

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 18, 2018**SUPREME COURT - CIVIL CASES****BD. OF SUPERVISORS OF CLARKE COUNTY V. BTH QUITMAN HICKORY, LLC****CIVIL - OTHER**

CIVIL PROCEDURE - APPEALS - ASSESSMENTS - Under Miss. Code Ann. § 27-35-119(2), any taxpayer who feels aggrieved by an action of the board of supervisors regarding assessments has the right to appeal to the circuit court of the county

CIVIL PROCEDURE - APPEALS - ASSESSMENTS - Under Miss. Code Ann. § 11-51-77, any person aggrieved by a decision of the board of supervisors regarding assessments may appeal to the circuit court of the county upon giving bond in double the amount of the matter in dispute

CIVIL PROCEDURE - ASSESSMENTS - BONDS - Under *Natchez Hospital*, a party appealing an assessment under Miss. Code Ann. § 27-35-119 is required to post a bond in compliance with Miss. Code Ann. § 11-51-77; the failure to do so divests the circuit court of subject matter jurisdiction over the appeal

FACTS

BTH Quitman Hickory, LLC challenged the amount of ad valorem taxes assessed by the Clarke County Board of Supervisors (“the Board”) by appealing the assessments to the Clarke County Circuit Court. BTH owned a torrefaction and wood-pellet facility in Quitman. To induce BTH to build in Quitman, the Board exempted BTH from ad valorem taxes. Under this promise, BTH made an investment in equipment. The Board appraised BTH’s equipment at \$62,273,746. BTH requested a reduction, and the Board reduced the assessment to \$48,068,654. BTH filed four complaints in the circuit court challenging the assessments of the Board. BTH did not submit a bond with its appeals, and the Board moved to dismiss the appeals for lack of jurisdiction. The circuit court found in favor of BTH, holding that Miss. Code Ann. § 27-35-119(2) did not include a bond requirement in order to appeal assessments. The Board filed an interlocutory appeal.

ISSUE

Whether the circuit court erred in concluding that Miss. Code Ann. § 27-35-119(2) does not include a bond requirement to appeal assessments.

HOLDING

Because the Court made clear in its holding in *Natchez Hospital* that a taxpayer who chooses to appeal a tax assessment under Miss. Code Ann. § 27-35-119(2) must comply with Miss. Code Ann. § 11-51-77, BTH was required to post a bond to appeal the tax assessments, and BTH’s failure to post a bond deprived the circuit court of jurisdiction to hear the appeal. Therefore, the Supreme Court reversed and remanded the judgment of the Clarke County Circuit Court.

Reversed & Remanded - 2017-IA-00149-SCT (Oct. 18, 2018)

Opinion by Justice Coleman

Hon. Lester F. Williamson Jr. (Clarke County Circuit Court)

Richard G. Norris II & Greg Snowden for Appellant - None for Appellee

Briefed by [Katelin Davis](#)

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CUMMINS V. GOOLSBY

CIVIL - OTHER

GIFTS - INTER VIVOS GIFT - ELEMENTS - The elements of an inter vivos gift include: (1) a donor competent to make a gift; (2) a voluntary act of the donor with donative intent; (3) completion of the gift with nothing else to be done; (4) delivery to the donee; and (5) an irrevocable gift

CONTRACT LAW - GIFTS - CONDITIONAL GIFT - A gift that is subject to or dependent on the occurrence of a condition is a conditional gift; if the recipient fails to fulfill one or more of the conditions of the gift, it may be revoked

FACTS

Dr. Christopher Cummins began a romantic relationship with one of his employees, Leah Jordan Goolsby. Cummins was separated from his wife but not divorced. Cummins and Goolsby began living together, had a child, and got engaged but never married, with Cummins remaining married to his wife. After Cummins and Goolsby separated, Goolsby filed a paternity suit for child support, and Cummins counterclaimed for the engagement and wedding rings he gave to Goolsby. Alternatively, Cummins argued that if Goolsby was awarded the rings, the value should be deducted from any child support payments awarded. The chancellor found Cummins had made an inter vivos gift and awarded the rings to Goolsby. The chancellor further found that the rings were not a conditional gift, because the condition of marriage was not met, as Cummins remained married to his wife. The chancellor certified the ruling on the rings as a final judgment. Cummins appealed.

