

MISSISSIPPI SUPREME COURT DECISIONS – JULY 19, 2018**SUPREME COURT - CRIMINAL CASES****HARVEY V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - APPEAL - *LINDSEY* - On appeal, defendant’s counsel may file a brief certifying, after a diligent search of the record, that there are no arguable issues for appeal; after filing, counsel must also then inform the defendant of his right to file a *pro se* brief

CRIMINAL PROCEDURE - APPEAL - *LINDSEY* - Upon review of the record, if the Court finds that sufficient evidence was presented to support conviction, the lower court’s judgement will be affirmed

CRIMINAL LAW - FIRST-DEGREE MURDER - ELEMENTS - Under Miss. Code Ann. § 97-3-19, the State is required to prove that the defendant killed another without the authority of law with deliberate design

FACTS

Henry Harvey was arrested for the murder of Eddie Briggs. At trial, evidence showed that the firearm used to kill Briggs was within Harvey’s proximity, Harvey’s DNA was on the firearm, and witnesses placed Harvey at the crime scene and further testified that Harvey had been fighting with the victim immediately before the victim was shot. Surveillance cameras also showed Harvey dragging the victim’s body. Harvey was convicted of first-degree murder and sentenced to life. Harvey filed for a judgment notwithstanding the verdict, or, in the alternative, a new trial. The trial court denied Harvey’s motion. Upon reviewing the record, Harvey’s counsel filed a *Lindsey* brief. Harvey did not file a *pro se* brief. Harvey appealed.

ISSUE

Whether any arguable issues existed to support an appeal.

HOLDING

Because the State provided sufficient evidence to support a conviction under Miss. Code Ann. § 97-3-19(1)(a), no arguable issues existed to support an appeal. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-01030-SCT (July 19, 2018)

Opinion by Presiding Justice Randolph

Hon. Christopher Louis Schmidt (Harrison County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Yance Falkner](#)

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THOMAS V. STATE**CRIMINAL - FELONY**

SENTENCING - GRAND LARCENY - VALUE OF PROPERTY - Miss. Code Ann. § 97-17-42(2) provides for a maximum of ten years' imprisonment for larceny of property valued at \$5,000 or more, but less than \$25,000

SENTENCING - HABITUAL OFFENDER - REQUIREMENTS - Miss. Code Ann. § 99-19-81 provides that a defendant does not have to actually serve time in prison but be sentenced to one or more years in prison to qualify as a habitual offender

APPELLATE REVIEW - LINDSEY PROCEDURE - ARGUABLE ISSUES - As part of a *Lindsey* procedure, the court must determine, based on a review of the record and any pro se brief, whether any arguable issue exists

FACTS

Andre Thomas was convicted of felony shoplifting for stealing merchandise valued at \$5,356 and was charged as a habitual offender. Thomas had previously been convicted of three other felonies and was sentenced to multiple terms in prison. Thomas appealed.

ISSUES

Whether (1) the trial court erred in applying Miss. Code Ann. §97-17-41 in sentencing; (2) the trial court erred in sentencing Thomas as a habitual offender; and (3) the record contained any arguable issue warranting appellate review.

HOLDING

(1) Because the value of the merchandise was between \$5,000 and \$25,000, Thomas was properly sentenced to the maximum term of ten years' imprisonment. (2) Because Thomas had previously been convicted of two felonies arising out of separate incidents and sentenced to at least one year in prison, Thomas was properly sentenced as a habitual offender. (3) Because the record did not contain any arguable issues, appellate review was not warranted. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-00904-SCT (July 19, 2018)

Opinion by Chief Justice Waller

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

Justin Taylor Cook & George T. Holmes (Pub. Def. Office) for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Zachary Flowers](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 17, 2018

COURT OF APPEALS - CIVIL CASES

MALOUF V. EVANS

CIVIL - CONTRACT

CONTRACTS - PARTNERSHIP - ELEMENTS - The main elements of a partnership include the intent of the parties to form a partnership, the control of operations, and profit sharing

UNIFORM PARTNERSHIP ACT - LIABILITY - THEORIES - The Uniform Partnership Act recognizes multiple theories of liability under which a party may be held liable: a party may be liable as a partner, a joint venturer, or as a purported partner

