
MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 22, 2020

SUPREME COURT - ORDERS**MISS. BAR V. KNIGHT****ORDER OF DISBARMENT****ORDER**

The Mississippi Bar, under Rule 6(a) and (d) of the Rules of Discipline for the Mississippi State Bar, filed a formal complaint seeking disbarment of Jeffrey Dixon Knight. Knight pled guilty to the crimes of possession of more than two grams but less than ten grams of methamphetamine with intent to distribute, felonies under Miss. Code Ann. § 41-29-139(b)(1)(B). The trial court sentenced Knight to serve a term of five years on probation under the supervision of the Mississippi Department of Corrections. Knight, a member of the Mississippi Bar, was personally served with a Formal Complaint in May 2020, but he did not respond. The Supreme Court considered the Formal Complaint with attached sentencing order and found a plea of guilty to a felony mandated that the Supreme Court strike the name of the attorney and order his immediate suspension from the practice of law pursuant to Rule 6(a) of the Rules of Discipline. Furthermore, Rule 6(d) of the Rules of Discipline mandated that the Court enter an order of disbarment when the time for appeal from judgment expires. The Supreme Court ordered that Knight is disbarred from practicing law in the state of Mississippi and specified that the Supreme Court Clerk forward a copy of the order to the necessary parties and courts. Finally, Knight must send notice to his clients, opposing counsel, adverse parties, and the affected courts and agencies.

Affirmed - 2020-BD-00428-SCT (Oct. 22, 2020)

En Banc Opinion by Justice Coleman

Briefed by [Fatelia Avery](#)

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SUPREME COURT - CRIMINAL CASES

STONE V. STATE**CRIMINAL - FELONY**

CRIMINAL PROCEDURE - NEW TRIAL - NEWLY DISCOVERED EVIDENCE - Pursuant to Miss. R. Crim. P. 25.1, in order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear that the evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching

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

FACTS

Dex Hester Stone was found guilty of lustful touching of a child. Stone filed a motion for judgment notwithstanding the verdict (“JNOV”), contending that an accident report revealed that his left hand was in a hard cast the day of the alleged lustful touching. As a result, Stone argued that this new medical evidence made it impossible for him to commit the crime. Stone argued that the verdict was against the overwhelming weight of the evidence and that although the medical evidence was available before trial, he was not aware of the relevance of his medical records until he heard the trial testimony. Stone argued that he was entitled to a new trial. The trial court denied his motion, finding that the accident report and medical records were available before trial and were not newly discovered evidence. Stone appealed.

ISSUE

Whether the trial court abused its discretion by denying Stone’s motion for a new trial.

HOLDING

Because the victim’s sister was an eyewitness who provided an in-court identification of Stone, and because Stone had the opportunity to present the medical evidence at trial but failed to do so, the trial court did not abuse its discretion by ruling that Stone’s additional medical evidence was not newly discovered or by denying Stone’s motion for a new trial. Therefore, the Supreme Court affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2019-KA-01082-SCT (Oct. 22, 2020)

Opinion by Presiding Justice Kitchens

Hon. Charles W. Wright Jr. (Lauderdale County Circuit Court)

Justin T. Cook & George T. Holmes (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Allison Payne](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 20, 2020

COURT OF APPEALS - CIVIL CASES

DOMKE V. DOMKE

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CUSTODY - MODIFICATION - At trial, the parent seeking custody modification must show (1) a material change in circumstances occurred since the issuance of the decree sought to be modified; (2) that the material change adversely affected the minor child; and (3) that it would be in the child’s best interest for custody to change

FAMILY LAW - BEST INTEREST OF CHILD - ALBRIGHT ANALYSIS - When evaluating a child’s best interest, the following factors must be considered: (1) the age, health, and sex of the child; (2) which parent has had continuity of care; (3) the parties’ parenting skills; (4) the parties’ willingness and capacity to provide primary child care; (5) the parties’ employment responsibilities; (6) the parties’ physical and mental health and age; (7) the emotional ties of parent and child; (8) the parties’ moral fitness; (9) the home, school and community records of the child; (10) the child’s preference, if the child is at least twelve years old; (11) the stability of the home environment and employment of each party; and (12) other factors relevant to the parent-child relationship

