
MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 28, 2021

SUPREME COURT - CIVIL CASES**MAGNOLIA HEALTH PLAN, INC. V. MISS.'S CMTY. MENTAL HEALTH COMM'NS****CIVIL - STATE BOARDS & AGENCIES**

APPELLATE PROCEDURE - JURISDICTION - INTERLOCUTORY ORDERS - Pursuant to *Rogers*, the Supreme Court does not have jurisdiction to decide direct appeals of interlocutory orders; an order is interlocutory rather than final when it adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties

FACTS

Magnolia Health Plan, Inc. (“Magnolia”) is a managed care organization contracted by the Mississippi Division of Medicaid to provide Medicaid services in exchange for specified, capitated fees. In 2012, Magnolia entered into provider agreements with fourteen community mental health centers (“the CMHCs”) and, for six years, paid the CMHCs according to the agreements. In February 2019, Magnolia began applying a five-percent rate reduction to its payments to the CMHCs without amending its contracts, resulting in Magnolia paying less than its normal reimbursement rate. Magnolia also sought recoupments from the CMHCs for alleged overpayments, the overall total of which was over \$1.3 million. The CMHCs filed suit for damages and injunctive relief. Magnolia filed a motion to compel arbitration and stay proceedings. The circuit court denied Magnolia’s motion to compel and granted the CMHCs’ request for a preliminary injunction. A few days later, the circuit court, on Magnolia’s motion, converted the preliminary injunction to a permanent injunction. Magnolia appealed.

ISSUES

Whether (1) the circuit court erred by denying Magnolia’s motion to compel arbitration and stay proceedings; (2) the circuit court erred by granting the permanent injunction against Magnolia; and (3) Magnolia waived its right to appeal by filing its motion to convert the preliminary injunction order into a permanent injunction and to stay execution.

HOLDING

(1) Because Magnolia abandoned this issue at oral argument, the Court declined to address whether the trial court erred by denying Magnolia’s motion to compel arbitration. (2) Because the trial court’s ruling on the injunction did not dispose of the providers’ claims of damages, the order Magnolia sought to appeal was not final, and, therefore, the Court did not have jurisdiction to address the issue on appeal. (3) Because the Court did not have jurisdiction, it did not address the issue of Magnolia’s potential waiver of its right to appeal. Therefore, the Supreme Court affirmed in part, dismissed in part, and remanded the judgment of the Hinds County Circuit Court.

Affirmed in Part; Dismissed in Part & Remanded - 2020-CA-00167-SCT (Oct. 28, 2021)

Opinion by Justice Coleman

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court)

Timothy Lee Sensing, Tremarcus D’Ray Keshon Roseman, Katie B. Lyons, & Hugh Ruston Comley for Appellants - George H. Ritter, John P. Sneed, & Charles Edward Cowan for Appellees

Briefed by [Channing Curtis](#)

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SUPREME COURT - CRIMINAL CASES

FIELDS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - GENDER DISCRIMINATION - If a peremptory challenge appears to be merely based on gender, a *Batson* challenge will require a gender-neutral reason for the peremptory challenge, provided that the objecting party demonstrates a prima facie showing that the exercise of the peremptory challenge was based only on gender

CRIMINAL PROCEDURE - JURY SELECTION - BATSON PROCESS - Under *Batson*, there is a three-step process for evaluating jury-selection gender-discrimination claims: (1) a party alleging gender discrimination must make a prima facie showing of intentional discrimination before the party exercising the challenge is required to explain the basis for the strike; (2) if the requisite showing has been made, the burden shifts to the striking party to rebut the showing by offering a gender-neutral explanation for challenging the prospective juror(s); (3) if a reason is given, the trial court must make an on-the-record determination that the reason proffered is, in fact, gender neutral

CRIMINAL PROCEDURE - BATSON PROCESS - DEFERENCE - In the first prong of the *Batson* analysis, the Court will not override the trial court's finding of a prima facie case of gender discrimination when the record lacks information as to the makeup of the venire

CRIMINAL PROCEDURE - BATSON PROCESS - SPECIFIC EXPLANATION - The second prong of the *Batson* analysis does not demand an explanation that is persuasive, or even plausible; it does though require at least a clear and reasonably specific explanation of the striking attorney's legitimate reasons for exercising the challenge

