

MISSISSIPPI SUPREME COURT DECISIONS – JULY 27, 2017**SUPREME COURT - CIVIL CASES****GROUNDWORX, LLC v. BLANTON****CIVIL - STATE BOARDS & AGENCIES**

CIVIL PROCEDURE - DISMISSAL - FAILURE TO STATE A CLAIM - Under Miss. R. Civ. P. 12(b)(6), a complaint may be dismissed if it fails to state a claim upon which relief can be granted

CONTRACTS - BREACH OF CONTRACT - PROMISSORY ESTOPPEL - If one party makes a promise and the other party reasonably relies on that promise, then the promise is enforceable even without the essential elements of a contract

CONSTITUTIONAL LAW - MISSISSIPPI CONSTITUTION - MUNICIPAL CREDIT LOAN - Article 7, § 183 of the Mississippi Constitution prohibits a city from loaning its credit in aid of a private corporation or association

FACTS

The City of Hattiesburg awarded Groundworx, LLC a contract to construct, operate, and maintain a land-application treatment system for sewage and wastewater. The contract between Groundworx and the City had a termination provision in case Groundworx was not able to secure financing for the project by a specific date. Groundworx's would-be financier backed out of the deal after the mayor vetoed a sewer rate increase. Groundworx then sued the City of Hattiesburg. The City subsequently terminated the contract. Thomas Blanton, a private citizen and resident of Hattiesburg, intervened and filed a motion to dismiss Groundworx's complaint because the financing scheme violated § 183 of the Mississippi Constitution which prohibits a city from loaning money to a private entity. The Forrest County Chancery Court then granted Blanton's motion to dismiss because the contract violated § 183 of the Mississippi Constitution, which rendered the city's motion to dismiss due to failure to state a claim moot. Groundworx appealed.

ISSUE

Whether the trial court erred in granting the motion to dismiss due to Groundworx's failure to state a claim.

HOLDING

Because Groundworx's amended complaint failed to state a claim upon which relief could have been granted, the trial judge did not err in dismissing Groundworx's breach of contract and promissory estoppel claims. Therefore, the Supreme Court affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2015-CA-00152-SCT (July 27, 2017)

Opinion by Justice Maxwell

Hon. M. Ronald Doleac (Forrest County Chancery Court)

R. Andrew Taggart Jr., Mona Patel Graham, & David Glyn Porter for Appellant - Michael Adelman, J. Collins Wohner Jr., & Keith W. Turner for Appellees

Briefed by [Jacob Swatley](#)

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SUPREME COURT - CRIMINAL CASES

BRIGGS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CONSTITUTIONAL REQUIREMENTS - INDICTMENT - Pursuant to Miss. Const. art. 3, § 26, an indictment must contain the essential elements of the offense charged, sufficient facts to fairly inform the defendant of the charge, and sufficient facts to enable him to plead double jeopardy if prosecuted in the future for the same offense

CONSTITUTIONAL LAW - SEPARATION OF POWERS - LEGISLATIVE POWER - The authority to declare and define criminal acts is vested in the legislature; neither the executive nor the judicial branch may amend statutory language

FACTS

Trevioun Briggs allegedly robbed a woman who was loading her shopping bags into her car in the Northpark Mall parking lot in Ridgeland, Mississippi. He was accused of taking her bags after striking her in the back of the head, which caused her to drop her three-year-old son. Briggs was arrested outside the mall for false pretense a few hours after he tried to return stolen items in exchange for a cash refund. While incarcerated in the Madison County Jail, Briggs made several recorded phone calls during which he attempted to convince acquaintances to provide him with an alibi or to arrange for a third party to do so. The jury convicted Briggs of robbery and witness-tampering, and the Court of Appeals affirmed. Briggs petitioned for certiorari.

ISSUE

Whether failure to track a statute's language in an indictment and in the jury instruction imposed different knowledge requirements, thus broadening the activity for which the defendant could be found guilty and lessening the burden of proof upon the State.