ISSUE

Whether the chancellor erred in awarding the rings to Goolsby.

HOLDING

Because Cummins remained married to his wife and could not legally marry Goolsby at the time he gave her the rings, he could not bring an action for the rings to be returned because the condition of marriage never occurred. Therefore, the Supreme Court affirmed the judgment of the Prentiss County Chancery Court.

SPECIAL CONCURRENCE

Justice Coleman argued that civil actions for the breach of the promise to marry are governed by contract law rather than the law of gifts under Mississippi precedent.

Affirmed - 2017-CA-00890-SCT (Oct. 18, 2018)

En Banc Opinion by Justice Maxwell - Special Concurrence by Justice Coleman

Hon. Jacqueline Estes Mask (Prentiss County Chancery Court)

Walter Alan Davis for Appellant - John A. Ferrell for Appellee

Briefed by [Ryan Overturf](#)

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MISSISSIPPI BAR V. BURTOFF

CIVIL - BAR MATTERS

STATE BAR - RULES OF DISCIPLINE - PUBLIC REPRIMAND - When another jurisdiction imposes sanctions on an attorney, the Supreme Court will do no further fact finding

STATE BAR - RULES OF DISCIPLINE - APPEARANCE - An attorney ordinarily appears in his or her county of residence for public reprimand, but when an attorney lives out of state, the Supreme Court can still order the attorney to appear in a Mississippi court for a public reprimand

FACTS

Bruce Burtoff drafted estate planning documents for his father-in-law and mother-in-law. When Burtoff's mother-in-law died, Burtoff represented his wife in a dispute regarding the Estate Burtoff had drafted. Burtoff took positions contrary to the interests of his father-in-law, his former client. Burtoff was publicly reprimanded by the Supreme Court of Florida for violating the Rules Regulating the Florida Bar. Burtoff was also licensed by the Mississippi Bar. In compliance with Rule 13 of the Mississippi Rules of Discipline, the Mississippi Bar filed a complaint seeking reprimand.

ORDER

When another jurisdiction imposes sanctions on an attorney licensed by the Mississippi Bar, the Court will not engage in fact-finding. The only issue is what discipline will be imposed on the attorney. An attorney may offer evidence of mitigating factors which can diminish the necessity or severity of sanctions. Burtoff acknowledged the truth of the allegations and did not point to any mitigating factors. Therefore, the Supreme Court ordered a public reprimand and all tax costs and expenses incurred be paid by Burtoff. Further, Burtoff was ordered to appear before the Hinds County Circuit Court to be publicly reprimanded by the presiding judge. Ordinarily, a public reprimand is carried out by the senior judge in an attorney's county of residence. Because Burtoff does not live in Mississippi, the Court ordered him to appear before the Hinds County Circuit Court.

Public Reprimand & Assessment - 2018-BD-01072-SCT (Oct. 18, 2018)

En Banc Order by Justice Beam

James Russell Clark & Adam Kilgore for Appellant - *Pro se* for Appellee

Briefed by [Yance Falkner](#)

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PURDUE PHARMA L.P. V. STATE

CIVIL - OTHER

CIVIL PROCEDURE - MISS. CONSUMER PROTECTION ACT - VENUE - Under Miss. Code Ann. § 79-24-9, the Mississippi Consumer Protection Act mandates that actions shall be brought in the chancery or county court of the county in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the chancery or county court of the county in which the state capitol is located

CIVIL PROCEDURE - VENUE - CHANCERY COURTS - Under Miss. Code Ann. § 11-5-1, all cases not otherwise provided may be brought in the chancery court of any county where the defendant, or any necessary party defendant, may reside or be found

