

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 30, 2017

SUPREME COURT - CIVIL CASES

BAPTIST MEM’L HOSPITAL-DESOTO, INC. v. MISS. STATE DEP’T OF HEALTH

CIVIL - STATE BOARDS AND AGENCIES

HEALTHCARE - CERTIFICATE OF NEED - CRITERIA - No certificate of need can be granted unless it has been reviewed for consistency with the specifications and criteria established by the State Department of Health and substantially complies with the projection of need as reported in the State Health Plan in effect at the time

CERTIFICATE OF NEED - MINIMUM POPULATION - METHODOLOGY - At its discretion, the Department of Health may use market share analysis and other methodologies in the analysis of a CON application; the Department shall not rely upon market share analysis or other statistical evaluations if they are found inadequate

CERTIFICATE OF NEED - THERAPEUTIC CATHETERIZATION CRITERIA - MINIMUM DIAGNOSTICS - An existing provider of diagnostic cardiac catheterizations, seeking to establish a therapeutic catheterization program, must perform a minimum of 300 diagnostic catheterizations each year for two years prior to filing a certificate of need application

FACTS

Citing the Mississippi State Department of Health’s (MSDH) 2014 State Health Plan, Methodist Healthcare-Olive Branch Hospital (Methodist) applied for a certificate of need seeking approval to perform percutaneous coronary interventions, a type of cardiac procedure at its hospital. The MSDH held a hearing and approved Methodist’s application. Baptist Memorial Hospital-Desoto (Baptist)—a competing hospital in the same service area—contested Methodist’s application. The Hinds County Chancery Court affirmed MSDH’s decision. Baptist appealed.

ISSUES

Whether the chancellor erred in (1) determining that a market-share analysis was not the sole method for determining the minimum population base to meet the criterion, and (2) finding that the requirement for a minimum number of diagnostic catheterizations before the certificate of need was granted did not apply to Methodist.

HOLDING

(1) Because MSDH did not use arbitrary or capricious methodology, the chancellor did not err by affirming MSDH’s decision. (2) Because the requirement for minimum annual diagnostic catheterizations applied to providers of diagnostic catheterizations proposing the establishment of a therapeutic catheterization program and Methodist already had a therapeutic catheterization program, this requirement was inapplicable. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2015-SA-01464-SCT (Mar. 30, 2017)

En Banc Opinion by Justice Maxwell

Hon. Denise Owens (Hinds County Chancery Court)

Barry K. Cockrell for Appellant - Cassandra S. Walter, Kathryn Russell Gilchrist, & Allison Treloar Jones for Appellees

Briefed by [Morgan L. Stringer](#)

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HERMAN GRANT CO. v. WASHINGTON

CIVIL - WRONGFUL DEATH

CIVIL ACTION - VENUE - STATUTORY OPTIONS - Pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred, or where a substantial event that caused the injury occurred

VENUE - NONRESIDENT DEFENDANT - Pursuant to Miss. Code Ann. § 11-11-3(1)(b), if venue in a civil action against a nonresident defendant cannot be asserted under Miss. Code Ann. § 11-11-3(1)(a)(i), a civil action against a nonresident may be commenced in the county where the plaintiff resides or is domiciled

VENUE - INJURY-CAUSING EVENT - The venue statute specifically requires a substantial alleged act, omission, or injury-causing event to have happened in a particular jurisdiction in order for venue to be proper there

APPEALS - VENUE CHANGE - ABUSE OF DISCRETION - An abuse of discretion standard of review is applicable when reviewing a trial court's denial of a motion to change venue; a trial judge's ruling will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances of the case

FACTS

Machinery created by Herman Grant Co. and Coti, Inc. collapsed and struck Carl Washington and James Rusty Bradford, causing severe injuries. Washington succumbed to his injuries and died. Bradford and the Estate of Washington filed suit, alleging that the proper venue was the First Judicial District of Jasper County based upon Miss. Code Ann. § 11-11-3(1)(b). Herman Grant filed a motion to transfer venue to the Second Judicial District of Jones County where the accident occurred. The request to transfer venue was denied. Herman Grant appealed.

