

MISSISSIPPI SUPREME COURT DECISIONS – MAY 28, 2020***SUPREME COURT - CIVIL CASES*****HWCC-TUNICA LLC V. MISS. DEPT. OF REV.****CIVIL - STATE BOARDS & AGENCIES**

CONSTITUTIONAL LAW - STATUTES - INTERPRETATION - The type of deference dictated by Miss. Code Ann. § 27-77-7(5) violates the constitutional doctrine of separation of powers, and interpreting statutes is reserved exclusively for the courts

LEGISLATION - TAXATION - EXEMPTIONS - When there is doubt as to legislative intention, the presumption is in favor of the taxing power, and the burden is on the claimant to prove or establish clearly his right to exemption, bringing himself clearly within terms of such conditions as that statute may impose

FACTS

HWCC-Tunica, LLC (“HWCC”) operated the Hollywood Casino in Tunica County, Mississippi, and BSLO, LLC operated the Hollywood Casino in Hancock County, Mississippi. Hollywood Casinos had a rewards program for its patrons called “Marque Rewards,” which allowed casino patrons who join earn entries into computerized drawings that randomly select members to receive various prizes. In 2014, Hollywood Casinos hired an accounting firm to conduct a review of its prior gaming taxes and calculate the amount of personal property that was distributed to rewards members for slot machine play. Pursuant to Miss. Code Ann. §75-76-193, Hollywood Casinos deducted these personal property costs from its gross revenue figures for slot machine play and sought a refund or credit for the tax periods from October 1, 2011 through August 31, 2014. In June 2015, the Mississippi Department of Revenue (“MDOR”) denied Hollywood Casinos’ refund claim. Hollywood Casinos appealed the MDOR’s denial to the Review Board, which upheld the denial. Hollywood Casinos then appealed that ruling to the Board of Tax Appeals, which denied its refund claim and affirmed the Review Board’s ruling. In February 2017, under Miss. Code Ann. § 27-77-7, HWCC and BSLO appealed the MDOR’s decision to their respective chancery courts. The Chancery Court of Tunica County entered an agreed order providing that BSLO’s action was to be transferred to and consolidated with HWCC’s action in Tunica County. In March 2018, the MDOR and the Mississippi Gaming Commission (“MGC”) filed a joint motion for summary judgment, arguing that the plain language of § 75-76-193 does not allow a casino to deduct the cost of prizes purchased for a rewards program’s drawings because those promotional giveaways were not the result of a “legitimate wager” under § 75-76-193. In April 2018, Hollywood Casinos filed its response opposing the joint motion for summary judgment. In January 2019, the chancellor granted the MDOR’s and the MGC’s joint motion for summary judgment, holding, among other things, that promotional activity was separate from slot machine activity and not deductible under § 75-76-193; the promotional giveaways were not the result of a legitimate wager; and Hollywood Casinos, in the request for a deduction under § 75-76-193, had the burden of proof, and § 75-76-193 was construed in favor of the MDOR and the MGC. The chancellor went on to interpret § 27-77-7(5) to give courts authority to defer to the MDOR’s and the MGC’s regulations and other publications that interpret statutes. The chancellor also determined that there were no genuine issues of material fact. HWCC appealed.

ISSUES

Whether (1) the chancellor erred by applying the incorrect standard of review under the applicable version of Miss. Code Ann. § 27-77-7(5) by giving deference to a prior MDOR decision; (2) § 27-77-7(5) was unconstitutional; (3) the chancellor erred in deferring to the MDOR’s and the MGC’s regulations when interpreting § 75-76-193; and (4) the chancellor erred by not finding there were genuine issues of material fact.

HOLDING

(1) Because Hollywood Casinos provided no evidence in its brief that the chancellor gave deference to prior MDOR decisions, and because the chancellor cited the current version of § 27-77-7(5) in her order and indicated that the statute instructs not to give deference to an agency's prior decision, the chancellor did not err by applying the incorrect standard of review and this issue was without merit. (2) Because the deferential standard prescribed in Miss. Code Ann. § 27-77-7(5) violates the separation of powers doctrine of the state constitution, the standard prescribed in § 27-77-7(5) is unconstitutional. (3) Because the chancellor referenced terms that were found only in the MDOR's or the MGC's regulations and not in the language of the statute throughout her analysis, because the chancellor deferred only to the examples listed in the MDOR's and the MGC's regulations regarding all of the ways the property given away could have been products of legitimate wagers, and because the chancellor also expressed a belief that she had the right to defer to the MDOR's and the MGC's regulatory interpretations, the chancellor erred by giving deference to the regulatory interpretations of § 75-76-193 rather than conducting a de novo review. (4) Because Hollywood Casinos failed to demonstrate that its random computerized drawings fell under § 75-76-193, and because Hollywood Casinos failed to show that it could determine that the drawing winners had won as the result of slot machine play, no genuine issues of material fact existed and the chancellor correctly granted summary judgment to the MDOR and the MGC. Therefore, the Supreme Court affirmed the judgment of the Tunica County Chancery Court.

Affirmed - 2019-CA-00336-SCT (May 28, 2020)

Opinion by Presiding Justice Kitchens

Hon. Watosa Marshall Sanders (Tunica County Chancery Court)

A. Thomas Tucker III for Appellants - Morton W. Smith, Justin P. Warren, & Bridgette T. Thomas (Att'y Gen. Office) for Appellees

Briefed by [Jennifer Lee](#)

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METHODIST SPECIALTY CARE CTR. V. MISS. DIV. OF MEDICAID

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - PROCEDURE - REVIEW - The court reviews an administrative agency's decision to determine whether the decision is supported by substantial evidence, is arbitrary or capricious, is beyond power of administrative agency to make, or violates some statutory or constitutional right of complaining party; these are the only grounds for overturning agency's action

ADMINISTRATIVE LAW - PROCEDURE - NOTICE - Notice provisions are not invariably or primarily designed to afford exhaustive disclosure, but to alert interested parties that their substantive rights may be affected in a forthcoming public proceeding

ADMINISTRATIVE LAW - PROCEDURE - LEGISLATIVE AUTHORITY - A statutory agency only has legislatively granted authority, not inherent authority

