

MISSISSIPPI SUPREME COURT DECISIONS – MAY 27, 2021***SUPREME COURT - CIVIL CASES*****IN RE REINSTATEMENT OF ROE****CIVIL - BAR MATTERS**

BAR MATTERS - REINSTATEMENT - DISABILITY INACTIVE STATUS - Procedures for reinstatement of an attorney transferred to disability inactive status shall be, insofar as is applicable, the same as the procedure for reinstatement of an attorney following suspension upon disciplinary grounds; the petition shall include a status report from LJAP regarding the attorney's treatment, monitoring, and compliance and the attorney shall obtain an examination by a medical expert approved by LJAP specifically addressing the removal of the attorney's disability and include the report with the petition

BAR MATTERS - RULES OF DISCIPLINE - ULTIMATE AUTHORITY - After receiving the Bar's investigation and recommendation, the Supreme Court may grant or deny the petition as circumstances and justice require

FACTS

Attorney Roe was first suspended from the practice of law nearly two decades ago for a period of ninety days due to infractions involving several cases. Roe did not appear before the Supreme Court to defend the underlying cases. Following this, Roe was placed on incapacity/disability inactive status until further order due to her mental health. Due to the severity of the state of her mental health, Roe experienced a decline in cognitive function which also caused her to avoid people, including clients. Roe was unable at the time to recognize the severity of her condition. Roe sought help for her severe depression and anxiety, and received in-patient as well as out-patient treatment, therapy, and medication. Roe also stated that she now has the skills to notice any decline in her mental health before it reaches levels of severity. A year after her placement on inactive status, Roe began voluntarily participating in the Lawyers and Judges Assistance Program ("LJAP"), despite not being required to do so by the order. Roe continued her participation in LJAP except for a three-year period in which she was unsure whether she wished to continue practicing law. Roe then worked in non-legal fields for some time before deciding she wished to return to the field of law, working her way up from office manager to law clerk. In 2020, Roe filed a petition for reinstatement, and in support thereof showed that she repaid her past clients all unearned legal fees, helped find them substitute counsel, and had an LJAP-approved psychiatrist corroborate the fact that her mental health was in remission. The social worker for Roe's LJAP group indicated her belief that Roe was fit to practice law again, as well as multiple letters of recommendation from credible individuals including attorneys and former employers. Upon order of the Supreme Court, the Mississippi Bar investigated and responded to the petition, finding Roe to be in compliance.

ISSUE

Whether Roe's petition for reinstatement should have been granted.

HOLDING

Because Roe complied with Miss. R. Discipline 23(b) by submitting a letter from her LJAP social worker supporting her reinstatement and submitting to an LJAP-approved medical expert who addressed the removal of her disability by determining that Roe's depression was in "full remission" and that she was high functioning, because Roe submitted several letters of recommendations from other attorneys as well as former employers, because Roe was forthright about the past disciplinary actions and her past mental health and personal struggles at her Bar deposition, and because overall, Roe had shown great dedication to bettering and maintaining her mental health condition, great dedication to the legal

field, and thoughtful and deliberate consideration of how to merge those two areas without either area suffering negative consequences, the Supreme Court granted Roe's petition for reinstatement.

Petition for Reinstatement Granted - 2020-BR-00430-SCT (May 27, 2021)

En Banc Opinion by Presiding Justice King

Pieter John Teeuwissen for Petitioner - Adam Bradley Kilgore for Respondent

Briefed by [Cameron Johnson](#)

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SUPREME COURT - CRIMINAL CASES

HENDERSON V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONSPIRACY - ELEMENTS - The act of agreeing is a group act requiring at least two people, and when one of two persons merely pretends to agree, there is neither a true agreement nor a meeting of the minds; a conspiracy cannot exist

CRIMINAL LAW - EVIDENCE - APPEALS - When testing the sufficiency of the evidence, we view the evidence in the light most favorable to the State, giving the State the benefit of all reasonably drawn inferences, to determine if any rational juror could have found the essential elements of the crime beyond a reasonable doubt

LEGAL ETHICS - INEFFECTIVE ASSISTANCE - ELEMENTS - To prove ineffective assistance of counsel, a defendant must show: (1) his or her counsel's performance was deficient, and (2) this deficiency prejudiced his defense

FACTS

Duane Henderson messaged a woman on Facebook offering to sell her methamphetamine. The woman contacted the Richland Police Department, who, with her assistance, set up a sting operation. Richland Police Department officers pulled Henderson over on the way to the drug deal. Henderson consented to a search and the officers found over three grams of methamphetamine in a small bag placed in his boot. A grand jury indicted Henderson with conspiracy to distribute methamphetamine and possession with intent to distribute. At trial, Henderson was convicted on both charges. Henderson appealed.