ISSUE

Whether the trial court abused its discretion in denying Herman Grant's motion to transfer venue to the Second Judicial District of Jones County.

HOLDING

Because Miss. Code Ann. § 11-11-3(1)(a)(i) stipulates that venue is proper where an injury-causing event took place, it was not proper for the plaintiffs to select the county of residence of one of the beneficiary-plaintiffs pursuant to Miss. Code Ann. § 11-11-3(1)(b). Thus, the site of the accident, Jones County, is the proper venue. Therefore, the Mississippi Supreme Court reversed the Jasper County Circuit Court's order denying the motion to transfer venue and remanded the matter to the trial court for transfer to the Second Judicial District of Jones County.

Reversed & Remanded - 2016-IA-00392-SCT (Mar. 30, 2017)

Opinion by Justice King

Hon. Eddie H. Bowen (Jasper County Circuit Court)

Ryan Jeffrey Mitchell, Richard O. Burson, & Katherine Bisnette Sumrall for Appellant - James W. Nobles Jr., William R. Ruffin, Joseph Tally Sims, & John Wincie Lee Jr. for Appellees

Briefed by [Desire'e Martinelli](#)

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KULJIS V. WINN-DIXIE MONTGOMERY, LLC

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - CHANCERY COURT - JURISDICTION - In order for the chancery court to assume jurisdiction and grant a bill of discovery, the plaintiff must make a showing that the information sought cannot be obtained by other methods

CIVIL PROCEDURE - JURISDICTION - SUBJECT-MATTER - To distinguish between the chancery court's and circuit court's subject-matter jurisdiction, the substance of the action should be controlling on the issue, not its form or label, but where doubts exist regarding the legal or equitable nature of a case, the case should be tried in the circuit court

CIVIL PROCEDURE - DISCOVERY - BILL OF DISCOVERY - The bill of discovery is an original action that may be pursued when there is no other remedy

CIVIL PROCEDURE - FRIVOLOUS LAWSUIT - DISCOVERY - The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery

FACTS

After tripping and falling in Winn-Dixie, Cynthia Kuljis filed a Bill of Discovery in the Harrison County Chancery Court. Winn-Dixie argued that Kuljis could not seek discovery in chancery court because no underlying negligence action had been filed in circuit court, which would allow discovery through the Mississippi Rules of Civil Procedure. The trial court dismissed for lack of subject-matter jurisdiction. The Court of Appeals affirmed. The Supreme Court granted certiorari.

ISSUE

Whether the trial court erred in dismissing Kuljis's Bill of Discovery for lack of subject-matter jurisdiction.

HOLDING

Because the discovery Kuljis desired was not itself the relief she sought and was only incidental to an action at law, and because the need for discovery does not make a claim frivolous, dismissal was not an abuse of discretion. Therefore, the Supreme Court affirmed the judgments of the Court of Appeals and the Harrison County Chancery Court.

DISSENT

Presiding Justice Dickinson argued that the majority's interpretation limits the jurisdiction of the chancery court on the basis of the enactment of the Rules of Civil Procedure. He argued that the complaint of discovery remains a viable action in chancery court even when the discovery relates to a matter which will be litigated in circuit court.

Affirmed - 2015-CT-00256-SCT (Mar. 30, 2017)

En Banc Opinion by Chief Justice Waller - Dissent by Presiding Justice Dickinson

Hon. Carter O. Bise (Harrison County Chancery Court)

Garner J. Wetzel & James K. Wetzel for Appellant - David W. Stewart & Brian C. Whitman for Appellee

Briefed by [Alison Guider](#)

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SMITH V. KANSAS CTY. S. RY. CO.