FACTS

In 2000, Methodist Specialty Care Center ("Methodist"), the only nursing facility for the severely disabled ("NFSD") in Mississippi, applied for a Certificate of Need ("CON") seeking to construct Mississippi's first long-term facility. The Mississippi Division of Medicaid ("DOM") and Methodist worked together to come up with a reimbursement methodology to fairly compensate for the cost of constructing the facility. Before construction, both parties agreed to adjust the New-Bed Value rate by 328.178% for incurred property costs for construction. This adjustment was added to the State Plan. This 328.178% was an add-on adjustment, which meant that Methodist had a percentage plus property reimbursement rate, so the rate was really 428.128%. In 2012, House Bill 421 was passed, asking the DOM to develop a plan regarding reimbursements for nursing facilities. The DOM created the Nursing Facility Reimbursement Methodology Revision Committee ("the Committee") compiled of DOM personnel, industry workers, and stakeholders. In 2014, the Committee submitted a plan to the legislature involving an increase value of a nursing facility bed to \$91,200, an increase in annual depreciation from 1% to 1.75%, an increase in the maximum depreciation allowed from 30% to 50%, a decrease in rental factor from 7.5% to 5.35%, and a 2% risk premium for all long-term care facilities. When analyzing this proposal, the DOM realized that with the adjusted base of New Bed Value to \$91,200,

Methodist had recouped its original investment in just eleven years and they would then receive a windfall. Therefore, the DOM further edited the State Plan to change the adjustment rate from the add-on 328.178% to a 175% multiplier rate, which would keep it at the 175% instead of adding on. In 2014, the DOM published the proposed changes in several newspapers and ran it for a month for the public notice and comment period. They included in the newspaper a description of the proposed changes, how it would affect the budget, an explanation for the changes, and how the public could read the proposed State Plan Amendment 15-004 (“SPAs”) where more detail was given about the nature of the changes. Methodist allegedly did not find out about the changes or SPAs until 2015, after the notice and comment period. In 2016, an administrative hearing was held and the Administrative Hearing Officer (“AHO”) determined that Methodist’s arguments were without merit, it were given adequate notice, and the adjustment rate was based on what construction costs are today. Methodist then appealed to the Hinds County Chancery Court, which determined Methodist’s arguments to be without merit. Methodist appealed.

ISSUES

Whether the (1) the DOM’s adjustment of Methodist’s NBV was erroneous; (2) the DOM violated state and federal laws requiring notice; and (3) the DOM acted contrary to requirements set by the legislature

HOLDING

(1) Because there was a basis for the adjustment of Methodist’s NBV, and because there was sufficient evidence to support the adjustment, the adjustment was not arbitrary or capricious and the DOM’s decision was not erroneous. (2) Because the DOM complied with the public notice requirement under federal law for significant changes in methods or standards for setting payment rates for services, and because the SPA is not an adopted or proposed rule, which keeps it out of the scope of the notice requirement under state law, the DOM did not violate any federal or state public notice laws or regulations. (3) Because the DOM complied with House Bill 421, the DOM did not take an action that was contrary to requirements set by the legislature. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

DISSENT

Justice Griffis argued that the new adjustment value of 175% multiplier from the 328.178% add-on rate was arbitrary and capricious, and it singled out Methodist by not adjusting any other nursing facilities reimbursement rates. He further argued that there was no indication that the rate would be changed to the 175% multiplier from the newspaper published either and, as a result, neither adequate federal or state notice was given. Finally, he argued the DOM did not comply with Mississippi Administrative Law by not giving proper notice according to the Miss. Administrative Procedures Act (“APA”).

Affirmed - 2019-CC-00037-SCT (May 28, 2020)

Opinion by Justice Chamberlin - Dissent by Justice Griffis

Hon. Patricia D. Wise (Hinds County Chancery Court)

Andy Lowry, Thomas L. Kirkland, & Bea Tolsdorf for Appellant - Janet McMurtray, Samuel P. Goff, & Laura L. Gibbs (Att’y Gen. Office) for Appellees

Briefed by [Liza Linginfelter](#)

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SUPREME COURT - ORDERS

WILLIAMS V. STATE

EN BANC ORDER

ORDER

Frankie Williams was on trial for murder, underwent both a mental evaluation and a competency hearing, and was found competent to stand trial. During trial, Williams requested to fire counsel and continue pro se, which the trial judge denied. The Court of Appeals determined that Williams did not waive his right to counsel and invoke his right to self-representation. Furthermore, the appellate court determined that Williams fit an exception to the right to self-representation because he was so mentally incompetent that speaking to a jury would endanger his right to a fair trial. The Supreme Court found that there was no need for further review and therefore dismissed the writ of certiorari.

OBJECTION

Presiding Justice King disagreed with the appellate court's analysis and the dismissal of Williams' petition for certiorari, stating that because the trial court had learned of Williams' desire to represent himself, Miss. R. Crim. P. 7.1(c) had been triggered, which requires a court to conduct an on-the-record examination of the criminal defendant and determine if the defendant knowingly and voluntarily wants to act as his/her own attorney. Additionally, he argued that the Court of Appeals acted inappropriately in its determination that Williams met one of the exceptions to the right to self-representation because no such determination had been made by the trial court. Because the trial court did not make an on-the-record determination under Miss. R. Crim. P. 7.1(c) if Williams waived his right to counsel, and because the right to self-representation is firmly entrenched in both state and federal constitutions, Presiding Justice King would have granted Williams's petition for certiorari, reversed William's conviction, and remanded the case to the trial court for a new trial.