ISSUES

Whether the trial court erred in (1) convicting Henderson of conspiracy to distribute methamphetamine and (2) convicting Henderson of possession with intent to distribute methamphetamine.

HOLDING

(1) Because a conspiracy requires a meeting of the minds between at least two people to commit a criminal offense, and because no such meeting of the minds here occurred, the trial court erred in convicting Henderson of conspiracy to distribute. (2) Because the evidence was more than sufficient to show that Henderson possessed between two and ten grams of methamphetamine with intent to distribute, because the jury simply rejected Henderson's defense and his conviction was not against the weight of the evidence, and because Henderson had adequate assistance of counsel, the trial court did not err in convicting Henderson for possession with intent to distribute. Therefore, the Supreme Court affirmed in part and reversed and rendered in part the judgment of the Rankin County Circuit Court.

CONCURRENCES IN PART & DISSENTS IN PART

Chief Justice Randolph argued that, in light of Miss. Code Ann. § 97-1-1(2), the elements of conspiracy were satisfied by the evidence, and therefore, the conviction was wrongfully reversed and rendered. However, he agreed with the majority's affirming of Henderson's possession with intent to distribute conviction.

Presiding Justice King agreed with the majority's analysis regarding Henderson's conspiracy conviction. However, he argued that, because the State failed to prove beyond a reasonable doubt that Henderson possessed the requisite intent to distribute a controlled substance, the Court should reverse his conviction for possession with the intent to distribute and remand for sentencing for possession of a controlled substance.

Affirmed In Part; Reversed & Rendered In Part - 2019-KA-01414-SCT (May 27, 2021)

En Banc Opinion by Justice Maxwell - Concurrences In Part & Dissents In Part by Chief Justice Randolph and Presiding Justice King

Hon. Dewey Key Arthur (Rankin County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) & *Pro Se* for Appellant - Alicia Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Jack Hall](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 25, 2021

COURT OF APPEALS - CIVIL CASES

BARTZ V. ROBERTS

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - MOTIONS - DETERMINATIONS - Under *Kountouris*, where a motion for summary judgment is filed and the court determines that it may appropriately be acted upon without reference to matters outside the pleadings, the judgment entered shall be a judgment on the pleadings pursuant to Miss. R. Civ. P. 12(c)

CIVIL PROCEDURE - MOTIONS - JUDGMENT ON THE PLEADINGS - On a Miss. R. Civ. P. 12(c) motion, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of his claim

CIVIL PROCEDURE - DISMISSAL - NOTICE - Under *Bazronx*, a court errs in dismissing a pro se complaint if the court fails to give the plaintiff notice or an opportunity to amend; such error may be ameliorated if the plaintiff has had a fair opportunity to make out his case, or if the dismissal was without prejudice

WILLS & ESTATES - DISTRIBUTION - HEIR AT LAW - Under Miss. Code Ann. § 91-1-27, any heir at law or interested party may petition the court requesting the recognition of the decedent's heirs

WILLS & ESTATES - HEIR AT LAW - REQUEST - The Supreme Court has found that a complaint is sufficient as a request for determination of heirship as set forth in Miss. Code Ann. § 91-1-27

