

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 18, 2018**SUPREME COURT - CRIMINAL CASES****RAY V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - SEARCHES & SEIZURES - ABANDONED PROPERTY - No seizure occurs when officers examine the contents of a container after it has been voluntarily abandoned

CRIMINAL PROCEDURE - CONFRONTATION CLAUSE - INFORMANT IDENTITY - According to Miss. R. Crim. P. 17.6(a)(2), disclosure of an informant's identity shall not be required unless a failure to disclose his/her identity will infringe the constitutional rights of the accused, and/or the informant was an eyewitness to the events constituting the charge against the defendant

CRIMINAL PROCEDURE - INDIGENT DEFENDANT - LINDSEY BRIEF - *Lindsey* establishes the procedure to govern cases where appellate counsel represents an indigent criminal defendant and does not believe that his or her client's case presents any arguable issues on appeal

FACTS

Investigators with a Stone County narcotics task force received a tip from an informant about an individual offering to sell crack cocaine. Investigators Aaron Grob and Chris Ory met with the informant and directed him to arrange a drug sale with the individual for later that day at a gas station in McHenry, Mississippi. The informant then told police the individual was African-American, was driving a white SUV, and would park on the north side of the gas station parking lot. The investigators set up surveillance across the street from the gas station, and observed a black male driving a white Toyota Sequoia with Harrison County plates park on the north side of the parking lot. Ory approached the SUV from the front while Grob parked behind the SUV. Grob called the number of the individual, provided by the informant, and the driver answered and began speaking. Grob then approached the SUV on the passenger's side. Not seeing Ory on the driver's side, the individual, Garrett Eugene Ray, threw a cigarette pack out the window, which Ory caught after it hit him in the chest. The cigarette pack contained two rocks of crack cocaine. Investigators detained Ray, brought him back to the task force, and provided him with his *Miranda* rights. Ray confessed to manufacturing and selling crack cocaine. Before Ray's trial, he filed a motion to require the State to disclose the identity of the informant, which the trial judge denied. After a mistrial, Ray was convicted in his second trial of possessing cocaine with intent to distribute and sentenced to sixteen years as a habitual offender. Ray's appellate counsel filed a *Lindsey* brief, claiming there were no arguable issues for appeal. Ray appealed.

ISSUES

Whether (1) Ray's arrest was the result of an unlawful search and seizure; (2) Ray was wrongfully denied his right to confront the confidential informant; and (3) Ray's trial and appellate counsel were constitutionally deficient.

HOLDING

(1) Because the officers were able to corroborate every aspect of the informant's tip, giving them probable cause for the warrantless arrest, and because Ray voluntarily abandoned the cigarette pack he complains of by throwing it out the window, there was no unlawful search and seizure. (2) Because the informant was not an eyewitness to Ray's criminal activity, and the informant's identity was not material to Ray's drug possession, Ray was not improperly denied his right to confront the witnesses against him. (3) Because Ray points to no error on the part of trial counsel, and appellate counsel certified she had thoroughly reviewed the record, and followed correct procedure under *Lindsey*, Ray's trial and

appellate counsel were not constitutionally deficient. Therefore, the Supreme Court affirmed the judgment of the Stone County Circuit Court.

Affirmed - 2016-KA-01555-SCT (Jan. 18, 2018)

Opinion by Justice Maxwell

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

Erin Elizabeth Briggs & George T. Holmes (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Daniel Tankersley](#)

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SUPREME COURT - ORDERS

IN RE MISSISSIPPI RULES OF APPELLATE PROCEDURE

COURT ORDER

ORDER

This en banc Order by the Mississippi Supreme Court, made in consideration of the court’s own motion, amends Rule 22(a) of the Mississippi Rules of Appellate Procedure. This amendment to the Rules became effective upon entry of the Order on January 10, 2018.

[Exhibit A](#), referenced in and attached to the Order, shows that Rule 22(a) is amended to correct a grammatical error.

Ordered 89-R-99027-SCT (Jan. 10, 2018)

En Banc Order by Presiding Justice Randolph

Briefed by [Mary-Katherine Black](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 16, 2018

COURT OF APPEALS - CIVIL CASES

ORCUTT V. CHAMBLISS

CIVIL - REAL PROPERTY

PROPERTY - DELINQUENT SALE - NOTICE OF RIGHT TO REDEEM - When property is sold for unpaid ad valorem taxes, the chancery clerk must give the owner notice of his right to redeem the property by registered or certified mail to the owner’s usual physical or mailing address, personal notice in the same manner as in Miss. R. Civ. P. 4(d)(1), and publication in the county where the land was located; any deviation from the procedures renders the tax sale void

PROPERTY - ADVERSE POSSESSION - ELEMENTS - In order to establish a claim of adverse possession, a claimant must prove by clear and convincing evidence that the possession was (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful

