

MISSISSIPPI SUPREME COURT DECISIONS - JANUARY 28, 2016

SUPREME COURT - CIVIL CASES

PRAYER V. GREENWOOD LEFLORE HOSP.

CIVIL - WRONGFUL DEATH

TORTS - MEDICAL MALPRACTICE - STANDARD OF REVIEW - Even if there is conflicting evidence, so long as there is substantial, credible, and reasonable evidence to support the trial court's judgment, appellate courts shall defer to the trial courts finding

FACTS

Jones Toy went to Greenwood Leflore Hospital ("Greenwood") to have his right index finger amputated due to gangrene as a result of medical complications. Toy had multiple health problems, including end stage renal failure, an internal heart defibrillator, cardiomyopathy, and a fistula to assist with dialysis. In preparation for the surgery, anesthesia was administered. In the operating room, a local anesthetic was administered, which made Toy flinch indicating he could feel pain. A second dose of propofol was given for anesthesia purposes. This made Toy's blood pressure fall, which was expected, and in response a dose of epinephrine was administered. From 2:15 to 2:30 no blood pressure or pulse oxygen readings were recorded; however, carbon dioxide exhalation was recorded. After the surgery was completed at 2:30, no pulse could be found and CPR was administered. Toy was revived, but left in an unresponsive state until his death roughly two weeks later. Toy's daughter, Tabitha Prayer, sued Greenwood alleging Toy died as a result of medical malpractice committed during his surgery. Toy presented expert testimony that the doctors and nurses in charge of Toy's care during this procedure violated the standards of care by overdosing him on propofol and neglected to notice or treat Toy's cardiac arrest for fifteen minutes. The defendants countered with expert testimony that the second dose of propofol was appropriate and that the blood pressure monitor and the pulse monitor being on the same arm could have caused the register failures. Further, the defense argued that carbon dioxide exhalation was recorded for the entirety of the fifteen minutes in question, showing that Toy was in fact breathing and not in cardiac arrest. In a bench trial, the trial court found for Greenwood. Prayer appealed.

ISSUE

Whether the trial court's findings of fact and conclusions of law were supported by substantial, credible, and reasonable evidence.

HOLDING

Although some evidence indicated that Toy's death was the product of malpractice by Greenwood, there was also evidence to the contrary. Further, in a bench trial the judge is the finder of fact and, so long as the evidence can support the findings and conclusions rendered by a judge as a finder of fact, appellate courts are to defer to those findings. The Court held that there was credible evidence that the defendants did not commit medical malpractice and thus were not responsible for Toy's death. Therefore, the Supreme Court affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2014-CA-00440-SCT (Jan. 28, 2016)

Opinion by Justice King

Hon. W. Ashley Hines (Leflore County Circuit Court)

Walter Andrew Neely, W. Eric Stracener Jr. & John F. Hawkins for Appellant - Rex Morris Shannon III and Gaye Nell Lott Currie for Appellee

Briefed by [Reginald R. Lewis](#)

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SUPREME COURT - COURT ORDERS

WALKER V. STATE

CAPITAL POST-CONVICTION - ACCESS TO EXPERT

CRIMINAL PROCEDURE - CAPITAL POST-CONVICTION EVIDENTIARY HEARING - ALLOWANCE OF EXPERTS - Prisoners sentenced to death should be granted access to their experts so long as the access complies with the rules and regulations of the Miss. Dep't of Corrections and so long as those rules and regulations do not violate petitioner's due-process rights

FACTS

The Harrison County Circuit Court denied Dr. Robert Shaffer, a neuropsychologist, access to Alan Dale Walker for a Post-Conviction Evidentiary Hearing. Walker appealed.

ISSUE

Whether the trial court erred in denying Walker access to an expert during Walker's capital post-conviction evidentiary hearing.

ORDER

Because prisoners sentenced to death should be granted access to their experts so long as the access complies with the rules and regulations of the Miss. Dep't of Corrections and so long as those rules and regulations do not violate petitioner's due-process rights, the trial court erred in denying Walker access to an expert. Therefore, the Supreme Court reversed and rendered the order of the Harrison County Circuit Court.