FACTS

Michael Malouf went to Lake Harbour Marine and made an agreement with Michael Evans to replace Malouf's boat engine and perform repairs. Malouf spoke repeatedly with Lisa Evans at Lake Harbour Marine, who told Malouf that the boat was being repaired but some parts were missing. After having the parts delivered, Malouf later retrieved the boat from Lake Harbour Marine and received an invoice from Lisa that detailed the work that was done to the boat. Malouf tested the boat and found that not all of the necessary repairs had been performed. Malouf sued Lisa Evans,

Lake Harbour Marine, and Michael Evans, in the County Court of Rankin County. The trial court granted Lisa’s motion for a directed verdict, finding that there was insufficient evidence to prove that Lisa was in a partnership with Michael Evans, or that Lisa was responsible for any misrepresentations made on behalf of Lake Harbour Marine. Malouf filed a motion for reconsideration, which was denied by the trial court. Malouf appealed both the trial court’s judgment and order denying the motion for reconsideration to the Circuit Court of Rankin County. The circuit court affirmed the decision of the county court. Malouf appealed.

ISSUES

Whether (1) Lisa and Mike Evans were in a partnership when Lake Harbour Marine performed work on Malouf’s boat; (2) Malouf’s claim was viable under the Uniform Partnership Act; and (3) the trial court made inferences favorable to Lisa.

HOLDING

(1) Because Malouf failed show that Lisa and Michael Evans had the intent to form a partnership, that Lisa Evans had control over business operations when Michael was alive, or that Lisa and Michael Evans profited together, a partnership did not exist. (2) Because handing a customer a receipt does not suggest that Lisa was in a partnership, the issue was without merit. (3) Because statements that Malouf had been “hoodwinked, bamboozled, and cheated” are not inferences about the existence of a partnership between Lisa and Mike, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Judge Greenlee argued that the trial court failed to properly consider the Uniform Partnership Act (UPA), which recognizes multiple theories in which Lisa could have been a partner. Judge Greenlee argued that Malouf showed evidence that Lisa presented herself as a partner or joint venturer, which would trigger liability under the UPA.

Affirmed - 2017-CA-00374-COA (July 17, 2018)

En Banc Opinion by Judge Westbrook - Dissent by Judge Greenlee

Hon. John Huey Emfinger (Rankin County Circuit Court)

Michael J. Malouf & Robert Eugene Jones II for Appellant - Christopher A. Tabb for Appellee

Briefed by [Ryan Overturf](#)

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PATTERSON V. MI TORO MEXICAN, INC.

CIVIL - PERSONAL INJURY

PERSONAL INJURY - PREMISES LIABILITY - DANGEROUS CONDITION - A property owner cannot be found liable for the plaintiff’s injury where no dangerous condition exists

PREMISES LIABILITY - SUMMARY JUDGMENT - INSUFFICIENT EVIDENCE - Plaintiff’s own opinion that a floor or ramp is “slick” or “slippery” is insufficient to create a genuine issue as to whether a dangerous condition exists

FACTS

In November 2014, Bruce Patterson slipped and fell on a wheelchair ramp when exiting Mi Toro, a Mexican restaurant in Corinth. Patterson claimed that the ramp was painted yellow and “slick” from rain. He also claimed that the ramp appeared freshly painted on the day he fell with no “gravel” or “sand” in the paint. In January 2016, Patterson sued Mi Toro in circuit court, alleging that he suffered injuries because Mi Toro failed to keep its property in a safe condition. The manager of Mi Toro testified that the ramp was not freshly painted and had not been painted since around 2012. The manager also testified that he was not aware of any other customer who had ever slipped and fallen on the ramp in the past twenty years. After discovery, Mi Toro moved for summary judgment claiming there was no evidence of a

dangerous condition on the premises at the time and place of Patterson's fall. The circuit court agreed that there was no genuine issue of material fact and granted Mi Toro's motion for summary judgment. Patterson appealed.

ISSUE

Whether Patterson presented sufficient evidence to create a genuine issue of fact as to whether the wheelchair ramp was a dangerous condition.

