

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 27, 2017**SUPREME COURT - CRIMINAL CASES****ROUTH V. STATE****CRIMINAL - MISDEMEANOR**

MISDEMEANOR - CRIMINAL CONTEMPT - CONTEMPT DEFINED - Conduct directed against the court's dignity and authority is criminal contempt; it involves an act "which tends to bring the court into disrepute or disrespect"

MISDEMEANOR - CONTEMPT - CIVIL OR CRIMINAL - If the primary purpose of the contempt order is to enforce the rights of private party litigants or enforce compliance with a court order, then the contempt is civil; if the purpose is to punish the contemnor for disobedience of a court order, then the contempt is criminal

CONSTITUTIONAL LAW - BAIL - REASON FOR DENIAL - In any case where bail is denied before conviction, the judge shall place in the record his reasons for denying bail

FACTS

Christopher Scott Routh represented Loren Shell-Blackwell (Blackwell) at her arraignment hearing. Blackwell had been indicted for capital murder. Prior to the hearing, Blackwell had been out on bond and under house arrest. Blackwell had been pregnant, but she had the child by the time of the arraignment hearing. During the course of the hearing, the dietary needs of Blackwell's child were brought up: specifically, whether the child could only digest breast milk from Blackwell and not substitute formula. The court considered this factor in determining whether to grant Blackwell bail but decided to deny bail because of the severity of the crime and the strong governmental interest in protecting the public. The judge, however, advised that he would "reconsider [his decision] upon the filing of the proper motion with proper evidence." The judge concluded the hearing, but Mr. Routh then asked if he could make an argument. The judge told him he could not make an additional argument because the hearing was over. Mr. Routh, however, launched into his argument anyway. As the trial judge was asking him to sit down, Mr. Routh asserted that the Constitution required the reason for the judge denying bail be placed on the record. He then accused the judge of failing to do so. The trial judge found Mr. Routh in direct criminal contempt. Routh appealed.

ISSUE

Whether the record, viewed ab initio, supported a finding of direct criminal contempt beyond a reasonable doubt.

HOLDING

Because the appellant disrupted the court by disputing the judge's ruling—after being expressly told not to—the record supported a finding of criminal contempt. Therefore, the Supreme Court affirmed the decision of the Hinds County Circuit Court.

Affirmed - 2016-KM-00546-SCT (Apr. 27, 2017)

Opinion by Justice Maxwell

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

David Neil McCarty & Merrida Coxwell for Appellant - Joseph Scott Hemleben (Att'y Gen. Office) for Appellee

Briefed by [Joseph Rychlak](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 25, 2017

COURT OF APPEALS - CIVIL CASES

BERLIN V. LIVINGSTON PROP. OWNERS ASS'N

CIVIL - REAL PROPERTY

CONTRACTS - EQUITABLE RELIEF - CLEAN HANDS DOCTRINE - The clean hands doctrine prevents a party from obtaining equitable relief only if the party is guilty of willful misconduct in the transaction at issue

PROPERTY - HOMEOWNERS ASSOCIATIONS - POWER - A homeowners association has the power to control the use and enjoyment of property through restrictive covenants, including controlling the use and size of buildings upon individual lots, regulation of the property commonly enjoyed by all lot owners, and requiring preapproval of all planned construction and alterations

PROPERTY - RESTRICTIVE COVENANTS - JUDICIAL REVIEW - The court's role in reviewing a decision of a homeowners association is to determine whether the powers granted to the homeowners association through the restrictive covenants were reasonably applied; in applying that standard, the court must consider not only the rights of the individual owner, but also the rights of the other association members who expect maintenance in keeping with the general plan of development for the subdivision

CIVIL PROCEDURE - ATTORNEY'S FEES - REASONABLENESS - Chancellors are not required to hold a hearing prior to making a determination as to the reasonableness of requested attorney's fees; the chancellor's award may be upheld so long as the amount is not unreasonable

