a business associate attended a baseball game in Oxford at the University's

invitation. As they were walking to their car after the game, a four-wheeler owned and operated by the University suddenly approached them from behind. Keever jumped out of the vehicle's path, tripped on rough asphalt, and fell to the ground, crushing the radius and ulna of her left forearm. Keever's attorney in Alabama mailed a notice of claim to the University, whose insurance carrier denied it. She then retained Wayne Ferrell Jr., a Mississippi attorney, who sent a second notice of claim to the University's chancellor and the Mississippi Institutions of Higher Learning, in accordance with MTCA procedures. Due to the one-year statute of limitations, Keever then filed a complaint on March 7, 2014, in the Hinds County Circuit Court. The University moved to dismiss for failure to comply with the MTCA's pre-suit notice requirements in Miss. Code Ann. § 11-46-11(2). After the case was transferred to Lafayette County in 2016, the circuit court granted the University's motion to dismiss on the grounds that Keever's notice of claim letters failed to provide the University with the amount of damages sought, Keever's residential address at the time of injury, and Keever's address at the time the letter was mailed to the University. The circuit court entered a final judgment and dismissed the case with prejudice. Keever appealed.

According to Miss. Code Ann. § 11-46-11(2), the following seven categories of information must be included in a MTCA notice of claim: the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought, and the residence of the person making the claim at the time of the injury and at the time of filing the notice. Because Mississippi courts require substantial compliance with this provision, and because neither of Keever's notice of claim letters included an amount of damages being sought, nor were her residential addresses clearly discernable, the court did not err in granting the University's motion to dismiss. However, the court erred in dismissing the case with prejudice because a properly served complaint should still serve to toll the statute of limitations until the trial court rules otherwise. Therefore, the Court of Appeals affirmed the ruling from the Lafayette County Circuit Court but modified the ruling as dismissal without prejudice.

Briefed by [Tucker Hood](#)

Kronfol v. Johnson - *Daubert* Challenge – Standard of Care – *Batson* Challenge – Barbara Johnson was diagnosed with kidney failure and received dialysis through a port in her arm from 2007 to 2013. Dr. Ned Kronfol was in charge of Johnson's dialysis and kidney care. In April 2013, due to complications with the port in her arm, Dr. Donald Russell placed a temporary port in her neck, where Johnson continued to receive dialysis. Dr. John Lucas III performed a surgical procedure to create a fistula, which was intended to solve the complication of receiving dialysis in her arm. Several weeks later, Johnson presented to the emergency room with pain and swelling in her face, and Dr. Xander Buenafe diagnosed her with sepsis with tachycardia arising from an infected catheter in her neck. Johnson received treatment and was released more than a week later.

In August 2014, Johnson filed a medical malpractice suit against Dr. Lucas and Dr. Russell. In May 2015, she set Dr. Kronfol notice of intent to sue and amended her complaint to add Dr. Kronfol as a defendant in July 2015. Dr. Kronfol filed a motion for summary judgment arguing that Johnson failed to file her claim within the statutory limitation of two years. However, because the trial court's pretrial ruling on the motion for summary judgment was rendered moot by the trial, it is not reviewable on appeal. Dr. Kronfol also argues that the trial court erred in admitting evidence offered by Johnson's expert witness who testified based on 2006 guidelines for nephrologists, which Dr. Kronfol argues are not the standard of care. The expert witness also offered opinions about alternative procedures that should have been done in Johnson's case. Because the expert can testify based on his training and experience as a nephrologist, the trial court did not commit and abuse of discretion in allowing the testimony. Dr. Kronfol also objects to the admission of Dr. Buenafe's testimony

about the high-risk care Johnson received, but Dr. Buenafe's testimony was consistent with Johnson's medical records; thus, no abuse of discretion occurred.

Dr. Kronfol next alleges error because the trial court did not permit him inform the jury of Johnson's claims for negligence against Dr. Lucas and Dr. Russell. Because the jury was still allowed to consider any negligence of Dr. Russell and Dr. Lucas, the trial court did not abuse its discretion in barring evidence of the negligence claims brought by Johnson. Dr. Kronfol also argues that the court erred by excluding Dr. Lucas's testimony, but because his testimony about Johnson's catheters would be outside the scope of his treatment of Johnson, the court did not abuse its discretion in excluding the testimony. Portions of Dr. Russell's testimony were also excluded at trial, but the court did not abuse its discretion in excluding the testimony because it did not result in prejudice or adversely affect a substantial right of Dr. Kronfol. The trial court also permitted Johnson to cross examine witnesses with testimony of other witnesses at trial, which was not an abuse of the court's discretion.