CIVIL PROCEDURE - GENERAL VENUE STATUTE - NON-RESIDENT DEFENDANT - Under Miss. Code Ann. § 11-11-3, if venue in a civil action against a non-resident defendant cannot be asserted, a civil action against a non-resident may be commenced in the county where the plaintiff resides or is domiciled

FACTS

The State of Mississippi filed a complaint in Hinds County Chancery Court alleging four common law claims and a claim pursuant to the Mississippi Consumer Protection Act ("MCPA") against Purdue Pharma L.P. and numerous other pharmaceutical companies (collectively "Defendants"). Each Defendants' principal place of business was located outside the State of Mississippi. Defendants moved to transfer venue from the Hinds County Chancery Court to the Rankin County Chancery Court because two of the Defendants had registered agents in Rankin County. The trial court found that the Registered Agents Act ("RAA") made the location of a foreign corporation's registered agent irrelevant to venue analysis. Further, the trial court found that Mississippi's general chancery court venue statute did not apply because no defendant resided or could be found in Mississippi. The trial court concluded that Mississippi's general venue statute was the only venue statute that identified criteria other than the location of a registered agent. Therefore, the trial court found venue to be proper in Hinds County. Defendants appealed.

ISSUE

Whether the trial court erred in finding that Hinds County was the appropriate venue for this action.

HOLDING

Because the MCPA venue statute and the general venue statute for chancery courts provided no choice of venue for foreign corporations, the general venue statute was appropriate to determine this action. Further, because Mississippi's Medicaid agency is located in Hinds County along with most state agencies, venue in Hinds County was appropriate. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Chancery Court.

DISSENT

Chief Justice Waller argued that venue was inappropriate because the MPCA venue statute required the consent of the parties. He further argued because the Defendants did not consent to the action being filed in Hinds County, the action should have been transferred to the circuit court of the State's choice so it could properly invoke its choice of venue.

DISSENT

Justice Coleman argued that the majority ignored the legislature's intent because the MPCA venue statute excluded Hinds County as a permissible venue. Because the RAA was amended to require that non-resident defendants must consent to be sued in Hinds County, the trial court's order should have been reversed and remanded to find a proper venue.

Affirmed & Remanded - 2017-IA-00300-SCT (Oct. 18, 2018)

Opinion by Justice King - Dissent by Chief Justice Waller - Dissent by Justice Coleman

Hon. Denise Owens (Hinds County Chancery Court)

Joseph Anthony Sclafani, R. David Kaufman, Christopher A Shapley, Sheila Birnbaum, Mark S. Cheffo, Hayden A. Coleman, Stephen L. Thomas, Alan W. Perry, Simon Turner Bailey, Joshua M. Davis, Brian M. Ercole, J. Gordon Cooney Jr., Tinos Diamantatos, Steven A. Reed, Chad Roberts Hutchinson, Christy D. Jones, Adam Julius Spicer, Charles C. Lifland, Ivana Cingal, Carolyn J. Kubota, J. Carter Thompson Jr., David F. Maron, & Samuel Deucalion Gregory for Appellants - George W. Neville, Jacqueline H. Ray, Gordon Garland Lyell III, Geoffrey C. Morgan, Samuel Martin Millette (Att'y Gen. Office), John Lee Davidson, Joe N. Tatum, Steve W. Berman, Jennifer F. Connolly, James L. Ward Jr., & Robert S. Wood for Appellee

Briefed by [Davis Pigg](#)

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SUPREME COURT - ORDERS

MISSISSIPPI BAR V. LEE

ORDER

STATE BAR - RULES OF DISCIPLINE - IRREVOCABLE RESIGNATION - Mississippi Rule of Discipline 10.5 provides an attorney may tender an irrevocable resignation to either the Court or the Tribunal, and such a resignation must acknowledge each and all disciplinary matters pending, provide the docket number or numbers, state that the attorney does not desire to defend, and request permission to resign with prejudice from the Bar

