

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 20, 2020***SUPREME COURT - CIVIL CASES*****SMITH V. HARDY WILSON MEM'L HOSP.****CIVIL - WRONGFUL DEATH**

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - Under Mississippi law, nurses are prohibited from giving medical causation opinions and cannot establish the causation element of medical malpractice claims

TORTS - MEDICAL MALPRACTICE - ELEMENTS - The essential elements of a medical malpractice claim that must be shown are: (1) the applicable standard of care; (2) a failure to conform to the applicable standard; and (3) an injury proximately caused by a defendant's noncompliance with the standard

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - The plaintiff must demonstrate through medical-expert testimony that the alleged breach was the proximate cause or the proximate contributing cause of the alleged injuries

CIVIL PROCEDURE - EXPERT TESTIMONY - STANDARD - Expert testimony will be deemed unreliable if it is the product of subjective belief or unsupported speculation.

FACTS

In 2015, Carolyn Smith fell outside her home and sustained a shoulder injury and a small laceration above her right eye. Carolyn presented to Hardy Wilson Memorial Hospital ("Hardy Wilson")'s emergency department, where nursing staff evaluated and recorded her vital signs. Dr. James Johnson evaluated Carolyn and ordered that she be administered four milligrams of Zofran and two milligrams of Dilaudid to relieve her pain. After an X-ray showed that Carolyn had a broken shoulder, Dr. Johnson ordered her discharged. Shortly after, Carolyn complained of increased pain. Dr. Johnson ordered that Carolyn be administered two milligrams of Ativan and two more milligrams of Dilaudid. The nurses administered these drugs and again checked her vital signs. Soon after, the nurses administered oxygen to stabilize Carolyn's oxygen levels. After being informed of her worsening condition, Dr. Johnson maintained his order to discharge her and sent her home. Carolyn was asleep when placed in her husband's car. Instead of awaking upon arrival, she had stopped breathing. An ambulance was called to bring her back to the hospital, and Carolyn was pronounced dead upon arrival. The Smiths filed suit against Hardy Wilson, alleging that its negligence, by and through its nursing staff, caused or contributed to Carolyn's death. In 2018, Hardy Wilson moved for summary judgment. To counter, Smith offered expert affidavits by Nurse Irish Patrick-Williams and Drs. Robert Dale and Michael Stodard. The trial court granted summary judgment for Hardy Wilson, finding that no competent evidence had been produced on the causation element of Smiths' claims against Hardy Wilson's nursing staff, and the Smiths could not prove that any alleged negligence of the nursing staff caused Carolyn Smith's injuries or death. The Smiths appealed.

ISSUE

Whether the trial court erred in granting Hardy Wilson's motion for summary judgment.

HOLDING

Because nurses, such as Patrick-Williams, are prohibited from giving medical causation opinions and cannot establish the causation of the Smiths' claims, because Patrick-Williams's opinion did not rise above mere speculation, and because neither Dr. Dale nor Dr. Stodard rendered opinions as to Hardy Wilson or its nursing staff, the Smiths could not prove that negligence by and through the nursing staff caused or contributed to Carolyn Smith's injuries or death, and the circuit court did not err in granting summary judgment in favor of Hardy Wilson. Therefore, the Supreme Court affirmed the judgment of the Copiah County Circuit Court.

Affirmed - 2018-CA-01448-SCT (Aug. 20, 2020)

Opinion by Justice Chamberlain

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

William C. Griffin for Appellants - Gaye Nell Currie & D. Jason Childress for Appellee

Briefed by [Jack Hall](#)

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SUPREME COURT - ORDERS

CUMMINGS V. STATE

EN BANC ORDER

CRIMINAL PROCEDURE - ILLEGAL SENTENCE CLAIM - ELEMENTS - An illegal-sentence claim is an exception to the time, waiver, and successive-writ bars

CRIMINAL PROCEDURE - DEFECTIVE INDICTMENT CLAIM - ELEMENTS - A defective-indictment claim must meet any recognized exception to the procedural bars and have some arguable basis to merit waiving the bars

FACTS

In 2009, Cummings was convicted of felony driving under the influence and sentenced to life in prison as a habitual offender. The Court of Appeals affirmed his conviction. Cummings has filed four applications pertaining to his conviction and sentence that were all denied or dismissed with a warning of sanctions. Cummings argued that his indictment was defective because (1) it was not submitted to the grand jury; (2) the foreman's affidavit was not attached to it; (3) it omitted the county and judicial district; and (4) it lacked specificity. Accordingly, Cummings argued that his sentence was illegal. Cummings appealed.