On cross examination, Dr. Kronfol responded by citing two articles, to which Johnson objected, and the court sustained and offered a curative instruction. If any error did occur in the exclusion of evidence, however, it constitutes harmless error. Dr. Kronfol also appeals the admission of Johnson's hospital bill, but because she provided prima facie evidence that her medical bill was necessary and reasonable and Dr. Kronfol had the opportunity to rebut this during cross examination, no error occurred.

Dr. Kronfol requested a jury instruction about the equal probability of causes, but failed to offer evidence showing equal probability during trial. Therefore, the court did not commit an abuse of discretion in refusing the jury instruction. Dr. Kronfol further appeals the denial of his motion to summons a new jury panel and his *Batson* challenges, but because defendants are not entitled to a jury with any particular racial makeup, the court did not commit error in denying either claim. Finally, because the record contained substantial evidence to support the jury's verdict and the overwhelming weight of the evidence was not against the jury's verdict, no abuse of discretion occurred; thus, Dr. Kronfol's motions for directed, JNOV, and a new trial were all properly denied. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court. Briefed by [Jack Schultz](#)

Court of Appeals – Post-Conviction Relief

[Shelton v. State](#) - Guilty Plea – Medication – Ineffective Assistance of Counsel – Gregory Shelton pled guilty to armed robbery and possession of a firearm by a convicted felon. However, Shelton claims that he was under the influence of prescription drugs when he accepted a plea and filed his first Post-Conviction Relief ("PCR") motion, which was denied due to lack of documentation. After receiving a letter from Shelton stating that he was unable to retrieve his medical documentation, the trial court filed an order requiring production of the records. Shelton then filed his second PCR motion, alleging he did not knowingly, intelligently, or voluntarily enter a guilty plea and ineffective assistance of counsel, which was denied. Shelton appealed.

Because the motion was successive and no fundamental Constitutional rights were affected, the motion was procedurally barred. Because the record does not indicate he was on those drugs at the time of his plea or that those drugs would affect his ability to plead guilty, the plea was without issue. Because the drugs did not affect appellant's ability to plea, counsel's assistance was not ineffective. Therefore, the trial court's judgment was affirmed.

Briefed by [James Adamoli](#)

Court of Appeals – Criminal

Gaston v. State - Criminal Procedure – Sentencing – Kidnapping – Autravious Gaston was convicted of one count of grand larceny, two counts of kidnapping, two counts of armed robbery, two counts of sexual battery, and one count of possession of a firearm by a felon. A sentencing hearing was held the same day as his conviction, and, Gaston was sentenced to life imprisonment for the first count of kidnapping. Gaston appealed the life sentence, arguing it was illegal pursuant to Miss. Code Ann. § 97-3-53, stating that any person guilty of kidnapping shall be imprisoned for life if the punishment is so fixed by the jury. If the jury fails to fix the penalty at imprisonment for life, the court shall fix the penalty at not less than one year nor more than thirty years.

Because Mississippi law is clear that a jury must pre-fix a sentence of life imprisonment for kidnapping in its verdict or else the trial court is bound by the statutory maximum of thirty years, the trial court reached beyond its statutory limits, resulting in plain error. Therefore, the Court of Appeals reversed and remanded the judgment of the Lowndes County Circuit Court.

Briefed by [Baxter Geddie](#)

Grace v. State - Criminal Procedure – Evidence – Sufficiency – Christopher Grace was found guilty of two counts of armed robbery and one count of felony evasion stemming from a bank robbery allegedly committed by him and his uncle. He was sentenced to two concurrent life sentences pursuant to the armed robbery charges and an additional five years, to run consecutively to the other two sentences, based upon the felony evasion charge. Grace appealed claiming that (1) the evidence was insufficient to support a conviction and (2) the verdict was against the overwhelming weight of the evidence.