FACTS

Patricia Bartz died in 2017. At the time of her death, she had two children, Rhonda Roberts and Michael Bartz. In September 2019, Michael, representing himself pro se, filed a complaint against Roberts. In his complaint, he claimed that Roberts had interfered with his inheritance and, as Patricia's natural-born son, he was an "heir-at-law" and entitled to his share of the trust, along with other gifts his mother intended he receive. Roberts filed an answer, asserting various affirmative defenses. Over the next four months, Michael filed numerous other motions and subpoenas. On January 27, 2020, the chancellor held a telephonic hearing regarding several of Michael's discovery motions; neither a transcript nor an order from that hearing appeared in the record. In February 2020, Roberts filed a motion for summary judgment, arguing that Michael failed to properly allege a cause of action, that it was impossible to determine what causes of action he had filed, and that he failed to plead his fraud claim with particularity. On February 14, 2020, seven days after Roberts filed her motion, the chancellor entered an order granting Roberts's motion for summary judgment and dismissed the case with prejudice. In March 2020, Michael filed a motion for reconsideration and argued that the chancellor erred in granting summary judgment before Michael could serve his response opposing the motion and without Michael receiving notice of any hearing. In May 2020, Michael filed a motion titled "Plaintiff's Second Statement of the Evidence," which asserted that Michael mailed his motion to transfer venue on February 10, 2020. Michael attached his

motion to transfer venue to his Second Statement of the Evidence. However, the motion did not appear on the trial court's docket or in the record. Michael appealed.

ISSUES

Whether (1) the chancellor erred in dismissing the case without providing Michael an opportunity to respond to the motion for summary judgment; (2) the chancellor erred in ruling that she would not set Michael's motions for hearing unless he retained counsel to represent him; (3) the chancellor erred by failing to file or grant Michael's motion to transfer venue; and (4) the chancellor's findings were supported by the greater weight of evidence.

HOLDING

(1) Because there was no evidence in the order indicating that the chancellor considered facts and evidence outside of the pleadings, the chancellor did not treat Roberts's motion as one for summary judgment under Miss. R. Civ. P. 56(c), but rather as a judgment on the pleadings under Miss. R. Civ. P. 12(c). (2) Because the chancellor dismissed the case with prejudice, and because Michael's complaint complied with the requirements to request an heirship determination as set forth in Miss. Code Ann. § 91-1-27, the chancellor erred by dismissing the case without first providing Michael notice or an opportunity to amend his complaint. (3) Because there was no support in the record for Michael's assertion that the chancellor declined to hear further motions from him unless he retained counsel other than Michael's "Statement of the Evidence," and because Michael failed to properly raise this issue before the trial court, the issue was procedurally barred on appeal. (4) Because Michael's motion to transfer venue did not appear on the trial court's docket or in the record, and because the record contained no ruling from the chancellor on the motion, the issue was waived on appeal. Therefore, the Court of Appeals reversed and remanded the judgment of the Lamar County Chancery Court.

Reversed & Remanded - 2020-CP-00259-COA (May 25, 2021)

Opinion by Presiding Judge Carlton

Hon. Deborah J. Gambrell (Lamar County Chancery Court)

Pro se for Appellant - S. Christopher Farris for Appellee

Briefed by [Cecelia Hurt](#)

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BREWER V. MISS. FARM BUREAU CAS. INS. CO.

CIVIL - INSURANCE

CONTRACT LAW - INSURANCE - INTERPRETATION - It is a familiar rule of construction of contracts, and especially insurance contracts, that they are construed most strongly against the party drafting the contract, and most favorably to the policyholder; insurance policies are subject to this fundamental rule

MISS. UNINSURED MOTORIST ACT - COVERAGE - INTERPRETATION - The language of the Miss. Uninsured Motorist Act must be construed liberally to provide coverage and strictly to avoid or preclude exceptions or exemptions from coverage

INSURANCE - UNDERINSURED VEHICLE - DEFINITION - An underinsured vehicle is one in which the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage

FACTS

Shelby Brewer was riding in a car driven by Allison McLain when it was struck by another car. Brewer incurred over \$100,000 in medical expenses from her injuries as a result of the accident. The tortfeasor was insured for \$25,000 in liability coverage. Brewer had personal uninsured motorist ("UM") coverage of \$75,000 through her parents' insurance policy. Farm Bureau insured the McLain car with \$25,000 in uninsured motorists benefits per vehicle along with three additional vehicles. Jason and Doris Brewer, Shelby's parents, filed a complaint requesting Farm Bureau aggregate, or "stack," the UM benefits of all four vehicles on the McLain policy which would provide a sum of \$100,000 in UM coverage from the vehicle owned by the McClains. Brewer argued that the limits of liability in the contract did not

prohibit guest passengers from stacking the UM coverage of all vehicles on the policy. Farm Bureau filed a motion for summary judgment, arguing that Brewer was only entitled to the UM coverage for the Farm Bureau-insured car she occupied at the time of the accident. Further, Farm Bureau claimed that Brewer’s passenger status automatically prohibited the UM policy from stacking. The trial court granted summary judgment in favor of Farm Bureau. Brewer appealed.