FAMILY LAW - CUSTODY - MODIFICATION - Although the mere moving of a custodial parent does not generally constitute a change in circumstances for child custody modification, it is the effect the move has on the child that is dispositive and even a short move can result in a material change in circumstances where the move causes the custody arrangement to become impractical

EVIDENCE - EXCLUSION - WITNESS SEQUESTRATION - Miss. R. Evid. 615 provides for the sequestration of trial witnesses and states that at a party’s request, the court must order witnesses excluded so that they cannot hear other witnesses’ testimony

CIVIL PROCEDURE - CONTEMPT - DISCRETION - Contempt is an issue of fact to be decided on a case-by-case basis; the chancery court has substantial discretion in deciding whether a party is in contempt

FACTS

Robert and Sarah Domke married in 2010 and divorced in 2017. They received joint physical and legal custody of their daughter, Julia. Robert received physical custody of Julia when he was home from his offshore work, and Sarah received custody when Robert was at work. Custody alternated every twenty-one days or, if Robert was no longer employed offshore, every fourteen days. They agreed that Robert would receive exclusive ownership and possession of the marital home in Lamar County and would be fully responsible for the mortgage payments. Shortly after enrolling Julia in kindergarten in 2017, both Robert and Sarah remarried, Robert relocated to Hancock County, and Sarah relocated to North Carolina. Julia's academic progress suffered during the 2017-2018 school year, and the school determined that she would not be promoted to the first grade. After the parties sold the former marital home, Sarah filed a motion for temporary relief as well as a petition for contempt, modification of the divorce judgment, and other related relief. She asserted that she should be awarded primary physical custody of Julia and that Robert should be held in contempt for failing to timely pay the mortgage on the home. Robert filed an answer, in which he argued that he had become current on the mortgage payments and that Sarah was to blame for Julia's academic struggles. He also requested primary physical custody of Julia. The chancellor appointed a guardian ad litem ("GAL") to represent Julia and held a three-day hearing. During the hearing, the chancellor heard testimony from several witnesses, including Jennifer Matherne, Julia's kindergarten teacher, and Jennifer Bertram, the dean of academics at the school. The chancellor analyzed the *Albright* factors and ultimately determined that physical custody should not be modified, but instead modified the parents' custodial schedule. The chancellor provided that the parties would divide the time over Christmas break and that Robert would have Julia during the 2018-2019 school year and for two weeks during the summer, while Sarah received Julia during the remaining eight weeks of summer and the entirety of Thanksgiving and spring break. The chancellor also denied Sarah's contempt claim against Robert, finding that any damage to Sarah's credit had been unintentional, the marital home had been sold, and the parties had moved on with their lives. Sarah filed a motion to alter or amend the judgment, to open the judgment and amend the findings of fact and conclusions of law, or, alternatively, for a new trial. The chancellor denied her requests. Sarah appealed.

ISSUES

Whether the chancellor erroneously (1) modified child custody; (2) admitted Bertram's witness testimony; (3) failed to find Robert in contempt; (4) failed to award Sarah a monetary judgment and attorney's fees related to her contempt action; and (5) failed to dismiss Robert's post-trial motion.

HOLDING

(1) Because substantial credible evidence supported the chancellor's modification of the custodial schedule, and because the modification still served the purpose of providing both parties with "significant periods of physical custody to assure the child of frequent and continuing contact with both parents," the chancellor did not erroneously modify child custody by modifying the custodial schedule. (2) Because Sarah showed no unfair prejudice due to the admission of Bertram's testimony, the chancellor did not erroneously admit Bertram's testimony. (3) Because Robert's failure to timely remit the missed mortgage payment was not willful, and because any adverse effect on Sarah's credit was unintentional, the chancellor did not err by not holding Robert in contempt. (4) Because there was no abuse of discretion or manifest error in the chancellor's denial of Sarah's contempt action against Robert, the chancellor did not erroneously fail to award Sarah a monetary judgment and attorney's fees related to her contempt action. (5) Because Robert's post trial motion was covered by Miss R. Civ. P. 60(b)(6), his motion was timely filed and the chancellor did not erroneously fail in dismissing Robert's post-trial motion. Therefore, the Court of Appeals affirmed the Lamar County Chancery Court.