HOLDING

Because substituting "may" for the word "will" when quoting Miss. Code Ann. § 97-9-115 in an indictment and the jury instruction did not alter the substantive meaning of the statute, it did not disadvantage Briggs in any defense he may have had. Further, the statute does not require coerced people to be designated as witnesses, any success in inducing the people to testify falsely, or for a proceeding to be initiated. Therefore, the Supreme Court affirmed the judgments of the Court of Appeals and the Madison County Circuit Court.

PARTIAL CONCURRENCE/DISSENT

Justice Kitchens concurred with affirming the robbery conviction and dissented concerning the conviction for witness-tampering. He found that the substitution of the word "may" for the word "will" was improper and rendered Briggs's indictment defective. He argued that the words are not synonymous and that any change to a statute's language constitutes an attempted statutory amendment and, in turn, judicial activism.

Affirmed - 2015-CT-00016-SCT (July 27, 2017)

En Banc Opinion by Justice Beam - Partial Concurrence/Dissent by Justice Kitchens

Hon. John Huey Emfinger (Madison County Circuit Court)

Justin Taylor Cook & George T. Holmes (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Katherine Farese](#)

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MINKA V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - OPENING STATEMENT - IMPROPER TACTICS - Attorneys are not allowed to employ tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury

CRIMINAL PROCEDURE - OPENING STATEMENT - INAPPROPRIATE CONDUCT - Pursuant to Rule 3.02 of the Uniform Rules of Circuit and County Court Practice, in opening statements and closing arguments, an attorney may not attack the opposing attorney, and any attempt to inject improper matters may be stopped by the court without the necessity of an objection

CRIMINAL PROCEDURE - MONETARY SANCTIONS - ATTORNEY CONDUCT - Uniform Rule 3.13 provides that the court may assess all costs, including fees and mileage of jurors who have been required to be present for the trial, against whichever party litigant or attorney it deems appropriate, for failure of an attorney to try the case

FACTS

Adolfo Minka appeared before the Hinds County Circuit Court to represent his client, William Wilson, for a felon in possession of a firearm charge. Once the State concluded its opening statement, Minka began his opening statement, but was interrupted by the interjection of the court. Defense counsel and counsel for the State approached the bench, where Minka was told that his argument was not appropriate. The judge explained to him that the purpose of the opening statement was to lay out what he believed the evidence would show and that it was not a time for an emotional appeal. Minka continued with his opening statement, but the court again interjected and the judge explained the purpose of the opening statement. When Minka started his opening statement for the third time, the State objected, stating that it felt Minka was attempting to bias the jury. The judge explained to Minka that his tone was the problem, and he read Minka Rules 10.03 and 3.02 of the Uniform Rules of Circuit and County Court Practice. The court gave Minka one last chance to finish his opening statement, which he did with no further problems. After the close of evidence, Minka began his closing argument to which the State objected on the grounds that Minka was arguing facts not in evidence. The court sustained the objection but allowed Minka to continue his closing argument. Minka proceeded but was stopped this time by the judge. The State moved for a mistrial, which Minka did not oppose. After a brief recess, the trial court granted the State's motion for mistrial. Minka was ordered to pay a \$100 fine along with the cost of the jury (\$1,350.00) for his behavior which resulted in the trial's termination. Minka appealed.

ISSUES

Whether the trial court erred in (1) finding Minka guilty of direct criminal contempt and (2) assessing monetary sanctions against him.

