

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 14, 2021***SUPREME COURT - CIVIL CASES******IN RE JOHNSON*****CIVIL - OTHER**

WILLS & ESTATES - PRESUMPTION OF DEATH - ELEMENTS - Any person who shall remain beyond the sea, or absent himself from this state, or conceal himself in this state, for seven years successively without being heard of, shall be presumed to be dead in any case where his death shall come in question, unless proof be made that he was alive within that time; any property or estate recovered in any such case shall be restored to the person evicted or deprived thereof, if, in a subsequent action, it shall be proved that the person so presumed to be dead is living

CIVIL PROCEDURE - APPEALS - ASSERTIONS OF ERROR - An appellate court is not bound to address assertions of error where a party fails to cite caselaw in support of their argument

FACTS

Ashley Bionte Johnson filed a petition for presumption of death for her father, Audray Johnson. Ashley claimed that, despite her father's physical form continuing to live and breathe, Audray had been gone from his physical body for more than seven years and thus should be declared dead. Audray suffers from mental illness and has been treated for Dissociative Identity Disorder. Audray changed his name in 2017 to Akecheta Andre Morningstar. Audray/Morningstar was present at Ashley's hearing and testified regarding Audray's death. He testified that Audray's spirit expired more than seven years ago, and now he—Morningstar—solely inhabits Audray's former physical body. He further explained that he was dispatched from the heavens to save the world, and that the "Great Spirit" had altered his DNA such that it differed from Audray's, claiming that, it had altered his liver functions and even made him slightly shorter than Audray. Morningstar argued he should have no responsibility to care for a dead man's (Audray's) family. Morningstar acknowledged that he and Audray shared a social security number, and that he lives at Audray's last known residence with his wife and daughter. The chancellor denied the motion, taking judicial notice of the fact that Audray appeared before the chancery court in 2017 to petition for his name change, and therefore had not been absent from the state for at least seven successive years. Ashley appealed.

ISSUES

(1) Whether the chancellor erroneously denied the petition for presumption of death; (2) whether Morningstar was denied his right to establish his "true identity;" (3) whether the presumption-of-death statute includes aliens; and (4) whether the chancery clerk's actions violated Ashley's right to a fair hearing.

HOLDING

(1) Because Audray has not been absent from or concealed himself in the state for seven years successively without being heard of, because the chancellor noted that she reviewed everything which had been filed and did not "refuse to review" the evidence that Ashley presented, because Ashley failed to explain how the school aged children's presence in the courtroom was prejudicial to her, and because the record did not indicate that Ashley attempted or requested to rebut Morningstar's testimony, the chancellor did not err in denying the petition for presumption of death. (2) Because Ashley failed to cite any case law or authority in support of her argument that Morningstar was denied the right to establish his true identity, and because Audray was allowed to change his name to Morningstar, he was not denied his right to establish his true identity. (3) Because the Supreme Court does not have the authority to create new law regarding amending the presumption of death statute to include aliens, and because Ashley failed to cite any authority supporting her position regarding the interpretation of the existing presumption-of-death statute, the Supreme Court was not required to address this issue. (4) Because Ashley failed to explain what evidence disappeared or was defaced or how

the chancery clerk's alleged actions prejudiced her case, the chancery clerk's alleged actions did not violate Ashley's right to a fair hearing. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2020-CP-00240-SCT (Jan. 14, 2021)

Opinion by Justice Griffis

Hon. Tiffany Piazza Grove (Hinds County Chancery Court, First Judicial Dist.)

Pro se for Appellant

Briefed by [Cameron Johnson](#)

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ROGERS V. ESTATE OF PAVLOU

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT- A final, appealable, judgment is one that “adjudicates the merits of the controversy and settles all the issues as to all the parties’ and require no further action by the lower court”

CIVIL PROCEDURE - FINAL JUDGMENT- MULTIPLE CLAIMS - Pursuant to Miss. R. Civ. P. § 54(b), when more than one claim for relief is presented in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an expressed determination that there is no just reason for delay and upon an expressed direction for the entry of the judgment; in the absence of such determination and direction, any order or other form of decision, however designated[,] which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties

CIVIL PROCEDURE - JURISDICTION - STANDING - Parties have standing to sue when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law

FACTS

Kenneth Rogers sued Costas E. Pavlou in the Hinds County Circuit Court, alleging that Pavlou breached a contract with Rogers that gave Rogers an option to purchase Pavlou's concession business at the Mississippi State Fair. During the pendency of this lawsuit, Pavlou died, and his will was admitted to probate in the Hinds County Chancery Court. Pavlou's estate was substituted as the defendant in the case. The county court directed a verdict in favor of the estate and dismissed Roger's claims with prejudice. In chancery court, the executor filed a Petition for Authority to Disburse Funds to Pay Outstanding Attorney and Accountant Fees. The chancellor granted the petition and found that Rogers lacked standing to challenge the claim because he had not probated a claim against the estate. Rogers appealed.