Reversed & Rendered - 2015-IA-01765-SCT (Jan. 26, 2016)

En Banc Order by Justice Kitchens

Harrison County Circuit Court

Briefed by [Sean Doran](#)

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SUPREME COURT - CRIMINAL CASES

GREEN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - STANDARD OF REVIEW - PLAIN ERROR DOCTRINE - If a criminal defendant fails to raise any objection at trial and fails to raise the issue on appeal, the only avenue available for review to the Supreme Court is through the plain error doctrine

CRIMINAL LAW - PLAIN ERROR DOCTRINE - SCOPE - The plain error doctrine is employed only in situations when a defendant's substantive or fundamental rights are affected and is properly utilized for correcting obvious instances of injustice or misapplied law

FACTS

In Feb. 2012, Lorenzo Green was seen by two police officers with his trunk open in a grocery store parking lot. After Green fled the scene and eluded the police, the police found three firearms (later determined to be stolen) in the open trunk of Green's car. Green was indicted and convicted in Adams County for three counts of felon in possession of a firearm and one count of trafficking a firearm. A dissenting judge in the Court of Appeals raised *sua sponte* the issue of whether it was double jeopardy to convict for three simultaneous counts of felon in possession of a firearm. Thus, certiorari was granted to determine whether the issue is properly resolved under plain error review.

ISSUE

Whether a defendant, having failed to raise the issue at trial or on appeal, can invoke the plain error doctrine to challenge his felon in possession of multiple firearms convictions on grounds of double jeopardy.

HOLDING

The claim for double jeopardy for simultaneous conviction for possession of multiple firearms could not be reviewed under the plain error doctrine. Therefore, the defendant's conviction of three counts of felon in possession of a firearm was affirmed.

DISSENT

The dissent stated that the right to be free from double jeopardy is a fundamental right, the plain error doctrine should be applied, the statutory language of "any firearm" is ambiguous and should be construed to bar multiple convictions for simultaneous possession of multiple firearms.

Affirmed - 2013-CT-01228-SCT (Jan. 28, 2016)

Opinion by Justice Coleman - Dissent by Justice King

Hon. Forrest A. Johnson, Jr. (Adams County Circuit Court)

Erin Elizabeth Pridgen & George T. Holmes (State Pub. Defender Office) for Appellant- Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Jacob A. Bradley](#)

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MOORE V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - ELEMENTS OF A CRIME - STATUTORY AMENDMENT PRIOR TO TRIAL - The court shall apply the provisions of a criminal statute that were in effect at the time the crime was committed, regardless of subsequent amendment to the statute

EVIDENCE - HEARSAY STATEMENT - HARMLESS ERROR - Hearsay statements about the value of stolen property are harmless when the value of the property is fully established by the victim-owner

FACTS

Lester Moore was arrested for shoplifting merchandise from a Dillard's and was indicted under Miss. Code Ann § 97-23-93 for felony shoplifting of merchandise valued in excess of \$500. Between the indictment and Moore's trial, the Miss. Legislature amended § 97-23-93, changing the threshold amount for felony shoplifting to \$1000. Moore's motion to quash his indictment based on this change of law was denied. At trial, Moore was denied a jury instruction that reflected the amended statute. Also at trial, Officer James D. Owens – using valuation information supplied by Dillard's – testified that the value of the fourteen men's leather wallets recovered from Moore was more than \$1,700. The jury returned a guilty verdict, and Moore was sentenced as a habitual offender to five years in prison. Moore appealed.

ISSUES

Whether the trial court erred in (1) failing to grant jury instructions that reflected the recent change in the criminal statute, and (2) allowing Officer Owens's hearsay testimony about the value of the stolen wallets.

HOLDING

(1) Because the crime was committed prior to the amendment of Miss. Code Ann. § 97-23-93, when the threshold for felony shoplifting was \$500, the trial court properly denied Moore's jury instruction. (2) Because a Dillard's representative testified the total value of the stolen wallets was \$1,726, Officer Owens's hearsay statement about the value of the stolen property was harmless. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2015-KA-00207-SCT (Jan. 28, 2016)

Opinion by Presiding Justice Randolph

Hon. Lisa P. Dodson (Harrison County Circuit Court)

Hunter Nolan Aikens & George T. Holmes (State Pub. Defender Office) for Appellant - Billy L. Gore (Att'y Gen. Office)

Appellee

Briefed by [John G. Archer](#)

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ROBY V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONVICTION - SUFFICIENT EVIDENCE - A conviction is supported by sufficient evidence if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL LAW - SIXTH AMENDMENT RIGHT TO CONFRONTATION - WAIVER - A defendant's Sixth Amendment right to confrontation is waived if defense counsel fails to object to the evidence, emphasizes the evidence, and there is no manifest miscarriage of justice in admitting the evidence

CRIMINAL LAW - JURY INSTRUCTIONS - REPETITIVE - A judge can refuse jury instructions because they are repetitive

CRIMINAL LAW - JURY INSTRUCTIONS - MISSTATEMENT OF THE LAW - A judge cannot grant jury instructions that incorrectly state the law

FACTS

Shunbrica Roby drove to West Point to "bust the windows" out of her boyfriend Marcus Payne's car because he had been seeing other women. Her cousins Natisha and Latwanna Roby accompanied her. They saw Payne's car at a gas station and pulled in behind him. Shunbrica got out with a hammer and began to break the windows out of his car. Payne emerged from the store and a struggle ensued. Initially the struggle was between Payne and Shunbrica, but her cousins joined in, and ultimately Payne was stabbed. He was taken to a hospital where he later died. A grand jury indicted Shunbrica for deliberate-design murder. Shunbrica was tried and a jury found her guilty.