Affirmed - 2018-CA-01758-COA (Oct. 20, 2020)

En Banc Opinion by Presiding Judge Carlton

Hon. Johnny Lee Williams (Lamar County Chancery Court)

Chase Ford Morgan for Appellant - Yvette Louise Stelly for Appellee

Briefed by [Madison Reightler](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

CREEL V. STATE

CIVIL - POST-CONVICTION RELIEF

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 judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

POST-CONVICTION RELIEF - SUBSEQUENT MOTIONS - EXCEPTION - Under Miss. Code Ann. § 99-39-23(6), any order dismissing a petitioner's motion or otherwise denying relief is a final judgment and shall be a bar to a second or successive motion; if a subsequent PCR motion is filed, the burden falls on the movant to show he has met a statutory exception

POST-CONVICTION REELIEF - STATUTE OF LIMITATIONS - FUNDAMENTAL RIGHTS EXCEPTION - The statute of limitations may be waived when a fundamental constitutional right is implicated; the following fundamental-rights exceptions have been found to survive procedural bars: the right against double jeopardy; the right to be free from an illegal sentence; the right to due process at sentencing; and the right to not be subject to ex post facto laws

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - In extraordinary circumstances, the right to effective assistance of counsel may also be excepted from the Mississippi Uniform Post-Conviction Collateral Relief Act procedural bars

FACTS

In 1993, James Creel escaped from the Covington County Sheriff's Department while under indictment for burglary. On July 18, 1994, Creel was subsequently found guilty of jail escape pursuant to Miss. Code Ann. § 97-9-491(1) and sentenced to life without the possibility of parole as a habitual offender. In 1997, Creel filed a petition for out-of-time appeal, which was denied. Between 1998 and 2018, Creel filed at least five PCR motions, all of which were dismissed or denied as either untimely, successive-writ barred, or both. In October 2018, Creel filed his most recent PCR motion, in which he asserted numerous errors concerning his 1994 jury trial and hearing. He filed two additional pleadings on December 18, 2018, and December 26, 2018, in which he alleged additional errors. Specifically, between the three pleadings, he alleged that his right to due process was violated, that he failed to receive a bifurcated trial, that his right to be free from double jeopardy was violated, that his right to confront witnesses at trial was violated, that he received an illegal sentence, that he received ineffective assistance of counsel, and several additional claims in which he did not assert a fundamental or constitutional right. On March 18, 2019, the Covington County Circuit Court held that Creel was not entitled to any of the requested relief and denied his PCR motion. Creel appealed.

ISSUES

Whether (1) Creel's PCR motion was untimely and successive and (2) Creel failed to establish a fundamental-right exception in order to overcome procedural bars.

HOLDING

(1) Because Creel's PCR motion was filed over twenty-four years after his conviction, thus outside of the applicable three-year statutory limitation, and because Creel has filed at least six PCR motions, the trial court properly found the motion barred as untimely and successive. (2) Because Creel must show a violation of his fundamental constitutional rights in order to establish an exception to procedural bars, because Creel failed to provide evidence to validate his claim that his right to due process was violated regarding a bifurcated trial, because the crimes of burglary and jail escape each include different elements from the other and therefore do not violate double-jeopardy, because the Mississippi Department of Corrections records were not testimonial evidence and the admission of such records did not violate Creel's constitutional right to confront or cross-examine witnesses, because Creel's mere assertion that he received an illegal sentence was not enough to substantiate his claim of illegal sentence, because he failed to identify an "extraordinary circumstance" or provide evidence to support his ineffective assistance of counsel allegation, and because Creel's additional procedural error claims were vague, unclear, and lacked proof, all of Creel's fundamental right and

procedural claims were without merit and the trial court properly found that Creel failed to establish a fundamental-right exception to overcome procedural bars. Therefore, Court of Appeals affirmed the judgment of the Covington County Circuit Court.