ISSUES

Whether (1) the Supreme Court had jurisdiction over Rogers's appeal and (2) Rogers had standing to object to the petition for authority to disburse attorney fees.

HOLDING

(1) Because the order granting the disbursement of attorney fees and denying Rogers's objections to the disbursement qualified as a final, appealable judgment, the Supreme Court had jurisdiction over Rogers's appeal. (2) Because Rogers claimed that his attorney's entry of appearance met the requirements of a probated claim, and because Rogers's failure to designate the entry of appearance in the record prevented appellate review of his argument that he had standing, Rogers lacked standing to challenge requests for proper payment of estate expenses. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2020-CA-00010-SCT (Jan. 14, 2021)

Opinion by Presiding Justice Kitchens

Hon. J. Dewayne Thomas (Hinds County Chancery Court, First Judicial Dist.)

Christopher J. Weldy for Appellant - Judson M. Lee & Cynthia H. Speetjens for Appellee

Briefed by [Morgan Hart](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 12, 2021

COURT OF APPEALS - CIVIL CASES

CHAMBERS V. HOWARD INDUS. INC.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - WAGE-EARNING CAPACITY - REBUTTABLE PRESUMPTION - A rebuttable presumption of no loss of wage-earning capacity arises when the claimant's post-injury wages are equal to or exceed pre-injury wages; to rebut the presumption, the court will consider any factor or condition that makes the post-injury wages a less reliable indicator including an increase in general wage levels since the accident, more training, longer hours, extra payments out of sympathy to the claimant and the temporary and unpredictable nature of post-injury earnings

WORKERS' COMPENSATION - PERMANENT PARTIAL-DISABILITY BENEFITS - CALCULATION - Miss. Code Ann. § 71-3-17(c)(25) provides the formula for permanent partial-disability benefits as sixty-six and two-thirds percent of the difference between an employee's average weekly wages subject to the maximum limitations as to weekly benefits

WORKERS' COMPENSATION - WAGE-EARNING CAPACITY - FACTORS - The decision on loss of wage-earning capacity is a factual decision left to the discretion and estimate of the Mississippi Workers' Compensation Commission; the Commission evaluates as a whole: (1) an increase in general wage levels, (2) increased maturity and training, (3) longer hours worked, (4) sympathy wages, (5) temporary and unpredictable character of post-injury earnings, (6) employee's inability to work, (7) employee's failure to be hired elsewhere, and (8) the continuance of pain and other related circumstances

FACTS

Anthony Chambers, an employee at Howard Industries Inc., suffered a work-related injury to his neck in 2013. In 2015, he had surgery to repair his neck and reached maximum medical improvement ("MMI") a year later. Prior to reaching MMI, Chambers returned to work at the same salary, but with a partner to perform actions Chambers could not manage due to his disability. After achieving MMI, Howard Industries increased Chambers's salary. A judge found that Chambers lost twenty percent of his earning capacity, which translated to a loss of \$122.07 per week. As a result, the Mississippi Workers' Compensation Commission (the "Commission") ordered Howard Industries to pay permanent partial-disability benefits at the rate of \$81.38 (two-thirds of the loss in earning capacity) per week beginning in June 2016 and continuing for a period of 450 weeks. Chambers appealed.

ISSUES

Whether substantial evidence supports (1) that Chambers rebutted the presumption of no loss of wage-earning capacity and (2) the Commission's calculation of Chambers's permanent partial-disability benefits.

HOLDING

(1) Because Howard Industries made Chambers's job easier by providing assistance, and because his wage increase was the result of a general increase in wages since his injury, Chambers rebutted the presumption of no loss of wage-earning capacity. (2) Because the Commission reached the decision that Chambers's earning capacity was twenty percent of his pre-injury average weekly salary by holistically considering Chambers's age, experience, employment post-MMI, increase in wage, and his demonstrated continuance in earning overtime for three years post-MMI, the calculation was supported by substantial evidence. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2020-WC-00012-COA (Jan. 12, 2021)

Opinion by Judge Westbrook

Mississippi Workers' Compensation Commission

Floyd E. Doolittle for Appellant - Parker Ford Leggett & William Lawrence Thames for Appellee