HOLDING

(1) Because Minka declared during his opening statement that the prosecution had betrayed the jury's trust, which was an attempt to unduly prejudice the jury, the trial court did not err in finding Minka guilty of direct criminal contempt.
(2) Because the amount of sanctions the court ordered tracked with the proscribed statutory rate, the trial court did not abuse its discretion. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2015-CA-01741-SCT (July 27, 2017)

Opinion by Justice Beam

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 [Maggie Vinzant](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 25, 2017

COURT OF APPEALS - CIVIL CASES

ALONSO V. SMITH

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - SUMMARY JUDGMENT - STANDARD OF REVIEW - Under Miss. R. Civ. P. 56(c), summary judgment is proper if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the nonmoving party is entitled to a judgment as a matter of law

NEGLIGENCE - WRONGFUL DEATH - ELEMENTS - To survive a motion for summary judgment, the plaintiff must allege facts tending to prove all four elements of negligence

FACTS

While driving his vehicle, Jason Ross struck and killed a pedestrian, James Smith. Ross testified that he was not speeding, using his cell phone, or under the influence of any substance at the time of the accident. Upon feeling the effects of the collision, Ross exited his vehicle and found Smith without a pulse. Ross, who is an EMT, immediately phoned 911 for assistance and began performing CPR until medical assistance arrived. It was later determined Smith was dressed in camouflage and possessed a blood-alcohol concentration of .247, which is three times over the legal limit for intoxication. Alonso, Smith's daughter, filed a wrongful death suit, individually and on behalf of all heirs-at-law and wrongful-death beneficiaries against Ross. Ross moved for summary judgment, arguing that all of Alonso's claims were based upon mere speculation. The Forrest County Circuit Court granted Ross's motion. Alonso appealed.

ISSUE

Whether the trial court erred in granting summary judgment in favor of Ross.

HOLDING

Because Alonso failed to produce any admissible evidence that Ross breached certain duties required by the operator of a motor vehicle, there was no genuine issue of material fact, and Ross was entitled to summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2016-CA-00113-COA (July 25, 2017)

Opinion by Judge Ishee

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

Don H. Evans for Appellant - Myles Ethan Sharp, Mark Edward Norton, & Joseph Randle Tullos for Appellee

Briefed by [Caroline Loveless](#)

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BUTLER V. CHADWICK NURSING & REHAB. CTR.

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - BURDEN OF PROOF - Negligence cannot be established without medical testimony that the defendant failed to use ordinary skill and care

TORTS - MEDICAL MALPRACTICE - PHYSICIAN'S NON-DELEGABLE DUTY OF CARE - Given the circumstances of each patient, each physician has a duty to use his or her knowledge and therewith treat through maximum reasonable medical recovery, each patient, with such reasonable diligence, skill, competence, and prudence as are practiced by minimally competent physicians in the same specialty or general field of practice throughout the United States, who have available to them the same general facilities, services, equipment and options

CIVIL PROCEDURE - JUDGMENT AS A MATTER OF LAW - EXPERT WITNESS OPINION - A conclusory expert opinion that fails to explain the underlying “how, when, and why,” is insufficient to withstand a motion for judgment as a matter of law

CIVIL PROCEDURE - DIRECTED VERDICT - STANDARD - A directed verdict should be granted if the moving party is entitled to judgment as a matter of law; the evidence must be viewed in the light most favorable to the non-moving party, with all reasonable inferences granted in favor of that party

FACTS

Evelyn Butler’s mother, Alice Butler, was transferred from Central Mississippi Medical Center (CMMC) to Chadwick Nursing Rehabilitation Center (CNRC) in order to strengthen her for hip replacement surgery. Upon admission, Alice had two pressure ulcers, which, over the course of three weeks, became dangerously infected. Alice was thereupon transferred back to CMMC and died a month later from acute respiratory failure caused by sepsis due to the infected sores. Evelyn subsequently filed a wrongful death suit against both CNRC and Dr. Farmer, Alice’s primary physician at CNRC. After a jury trial, the circuit judge granted the defendants’ motions for directed verdicts because Butler did not meet the required burden of proof. Butler appealed.

ISSUES

Whether Evelyn established (1) sufficient evidence that an alleged breach of care by CNRC caused Alice’s death, and (2) an alleged breach of care by Dr. Farmer as a matter of law.