FACTS

Paul and Janice Berlin are residents of Livingston, a covenant-restricted community in Madison County. Their lakefront lot is subject to a maintenance easement that extends 20 feet onto their property from the lake's high-water mark. Their lot is also subject to a covenant requiring them to obtain approval from the Architectural Review Committee (ARC) of the Livingston Property Owners Association (LPOA) prior to beginning construction of fences and other improvements on their property. The covenants require ARC to approve or disapprove plans within 30 days and to provide written notice of its decision and specify its reasons. The Berlins asked ARC to approve a fence that would extend across the maintenance easement along their property lines. ARC denied the proposed fence because it would interfere with the maintenance easement. The chair of ARC told Paul Berlin of the disapproval and the reasons for the decision instead of providing written notice. The Berlins built the fence anyway. LPOA sued the Berlins and asked the court to enforce the covenants, enjoin the Berlins from maintaining their fence, and order the Berlins to remove the portion that encroached on LPOA's maintenance easement. The Berlins filed a counterclaim accusing LPOA of arbitrary and selective enforcement of the covenants. The chancellor found that the Berlins had violated the covenants and that LPOA was entitled to injunctive relief. The Berlins were ordered to remove portions of their fence within 60 days of judgment. The chancellor awarded LPOA \$17,485.58 for attorney's fees and expenses. The chancellor denied all relief requested in the Berlins' counterclaim. The Berlins unsuccessfully moved for reconsideration or a new trial. The Berlins appealed.

ISSUES

Whether (1) ARC's failure to provide a written statement of reasons for its decision excused the Berlins' violation of the covenants; (2) the chancellor's ruling was contrary to law and against the overwhelming weight of the evidence; (3) LPOA's other alleged noncompliance with the covenants excused the Berlins' violations; (4) the chancellor erred by not holding a hearing on the reasonableness of attorney's fees; and (5) the chancellor abused her discretion by refusing to admit a letter written by LPOA's attorney.

HOLDING

(1) Because ARC substantially complied with the covenants by promptly informing the Berlins of the reasons for denial, LPOA's conduct was not willful misconduct, and the Berlins' argument was without merit. (2) Because LPOA and ARC's conclusion that the Berlins' fence would interfere with necessary access to the maintenance easement was

reasonable, the chancellor's ruling to enforce the covenant was neither contrary to law nor against the overwhelming weight of the evidence. (3) Because nothing in the declaration of the covenants required LPOA's board to adopt any rules recommended by ARC, LPOA was not estopped from enforcing the covenants for failing to provide evidence at trial that it had adopted construction rules and regulations. (4) Because the chancellor was not required by statute or rule to hold a hearing prior to determining the reasonableness of attorney's fees, the chancellor did not err by failing to hold a hearing. Further, the Berlins never identified any duplicative or unnecessary time entries or articulated any way in which LPOA's requested fees were unreasonable, so the chancellor's award was not unreasonable. (5) Because the letter was irrelevant to the case at issue and was written by a person without authority to propose a settlement, the chancellor did not abuse her discretion in refusing to admit it into evidence. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

Affirmed - 2015-CA-01512-COA (Apr. 25, 2017)

Opinion by Judge Wilson

Hon. Cynthia L. Brewer (Madison County Chancery Court)

Donald W. Boykin & V. Douglas Gunter for Appellants - James L. Martin & David Glyn Porter for Appellee

Briefed by [Mallory Bland](#)

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MOSELY V. BAPTIST MEM'L HOSP.

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - RESPONDEAT SUPERIOR - A suit barred by a statute of limitation against an agent will likewise bar the same claim against the principal whose liability is based solely upon the principal and agency relationship, and not some act or conduct of the principal that is separate and apart from the act or conduct of the agent

CIVIL PROCEDURE - PLEADINGS - AMENDMENT - Pursuant to Miss. R. Civ. P. 15(a), trial courts are required to provide plaintiffs an opportunity to amend complaints that have been dismissed under R. 12(b)(6) "when justice so requires" and "upon conditions and within time as determined by the court"

FACTS

Gerboria Mayfield died at Baptist Memorial Hospital-Golden Triangle (BMH-GT) following complications from a caesarian section. Jimi Mosely, as representative of Mayfield's estate, brought a wrongful-death action based on the tort of medical negligence against Mayfield's doctor, Gregory Childrey, and against BMH-GT (*Moseley I*). BMH-GT was dismissed without prejudice from the action before trial due to Mosely's inadequate pleading as to causation. Mosely's subsequent motion to amend the complaint to join BMH-GT back as a defendant was denied as untimely. Mosely then filed a second action (*Moseley II*) naming BMH-GT and two nurses, Brady Adams-Hall and Jennifer Gilliam, as defendants. The court denied Mosely's motions to consolidate *Moseley I* and *Moseley II* and granted BMH-GT's and Gilliam and Adams-Hall's respective motions to dismiss, or, in the alternative, for summary judgment in *Moseley II* on the ground that *Moseley II* was barred by the two-year statute of limitations. Mosely appealed.