Briefed by [Kathleen Workman](#)

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MASSEY V. NEELY

CIVIL - OTHER

CIVIL PROCEDURE - VENUE - REPLEVIN - Replevin may be instituted in the circuit court of a county in which the defendant, property, or some of the property may be found

CIVIL PROCEDURE - VENUE - WAIVING VENUE - Venue is not jurisdictional and improper venue does not itself affect the right of the court to hear and determine the case on the merits; failing to raise the issue of improper venue at trial waives the issue on appeal

CIVIL PROCEDURE - CLAIM FOR REPLEVIN - OBJECTIONS - Failing to object to the exclusion of the individual values of items in a replevin complaint at trial waives the issue on appeal

CIVIL PROCEDURE - CLAIM FOR REPLEVIN - ELEMENTS - To establish a claim for replevin, a party must set forth the following: (1) a description of the personal property at issue; (2) the value of each separate article and the value of the total of all articles; (3) the party's entitlement to the immediate possession of the property; and (4) the other party's possession and wrongful attainment of the property

FACTS

In July 2018, James Neely filed a complaint for replevin of certain personal property that he alleged Evelyn Massey had wrongfully retained following the end of their relationship. The items, which included various guns, equipment, and clothing needed to participate in cowboy-mounted shooting—an activity both parties participated in—totaled \$7,500. According to Neely's complaint, the items were left in storage that Massey owned and they remained there following the end of their relationship. Neely claimed that he coordinated with a friend to retrieve the items from Massey, and the friend testified that Massey confirmed this arrangement. Massey claimed these items were inter vivos gifts. Following a hearing, the circuit court issued a bench ruling in favor of Neely. Massey filed a motion to set aside the circuit court's judgment for lack of subject-matter jurisdiction, arguing that venue was proper in Coahoma County and that Neely's complaint failed to comply with the statutory requirements for replevin. The circuit court denied Massey's post-trial motion. Massey appealed.

ISSUES

Whether (1) the circuit court erred in not granting Massey's post-trial motion to set aside the circuit court's judgment for lack of subject matter jurisdiction because of improper venue and (2) Neely's complaint failed to comply with all the statutory requirements for replevin.

HOLDING

(1) Because venue is not jurisdictional, because filing a case in an improper venue does not affect the rights of the court to hear and determine the case on the merits, and because Massey failed to object to venue, Massey waived the issue of improper venue and the circuit court did not err in denying Massey's post-trial motion. (2) Because Neely provided the court with a corrected list of items in Massey's possession, and because Massey failed to raise an objection to the corrected list on the basis that it failed to include individual values for each item, substantial evidence supported the circuit court's finding that Neely established his claim for replevin. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

Affirmed - 2019-CA-01447-COA (Jan. 12, 2021)

Opinion by Chief Judge Barnes

Hon. Eddie H. Bowen (Simpson County Circuit Court)
Carol Burke Turner for Appellant - *Pro se* for Appellee
Briefed by [Jack Hall](#)

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OWENS V. BROOKS

CIVIL - PERSONAL INJURY

TRAFFIC REGULATIONS - RULES OF THE ROAD - OVERTAKING & PASSING - Miss. Code Ann. § 63-3-617 states that it shall be unlawful for the driver of any truck or other vehicle to refuse to turn to the right in order that any driver desiring to pass said truck or other vehicle may drive at a higher legal rate of speed

TRAFFIC REGULATIONS - RULES OF THE ROAD - DUTY - The codified ‘Rules of the Road’ establish that every motorist owes a duty to every other traveler to exercise reasonable care to prevent injury and to operate his motor vehicle in accordance with the statutes

TRAFFIC REGULATIONS - RULES OF THE ROAD - SPEED RESTRICTIONS - Pursuant to Miss. Code Ann. § 63-3-505, the driver or operator of any motor vehicle must decrease speed when a special hazard exists with respect to pedestrians or other traffic

TORTS - NEGLIGENCE - BURDEN OF PROOF - To survive a motion for summary judgment, the plaintiff must allege facts tending to prove all four elements of negligence; it is not enough to simply show that a party committed some misdemeanor traffic offense, rather, an offense such as speeding must still be shown to have been the cause of the accident

TORTS - NEGLIGENCE - FAILURE TO STOP - Miss. Code Ann. § 63-3-401 makes it mandatory for a driver to stop a vehicle at the scene of an accident, but no presumption or inference of negligence arises from a driver’s failure to stop