ISSUES

Whether the trial court erred by holding that a passenger may not stack the uninsured motorist benefits.

HOLDING

Because Supreme Court precedent allows insurers to include express anti-stacking provisions in policy contracts, and because Farm Bureau did not include such a provision in its policy, the trial court erred in holding that a passenger may not stack the uninsured motorist benefits. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

SPECIAL CONCURRENCE

Presiding Judge Wilson agreed with the majority that nothing in the insurance policy issued by Farm Bureau prevented Brewer from stacking the uninsured motorist coverage and that the circuit court erred by granting summary judgment in favor of Farm Bureau. However, he wrote separately on the language of the subject policy and caselaw that Farm Bureau relied on. He argued that the language of the subject policy permitted Brewer to stack coverage to determine the amount of uninsured motorist benefits that she may recover. Moreover, he claimed that Mississippi law does not forbid stacking for the purpose of determining the amount of uninsured motorist benefits that Brewer may recover. Therefore, he concurred that the circuit court erred by granting Farm Bureau’s motion for summary judgment.

Reversed & Remanded - 2020-CA-00558-COA (May 25, 2021)

Opinion by Judge McCarty - Special Concurrence by Presiding Judge Wilson

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

Paul V. Ott for Appellants - James R. Moore Jr. & Charles Landon Kidd for Appellee

Briefed by [Gabrielle Beech](#)

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CINCINNATI INS. CO. V. WILSON

CIVIL - INSURANCE

CIVIL PROCEDURE - CHOICE OF LAW - CENTER OF GRAVITY TEST - In utilizing the Center of Gravity test, a court considers the following elements: the place of contracting, the place of negotiation of the contract, the place of performance, the location of the subject matter of the contract, and the domicile, residence, nationality, place of incorporation and place of business of the parties

CIVIL PROCEDURE - CHOICE OF LAW - ANALYSIS - Choice of law analysis arises only when there is a true conflict between the laws of two states, each having an interest in the litigation

INSURANCE - POLICY EXCLUSION AND EXCEPTION - BURDEN OF PROOF - If the insurer shows an exclusion applies, the burden shifts back to the insured to show that there is an exception to the exclusion

EVIDENCE - OPINION TESTIMONY - LAY WITNESS - Opinion testimony by a lay witness is limited to one that is rationally based on the witness’s perception, helpful to clearly understand the witness’s testimony or to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Miss. R. Evid. 702

FACTS

In September 2006, James Wilson, an employee of Tri-State Brick & Tile Co. Inc. (“Tri-State”), was blinded on Tri-State’s premises when he attempted to unclog a line in an air pollution control system (“scrubber”) manufactured by

Bundy Environmental Technology Inc. (“Bundy”). James hit the side of the scrubber with a sledgehammer, opening a hole and spraying alkali lime into James’s eyes. Bundy’s insurance carrier, The Cincinnati Insurance Company (“Cincinnati”), denied coverage for James’s injury, citing an exclusionary clause for products-completed operations hazard (“PCOH”). In 2010, James and Lisa Wilson filed a Complaint for Declaratory Judgment against Bundy and Cincinnati, arguing that Bundy’s insurance policy covered James’s accident. The Wilsons and Cincinnati moved for summary judgment at the close of discovery, but the circuit court denied both motions. The case proceeded to jury trial. Cincinnati moved for a directed verdict, arguing that the Wilsons had failed to provide evidence that the scrubber was not put to its intended use or was not complete at the time of or before James’s accident, which the court denied. The jury returned a verdict for the Wilsons, and the court entered its final judgment concluding that the policy provided coverage for James’s accident. Cincinnati made a posttrial motion for JNOV, which the court denied. Cincinnati appealed.