CIVIL - OTHER

CIVIL PROCEDURE - JURISDICTION - VENUE - Interpreting venue statutes to allow a foreign corporation to have only one principal place of business promotes simplicity and avoids complex litigation

CIVIL PROCEDURE - JURISDICTION - VENUE - The term "principal place of business" is a singular reference to a corporation's nerve center; multiple principal places of business nationally as well as in each state does not logically promote the term "principal place"

CIVIL PROCEDURE - VENUE - STATUTORY OPTIONS - Pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred

CIVIL PROCEDURE - VENUE - NONRESIDENT DEFENDANT - Pursuant to Miss. Code Ann. § 11-11-3(1)(b), if venue in a civil action against a nonresident defendant cannot be asserted under Miss. Code Ann. § 11-11-3(1)(a)(i), a civil action against a nonresident may be commenced in the county where the plaintiff resides or is domiciled

FACTS

On April 20, 2012, Smith injured himself in Louisiana while working for the Kansas City Southern Railway Company (KCS), a Kansas company. Smith filed suit against KCS alleging negligent failure to provide Smith with a reasonably safe workplace in violation of the Federal Employers' Liability Act. Smith filed suit in Lowndes County, where he was domiciled, and KCS subsequently filed a motion for change of venue. KCS argued that although their principal place of business was Kansas City, Missouri, their principal place of business in Mississippi was in Rankin County. The trial court granted KCS's motion and transferred venue to Rankin County. Smith appealed.

ISSUES

Whether, pursuant to Miss. Code Ann. § 11-11-3(1), a corporation may have only one national principal place of business or may have a principal place of business in multiple or all states.

HOLDING

Because holding that a corporation has a single, principal place of business followed the plain language of the statute and promoted simplicity, the change of venue was improper. Therefore, the Mississippi Supreme Court reversed and remanded the decision of the Lowndes County Circuit Court.

Reversed & Remanded - 2016-IA-00031-SCT (Mar. 30, 2017)

Opinion by Justice King

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

C.E. Sorey II for Appellant - Charles Edwin Ross & Victoria Reppond Bradshaw for Appellee

Briefed by [Blake Brookshire](#)

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SUPREME COURT - COURT ORDERS

BUFFALO SERVS., INC. v. SMITH

COURT ORDER

PREMISES LIABILITY - DUTY TO PROTECT - RUNAWAY VEHICLES - It cannot be contended that a storeowner breaches his duty by failing to erect an impregnable barrier between his store and an adjacent area where cars are parked or driven in order to protect against runaway or wayward vehicles

PREMISES LIABILITY - DUTY TO PROTECT - FORESEEABILITY - A reasonably prudent store operator would not reasonably foresee the possibility of a vehicle being negligently propelled into the store, and thus no duty should be established to take measures against such an occurrence

PREMISES LIABILITY - DUTY TO PROTECT - ASSUMPTION OF DUTY - A store owner can assume the duty to protect patrons from wayward vehicles by action such as erecting bollards or parking stops; once assumed, the duty must be carried out with reasonable care and prudence

FACTS

Brander Smith was shopping in Daisy's Discount Clothing Store, owned by Buffalo Services, Inc. A vehicle driven by a third party crashed into the store and injured Smith. Smith brought suit against Buffalo Services, Inc. claiming it failed to fulfill their duties to make their premises reasonably safe for pedestrians shopping in the subject store from the risk of being struck by a moving vehicle. Specifically, she claimed that Buffalo Services should have erected vertical bollards, parking stops, or other physical barriers to protect pedestrian ways. Buffalo Services conversely argued that there was no established duty to protect shoppers from unforeseeable runaway or wayward vehicles. Buffalo Services filed a motion for summary judgment, but the Wilkinson County Circuit Court denied the motion. Buffalo Services then filed a Petition for Interlocutory Appeal with the Mississippi Supreme Court.

ISSUE

Whether the store owner owed a duty to erect barriers to protect persons inside the store from vehicles driven into the store.

ORDER

Because Buffalo Services did not owe Smith a duty to protect her from the negligent operation of a vehicle operated by a third party, and Buffalo Services did not assume such a duty, Smith failed to establish a premises-liability claim. Therefore, the Supreme Court reversed the order of the Wilkinson County Circuit Court, which denied Buffalo Services summary judgment. A judgment was rendered in favor of Buffalo Services, and all claims against them were dismissed.