ORDER

Because Cummings's defective indictment claim did not meet any recognized exception to procedural bars or have any arguable basis, his illegal-sentence claim was insufficient. Further, in the order dismissing Cummings's last application, he was warned that future filings deemed to be frivolous may result in monetary sanctions and restrictions on filing applications for post-conviction relief. Accordingly, this application was deemed to be frivolous and thus sanctions were merited. The Application for Leave to Proceed in the Trial Court was denied, and Cummings was restricted from filing further applications for post-conviction relief related to this conviction and sentence in forma pauperis.

OBJECTION IN PART

Presiding Justice Kitchens argued that because Cummings did not challenge his indictment on the ground that it failed to charge essential elements of the crime, and because his claim had no arguable basis, his application should be denied, but he would not choose to sanction Cummings by depriving him of access to the courts.

OBJECTION IN PART

Presiding Justice King argued that the Supreme Court's decision to deny Cummings's filing actions was a violation of his constitutional rights. Rather than violating his rights, he argued that he would instead simply deny his petition for post-conviction relief.

Ordered - 2017-M-01424 (Aug. 20, 2020)

En Banc Order by Justice Coleman - Objections by Presiding Justice Kitchens & Presiding Justice King

Briefed by [Gabrielle Beech](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 18, 2020
COURT OF APPEALS - CIVIL CASES

ABG CONTRACTORS, INC. v. I-55 DEV., LLC

CIVIL - CONTRACT

PROPERTY - CONSTRUCTION LIEN - EXPUNGEMENT - A notice of construction lien may not be expunged without first making a finding as to the validity of the lien

PROPERTY - FALSE LIEN - PENALTY - Pursuant to Miss. Code Ann. § 85-7-429, any person who falsely and knowingly files the claim of lien shall be liable to every party injured for a penalty equal to three times the full amount for which the claim was filed to be recovered in an action by any party so injured at any time within 180 days from the filing of the claim of lien

CIVIL PROCEDURE - STATUTE APPLICATION - PLAIN MEANING - When presented with a question regarding the application of a statute, an appellate court strives to give the statute its effect as intended by the Legislature by looking to the statute’s language; if the language is found to be clear and unambiguous, the plain meaning of the statute should be applied

FACTS

I-55 Development (“I-55”) owned real property in Holmes County, Mississippi. I-55 contracted with ABG Contractors, Inc. (“ABG”) to build a gas station and convenience store (collectively the “C-Store”) on I-55’s property. The contract terms stated that ABG would act as the prime contractor and provide the labor and materials to perform the services to complete the C-Store. The contract also stipulated that ABG would complete the project within 180 days of the project start date. In addition, the contract stated that any alteration or deviation from the described work above involving extra costs shall be executed only upon a signed Change Order agreement between the Owner and Contractor. ABG filed a notice of construction lien on I-55’s property. The lien stated that ABG was entitled to the contract price of \$900,000. I-55 filed a petition, seeking (1) expungement of the notice of construction lien from the land records, (2) assessment of penalties against ABG for filing a false lien, and (3) entry of a declaratory judgment. I-55 claimed the lien was defective because it alleged ABG was owed the entire contract price and presupposed that ABG had not been paid under the terms of the contract. Further, I-55 asserted that the lien was fraudulent because ABG had already received \$832,054 under the contract. I-55 also claimed that they had paid \$186,815 for materials on ABG’s behalf, though the contract price was only \$900,000. I-55 argued they had already paid \$1,018,869. The circuit court entered an order to expunge ABG’s notice of construction lien on I-55’s property. In the order expunging the notice of construction lien, the circuit court judge specified that though she was expunging the lien, she made no findings as to whether the lien was false or improper. ABG appealed.

ISSUE

Whether the circuit court incorrectly applied Miss. Code. Ann § 85-7-429 in granting the expungement of the notice of construction lien.

HOLDING

Because the plain language of Miss. Code Ann. § 85-7-429 is clear and unambiguous, and because the circuit court failed to make any findings as to the validity of the notice of the construction lien prior to expunging the lien, the circuit court incorrectly applied Miss. Code Ann. § 85-7-429. Therefore, the Court of Appeals reversed the judgment of the Holmes County Circuit Court.