HOLDING

Because Patterson's only evidence of a dangerous condition was his own opinion that the ramp was "slick," he failed to provide sufficient evidence to create a genuine issue as to whether the wheelchair ramp was a dangerous condition. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2017-CA-01113-COA (July 17, 2018)

Opinion by Judge Wilson

Hon. Paul S. Funderburk (Alcorn County Circuit Court)

Brian L. Starling for Appellant - Marc A. Sorin for Appellee

Briefed by [Natalie McCarty](#)

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PRAIRIE FARMS DAIRY & ACE AM. INS. CO. V. GRAHAM

CIVIL - WORKERS' COMPENSATION

WORKERS COMPENSATION - STANDARD OF REVIEW - SUBSTANTIAL EVIDENCE - Substantial evidence requires more than a mere scintilla of evidence, but does not rise to a preponderance of the evidence standard; the Court of Appeals may not reweigh the evidentiary findings of the Commission absent clear legal error

WORKERS COMPENSATION - CAUSATION - CAUSAL CONNECTION - Where there is conflicting expert evidence of a causal connection, the Court of Appeals will affirm the findings of the Commission

FACTS

Gregory Graham injured his knee delivering milk for Prairie Farms Dairy in 2014. Graham received workers' compensation payments for surgery and physical therapy to improve his condition. The next year, he fell at his home and aggravated a prior, separate injury in his back. Following a series of doctors' visits, Graham filed workers' compensation claims for the newly complicated back injury. Prairie Farms admitted responsibility for the knee injury but denied liability for the back injury. The administrative judge ordered an Employer Medical Evaluation (EME). Following the EME, the administrative judge found that Graham sustained a fifty percent industrial loss of the use of his left knee, and he subsequently suffered a compensable back injury arising out of the 2014 knee injury. Prairie Farms appealed the decision to the Mississippi Workers' Compensation Commission. The Commission affirmed the administrative judge's findings. Prairie Farms appealed.

ISSUES

Whether the Commission erred by affirming the administrative judge's findings that Graham (1) sustained a 50% industrial loss of use of his left knee and was entitled to disability benefits; and (2) sustained a compensable back injury and was entitled to related medical expenses and temporary total disability benefits.

HOLDING

(1) Because a doctor supported the medical claim that Graham lost wages due to his knee injury, there was substantial evidence to support the Commission's finding that he sustained a fifty percent industrial loss of use of his left knee and was entitled to disability benefits. (2) Because a doctor supported the medical claim that Graham's aggravated back injury was causally connected to his knee injury, there was substantial evidence to support the Commission's finding that he sustained a compensable back injury and was entitled to related medical expenses and temporary total disability benefits. Therefore, the Court of Appeals affirmed the judgment of the Commission.

Affirmed - 2017-WC-01437-COA (July 17, 2018)

Opinion by Chief Judge Lee

Miss. Workers' Compensation Comm'n

John S. Gonzalez & Lindsey Blackwell Harris for Appellants - James Kenneth Wetzel & Garner James Wetzel for Appellee

Briefed by [David Wellen](#)

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ROGERS V. ROGERS

CIVIL - WILLS, TRUSTS, & ESTATES

ESTATE PLANNING - WILLS - UNDUE INFLUENCE - The presumption of undue influence arises if the contestant proves a (1) a confidential relationship; and (2) the beneficiary's active involvement or other suspicious circumstances in the execution of the will

UNDUE INFLUENCE - PEREMPTORY INSTRUCTION - FREE WILL - A presumption of undue influence will be raised, warranting a peremptory instruction, if a preponderance of the evidence shows the will was not a product of free will

FACTS

Roselle Rogers and her sons Frederick, Walter, and William Rogers entered into a partnership agreement to manage Roselle's timber holdings and estate. After a disagreement, Frederick requested out of the partnership, and Roselle subsequently changed her will to reflect the new partnership make-up, which Frederick alleged was the result of undue influence. The jury found no evidence of undue influence. Frederick appealed.

ISSUES

Whether the chancellor erred in (1) failing to give a peremptory instruction that there was a presumption of undue influence; and (2) finding there was substantial evidence to support the jury's verdict.

HOLDING

(1) Because there was no confidential relationship that gave rise to suspicious circumstances in the execution of the will, the chancellor did not err in refusing to give a peremptory instruction that there was a presumption of undue influence. (2) Because Roselle clearly executed the will through her own initiative, there was substantial evidence to support the jury's verdict. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

Affirmed - 2016-CA-00821-COA (July 17, 2018)

Opinion by Judge Wilson

Hon. Robert L. Lancaster (Lauderdale County Chancery Court)

Eddie Jacob Abdeen, Sam Starnes Thomas, & Benjamin Adams Duncan for Appellant - Robert H. Compton, Grace Watts Mitts, & John G. Compton for Appellees

Briefed by [Karen Lott](#)

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TURNER V. HALL

CIVIL - STATE BOARDS & AGENCIES

APPELLATE PROCEDURE - MOOTNESS - GROUNDS FOR DISMISSAL - An appeal is moot when a movant claims an illegal revocation of earned time delayed his release but is then subsequently released on probation during the pendency of the appeal

APPELLATE PROCEDURE - REVIEW - MOOTNESS - A case is moot where a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant

FACTS

After inmate Roderick Turner violated prison rules, the Mississippi Department of Corrections revoked 180 days of Turner's earned time. Turner filed a complaint for judicial review claiming this was an illegal revocation. The Rankin County Circuit Court dismissed Turner's complaint as untimely. Turner appealed, but was released on probation during the pendency of the appeal.