HOLDING

(1) Because the testimony of Evelyn’s expert witness, Dr. Dave, rested merely on legal conclusions, Evelyn was unable to illustrate any specific breaches of duty and was unable to produce evidence of the alleged breach of duty. Consequently, CNRC was entitled to a judgment as a matter of law. (2) Because Evelyn failed to establish the duty of care or a breach thereof, Dr. Farmer was also entitled to a judgment as a matter of law. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2015-CA-01894-COA (July 25, 2017)

Opinion by Judge Wilson

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial Dist.)

William W. Fulgham for Appellant - W. Davis Frye, Mildred M. Morris, Timothy Lee Sensing, Andrea La’Verne Ford Edney, Jean Cooper Bertas, & John Burley Howell III for Appellees

Briefed by [Nikki Breeland](#)

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HAWKINS V. HECK YEA QUARTER HORSES, LLC

CIVIL - WRONGFUL DEATH

TORTS - PREMISES LIABILITY - DUTY TO INVITEES - A landowner owes a business invitee a duty of reasonable care for the invitee’s safety; an invitee is defined as a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage

TORTS - PREMISES LIABILITY - DUTY TO INVITEES - Owners of land who hold their land open to the public have a duty to render reasonable first aid to invitees on their land; however, that duty abates when a competent patron refuses medical aid and surrenders his own care to his own discretion

TORTS - PREMISES LIABILITY - GOOD-SAMARITAN STATUTE - The good-samaritan statute—Miss. Code Ann. § 73-25-37(1)—is not dispositive where the principles of negligence may also apply

FACTS

Connie Hawkins filed suit in the Hinds County Circuit Court against Heck Yea Quarter Horses LLC, Wallace Heck, and Bruce Horn for the wrongful-death of Connie’s husband, George Hawkins. George, a temporary employee of Heck

Yea, began experiencing a heat stroke during his first day of employment with Heck Yea. George was taken into the shade, given a cold drink, and declined several offers from Horn for emergency services. Instead, George left the work premises in the early afternoon and drove home. Connie arrived home later that afternoon to find George in distress and eventually unresponsive. George was taken to hospital and subsequently died several days later. At trial, Heck Yea moved for summary judgment, arguing that Connie failed to present a genuine issue of fact and that the good-samaritan statute immunized it from liability. The trial court granted Heck Yea's motion for summary judgment. Connie appealed.

ISSUES

Whether the trial court erred in (1) finding the good-samaritan law was dispositive, and (2) not applying the general principles of negligence to Hawkins's case.

HOLDING

(1) Because Connie failed to establish that Heck Yea's negligence was the proximate cause of George's death, the trial court did not err in granting Heck Yea's motion for summary judgment, despite finding the good-samaritan statute was non-dispositive of Connie's wrongful-death case. (2) Because Heck Yea rendered reasonable first aid to George, Heck Yea did not breach its duty of care regardless of the applicable standard of negligence. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed – 2016-CA-00215-COA (July 25, 2017)

Opinion by Judge Westbrook

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

John Hunter Stevens for Appellant - Robert P. Thompson & Paul Pacific Blake for Appellees

Briefed by [William L. Moorer](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

FORD V. STATE

CIVIL - POST-CONVICTION RELIEF

JURY INSTRUCTIONS - TRIAL STRATEGY - INEFFECTIVE ASSISTANCE - Deciding what jury instructions to include is a trial strategy, and such trial strategy decisions do not amount to ineffective assistance of counsel

DEFENSES - ALIBI DEFENSE - PHYSICAL PROXIMITY - It is a denial, rather than an alibi defense, if the defendant asserts an alternate location that is still within the realm of physical possibility for the defendant to have committed the crime rather than a location that is so removed to render the defendant committing the offense impossible