FACTS

A traffic accident occurred on a two-lane asphalt road in Warren County, Mississippi, when a vehicle driven by Michael Bailey collided with a vehicle driven by Michael Owens. The accident occurred when Bailey attempted to pass Willie Brooks’s eighteen-wheel truck. After beginning his pass attempt, Bailey saw Owens quickly approaching and attempted to avoid a collision by pulling onto the shoulder of the eastbound side of the road. So did Owens, and the vehicles collided head-on. Owens died as a result of injuries sustained in the accident. The accident occurred behind Brooks’s truck, and Brooks was not physically involved in the accident. Owens’s wrongful death beneficiaries (the “Owenses”) brought a negligence action against multiple people and entities, including Brooks and his employer, Jim Newsom Trucking Inc. (“Newsom Trucking”). Officer Bobby Jones, the officer who investigated the accident, and Brett Munyon, an accident reconstructionist that Brooks designated, concluded that Brooks was not involved in the accident and did nothing to cause or contribute to it. Witnesses testified that Brooks failed to slow down, failed to stop, and possibly accelerated within the posted speed limit. The Warren County Circuit Court granted summary judgment in favor of Brooks and Newsom Trucking. The Owenses appealed.

ISSUES

Whether the trial court erred in (1) finding there was no violation of Miss. Code Ann. § 63-3-617; (2) finding there was no violation of Miss. Code Ann. § 63-3-505; (3) finding no genuine issue of material fact regarding Brooks’s alleged acceleration; (4) finding there was no violation of Miss. Code Ann. § 63-3-401; and (5) relying on the testimony of Munyon and Officer Jones.

HOLDING

(1) Because the plain language of Miss. Code Ann. § 63-3-617 does not call for a driver to yield the right-of-way by leaving his proper lane of traffic to allow another driver to pass, Brooks had no duty to pull off the roadway and the trial court’s finding as to Miss. Code Ann. § 63-3-617 was proper. (2) Because Brooks had no duty to decrease his speed because of a special hazard or otherwise, the trial court’s finding as to Miss. Code Ann. § 63-3-505 was proper. (3)

Because the Owenses failed to offer any proof that Brooks’s speed caused or contributed to the accident, the trial court’s finding of no genuine issue of material fact regarding Brooks’s alleged acceleration was proper. (4) Because Brooks’s failure to stop did not proximately cause or contribute to the accident, the trial court’s finding as to Miss. Code Ann. § 63-3-401 was proper. (5) Because the trial court’s reliance on Munyon and Officer Jones’s testimony did not change the fact that the Owenses did not link any action by Brooks to the accident and did not set out a prima facie case of negligence, the trial court did not err. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2019-CA-01892-COA (Jan. 12, 2021)

Opinion by Judge Westbrook

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

David M. Sessums for Appellants - Robert Elliott Briggs III for Appellees

Briefed by [Mckenzie Williamson](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

MC MANUS V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - APPEALS - FORMALITIES - Appeals of department of corrections decisions must be made in the circuit court of the county where the prisoner resides

CIVIL PROCEDURE - POST-CONVICTION RELIEF - CREDIT FOR TIME SERVED - A post-conviction relief motion is not a proper vehicle for challenging Mississippi Department of Corrections’ (“MDOC”) denial of credit for time served

FACTS

In April 2016, a Lowndes County grand jury indicted John McManus of possession of methamphetamine, noting that he had previously been convicted of manslaughter in 1996 as well as possession of contraband in a correctional facility. In November 2016, McManus was indicted on two counts of uttering a forgery in Lowndes County. For the forgery conviction, the circuit court sentenced McManus to five years in custody. For the possession conviction, the circuit court sentenced him as a habitual offender to serve three years. In 2019, while serving sentences for the three Lee County convictions, McManus filed a request through the MDOC’s Administrative Remedy Program (“ARP”). With regard to his Lowndes County sentences, he sought credit for five-hundred and fifteen days served at the Clay County jail. The first-step ARP response form noted that the May 2018 order from Lowndes County did not award McManus credit for the time spent in jail. The second-step ARP form stated, “You have already been credited 515 jail time days. This includes the timeframe that you are requesting[,] which you served prior to your sentencing date of 8/14/2017.” In August 2019, McManus filed a motion for judicial review with the circuit court, claiming that the MDOC wrongfully denied him relief through the ARP. The circuit court treated the motion as one for PCR and denied McManus’s requested relief. McManus appealed.

ISSUE

Whether the circuit court erred in denying McManus’s motion.