ISSUES

Whether (1) the State’s evidence was legally insufficient; (2) Roby’s conviction was against the overwhelming weight of the evidence; (3) Roby’s Sixth Amendment right to confrontation was violated; and (4) the trial court erred in granting and/or refusing several jury instructions.

HOLDING

(1) Shunbrica’s conviction was supported by sufficient evidence because a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt—that Shunbrica intended to kill Payne and that she had “appreciable time” to reflect upon her actions before committing (or assisting in) the act. (2) Shunbrica’s conviction was not against the overwhelming weight of the evidence because Shunbrica’s conviction was not an “unconscionable injustice.” (3) Shunbrica’s Sixth Amendment right to confrontation was not violated because she forfeited due to the defense counsel’s failure to object, emphasis on the testimony in question, and there was no “manifest miscarriage of justice” by admitting the testimony. (4) The trial judge did not abuse his discretion in refusing some of the jury instructions because they were repetitive, but the trial judge did err when he granted jury instruction S-10 because it was an incorrect statement of the law. Therefore, the Court of Appeals reversed and remanded the judgment of the Clay County Circuit Court.

Reversed & Remanded - 2014-KA-00621-SCT (Jan. 28, 2016)

Opinion by Justice Lamar

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

Hunter N. Aikens & George T. Holmes for Appellant (State Pub. Defender Office) - Lisa L. Blount & Forrest Allgood for Appellee (Att’y Gen. Office)

Briefed by [Addie Clark](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS - JANUARY 26, 2016
COURT OF APPEALS - CRIMINAL CASES

LAND V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - LAY-WITNESS OPINIONS - The introduction of non-expert opinion evidence is permitted if: (a) the opinion is rationally based on the perception of the witness and (b) is helpful to the clear understanding of the determination of a fact in issue

EVIDENCE - ADMISSIBILITY - LAY-WITNESS OPINIONS - For lay-witness opinion testimony to be admissible, the information must assist the trier of fact and must be based on firsthand knowledge

EVIDENCE - ADMISSIBILITY - INTRODUCTION OF EVIDENCE - If the prosecution attempts to introduce evidence not timely disclosed to the defense, the defense must claim unfair surprise and seek and continuance or mistrial, in order to invoke Uniform Rule of Circuit and County Court 9.04

FACTS

Sean Land was seated inside the vehicle of Sedrick Miles, who had stopped at the Walmart in Laurel. As the two sat in the vehicle, Land noticed Fernando Noriega exit the Walmart, counting his money. Land told Miles that he was going “to get out of the car and do something.” As Miles looked through his CDs, he heard a gunshot. Looking up, Miles saw Noriega on the ground. Miles saw Land shoot Noriega again. Land returned to the vehicle, and Miles drove away. At trial, Noriega testified that though he does not speak English, he understood from the encounter that Land wanted money. Lieutenant Jerome Jackson of the Laurel Police department testified that by viewing the Walmart surveillance video, he was able to obtain Miles’ license-plate number. Jackson arrested Miles, who subsequently made a statement to the police that Land was the actual shooter. Land was arrested, and confessed to shooting Noriega. The jury found Land guilty on counts of armed robbery, felon-in-possession of a firearm and aggravated assault. Land sought JNOV, or, in the alternative, a new trial and a motion for resentencing. The trial court denied land’s motion. Land appealed.

ISSUES

Whether the trial court erred in (1) allowing Jackson to provide a narration of the surveillance videos shown to the jury; and (2) admitting physical evidence not produced during discover.

HOLDING

(1) Jackson should not have been allowed to offer opinion testimony regarding the video because he did not possess firsthand knowledge, but this error was harmless, considering the totality of the evidence. (2) Though Land claimed unfair surprise, he waived his argument that the trial court erred by admitting the shoes because he failed to request a continuance or mistrial. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2014-KA-00805-COA (Jan. 26, 2016)

En Banc Opinion by Judge James

Hon. Billy Joe Landrum (Jones County Circuit Court)

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

Briefed by [Taylor S. Hardenstein](#)

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