ISSUE

Whether a controversy for review existed.

HOLDING

Because Turner was released on probation during the pendency of his appeal, he could no longer show that a judgment in his favor would be of any practical benefit to him, and as a result of his release no controversy for review existed. Therefore, the Court of Appeals dismissed Turner's appeal as moot.

Appeal Dismissed - 2017-CP-00800-COA (July 17, 2018)

Opinion by Judge Carlton

Hon. William E. Chapman III (Rankin County Circuit Court)

Pro se for Appellant - Darrell Clayton Baughn for Appellees

Briefed by [Luke Phillips](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

DYE V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL LAW - SEXUAL BATTERY OF A MINOR - ELEMENTS - Miss. Code Ann. § 97-3-95(1)(d) states that a person is guilty of sexual battery if he or she engages in sexual penetration with a child under fourteen years of age if the person is twenty-four or more months older than the child.

POST-CONVICTION RELIEF - NOTICE - INDICTMENT - An indictment which states the statutory language is generally sufficient to inform the accused of the charge against him

FACTS

Charles Dye was indicted and pled guilty to sexual battery against a minor under fourteen years of age. Four months after entering this plea, Dye filed a motion for post-conviction relief on the grounds that his indictment failed to include either his or his alleged victim's specific ages or birthdates. His motion was dismissed by the circuit court as without merit. Dye appealed.

ISSUE

Whether the trial court erred by dismissing Dye's motion for post-conviction relief.

HOLDING

Because an indictment is legally sufficient so long as, taken as a whole, it clearly describes the nature and cause of the charge against the accused, and because Dye's indictment specifically cited the statute under which he was indicted and tracked the language of the statute, the trial court did not err in dismissing Dye's motion for post-conviction relief. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-CP-00799-COA (July 17, 2018)

Opinion by Justice Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Kaylyn Havrilla McClinton (Att’y Gen. Office) for Appellee

Briefed by [Jon-Paul Bushnell](#)

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FLUKER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - SUCCESSIVE MOTIONS – PROCEDURAL BAR - An order denying a PCR motion shall be conclusive until reversed, and shall be a bar to a second or successive PCR motion

POST-CONVICTION RELIEF - FRIVOLOUS MOTIONS – TIME EARNED - A prisoner held within the Department of Corrections may forfeit time earned for filing a frivolous motion according to Miss. Code. Ann. § 47-5-138(3)

FACTS

Patrick Fluker was committed to the Department of Corrections in 2007 after pleading guilty to armed robbery. He acquired time earned while serving his sentence. Fluker filed four motions seeking post-conviction relief (PCR), and all four were denied. The circuit court denied Fluker’s fifth motion as procedurally barred. The Court of Appeals affirmed the circuit court’s judgment and stripped Fluker of his time earned pursuant to Miss. Code. Ann. § 47-5-138(3) for bringing a frivolous motion and appeal. Fluker appealed.

ISSUE

Whether the motion and appeal were frivolous.

HOLDING

Because the UPCCRA bans successive PCR motions and none of Fluker’s issues involved fundamental rights, the motion was considered frivolous and Fluker’s time served was properly forfeited. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-CP-00734-COA (July 17, 2018)

Opinion by Judge Wilson

Hon. Robert B. Helfrich (Forrest County Circuit Court)

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

Briefed by [Drey Russell](#)

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COURT OF APPEALS - CRIMINAL CASES

ADAMS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - UNLAWFUL POSSESSION - CELL PHONES - It is unlawful for any prisoner to be in possession of a cell phone while incarcerated

CIVIL PROCEDURE - JURY VERDICT - SUFFICIENT EVIDENCE - When there is sufficient evidence to support the jury's verdict, the Court may sustain the decision

CIVIL PROCEDURE - APPEALS - ARGUABLE ISSUES - In accordance with *Taylor*, when there are no arguable issues for appeal, there is no reason to reverse the trial court's judgment

FACTS

On May 5, 2016, Latterance Dontae Adams was convicted for the unlawful possession of a cell phone while confined in a correctional facility. During trial, Michael Jones, a security captain at Walnut Grove Correctional Facility, testified that Adams, along with two other inmates, were found with cell phones in their possession. Adams argued that Jones's allegations were not true and that he, along with the other inmates, were set up. However, the jury found Adams guilty. He was sentenced to fifteen years in the custody of the Mississippi Department of Corrections. Adams appealed.