FACTS

On January 11, 2010, Sanford Lackey was photographing land in rural Scott County. When Lackey discovered he was photographing the wrong property, he turned his car around at an old convenience store as he heard three gunshots. He turned in the direction of the shots and saw a man wearing a blue sweatshirt and a rolled-up toboggan exit a nearby motor home and walk towards a gold SUV as he looked in Lackey's direction. Later, Lackey noticed the gold SUV behind him approaching at a fast rate of speed. When the gold SUV was approximately a car length behind Lackey, the driver leaned out of the driver's side window and fired a handgun. A gunshot went through the rear windshield of Lackey's car. The gold SUV turned around and sped away from Lackey. The sheriff's department interviewed Darius Ford's girlfriend at her mobile home near where the shooting took place. She said Ford had been there with her, and they slept from 9:00 a.m. until 2:40 p.m. when Ford went to pick up his kids from school. A search of the mobile home revealed a .40-caliber pistol, ammunition, and a dark grey or blue sweatshirt that matched Lackey's description of the

shooter. Ford's girlfriend testified that the pistol was hers, and that Ford did not know she owned it. Ford testified he did not own a dark pullover or sweatshirt, and he did not own a firearm because he was a convicted felon. After a jury trial, Ford was convicted in February 2012 of aggravated assault and possession of a firearm by a convicted felon. He was sentenced to concurrent sentences of twenty years for aggravated assault and ten years for possession of a firearm by a convicted felon without eligibility for parole or probation. Ford sought leave of the Supreme Court to file for post-conviction relief. The circuit court denied his PCR motion in October 2016. Ford appealed.

ISSUE

Whether trial counsel was ineffective by failing to request an alibi jury instruction.

HOLDING

Because the shooting occurred near the mobile home belonging to Ford's girlfriend, who was asleep at the time of the incident, and the evidence did not mandate an alibi instruction, Ford's counsel did not provide constitutionally ineffective assistance of counsel by not requesting an alibi instruction. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2016-CA-01498-COA (July 25, 2017)

Opinion by Judge Wilson

Hon. Christopher A. Collins (Scott County Circuit Court)

Richard A. Rehfeldt for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Michael Farese](#)

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WORTH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - INVOLUNTARY PLEA

- A guilty plea is valid so long as it is entered voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences

POST-CONVICTION RELIEF - DEFENSES - GUILTY PLEA - By entering into a guilty plea, the party waves their right to present defenses and require the State to prove the elements of the offense beyond a reasonable doubt

CONSTITUTIONAL LAW - FREEDOM OF SPEECH - PROTECTED SPEECH - Speech attempting to arrange the sexual abuse of a child is not constitutionally protected any more than speech attempting to arrange any other type of crime

FACTS

Robert Worth was arrested after he engaged Sergeant Donnie Dobbs of the Biloxi Police Department in an online chatroom where Sergeant Dobbs was posing as a thirty-five year-old mother, "Denise," with a thirteen year-old daughter, "Brandi." Worth expressed interest in having sexual relations with Brandi, and arranged a meeting with Denise in order to engage in a sexual relationship with Brandi. When Worth arrived at the agreed-upon meeting place, he was apprehended by law enforcement and items including condoms, lubricant, vibrators, and a camera were found in his car. Worth pled guilty to the charge of child exploitation and was sentenced to fifteen years with the Mississippi Department of Corrections, with five years suspended, ten years to serve, and five years of post-release supervision. After sentencing, Worth filed a pro se post-conviction relief petition claiming that his plea was involuntary due to ineffective assistance of counsel. The circuit court found that Worth's plea was voluntary and that nothing in the record supported his position that his attorney's actions resulted in an involuntary plea. Worth appealed.

ISSUES

Whether (1) the trial court erred in finding that Worth's guilty plea was voluntary and not the result of ineffective assistance of counsel; (2) Worth's sexually explicit emails constitute protected speech under the First Amendment; (3)

Worth's allegations of misconduct by the prosecution and Worth's attorney have merit; and (4) Worth's alleged inability to perform sexual intercourse without Viagra should have been considered prior to his sentencing.