Grace argued that the evidence was insufficient to support a conviction because no reasonable juror could have found that he committed the crimes alleged. However, Grace gave a lengthy statement after being *Mirandized*, which was entered at trial and not objected to, which both implicated him in the commission of the crimes and detailed his assistance of his uncle's commission of the crimes. Additionally, multiple bank tellers confirmed Christopher's account of the story in their testimony before the trial court. Therefore, the issue of evidentiary sufficiency was properly left to the jury. Grace additionally argued that the evidence was insufficient to support his convictions because the evidence proving him guilty was "so weak." However, based on Grace's aforementioned statement, and the corroborating testimony of the bank tellers, the evidence against Grace does not "weigh heavily against the jury's verdict" and, therefore, the verdict should not be disturbed. Therefore, the Court of Appeals affirmed the judgment of the Kemper County Circuit Court.

Briefed by [Corban Snider](#)

Grant v. State - Burden of Proof – Testimony – Value of Stolen Property – Milton Grant stole a 2005 black Acura at a gas station after asking the owner to go inside and purchase cigarettes for him. He was convicted of receiving stolen property exceeding \$1,000 but less than \$5,000. Because he was a habitual offender, he was sentenced to life imprisonment without parole. During his appeal, he raised three issues: (1) whether the State presented sufficient evidence to ascertain the value of the stolen property; (2) whether the State used competent evidence to prove his status as a habitual offender; and (3) whether his sentence is unconstitutionally cruel and unusual.

The burden of proof in a criminal prosecution lies on the State to prove every essential element of the crime charged beyond a reasonable doubt. The only testimony providing evidence as to the value of the car was from Detective Magee, which was insufficient because on two subsequent occasions he admitted to not

knowing the value of the vehicle; thus, the State failed to prove the elements of the offense. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

Presiding Judge Carlton dissented, finding that the testimony of Detective Magee's approximate value of the car based on the value of other 2005 black Acuras was sufficient to prove that element of the crime, and that juries may determine value based upon their common experience, reason, and common sense.

Briefed by [Andie Szabo](#)

[Williams v. State](#) - Criminal Law – Right to Self-Representation – Exceptions – In 2017, Frankie L. Williams was found guilty by jury trial of murder in the 2012 shooting death of Patrick Tate and possession of a firearm by a convicted felon. Williams appealed his conviction. He raised two issues: (1) the trial court had violated his right to self-representation and (2) he had received ineffective assistance of counsel.

Williams based his claim that his right to self-representation had been violated on two exchanges before his trial. The first was between his defense and the trial court, where the court said that Williams would not be allowed to represent himself because “he is not qualified to represent himself.” The second was between Williams and the court directly, where Williams spoke about his lack of confidence in one of his two attorneys. Again, the court said that the trial would continue with Williams being represented by his counsel.

The Court of Appeals found that in these exchanges, neither Williams nor his defense specifically invoked his right to represent himself – only Williams's dissatisfaction with his current counsel. Furthermore, the Court of Appeals emphasized that a trial court may rightfully make an exception to a defendant's right to represent himself where the defendant is so physically or mentally incompetent to speak to the jury that his right to a fair trial is endangered. Based on the content of Williams's statements, the Court of Appeals held that, even if Williams had properly invoked his right to self-representation, the trial court's refusal would have qualified for this exception. Therefore, the Court of Appeals affirmed the judgment of the trial court.

Williams based his claim of ineffective assistance of counsel on his defense attorneys' failing to stipulate to his felony conviction and allowing the prosecution to enter the conviction into evidence. The Court of Appeals stated that such claims must be made in the form of a post-conviction release. Further, the court noted that the failure to stipulate to prior convictions enjoys a strong presumption that the failure is a part of the defense's trial strategy. Therefore, the Court of Appeals affirmed by dismissing Williams's claim without prejudice so that he may file a motion for post-conviction relief.

Judge Westbrook concurred in part and dissented in part, agreeing to the dismissal of Williams's claim of ineffective counsel but disagreeing with the dismissal of his claim that his right to self-representation had been violated. Judge Westbrook argued that the 2017 state rules of procedure allowed that when a court first becomes aware a defendant wishes to act as his own counsel, the court must perform an examination. The judge did not hold with the majority that Williams had to declare outright his desire to represent himself but found that the quality of the pre-trial exchanges informed the court of Williams's desire to represent himself.

Briefed by [Michael Lambert](#)

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