

MISSISSIPPI SUPREME COURT DECISIONS – MAY 6, 2021***SUPREME COURT - CIVIL CASES*****BRIGGS V. HUGHES****CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

TORTS - NUISANCE - MISS. RIGHT TO FARM ACT - Under Miss. Code Ann. § 95-3-29, nuisance actions are barred against any “agricultural operation” that has been established one year or more and is compliant with all applicable state and federal permits; the one-year time limitation does not hinge on the existence of any specific agricultural practice, rather it is expressly based on the existence of the agricultural operation, including machinery and devices in accordance with best agricultural-management practices

CIVIL PROCEDURE - STATUTORY INTERPRETATION - LEGISLATIVE INTENT - If the words of a statute are clear and unambiguous, the court must apply the plain meaning

TORTS - NUISANCE - DISTURBING THE PEACE - Mississippi law criminalizes willfully disturbing the peace of any family or person by an explosion of gunpowder or other explosive substance, or by loud or unusual noise, or by any tumultuous or offensive conduct

FACTS

Will Hughes and Chad Penn were commercial farmers who leased farmland in Madison County. Hughes and Penn operated a propane cannon during summer months to deter deer from eating their crops. Because of the intentionally loud noises these devices create, neighboring property owners, (collectively, “Briggs”), in July 2018, filed a nuisance complaint against Hughes and Penn, seeking a permanent injunction against the use of the cannons. The trial court did not determine whether the propane cannons constituted a nuisance. Rather, the trial court ruled that the Right to Farm Act provided an absolute bar to Briggs’s private nuisance act as Hughes’s and Penn’s agricultural operations had existed for more than a year preceding the suit. Briggs appealed.

ISSUES

Whether the trial court (1) erred in applying the plain meaning of Mississippi’s Right to Farm Act; (2) abused its discretion in finding that the use of propane cannons constituted a best agricultural-management practice; (3) erred in applying the Right to Farm statute to this case instead of the statute criminalizing willful disturbance of the peace; (4) interpreted the Right to Farm statute in a manner that violated Briggs’s right to due process; and (5) improperly allowed Hughes’s and Penn’s experts to testify.

HOLDING

(1) Because the words of the statute are clear and unambiguous, the court must apply the plain language as written, and under such plain language, the farms had been in operation for more than one year, therefore, the trial court was correct to apply § 95-3-29(1)’s bar. (2) Because the factual findings of the trial court were supported by substantial evidence, the Supreme Court did not disturb the finding that Hughes and Penn used propane cannons in accordance with best agricultural-management practices. (3) Because Hughes and Penn were not charged with criminal willful disturbance of the peace, and because the only claim before the trial court was Briggs’s private nuisance action, the trial court did not err in applying the Right to Farm Act. (4) Because the trial court’s interpretation of the Right to Farm Act was consistent with the statute’s plain language, and because Briggs failed to meet the built-in notice requirements for constitutional challenges under Miss. R. Civ. P. 24(d) or under Miss. R. App. P. 44(a), the trial court properly interpreted the statute and disallowed the challenge of constitutionality. (5) Because the admission of expert testimony was within the sound discretion of the trial court judge, because Briggs failed to show that the trial court abused its discretion by failing to

show how he would have been prejudiced, and because Briggs did not claim he lacked access to the substance of the expert opinions or that he was hampered in his ability to meet their testimony at trial, the trial court did not abuse its discretion by admitting the expert testimony. Therefore, the Supreme Court affirmed the judgment of the Madison County Chancery Court.

CONCURRENCE IN PART & IN RESULT

Presiding Justice King would have found that the specific agricultural operation at issue determined the applicability of the one-year defense. However, because the farmers in this case had used the propane cannons for more than one year before the nuisance action was filed, he agreed that the trial court correctly dismissed Briggs's nuisance action and request for permanent injunction.

Affirmed - 2019-CA-00838-SCT (May 6, 2021)

En Banc Opinion by Justice Maxwell - Concurrence In Part & In Result by Presiding Justice King

Hon. James Christopher Walker (Madison County Chancery Court)

George Cayce Nicols for Appellants - Eddie Jacob Abdeen for Appellees

Briefed by [Jack Hall](#)

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LIBERTY MUT. INS. CO. V. MISS. TRANSP. COMM'N

CIVIL

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in the light most favorable to the non-moving party

CIVIL PROCEDURE - MOTION PRACTICE - AMEND OR ALTER JUDGMENT - In order to succeed on a Miss. R. Civ. P. 59(e) motion, the movant must show: (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or to prevent manifest injustice

CIVIL PROCEDURE - SUMMARY JUDGMENT - MOVANT'S BURDEN - The party who requests summary judgment must prove that there is no genuine issue of material fact, and the nonmoving party receives the benefit of the doubt as to whether such an issue of material fact exists