Affirmed - 2019-CP-00636-COA (Oct. 20, 2020)

Opinion by Judge Lawrence

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

Pro se for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Betsy Lee Montague](#)

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CUEVAS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - A guilty plea will only be binding upon a criminal defendant if it is voluntary and intelligently entered, which means a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea

POST-CONVICTION RELIEF - ADVERSARIAL HEARING - DISMISSAL - A post-conviction relief motion may be dismissed without a hearing if it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief

POST-CONVICTION RELIEF - PETITION - MERIT - When the trial court reviews a petition for post-conviction relief, the trial court has an obligation to review the original motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack to determine whether the defendant has proven the merit of the allegations by a preponderance of the evidence

FACTS

Officer Jason Ginn of the Mississippi Highway Patrol pulled over a truck that Cesar Cuevas was driving for traveling below the posted speed limit in the left lane of the interstate. During the stop, Ginn noticed smooth, white pallets in the bed of the rental truck. A search on Cuevas’s license showed that he had recently crossed the border from Mexico, and Ginn learned that Cuevas’s rental agreement was not valid. Cuevas gave verbal consent to Ginn and a back-up officer to search the vehicle and both Cuevas and his father signed a consent-to-search form. The officers drilled a hole in one of the pallets and found a white residue that tested positive for methamphetamine. Cuevas plead guilty to the trafficking charge. At his plea hearing, the Rankin County Circuit Court questioned Cuevas extensively about the characteristics of his guilty plea. Cuevas answered that he was aware of the contents of his plea, had discussed the elements of the crime with his attorney, was satisfied with his attorney’s representation, and was voluntarily admitting his guilt. Cuevas’s attorney replied to the circuit court that she and Cuevas had an opportunity to review the pre-sentence report and that no corrections were necessary. Cuevas was sentenced and later filed a petition for post-conviction relief. After considering the petition, transcripts, and Cuevas’s criminal file, the Rankin County Circuit Court denied the petition, finding that it was clear on its face that Cuevas was not entitled to post-conviction relief. Cuevas appealed.

ISSUES

Whether (1) the trial court erred in denying Cuevas’s post-conviction relief petition without a hearing and (2) Cuevas’s lawyer was ineffective in failing to provide mitigation evidence and failing to show him the pre-sentencing report.

HOLDING

(1) Because the trial court followed precedent and adequately afforded Cuevas an opportunity to raise any concerns, and because Cuevas unequivocally affirmed to the trial court that he was fully aware of the consequences of his decision, Cuevas’s claim was without merit and the trial court did not err in denying the post-conviction relief motion without a hearing. (2) Because neither claim affected the voluntariness of Cuevas’s guilty plea, both were procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2019-CA-01460-COA (Oct. 20, 2020)

Opinion by Judge McCarty

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Nathan Henry Elmore & Jane E. Tucker for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Greyson Young](#)

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MANUEL V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PETITION - DISMISSAL - Dismissal of a PCR motion is proper where it appears beyond a doubt that the movant can prove no set of facts in support of his claim which would entitle him to relief

POST-CONVICTION RELIEF - PETITION - HEARING REQUIREMENT - An evidentiary hearing is not required if the movant’s claims are supported by only his own affidavit and are contradicted by unimpeachable documents in the record; an evidentiary hearing is necessary if the movant presents sufficient evidence such that his allegations are not overwhelmingly belied by the plea hearing transcript and related documents

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - A guilty plea will only be binding upon a criminal defendant if it is voluntary and intelligently entered, which means a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea

CRIMINAL PROCEDURE - GUILTY PLEA - INVOLUNTARINESS - A plea is considered involuntary if the defendant’s attorney affirmatively misinformed him regarding his eligibility for earned time or trusty time, the attorney’s erroneous advice was not corrected, and the defendant pled guilty in reliance on the erroneous advice