HOLDING

Because McManus’s motion was one for judicial review of an MDOC decision, which is to be filed in the county where the prisoner is incarcerated, and because McManus was incarcerated in Sunflower County rather than Lowndes County when he requested relief through the ARP, the circuit court did not have jurisdiction to consider McManus’s motion and it should be transferred to the proper venue in Sunflower County for further review. Therefore, the Court of Appeals vacated and remanded the judgment of the Lowndes County Circuit Court.

Vacated & Remanded - 2019-CP-01822-COA (Jan. 12, 2021)

Opinion by Chief Judge Barnes

Hon. Lee Sorrels Coleman (Lowndes County Circuit Court)

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Gabrielle Beech](#)

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RANSBURGH V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - HEARINGS - EX PARTE COMMUNICATIONS - Ex parte communications consists of communication between counsel and the court when opposing counsel is not present

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - PRIMA FACIE CASE - There is no automatic right to an evidentiary hearing under the Mississippi Uniform Post-Conviction Collateral Relief Act; once a prima facie case is established, the trial court may still summarily deny a petitioner’s motion if, after the answer has been filed and discovery completed, it appears that no evidentiary hearing is warranted

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

FACTS

In 1991, Lewis Ransburgh was convicted of murder and sentenced to life in prison. Ransburgh was paroled in 2002, but his parole was revoked in 2007 after he tested positive for cocaine on three different occasions. Ransburgh alleged that the revocation was based on false-positive drug tests caused by antibiotics. Since 2007, Ransburgh has filed dozens of motions seeking to have the revocation of parole reversed, including multiple motions for post-conviction relief (“PCR”). In 2019, the Hinds County Circuit Court dismissed Ransburgh’s most recent PCR motion with prejudice. Ransburgh appealed.

ISSUES

Whether (1) the circuit court judge had inappropriate ex parte communications with the parole board or its lawyer; (2) Ransburgh’s due process rights were violated because the circuit court did not conduct an evidentiary hearing and allegedly relied on insufficient evidence in making its ruling; and (3) the motion for post-conviction relief was procedurally barred.

HOLDING

(1) Because there was no indication that the State appeared for a hearing in which Ransburgh was not present, and because the record did not indicate that any ex parte communications occurred, Ransburgh was not entitled to relief pertaining to his claim of ex parte communications. (2) Because Ransburgh had the opportunity to include relevant evidence with his PCR motion, and because evidentiary hearings are not required when extraordinary circumstances are not present, Ransburgh’s due process rights were not violated. (3) Because this motion was Ransburgh’s fifth PCR motion since his initial motion, and because Ransburgh’s motion did not involve allegations regarding fundamental rights that would allow an exception to the procedural bar, his PCR motion was barred as successive. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2019-CP-01282-COA (Jan. 12, 2021)

Opinion by Judge Westbrook

Hinds County Circuit Court

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellees

Briefed by [Schlyler Burney](#)

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COURT OF APPEALS - CRIMINAL CASES

ADAY-CAZORLA V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER OCCURENCES - Mistrial is reserved for those instances where the trial court cannot take any action which would correct improper occurrences inside or outside the courtroom; the grant of a mistrial is left to the sound discretion of the trial judge

CRIMINAL PROCEDURE - MISTRIAL - WAIVER - The failure to obtain a ruling on a motion for mistrial before the end of trial constitutes a waiver and is procedurally barred on appeal

CRIMINAL PROCEDURE - MISTRIAL - MOTION - It is incumbent on the attorney asserting an error and making a motion for mistrial to make a contemporaneous objection and obtain a ruling in order to preserve the objection

FACTS

In March 2018, Jorge Aday-Cazorla was indicted in the Rankin County Circuit Court for four counts of sexual battery (Counts I, III, IV, and V) and one count of gratification of lust (Count II). After a two-day jury trial, he was acquitted of Counts I and II but was convicted of Counts III, IV, and V and sentenced to serve three thirty-year terms. During the voir dire process, the State made two alleged prejudicial statements, and defense counsel requested a bench trial after each statement. The first statement was, “The crime of gratification of lust occurs when an adult touches or handles or rubs a child under the age of 16 to gratify their lust;” and the second statement was, “These crimes happened between 2013 and 2015.” Following the first statement, defense counsel took issue with the usage of “the crime occurred” and argued that it was not proper at this point in the trial as the defendant was innocent until proven guilty. However, the defense did not make a motion for mistrial. Following the second statement, defense counsel objected to the State saying, “these crimes happened” and stated the defendant is innocent until proven guilty. Defense counsel moved for a mistrial during the second bench conference, but the trial court did not rule on its motion and defense counsel failed to obtain a ruling. Following the second bench conference, the State made several follow-up statements during the voir dire process in an attempt to cure any misinformation that might have been given to the prospective jurors. Such curative statements included the State referring to the “alleged crimes,” further reiterating that the defendant is presumed innocent at the beginning of every trial and apologizing for previously saying “crime” rather than an alleged crime. In addition to these statements, the State asked the prospective jurors twice whether they understood that Aday-Cazorla was presently presumed innocent, to which they gave general affirmative indications. The trial continued without defense counsel pressuring for a ruling on its previous motion for mistrial. Following the returned verdict, a poll of the jury indicated that the verdict was unanimous. After the verdict, Aday-Cazorla filed a motion for a new trial, which was denied the following day. Aday-Cazorla appealed.