FACTS

Cullen Fields was convicted of sexual battery following a jury trial in the Rankin County Circuit Court. During the course of jury selection, the State challenged Fields's use of peremptory strikes against four women on the jury panel. Following Fields's fourth peremptory strike, the State objected and alleged Fields struck the jurors based on gender. The trial court found that all of Fields's strikes were against female jurors and requested gender-neutral reasons for the strikes. For Fields's first strike, Fields's trial counsel stated that he struck Juror Number 2 because she was a nurse, and nurses provide care for victims. The trial court found the reason was gender-neutral despite the State response that the nurse failed to mention being a nurse in voir dire. For Fields's second strike, Fields's trial counsel stated that he struck Juror Number 2 because she knew the detective in the case and her husband worked for the fire department. The trial court found this reason to also be gender-neutral. For Fields's third strike, Fields's trial counsel stated that he struck Juror Number 19 because he was looking for a better juror for Fields. The State determined Fields's trial counsel did not offer a sufficient reason. The trial court seated Juror Number 19. For Fields's fourth and final strike, Fields's trial counsel offered the same reason for striking as he did for the third strike. The State determined Fields's trial counsel did not offer a sufficient gender-neutral reason. Stating it had no other choice, the trial court seated Juror Number 22. Fields appealed.

ISSUE

Whether the trial court erred by seating Juror Numbers 19 and 22 after Fields used peremptory strikes against them.

HOLDING

Because Fields's counsel failed to provide clear and specific gender-neutral explanations for striking Jurors Numbers 19 and 22 that were sufficient to rebut a prima facie case of gender discrimination, the trial court did not err by seating Juror Numbers 19 and 22. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2020-KA-01317-SCT (Oct. 28, 2021)

Opinion by Justice Beam

Hon. Dewey Key Arthur (Rankin County Circuit Court)

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

Briefed by [Le'Ronda Gates](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 26, 2021

COURT OF APPEALS - CIVIL CASES

WEBBER V. RANDLE

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - ADMINISTRATOR - DOCTRINE OF UNCLEAN HANDS - The doctrine of unclean hands may prevent an administrator of an estate from petitioning to disinherit certain heirs at law of the decedent after she has filed numerous sworn pleadings declaring them to be heirs and after a judgment has been entered adjudging them to be heirs; however, where a judgment has not been entered declaring the children in question as heirs at law and only one past sworn petition has been entered identifying them as such, an administrator has both the standing and the duty to challenge paternity and is not barred by the doctrine of unclean hands from doing so

WILLS & ESTATES - DETERMINATION OF HEIRSHIP - REBUTTABLE PRESUMPTION OF LEGITIMACY - A child born of a marriage creates a strong rebuttable presumption that the child is legitimate; an administrator, on behalf of the decedent, may contest paternity and rebut the presumption by proving beyond a reasonable doubt that the child is illegitimate

WILLS & ESTATES - DETERMINATION OF HEIRSHIP - DNA EVIDENCE - DNA test results may rebut the presumption of legitimacy if the court finds that the conclusions of all the experts, as disclosed by the evidence based on the DNA tests, are that the alleged father is not the father of the child in question

WILLS & ESTATES - DETERMINATION OF HEIRSHIP - ORDER TO EXHUME DECEASED - Where cross-referencing of the decedent's children's DNA is sufficient to determine paternity, a sua sponte order requiring the exhumation of the deceased for testing is not necessary

APPELLATE PROCEDURE - MOTION TO STAY EXECUTION OF ORDER - SUPERSEDEAS BOND - Pursuant to Miss. R. App. P. 8(b), an appellant must post a supersedeas bond only when the appellant has filed a motion to stay the execution of the lower court's order; conversely, where an appellant has filed a notice of appeal without a motion to stay or has withdrawn a previous motion to stay, there is no reason to require the appellant to post a supersedeas bond

FACTS

Lester Randle died intestate in 2009. He was survived by his wife Dorothy Randle and their son Raymond Randle. Prior to Dorothy, Lester was married to Ruthie Randle. Ruthie and Lester had two children, Tumika Randle Webber and Sylvester Randle, before they divorced in 1977. In May 2018, Dorothy filed a petition for grant of letters of administration. The petition stated that there was no real property in Lester's estate but that there was a potential claim for unliquidated damages related to Lester's death. Further, the petition recognized Dorothy, Raymond, Tumika, and Sylvester as Lester's heirs at law. Dorothy was subsequently appointed administrator. Six months later, Dorothy filed a petition for a determination of heirship, claiming Tumika and Sylvester were not Lester's heirs at law. Further, she asserted the estate now consisted of a \$67,500.25 claim for benefits, the result of the unliquidated claim mentioned in her earlier petition. After a summons by publication to any unknown heirs, Cederica Gilliam appeared at a 2019 chancery court hearing claiming to be Lester's heir. The chancery court ordered Lester's four putative children to undergo DNA testing. In a subsequent hearing in 2020, DNA evidence was presented, revealing that there was a high probability that Tumika and Sylvester were unrelated to Raymond and an over ninety-nine percent probability they were unrelated to Cederica. However, the DNA evidence showed that there was a nearly ninety-nine percent probability that Raymond and Cederica were related. The parties agreed to enter the DNA results into evidence. Further, Dorothy testified that Lester was listed on Tumika and Sylvester's birth certificates and that he had paid the two's child support; however, she also said that Lester had sought legal advice in the past to determine whether the two were his biological children. Based on the evidence, the chancery court concluded that Tumika and Sylvester were not Lester's legal heirs at law. However,