FACTS

Robert Earl Manuel was indicted for first-degree murder, aggravated assault, and shooting into a vehicle. Pursuant to a plea bargain, he agreed to plead guilty as an accessory before the fact to second-degree murder and accessory before the fact to aggravated assault. In exchange, the State agreed to nolle prosequi the shooting-into-a-vehicle charge and unrelated drug charges under another indictment. The State also agreed to recommend concurrent sentences of twenty-five years and twenty years. Manuel subsequently filed a motion for post-conviction relief (“PCR”), in which he alleged that his plea was involuntary because his attorney erroneously advised him that the charges to which he pled guilty were not considered violent crimes, that he would be eligible for “good time credit,” and that he would be out of prison in “a few short years.” The circuit court summarily dismissed Manuel’s PCR motion without an evidentiary hearing. Manuel appealed.

ISSUE

Whether the circuit court erred by dismissing Manuel’s PCR motion without an evidentiary hearing.

HOLDING

Because Manuel pled guilty in reliance on his attorney’s erroneous advice regarding his eligibility for parole, earned time, and trusty time, his plea was considered involuntary and the trial court erred by dismissing the PCR motion without an evidentiary hearing. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

Reversed & Remanded - 2019-CA-01145-COA (Oct. 20, 2020)

En Banc Opinion by Presiding Judge J. Wilson

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)

Merrida Coxwell & Charles Richard Mullins for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Cecelia Hurt](#)

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COURT OF APPEALS - CRIMINAL CASES

BAKER V. STATE

CRIMINAL - FELONY

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

CRIMINAL LAW - MURDER - DELIBERATE-DESIGN - The prosecution is required to prove beyond a reasonable doubt that (1) the defendant killed the victim; (2) without authority of law; and (3) with deliberate design to affect his death

CRIMINAL PROCEDURE - TESTIMONY - CONFLICTING TESTIMONY - When evidence or testimony conflicts, the jury is the sole judge of witness credibility and the weight and worth of their testimony

FACTS

On May 30, 2016, Madison Sims entered a convenience store to buy cigarettes. Once inside, Andre Baker insisted that Sims had bumped into him and began acting aggressively. Sims denied pushing Baker, completed his purchase, and left the store. Baker followed Sims out to the parking lot and continued acting aggressively. Sims got into his cousin's car and as they were leaving, Sims's cousin accidentally put the car in drive instead of reverse. After lurching forward, the car was put in reverse and Baker shot into the car, hitting Sims in the neck. Although 911 had been called, Sims's cousin attempted to drive Sims to the hospital, but collided with another vehicle on the way. The medical examiner determined that Sims's death was caused by a gunshot wound to the neck. Convenience store surveillance showed Baker pointing a gun in the direction of the car after it was put in reverse. Additionally, witnesses offered conflicting testimony as to whether the car hit any bystanders when it lurched forward, thus, as Baker argued, prompting him to fire into the car. Baker was indicted for first-degree murder, and his case proceeded to trial. The jury found Baker guilty of first-degree murder, and the circuit court sentenced him to life imprisonment. Baker filed a motion for a judgment notwithstanding the verdict or a new trial, which was denied. Baker appealed.

ISSUE

Whether the trial court judge abused his discretion by denying Baker's motion for a new trial.

HOLDING

Because there was ample, credible evidence supporting the jury's finding that Baker killed Sims with deliberate design and not, as Baker argued, in the heat of passion, and because the verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice, the trial court judge did not abuse his discretion by denying Baker's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2019-KA-01042-COA (Oct. 20, 2020)

En Banc Opinion by Presiding Judge Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Blake Tims](#)

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BRANNAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - 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 PROCEDURE - INDICTMENT - NOTICE - So long as a fair reading of the indictment, taken as a whole, clearly describes the nature and cause of the charge against the accused, the indictment is legally sufficient

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

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Admissibility of expert testimony is viewed in light of Miss. R. Evid. 702; such testimony is admissible if it is found to be relevant and reliable