OBJECTION

Justice King objected to the Order because (1) the case contained unresolved issues of material fact, concerning whether Buffalo Services had a duty to Smith through prior knowledge of dangerous conditions on the property and (2) whether the Buffalo Services breached their duty to provide reasonably safe premises. He argued that Buffalo Services was aware that vehicles had bumped the building in the past and this should have given notice that such an accident could likely occur. This, combined with the shop's proximity to the highway and the fact that there were bollards present on part of the property indicate that a duty was created and subsequently breached. Justice King believed that issues of material fact existed and thus would have denied the interlocutory appeal and remanded this case for trial.

Granted - 2016-IA-01687-SCT (Mar. 30, 2017)

En Banc Order by Justice Maxwell - Objection by Justice King

Briefed by [Joseph Rychlak](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 28, 2017

COURT OF APPEALS - CIVIL CASES

DOSS V. CLAIBORNE COUNTY BD. OF SUPERVISORS

CIVIL - OTHER

CIVIL PROCEDURE - JURISDICTION - TAXPAYER STANDING - A plaintiff lacks standing unless he can show that the alleged adverse effect experienced is different from the adverse effect experienced by the general public
APPELLATE PROCEDURE - DISMISSAL - RIGHT RESULT WRONG REASON - It is well established that the right result reached for the wrong reason will not be disturbed on appeal

FACTS

Emma R. Doss and fourteen other Claiborne County property owners sued the Claiborne County Board of Supervisors (the Board), the Mississippi State Tax Commission (MSTC), and the Mississippi Attorney General (AG).

Doss claimed that the Board, MSTC, and AG conspired to enact or comply with racially discriminatory legislation that prevents the county from collecting traditional ad valorem taxes from Grand Gulf Nuclear Station. Doss sought a declaratory judgment stating that the statute is unconstitutional, as well as injunctive relief and damages. The Claiborne County Circuit Court dismissed Doss’s complaint. Doss appealed.

ISSUE

Whether the trial court erred in dismissing Doss’s complaint.

HOLDING

Because Doss’s claims rested solely on a general and speculative conclusion that the statute is racially discriminatory because it caused her property-tax liability to increase, she failed to establish standing. Although the trial court lacked subject-matter jurisdiction over Doss’s claim, the trial court did not err in dismissing Doss’s meritless complaint. Therefore, the Court of Appeals affirmed the judgment of the Claiborne County Circuit Court.

Affirmed - 2014-CA-01177-COA (Mar. 28, 2017)

En Banc Opinion by Presiding Judge Irving

Hon. Lamar Pickard (Claiborne County Circuit Court)

Deborah McDonald & Jeffery Kendrick Harness for Appellants - Wilson Douglas Minor, Barbara Blackmon, Edward Blackmon, Janessa Emontan Blackmon, Bradford Jerome Blackmon, & James L. Powell (Att’y Gen. Office) for Appellees

Briefed by [Lora Wuerdeman](#)

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GRIFFIN V. GRENADA YOUTH LEAGUE

CIVIL - PERSONAL INJURY

TORTS - PREMISES LIABILITY - DUTY TO INVITEE - A landowner owes a duty to an invitee to exercise reasonable care to keep the premises in a reasonably safe condition, and if the landowner is aware of a dangerous condition, which is not readily apparent to the invitee, the landowner is under a duty to warn the invitee of such condition

TORTS - PREMISES LIABILITY - KNOWLEDGE - Unless the dangerous condition was created by the landowner’s own negligence, the plaintiff must prove that the landowner had actual or constructive knowledge of the condition in order to recover for any damages

TORTS - PREMISES LIABILITY - DUTY TO LICENSEE - A landowner’s only duty to a licensee is to refrain from willfully or wantonly causing injury to the licensee

FACTS

Tiffany Griffin attended a charity baseball tournament held at fields owned and maintained by the Grenada Youth League (GYL). As she walked down a grassy hill from the parking lot to the ball fields, Griffin fell and suffered a broken ankle. Griffin sued GYL on a premises liability theory, alleging that she fell because she stepped into a hole that was obscured by grass. The trial court acknowledged that there was a dispute over whether there actually was a hole, but the court ruled that as a matter of law the premises were reasonably safe and there was no dangerous condition or peril that required a warning. Griffin appealed.