Ordered - 2017-CT-01488-SCT (May 28, 2020)

En Banc Order by Justice Coleman - Objection by Presiding Justice King

Briefed by [Cristofor Taylor](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 26, 2020

COURT OF APPEALS - CIVIL CASES

ALCATEC LLC V. THE JONES GROUP OF MISS. LLC

CIVIL - CONTRACT

CIVIL PROCEDURE - PLEADING - MOTION TO AMEND - Pursuant to Miss. R. Civ. P. § 15(a), a party may amend a pleading as a matter of course at any time before a responsive pleading is served, or, if a pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may amend it at any time within thirty days after it is served; otherwise a party may amend a pleading only by leave of court or upon written consent of the adverse party

CIVIL PROCEDURE - COLLATERAL ESTOPPEL - RE-LITIGATION - Under the doctrine of collateral estoppel, a party is precluded from re-litigating specific questions actually litigated and determined by and essential to the judgment in the prior suit, even though a different cause of action is the subject of the present suit; collateral estoppel applies only to questions actually litigated in a prior suit and not to questions that might have been litigated

CIVIL PROCEDURE - AFFIRMATIVE DEFENSES - WAIVER - Generally, if a party fails to raise an affirmative defense in its original answer, the defense will be deemed waived

FACTS

After Hurricane Katrina, the Department of Homeland Security and the Federal Emergency Management Agency ("FEMA") contracted with Alcatec to maintain temporary housing units throughout the region impacted by the hurricane. The contract required Alcatec to coordinate the delivery, setup, maintenance, and disconnection of temporary housing units. In addition, Alcatec was required to perform monthly inspections referred to as preventative maintenance inspections ("PMIs") on the housing units, perform maintenance on the housing units, respond to emergency calls, and deactivate the housing units when they were taken out of service. Alcatec contracted with The Jones Group to assist

with the contract and to handle technology and database issues. In addition to other duties, Alcatec requested that The Jones Group identify a computer software program to track the life cycle of the PMI work orders. Alcatec alleged that The Jones Group committed numerous errors in keeping track of the PMIs and work orders, which led to duplicate entries being made and resulted in FEMA being double billed for duplicate inspections. Alcatec subsequently terminated its relationship with The Jones Group. In addition, FEMA won a lawsuit against Alcatec because the United States Court of Federal Claims determined that Alcatec knowingly submitted fraudulent claims with the intent to deceive FEMA. In response to this, Alcatec and Alcatec's owner, Rosemary Barbour, filed a complaint against The Jones Group. The Jones Group filed a Miss. R. Civ. P. 12(b)(6) motion to dismiss Alcatec's complaint. The Hinds County Circuit Court denied The Jones Group's motion to dismiss after finding that Alcatec's claim was not barred by the statute of limitations. The Jones Group then filed a motion to amend their answer. Alcatec filed its response in opposition to The Jones Group's motion to amend its answer, arguing that Miss. R. Civ. P. 8(c) requires a defendant to plead affirmative defenses in its answer, or those defenses, including res judicata and collateral estoppel, are waived. The Jones Group filed a motion for summary judgment and argued the following: (1) Barbour's fraudulent conduct, and not the conduct of The Jones Group, was the sole and proximate cause of Alcatec's damages; (2) Barbour's conduct was, at the very least, the superseding cause of Alcatec's damages; and (3) Alcatec was estopped from re-arguing the matter because the issue of causation had already been thoroughly litigated before the Court of Federal Claims. The circuit court entered an order allowing The Jones Group to amend its answer to plead res judicata and collateral estoppel. After a hearing, the circuit court entered an order that granted The Jones Group's motion for summary judgment and dismissed Alcatec's complaint with prejudice. Alcatec appealed.

ISSUE

Whether the trial court abused its discretion by granting The Jones Group's motion to amend their answer and add the affirmative defense of collateral estoppel.

HOLDING

Because collateral estoppel and res judicata are affirmative defenses that are waived if not timely pled, because the Mississippi Supreme Court has held that, generally, if a party fails to raise an affirmative defense in its original answer, the defense will be deemed waived and because the Jones Group actively participated in the litigation and failed to provide a reasonable explanation for the almost three-year delay in raising the affirmative defense of collateral estoppel, the Mississippi Court of Appeals found that The Jones Group waived its right to assert this affirmative defense. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

DISSENT

Presiding Judge J. Wilson agreed with Alcatec that the doctrine of collateral estoppel did not apply because The Jones Group was neither a party to the federal case nor in privity with the United States. He argued, however, that Alcatec's complaint was barred by the doctrine of unclean hands, the doctrine of in pari delicto, and/or the wrongful conduct rule.

Reversed & Remanded - 2018-CA-01590-COA (May 26, 2020)

Opinion by Presiding Judge Carlton - Dissent by Presiding Judge J. Wilson

Hon. Joseph Anthony Sclafani (Hinds County Circuit Court, First Judicial Dist.)

Michael A. Heilman, John William Nisbett, Edward Taylor Polk, & Daniel J. Hammett for Appellants - James D. Bell, Jay Marshall Atkins, & Candice Carol Hargett for Appellees

Briefed by [David Boydston](#)

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BOZANT V. NGUYEN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CONTEMPT - CIVIL CONTEMPT ORDERS - A contempt citation is proper only when the contemner willfully and deliberately ignored the order of the court; the court will not reverse a contempt citation where the chancellor's findings are supported by substantial credible evidence

FAMILY LAW - CONTEMPT - ATTORNEY'S FEES - Attorney's fees are awarded to make the plaintiff whole in contempt actions; when a party is held in contempt for violating a valid judgment of the court, then attorney's fees should be awarded to the party that has been forced to seek the court's enforcement of its own judgment

FAMILY LAW - CONTEMPT - FUTURE VIOLATIONS - A person cannot be held in contempt by a court for some future violation of a court order that has not yet happened, regardless of the likelihood of such future violation

FACTS

In October 2016, Remy Bozant and Hang Nguyen got divorced and the parties executed a property settlement agreement ("PSA"). Hang filed a petition for a citation of contempt against Remy, claiming that Remy did not comply with Paragraph H of the PSA. Specifically, Hang alleged that Remy failed to pay his twenty-five percent share of the debt the couple owed to the Internal Revenue Service ("IRS") and the Mississippi Department of Revenue ("MDOR") for the 2013, 2014, and 2015 tax years. In addition, Hang alleged that Remy failed to pay his fifty percent share of the professional fees owned to Wegmann Dazet, a firm, for their preparation of their 2015 tax return. Both parties were aware of the amount of tax liability for 2013 and 2014 at the time of their divorce. However, for the 2015 tax return, the tax liability and the tax-preparation fee were not established until seven months after the date of the divorce. Hang requested that Remy be ordered to join the installment agreement to ensure that he pay his twenty-five percent share of the remaining outstanding tax liability for 2013 and 2014. Remy filed an answer to the petition for contempt and asserted multiple defenses, including recrimination, unclean hands, and a Miss. R. Civ. P. 12(b)(6) motion to dismiss. After a hearing, the chancery court entered a final judgment finding Remy in willful and contumacious civil contempt, and he was directed to pay the entire monetary judgment directly to Hang. Remy filed a motion for a new trial, or to alter or amend the judgment, under Miss. R. Civ. P. 59. Further, Remy filed an additional motion, requesting an evidentiary hearing to show his inability to pay the judgment. After a hearing, the Forrest County Chancery Court entered an order dismissing all post-trial motions and entered a second judgment of contempt. Remy appealed.