FACTS

In 2014, William Joel Dixon was arrested for possession of a controlled substance and other charges. During the arrest, Dixon told the arresting officer that he was a diabetic. Dixon was taken to the George County Regional Correctional Facility (“GCRCF”), where he specified during his medical intake screening that he required insulin. Carmon Brannan, a registered nurse and the highest-ranking medical authority at GCRCF, called Donna Dixon, Dixon’s mother, and asked her to bring insulin, needles, and syringes to jail for Dixon. Donna brought the supplies to GCRCF, and she later testified that Dixon had been a Type-1 diabetic since he was sixteen years old. Ulysses Williams, a nurse at GCRCF that Brannan supervised, testified that copies of an inmate’s medical history were given to the nurses after intake, that serious conditions like diabetes were red flagged, and that the nurses notified correctional officers of red-flagged inmates so they would know that the inmate might request medical treatment. Williams was unaware if any officers were told that Dixon was a diabetic. Williams also stated that an inmate could request an insulin check at any time and, since Brannan and Williams were the only nurses at the jail, they relied in part on the correctional officers to let them know if an inmate needed medical attention. An officer later testified that officers were not allowed to administer medicine to inmates and that an officer was required to call a nurse if they believed something was wrong with an inmate. Brannan told Williams that she had obtained insulin for Dixon, but that Dixon refused to take it and signed a refusal form. Williams thought it was strange that an inmate refused to take important medicine such as insulin and saw a refusal form that appeared to be signed, but he did not look at the form carefully to verify that it was Dixon’s signature. Williams testified that Brannan sometimes cancelled medical appointments that he scheduled for inmates and that Brannan told him that if an inmate was not taking his medication in the “free world,” the inmate did not need it in jail either. A few days later, two officers found Dixon on the shower floor drifting in and out of consciousness. Dixon was brought to Brannan’s office and told Brannan that he was weak and could not eat anything. One of the officers stated that Brannan looked up Dixon’s charges and stated that Dixon was detoxing, and the officer testified that it was his “past experience” that if Brannan believed that an inmate was “just detoxing,” Brannan “wasn’t going to do much after that.” Brannan completed two incident reports on Dixon over the next four hours, and Dixon stated that he could not breathe during both. The next day, another officer was called to Dixon’s cell because he had thrown up, and Dixon later stated that he could not get up from his bed because he was sick. Brannan saw Dixon and told the officer that Dixon was “faking.” Later, officers had to dress Dixon because he could not dress himself and had to physically carry Dixon to the booking area. The next day, another officer told Brannan that Dixon looked “really bad sick” and needed medical attention, but Brannan glanced in Dixon’s cell and kept moving. A few hours later, Dixon died in his cell at GCRCF. After Dixon’s death, the refusal form could not be found. Dr. John Brently Davis performed Dixon’s autopsy and stated that Dixon’s blood had sixty times the normal level of acetone, which was common for people suffering from diabetic ketoacidosis (“DKA”), a life-threatening condition that occurs when an insulin-dependent diabetic person’s glucose level gets too high due to a lack of insulin. Davis testified that nausea and vomiting are symptoms of DKA, but also testified that some of the symptoms of withdrawal are similar to those of DKA. Lori Roscoe, an expert in nursing practices, testified that Brannan failed to provide sufficient medical attention by not establishing a baseline for Dixon’s medical needs and not ensuring that he was adequately monitored. Roscoe also stated that Brannan should have offered Dixon insulin despite the refusal form, but acknowledged that Brannan could not force Dixon to test his glucose or take insulin. Roscoe testified that although Brannan could not diagnose Dixon’s condition, Brannan’s observations should have indicated to her that Dixon’s condition was worsening and that Brannan “was operating well beyond her scope of