FACTS

In 2000, the Mississippi Transportation Commission ("Commission") awarded a contract to D.B. Johnson Construction Company ("D.B. Johnson") for the construction of a stretch of highway. D.B. Johnson defaulted and the Commission called on D.B. Johnson's bonding company, Travelers Casualty and Surety Company of America ("Travelers"), to complete the project. Travelers and Hill Brothers Construction Company ("Hill Brothers") entered into a completion agreement that incorporated all of the contract documents and special provisions contained in the contract between D.B. Johnson and the Commission. Included in this agreement was a special provision entitled Measurement & Payment for Changes in Costs of Construction Materials ("FAC") that required certain monthly cost-adjustments for the purposes of reimbursing Hill Brothers for diesel fuel and asphalt used in the project. The Commission extended the contract deadline to March 2004, and Hill Brothers completed the contract in March 2006. Before the contract deadline in March 2004, the Commission, through the Mississippi Department of Transportation, calculated monthly payments for designated pay items affected by oil prices by adjusting the baseline price of petroleum products. However, after the contract deadline, the Commission made reimbursements based on the Violating Clause of the agreement which calculated prices in effect at the expiration of the contract. Hurricane Katrina struck the Mississippi Gulf Coast in August 2005, resulting in a sizable increase in petroleum prices. As a result of the Violating Clause using prices in effect on March 13, 2004, Hill Brothers received far less in reimbursements than the amount it actually expended for fuel. Hill Brothers filed suit against the Commission for breach of contract through improper application of the FAC. The circuit court found that the FAC was not ambiguous, and that the Commission was entitled to summary judgment as a matter

of law. Hill Brothers appealed, arguing that the circuit court improperly interpreted the FAC and that the Commission's interpretation violated the authorizing statute such that the final clause ought to be struck. The Supreme Court struck the violating clause since it locked in price adjustments upon the expiration of contract time and remanded the case for further proceedings. On remand in 2018, the circuit court granted Liberty Mutual's motion for partial summary judgment on the issue of liability and struck the Violating Clause from the FAC. The Commission subsequently filed a Miss. R. Civ. P. 59(e) Motion. In September 2019, the circuit court granted the Commission's motion and found that the Supreme Court neither reviewed nor ruled on the issue of liability under the FAC. The circuit court determined that the 2018 grant of summary judgment acted to reform the contract by granting post-expiration contract reimbursements using pre-expiration monthly adjustments from another section of the FAC. The circuit court found that the 2018 order impermissibly reformed the FAC and therefore vacated the order.

ISSUE

Whether the circuit court erred by denying Hill Brothers's motion for partial summary judgment.

HOLDING

Because the 2018 order only granted Liberty Mutual partial summary judgment on the issue of liability and, therefore, was an interlocutory order, the circuit court in 2019 erred by analyzing Liberty's Mutual's motion under Miss. R. Civ. P. 59(e) and instead should have simply revised the 2018 order. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County Circuit Court.

Reversed & Remanded - 2019-IA-01483-SCT (consolidated with 2009-CA-00053-SCT) (May 6, 2021)

Opinion by Justice Chamberlin

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court)

Simon T. Bailey, William R. Purdy, Ralph B. Germany Jr., Stevie F. Rushing, & James Stephen Fritz Jr. for Appellants - Christopher H. Corkern and Alan M. Purdie (Att'y Gen. Office) for Appellee

Briefed by [Blake Tims](#)

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PECO FOODS INC. V. CITY OF CANTON V. GLUCKSTADT INCORPORATORS

CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION

MUNICIPAL LAW - INCORPORATION - JURISDICTIONAL REQUIREMENTS - Miss. Code Ann. § 21-1-13(3) provides that a petition for incorporation shall be signed by at least two-thirds of qualified electors residing in the territory proposed to be incorporated as one of the eight jurisdictional requirements for incorporation

MUNICIPAL LAW - INCORPORATION - TWO-THIRDS REQUIREMENTS - The question of whether the two-thirds requirement has been met must be determined by an ascertainment of the number of persons living in the area to be annexed who are registered voters and then determining whether two-thirds of that number have signed the complaint

MUNICIPAL LAW - ANNEXATION - INDICA OF REASONABLENESS - To determine whether annexation is reasonable under the totality of circumstances, the court must consider the following indica of reasonableness: (1) the municipality's need to expand; (2) whether the area sought to be annexed is reasonably within a path of growth of the city; (3) potential health hazards from sewage and waste disposal in the annexed areas; (4) the municipality's financial ability to make the improvements and furnish municipal services promised; (5) need for zoning and overall planning in the area; (6) need for municipal services in the area sought to be annexed; (7) whether there are natural barriers between the city and the proposed annexation area; (8) past performance and time element involved in the city's provision of services to its present residents; (9) economic or other impact of the annexation upon those who live in or own property in the proposed annexation area; (10) impact of the annexation upon the voting strength of protected minority groups; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past and in the foreseeable future, unless annexed, will, because of their reasonable proximity to the corporate limits of the municipality,

enjoy economic and social benefits of the municipality without paying their fair share of taxes; and (12) any other factors that may suggest reasonableness

FACTS

Gluckstadt Incorporators (“Gluckstadt Inc.”) filed a petition seeking to incorporate a new City of Gluckstadt. Subsequently, the City of Canton (“Canton”) filed its own petition for annexation. The proposed incorporation area (“PIA”) consisted of 10.8 square miles in Madison County, 1.1 square miles of which Canton also sought to be annexed. The chancellor consolidated the matters and then held a bifurcated trial, the first for jurisdictional purposes related to the incorporation and the second on the merits of both the incorporation and annexation petitions. The chancellor found that the jurisdictional requirements were met and that the City of Gluckstadt should be incorporated; the chancellor reduced the total amount of territory sought by Gluckstadt Inc.. The chancellor also granted Canton annexation of two of the five areas it sought in its petition and denied the remaining three areas. Objectors to the incorporation of the City of Gluckstadt (“Incorporation Objectors”) appealed the grant of incorporation. Objectors to the annexation of area to Canton (“Annexation Objectors”) appealed the annexation of the two areas. Canton cross-appealed the denial of annexation of the three other areas sought to be annexed.