ISSUES

Whether the trial court erred in (1) allowing the State to say “when the crime of the gratification of lust occurred” during the voir dire process; (2) implicitly denying Aday-Cazorla’s contemporaneous motion for a mistrial made after the State’s second alleged prejudicial statement; and (3) failing to instruct the jury on the alleged misstatement of the law.

HOLDING

(1) Because Aday-Cazorla’s attorney failed to make a contemporaneous motion for a mistrial following the State’s comment regarding “when the crime of the gratification of lust occurred” during the first bench conference, arguments regarding the State’s comment were procedurally barred. (2) Because Aday-Cazorla’s attorney did not obtain a ruling from the circuit court following the motion for mistrial after the State stated, “These crimes happened . . . ,” because it is the movant’s responsibility to obtain a ruling and failure to do so constitutes a waiver, and because the jury was fully advised and instructed on the proper application of law through jury instructions and had heard the State’s curative statements such as “alleged crimes,” as well as further reiteration that Aday-Cazorla was innocent until proven guilty, Aday-Cazorla’s argument was procedurally barred and without merit. (3) Because the trial court provided the jury with

multiple jury instructions to further reinforce the applicable law and the jurors' duty, and because the record did not indicate that the jurors did not follow the law or that Aday-Cazorla suffered any prejudice due to the State's comments during the voir dire process, the trial court did not err in failing to instruct the jury on the previous misstatement of law regarding Aday-Cazorla's presumption of innocence. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE

Judge Westbrook argued that the importance of receiving a ruling has been long-standing throughout Mississippi's legal history, and further emphasized that the movant's attorney should ensure that a ruling is made before the trial concludes or the matter is sent to the jury. She also emphasized that the failure to request a ruling for a motion made could cause potential harm to a client or potential claims of ineffective assistance of counsel.

Affirmed - 2019-KA-00933-COA (Jan. 12, 2021)

Opinion by Judge Lawrence - Concurrence by Judge Westbrook

Hon. Steve S. Ratcliff III (Rankin County Circuit Court)

Richard Poole Noel III for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Mackinlee Rogers](#)

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FOGLEMAN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - FELONY LAW ENFORCEMENT EVASION - ELEMENTS - The crime of failing to yield to a law-enforcement officer requires: (1) a driver of a motor vehicle to be given a signal directing the driver to stop; (2) a law-enforcement officer acting in the lawful performance of his duty with reasonable suspicion to believe that the driver has committed a crime; and (3) the driver to willfully fail to obey the law-enforcement officer's direction

CRIMINAL PROCEDURE - FOURTH AMENDMENT - UNREASONABLE SEARCH AND SEIZURE - To determine whether a search and seizure was unreasonable, the inquiry is two-fold: (1) whether the officer's action was justified at its inception and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - REVOCATION - The Mississippi Supreme Court has articulated two exceptions to the right to self-representation: (1) where the defendant is so unable or unwilling to abide by rules and courtroom procedure that his representation of himself would result in disruption of the trial and (2) where the defendant is so physically or mentally incompetent to speak to the jury that his right to a fair trial is endangered