ISSUES

Whether the trial court erred in (1) denying Mosely's motion to amend the complaint in *Moseley I* and (2) dismissing the case with prejudice in *Moseley II*.

HOLDING

(1) Because Mosely filed her motion to amend three months after the scheduling deadline, the trial court did not err in denying Mosely's motion to amend the complaint on the ground of undue delay. (2) Because the two nurses were not named as defendants in *Moseley I* and were not given presuit notice in either *Moseley I* or *II*, the two-year statute of limitation as to them expired. Consequently, the trial court properly dismissed the two nurses with prejudice from *Moseley II*. Additionally, because Mosely's claim against BMH-GT was based solely on the theory of respondeat superior, the statute

of limitation also expired to BMH-GT when it expired as to the nurses. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2015-CA-01380-COA (consolidated with 2015-CA-01517-COA) (Apr. 25, 2017)

Opinion by Judge Greenlee

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

Carlos Eugene Moore, Tangala Laniece Hollis, Tameika Ladanya Bennett, & Darryl Anthony Wilson for Appellant - David W.

Upchurch, John Mark McIntosh, J. Gordon Flowers, Scott Fuller Singley, & Lauren Oaks Lawhorn for Appellees

Briefed by [Lora Wuerdeman](#)

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ROSS V. STEWART

CIVIL - OTHER

CIVIL PROCEDURE - COUNTERCLAIMS - COMPULSORY & PERMISSIVE - Miss. R. Civ. P. 13 allows the court to consider compulsory and permissive counterclaims

CIVIL PROCEDURE - SUBJECT-MATTER JURISDICTION - ANCILLARY OR PENDENT CLAIMS -

Once a court acquires actual subject-matter jurisdiction of an action, other claims (whether asserted by one or more of the original parties or by new or intervening parties), ancillary or pendent to the original claim can also be litigated in that action even though the ancillary or pendent claim standing alone may have been beyond the court's jurisdiction

FACTS

Shellie R. Stewart filed a complaint for replevin of a mobile home in the possession of Earl and Maxcine Ross ("Rosses"). The Rosses filed a counterclaim alleging breach of contract. The Pike County Circuit Court dismissed the Rosses' counterclaim but scheduled a trial concerning the replevin action. During the bench trial, the circuit court heard testimony regarding the alleged contract between Stewart and the Rosses. The court found the testimony given by Stewart and the Rosses proved that there was no meeting of the minds, no binding agreement, and, thus, no contract. The Pike County Circuit Court granted the replevin and awarded possession of the mobile home to Stewart. The Rosses appealed.

ISSUE

Whether the trial court erred in declining to accept jurisdiction of the counterclaim filed in response to the complaint in replevin.

HOLDING

Because the trial judge later allowed testimony regarding the existence of a contract and an alleged breach, he corrected his initial error of declining jurisdiction over the Rosses' counterclaim. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

DISSENT

Presiding Judge Griffis argued it was reversible error as a matter of law for the circuit court to decline jurisdiction over the counterclaims. Therefore, he would reverse and remand this case for further proceedings.

Affirmed - 2015-CA-01801-COA (Apr. 25, 2017)

Opinion by Judge Westbrook - Dissent by Presiding Judge Griffis

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

Charles E. Miller for Appellants - W. Stewart Robison & Michelle Wroten Van Norman for Appellee

Briefed by [Victoria Jones](#)

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COURT OF APPEALS - CRIMINAL CASES

BRADLEY V. STATE

CRIMINAL - FELONY

AGGRAVATED ASSAULT - PROOF - ELEMENTS - To prove aggravated assault, the State generally must prove beyond a reasonable doubt that a defendant (1) attempted to cause or purposely or knowingly caused bodily injury to another (2) with a deadly weapon

EVIDENCE - WITNESS CREDIBILITY - APPEALS - An appellate court will not pass upon the credibility of witnesses and, where the evidence justifies a verdict, it must be accepted as having been found worthy of belief

CLOSING ARGUMENT - PLAIN ERROR - INFLAMMATORY STATEMENTS - An appellate court will only find plain error under circumstances where the comments at issue were so inflammatory that the trial judge should have objected on his own motion

FACTS

Stanley Bradley lived with his girlfriend, Cassandra Baker, and her brother David Baker. On February 15, 2014, Bradley and David got into a fight, and Bradley stabbed David with a pocketknife five times. Bradley was sentenced to 20 years in the custody of the Department of Corrections for aggravated assault. Bradley appealed.