ISSUES

Whether the trial court erred in (1) holding Remy in contempt to pay his portion of the tax debt and the professional fees associated with the 2015 taxes; (2) entering a judgment of attorney's fees associated with the finding of contempt; and (3) holding Remy in contempt for his failure to pay his portion of the tax debt for the 2013 and 2014 years.

HOLDING

(1) Because Remy failed to pay his twenty-five percent portion of the 2015 tax debt owed and the tax-preparation fee, thereby forcing Hang to pay his share, the chancery court correctly held Remy in contempt for his failure to pay twenty-five percent of the 2015 tax debt and fifty percent of the tax-preparation fee and correctly held that Remy should pay those amounts directly to Hang. (2) Because the chancery court found that the hourly rates charged by the attorney and paralegal were reasonable and necessary as a result of Remy's contempt, the chancery court did not err in their award of reasonable attorney's fees to Hang that were incurred as a result of the contempt action. (3) Because Hang had not paid her portion of the couple's joint debt for the 2013 and 2014 taxes to the IRS at the time of the contempt order, Remy could not be held in violation of the PSA for his failure to pay when he had not yet failed to pay and the chancery court erred in holding Remy in contempt for failing to pay his twenty-five percent portion of the tax debts due for the 2013 and 2014 tax years. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Forrest County Chancery Court.

Affirmed in Part & Reversed & Remanded in Part - 2018-CA-01438-COA (May 26, 2020)

Opinion by Judge Lawrence

Hon. M. Ronald Doleac (Forrest County Chancery Court)

Mary Lee Holmes for Appellant - William Brian Atchison for Appellee

Briefed by [Brittany Brewer](#)

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DIXON V. OLMSTEAD

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - MODIFICATION - A chancellor may modify a child-support award if there has been a substantial or material change in the circumstances of one or more of the interested parties

FAMILY LAW - CHILD SUPPORT - MODIFICATION - If the chancellor does not relate in their decree or otherwise give proof of the noncustodial parent's financial ability to pay the child-support award, the judgment should be reversed and remanded for further findings as to the parent's income and expenses; if the record includes findings as to why the chancellor decided an issue or fact a certain way, it would greatly decrease the chances of reversal

ADMINISTRATIVE LAW - STATE AGENCIES - CHILD-SUPPORT MODIFICATION - A state agency specifically authorized to litigate child-support issues is exempted from the requirement of proving a material change in circumstances in order to secure the modification of a child-support obligation

APPELLATE REVIEW - REVERSAL - CONTEMPT AWARD - When deciding contempt matters, a chancellor is afforded substantial discretion because of the chancellor's temporal and visual proximity to the litigants; a chancellor's findings in a contempt matter will not be reversed where the findings are supported by substantial credible evidence

FACTS

In 2005, Michael Dixon was ordered to pay monthly child support to Christy Olmstead for the care of their daughter. Olmstead was awarded physical custody, with Dixon receiving visitation. According to Dixon, Olmstead initially complied with the visitation schedule set forth in the final judgment, but she eventually refused to let Dixon see his daughter, and he had not had visitation with her since 2005. In 2017, Dixon filed a petition to cease his child-support obligation. In 2018, the Mississippi Department of Human Services ("DHS") filed a cross-complaint, seeking an upward modification of Dixon's child-support obligation. DHS argued that a substantial material change in circumstances had occurred since the final judgment; namely, that Dixon's adjusted gross income had substantially increased and that he was no longer obligated to pay support for the child of a different relationship. Pursuant to Miss. Code Ann. § 43-19-101(1), DHS requested that Dixon pay fourteen percent of his adjusted gross income in child support. After hearing testimony from the parties, the chancellor entered a visitation order awarding Olmstead physical custody of the daughter, with Dixon to receive "standard" visitation. Dixon filed a "complaint for citation of contempt" against Olmstead, claiming that since the entry of this judgment, Olmstead refused to comply with the visitation schedule. Dixon requested that Olmstead be responsible for payment of Dixon's travel expenses, as well as pay \$2,500 in attorney's fees. The chancellor amended and increased Dixon's child-support obligation to comply with the statutory amount, found Olmstead "in willful and contumacious contempt" of the chancellor's prior order, and accordingly ordered Olmstead to pay Dixon attorney's fees in the amount of \$1,000. Dixon appealed.

ISSUES

Whether the chancellor erred in (1) the upward modification of Dixon's child-support obligation and (2) ordering Olmstead to pay Dixon's attorney's fees in the amount of \$1,000.

HOLDING

(1) Because, although the chancellor had sufficient information before him to support the modification of Dixon's child-support obligation, there was no actual evidence in the record as to the dollar amount of Dixon's income or his adjusted gross income to support the amount of the modified child-support obligation, this matter must be reversed and remanded to the chancellor for the introduction of additional evidence as to Dixon's income for the purposes of supporting the modified amount. (2) Because chancellors are afforded substantial discretion when deciding contempt matters, and because Dixon provided no evidence in support of the amount of attorney's fees that he incurred, the chancellor did not err in determining the amount of attorney's fees awarded to Dixon in the contempt action. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the George County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2019-CA-00063-COA (May. 26, 2020)

Opinion by Presiding Judge Carlton

Hon. Michael L. Fondren (George County Chancery Court)
Matthew Stephen Lott for Appellant - *Pro se* & Darnell L. Nicovich for Appellees
Briefed by [Melissa Fenwick](#)

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DUNCAN V. BONNER

CIVIL - OTHER

CONSTITUTIONAL LAW - DUE PROCESS - CONFISCATION OF PROPERTY - For the taking of a prisoner's property without replacement or reimbursement to violate Due Process, the prisoner must prove their ownership of the confiscated items

CONSTITUTIONAL LAW - DUE PROCESS - TAKING WITHOUT DUE COMPENSATION - A prisoner's illegally obtained items do not grant the necessary possessory right needed to claim the confiscation of property is a taking without due compensation

CIVIL PROCEDURE - FRIVOLOUS FILINGS - SANCTIONS - Pursuant to Miss. Code Ann. § 47-5-76, an inmate shall not bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court that was dismissed on the grounds that it was frivolous.