STATE BAR - RULES OF DISCIPLINE - RESIGNATION - Upon receipt of an attorney's resignation and any response that the Bar may elect to file, the disciplinary proceedings terminate and either the Court or the Tribunal must enter its order accepting the resignation, revoking the attorney's license, and barring the attorney's right to seek reinstatement to the privilege of practicing law

FACTS

On July 17, 2018, the Mississippi Bar filed a formal complaint against John W. Lee Jr., seeking to disbar Lee after he pled guilty to one count of felony tax fraud in the United States District Court for the Southern District of Mississippi. Lee filed a Notice of Irrevocable Resignation on July 20, 2018. Lee noted that this was the only disciplinary matter

pending against him and that he no longer wished to defend it. Lee also requested permission to irrevocably resign with prejudice from the Mississippi Bar. The Mississippi Bar then moved the Court to accept Lee's resignation.

ORDER

Because the Supreme Court found that Lee filed his Notice of Irrevocable Resignation in compliance with Mississippi Rule of Discipline 10.5, the Supreme Court granted the Mississippi Bar's Motion to Accept the Irrevocable Resignation of John W. Lee Jr. The Supreme Court further revoked Lee's license to practice law in Mississippi, barred Lee from seeking reinstatement to the privilege of practicing law in Mississippi in the future, ordered Lee to notify clients and affected courts of his resignation from the Mississippi Bar, properly disburse all funds he may hold in trust, and comply with all other requirements applicable under Rule 11 of the Mississippi Rules of Discipline, and ordered costs of the formal complaint to be assessed to Lee.

Granted - 2018-BD-01029-SCT (Oct. 17, 2018)

En Banc Order by Justice Chamberlin

Briefed by [Emily Warwick](#)

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SUPREME COURT - CRIMINAL CASES

AMBROSE V. STATE

CRIMINAL - DEATH PENALTY - DIRECT APPEAL

CRIMINAL LAW - DEATH PENALTY - ENMUND FACTORS - In compliance with *Enmund*, Miss. Code Ann § 99-19-101(7) requires the jury to find beyond a reasonable doubt at least one of the four enumerated scienter factors before imposing the death penalty, including full consideration of all mitigating evidence

CRIMINAL PROCEDURE - VOIR DIRE - DEATH PENALTY - The test for determining when a prospective juror's views on the death penalty justify her removal is whether the trial court finds that the juror's views would prevent or substantially impair the performance of her duties in accordance with the instructions and oath and the trial court is left with the impression that a prospective juror would be unable to faithfully and impartially apply the law

CRIMINAL PROCEDURE - DEATH PENALTY - DIRECT APPEAL - Under Miss. Code Ann. § 99-19-105(3)(c), the court must consider whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant

CRIMINAL PROCEDURE - DEATH PENALTY - CUMULATIVE-ERROR DOCTRINE - Under the cumulative-error doctrine, even if any specific error is insufficient for reversal, the court may reverse if the cumulative effect of all the errors deprived the defendant of a fundamentally fair trial

FACTS

Abdur Rahim Ambrose and others beat Robert Trosclair and left him in a ditch. Trosclair was discovered and eventually died in the hospital. During trial, Demetrius Lee, one of the parties to the murder, testified as an uncharged witness for the State, and the trial court disallowed Ambrose to cross-examine Lee. Forty-six potential jurors said they would impose the death penalty if Ambrose was found guilty beyond a reasonable doubt. Five of these jurors eventually served on the jury. When asked if they would consider any mitigating factors, nine of the forty-six said they would not consider mitigating factors and would automatically vote for the death penalty. None of these nine served on the jury. The trial court allowed individual voir dire of the nine potential jurors. At trial, the trial court allowed graphic photos of Trosclair's body and autopsy into evidence. Ambrose did not object to any of the State's closing statements. The trial court refused to quash Ambrose's indictment. The jury found that the capital offense was committed when the defendant was engaged in the commission of kidnapping and that the capital offense was especially heinous, atrocious, or cruel. The jury

ultimately found Ambrose guilty using only one of the sentencing eligibility factors of Miss. Code Ann. § 99-19-101(7), and Ambrose was sentenced to death. Ambrose appealed.