ISSUES

Whether the circuit court erred by (1) allowing the jury to decide the question of whether there was coverage in violation of Ohio law; (2) granting Jury Instruction P-7 because it shifted the burden on the insurer; and (3) allowing lay witness opinion testimony that the scrubber was not complete at the time of the accident.

HOLDING

(1) Because both Mississippi and Ohio law provided that, if there is ambiguity in an insurance policy, it should be resolved in favor of coverage, and because the determination of whether the work had been completed and the jury covered as an exception to the policy’s exclusionary clause involved a question of fact for a jury consideration, there was no true conflict requiring choice of law analysis. (2) Because the jury instruction only addressed which party had the burden of proof to prove the exclusion was applicable, because the issue of who bore the burden to prove whether an exception to the exclusion has been established was never argued at trial, and because the jury instruction stated the applicable law, the court did not err in granting Jury Instruction P-7. (3) Because both lay witnesses testified with respect to whether the scrubber’s assembly was complete when the accident happened and as to their first-hand knowledge of the scrubber’s utilization at the time of the accident, and because one lay witness averred that he was involved in the negotiations with Bundy and was familiar with the terms of the purchase contract, the court did not err in allowing lay witnesses opinion testimony. Thus, the alleged errors were without merit, and the verdict was supported by the evidence. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-CA-01703-COA (May 25, 2021)

Opinion by Chief Judge Barnes

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial District)

Stuart Robinson Jr. & Richard T. Conrad III for Appellant - John Hunter Stevens for Appellees

Briefed by [Caroline Heavey](#)

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ROGERS V. STATE

CIVIL - OTHER

CRIMINAL PROCEDURE - SENTENCING - EXPUNCTION - Pursuant to Miss. Code Ann. § 99-19-71(2)(a), a person who has been convicted of a felony and who has paid all criminal fines and costs of court imposed in the sentence of conviction may petition the court in which the conviction was had for an order to expunge one conviction from all public records five years after the successful completion of all terms and conditions of the sentence for the conviction upon a hearing as determined in the discretion of the court

CRIMINAL PROCEDURE - SENTENCING - EXPUNCTION - A person is eligible for only one (1) felony expunction under Miss. Code Ann. § 99-19-71(2)(a); the terms “one (1) conviction” and “one (1) felony expunction” mean and include all convictions that arose from a common nucleus of operative facts as determined in the discretion of the court

FACTS

In 1979, Azalean Rogers was indicted and pled guilty to two counts of forgery of a check in cause numbers 5581 and 5582. The circuit court ultimately suspended Rogers's sentence and placed her under supervised probation for three years. In January 2020, Rogers filed a motion to expunge her records in cause numbers 5581 and 5582. The circuit court entered an order of expungement in cause number 5581 but did not address cause number 5582. Rogers appealed.

ISSUE

Whether the trial court considered if Rogers was eligible for expungement of both of her cause numbers.

HOLDING

Because the record was silent as to whether cause numbers 5581 and 5582 arose from a common nucleus of operative facts, which would allow for expungement of both convictions at the court's discretion, and because there was no indication in the record whether a hearing was held on Rogers's motion or whether a determination was made if the two convictions arose from a common nucleus of operative facts, the record was insufficient to evaluate whether the circuit court considered whether Rogers was eligible for expungement of both of her convictions. Therefore, the Court of Appeals vacated the Bolivar County Circuit Court's order of expungement and remanded the case back to the circuit court to conduct an evidentiary hearing and make factual findings as to whether her forgery convictions arose from a common nucleus of operative facts.

Vacated & Remanded - 2020-CP-00406-COA (May 25, 2021)

Opinion by Judge Lawrence

Hon. Linda F. Coleman (Bolivar County Circuit Court, Second Judicial Dist.)