FACTS

Gulfport Police Officer Nicholas Kehoe witnessed an orange Camaro rev its engine and spin out from a stop sign. Officer Kehoe determined that this was careless driving, decided to follow the vehicle, and activated his lights and siren. Instead of stopping, the Camaro sped off, reaching speeds of 100 miles per hour. As the Camaro reached an intersection, it did not stop at a red light and proceeded to hit Edward Frederickson and push Frederickson's vehicle into the rear of Cassandra Walker's vehicle. The Camaro's driver, allegedly Jeremy Fogleman, got out of the vehicle and Officer Kehoe ordered him to show his hands and then get on the ground. Fogleman was injured and was placed on a stretcher and taken to the hospital. Sandridge, the alleged passenger, was not injured and remained at the scene. At the hospital, Fogleman was diagnosed with alcohol intoxication and drug abuse, and Walker suffered aggravation of a prior back injury and additional bruising. Frederickson was airlifted to Mobile, where he died. Fogleman claimed that Sandridge was driving the Camaro at the time of the collision, while Sandridge testified that Fogleman was the driver. When the Camaro was searched at the scene, 1.94 grams of methamphetamine was found. Law enforcement also found blood on the driver's side of the Camaro and, pursuant to court-issued warrants, it was confirmed that the DNA was Fogleman's. In addition to Fogleman's DNA, two officers who were present at the scene identified Fogleman as the driver. Fogleman

was charged with two counts of failing to stop for a law enforcement officer (one for causing Frederickson's death and one for causing Walker's injuries) and one count of possession of methamphetamine that was found in the Camaro. He elected to represent himself pro se, but the circuit court revoked Fogleman's right to self-representation after he made argumentative statements and told the jury that the State and the circuit court were silencing him. Fogleman's attorney concluded the trial, presenting witnesses and evidence in consultation with Fogleman. At the conclusion of the trial, Fogleman was found guilty of all charges. The circuit court sentenced him to forty years of incarceration on the Court as to Frederickson's death, ten years of incarceration on the Court as to Walker's injuries, and three years of incarceration on the Court for possession of a controlled substance. Fogleman then filed a Motion for New Trial and Judgment Notwithstanding the Verdict, which the circuit court denied. Fogleman appealed.

ISSUES

Whether the circuit court erred in (1) finding sufficient evidence to support a lawful pursuit and conviction for felony evasion; (2) finding that the evidence was sufficient for a jury to find that Walker suffered serious bodily injury and the conviction on the Court as to Walker's injuries was contrary to the weight of the evidence; (3) finding that the jury was properly instructed on the element of serious bodily injury with respect to Walker's injuries; (4) the admission of the methamphetamine; and (5) revoking Fogleman's right to self-representation.

HOLDING

(1) Because there was undisputed evidence that the driver of the Camaro was given a signal to stop when Officer Kehoe activated his lights and siren, the driver of the Camaro willfully failed to obey the direction to stop and sped away, and Officer Kehoe witnessed two undisputed traffic violations, there was sufficient evidence for each element of felony evasion. (2) Because Walker testified to suffering from a permanent injury as a result of the collision for which she still experiences physical symptoms, and because the question of what constitutes a serious bodily injury was in the province of the jury, Fogleman's claim that Walker did not suffer serious bodily injury lacked merit. (3) Because the jury instructions in this case accurately covered the elements of the crimes charged, and because Fogleman presented no evidence of jury confusion, Fogleman's claim that the jury was not properly instructed lacked merit. (4) Because Officer Kehoe had reasonable suspicion and probable cause to stop Fogleman, and because the subsequent search of the vehicle was reasonable given the circumstances, the search of the Camaro did not violate Fogleman's Fourth Amendment rights and the methamphetamine found was not "fruit of the poisonous tree." (5) Because the circuit court repeatedly cautioned Fogleman about his disregard for the court's rules and rulings to the point of finding him in contempt before revoking his right to self-representation, the circuit court did not err in the revocation. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2020-KA-00260-COA (Jan. 12, 2021)

Opinion by Judge McDonald

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Rachel Fewell](#)

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JOHNSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - DIRECT APPEAL - LINDSEY BRIEF - Under *Lindsey v. State*, an indigent criminal defendant's appellate counsel may file a brief certifying that, after scouring the record, there are no arguable issues supporting appeal

CRIMINAL PROCEDURE - DIRECT APPEAL - SUFFICIENT EVIDENCE - The evidence is sufficient if a reasonable jury could have found the defendant guilty

CIVIL PROCEDURE - JURISDICTION - CIRCUIT COURT - The circuit court shall have original jurisdiction in all matters arising under the constitution and laws of this state

FACTS

Thirty-two-year-old Fredrick Johnson was convicted of statutory rape and sentenced to thirty years of imprisonment. The thirteen-year-old victim had run away from her home in Louisiana and traveled to Mississippi, where she was arrested for illegal use of her mother's credit card. While in custody, the victim reported being sexually assaulted. Johnson's videotaped confession, the victim's testimony, and positive DNA testing all supported Johnson's conviction. On direct appeal, Johnson's counsel filed a *Lindsey* brief certifying that, after scouring the record, there were no arguable claims to be raised. Filing a supplemental pro se brief, Johnson appealed.