ISSUES

Whether the trial court erred in (1) preventing Ambrose from presenting evidence of bias against a witness in violation of Ambrose's rights under U.S. Const. amends. VI & XIV; (2) sentencing Ambrose to death because the only sentencing factor found by the jury was Ambrose contemplated that lethal force would be employed; (3) the seating or removal of certain jurors; (4) the employment of the jury selection process so as to require a reversal of conviction and sentence; (5) allowing the State's prejudicial and inflammatory closing arguments; (6) committing reversible evidentiary error; (7) denying Ambrose's motion to quash the indictment as legally insufficient; (8) allowing erroneous sentencing phase instructions; (9) imposing the death penalty; and (10) causing cumulative errors mandating reversal of the verdict of guilt and/or the sentence of death entered pursuant to it.

HOLDING

(1) Because the State presented enough evidence to convict Ambrose beyond a reasonable doubt, the exclusion was harmless error. (2) Because the State only needed to prove one factor under Miss. Code Ann. § 99-19-101, the sentence was valid. (3) Because Ambrose failed use his preemptory challenges, this issue was waived. (4) Because the trial court is granted deference in juror exclusion and a strict view of the validity of the death penalty is considered a partiality that may give cause for valid juror exclusion, the trial court did not commit reversible error. (5) Because Ambrose did not object to the closing arguments at trial and because the State's arguments were not so inflammatory as to require intervention, the State did not commit prosecutorial misconduct. (6) Because a trial judge is afforded a great deal of discretion for the relevancy and admissibility of evidence, there was no error. (7) Because the indictment adequately put Ambrose on notice and narrowed his conduct to a level sufficient to support the death penalty, the indictment was legally sufficient. (8) Because evidence of the underlying crime can be used as an aggravating factor and a jury may properly impose a death sentence when there are sufficient aggravating circumstances, the trial court properly denied Ambrose's proposed jury instructions. (9) Because Mississippi's death penalty scheme is constitutional, and because the United States Supreme Court has reaffirmed that capital punishment is not per se unconstitutional, Ambrose's death sentence was proper. Further, the death sentence was not disproportionate or excessive. (10) Because the Court found a single, harmless error existed, the cumulative effect did not mandate reversal of the verdict or sentence. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit.

DISSENT

Presiding Justice Kitchens argued that precedent declared that what may be considered harmless errors become reversible errors when death is at stake, and there were six errors that taken cumulatively created an effect that rendered the trial court's holding reversible when considered in light of the penalty. Therefore, he would reverse Ambrose's death sentence.

Modified - 2015-DP-01159-SCT (Oct. 18, 2018)

En Banc Opinion by Justice Coleman - Dissent by Presiding Justice Kitchens

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Alison R. Steiner & Angela Blackwell (Pub. Def. Office) for Appellant - Ladonna C. Holland, Jason L. Davis, & Cameron Benton (Att'y Gen. Office) for Appellee

Briefed by [David Wellen](#) & [Davis Pigg](#)

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GREEN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - KIDNAPPING - ELEMENTS - Forcible detention or movement that is merely incidental to a lesser crime than kidnapping is insufficient to be molded into the greater crime of kidnapping, but forcible detention that is a part of a greater crime may be sufficient for the crime of kidnapping

CRIMINAL LAW - KIDNAPPING - DISTANCE & TIME REQUIREMENTS - The distance of asportation or time of confinement necessary to constitute the crime of kidnapping are immaterial; instead, the law only requires that they take place

CRIMINAL LAW - ATTEMPT - DEFINITION - An attempt to commit a crime consists of three elements: (1) an intent to commit a particular crime, (2) a direct ineffectual act done toward its commission, and (3) the failure to consummate its commission; intent can be shown from the facts surrounding the case