practice as a registered nurse” in not referring Dixon to a doctor or emergency room. Dr. Randy Easterling, an expert in diabetics and family medicine, testified that it was reasonable for Brannan to believe that Dixon was going through withdrawals, but that Dixon’s outcome would have been different if he had received insulin. During an interview with the Mississippi Bureau of Investigation, Brannan stated that she did not recall if anyone brought insulin for Dixon or if anyone told her that Dixon was not eating. At trial, Brannan stated that she had told the Mississippi Bureau of Investigation investigator things that were inaccurate or untrue due to the passage of time between Dixon’s death and the interview. Brannan testified that she thought it was odd that Dixon refused insulin and that his jitteriness combined with the fact that he had been sick recently made Brannan believe that he was suffering from withdrawal. Brannan also testified that she checked on Dixon when requested and repeatedly asked him if he wanted to check his blood sugar, which Dixon refused. Brannan further stated that Dixon’s death was on a Wednesday, which was her busiest day of the week because that was when the doctor came to the jail, and that she tried to get through her initial checks before the doctor arrived. On cross examination, she stated that she never asked if Dixon was a Type-1 or Type-2 diabetic and denied that she ever saw Dixon being unable to walk despite the testimony of multiple officers. The trial court found Brannan guilty of manslaughter and sentenced her to serve fifteen years in the custody of the Mississippi Department of Corrections. Brannan appealed.

ISSUES

Whether (1) the indictment was vague and confusing; (2) the maltreatment statute was unconstitutionally vague; (3) the trial court abused its discretion by excluding Dixon’s medical records, limiting the testimony of one of his doctors, and excluding certain evidence related to his arrest; (4) the trial court abused its discretion by admitting a summary chart of a surveillance video; and (5) the trial judge erred by denying Brannan’s motion for judgment notwithstanding the verdict.

HOLDING

(1) Because the heading on Brannan’s indictment was valid and sufficient, because the indictment sufficiently alleged the essential elements of the crime, and because the indictment did not charge a legal impossibility, the indictment was not deficient. (2) Because the maltreatment statute was not impermissibly vague in all its applications, the maltreatment statute was not unconstitutionally vague. (3) Because the trial court has discretion to exclude evidence it deemed irrelevant and/or immaterial, and because Brannan could not provide enough evidence to show error and prejudice, the trial court did not abuse its discretion by excluding Dixon’s medical records, limiting the testimony of one of his doctors, and excluding certain evidence related to his arrest. (4) Because the trial judge had the discretion to admit or exclude the summary chart, and because Brannan had the opportunity to point out any alleged error in the chart, the trial judge did not abuse his discretion or commit reversible error by admitting the summary chart. (5) Because the State presented sufficient evidence to sustain Brannan’s conviction, and because the jury’s verdict was not against the overwhelming weight of the evidence, the trial judge did not err by denying Brannan’s motion for judgment notwithstanding the verdict. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

Affirmed - 2018-KA-01203-COA (Oct. 20, 2020)

Opinion by Presiding Judge Wilson

Hon. Richard W. McKenzie (George County Circuit Court)

Mary Lee Holmes, Paul Hardin Holmes, & Marcus Alan McLelland for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Joshua L. Holmes](#)

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SANDERS V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DUE PROCESS - APPELLATE COUNSEL - In *Lindsey v. State*, the Mississippi Supreme Court has implemented a procedure for appellate counsel to follow once it is determined a record lacks any appealable issues to more effectively implement due process and equal protection rights to appellate counsel

APPELLATE PROCEDURE - WITHDRAWAL - LINDSEY REQUIREMENTS - Under *Lindsey*, an attorney must (1) file and serve a brief; (2) certify in that brief that there are no arguable issues supporting the client’s appeal and that the attorney has reached this conclusion after scouring the record thoroughly; and (3) send a copy of the brief to the defendant, inform the defendant that the attorney could find no arguable issues in the record, and advise the defendant of his or her right to file a pro se brief

FACTS

Ernie Sanders registered his address with the Mississippi Sex Offender Registry as 2111 Lilly Road in Copiah County, Mississippi. When a joint task force of U.S. marshals and the local Sheriff’s Office conducted an address verification check, Sanders was not present at that address. Chester Banks, the homeowner at the address Sanders registered, informed law enforcement that Banks had lived there for fifteen years and Sanders did not reside at that address. Sanders was convicted for failure to register as a sex offender and sentenced to serve three years in the custody of the Mississippi Department of Corrections (“MDOC”). Sanders filed a post-trial motion, which was denied. Sanders’s appointed counsel filed a *Lindsey* brief. Sanders was given an additional forty days to file a pro se brief, but he did not. Sanders appealed.