ISSUES

Whether the chancellor committed manifest error by (1) finding the two-thirds signature requirement pursuant to Miss. Code Ann. § 21-1-13 was met and (2) approving Canton’s annexation of two areas and denying annexation of the remaining three areas.

HOLDING

(1) Because the chancellor’s decision was based on the preponderance of the evidence, because the amended petition was not defective, and because the chancellor determined a margin based on the evidence before him to fill in the unknown portion of the reconstructed voter roll, the chancellor did not commit manifest error by finding that Gluckstadt met the two-thirds requirement for signatures on their petition. (2) Because the chancellor’s grant of annexation for two areas and denial of the remaining three was supported by substantial, credible evidence and not unreasonable in light of the totality of the circumstances, the chancellor did not commit manifest error. Therefore, on direct appeal, the Supreme Court affirmed the judgment of the Madison County Chancery Court. On cross-appeal, the Supreme Court affirmed the judgment of the Madison County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis argued the chancellor committed manifest error by granting Canton annexation of the two areas because the substantial, credible evidence did not support annexation. He argued that Canton’s ample vacant, developable land, its lack of growth, its declining population, its declining finances, and its poor past performance and unfunded capital needs provided an additional burden on taxpayers without a like benefit in return. He argued that these factors indicated that annexation was unreasonable in light of the totality of the circumstances. Therefore, Justice Griffis would have reversed the chancellor’s annexation of the two areas to Canton and rendered a judgment in favor of the Annexation Objectors.

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2019-AN-00733-SCT (May 6, 2021)

En Banc Opinion by Justice Beam - Concurrence In Part & Dissent In Part by Justice Griffis

Hon. James Christopher Walker (Madison County Chancery Court)

John Prince Martin, Sheldon G. Alston, C.R. Montgomery, William Dement Drinkwater, & John Ernest Wade Jr. for Appellants - J. Chadwick Mask, Jerry L. Mills, John Preston Scanlon, Kimberly Celeste Banks, & Jacob Thomas Evans Stutzman for Appellees
Briefed by [Caroline Heavey](#)

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TAYLOR V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - MIRANDA RIGHTS - WAIVER - Police officers must warn a suspect prior to questioning that he has a right to remain silent and a right to the presence of an attorney, and if the suspect states he wants an attorney, the interrogation must cease until an attorney is present; however, this right may be waived and the validity of any such waiver rests on the State's ability to show that the waiver was knowing, intelligent, and voluntary

CRIMINAL LAW - MIRANDA RIGHTS - DETERMINATION - The trial judge should determine whether the criminal defendant was advised of his rights, including the right against self-incrimination

CRIMINAL LAW - RIGHT TO COUNSEL - WAIVER - When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights

FACTS

When responding to a call in September 2011, Officer Royneshia Turner found Willie Bass and Flora Watkins shot dead in their home. More than a year later, Lieutenant Marena Jones and Captain Mario Magsby went to the Bolivar County jail to interview Kelvin Taylor where he was awaiting trial for a separate, unrelated capital murder. When Lieutenant Jones and Captain Magsby informed Taylor of the reason for their visit, Taylor told Lieutenant Jones that he wanted to talk to Sheriff Charles Jones of Coahoma County. Later, Lieutenant Jones and Sheriff Jones returned to interview Taylor and, after informing him of his Fifth Amendment rights, Lieutenant Jones obtained a waiver of those rights. The conversation did not provide Sheriff Jones with any information regarding the murders of Bass and Watkins, however, when they returned to the Bolivar County jail, Taylor indirectly implicated himself in the murders. In May 2015, Taylor was indicted for the murders of Bass and Watkins and for possession of a firearm by a felon. Taylor filed two motions to suppress, one authored by his defense counsel and one pro se. Taylor's pro se motion to suppress challenged the validity of the waiver of his Fifth Amendment right to counsel as, according to Taylor, he had already invoked his Fifth Amendment right to counsel. Neither Taylor nor his defense presented evidence to substantiate Taylor's claims that he invoked his right to counsel, and the circuit court denied Taylor's motions to suppress. Taylor's second trial began in February 2018 and though Taylor renewed his motions to suppress, he presented no evidence of invocation of the Fifth Amendment right to counsel. Taylor's statement implicating himself in the Bass and Watkins murders was introduced at trial along with the testimony of Sheriff Jones and Lieutenant Jones regarding their interviews with him. Taylor was convicted on all three counts and was sentenced to life in prison for each count and ten years in prison for possession of a firearm by a felon. In the Court of Appeals, Taylor argued that the circuit court erred in denying his motions to suppress his statement made to Lieutenant Jones and Sheriff Jones and that he received ineffective assistance of counsel. The Court of Appeals affirmed the judgment of the circuit court. Taylor petitioned for certiorari.

ISSUES

Whether (1) the circuit court erred in denying his motions to suppress the statement by applying an incorrect legal standard and misapplying the law; (2) the Court of Appeals applied an incorrect legal standard in affirming the circuit court's order; and (3) Taylor received ineffective assistance of counsel.