Reversed & Remanded - 2018-CA-01673 (Aug. 18, 2020)

En Banc Opinion by Judge Lawrence

Hon. Jannie M. Lewis-Blackmon (Holmes County Circuit Court)

Warren Louis Martin Jr. & Robert Earl Thompson II for Appellants - Terris Caton Harris & Jamie Deon Travis for Appellees

Briefed by [Rachel Fewell](#)

MISS. BUREAU OF NARCOTICS V. HUNTER

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - DISCOVERY - ADMISSIONS - While Miss. R. Civ. P. 36 is to be applied as written, if the rule may sometimes seem harsh in its application, the harshness may be ameliorated by the trial court's power to grant amendments or withdrawals of admissions in proper circumstances

CIVIL PROCEDURE - APPELLATE PRACTICE - SUMMARY JUDGMENT - An appeal from the denial of a motion for summary judgment is interlocutory in nature and is rendered moot by a trial on the merits

TORTS - GOVERNMENTAL ENTITY - IMMUNITY - Pursuant to Miss. Code Ann. § 11-46-9(1)(c), an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police are not immune if the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury

FACTS

The Mississippi Bureau of Narcotics ("Bureau") initiated a task force with the Vicksburg Police Department ("VPD") intended to dismantle an organization that was moving large quantities of illegal drugs through Warren County, Mississippi. The Bureau used confidential informants to buy drugs from numerous individuals, including an individual who lived at 525 Feld Street. The Bureau appeared before a judge and presented a search warrant application for 525 Feld Street, but the application incorrectly listed the address as 523 Feld Street, where Rita and Henry Hunter resided. The judge issued a "no knock" warrant for the Hunters' home at 523 Feld Street instead of 525 Feld Street. As the officers approached the residence, a VPD officer realized the mistaken address and informed a Bureau officer. Nevertheless, the Bureau officers proceeded with the "no knock" warrant. The officers opened the door with a battering ram and commanded the Hunters to get down. When the officers asked the Hunters for the targeted individual's whereabouts, the Hunters responded that he did not live there. The officers allowed the Hunters to get off the floor five minutes later. The Hunters filed a complaint against the Bureau and the VPD for the illegal entry into their home. After the Hunters failed to respond to requests for admissions, the Bureau filed a motion for summary judgment. The Hunters filed a response, which included a motion to withdraw and amend their deemed admissions and requested the trial court excuse the twelve-day delay. The VPD filed a motion for summary judgment, claiming immunity under the Mississippi Tort Claims Act ("MTCA"). The Bureau subsequently filed a supplemental motion for summary judgment, also claiming immunity under the MTCA. The trial court granted the VPD's motion for summary judgment, denied the Bureau's supplemental motion for summary judgment, and allowed the Hunters to withdraw and amend their deemed admissions. The Bureau filed a motion for recusal on the basis that the court administrator was the daughter of the Hunters' counsel. The trial court denied the motion for recusal. At the close of trial, the trial court found the Bureau acted in reckless disregard under Miss. Code Ann. § 11-46-9(1)(c) and awarded the Hunters \$50,000 in damages. The Bureau appealed.

ISSUES

Whether the trial court erred in (1) allowing the Hunters to withdraw and amend their deemed admissions; (2) denying the Bureau's supplemental motion for summary judgment; (3) denying the Bureau's motion for recusal; (4) finding that the Bureau acted in reckless disregard in executing the "no knock" warrant; and (5) granting a "grossly excessive" award in damages.

HOLDING

(1) Because the Hunters filed a request to withdraw their deemed admissions and filed amended responses only twelve days late, and because the Bureau failed to show how the Hunters' delay prejudiced its case in any way, the trial court did not abuse its discretion in granting the request. (2) Because the trial court's denial of the Bureau's motion for summary judgment was rendered moot by the trial on the merits, it was not reviewable on appeal and was not a basis for reversal. (3) Because the Bureau failed to provide any evidence to overcome the presumption that the trial judge was

unbiased or acted impartially, the issue of recusal lacked merit. (4) Because the Bureau officers ignored the evidence clearly before them of the wrong address and failed to take any corrective steps to preserve the safety of those involved, the trial court properly found the Bureau acted in reckless disregard in executing the “no knock” warrant. (5) Because the evidence the trial court considered was not so unreasonable in amount as to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous, the award of \$50,000 was not “grossly excessive.” Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2019-CA-01246-COA (Aug. 18, 2020)