HOLDING

(1) Because the trial court's plea colloquy was sufficient to correct any alleged misinformation that Worth's counsel provided, Worth failed to establish a claim for post-conviction relief. (2) Because Worth's emails attempted to arrange the sexual abuse of a child, the emails were not constitutionally protected speech. (3) Because Worth's guilty plea was valid, his claims of misconduct could not be the basis for post-conviction relief. (4) Because Worth waived his right to present a defense by pleading guilty, his medical defense was without merit. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-CP-00704-COA (July 25, 2016)

Opinion by Judge Wilson

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, Second Judicial Dist.)

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

Briefed by [Kelsey Dismukes](#)

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COURT OF APPEALS - CRIMINAL CASES

AINSWORTH V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY DELIBERATIONS - SUPPLEMENTAL JURY INSTRUCTIONS - A trial court has the authority to give supplemental instructions to a jury; if the defense fails to raise a contemporaneous objection at trial, the issue of supplemental jury instructions is barred on appeal

CRIMINAL PROCEDURE - INEFFECTIVE COUNSEL - TRIAL STRATEGY - Decisions that fall within the scope of trial strategy fail to give rise to an ineffective assistance of counsel claim

FACTS

A grand jury indicted Kenneth Ray Ainsworth for possession of a controlled substance with intent to distribute. During deliberations, the judge received a note from the jury that said it did not have a unanimous decision on the charge of intent to distribute, but it did have a unanimous decision on the lesser-included charge of possession. The judge conferred with both parties' attorneys, who agreed that the jury first must consider the actual charge and only proceed to the lesser-included crime if it found the defendant not guilty. The judge then gave the jury two additional jury instructions, a supplemental instruction and a *Sharplin* charge. Both attorneys agreed to the additional instructions. The jury convicted Ainsworth of possession of a controlled substance with intent to distribute, and the trial court sentenced him as a habitual offender with an enhanced penalty to serve twenty years without the possibility of parole. Ainsworth filed a motion for a new trial or an acquittal notwithstanding the verdict, which the court denied. Ainsworth appealed.

ISSUES

Whether (1) the trial judge erred in issuing a supplemental jury instruction; (2) the trial judge erred in instructing the jury to continue deliberations in light of the jury's note indicating unanimous agreement as to a lesser-included charge; and (3) Ainsworth's attorney was ineffective for failing to object to the supplemental jury instruction.

HOLDING

(1) Because the trial court was within its discretion to issue a supplemental instruction and Ainsworth agreed to the supplemental instruction, the issue was procedurally barred. (2) Because the *Sharplin* charge was issued in accordance

with Rule 3.10 of the Uniform Rules of Circuit and County Practice and Ainsworth failed to make a contemporaneous objection, the issue was without merit and procedurally barred. (3) Because decisions that fall within the scope of trial strategy fail to give rise to a claim of ineffective assistance of counsel, the claim lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-KA-01019-COA (July 25, 2017)

Opinion by Judge Carlton

Hon. Lisa P. Dodson (Harrison County Circuit Court, Second Judicial Dist.)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att’y Gen. Office) for Appellee

Briefed by [Sarah Raben](#)

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CANNADY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - WITHDRAWAL OF COUNSEL - BRIEFING REQUIREMENT - An appellant’s attorney may withdraw as counsel on appeal so long as he (1) files a brief in compliance with Mississippi Rules of Appellate Procedure and certifying that there are no arguable issues before the court, (2) serves every party with the brief, and (3) further advises the defendant of his right to file a pro se brief

CRIMINAL PROCEDURE - WITHDRAWAL OF COUNSEL - SUPPLEMENTAL BRIEFING - Should the Court of Appeals find it appropriate, appellate counsel may be directed to file supplemental briefing on any issues not previously covered in the original brief