HOLDING

(1) Because Taylor offered nothing suggesting how he invoked his right to counsel, and because substantial evidence supported the finding that his statement was voluntary, the circuit court did not err by denying Taylor's motions. (2) Because the facts of *Duplantis* and those of Taylor's case were nearly identical for purposes of determining the initiation issue under *Edwards*, the Court of Appeals did not err in its use of legal standard. (3) Because Taylor failed to raise his ineffective assistance claim on these grounds on direct appeal to the Court of Appeals, the issue was procedurally barred. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Justice Maxwell argued against the majority's assertion that the facts in this case were nearly identical to those in *Duplantis*. In that case, law enforcement officers interrogated the defendant three hours after he was arrested, conversely, in this case, nine months passed before Taylor's invocation of his right to counsel. Therefore, the majority should not have applied the *Duplantis* standard.

Affirmed - 2019-CT-00534-SCT (May 6, 2021)

En Banc Opinion by Justice Chamberlin - Concurrence In Part & In Result by Justice Maxwell

Hon. Charles E. Webster (Coahoma County Circuit Court)

Mollie M. McMillin & George T. Holmes (Pub. Def. Office) & *Pro se* for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Gabrielle Beech](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 4, 2021

COURT OF APPEALS - CIVIL CASES

FOSTER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - SENTENCING - DISCRETION - Sentencing is generally within the trial court's discretion and will not be disturbed on appeal if the sentence is within the statute's terms

CIVIL PROCEDURE - SENTENCING - SENTENCE ALTERATION - Longstanding authority holds that once a case has been terminated and the term of court ends, a circuit court is powerless to alter or vacate its judgment, in the absence of a statute authorizing modification of a sentence

CIVIL PROCEDURE - SENTENCING - SENTENCE SUSPENSION - Under Miss. Code Ann. § 47-7-47(2)(a), the circuit court may *sua sponte* suspend the further execution of the sentence and place the defendant on earned probation so long as this decision is not earlier than thirty days nor later than one year after the defendant has been delivered into custody

FACTS

In August 2017, Tishunda Foster pled guilty to possession of methamphetamine with the intent to sell, transfer or distribute. The trial court sentenced Foster to a term of thirty years in the custody of the Mississippi Department of Corrections ("MDOC"). On the same day, Foster pled guilty to a second charge for possession of methamphetamine with the intent to sell, transfer, or distribute. For the second charge, Foster was sentenced to a twenty-year term, to run consecutively with the first sentence. The trial court suspended the imposition of the second sentence subject to five years of post-release supervision. The following year, Foster petitioned the trial court for "Parole Consideration, Reconsideration of Sentencing and/or Early Release." The trial court denied the request, finding that it did not have the authority to alter the date of parole and that the request to modify the sentence was untimely pursuant to state law. Foster did not appeal this ruling but, in 2020, again sought for the trial court to reduce or modify the sentence imposed by the 2017 guilty plea. The trial court denied the motion, finding that it was filed beyond the time provided by state law. Foster appealed.

ISSUE

Whether the trial court erred in denying Foster's motion for a reduced or modified sentence.

HOLDING

Because the request came after the term of court in which the guilty plea was entered and more than one year from the date Foster entered into custody of the MDOC, the appeal for a reduced or modified sentence was denied. Therefore, Court of Appeals affirmed the judgment of the Lee County Circuit Court.

Affirmed - 2020-CP-00457-COA (May 4, 2021)

Opinion by Judge McCarty

Hon. Paul S. Funderburk (Lee County Circuit Court)

Pro se for Appellant - Michael Dewayne Wilson Sr. (Att’y Gen. Office) for Appellee

Briefed by [Rachel Fewell](#)

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GRAFTON V. S. CENT. REG’L MED. CTR.

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - BURDEN OF PROOF - In a medical-malpractice action, the plaintiff has the burden to prove (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the require standard; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant; thus, in order to survive summary judgment, the plaintiff is generally required to establish these elements through expert testimony

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - The expert opinion of a doctor as to causation must be expressed in terms of medical probabilities as opposed to possibilities

TORTS - MEDICAL MALPRACTICE - STANDARD OF CARE - Under Mississippi law, negligence cannot be established without medical testimony that the defendant failed to use ordinary skill and care; thus, when a plaintiff fails to provide expert testimony establishing a prima facie case of medical malpractice, generally, a grant of summary judgment is required

FACTS

In March 2007, Donald Grafton went to the emergency room at South Central Regional Medical Center (“SCRMC”), complaining of severe chest pains. Following various tests, which did not indicate that Donald was experience a heart attack, he was diagnosed with gastritis and esophagitis. Subsequently, Donald followed up with a cardiologist, Dr. Wassim Mouannes, who diagnosed Donald with myocardial infarction and admitted him to the hospital, where tests showed that Donald had suffered a heart attack. Dr. Mouannes performed a cardiac intervention to open a blocked artery and inserted a stent. Five months later, a defibrillator was inserted into his chest. In October 2008, Donald, and his wife, Wendy, filed a complaint for negligence and medical malpractice in the Jones County Circuit Court, asserting that SCRMC employees failed to diagnose and treat Donald’s heart attack that he allegedly suffered while in the hospital’s emergency room. The Graftons designated Dr. Rick Carlton as their expert expected to testify at trial. On December 2, 2013, the Graftons deposed Dr. Mouannes, Donald’s treating cardiologist. SCRMC objected to the doctor’s testimony as he had not been designated an expert. After various delays, on May 23, 2018, more than five years after the deadlines for expert designation and discovery expired, the Graftons moved to reset the dates of designation of expert witnesses, citing the fact that their previously designated expert, Dr. Carlton, had moved and was likely to retire. The trial court denied the Graftons’ motion, finding the Graftons had not demonstrated good cause. SCRMC subsequently filed a motion for summary judgment, asserting that the Graftons’ claim failed as a matter of law because it lacked any expert testimony regarding the essential element of causation. In response, the Graftons provided a supplemental affidavit by the formerly designated expert witness, Dr. Carlton. In granting summary judgment for SCRMC, the trial court found Dr. Carlton’s supplemental affidavit containing undesigned opinions was inadmissible, and therefore, could not be considered for purposes of summary judgment. The Graftons appealed.