Opinion by Judge Lawrence

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

Mark D. Morrison for Appellant - Marshall E. Sanders for Appellees

Briefed by [Lynette Potter](#)

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SHORT V. BOLIVAR CTY. BD. OF SUPERVISORS

CIVIL - OTHER

CIVIL PROCEDURE - IMMUNITY - PUBIC POLICY FUNCTION TEST - When reviewing whether a challenged action is afforded immunity, a court’s focus is on the nature of the actions taken and whether they are susceptible to policy analysis

CIVIL PROCEDURE - PUBLIC OFFICERS AND EMPLOYEES - MANDATORY DUTY - Although Miss. Code Ann. § 25-1-45 may give standing to any interested party to sue an official’s bonding company for recovery of damages, those damages must be caused by the failure of that official to perform a mandatory duty

CIVIL PROCEDURE - FAILURE TO STATE A CLAIM - DAMAGES- A plaintiff who fails to plead a viable cause of action may not recover any damages they claim were experienced

FACTS

Antonio Lawson operated “Lawson’s Mini-Mart” in Bolivar County prior to the property being zoned as an R-1-Low Density Residential District by the Bolivar County Development Code in 2008. Lawson’s was allowed to continue operating his business through a grandfather clause, which stipulated that it expired if more than sixty percent of the property was destroyed. In 2012, a fire completely destroyed the mini-mart. Lawson began reconstruction of the mini-mart, as well as the addition of “The Sugar Shack” lounge, and the Bolivar County Board of Supervisors (“the Board”) granted a zoning variance. Dennis and Sammye Short filed administrative appeals to this decision, and the Board rescinded Lawson’s variance. Lawson was ordered to halt construction but continued anyway, filing two Land Use Applications in the meantime. The Board filed suit against Lawson in the Bolivar County Chancery Court, and the Shorts filed joinders to this suit. The chancery court refused to rule on the matter until the second of the Land Use Applications was settled. Lawson failed to comply with the proper procedures for his application, so the Shorts urged the Board to move forward with suit on numerous occasions in 2013. After no action was taken, the Shorts sued the Board, seeking attorney’s fees and an injunction ordering it to proceed with its suit against Lawson. In 2018, the Board received an injunction against Lawson. While this mooted the Shorts’ injunction action, they continued to pursue an award for attorney’s fees, arguing that the Board failed to comply with a mandatory duty pursuant to Miss. Code Ann. § 25-1-45. The Board filed a motion to dismiss, arguing the Shorts failed to state a cause of action because zoning enforcement is a discretionary function under Miss. Code Ann. § 17-1-19. The chancery court granted the Board’s motion to dismiss. The Shorts appealed.

ISSUES

Whether the trial court erred in dismissing the Shorts’ claim by finding that the Shorts (1) failed to plead a cause of action for breach of duty; (2) failed to plead a cause of action for breach of duty under Miss. Code Ann. § 25-1-45; and (3) were not entitled to attorney’s fees.

HOLDING

(1) Because zoning by city and county boards is a discretionary function under Mississippi's public policy functions test, the Shorts failed to plead a viable cause of action for breach of duty. (2) Because zoning enforcement is a discretionary duty, any cause of action pled under § 25-1-45 fails as a matter of law. (3) Because the Shorts did not plead any viable cause of action, any damages they experienced were not recoverable. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Chancery Court.

Affirmed - 2019-CA-01526-COA (Aug. 18, 2020)

Opinion by Judge McDonald

Hon. Willie James Perkins Sr. (Bolivar County Chancery Court, Second Judicial Dist.)