ISSUE

Whether the alleged hole constituted a “dangerous condition” within the meaning of Mississippi premises liability law.

HOLDING

Because Mississippi law does not impose liability based on a minor indentation on the side of a park’s grassy hill, the “hole” that caused Griffin’s injury was not a dangerous condition. Even if the hole was a dangerous condition, Griffin

failed to produce any evidence that would support a reasonable inference that GYL created the hole or that it had knowledge of the hole. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2015-CA-01867-COA (Mar. 28, 2017)

Opinion by Judge Wilson

Hon. C.E. Morgan III (Grenada County Circuit Court)

Steven Craig Panter & Stacy Everett Pepper for Appellant - Nakimuli Oni Davis-Primer & J. Stephen Kennedy for Appellee

Briefed by [TreMarcus Rosemon](#)

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IRBY V. MADAKASIRA

CIVIL - MEDICAL MALPRACTICE

CIVIL - WRONGFUL DEATH - STATUTE OF LIMITATIONS - The statute of limitations in a wrongful death action is adopted from the statute of limitations that governs the intentional tort that caused the death

CIVIL - SUICIDE - STANDARD - To sustain a cause of action for a suicide, the plaintiff must show that the defendant committed an intentional act that proximately caused an irresistible impulse in the decedent to commit suicide, not based solely on allegations of negligent medical malpractice

CIVIL - CAUSE OF ACTION - MEDICAL MALPRACTICE - The plaintiff must prove: (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the required standard; and (3) an injury to the plaintiff proximately caused by the breach of such a duty by the defendant

FACTS

Graham Irby, by and through his mother, Karen Collins, filed a wrongful death suit against the psychiatrist who treated his father, Stuart Irby, prior to Stuart's suicide. Collins alleged that Dr. Madakasira's professional negligence and intentional acts in assisting conservators with Stuart's divorce caused Stuart to develop an irresistible-impulse to commit suicide. Dr. Madakasira moved for dismissal, arguing that Collins's claim based on intentional tort was barred by the statute of limitations and that the negligence claims were barred for failure to state a claim upon which relief can be granted. The trial court granted the motion to dismiss. Collins appealed.

ISSUES

Whether the trial court erred in (1) finding Collins's wrongful-death complaint was barred by the one-year statute of limitations for intentional torts and (2) dismissing Collins's negligence claims.

HOLDING

(1) Because an intentional act cannot serve as the basis for a negligence claim, the trial court did not err in finding the claim was barred by the one-year statute of limitations for an intentional tort. (2) Although a claim for wrongful suicide death under the irresistible-impulse doctrine may be sustained on a doctor's actions, Collins incorrectly based her claim on medical negligence, which could not serve as grounds to support the irresistible-impulse doctrine. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Chief Judge Lee argued this case was properly viewed as medical malpractice, and Mississippi law is clear that a two-year statute of limitations applies to medical malpractice cases. He would have found that Collins's claim was not barred by the statute of limitations.