ISSUES

Whether the trial court erred in (1) disregarding Dr. Carlton’s affidavit for purposes of summary judgment and (2) granting summary judgment.

HOLDING

(1) Because evidence offered in support or in opposition to a motion for summary judgment must be admissible at trial; because the Graftons did not have leave to supplement their expert’s designation, as more than five years had passed

since the deadline for designation of experts; and because the affidavit contained undesignated opinions, the trial court properly found Dr. Carlton's affidavit inadmissible for the purposes of summary judgment. (2) Because expert opinions expressed in terms of a mere possibility rather than probability are insufficient to establish causation under Mississippi law, and because Dr. Carlton's initial expert designation in 2013 failed to designate as to what treatment, if any, would have been provided had the heart attack been diagnosed earlier, much less any discussion of timing and efficacy of such treatment, the trial court properly granted summary judgment, as Dr. Carlton's designation was insufficient to satisfy the element of causation. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

CONCURRENCE IN RESULT

Presiding Judge Wilson agreed with the circuit court's order granting summary judgment, finding that even if Dr. Carlton's affidavit been considered, the Graftons nevertheless failed to create a genuine issue of material fact on the issue of proximate causation. He argued that Dr. Carlton's affidavit was insufficient under Mississippi law, as it provided no evidence that it was more likely than not that earlier treatment would have led to a significantly better result or better outcome, which is required by the longstanding loss-of-chance standard. Therefore, he argued that SCRMC was still entitled to judgment as a matter of law regardless if the affidavit were to be considered. Thus, he concurred that the judgment of the circuit court should be affirmed.

DISSENT

Judge Westbrooks argued that the trial court should have taken Dr. Carlton's supplemental affidavit into consideration, as it was timely submitted, consistent with precedent; therefore, it should have been deemed admissible to satisfy the element of causation. Thus, she would have reversed and remanded the grant of summary judgment.

Affirmed - 2019-CA-01367-COA (May 4, 2021)

En Banc Opinion by Chief Judge Barnes - Concurrence In Result by Presiding Judge Wilson & Dissent by Judge Westbrooks Hon. Jon Mark Weathers (Jones County Circuit Court, Second Judicial Dist.)

Frank Chandler Breese III for Appellants - Richard O. Burson & Peeler Grayson Lacey Jr. for Appellee

Briefed by [Betsy Lee Montague](#)

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REYNOLDS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PAROLE REVOCATION - WRITTEN NOTICE - Parolees are entitled to written notice of their parole revocation at the time of detention

POST-CONVICTION RELIEF - PAROLE REVOCATION - PRELIMINARY HEARING - Prior to 2014, parolees were entitled to a preliminary hearing as "promptly as convenient after arrest"

POST-CONVICTION RELIEF - PAROLE REVOCATION - HARMLESS ERROR - The outright denial of a preliminary hearing is a harmless error unless the parolee can prove he was prejudiced as a result

FACTS

Reynolds pled guilty to capital murder in 1978 and was paroled in 2000. In 2002, Reynolds's parole was revoked after he tested positive for cocaine. In 2018, he filed a petition for habeas corpus and a motion to vacate the revocation of his parole. The circuit court denied the petition for lack of jurisdiction; the Court of Appeals reversed and remanded the case to be heard. On remand, the circuit court reviewed the record which showed that Reynolds was afforded written notice of his alleged parole violation at the time of his detention, that he was afforded a preliminary hearing within eight days, and that the parole board held a final revocation hearing within two months. The circuit court found that Reynolds's claim was without merit and denied the petition. Reynolds appealed.

ISSUE

Whether the circuit court erred in finding that Reynolds’s petition for habeas corpus was without merit.

HOLDING

Because Reynolds was afforded a preliminary hearing within eight days of notice of his alleged parole violation, and because Reynolds’s petition failed to allege how he was prejudiced by the purported denial of a preliminary hearing, the circuit court correctly ruled that Reynolds was afforded a preliminary hearing consistent with the requirements of due process; thus, Reynolds’s claim was entirely without merit. Therefore, the Court of Appeals affirmed judgment of the Harrison County Circuit Court.

Affirmed - 2020-CP-00605-COA (May 4, 2021)

Opinion by Presiding Judge Wilson

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Kathleen Workman](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

HARRIS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - COMPETENCY - PRESUMPTION OF COMPETENCY - There is a presumption of mental competency, but if at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination

POST-CONVICTION RELIEF - COMPETENCY - STANDARD - The standard of competency necessary to enter a plea of guilty is the same as that for determining competency to stand trial

POST-CONVICTION RELIEF - COMPETENCY - BURDEN OF PROOF - The defendant bears the burden to show by substantial evidence that his competency to stand trial is in question

FACTS

A Panola County grand jury indicted Craig Harris for one count of first-degree murder. The State offered Harris a reduced sentence of second-degree murder in exchange for pleading guilty. After he pled guilty, the Panola County Circuit Court sentenced Harris to forty years in the custody of the Mississippi Department of Corrections. Harris moved for post-conviction relief (“PCR”), but his motion was denied. Harris appealed.