David Lee Gladden Jr., David Lenoir Carney, Whitney Warner Gladden, & Bridget K Harris for Appellants - Chad Patrick Favre for Appellees

Briefed by [Brie Mansoor](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BLACK V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE - Pursuant to Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - A post-conviction relief motion is a final judgment and procedurally bars appeal unless the petitioner asserts an error affecting a fundamental constitutional right and presents some basis for the truth of the claim

POST-CONVICTION RELIEF - PROCEDURAL BAR - FUNDAMENTAL RIGHTS EXCEPTIONS - Six fundamental rights have been recognized as exceptions allowing a claim to survive a procedural bar: (1) the right against double jeopardy; (2) the right to be free from an illegal sentence; (3) the right to due process at sentencing; (4) the right not to be subject to ex post facto laws; (5) the right to not be convicted while incompetent; and (6) under extraordinary circumstances, ineffective assistance of counsel

CRIMINAL PROCEDURE - INVOLUNTARY PLEADING - STANDARD - For a plea to be voluntarily and intelligently given, the trial court must inform the defendant of his rights, the nature of the charge against him, and the consequences of the plea; when asserting that a plea is made involuntarily, the petitioner must show support for such claim by a preponderance of the evidence

CRIMINAL PROCEDURE - INVOLUNTARY PLEADING - MISINFORMATION - A plea is considered to be involuntarily made if a defendant is affirmatively misinformed regarding parole and pleads guilty in reliance on the misinformation

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - COMPETENCY EVALUATION - A trial court's competency evaluation order does not establish, for purposes of the Uniform Rule of Circuit and County Court Practice 9.06, that the trial court had reasonable grounds to believe that the defendant was incompetent to stand trial

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) but for the counsel's unprofessional errors, the results of the proceedings would have been different; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

FACTS

In 2010, William Taylor Black pled guilty to murder. The trial court found that Black’s plea was made “freely, voluntarily, knowingly, and intelligently entered” and sentenced Black to serve life in prison. Almost eight years later, Black filed a post-conviction relief (“PCR”) motion on the basis that his guilty plea was not voluntarily or intelligently made, that his due process rights were violated because a competency hearing was not conducted, and that he received ineffective assistance of counsel. The trial court denied Black’s PCR motion, finding it time-barred and without merit. Black appealed.

ISSUES

Whether (1) Black’s PCR motion time-barred; (2) Black’s guilty plea was voluntarily and intelligently made; (3) Black’s due process rights were violated when the circuit court failed to conduct a competency hearing; and (4) Black received ineffective assistance of counsel.

HOLDING

(1) Because Black filed his PCR motion almost eight years after the judgment of conviction was entered, and because Black asserted additional claims regarding his fundamental rights, his claims were time-barred but were examined as potential exceptions to the procedural bar. (2) Because Black did not provide evidence showing how his faulty mental state affected his plea, and because Black was not misinformed about his parole eligibility, Black’s claims were without merit. (3) Because physicians found Black competent to stand trial, and because the record did not contain reasonable grounds for the circuit court to believe that Black was incompetent, the circuit court had no obligation to conduct a competency hearing, rendering Black’s claims meritless. (4) Because Black only made bare assertions that contradicted the record, Black’s claims regarding ineffective assistance of counsel were found to be without merit. Therefore, the Court of Appeals affirmed the judgment of the Noxubee County Circuit Court.

Affirmed - 2019-CP-00116-COA (Aug. 18, 2020)

En Banc Opinion by Chief Judge Barnes

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

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

Briefed by [Schlyler Burney](#)

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JEFFERSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE-WRIT BAR - Miss. Code Ann. § 99-39-23(6) states that any post-conviction claim for relief shall be dismissed or denied if it is a second or successive motion unless the movant can show an exception to overcome the procedural bar

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - SUCCESSIVE-WRIT BAR - Under extraordinary circumstances, ineffective assistance of council can constitute an exception to the procedural bars of the Uniform Post-Conviction Collateral Relief Act and allow an appellant to bring a successive motion for post-conviction relief

FACTS

In 2018, Kendrick C. Jefferson pled guilty to criminal charges and was sentenced to thirty years in the custody of the Mississippi Department of Corrections. In a timely manner, Jefferson filed for post-conviction relief (“PCR”), alleging ineffective assistance of counsel. The trial court dismissed Jefferson’s PCR claim, ruling the motion was barred as a successive writ. Jefferson appealed.

ISSUE

Whether the trial court erred in dismissing Jefferson’s PCR motion as successive-writ barred.

HOLDING

Because the court reporter failed to submit the transcripts of Jefferson’s plea and sentencing hearings, and because the record contained no evidence showing that the trial or appellate court ever addressed the merits of Jefferson’s PCR claims, Jefferson’s PCR motion fit into the narrow “extraordinary circumstances” exception and was not barred as successive. Therefore, the Court of Appeals reversed and remanded the judgment of the Lamar County Circuit Court.