FACTS

Richard Green and his wife Cathy Green had been arguing for several days. Cathy wanted to be with someone else and divorce Richard. One night, after she did not comply with his demand to unlock her cell phone, Richard walked out to his truck to retrieve a machete. Re-entering the house, Richard took Cathy from their son's side, separating them, and forcibly dragged her down the hallway kicking and leaving bruises up and down her arms. Once in the living room, Richard repeatedly struck Cathy in the head with the machete while she tried to defend herself. Richard told Cathy he was going to kill her. After she pleaded for her life, Richard stopped, walked out of the front door, locked the house, and drove off with their son. He called 911 to report what he had done. The Pearl Police Department issued a county-wide alert to find Richard, and he was later apprehended, taken to the station, and issued a confession. Richard was indicted for the attempted murder and kidnapping of Cathy and convicted on both counts. Richard appealed.

ISSUES

Whether the State (1) presented sufficient evidence to convict Richard of kidnapping; and (2) presented sufficient evidence to convict Richard of attempted murder.

HOLDING

(1) Because Richard forcibly removed Cathy from her room and denied her requests to be let go, and because the forcible detention was incidental to a greater crime, there was sufficient evidence to convict Richard of kidnapping. (2) Because Richard had the requisite intent to commit murder and made an overt act toward commission of the crime by assaulting Cathy with the machete, there was sufficient evidence to convict Richard of attempted murder. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

PARTIAL CONCURRENCE/ DISSENT

Justice King concurred in the Court's holding for attempted murder but argued that conviction of kidnapping was improper and that kidnapping must involve a substantial duration of detention and not be incidental to the crime of attempted murder. His opinion is that the State should follow more closely the kidnapping framework proffered by the Model Penal Code and other circuits.

Affirmed - 2017-KA-00770-SCT (Oct. 18, 2018)

En Banc Opinion by Presiding Justice Randolph - Partial Concurrence/Dissent by Justice King

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

Justin Taylor Cook & George T. Holmes (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [David Wellen](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 16, 2018

COURT OF APPEALS - CIVIL CASES

CASTLE V. CASTLE

CIVIL - DOMESTIC RELATIONS

CIVIL - DIVORCE PROCEDURE - MARITAL ASSETS - Marital property is any and all property acquired or accumulated during a marriage, except property acquired as an inter-vivos gift or inheritance

CIVIL - ALIMONY - LUMP-SUM ALIMONY - The most important factor in determining lump-sum alimony is the disparity between the separate estates

CIVIL - ALIMONY AWARD - REASONABLENESS OF AWARD - When determining the reasonableness of an alimony award, the appellate court must consider the totality of the chancellor's award upon the parties, including the burden placed on the paying spouse

FACTS

Jason Castle and Mary Castle were married for fifteen years until Jason's infidelity caused them to divorce. In their petition, the Castles' cited irreconcilable differences as their grounds for difference. In the divorce order, the Lauderdale County Chancery Court awarded Mary twenty-five percent of the marital estate, an equalization payment of \$584,604.41, lump-sum alimony of \$1.6 million, and Periodic alimony of \$6,500 a month and child support of \$3,200 a month. Jason appealed.

ISSUES

Whether the trial court abused its discretion in (1) classifying a second home as a marital asset; (2) awarding a substantial lump-sum alimony payment; and (3) awarding excessive periodic alimony payments.

HOLDING

(1) Because Jason failed to rebut the presumption that the property was marital property, the chancery court did not abuse its authority in classifying the second home as a marital asset. (2) Because, even considering Jason's other payments, Jason's assets greatly outweighed Mary's, and Jason had the means to make the payments, there was substantial evidence that the lump-sum alimony was reasonable. (3) Because Mary suffered a deficit between her former and current lifestyle, there was substantial evidence that the alimony award was not excessive. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

PARTIAL CONCURRENCE/DISSENT

Judge Wilson concurred with the majority on the classification of the second home as a marital asset and award of a lump-sum alimony. However, Judge Wilson dissented on the periodic alimony issue arguing that the majority misinterpreted the concept of a deficit and that, considering the other payments, Mary no longer suffered a deficit.