Affirmed - 2015-CA-01759-COA (Mar. 28, 2017)

En Banc Opinion by Judge Barnes - Dissent by Chief Judge Lee

Hon. John Huey Emfinger (Rankin County Circuit Court)

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COURT OF APPEALS - POST-CONVICTION RELIEF

HOBSON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - TIME-BAR - Pursuant to Miss. Code Ann. § 99-39-5(2), under the Uniform Post-Conviction Collateral Relief Act, a PCR motion challenging a guilty plea must be filed within three years of the entry of the judgment of conviction

CRIMINAL PROCEDURE - POST-RELIEF SUPERVISION - ABSCONDING - Pursuant to Miss. Code Ann. § 47-7-37.1, if a probationer or person under post-release supervision absconds, the court may revoke his probation and impose any or all of the sentence; absconding from supervision means the failure of a probationer to report to his supervising officer for six or more consecutive months

CRIMINAL PROCEDURE - POST-RELIEF SUPERVISION - TIME FRAME - While Miss. Code Ann. § 47-7-34 unquestionably limits to five years the period of time that the MDOC may supervise an offender who is on post-release supervision, the statute does not limit the total number of years of post-release supervision to five years; unsupervised post-release supervision means that the court, and not the MDOC, is monitoring the defendant during this time, and any time period extending beyond the five years is considered unsupervised, even if it was not designated as such

FACTS

In 2009, Timothy Hobson pled guilty to one count of possession of cocaine, which was subject to enhancement as a second or subsequent offender under the Uniform Controlled Substance Law. Hobson was sentenced to serve four years with five years of supervised post-release supervision, and seven years of unsupervised post-release supervision. In June 2013, Hobson's probation field supervisor filed a petition to revoke Hobson's probation, an affidavit, and an arrest warrant for failure to report or pay court costs. In September 2015, Hobson's field supervisor filed a petition to dismiss the 2013 arrest warrant and revocation petition because Hobson had not been located and arrested within thirty days nor had the revocation hearing occurred within thirty days. The circuit court granted the petitions, and the field officer filed a new petition for revocation, an affidavit, and an arrest warrant for the same probation violations cited in 2013. Hobson was brought into custody. At the revocation hearing, the circuit court found Hobson in violation of the terms of his post-release supervision and revoked his probation. In January 2016, Hobson filed a PCR motion to vacate his sentence and the revocation of his post-release supervision. The Rankin County Circuit Court dismissed Hobson's motion. Hobson appealed.

ISSUES

Whether (1) Hobson's post-conviction relief motion was time-barred, (2) Hobson's post-release supervision was illegally revoked because of a mere technical violation, and (3) Hobson's post-release supervision was illegal because it exceeded five years.

HOLDING

(1) Because Hobson's motion was filed seven years after Hobson pled guilty, the PCR motion was time-barred. (2) Because Hobson absconded more than six months, the court did not err by revoking probation. (3) Because Hobson's five years of supervised and seven years of unsupervised post-release supervision fell within the limits of Miss. Code

Ann. § 47-7-34, his post-release supervision was legal. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2016-CP-00308-COA (Mar. 28, 2017)

Opinion by Judge Barnes

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

Pro se for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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McCOY V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - PROCEDURAL BAR - Under the Uniform Post-Conviction Collateral Relief Act, any order denying or dismissing a post-conviction relief (PCR) motion bars a second or successive motion

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - STATUTORY BAR - The burden of proof is on the movant to show any statutory exceptions to the Uniform Post-Conviction Collateral Relief Act’s three-year statute of limitations, and mere assertion of a constitutional rights violation is insufficient

FACTS

On November 10, 2004, Bruce McCoy was charged by a Lincoln County grand jury with burglary of a dwelling and petit larceny. On December 6, 2004, McCoy pled guilty to two counts of burglary of a dwelling, one count of burglary of a building, four counts of grand larceny, and two counts of petit larceny. McCoy was sentenced as a habitual offender under Miss. Code Ann. § 99-19-81. His sentences were ordered to run concurrently without the possibility for early release or parole. McCoy filed a motion for post-conviction relief (PCR) timely challenging all four of his sentences resulting from his guilty pleas entered on the nine different counts. The circuit court denied relief, and McCoy’s appeal was dismissed without prejudice for failing to file separate motions challenging each judgment, as required. In 2007, McCoy filed another PCR motion, which the circuit court again denied. McCoy’s appeal was dismissed for failure to pay the appeal costs. On March 15, 2011, McCoy filed three separate PCR motions challenging his guilty pleas and sentences, arguing that newly discovered evidence showed that the circuit judge should have recused himself because one of the victims was a court administrator. He also argued that there was an intervening decision by the Mississippi Supreme Court, his indictments were insufficient, and his defense counsel was ineffective. The circuit court dismissed each of his motions as untimely and successive. McCoy appealed, which was again dismissed. On October 8, 2015, McCoy filed a PCR action challenging his indictment for burglary of a dwelling and petit larceny. The circuit court dismissed his PCR motion as successive. McCoy appealed.