DISSENT

Presiding Judge Wilson argued that the absence of transcripts from Jefferson’s plea and sentencing hearing was not enough to satisfy the “extraordinary circumstances” exemption under the successive-writ bar.

Reversed & Remanded - 2019-CP-00619-COA (Aug. 18, 2020)

En Banc Opinion by Presiding Judge Carlton - Dissent by Presiding Judge Wilson

Hon. Anthony Alan Mozingo (Lamar County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Kathleen Workman](#)

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WOODS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE MOTIONS - Under the Uniform Post-Conviction Collateral Relief Act, any order denying or dismissing a PCR motion is a bar to a second or successive PCR motion

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE - A motion for post-conviction relief must be filed within three years following the entry of the judgment of conviction, and failure to file within the three-year period procedurally bars the motion

CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS - If sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea; a defendant’s admission alone may establish a factual basis for the guilty plea so long as the trial court can say with confidence the prosecution could prove the accused guilty

FACTS

In 2008, after an indictment for three counts of armed robbery, Virgil Woods plead guilty to Count I. The guilty plea was accepted, and Woods was sentenced to thirty-five years in custody. In 2019, Woods filed a motion for post-conviction relief (“PCR”), alleging the required sufficient factual basis for his guilty plea did not exist. The Warren County Circuit Court found that Woods was not entitled to any relief and that the motion was frivolous, successive, and time barred. Woods appealed.

ISSUES

Whether the trial court erred in finding (1) the PCR motion was procedurally barred and (2) Woods was not entitled to relief because his guilty plea did not lack a sufficient factual basis.

HOLDING

(1) Because the PCR motion was successive and filed more than three years after the judgment of conviction was entered, it was procedurally barred. (2) Because Woods’ guilty plea was accepted with a sufficient factual basis, the trial court properly denied relief. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2019-CP-01461-COA (Aug. 18, 2020)

Opinion by Judge Greenlee

Hon. M. James Chaney Jr. (Warren County Circuit Court)

Pro se for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Ashley Pruitt](#)

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COURT OF APPEALS - CRIMINAL CASES

EDMONSON V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - INDICTMENT - ELEMENTS - An indictment must contain: (1) the essential elements of the offense charged; (2) sufficient facts to fairly inform the defendant of the charge against which he must defend; and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense

CRIMINAL LAW - BAD CHECKS - ELEMENTS - To convict a defendant of passing a bad check with fraudulent intent under Miss. Code Ann. § 97-19-55, the prosecution must prove that the defendant (1) made and delivered a check to another person for value, and thereby obtaining from such other person money, goods, or other property value and (2) knew at the time of authorizing the check knew there were insufficient funds in the account

CRIMINAL LAW - DISTINCT CORPORATE IDENTITY - EXCEPTIONS - Under *Johnson*, a distinct corporate identity will not be maintained if to do so would subvert the ends of justice

FACTS

On July 11, 2016, Kenny F. Edmonson wrote a check on the ONYXS Sounds LLC (“ONYXS Sounds”) account in the amount of \$5,867.50 to Hub Refrigeration & Fixture Company Inc. (“Hub Refrigeration”). The check was written as a down payment for ductless air conditioning to be installed at Edmonson’s business, ONYXS Sounds. The work was completed, but the check was returned because the ONYXS Sound checking account had been closed due to insufficient funds. In February 2017, a Jasper County grand jury indicted “Kenny F. Edmonson d/b/a ONYXS Sounds LCC” for writing a fraudulent check in violation of Miss. Code § 97-19-55. At trial, Charles Shoemake, the president of the bank where the account was opened, testified that Edmonson presented himself to open the account and that he was the only authorized signatory on the account. Bank records submitted into evidenced showed that Edmonson deposited \$100 on May 17, 2016; two checks for cash totaling ninety-five dollars on May 20, 2016 and May 23, 2016, respectively; and the check to Hub Refrigeration for \$5,867.50 on July 11, 2016. Shoemake testified there were no further deposits made after the initial \$100 deposit. Shoemake further testified that the ONYXS Sounds checking account was closed on June 20, 2016, and that the June bank statement for the account, which was printed and mailed to Edmonson ten days later, indicated that the account was closed. George Curry, the owner of Hub Refrigeration, also testified that Edmonson introduced himself as the owner of ONYXS Sounds, that he wrote the check to Hub Refrigeration for \$5,867.60 on the ONYXS Sounds checking account, and that Edmonson was the only person Curry dealt with in the transaction. After Curry performed the air conditioning work and the check was returned, Curry called Edmonson. Curry testified that Edmonson said he would “take care of it,” and promised to send a cashier’s check, but Edmonson never tendered any payment. A unanimous jury found Edmonson guilty of check fraud. The trial court sentenced Edmonson to three years in the custody of the MDOC, with two years to serve and the remainder in a restitution center until the full amount of restitution had been paid. Edmonson appealed.