ISSUES

Whether the trial court erred in (1) finding the evidence was sufficient and (2) exercising original jurisdiction.

HOLDING

(1) Because the evidence included Johnson's confession, the victim's testimony, and a positive DNA test, the evidence was sufficient to support Johnson's conviction. (2) Because there was no evidence that Johnson transported the victim across the state line with an intent for criminal sexual activity, and because Johnson committed this crime in violation of Mississippi law while in Warren County, the circuit court had jurisdiction to oversee the case. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2019-KA-01896-COA (Jan. 12, 2021)

Opinion by Judge McCarty

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) & *Pro se* for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Ashley Pruitt](#)

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ROBINSON V. STATE

CRIMINAL - FELONY

APPELLATE REVIEW - EVIDENCE - SUFFICIENCY - In determining whether the evidence is sufficient, the relevant question is whether any trier of fact could have found some essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - CONVICTION - SUFFICIENCY - A conviction is sufficiently supported when it can be established, beyond a reasonable doubt, that every element of the offense was present

APPELLATE REVIEW - JURY INSTRUCTIONS - REVERSAL - On appeal, jury instructions are reviewed as a whole and the trial court's decision will not be reversed when the jury instructions taken as a whole—although not perfectly—announce applicable primary rules of law

FACTS

In July 2015, Greenville police officer Arsenio Robinson met his friends at a car wash in Belzoni, Mississippi. While at the car wash, he began drinking and conversing with Vice Lord gang members Cordale Weathersby and Fred Hogan. Robinson told Weathersby that Tahiti Banks, another gang member, had to die because Banks was trying to take over the Vice Lords. Robinson and Hogan left in Robinson's car to go "sort it out" with Banks and went to a barbecue, where Hogan confronted Banks. The men got into an argument, which led to Hogan shooting Banks multiple times. Robinson willingly threw Hogan his car keys and told him to "go go go." Robinson fled the scene, but eventually turned himself in. Multiple eyewitnesses placed Robison at the scene and testified that Hogan's shot Banks and Robinson relinquished his car keys to Hogan. A Humphreys County grand jury indicted Robinson of conspiracy to commit a murder, being an accessory after the fact, and participation in gang activity. Robinson filed a motion to dismiss the conspiracy to commit murder charge, and the trial court granted the motion. In June 2017, Robinson was granted a mistrial when, after two hours of voir dire, it was found that the majority of the jury knew Robinson, his family, and the victim's family. A second trial took place in June 2018, and a Humphreys County jury convicted Robinson of accessory

after the fact to murder and participation in gang activity. Robinson filed a motion for judgment of acquittal or a new trial, but the trial court denied his motion. Robinson appealed.

ISSUES

Whether (1) the evidence presented at trial was insufficient to support Robinson’s convictions; (2) the circuit court erred in giving the State’s flight instruction when Robinson’s purported flight was explained; (3) the circuit court erred in admitting Hogan’s judgment of conviction; (4) the circuit court erred in failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act; and (5) the circuit court erred in failing to instruct the jury on the elements of murder, depriving Robinson of a fair trial.

HOLDING

(1) Because the State presented eyewitnesses who saw Robinson throw Hogan his keys, witnesses who personally knew Robinson was in the Vice Lords gang, photos of Robinson’s gang tattoos, and photos of Robinson wearing a Vice Lords shirt, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt and the issue was without merit. (2) Because there was clear probative value of Robinson’s flight, because there was sufficient evidence to find Robinson guilty of accessory after the fact to murder and participation in gang activity, and because even if the flight instruction has been given improperly, it would have amounted to harmless error, the flight instruction did not have any bearing on the verdict and the circuit court did not abuse its discretion in giving the State’s flight instruction. (3) Because the State used Hogan’s murder conviction only to show that Robinson assisted a felon in order to prove that Robinson was an accessory after the fact to murder, the admission of Hogan’s conviction was necessary and the issue was without merit. (4) Because it was not necessary to provide the language in the Mississippi Streetgang Act for a jury instruction, and because the Mississippi Supreme Court warned against using the Mississippi Streetgang Act in criminal proceedings, the circuit court did not abuse its discretion. (5) Because the jury instruction clearly contained the required language to charge Robinson with being an accessory after the fact to murder, there was no need for a jury instruction on the elements of murder and this issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Humphreys County Circuit Court.

Affirmed - 2019-KA-01081-COA (Jan. 12, 2021)

Opinion by Judge McDonald

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

Justin Taylor Cook (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Jacob D. Hamm](#)

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