FACTS

In 2014, Wendell Duncan was placed in lock-down in the Mississippi Department of Corrections ("MDOC"). Duncan claimed that the guards confiscated an Energizer battery charger, a Sony radio, five other radios, and two fans during the lockdown. Further, he claimed the confiscated items were not returned to him upon his release from lockdown. Duncan filed an administrative remedy program ("ARP") request to have his property returned to him. Deputy Warden Joann Shivers's response stated that there was no receipt proving the items belonged to Duncan. Additionally, there was nothing on file indicating that Duncan purchased the property. As a result, his request was denied. Duncan filed a complaint, arguing denial of due process by virtue of alleged procedural violation of MDOC's ARP. The circuit court dismissed the motion. Duncan appealed.

ISSUE

Whether the trial court erred in dismissing Duncan's complaint arguing he was denied due process.

HOLDING

Because MDOC's final decision was supported by substantial evidence, was within its power as an administrative agency, was not arbitrary or capricious, and did not violate any statutory or constitutional rights afforded or guaranteed to Duncan, the trial court properly dismissed the complaint and Duncan should not have been allowed to file his complaint in forma pauperis due to his previous frivolous filings. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2018-CP-01754-COA (May 26, 2020)

Opinion by Judge Lawrence

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

Pro se for Appellant - Darrell Clayton Baughn (Att'y Gen. Office) for Appellee

Briefed by [Haley Nutt](#)

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IN RE ESTATE OF KING V. KING

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - APPELLATE JURISDICTION - ORDERS - Both the Mississippi Supreme Court and the Mississippi Court of Appeals have exercised appellate jurisdiction over timely appeals from orders either allowing or disallowing claims against still-open estates

CIVIL PROCEDURE - APPELLATE REVIEW - JUDGMENT - Appellate courts will affirm the judgment of a chancery court if it is supported by substantial evidence, unless the chancellor abused his discretion, clearly or manifestly erred, or applied the wrong legal standard

CHANCERY COURT - TRIER OF FACT - CREDIBILITY & WEIGHT - The chancellor, as the trier of fact, is the sole judge of the credibility of witnesses and the weight of the evidence

FACTS

Marion King passed away and his will named his daughter, Susan Atkins, and her husband, Kevin Atkins, as co-executors and left his entire estate to his wife, Joyce, and the Atkinses. Atkins filed a petition to probate the will, and Joyce waived process and joined the petition. The chancery court granted the petition. Atkins filed a motion to compel an accounting and determine ownership of Mid South Pest Control and require Joyce to deliver assets of the business to the estate. Atkins alleged that King owned Mid South Pest Control at the time of his death and that Joyce had wrongfully converted the business's assets to her exclusive use and control. The chancery court ruled that Joyce was the sole and rightful owner of the business and that King's estate owned no interest in the business because of a cited purchase agreement, promissory note, and bill of sale by which King had conveyed the business to Joyce. The chancery court also cited an operating agreement that named Joyce and her now-deceased son, Jerry Hadaway, as the business's two owners. Atkins filed a motion to set aside the order. The chancery court granted the motion and set the matter for a new hearing, during which the chancellor again held that Joyce was the sole and rightful owner of the business. The chancellor stated that the claim was barred by an agreed order entered in Hadaway's estate ("*Hadaway*") that found that King had conveyed the business to Joyce and, despite the *Hadaway* order, the evidence and testimony in this case pointed to the same conclusion. Atkins appealed.

ISSUES

Whether (1) the Court of Appeals lacked jurisdiction to hear the appeal and (2) the chancellor erred by holding that the evidence and testimony established Joyce's ownership of the business.

HOLDING

(1) Because the chancery court's judgment was final and appealable, the Court of Appeals did not lack jurisdiction to hear the appeal. (2) Because the chancellor's ruling was supported by substantial evidence and Atkins failed to identify any legal error in the judgment, the chancellor did not err by holding that the evidence and testimony established Joyce's ownership of the business. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Chancery Court.

DISSENT

Judge Westbrook argued that the majority did not adequately address the issue of jurisdiction. She would have dismissed the appeal for lack of jurisdiction and remanded the matter to the chancery court for clarification of the order.

Affirmed - 2018-CA-01764-COA (May 26, 2020)

En Banc Opinion by Presiding Judge J. Wilson - Dissent by Judge Westbrook

Hon. C. Michael Malski (Monroe County Chancery Court)

Ben Logan for Appellants - Sarah Cline Stevens for Appellee

Briefed by [Philip Lott](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

EVANS V. STATE

CIVIL - POST-CONVICTION RELIEF

SENTENCING - ORDER OF SENTENCES - EARNED TIME - If a sentencing order is ambiguous as to which sentence should be served first and no sentence is eligible for parole, then an individual can earn the same amount of earned time for a particular sentence no matter that sentence's place in the order

FACTS

In 2007, Larry Evans was sentenced to consecutive prison terms of fifteen years for armed robbery and twenty years for manslaughter. In April 2017, Evans filed a petition for writ of mandamus in the Mississippi Supreme Court, claiming that the Hinds County Circuit Court had not ruled on a "Post Motion to Correct the Time Served in the Mississippi Department of Corrections" that he filed in September 2016. Evans attached a copy of the "Post Motion" to his mandamus petition, but the copy was not stamped "filed." In response to Evans's mandamus petition, the circuit judge advised that the circuit court did not have a record of Evans's motion. Evans then provided a copy of a prison mail log showing that he mailed the motion in September 2016. Accordingly, a panel of the Supreme Court ordered the circuit court to file the motion and dismissed Evans's mandamus petition without prejudice. The circuit court subsequently denied Evans's motion. Evans appealed.

ISSUE

Whether Evans should have served his sentence for manslaughter, which was eligible for earned time, before his sentence for armed robbery, which was not eligible for earned time.