PROPERTY - TAX SALE - REDEMPTION - Pursuant to the 1993 version of Miss. Code Ann. §§ 27-45-3, a tax sale purchaser may redeem the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent per month, or any fractional part thereof, from the date of such sale, and all taxes and costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent per month, or any fractional part thereof; when interest is allowable, it should be computed on a simple rather than compound basis

FACTS

Eddie Orcutt purchased a parcel of property at a tax sale in 1993 and was issued a tax deed. The tax deed indicated the taxes had been assessed to the “Henry Chambliss Estate.” In 2014, Orcutt filed a complaint in chancery court to quiet and confirm the tax title to the property. Charlie Chambliss, who had previously received interest in the property via warranty deed, responded to Orcutt’s complaint alleging that he had not received notice of the tax sale and, in the alternative, had acquired the property by adverse possession. The chancellor declared the tax sale void for lack of notice and found that Orcutt had failed to prove ownership by adverse possession. Orcutt was awarded statutory damages. The chancellor limited the damages to taxes and compound interest paid in the years 1993 through 1995 finding that amendments made to the controlling statutes in 1995 precluded entitlement to reimbursement for taxes and interest paid in the following years. Orcutt appealed.

ISSUES

Whether the chancellor erred in (1) voiding the tax sale for lack of notice; (2) finding Orcutt failed to prove ownership of the property by adverse possession; and (3) calculating and limiting the statutory damages.

HOLDING

(1) Because there was no evidence regarding the chancery clerk’s requirements for notice nor any evidence that personal service was attempted, the chancellor did not err in declaring the tax sale void for lack of notice. (2) Because there was no clear and convincing evidence to prove four of the required elements, the chancellor did not err in finding Orcutt failed to prove adverse possession. (3) Because the damages were limited to the years preceding the 1995 amendment and computed interest on a compound basis, the chancellor’s calculation of damages was in error. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Jefferson County Chancery Court.

PARTIAL CONCURRENCE/DISSENT

Judge Griffis argued the majority failed to identify or follow an applicable standard of review. Additionally, he contended the majority failed to address and find fundamental error in the chancellor’s decision to grant Chambliss’s motion for involuntary dismissal. He further argued the majority failed to address the portion of the final judgment where the chancellor found that Chambliss disavowed his ownership or any rights to the property. Thus, he alleged the majority affirmed a judgment that concluded a parcel of property was ownerless and awarded a monetary judgment against no one. However, he did concur with the majority’s determination of error in the chancellor’s calculation of damages.

Affirmed in Part; Reversed & Remanded in Part - 2016-CA-00902-COA (Jan. 16, 2018)

En Banc Opinion by Chief Judge Lee Partial Concurrence/Dissent by Presiding Judge Griffis

Hon. E. Vincent Davis (Jefferson County Chancery Court)

Lucien C. Gwin Jr. for Appellant - *Pro se* for Appellees

Briefed by [Marilyn Higdon](#)

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SANDROCK V. SANDROCK

CIVIL - OTHER

CIVIL PROCEDURE - FINAL JUDGMENT - DECLARATORY RELIEF - Once a judgment becomes final, it is dispositive as to all issues arising from a claim, and one cannot do “what should have been an appeal now in a declaratory judgment action”

CIVIL PROCEDURE - RES JUDICATA - FOUR IDENTITIES - Res judicata requires the same identity of (1) the subject matter of the action, (2) the cause of action, (3) the parties to the action, and (4) the quality or character of the person against whom the claim is made

FACTS

On August 1, 2005, Jason Sandrock entered into a mortgage agreement (“Agreement”) with his father, Fred, to pay for a structure on his parents’ property. The Agreement outlined a payment plan in which Jason would make 300 monthly payments of \$1,000 to Fred for a home that he and his wife, Cassie, had built there. However, on August 29, 2005, Hurricane Katrina severely damaged the home. Jason’s State Farm insurance policy issued two checks to him and his parents, including one for insurance proceeds and one for MDA grant money, which were to reimburse them for the loss of the home. On January 15, 2009, Jason and Cassie divorced. The divorce judgment stated that Jason and Cassie would equally divide the proceeds from insurance and grant monies and Cassie would execute a quitclaim deed of the property to Jason. The court found that Jason did not owe a debt to his parents for the construction of the home on their property; rather, the money used to construct the home was considered “a marital gift.” On March 26, 2009, Cassie filed a motion for contempt against Jason for failing to pay the court-ordered judgment, and Jason filed a motion to dismiss. He also filed a counterclaim, asking the court to correct the divorce judgment and to indicate that the property belonged to his parents and that he paid all funds received from insurance and grants to satisfy a mortgage obligation. Jason’s parents filed a motion to intervene, which was denied. Instead of appealing it, they filed a motion for judicial foreclosure on the property against Jason and Cassie. The motion for judicial foreclosure was granted, but the judgment emphasized that it did not alter the 2009 divorce judgment between Jason and Cassie. On December 26, 2013, Jason filed a complaint, seeking declaratory relief and an injunction against Cassie and his parents. He requested the court to declare that he owed a debt to his parents and that he paid the insurance and grant monies to them. He also asked the court to declare that he owed nothing to Cassie and that Cassie would be enjoined from enrolling the divorce judgment against him. The chancery court denied Jason’s claims. Jason filed a motion to reconsider, and his parents filed a separate Rule 59 motion. The court granted the motion to reflect that Jason’s mother had been a witness but denied all other relief. Jason’s parents joined him as appellants, and they appealed.