ISSUES

Whether (1) the jury's verdict was contrary to the weight of evidence, and (2) the prosecution made an improper "send a message" closing argument.

HOLDING

(1) Because there was credible witness testimony and Bradley provided inconsistent statements, the jury could have reasonably found Bradley guilty of aggravated assault. Consequently, the verdict was not contrary to the weight of evidence. (2) Because the prosecution's closing argument was not improper or inflammatory and because neither the defense or the trial judge objected to the closing, the issue was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2015-KA-01234-COA (Apr. 25, 2017)

Opinion by Judge Barnes

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

Erin Elizabeth Briggs for Appellant (Pub. Def. Office) - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Desire'e Martinelli](#)

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BROWN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INDICTMENT - VALIDITY - An indictment must contain: (1) the essential elements of the offense charged; (2) sufficient facts to fairly inform the defendant of the charge which he must defend, which can be accomplished by tracking the language of the criminal statute; and (3) sufficient facts to enable the defendant to plead double jeopardy in the event of a future prosecution for the same offense

CRIMINAL PROCEDURE - INDICTMENT - SPECIFIC DATES - Specific dates on which an alleged act was committed is not required in an indictment so long as the defendant is fully and fairly informed of the charges against him

CRIMINAL PROCEDURE - ELECTRONIC SURVEILLANCE - CONSENT - Electronic surveillance does not tread on the constitutional rights of the Fourth Amendment when the consent of one of the parties is first obtained; the expectation of privacy, though perhaps shaken by the mistaken belief that a person to whom one voluntarily confides will not reveal the conversation, does not reach constitutional proportions

CRIMINAL PROCEDURE - MIRANDA RIGHTS - WAIVER - Under *Miranda*, the accused must be warned of the right to remain silent and the right to an attorney before any custodial interrogation may occur, but an accused may waive that right, if waiver is voluntarily, knowingly, and intelligently done

FACTS

While V.B. was living with her father between the ages of 8 and 13, V.B.'s grandfather, Jimmy Brown, penetrated her digitally, and he had additional sexual contact with her when she was between the ages of 16 and 19. During the investigation, V.B.'s mother called Brown in the presence of a detective, and the phone call was recorded. In it, Brown confessed to inappropriate contact with V.B. After being taken into custody, Brown waived his *Miranda* rights and admitted to touching V.B. while in a position of trust or authority over her. Brown was indicted for one count of fondling his granddaughter when she was under the age of 18 and one count of fondling his granddaughter when she was under the age of 16. The indictment did not include exact dates of the alleged abuse due to the continued nature of the crimes. At trial, both the phone call and the interrogation were admitted into evidence. A Desoto County jury convicted and sentenced Brown on both counts. Brown filed posttrial motions for a judgment notwithstanding the verdict or, in the alternative, a new trial. Although Brown did not raise the issue posttrial, the sentencing order contained a clerical error. The Desoto County Circuit Court denied the motions. Brown appealed.

ISSUES

Whether (1) the trial court erred by finding the indictment provided Brown with sufficient notice of the charges against him; (2) the trial court erred by finding that the verdict was supported by sufficient evidence; (3) the trial court abused its discretion by denying Brown's motion to suppress; and (4) Brown's trial counsel provided ineffective assistance.

HOLDING

(1) Because specific dates of the alleged sexual abuse are not essential elements of the crime charged, the trial court did not err in finding that the indictment provided sufficient notice to Brown. (2) Because V.B. testified to the acts Brown committed and the time frame of the acts, and because the jury heard Brown's admission of being in a position of trust over V.B., the trial court did not err in finding that the verdict was supported by sufficient evidence. (3) Because V.B.'s mother consented to the recording of the phone call, Brown was not in custody or subject to interrogation during the phone call, and Brown knowingly, voluntarily, and intelligently waived his *Miranda* rights before making any statements while in custody, the trial court did not abuse its discretion in allowing Brown's admission. (4) Because the record did not indicate that Brown received ineffective assistance and because the parties did not explicitly stipulate that the record was adequate to allow the court to make findings without considering a trial judge's findings of fact, the ineffective assistance claim was dismissed without prejudicing Brown's ability to raise the issue in post-conviction proceedings. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court, but remanded because of the error in the sentencing order.