HOLDING

Because Evans's sentencing order was ambiguous as to which sentence should be served first and neither sentence was eligible for parole, the order of the sentences made no difference in this case and Evans was eligible for earned time on his manslaughter sentence just as he would have if he had served it first. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-CP-00750-COA (consolidated with 2009-CT-00524-COA) (May 26, 2020)

Opinion by Presiding Judge J. Wilson

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

Pro se for Appellant - Darrell Clayton Baughn (Att'y Gen. Office) for Appellee

Briefed by [Kaitlin Bethay](#)

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COURT OF APPEALS - CRIMINAL CASES

CALLAHAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - TWO-THEORY INSTRUCTION - A two-theory instruction provides that when a jury has considered facts and circumstances along with all other evidence, and every reasonable theory of innocence has been excluded, the jury must resolve the case in favor of the defendant; however, to receive the instruction, the evidence must be purely circumstantial and two reasonable hypotheses or theories arising out of the evidence must be presented to the jury

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - DEFINITION - Evidence which, without going directly to prove the existence of a fact, gives rise to a logical inference that such a fact does exist

EVIDENCE - DIRECT EVIDENCE - DEFINITION - Direct evidence must directly and not by inference implicate the accused and not just show that there has been a crime

FACTS

Tramain Callahan was convicted of armed robbery by a Hinds County Circuit Court jury and sentenced to thirty years in the custody of the Mississippi Department of Corrections (“MDOC”), with eight years to serve. The robbery occurred at a Shell gas station in Jackson, Mississippi. The cashier was approached by an armed man who passed him a slip of paper that read, “I have a gun. Give me your money.” The cashier handed over the money from the cash register. The robber told the cashier to lie on the floor, and the cashier complied. The Jackson Police Department responded to the scene, where the cashier described the robber as tall, wearing a black shirt, black pants, and a wig or hat on his head. The police also viewed the surveillance video and released the video to the media, asking for the public to help identify the robber. Latricia Black contacted the police, stating the person in the video was her boyfriend, Callahan. Black and Callahan lived together with their daughter in an apartment complex adjacent to the gas station. A maintenance worker at the apartment complex found a wig containing dreadlocks and sunglasses in a dumpster. Callahan was arrested and indicted for armed robbery. He did not appear for the trial, so the trial court held the trial in absentia. Several Jackson Police Department officers testified regarding Black’s identification of Callahan and the items found in the apartment complex dumpster. The gas station cashier testified about the robber’s appearance, including the wig. Black testified that a few weeks prior to the robbery, Callahan had purchased a wig with dreadlocks. Black also identified the sunglasses found in the dumpster as hers. After the State rested, the defense moved for a directed verdict, which the trial court denied. The jury found Callahan guilty of armed robbery and sentenced him to thirty years in MDOC custody. The trial court denied Callahan’s motion for a JNOV. Callahan appealed.

ISSUE

Whether the trial court erred in refusing Callahan’s circumstantial-evidence jury instruction.

HOLDING

Because there was direct evidence against Callahan, and because circumstantial evidence is required in order to receive a two-theory jury instruction, the trial court did not err in refusing the instruction. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-KA-00528-COA (May 26, 2020)

Opinion by Chief Judge Barnes

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

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att’y Gen. Office) for Appellee

Briefed by [Allison Middleton](#)

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HARRIS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - APPEALS - LINDSEY BRIEF - When appellate counsel determines the record shows no appealable issues, counsel must follow the procedures outlined in *Lindsey v. State*

CRIMINAL LAW - LINDSEY BRIEF - SUPPLEMENTAL BRIEFING - Once a copy of counsel’s *Lindsey* brief has been sent to a client stating that they find no arguable issues, the client has the option to file a pro se supplemental brief

CRIMINAL LAW - APPEALS - SUPPLEMENTAL BRIEFING - After a court independently and thoroughly reviews the record and the finds no arguable issues, no supplemental briefing is required

FACTS

In September 2017, Officer Justin Landrum, a patrolman with the Laurel Police Department, responded to a disturbance call. Several homeowners had called to report that a male in a white jersey was assaulting a female in the road. When Officer Landrum arrived at the scene, he encountered Joseph Harris and detained him for investigative questioning. Officer Landrum did not place Harris under arrest at the time, but during a pat down, Harris stated that there was methamphetamine in his pants pocket. Officer Landrum took the methamphetamine from Harris's pocket and contacted Sergeant Jake Driskell of the narcotics unit. At Sergeant Driskell's direction, Officer Landrum arrested Harris and took him to the Jones County Jail. Sergeant Driskell met Harris the next day and advised him of his constitutional rights and his opportunity to waive those rights, to which Harris signed a waiver of his rights. Sergeant Driskell proceeded to interview Harris and the recording of that interview showed Harris admitting that he had drugs in his pocket. The methamphetamine was sent to the Mississippi Forensics Laboratory, and Eric Frazier testified at trial that he tested the submitted substance, which was found to contain methamphetamine. After a trial on the matter, the jury returned a verdict finding Harris guilty of possession of methamphetamine pursuant to Miss. Code Ann. § 41-29-139. The trial court sentenced Harris to serve eight years in the custody of the Mississippi Department of Corrections ("MDOC") and ordered Harris to pay a \$3,000 fine. Harris filed a motion for judgment notwithstanding the verdict, or, alternatively, a new trial, which was denied. Harris appealed.

ISSUE

Whether there were arguable issues on appeal that required supplemental briefing.

HOLDING

Because Harris's counsel submitted a *Lindsey* brief stating that he found no arguable issues on appeal and advised Harris that he had the right to file a pro se supplemental brief, which Harris did not file, there were no arguable issues that required supplemental briefing. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2019-KA-00713-COA (May 26, 2020)

Opinion by Presiding Judge Carlton

Hon. Dal Williamson (Jones County Circuit Court, Second Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [Jack Byrd](#)

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MANYFIELD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - EVIDENCE - PRIOR CONVICTIONS - Evidence of prior convictions may be admitted if its probative value outweighs potential prejudice to the defendant

CRIMINAL APPEALS - CONTINUANCE DENIAL - FAILURE TO RAISE - Failure to raise the issue of a denial of a continuance motion within a motion for new trial bars the issue from being raised on appeal

CRIMINAL LAW - CONVICTION - STANDARD - Where a conviction is based on circumstantial evidence, the evidence must only exclude any reasonable doubt, not any possible doubt

FACTS

Laertez Manyfield was indicted for the culpable negligent killing of James Freeman in a vehicle accident where Manyfield was driving on the wrong side of I-55 in Hinds County. Manyfield was also indicted for the felony of leaving the scene of an accident. Manyfield pled not guilty. Shortly before trial, Manyfield moved for a continuance for additional time to retain an expert to testify regarding the State's DNA evidence, and the motion was denied. At trial, the State presented evidence of Manyfield's past DUI, to which Manyfield objected. After the trial, a jury found Manyfield guilty of manslaughter and felony leaving an accident. Manyfield was sentenced to twenty years in the custody of the Mississippi

Department of Corrections (“MDOC”) for the manslaughter conviction and to twenty years in the custody of MDOC for the felony leaving-the-scene-of-the-accident conviction, with the sentences to run concurrently. Manyfield appealed.