ISSUE

Whether the trial court erred in sustaining the jury's verdict.

HOLDING

Because there was sufficient evidence to support the jury's verdict, the trial court did not err in sustaining the jury's verdict. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2017-KA-00446-COA (July 17, 2018)

Opinion by Judge Wilson

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

Erin E. Briggs (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Whitney Jackson](#)

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JACKSON V. STATE

CRIMINAL - FELONY

EVIDENCE - SEARCH WARRANT - CONFIDENTIAL INFORMANTS' RELIABILITY - The substantial basis standard is met when the affidavit includes a statement that an officer has successfully used a CI's information to prosecute criminal allegations previously and there is corroborating evidence of the CI's truthfulness and reliability

CRIMINAL LAW - EVIDENCE TAMPERING - AUTHENTICATING EVIDENCE - Pursuant to Miss. R. Evid. 901(a), to authenticate or identify an item as evidence, the proponent must (1) produce sufficient evidence to support that the item is what the proponent claims it is; and (2) show no reasonable inference of material tampering or substitution of evidence

CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - REVIEW - On direct appeal, the Court will determine an ineffective assistance of counsel issue if (1) the record affirmatively shows ineffectiveness of constitutional dimensions and (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

FACTS

Herman Jackson was convicted of possessing more than thirty grams but less than one kilogram of marijuana with the intent to distribute after the Clarksdale Police Department (CPD) executed a search warrant, via word from a confidential informant (CI). While in custody, Jackson made three phone calls at the CPD implicating himself as the marijuana owner. Jackson appealed.

ISSUES

Whether (1) the trial court erred in denying the motion to suppress telephone recordings; (2) the search warrant was based on reliable facts; (3) the search warrant was stale; (4) the search warrant was signed by a neutral magistrate; (5) law enforcement tampered with the evidence; (6) there was sufficient evidence to support the verdict; (7) the trial judge

should have been recused; (8) the cumulative errors by the trial court deprived Jackson of a fair trial; (9) Jackson's counsel was ineffective; (10) the State committed prosecutorial misconduct by allowing witnesses to make false statements; (11) the search warrant was based on false testimony; (12) the trial court erred in denying the request for disclosure of the CI's identity; and (13) the trial court abused its discretion when it declined to reduce Jackson's sentence.

HOLDING

(1) Because the State properly authenticated the recordings and there was no violation of the 4th Amendment or Miss. Code Ann. § 41-29-507, the court did not abuse its discretion. (2) Because there was sufficient evidence of the CI's reliability and a description of the property to be seized, the issue was without merit. (3) Because the magistrate had a substantial basis to believe marijuana was at the address, the search warrant was not stale. (4) Because there was no evidence to indicate a non-detached or non-neutral judge, the issue was without merit. (5) Because Miss. R. Evid. 901(a) was satisfied, defense failed to meet their evidence tampering burden. (6) Because the Court found Jackson's evidence tampering without merit, there was sufficient evidence for a jury to draw a reasonable inference of the crime. (7) Because there was no evidence of impartiality, the trial judge didn't abuse his discretion. (8) Because there were no errors, there was no cumulative error. (9) Because there was no record of insufficiency and the parties did not meet the relevant stipulations, the Court denied relief for ineffective assistance of counsel. (10) Because the State did not use false or prejudicial evidence, the issue was without merit. (11) Because the issue was not supported by the record and the search warrant was valid, the issue was without merit. (12) Because the CI was not a material witness, their identity wasn't necessary. (13) Because the State's sentencing recommendation was reasonable, the trial court didn't error. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2015-KA-01240-COA (July 17, 2018)

Opinion by Judge Barnes

Hon. Albert B. Smith III (Coahoma County Circuit Court)

Benjamin Allen Suber, George T. Holmes, & Justin T. Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Brandon Wilson](#)

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MCCRAY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A defendant claiming ineffective assistance of counsel carries the burden to show: (1) counsel's performance was deficient; and, (2) the deficiency prejudiced his defense