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

Briefed by [Betsy Lee Montague](#)

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COURT OF APPEALS - CRIMINAL CASES

DECATUR V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - EVIDENCE - CHARACTER - Miss. R. Evid. 404(a) provides that character evidence is not generally admissible to show on a particular occasion that a person acted in accordance with the character trait; an exception applies to criminal cases where the criminal defendant may offer evidence of his or her pertinent trait

EVIDENCE - EXCLUSION OF EVIDENCE - PREJUDICIAL ERROR - Even if a party can prove that evidence should have been allowed into the record, the court will not reverse without a showing of prejudice

EVIDENCE - EXCLUSION OF EVIDENCE - THREATS - To admit evidence of threats, the party must demonstrate a causal relationship between the threat and the purpose for which the threat is offered

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REFUSAL - Though a defendant has the right to jury instructions that present their theory of the case, the entitlement does not extend to jury instructions that have no foundation in evidence

CRIMINAL LAW - MANSLAUGHTER - HEAT-OF-PASSION - Heat-of-passion manslaughter occurs when the defendant acts out of uncontrollable passion suddenly aroused by immediate and reasonable provocation; mere words and disagreements are insufficient provocation for heat-of-passion manslaughter

FACTS

Robert Decatur found one of William Butler's missing dogs. Upon returning the dog, Butler accused Decatur of stealing both dogs. Butler, Damian Trunnell, and Albert English Jr. went to Decatur's wife and mother-in-law to accuse Decatur of stealing the dog. Decatur spoke to Butler over the phone and agreed to meet in-person to discuss the matter. Upon arrival, Decatur got out of the car and fired a gun four or five times into the back of Trunnell's car. A bullet struck Trunnell in the back of the head, killing him. After leaving the scene, Decatur surrendered himself to the police. Decatur waived his *Miranda* rights and gave a statement. The police obtained local security camera footage that contradicted Decatur's statement. At trial, Decatur admitted that he had lied in his interview with the police and gave a revised statement in which he admitted to firing the gun. The only weapon found at the scene was Decatur's weapon. A jury found Decatur guilty of second-degree murder. Decatur moved for a new trial or JNOV, which the court denied. Decatur appealed.

ISSUES

Whether the circuit court erred by (1) excluding evidence of the defendant's peaceful character; (2) excluding evidence of threats against the defendant; and (3) failing to instruct the jury on heat-of-passion manslaughter.

HOLDING

(1) Because the exclusion of character evidence failed to prejudice the defendant, the error was harmless. (2) Because Decatur failed to demonstrate a causal relationship between the threats and the purpose for which it was offered, there was no abuse of discretion in excluding it as irrelevant, and the issue lacked merit. (3) Because Butler made the threats, and because there was no other weapon found at the scene, the evidence failed to support Decatur's proposed instruction on heat-of-passion manslaughter; thus, there was no abuse of discretion, and the issue lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2019-KA-01527-CAO (May 25, 2021)

Opinion by Judge Smith

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

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Kathleen Workman](#)

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GRAY V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - MURDER - FIRST-DEGREE- Miss. Code Ann. § 97-3-19(1)(a) provides that to prove first-degree murder, the State must show that a person was killed without the authority of law and that the killing was done with the deliberate design to effect the death of the person killed

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

Connell Gray and Dantrail "Pole" Jackson walked to Myrtle and Michael Messenger's house between 10 and 11 p.m. Gray claimed he had no idea that Pole planned to kill anyone and that he stood on the street while Pole knocked on the door. According to Gray, Pole shot Myrtle when she opened the door. Gray admitted fleeing the scene, running through an alley, and throwing his gun in the brush after hearing the shot. Gray also admitted meeting up with Pole again after the shooting, but he said that Pole got in a car and left by himself. After the murder, a Coahoma County Sheriff's deputy detained four men in the alley near Myrtle and Michael's house. Officers also recovered two guns in the same alley. Gray told officers that the semiautomatic pistol was his, but a witness testified that she had seen him with a revolver earlier in the day. A ballistics expert determined that the revolver was the murder weapon. Two shots had been fired from the

revolver and none from the semiautomatic pistol. In December 2015, Gray was indicted and charged with one count of first-degree murder with an added firearm enhancement. After a jury trial in December 2019, Gray was convicted of first-degree murder in violation of Miss. Code Ann. § 97-3-19(1)(a) and sentenced to life in the custody of the Mississippi Department of Corrections (“MDOC”). The circuit court denied Gray’s motion for judgment notwithstanding the verdict or, in the alternative, a new trial. Gray appealed.

ISSUES

Whether (1) there was sufficient evidence to find Gray guilty of first-degree murder and (2) the verdict was contrary to the weight of the evidence.