ISSUE

Whether the circuit court erred in denying McCoy’s fourth PCR motion as successive.

HOLDING

Because the circuit court did not abuse its discretion in dismissing McCoy’s PCR motion as successive, and because no statutory exceptions under § 99-39-23(6) applied, the motion relating to McCoy’s December 2004 guilty plea, filed nearly eight years after the statutory deadline of December 2007 had passed, was properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2016-CP-00051-COA (Mar. 28, 2017)

Opinion by Judge Barnes

Hon. David H. Strong Jr. (Lincoln County Circuit Court)

Pro se for Appellant - Laura Hogan Tedder (Att’y Gen. Office) for Appellee

COURT OF APPEALS - CRIMINAL CASES

COOPER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - THEORY OF CASE - A defendant is entitled to have jury instructions given which present his theory of the case; the court may refuse an instruction which (1) incorrectly states the law, (2) is covered fairly elsewhere in another instruction, or (3) is without foundation in the evidence

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - GENERALLY - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL PROCEDURE - SUFFICIENCY OF 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 PROCEDURE - WEIGHT OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because factual disputes are properly resolved by the jury, not by an appellate court

FACTS

On December 19, 2013, Randall Cooper, Vursha Lovelace, and Virgil Harris (Virgil) all attended a party. Lovelace received a call from Tevin Harris (Harris) who asked her to pick him up. When Lovelace told Virgil she was leaving to go get Harris, Virgil asked her for a ride, and Lovelace agreed. Before the two left, Cooper also asked for a ride and thus, joined the pair. The trio then picked up Harris. The four then continued down the highway to drop off Virgil. As they drove, Virgil became agitated and started “talking crazy.” Virgil threatened to shoot everyone in the car and then told Lovelace to pull over and let him out. However, testimony indicated that no one felt threatened by Virgil’s behavior. Lovelace ultimately pulled over, and as Virgil exited the car he continued to hurl insults at the remaining occupants of the car. Lovelace testified that Cooper then leaned over and shot Virgil one time. Virgil fell to the ground, and Cooper leaned over him and continued to shoot. The three eventually fled the scene. Lovelace testified that during the car ride she did not see a gun in Virgil’s possession. Harris disputed this fact and noted that Virgil had a gun lying in his lap throughout the car ride. At trial, the jury found Cooper guilty of first-degree murder, and the circuit judge sentenced Cooper to life imprisonment. Cooper filed a motion for a new trial or judgment notwithstanding the verdict, which was denied. Cooper appealed.

ISSUES

Whether the trial court erred in (1) denying Cooper’s proposed jury instruction, (2) granting three of the State’s instructions, and (3) finding the evidence was sufficient to support the verdict or that the verdict was not against the overwhelming weight of the evidence.

HOLDING

(1) Because whether Virgil displayed a gun was disputed and not an after-developed fact, the trial court did not err in denying Cooper’s proposed jury instruction. (2) Because Cooper did not object to any of the State’s jury instructions at trial, the issue was procedurally barred. (3) Because evidence showed that Cooper shot Virgil eight times, there was a dispute as to Virgil’s possession of a gun, and no one felt threatened by Virgil’s behavior, the trial court did not err in finding the verdict was supported by sufficient evidence and would not sanction an unconscionable injustice. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

CONCURRENCE

Judge Barnes disagreed with the majority's reasoning as to whether the trial court erred by denying one of Cooper's proposed jury instructions. Though it was harmless error, he argued that a misapprehension or mistaken belief later brought to light by after-developed facts should not determine whether an instruction should be given.