CRIMINAL PROCEDURE - INEFFECTIVE COUNSEL - DIRECT APPEAL - Claims of ineffective counsel are reserved for post-conviction relief proceedings, and claims of ineffective appellate counsel are not subject to review in a direct appeal from a conviction in the trial court

FACTS

Cornelius Cannady was convicted of false pretense and conspiracy to commit false pretense. Cannady moved for a judgment notwithstanding the verdict, or alternatively, a new trial. The trial judge denied the motion, and Cannady appealed. His case was assigned to the Office of the State Public Defender, Indigent Appeals Division. Cannady’s attorney submitted a brief having found no arguable issues for appeal of the trial court’s conviction, but he requested forty days’ additional time for Cannady to file a pro se brief. Cannady filed his brief alleging both error in the trial court’s ruling and ineffective assistance of counsel.

ISSUE

Whether Cannady raised any arguable issue for appeal or reversible error committed at the trial level.

HOLDING

Because ineffective-assistance-of-counsel claims are reserved for post-conviction relief proceedings and because Cannady’s brief did not raise any other claims in addition to those addressed in the appellate counsel’s brief, Cannady had no arguable issues on appeal. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2015-KA-01756-COA (July 25, 2017)

Opinion by Judge Ishee

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

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

Briefed by [D. Kirkwood Palmer](#)

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OLIVER V. STATE

CRIMINAL - FELONY

CRIMINAL - ARMED ROBBERY - TAKING BY FORCE - Taking by force can occur by refusal to return borrowed property while exhibiting a deadly weapon with the intent to intimidate or cause fear in order to keep the property

CRIMINAL - ARMED ROBBERY - INTIMIDATION - The taking must be the result of force or fear; fear of physical ill must come before the relinquishment of the property

CRIMINAL - ARMED ROBBERY - FEAR - Attempting to get one's property back does not negate being put under the influence of fear of immediate injury by the exhibition of a deadly weapon

FACTS

On November 16, 2013, Christian Rone was riding his skateboard when John Ed Oliver II pulled up beside him in a vehicle and asked to borrow his phone. Rone was acquainted with Oliver through school and allowed him to use his phone. Oliver, however, then stated he was going to keep the phone. Rone demanded the phone back, and Oliver threatened Rone with a gun, including cocking back the hammer. When Oliver drove off, Rone held on to the car until he was knocked off his skateboard. Oliver was convicted of armed robbery and subsequently filed a motion for a judgment notwithstanding the verdict, or in the alternative, a new trial. Both were denied by the circuit court. Oliver appealed.

ISSUES

Whether (1) the evidence was sufficient to sustain a conviction and (2) the weight of the evidence was contrary to the verdict so as to create an unconscionable injustice.

HOLDING

(1) Because the taking occurred when Oliver refused to return the phone and exhibited a deadly weapon to intimidate or cause fear in Rone in order to keep it, the evidence was sufficient to convict for armed robbery. (2) Because evidence showed that Rone on multiple occasions asked for the return of his phone and that he was under the influence of fear, there was no voluntary relinquishment as to defeat robbery. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

DISSENT

Presiding Judge Irving argued that Oliver took Rone's phone via deceit or artifice, and that it was not until later that he brandished the gun and pointed it at Rone. Because of this, he argued that Oliver committed larceny and maybe aggravated assault, but not armed robbery. Judge Irving argued that "take" is not a term of art, therefore the dictionary definition "to get into one's possession by force, skill, or artifice" would favor Oliver's argument.

Affirmed - 2016-KA-00262-COA (July 25, 2017)

Opinion by Presiding Judge Griffis - Dissent by Presiding Judge Irving

Hon. Robert P. Chamberlin (DeSoto County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Katy T. Gerber (Att'y Gen. Office) for Appellee

Briefed by [D. Hunter V. Robertson](#)

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