ISSUES

Whether (1) Jason’s parents’ due process rights were violated; (2) the divorce judgment was a final judgment; and (3) payment of the divorce judgment would unjustly enrich Cassie.

HOLDING

(1) Because Jason’s parents had already received insurance proceeds from Jason and payment of proceeds to Cassie would not cause them to lose any money they invested in constructing the home on their property, the court’s decision not to adjudicate Jason’s parents’ rights as mortgage holders did not violate their due process rights. (2) Because Jason failed to appeal the 2009 divorce judgment and his parents failed to appeal the denial of their motion to intervene, the divorce judgment constituted a final judgment. Further, one cannot do “what should have been an appeal now in a declaratory judgment action.” (3) Because the divorce judgment is considered a final judgment and res judicata barred Jason’s request for declaratory relief, a claim that Cassie would be unjustly enriched failed. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Chancery Court.

Affirmed - 2016-CA-00803-COA (Jan. 16, 2018)

Opinion by Judge Barnes

Hon. James B. Persons (Hancock County Chancery Court)

Renee M. Porter for Appellants - Patrick Taylor Guild for Appellee

Briefed by [Katherine Farese](#)

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COURT OF APPEALS - CRIMINAL CASES

SHEPARD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTION - DIRECT EVIDENCE - Evidence does not always fall neatly into one category, but examples of direct evidence include eyewitness testimony to the gravamen of the offense charged

CRIMINAL PROCEDURE - JURY SELECTION - BATSON CHALLENGE - The party objecting to a preemptory strike of a potential juror must make a prima facie showing that race was the criterion for the strike, the burden then shifts to the opposing party to articulate a race-neutral reason for excluding the juror, then the court must determine whether the reason given for the strike was pretext for discrimination

CRIMINAL - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL - The court may address an ineffective assistance of counsel claim on direct appeal if the presented issues are based on facts fully apparent from the record

FACTS

Donte Shepard was found guilty of capital murder after participating in a burglary where the resident was shot and killed. Willie Thomas, a thirteen-year-old kid walking past the house at the time of the shooting, identified Shepard and two other individuals fleeing from the house after hearing gunshots. Thomas further testified at trial that the two other men, Johnson and Perkins, were inside the house while Shepard was outside on the phone, “looking out.” Shepard and the other two individuals were arrested based on Thomas’s statement. A ballistics test matched the projectiles found on scene and during the autopsy to a pistol found in Johnson’s possession, leading to Shepard’s conviction. Shepard appealed.

ISSUES

Whether (1) Thomas’s testimony was sufficient to support Shepard’s conviction; (2) the verdict was contrary to the weight of the evidence; (3) the court should have allowed Shepard’s requested circumstantial evidence jury instruction; (4) the trial court erred in ruling that Shepard’s move to strike a white male juror was pretext for discrimination; (5) Shepard received ineffective assistance of counsel by eliciting testimony that Shepard had been accused of and possibly admitted to burglarizing Brown’s house a previous time and by failing to request an alibi instruction.

HOLDING

(1) Because Thomas’s testimony, along with detectives investigating the scene, was presented to show that Shepard assisted or participated in the crime, the evidence was sufficient to support his conviction. (2) Because Thomas’s statement and trial examination were not inconsistent and unreasonable, Shepard’s conviction was not contrary to the weight of the evidence. (3) Because Thomas provided direct evidence through eyewitness testimony, the case was not based on circumstantial evidence. As such, a jury-instruction on circumstantial evidence was not warranted. (4) Because the record indicated Shepard’s reason for striking Barber was influenced by the fact he was a white educated male, the trial court properly concluded that such an explanation was a pretext for discrimination. (5) Because Shepard based his claim for ineffective assistance of counsel on facts not fully apparent from the record, the claim could not be adequately addressed on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2016-KA-01567-COA (Jan. 16, 2018)

Opinion by Presiding Justice Griffis

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

George T. Holmes (Pub. Def. Office) for Appellant - Alicia M. Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [Jay Michael Patterson](#)

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