Affirmed & Remanded - 2015-KA-01416-COA (Apr. 25, 2017)

Opinion by Judge Ishee

Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)

Jeanine Mr. Carafello & Ross R. Barnett Jr. for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Alison Guider](#)

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COLEMAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - UNJUST PREJUDICE - The standard of review which the court must apply to lawyer misconduct during opening statements or closing arguments is whether the natural and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - SCOPE - Prosecutors are not allowed to employ tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury; the prosecutor may comment upon any facts introduced into evidence, and he may draw whatever deductions and inferences that seem proper to him from the facts

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - HARMLESS ERROR - Improper remarks made during closing arguments can be harmless error where the evidence of guilt is overwhelming

FACTS

Marcellos Coleman was charged with kidnapping and murder. During closing arguments at trial, the State made comments about the absence of an alibi witness and the fact that Coleman had multiple girlfriends. Coleman's attorney objected to these comments as improper remarks, but the trial court allowed the comments. The jury found Coleman guilty, and Coleman received concurrent sentences of life imprisonment for the murder conviction and thirty years for the kidnapping conviction. Coleman appealed.

ISSUE

Whether the trial court erred in allowing the State to make improper remarks during the State's closing argument, denying Coleman a fair trial.

HOLDING

Because the natural and probable effect of the improper remarks did not create an unjust prejudice against Coleman, the trial court did not err in allowing the comments during closing arguments. The State provided overwhelming evidence of Coleman's guilt, so any error that may have occurred was harmless. Consequently, Coleman's constitutional right to a fair trial was not violated. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2015-KA-01554-COA (Apr. 25, 2017)

Opinion by Judge Ishee

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

Mollie M. McMillin (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Kyle Hansen](#)

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SALLIE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INDICTMENT - SUFFICIENCY OF INDICTMENT - An indictment that tracks the language of the statute is generally sufficient to inform the accused of the charge against him or her, as long as the statute fully, directly, and expressly, without any uncertainty or ambiguity, sets out all the elements necessary for the offense

CRIMINAL PROCEDURE - FALSE PRETENSES - INDICTMENT - For a prosecution of false pretenses, it is necessary to charge that the pretenses were false; that the defendant knew them to be false; that he obtained from another certain money or other valuable things; and that the pretenses were the moving cause by which the money or things were obtained

CRIMINAL PROCEDURE - INDICTMENT - WAIVER ON APPEAL - Since a challenge to an indictment for failure to charge the essential elements of a criminal offense affects a fundamental right, challenges to the sufficiency of an indictment may not be waived and consequently may be raised for the first time on appeal

FACTS

Sharon Sallie, along with her daughter Jessica Plaxico and her son-in-law Ahmad Fryar, obtained money from Wilma Colom through false pretenses. Plaxico and Fryar were tenants of Colom. Plaxico informed Colom that she intended to sue a doctor for leaving medical tools inside of her, and requested money from Colom in order to pursue the claim. Colom asked Sallie if Plaxico’s story was true, and Sallie confirmed it was. Plaxico requested Colom to send the money to Sallie, since she was the only one with a valid identification. As a result, Colom sent \$2,160 as well as two \$50 money orders to Sallie via Moneygram. Colom continued giving money to Sallie until Colom discovered Plaxico was not actually pursuing litigation. Sallie was convicted of conspiracy to obtain money through false pretenses and for committing the crime of false pretenses. The circuit court sentenced Sallie to five years for conspiracy and ten years for the false pretenses. Sallie appealed.

ISSUE

Whether Sallie’s indictment was defective because it lacked an essential element of the crime, namely the specific nature of false pretenses.

HOLDING

Because Sallie’s indictment fully and directly set out all the elements necessary for the offense of false pretenses, the indictment was not defective. Therefore, the Court of Appeals affirmed the judgment of the Tippah County Circuit Court.

Affirmed - 2016-KA-00891-COA (Apr. 25, 2017)

Opinion by Judge Fair

Hon. Andrew K. Howorth (Tippah County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Blake Brookshire](#)

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