HOLDING

(1) Because the jury heard testimony that Gray was seen with the same type of gun as the murder weapon on the day of the shooting, and because Gray and Pole hid their weapons in the same place as they fled the scene and met up after the murder, it could have reasonably been interpreted by the jury as part of the plan to commit a crime. Thus, there was sufficient evidence to find Gray guilty of first-degree murder. (2) Because the evidence failed to persuade the Court that the State’s case was so weak or that the defendant’s proof was so persuasive that the jury’s decision to convict amounted to a manifest injustice, the Court declined to overturn the trial court’s decision to deny Gray’s motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

DISSENT

Presiding Judge Wilson argued that Gray’s conduct following the shooting was suspicious, but that a conviction may not be based on suspicion alone. He asserted that there was insufficient evidence to prove beyond a reasonable doubt that Gray incited, encouraged, or assisted in the murder, or participated in the planning of the murder.

Affirmed - 2020-KA-00116-COA (May 25, 2021)

Opinion by Judge Westbrook - Dissent by Presiding Judge Wilson

Hon. Albert B. Smith III (Coahoma County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Allison Kay Hartman (Att’y Gen. Office) for Appellee

Briefed by [Joshua L. Holmes](#)

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WILSON V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - ARGUABLE ISSUES - LINDSEY BRIEF - When no appealable issues are apparent from the record on appeal, appellate counsel must take the following actions: (1) file and serve a brief in compliance with Miss. R. App. P. 28(a)(1)-(5), (8); (2) certify in the 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, specifically examining the reason and circumstances for arrest; and (3) send a copy of the brief to the defendant, inform the defendant that counsel could find no arguable issues in the record, and advise the defendant of his or her right to file a pro se brief

APPELLATE PROCEDURE - APPELLATE COUNSEL - SUPPLEMENTAL BRIEFINGS - If a court finds any arguable issue in the case record or brief, it will require appellate counsel to submit a supplemental briefing on that issue regardless of the probability of the defendant’s success on appeal, after which the court will consider the case on the merits and render a decision

CRIMINAL PROCEDURE - NEW TRIAL - NEWLY DISCOVERED EVIDENCE - 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 - SENTENCING - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-83 provides that every person convicted in Mississippi of a felony who shall have been convicted twice previously of any felony upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one year or more in any state and/or federal penal institution and where any one of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

FACTS

Michael Wilson escaped from prison while incarcerated at South Mississippi Correctional Institution in Greene County. Wilson was subsequently captured and convicted in Greene County Circuit Court of escape of a prisoner. The trial court sentenced Wilson as a violent habitual offender to serve life without eligibility for parole in the custody of the Mississippi Department of Corrections. Wilson appealed. Subsequently, Wilson's appellate counsel filed a brief in compliance with *Lindsey v. State*, certifying to the Court of Appeals that the record presented no arguable issues for appeal. Wilson then filed a pro se brief.

ISSUES

Whether (1) Wilson was competent to stand trial; (2) Wilson was entitled to a change of venue; (3) the jury was biased; (4) Wilson was entitled to a new trial based on newly discovered evidence; and (5) Wilson's sentence was illegal and violated the Eighth Amendment.

HOLDING

(1) Because there was no basis to question Wilson's competency, the issue was without merit. (2) Because Wilson did not apply for a change of venue in trial court, Wilson was procedurally barred from raising the argument on appeal. (3) Because Wilson did not show that the jurors were less than impartial, and because Wilson failed to raise an objection before the jury was empaneled, the issue was waived on appeal and without merit. (4) Because the newly discovered evidence was either known prior to trial or reasonably discoverable at the time of trial, Wilson was not entitled to a new trial based on newly discovered evidence. (5) Because Wilson's sentence conformed to the applicable penalty statute, and because sentences under the habitual-offender statute do not constitute cruel and unusual punishment, his sentence was not illegal and did not violate the Eight Amendment. Therefore, the Court of Appeals affirmed the judgment of the Greene County Circuit Court.

Affirmed - 2020-KA-00395-COA (May 25, 2021)

Opinion by Judge Greenlee

Hon. Kathy King Jackson (Greene County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) & *Pro se* for Appellant - Meta S. Copeland (Att'y Gen. Office) for Appellee

Briefed by [Blake Tims](#)

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