Affirmed - 2017-CA-00213-COA (Oct. 16, 2018)

En Banc Opinion by Judge Fair - Partial Concurrence/Dissent by Judge Wilson

Hon. Jerry G. Mason (Lauderdale County Chancery Court)

David Bridges for Appellant - Mark A. Chinn for Appellee

Briefed by [Brandon H. Wilson](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

SPIERS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PETITION - MERIT - When the trial court reviews a petition for post-conviction relief, the trial court has an obligation to review the original motion, together with all the files, records,

transcripts and correspondence relating to the judgment under attack to determine whether the defendant has proven the merit of the allegations by a preponderance of the evidence

MISSISSIPPI DEPARTMENT OF CORRECTIONS - INMATES - AUTHORITY - The commissioner is vested with the exclusive authority and responsibility for the management and control of the correctional system and for the proper care, treatment, feeding, clothing, and management of the offenders confined therein

FACTS

Chad Spiers was ordered to complete a long-term drug and alcohol therapeutic program while in the custody of the Mississippi Department of Corrections (“MDOC”). Spiers alleged that because he was in protective custody, he was not given the opportunity to participate in the long-term drug and alcohol therapeutic program. The circuit court denied Spiers’s PCR motion asking the court to amend or otherwise change his sentence to eliminate required completion of the long-term drug and alcohol program. Spiers appealed.

ISSUE

Whether the trial court abused its discretion in denying the PCR motion claiming that MDOC made it impossible for Spiers to attend his mandated drug and alcohol therapy.

HOLDING.

Because neither the circuit court nor the Court of Appeals has statutory authority to manage programs operated by MDOC, the circuit court did not abuse its discretion.

Affirmed - 2017-CP-01527-COA (Oct. 16, 2018)

Opinion by Judge Westbrook

Hon. Roger T. Clark (Harrison County Circuit Court, Second Judicial Dist.)

Pro se for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Drey Russell](#)

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COURT OF APPEALS - CRIMINAL

ABRAM V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - PROCEDURAL BAR - CONTEMPORANEOUS OBJECTION RULE - Failure to make a contemporaneous objection waives an issue for purposes of appeal

APPELLATE PROCEDURE - ERROR - PLAIN-ERROR DOCTRINE - For the plain-error doctrine to apply, there must be an error that results in a manifest miscarriage of justice or seriously affects the fairness, integrity, or public reputation of judicial proceedings

APPELLATE PROCEDURE - ERROR - APPEALABLE ISSUES - A trial court cannot be held in error on a matter not presented to it for a decision

FACTS

Anthony Ray Abram was indicted on charges of being an accessory after the fact to first-degree murder and first-degree arson. At trial, the State was allowed to refresh the memory of a witness by playing the entire audio recording of a pre-trial statement Abram gave to law enforcement. The jurors listened to the recording and were each provided a transcript of the recorded statement, but neither the recording nor the transcript were admitted into evidence. The transcripts were collected from the jury immediately following the playing of the recording. Additionally, the trial judge announced

that a certain jury instruction proffered by Abram would be given, but the instruction itself was stamped “refused.” Abram was convicted of being an accessory after the fact to first-degree murder and first-degree arson. Abram appealed.

ISSUES

Whether the trial court erred in (1) allowing the State to play the witness’s entire recorded statement to the jury and provide each juror with a transcript of the statement; and (2) mistakenly stamping Abram’s proffered jury instruction as “refused” and not giving the instruction to the jury.