ISSUES

Whether the trial court erred in (1) finding that the indictment was legally sufficient because it charged Edmonson individually and that Edmonson had ample notice of the charges against him and (2) holding Edmonson personally liable under Miss. Code Ann. § 97-19-55 although the check at issue was written on the account of his limited liability company.

HOLDING

(1) Because the indictment specifically charged “Kenny F. Edmonson d/b/a ONYXS Sounds, LLC,” and because the indictment fully notified Edmonson of the essential elements that constitute passing a bad check and the nature and

cause of Hub Refrigeration’s accusation, the indictment was legally sufficient. (2) Because Edmonson withdrew all but five dollars from the ONYXS Sounds account and received a bank statement that indicated that the account was closed, and because a distinct corporate identity will not be maintained if to do so would subvert the ends of justice, he acted with fraudulent intent in writing the \$5,867.50 check on the ONYXS Sounds account knowing that it did not have sufficient funds and the trial court properly held that the distinct corporate identity could not be maintained. Therefore, the Court of Appeals affirmed the judgment of the Jasper County Circuit Court.

Affirmed - 2018-KA-01186-COA (Aug. 18, 2020)

Opinion by Presiding Judge Carlton

Hon. Stanley Alex Sorey (Jasper County Circuit Court, First Judicial Dist.)

W. Daniel Hinchcliff (Pub. Def. Office) & *Pro se* for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Mackinlee Rogers](#)

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FALCON V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - COURT’S DISCRETION - The determination of whether evidence satisfies Miss. R. Evid. 901 is left to the trial judge’s discretion, and his decision will be upheld unless it can be shown that he abused his discretion

EVIDENCE - ADMISSIBILITY - AUTHENTICITY - Miss. R. Evid. 901(a) states that to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is

EVIDENCE - ADMISSIBILITY - AUTHENTICITY - *Garvia* states that Miss. R. Evid. 901 only requires that a party make a prima facie showing of authenticity and not a full argument on admissibility; once a prima facie case is made, it is the jury who will ultimately determine the authenticity of the evidence, not the court

EVIDENCE - ADMISSIBILITY - AUTHENTICITY - Miss. R. Evid. 901 lists nine specific examples of viable methods of authentication, but it also makes it clear that they are only examples and not a complete list

EVIDENCE - AUTHENTICITY - ELECTRONIC COMMUNICATION - *Smith* states that a prima facie showing of the authenticity of Facebook messages may be established by showing that the purported sender responded to an exchange in such a way as to indicate circumstantially that he was the author of the communication

EVIDENCE - AUTHENTICITY - SOCIAL MEDIA - *Smith* states that due to the relative ease with which social media evidence can be fabricated, more than a simple name and photograph is needed to sufficiently link the communication to the purported author under Miss. R. Evid. 901

FACTS

After Jason Baker’s arrest for the possession and sale of controlled substances, he approached Investigator Greg Jones and offered “to make a buy” from Rudy Falcon in exchange for leniency. Baker contacted Falcon via Facebook Messenger in Jones’s presence, and Falcon responded. The Facebook conversation began with Baker’s request for methamphetamine and ended in Falcon inviting Baker to come over to look at his new speakers. Jones provided Baker with money and a watch equipped with a video camera, and drove Baker to Falcon’s house within twenty minutes of the Facebook correspondence. A video taken on Baker’s watch was admitted into evidence, and it showed Baker asking Falcon about the speakers. Falcon’s response was inaudible. Although the video did not show it, Baker testified that Falcon showed him the speakers. Baker also testified that Falcon poured methamphetamine onto a scale, measured it, and sold it to him. The video did not depict hand-to-hand transfer or any discussion about drugs. Falcon was indicted for the sale of and conspiracy to sell more than two grams but less than ten grams of methamphetamine. After being found guilty, Falcon filed a motion for judgment notwithstanding the verdict or a new trial, which was denied. Falcon appealed.