Affirmed - 2015-KA-00846-COA (Mar. 28, 2017)

Opinion by Judge Wilson - Concurrence by Judge Barnes

Hon. Lee J. Howard (Lowndes County Circuit Court)

George T. Holmes & Hunter N. Aikens (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss & Ladonna C. Holland (Att'y Gen. Office) for Appellee

Briefed by [Brittany Barbee](#)

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HOPPER V. STATE

CRIMINAL - FELONY

INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland v. Washington*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

TRIAL - JOINT OR SEPARATE TRIALS OF CODEFENDANTS - GROUNDS FOR SEVERANCE -

Where all the evidence at trial goes to the guilt of all the defendants and not to one more than the other, it is not error to try the defendants jointly

TIME OF TRIAL - CONSTITUTIONAL GUARANTEES - SPEEDY TRIAL - To determine whether a defendant was denied the right to a speedy trial, a court should consider the following factors: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant has asserted his right to a speedy trial, and (4) whether the defendant was prejudiced by the delay

FACTS

On June 3, 2003, a Coahoma County grand jury returned a multi-count indictment against Terrell Hopper and Patrick Parker. The first indictment charged Hopper with aggravated assault and aggravated assault of a law enforcement officer, and it charged Parker with accessory after the fact. Additionally, the grand jury returned a second indictment against Hopper, charging him with armed robbery, kidnapping, and nine counts of aggravated assault of a law enforcement officer. Pursuant to the first indictment, Hopper and Parker were tried together; Hopper was convicted of both counts, and Parker was acquitted. Hopper filed a motion for a new trial on August 25, 2003, and his motion was denied. Pursuant to the second indictment, Hopper was tried and convicted. After the second trial, Hopper filed a motion for a new trial on December 6, 2003, and his motion was denied. The Mississippi Supreme Court granted out-of-time appeals of Hopper's convictions and ordered the Court of Appeals to address the claims on direct appeal.

ISSUES

Whether (1) Hopper's counsel erred in failing to request an accident instruction; (2) Hopper's counsel was ineffective for failing to request severance of the trials; (3) Hopper's counsel was ineffective in failing to object to evidence introduced in each trial regarding the incidents of the other trial; (4) Hopper's counsel erred in failing to move for a change of venue; (5) Hopper's counsel failed to provide any "meaningful" representation; (6) the forensic expert's testimony violated the Confrontation Clause and was prejudicial; (7) the State withheld exculpatory evidence, (8) Hopper's indictments were defective; and (9) Hopper was denied a speedy trial.

HOLDING

(1) Because there was no evidentiary basis to request an accident instruction, Hopper's counsel did not err in failing to request such an instruction. (2) Because the decision whether to move for severance is within the purview of trial strategy, Hopper's counsel did not err in failing to request severance of the trials. (3) Because the decision fell within the ambit of trial strategy, Hopper's counsel did not err in failing to object to evidence introduced in each trial regarding the incidents of the other trial. (4) Because defense counsel is under no duty to attempt to transfer venue, Hopper's counsel did not err in failing to move for change of venue. (5) Because it is highly improbable that the outcome of Hopper's trials would have been different, Hopper's claims of ineffective assistance of counsel were without merit. (6) Because the forensic expert participated in the analysis of the evidence recovered and Hopper failed to show how he was prejudiced by the expert's testimony, the testimony did not violate the Confrontation Clause. (7) Because there was testimony about the exculpatory evidence, the State did not withhold the evidence. (8) Because both indictments stated that Hopper caused bodily injury with a deadly weapon, the indictments were not defective. (9) Because Hopper failed to show how his delay resulted in a miscarriage of justice and failed to raise a speedy-trial issue at trial, his claim was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2014-KA-01273-COA (Mar. 28, 2017)

Opinion by Judge Fair

Hon. Larry O. Lewis (Coahoma County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Catherine Norton](#)

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