HOLDING

(1) Because Abram failed to contemporaneously object and actually requested that the entire statement, as opposed to snippets, be played to the jury, his claim was procedurally barred. Additionally, the court found no plain-error in the submission of the audio recording. (2) Because Abram did not alert the trial court that it failed to read his jury instruction, the trial court could not be held in error. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2016-KA-01396-COA (Oct. 16, 2018)

Opinion by Presiding Judge Griffis

Hon. Prentiss Greene Harrell (Marion County Circuit Court)

Robert G. Whitacre Jr. for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Luke Phillips](#)

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GRASSAREE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - If jury instructions, read together as a whole, fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL LAW - CONSTRUCTIVE POSSESSION - PRESUMPTION - Constructive possession of the contents of a vehicle by one who occupies or exercises control of the vehicle may be presumed

CRIMINAL LAW - CONTROLLED SUBSTANCES - POSSESSION OF COCAINE - Under Miss. Code Ann. § 41-29-139, weight is an element in distinguishing crimes of cocaine possession

FACTS

Akem Grassaree was pulled over in 2013 for driving without a license plate. The officer ran a search of Grassaree’s name and found he had an outstanding warrant. After placing him in custody, the officer searched the vehicle and discovered a small bag of marijuana and what was later confirmed to be .14 grams of cocaine. At trial Grassaree argued that the controlled substances were not his but had been in the vehicle when he had purchased it a week prior to his arrest. The trial court instructed the jury that constructive possession by Grassaree of the contents of the vehicle could be presumed when Grassaree was occupying or exercising control over the vehicle. Grassaree objected that the jury instruction improperly permitted the jury to presume guilt without sufficient evidence, and the trial court overruled Grassaree’s objection. Grassaree was convicted of possession of more than .10 but less than 2 grams of cocaine and was sentenced to three years in prison and a \$1000 fine. Grassaree appealed.

ISSUE

Whether the trial court erred in instructing the jury that it may presume constructive possession of the contents of the vehicle by the one who is occupying or exercising control over the vehicle.

HOLDING

Because there is no reversible error when jury instructions, read together as a whole, fairly and accurately state the law, and because the trial court issued sufficient jury instructions on all the elements of the crime, the trial court did not err

in instructing the jury that it may presume constructive possession of the contents of the vehicle by the one who is occupying or exercising control over the vehicle. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2017-KA-01107-COA (Oct. 16, 2018)

Opinion by Presiding Judge Fair

Hon. Larry E. Roberts (Lowndes County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Laura Hogan Tedder & Scott Winston Colom (Att’y Gen. Office) for Appellee

Briefed by [Jon-Paul Bushnell](#)

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HOLLOWAY V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - AUTHENTICITY - Once there is a prima facie showing of authenticity, the evidence will go to the jury, which will then determine the ultimate question of whether the evidence is what it was claimed to be

EVIDENCE - ADMISSIBILITY - HEARSAY - Under Miss. R. Evid. 801(c), hearsay is a statement that (1) the defendant does not make while testifying at the current trial or hearing, and (2) a party offers in evidence to prove the truth of the matter asserted in the statement

FACTS

A police officer found Ladale Holloway passed out at the wheel of a vehicle sitting in an intersection on Highway 90 in Biloxi. Holloway had illegal drugs and paraphernalia in his lap and in the vehicle, and he fled when awoken by police officers. Holloway was convicted of three counts of possession of a controlled substance with intent to distribute, as a “little” habitual offender and as a second or subsequent offense. The trial court allowed admission of text messages received by a phone found in the vehicle, which were recent solicitations to purchase illegal drugs. Holloway appealed.

ISSUES

Whether (1) the text messages found on a phone found in Holloway’s vehicle with him were properly authenticated; and (2) the text messages were inadmissible hearsay.

HOLDING

(1) Because the totality of the circumstances made a prima facie showing that the messages were what the State claimed they were, there was no error in the admission of the text messages. (2) Because the text messages at issue were neither positive declarations nor intended to be assertions, they were not “statements” as contemplated by Miss. R. Evid. 801, and there was no error in overruling Holloway’s hearsay objection. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2017-KA-01455-COA (Oct. 16, 2018)

Opinion by Judge Fair

Hon. Roger T. Clark (Harrison County Circuit Court, Second Judicial Dist.)

Justin T. Cook (Pub. Def. Office) for Appellant - Kaylyn H. McClinton (Att’y Gen. Office) for Appellee

Briefed by [Natalie McCarty](#)

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