ISSUE

Whether the trial court erred by admitting the Facebook messages as evidence because the messages were not properly authenticated.

HOLDING

Because Baker exchanged Facebook messages with a “Rudy Falcon,” and because Falcon’s response to Baker’s arrival circumstantially indicated that he was the same person who exchanged messages with Baker, the trial judge did not abuse his discretion by admitting the messages as evidence. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE

Judge Westbrooks concurred in result only, arguing that the Facebook messages were not properly authenticated by way of circumstances peculiar to the particular case. She argued that the State failed to prove Falcon was the party on the other end of the Facebook correspondence because the State offered no direct evidence other than the name “Rudy Falcon” on the account and the circumstantial evidence supported by the video showed Baker, not Falcon, mentioned the speakers.

Affirmed - 2019-KA-00248 (Aug. 18, 2020)

En Banc Opinion by Presiding Judge Wilson - Concurrence by Judge Westbrooks

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Mckenzie Williamson](#)

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GOFF V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - AGGRAVATED DOMESTIC VIOLENCE - ELEMENTS - Miss Code Ann. § 97-3-7(4)(a) provides that “[a] person is guilty of aggravated domestic violence ... who strangles, or attempts to strangle, a current or former spouse of the defendant”

CRIMINAL LAW - WITNESS TAMPERING - ELEMENTS - Miss Code Ann. § 97-9-115 provides that “[a] person commits the crime of tampering with a witness if he ... [i]ntentionally or knowingly attempts to induce a witness or a person he reasonably believes will be called as a witness in any official proceeding to ... [t]estify falsely or unlawfully withhold testimony”

EVIDENCE - OBJECTIONS - PROCEDURAL BAR - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the statements during trial

APPELLATE PROCEDURE - ARGUMENTS - ELEMENTS - Miss. R. App. P. 28(a)(7) provides that “[t]he argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on;” an appellate court is under no obligation to consider alleged errors when no authority is cited

FACTS

In October 2016, Donald K. Goff and Joanna Pickering got into an altercation while Pickering was driving the soon to be divorced couple in a vehicle. Pickering testified that the altercation started when Goff lit a cigarette purportedly containing the drug spice. Pickering further testified that while she was driving, Goff bit her, pulled her ponytail, choked her, and banged her head on the steering wheel. During the altercation, the vehicle crossed four lanes of traffic, went into a ditch, and finally stopped in a parking lot. A witness called 911, approached the vehicle, and, with the assistance of another unidentified witness, hit Goff until he was unconscious. Deputy Sherman Heathcock responded to the scene and found both Goff and Pickering injured. Investigator Alyssa Chandlee interviewed Pickering, photographed her injuries, and monitored Goff’s phone calls to Pickering from jail. In June 2017, Goff was arrested and indicted on one count of aggravated domestic violence pursuant to Miss. Code Ann. § 97-3-7(4)(a) and one count of witness tampering

pursuant to Miss. Code Ann. § 97-9-115). One year later, the trial began, during which Heathcock and Chandlee testified as witnesses for the State and served as bailiffs. The trial judge and Goff's attorneys noted for the record but did not object to Heathcock and Chandlee serving as both bailiffs and witnesses. The jury returned a guilty verdict on both counts, and Goff was sentenced as a habitual offender to life imprisonment. Goff filed a post-trial motion for JNOV or a new trial. The Forrest County Circuit Court denied Goff's motion. Goff appealed.

ISSUE

Whether the circuit court violated Goff's due process rights by denying the post-trial motion for JNOV or a new trial after allowing the State's witnesses to also serve as bailiffs during the jury proceedings.

HOLDING

Because an objection was not raised at trial to properly preserve the issue for appeal, because the trial defense counsel found no evidence that the guard change was prejudicial, and because the *pro se* accusations were without merit or not supported by authorities, the circuit court did not err in denying the post-trial motion and did not violate Goff's due process rights. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2018-KA-01370-COA (Aug. 18, 2020)

Opinion by Judge Westbrook

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) & *Pro se* for Appellant - Allison Elizabeth Horne & Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Caroline Heavey](#)

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