ISSUE

Whether Sanders’s attorney complied with the *Lindsey* requirements.

HOLDING

Because Sanders’s appointed counsel filed a brief pursuant to *Lindsey* representing that he had diligently scoured the record and could not find any arguable issues warranting reversal on appeal, because Sanders’s appointed counsel mailed a copy of this brief to Sanders and advised him of his right to file a pro se brief, and because Sanders was granted an additional forty days to file a pro se brief but failed to do so, Sanders’s appointed counsel complied with the *Lindsey* requirements and no arguable issues for appeal existed. Therefore, the Court of Appeals affirmed the judgment of the Copiah County Circuit Court.

Affirmed - 2019-KA-01326-COA (Oct. 20, 2020)

Opinion by Judge Greenlee

Hon. Tomika Harris Irving (Copiah County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth & Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Muriel Collins](#)

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SLAUGHTER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - EYEWITNESSES - WEATHERSBY RULE - The *Weathersby* rule states that “where the defendant or the defendant’s witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge”

CRIMINAL LAW - WEATHERSBY RULE - EXCEPTION - The *Weathersby* rule is inapplicable when the defendant’s conduct and statements following the killing are inconsistent with his version of the events as recounted at trial

CRIMINAL LAW - WEATHERSBY RULE - INAPPLICABILITY - If the defendant’s testimony satisfies all the elements of murder or manslaughter, the defendant would not be entitled to a direct verdict of acquittal, as this testimony would be the basis for a valid conviction, and the *Weathersby* rule would not apply”

FACTS

In November 2015, police officer Doug Triplett responded to a 911 call regarding a brawl between two males outside the “Talk of the Town,” a small club in Macon, Mississippi. Arriving at the scene, Officer Triplett found the deceased victim, Dennis Gavin, lying in the street. Johnny “Bullet” Slaughter was standing at his truck with his eye swollen shut from the fight with Gavin. Officer Triplett approached Slaughter, who handed the officer a knife and stated that Gavin tried to cut him with it during the fight but that Slaughter took it from him. Triplett arrested Slaughter, and Slaughter was charged with first-degree murder. At trial, Willie Jones, Slaughter’s friend, testified Slaughter told him about a physical altercation he had with Gavin earlier on the day of the incident. Jones stated that Slaughter still seemed angry about the fight and that he said he would “do something” if Gavin messed with him again. After encouraging Slaughter to go home, Jones said he gave Slaughter a hug. During the hug, Jones testified that he felt a hard object concealed near Slaughter’s waist. Slaughter, also testified at trial, explaining that, prior to the fight with Gavin outside of the night club, he and Gavin had gotten into a fight about sharing alcohol earlier that day. Slaughter further asserted that he and Gavin met later that night at the “Talk of the Town,” and Gavin started another fight. Slaughter then admitted to stabbing Gavin and that the knife he used to stab Gavin belonged to Slaughter. Although Slaughter stated he used deadly force because he was afraid for his life, Slaughter admitted during his testimony that Gavin never threatened him with a knife and that he never saw Gavin holding a knife before or during the fight. The jury found Slaughter guilty of manslaughter. Slaughter appealed.

ISSUES

Whether (1) there was insufficient evidence to support Slaughter’s conviction and (2) the jury’s verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because Slaughter’s statements to Officer Triplett about the ownership of the knife were inconsistent with his testimony, and because Slaughter admitted to killing Gavin with his own knife during his testimony, the *Weathersby* rule was inapplicable and there was sufficient evidence to support the conviction. (2) Because the State presented sufficient evidence to undermine the self-defense claim, the jury’s verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Noxubee County Circuit Court.

Affirmed - 2019-KA-00735-COA (Oct. 20, 2020)

En Banc Opinion by Presiding Judge J. Wilson

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

Rodney A. Ray for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [John Michael Sweatt](#)

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