ISSUE

Whether the circuit court erred in failing to order a sua sponte competency hearing prior to accepting Harris’ guilty plea.

HOLDING

Because Harris was alert, able to communicate rationally with his attorney, recalled facts, and understood the nature of the proceedings, the circuit court did not have reasonable grounds to believe him mentally incompetent. Because none of the evidence offered by Harris to support his PCR motion was available as evidence during his plea hearing, the circuit court could not form a reasonable ground to question his competency. Additionally, because Harris did not receive incentives to plead guilty, the circumstances surrounding Harris’ plea do not raise a bona fide doubt necessitating a competency hearing. Furthermore, because Harris failed to show that the circuit court erred in not ordering a competency hearing, the standard for conducting a retroactively meaningful hearing did not apply to his claim. Therefore, the Court of Appeals affirmed the judgment of the Panola County Circuit Court.

Affirmed - 2020-CP-00058-COA (May 4, 2021)

Opinion by Judge Smith

Hon. James McClure III (Panola County Circuit Court, Second Judicial Dist.)

Pro se for Appellant - Zakia Helen Annyce Butler (Att’y Gen. Office) for Appellee

Briefed by [Jacob D. Hamm](#)

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COURT OF APPEALS - CRIMINAL CASES

JONES V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONTROLLED SUBSTANCES - TRANSFER - Pursuant to Miss. Code Ann. § 41-29-139(a)(1), it is a crime for any person knowingly or intentionally to transfer a controlled substance, and under this statute, a “transfer” does not require proof that money or any other consideration was exchanged because a “transfer” is simply a change of possession from one person to another

CRIMINAL LAW - TRANSFER OF CONTROLLED SUBSTANCES - INTENT - All that is required under Miss. Code Ann. § 41-29-139(a)(1) is that the transferor have knowledge of the character and presence of the controlled substance and that he intentionally transfers it to another with the intent to part with possession and control

CRIMINAL PROCEDURE - RETROACTIVE MISJOINDER - REVIEW - Retroactive misjoinder occurs when a trial or appellate court determines that, while joinder of two or more counts against a defendant was initially proper, one or more of those counts should be vacated

CRIMINAL PROCEDURE - RETROACTIVE MISJOINDER - PROOF - The defendant in a retroactive misjoinder case is entitled to a new trial on the remaining counts if he can show that he suffered clear and compelling prejudice as a result of the evidence introduced to support the vacated count, therefore, the defendant is not entitled to a new trial on the counts of conviction simply because the jury found the government’s proof on other counts unpersuasive

FACTS

In January 2019, Agent Clay McCombs of the Mississippi Bureau of Narcotics saw Christopher Jones in a parking lot with two other men. Because there was an active warrant for Jones arrest, McCombs turned on his blue lights, parked, exited his vehicle, and asked Jones to come to him. When Jones saw McCombs, he turned toward one of men, later identified as Sammy Ford, and they put their chests together. McCombs thought he saw Jones hand Ford something at this time and again asked Jones to come to him. He then saw Jones hand Ford a yellow can. McCombs asked for the can, and Ford complied. Upon twisting the top, McCombs found plastic baggies containing cocaine and methamphetamine inside the fake drink can. He arrested Jones and found a set of scales when he patted down Jones. McCombs also arrested Ford, finding a pistol in the sleeve of Ford’s jacket when he patted him down. Jones was indicted as a nonviolent habitual offender for two counts of transferring a controlled substance and for unlawful possession of a firearm as a felon. At trial, Ford testified that Jones handed him the gun and the can and that they both belonged to Jones. Jones denied that either the gun or the drugs belonged to him but admitted that the can was his. Jones testified that he did not know how the drugs ended up inside the can. The jury found Jones guilty of transferring cocaine and methamphetamine but not guilty of possessing the pistol. Jones appealed.

ISSUES

Whether the (1) evidence was insufficient to show that Jones knew there were drugs in the fake soda can or that he transferred possession of the can and (2) doctrine of retroactive misjoinder entitled Jones to a new trial on the drug charges because the jury found him not guilty on the firearm charge.

HOLDING

(1) Because there was sufficient evidence that Jones intended to get the can and the drugs out of his possession and into Ford's hands, and because the jury could logically infer that Jones was aware of the contents of the can from the fact that he tried to conceal it, the evidence was sufficient to show that Jones knew there were drugs in the fake soda can and he transferred the drugs. (2) Because Jones was validly indicted and tried for unlawfully possessing a firearm as a felon, and because the doctrine of retroactive misjoinder did not apply, Jones was not entitled to a new trial. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2020-KA-00150-COA (May 4, 2021)

Opinion by Presiding Judge Wilson

Hon. Mark Sheldon Duncan (Leake County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Mckenzie Williamson](#)

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SIMS V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - ARRESTS - PROBABLE CAUSE - In order to arrest an individual suspected of a felony, either with or without a warrant, a police officer must have (1) probable cause to believe that a felony has been committed and (2) probable cause to believe that the person proposed to be arrested is the one who committed it

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - BRADY VIOLATION - To establish a *Brady* violation, the defendant must prove that: (1) the State possessed material evidence favorable to the defendant; (2) the defendant did not possess the evidence and could not have obtained it by reasonable diligence; (3) the State suppressed the evidence; and (4) there is a reasonable probability that the result of the trial would have been different if the evidence had been disclosed