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PREJUDICE - To show prejudice, the claimant must show that, but for his attorney's errors, there is a reasonable probability that the result would have been different

CRIMINAL LAW - BURDEN OF PROOF - CIRCUMSTANTIAL EVIDENCE - A conviction may be had on circumstantial evidence alone and such evidence is accorded equal weight as any other kind of evidence; a jury's verdict of guilt based on circumstantial evidence will not be overturned unless the court finds no reasonable jury could have inferred existence of each element of the charge based on the evidence presented

FACTS

Following a jury trial, La'Darrian McCray was convicted of the first-degree murder of Glentez Brown and attempted aggravated assault of Brown's son. At trial, the State presented testimony of Brown's wife, witnesses arriving to the scene of the murder, and police officials. McCray's counsel failed to request a circumstantial-evidence jury instruction. McCray moved for a judgment notwithstanding the verdict, which the trial court denied. McCray was sentenced to life imprisonment for the murder conviction and twenty years for the attempted aggravated-assault conviction. McCray appealed.

ISSUES

Whether (1) McCray received ineffective assistance of counsel; and (2) the trial court erred in denying his motion for a judgment notwithstanding the verdict with respect to the aggravated-assault conviction.

HOLDING

(1) Because a defendant claiming ineffective assistance of counsel must show that, but for his attorney's errors, a reasonable probability exists that the result would have been different, and because McCray did not demonstrate that the jury could not otherwise draw the same conclusion based on the circumstantial evidence, McCray did not receive ineffective assistance of counsel. (2) Because a conviction may be had on circumstantial evidence alone and such evidence is accorded equal weight as any other kind of evidence, and because testimony placed McCray at the scene of the crime with a gun and motive, the trial court did not err in denying McCray's motion for a JNOV with respect to the aggravated-assault conviction. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2016-KA-01592-COA (July 17, 2018)

Opinion by Chief Judge Lee

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial Dist.)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Katelin Davis](#)

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MISKELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - RACIAL DISCRIMINATION - *Batson* strikes are proper if the striking party states race-neutral reasons for the striking of each juror, and the court determines that there is no discriminatory purpose for the challenges and accepts those reasons as race-neutral

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CONFESSIONS - The trial court does not abuse its discretion by denying a jury instruction asking the jury to disregard the defendant's confession if the jury is properly instructed of its duty to judge the weight and credibility of the evidence presented and witness testimony

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - FACTS NOT IN EVIDENCE - For a statement of facts not in the evidence to be an appealable error, the appealing party must timely object and ask the judge to admonish the jury

FACTS

Following a 2016 jury trial in the Forrest County Circuit Court, V'Nel Miskell was convicted of first-degree murder and sentenced to life imprisonment. During trial, the State used five of its six peremptory strikes on African-American jurors. Miskell objected to the strikes and asked for the State's reasoning. The State said it struck jurors because of the jurors' perceived negative body language or for incomplete juror forms. The trial court denied Miskell's jury instruction that asked the jury to disregard Miskell's alleged confession if they believed it was untrue. The trial court admitted the confession's transcript into evidence and told the jury the law regarding admissibility of evidence. Miskell did not introduce evidence showing that the confession was untrue or involuntary. The State made several comments during its closing arguments, to which Miskell timely objected at trial. The State noted that Miskell did not dispute the first element of the crime, and made two comments regarding facts not in the evidence. Miskell's objection to the facts not in evidence was sustained, but no request was made to tell the jury to disregard the comments. Miskell appealed.

ISSUES

Whether (1) the trial court erred in its application of *Batson* during jury selection; (2) the trial court erred in denying defendant's request for a confession instruction; and (3) the State made improper remarks during its closing argument.

HOLDING

(1) Because the State gave race-neutral reasons for striking each juror and the trial court accepted those reasons, there was no pattern of racial discrimination that violated *Batson*. (2) Because the defendant's confession was voluntary and the defendant did not submit evidence disputing its truth, voluntariness, weight, or credibility, the jury instructions were fair and accurately stated the law. (3) Because the State's comments did not make a direct or insinuated reference to the defendant's failure to testify, influence the jury's decision, ask the jury to put themselves in the victim's place, or suggest that the jurors were accountable to the State or the victim's family, the State's remarks did not prejudice the jury against the defendant. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-KA-00136-COA (July 17, 2018)

Opinion by Chief Judge Lee

Hon. Jon Mark Weathers (Forrest County Circuit Court)

David Neil McCarty for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Davis Pigg](#)

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