ISSUES

Whether the trial court erred by (1) admitting evidence of Manyfield’s prior DUI conviction; (2) denying Manyfield’s motion for continuance; and (3) entering judgment based on the jury’s verdict against the overwhelming weight of the evidence or with insufficient evidence to convict Manyfield.

HOLDING

(1) Because the trial court found that Manyfield’s prior DUI conviction and suspended license were closely connected to his intent to leave the accident scene, the trial court did not err in admitting the prior DUI. (2) Because Manyfield had ample opportunity to conduct DNA testing, the trial court did not err in denying Manyfield’s continuance motion. (3) Because the jury heard sufficient circumstantial evidence to convict Manyfield, and because Manyfield did not file a motion for new trial, the trial court did not err in entering judgment based on the jury’s verdict against Manyfield. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

SPECIAL CONCURRENCE

Judge Westbrook argued that the State was given an unfair advantage by the trial court because the defendant only had one business day before trial began to find and retain an expert regarding the DNA evidence presented at trial.

CONCURRENCE IN PART/DISSENT IN PART

Judge McCarty argued that the trial court had three options in addressing Manyfield’s continuance motion in light of the “ambush” DNA evidence: (1) declare a mistrial; (2) exclude the evidence, or (3) grant the continuance. He further argued that the trial court did none of these in violation of Miss. R. Crim. P. 17.9

Affirmed - 2018-KA-01412-COA (May 26, 2020)

En Banc Opinion by Presiding Judge Carlton - Special Concurrence by Judge Westbrook - Concurrence in Part/Dissent in Part by Judge McCarty

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

S. Malcolm O. Harrison for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [Joshua Crownover](#)

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NELSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NO APPEALABLE ISSUES - BRIEF REQUIREMENTS - In a brief pursuant to *Lindsey v. State* stating that appellate counsel does not believe that his or her client has any arguable issues on appeal, counsel must certify he or she reached this conclusion after thoroughly examining: (1) the reason for and circumstances surrounding the arrest; (2) any possible violations of client’s right to counsel; (3) the entire trial transcript; (4) all trial court rulings; (5) possible prosecutorial misconduct; (6) all jury instructions; (7) all exhibits, whether admitted into evidence or not; and (8) possible misapplication of the law in sentencing

CRIMINAL PROCEDURE - NO APPEALABLE ISSUES - NOTICE REQUIREMENTS - Pursuant to *Lindsey v. State*, appellate counsel must send a copy of the *Lindsey* brief to the defendant, inform the defendant that counsel could not find any arguable issues in the record, and advise the client of their right to file a pro se brief

FACTS

After receiving information about a suspect from the Gulfport Police, Deputy Christopher Allen attempted to pull over a vehicle matching the description he had just received. The driver ignored the lights and siren, accelerating instead which resulted in a high-speed chase. While remaining at considerable speed, the car exited the interstate, crossed an intersection, and crashed into a fence. The driver, later identified as Devon Nelson, fled on foot. Nelson was able to

evade Deputy Allen and his K-9, but the duo eventually picked back up his trail and apprehended Nelson. A search of Nelson's car yielded three bags of crack cocaine, weighing approximately ten grams and a small digital scale. Nelson was arrested and later indicted for one count of possession with intent to distribute and one count of felony fleeing. The State moved to amend the indictment and charge Nelson as a habitual offender given his two previous convictions. At trial, Nelson sought a directed verdict, but his request was denied. A unanimous jury found him guilty of both counts. The trial court sentenced Nelson to twenty years for the possession with intent to distribute, and five years for felony fleeing to be served concurrently. Nelson's counsel filed a brief pursuant to *Lindsey v. State*, asserting he found no arguable issues for review. Nelson was given an additional forty days to file a pro se supplemental brief., but he did not file one. Nelson appealed.

ISSUES

Whether (1) Nelson's counsel's *Lindsey* brief complied with all of the requirements set forth in *Lindsey* and (2) whether Nelson's counsel fulfilled the notice requirements of a *Lindsey* brief.

HOLDING

(1) Because Nelson's counsel filed the appropriate brief stating that he diligently searched the record, failed to find any arguable issues, and asserted he reviewed all proper materials, Nelson's counsel complied with all requirements set forth in *Lindsey*. (2) Because Nelson's counsel mailed Nelson a copy of the brief, informed Nelson he had found no arguable issues, and informed Nelson of his right to file a pro se brief, Nelson's counsel complied with the notice requirements pursuant to *Lindsey*. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2019-KA-00675-COA (May 26, 2020)

Opinion by Judge McCarty

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

George T. Holmes & W. Daniel Hinchliff (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen Office) for Appellee

Briefed by [Charles Ellzey](#)

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RUSSELL V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DIRECTED VERDICT - SUFFICIENCY OF EVIDENCE - When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL LAW - REVIEW - MOTION FOR NEW TRIAL - When reviewing a denial of a motion for a new trial based on a challenge to the weight of the evidence, the appellate court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

CRIMINAL LAW - EVIDENCE - HEARSAY - A statement that is not offered to prove the truth of the matter asserted is not hearsay, and thus, it is admissible if it meets other evidentiary requirements

EVIDENCE - RELEVANCY - PREJUDICE - Under Miss. R. Evid. 403, the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - DEFICIENT REPRESENTATION AND PREJUDICE - In order to prevail on a claim for ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance was deficient and (2) that the alleged deficiency prejudiced his defense