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

In January 2016, the Southaven Police Department responded to a shoplifting call at the SuperLo Food Store ("SuperLo"). One suspect had been detained, but the other was still possibly in the area. The responding officer radioed for assistance and Officer Chase Joiner responded to the call for assistance at the SuperLo. Officer Joiner approached James Sims in the parking lot, conducted a pat-down search, and detained Sims, believing that Sims was involved in the shoplifting. Once detained, Sims was not compliant with law enforcement, causing a brief struggle before being placed in the patrol vehicle. Officer Joiner arrested Sims once he discovered that there was a warrant for Sims's arrest for contempt. In May 2016, the Southaven Municipal Court convicted Sims of disorderly conduct and resisting arrest. Sims appealed the judgment to DeSoto County County Court, which also found Sims guilty of disorderly conduct and resisting arrest. Sims subsequently filed an untimely motion for judgment notwithstanding the verdict ("JNOV") or, alternatively, a new trial. The county court ultimately found Sims's delay in filing was a result of "inadvertence" and denied Sims's post-trial motion pursuant to Miss. R. Crim. Pro. 25.1(c). In March 2018, Sims appealed the county court's judgment to the DeSoto County Circuit Court. In July 2019, after reviewing the briefs and the county court record, the circuit court affirmed the county court's judgment under Miss. R. Crim. Pro. 30.1(c), finding no prejudicial error. Sims appealed.

ISSUES

Whether (1) the police department committed a *Brady* violation; (2) the City presented perjured testimony; (3) there was sufficient evidence to support Sims’s convictions; and (4) the verdicts were against the overwhelming weight of the evidence.

HOLDING

(1) Because no recordings made prior to Sims’s arrest would have changed the circumstances surrounding Sims’s arrest for disorderly conduct and resisting arrest, Sims’s *Brady* claim failed. (2) Because no other officer’s testimony contradicted Officer Joiner’s testimony, and because Sims failed to show how the alleged false testimony would have had any reasonable likelihood to affect the trial court’s judgment, the issue of perjured testimony was without merit. (3) Because both officers testified that Sims repeatedly refused to remove his hands from his pockets, was irate, and continued to curse at the officers in a public place with people nearby, a reasonable finder of fact could have found that the City proved each element to convict Sims of disorderly conduct and resisting arrest; thus, the City presented sufficient evidence to support Sims’s convictions. (4) Because the City presented ample evidence to show that Sims was guilty of both disorderly conduct and resisting arrest, and because allowing the guilty verdicts to stand would not sanction unconscionable injustice, the verdicts were not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

DISSENTS

Chief Judge Barnes argued that there was insufficient evidence to support Sim’s conviction for disorderly conduct and resisting arrest. She argued that the officer did not observe Sims commit a crime and did not have the reasonable suspicion necessary to stop Sims, much less probable cause required to arrest him. Accordingly, she found that the State failed to prove that the arrest was “lawful,” and that Sims could not be guilty of disorderly conduct or resisting arrest. Therefore, Sim’s motion for JNOV should have been granted and his convictions should have been vacated.

Judge Westbrook argued that Officer Joiner lacked reasonable suspicion and that, based on his own testimony and evidence, Officer Joiner exhibited implicit bias that led him to target Sims because he was Black. She found that Officer Joiner branded Sims with the uncorroborated description of the second suspect because of his implicit bias and coupled his implicit bias with his authority and used it to stop and arrest Sims prior to having any knowledge or basis for arrest.

Affirmed - 2019-KM-01581-COA (May 4, 2021)

En Banc Opinion by Judge Lawrence - Dissents by Chief Judge Barnes & Judge Westbrook

Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)

Wanda Turner-Lee Abioto for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Joshua L. Holmes](#)

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VASSER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - RACIAL DISCRIMINATION - In order to make a prima facie case of purposeful discrimination, a defendant may establish: (1) that he is a member of a cognizable racial group; (2) that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant’s race; and (3) that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race

CRIMINAL PROCEDURE - JURY SELECTION - VOIR DIRE - Mississippi law allows an attorney for either side to probe the prejudices of the prospective jurors to the end that all will understand the jurors’ thoughts on matters directly related to the issues to be tried

CRIMINAL PROCEDURE - JURY SELECTION - BATSON REQUIREMENTS - To prevent racial discrimination in jury selection, the following requirements must be met: (1) the party objecting to the peremptory strike of a potential juror must make a prima facie showing that race was the criterion for the strike; (2) upon such a showing,

the burden shifts to the State to articulate a race-neutral reason for excluding that particular juror; and (3) after a race-neutral explanation has been offered by the prosecution, the trial court must determine whether the objecting party has met its burden to prove that there was been purposeful discrimination in the exercise of the peremptory strike

FACTS

In 2017, Christopher Vasser, along with four other men, were observed loitering and instructed to go home. The men left, but shortly returned and were arrested for failing to comply with an officer's orders. Upon arrival at the jail, Vasser was searched and a plastic bag filled with a white powdery substance fell from Vasser's pocket. The substance was determined to be methamphetamine, and Vasser was charged with possession as a habitual offender. At trial, the State objected to questions asked during the defense counsel's voir dire of the jury. Specifically, during voir dire, an African American juror stated that she knew someone who had been charged with a similar charge as Vasser. The State requested to strike that particular jury member, and the defense raised a *Batson* challenge, arguing that the State did not have a race-neutral reason for striking the prospective juror. The circuit court found that Vasser did not establish a prima facie showing of racial discrimination because the State had already accepted three African American jurors. The jury ultimately found Vasser guilty of possession of methamphetamine. Vasser moved for a judgment notwithstanding the verdict or, in the alternative, a new trial. The circuit court denied the motion. Vasser appealed.

ISSUES

Whether the circuit court erred in (1) finding no discriminatory intent proven to support Vasser's *Batson* challenge and (2) limiting Vasser's voir dire of potential jurors.

HOLDING

(1) Because the circuit court properly noted that there were three other African American jurors chosen by the State indicating that there was no racial discrimination proven and because deference was given to the trial court, the trial court did not abuse its discretion in finding that Vasser failed to meet his burden of showing the State exercised purposeful racial discrimination. (2) Because Vasser failed to prove that any limitation on questioning during voir dire caused him any actual harm or prejudice, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2020-KA-00358-COA (May 4, 2021)

Opinion by Judge McDonald

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Candice Leigh Rucker (Att'y Gen. Office) for Appellee

Briefed by [Schlyer Burney](#)

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WILLIAMS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - EIGHTH AMENDMENT - GENERAL REQUIREMENT - Generally, as long as a sentence does not exceed the maximum term allowed by statute, the court will not disturb the sentence on appeal, however, where it is alleged that a sentence is grossly disproportionate to the crime charged, the sentence may be attacked on the basis that it violates the Eighth Amendment's restriction on cruel and unusual punishment

CRIMINAL LAW - EQUAL PROTECTION - VIOLATION - A defendant asserting an equal protection claim has the burden of proving the existence of purposeful discrimination

CRIMINAL LAW - EVIDENCE - SUFFICIENCY - If the facts and inferences considered in a challenge to the sufficiency of the evidence "point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty," the appellate court should reverse and render, however, where the evidence is of such quality and weight that "having in mind the beyond

a reasonable doubt burden of proof standard, reasonable fair minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense,” the evidence will be deemed to have been sufficient

FACTS

Lieutenant Ed Steed, a K-9 interdiction officer, was notified of a suspicious package received at a FedEx facility. The package had been sent from California by James Collins to Shamaya Collins in Mississippi. Lieutenant Steed checked the information on the package in a database to see if it matched, finding all of the names, addresses, and phone numbers to be false. Lieutenant Steed's K-9 dog alerted the presence of narcotics, a search warrant was obtained, and the package was opened. The package contained two large vacuum-sealed bundles containing marijuana. As Lieutenant Steed was arresting Dexter Smith, Smith told Steed that he was at the residence to weed-eat and that the homeowner, who Smith later identified as Lavar Williams, told him FedEx would deliver a package that morning. Officers obtained a search warrant for the house. During the search, officers found a Home Depot bucket, containing cocaine, marijuana, and other drugs, and an AR-15 with the serial numbers filed off. Personal items also found in the home were identified to belong to Williams. In June 2017, prior to William's arrest, Smith executed an affidavit claiming that the AR-15 confiscated during the search was his and not Williams's. However, at trial, Smith further explained that Williams drove up to him as he was walking and told him to get into the car. It was during that trip that Williams and Michael Brown executed affidavits. A law clerk at the time of trial testified that Williams brought Smith and Brown into the firm's office to execute affidavits. The clerk explained that Smith claimed that the gun was his and Brown's affidavit stated that the marijuana in the home belonged to him. After considering the evidence presented at trial, a Madison County jury returned a verdict of guilty on four counts. In November 2018, the circuit court sentenced Williams to sixty years as a subsequent drug offender and nonviolent habitual offender for Count I, eighty years as a subsequent drug offender and nonviolent habitual offender for Count III, five years as a nonviolent habitual offender for Count IV, and ten years as a nonviolent habitual offender for Count V. Williams appealed.

ISSUES

Whether (1) his sentences were grossly excessive and disproportionate to the crimes; (2) the circuit court erred by excluding Michael Brown's affidavit; (3) the State violated the Fourteenth Amendment's Equal Protection Clause; (4) the circuit court erred by admitting Smith's statement to Lieutenant Steed into evidence; (5) the circuit court erred by refusing jury instruction D-7; and (6) whether the circuit court erred by denying Williams's motion for a directed verdict for insufficiency of the evidence.

HOLDING

(1) Because Williams was a habitual offender, and because his sentences were within statutory guidelines and met the legislature's intent, his sentences were not grossly excessive or disproportionate to his crimes. (2) Because Michael Brown's affidavit constituted hearsay, thus inadmissible absent an exception, the circuit court did not abuse its discretion in not admitting it. (3) Because Williams did not state a specific claim as to how the state treated him differently, his equal protection claim failed. (4) Because Smith's statement described why Steed focused his attention on Williams and because it was not offered for the truth of the matter asserted, there was no prejudice, therefore, the court did not err in admitting Smith's statement. (5) Because there was direct evidence rather than circumstantial evidence, the circuit court did not err in refusing jury instruction D-7. (6) Because there was sufficient evidence to support the jury's verdict, the circuit court did not err in the denying Williams's motion a directed verdict for insufficiency of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2019-KA-00169-COA (May 4, 2021)

En Banc Opinion by Judge Greenlee

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

Cynthia Ann Stewart for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Gabrielle Beech](#)

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