FACTS

James Russell was indicted for trafficking thirty grams or more of methamphetamine in violation of Miss. Code Ann. § 41-29-139(f)(2)(C). He was also charged as a second drug offender under Miss. Code Ann. § 41-29-147 and a nonviolent

habitual offender under Miss. Code Ann. § 99-19-81. The evidence used against Russell at his trial was gathered through a confidential informant who participated in a controlled purchase of methamphetamine from Russell at his house. Agents from the Mississippi Bureau of Narcotics equipped the informant with two video cameras, met with the informant, and overheard a phone conversation between the informant and Russell. At trial, an agent testified that he overheard the informant tell Russell that she wanted to purchase approximately 1.5 ounces of methamphetamine over the phone. Additionally, the videos recorded during the controlled purchase were entered into evidence. A jury ultimately found Russell guilty as charged. The trial court sentenced Russell, as a nonviolent habitual offender and second drug offender, to serve forty years in the custody of the Mississippi Department of Corrections (“MDOC”) without eligibility of parole. Russell was also ordered to pay all court costs and his motion for a new trial was denied. Russell appealed.

ISSUES

Whether (1) the trial court erred by denying Russell’s motion for a directed verdict; (2) the trial court erred by denying Russell’s motion for a new trial; (3) the trial court erred by admitting hearsay evidence over Russell’s objection; (4) the trial court erred by admitting the videos of the controlled purchase; and (5) Russell received ineffective assistance of counsel because his trial attorney did not request a two-theory jury instruction.

HOLDING

(1) Because of the informant’s testimony, which was corroborated by the videos and other testimony, there was sufficient evidence to support the jury’s verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, and the trial court did not err by denying Russell’s motion for a directed verdict. (2) Because the jury listened to the witnesses testify at trial and assessed their credibility, and because the jury resolved any conflicts in the evidence and found Russell guilty, the verdict was not contrary to the overwhelming weight of the evidence and the trial court did not err by denying Russell’s motion for a new trial. (3) Because the agent’s testimony regarding the phone call was not offered to prove the amount of methamphetamine that was later purchased, the testimony did not constitute inadmissible hearsay and the trial court did not err by admitting the evidence. (4) Because the videos corroborated witnesses’ testimony, they were relevant, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and the trial court did not err by admitting the videos of the controlled purchase. (5) Because both direct and circumstantial evidence linked Russell to the crime, he was not entitled to a two-theory jury instruction and his counsel was not deficient for failing to request one. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2019-KA-00491-COA (May 26, 2020)

Opinion by Judge Greenlee

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

Thomas W. Powell for Appellant - Scott Stuart & Steven Simeon Kilgore (Att’y Gen. Office) for Appellee

Briefed by [Nicole Broussard](#)

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SHELL-BLACKWELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - EVIDENCE - PRIOR BAD-ACT - Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show on a particular occasion, the person acted in accordance with that character, but the evidence may be admitted to prove other matters, including motive, intent, knowledge, and plan
CRIMINAL PROCEDURE - EVIDENCE - RELEVANCE - If the evidence is determined to be more probative than prejudicial, it may be admitted, with a jury instruction from the trial court explaining the limited purposes for which the evidence may be considered

CRIMINAL PROCEDURE - WEIGHT OF THE EVIDENCE - CONFLICTING EVIDENCE - When the evidence is conflicting, the jury will be the sole judge of the credibility of witnesses and the weight and worth of their testimony

FACTS

In September 2015, eighty-year-old Lee Kendrick was reported missing to the police by his daughter. The next day, Kendrick's body was discovered in an apartment with a gunshot wound to the back of the head. The police found DNA from Loren Shell-Blackwell ("Blackwell"), a prostitute that Kendrick had seen daily since May 2015 and described Kendrick as her "sugar daddy," at the scene. Three days after Kendrick's body was found, Blackwell turned herself in after the Jackson Police Department presented her with increasing evidence to incriminate her. Blackwell later told the police that Kendrick had picked up her and another man, Walter Young, and took them to a hotel room. Blackwell claimed while she was in the bathroom alone, she heard a gunshot and then she and Young fled the scene in Kendrick's car. Young later turned himself in to the Jackson Police Department and claimed that he witnessed Blackwell shoot Kendrick while her boyfriend, Shaddarine Lindsey, was in the room. Blackwell, Young, and Lindsey were all arrested and charged with capital murder and auto theft. At trial, evidence was introduced that Blackwell and her boyfriend stole from Kendrick a month before the murder. Following the murder, Blackwell drove Kendrick's vehicle to a store, where she met with a friend to purchase marijuana. She also arrived at her grandmother's house unannounced, to which her grandmother sensed something wrong and told her to leave. Finally, she tried to sell Kendrick's vehicle to another friend, Zachary Shell, for a suspiciously low price, which the friend refused. When news reports were released, Blackwell's grandmother testified that she recognized the vehicle in the reports as the one Blackwell had arrived at her home unannounced in. Shell also recognized the vehicle from the news reports as the same vehicle Blackwell tried to sell to him and he subsequently contacted the Hinds County Sheriff's Office. Blackwell was convicted of capital murder and automobile theft. The trial court sentenced her to life imprisonment without eligibility for parole for the capital murder conviction, and five years for auto theft, to run consecutively to her life sentence. Blackwell appealed.

ISSUES

Whether (1) the State introduced irrelevant and prejudicial prior bad-act evidence; (2) the verdict was contrary to the weight of the evidence; and (3) the jury was improperly instructed on the auto-theft charge.

HOLDING

(1) Because the evidence of the prior bad-act was not used as propensity evidence, but as evidence to show Blackwell had knowledge of the position she put Kendrick in and lack of accident, the trial court did not err in allowing this evidence. (2) Because the overwhelming weight of the evidence supported the conviction, and because the jury chose to believe Young's version of events despite some contradictory evidence, the verdict did not sanction an unconscionable injustice. (3) Because the State's jury instructions erroneously omitted the vehicle's value, which was a factual finding the jury had to make to determine the sentencing range, it was necessary to reverse the auto-theft conviction and remand for new trial. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Hinds County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2018-KA-01135-COA (May 26, 2020)

Opinion by Chief Judge Barnes

Hon. Jeff Weill Sr. (Hinds County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton & Robert Shuler Smith (Att'y Gen. Office) for Appellee

Briefed by [Winston Hudson](#)

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