the chancery court also ordered that Tumika and Sylvester could, at their own expense, exhume Lester's body for further testing. After denying Tumika and Sylvester's motions for a new trial and amendment of judgment, the chancery court filed an order to approve the distribution of the assets and close the estate. Subsequently, Tumika and Sylvester filed a motion to set aside the order, a notice of appeal, and a motion to stay the execution of the order. Soon after, Tumika and Sylvester withdrew the motion to stay. The chancery court dismissed the motions. Tumika and Sylvester appealed, and the chancery court ordered each to post a \$5,000 supersedeas bond pending the appeal.

ISSUES

Whether (1) Dorothy was estopped from challenging paternity by the doctrine of unclean hands; (2) Dorothy was estopped from challenging paternity by equitable or judicial estoppel; (3) Lester's failure to take affirmative action to disestablish paternity estopped Dorothy from challenging it; (4) the chancery court erred by relying on the DNA results in excluding Tumika and Sylvester as heirs at law; (5) the chancery court erred by not ordering a DNA sample from the deceased; (6) the chancery court erred by shifting the burden of proving paternity to Tumika and Sylvester by ordering them to bear the cost if Lester's body was to be exhumed and DNA tested; and (7) the chancery court erred by ordering Tumika and Sylvester to post a supersedeas bond.

HOLDING

(1) Because Dorothy had the duty to contest Tumika and Sylvester's paternity in good faith as administrator of the estate, she was not barred from challenging paternity by the doctrine of unclean hands. (2) Because Tumika and Sylvester failed to demonstrate that they were induced to change their position in such a way that they would suffer injury, because Tumika and Sylvester failed to establish how Dorothy gained to benefit from listing them as putative heirs at law in the first petition, and because, as administrator, Dorothy had standing to determine the heirs, Tumika and Sylvester failed to establish equitable or judicial estoppel. (3) Because Lester had no statutory means to challenge paternity until Tumika and Sylvester were over twenty-one years of age, at a point where Lester's support obligation would have ended, the issue was without merit. (4) Because the parties mutually agreed to enter into evidence the DNA results that successfully rebutted the presumption that Tumika and Sylvester were legitimate heirs, the chancery court did not err in excluding Tumika and Sylvester as Lester's heirs at law based on the DNA evidence. (5) Because the chancery court acted within its discretion in concluding that the cross-reference DNA testing of Lester's children was sufficient to make the paternity determination and that rendered court ordered exhumation unnecessary, the chancery court did not err in not ordering a DNA sample from the deceased. (6) Because Dorothy presented evidence that successfully rebutted the presumption of legitimacy, because Tumika and Sylvester failed to present evidence refuting Dorothy's evidence, and because the chancery court allowed Tumika and Sylvester, at their request, to exhume Lester's body for genetic testing, there was no merit to this issue. (7) Because Tumika and Sylvester withdrew their motion to stay the execution of the order, the chancery court erred in ordering them to post a supersedeas bond. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Leflore County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Presiding Judge Carlton agreed that the chancery court erred in requiring Tumika and Sylvester to post a supersedeas bond. However, she disagreed with the Court's decision to affirm the chancery court's finding that Tumika and Sylvester were not Lester's heirs at law. She argued that because Lester failed to take affirmative actions to disestablish paternity of Tumika and Sylvester while he was alive, Dorothy could not posthumously challenge or disestablish paternity. She emphasized that Lester was married to Tumika and Sylvester's mother when they were born, that he was listed as their father on their birth certificates, and that he paid court-ordered child support throughout their childhoods.

Affirmed in Part; Reversed & Rendered in Part - 2020-CA-00433-COA (Oct. 26, 2021)

En Banc Opinion by Chief Judge Barnes - Concurrence in Part & Dissent in Part by Presiding Judge Carlton

Hon. Watosha Marshall Sanders (Leflore County Chancery Court)

Carlos Diallo Palmer & Tangala Laniece Hollis for Appellants - Margarett Lafaye Meeks for Appellee

Briefed by [Garner Vance](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BELL V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUCCESSIVE MOTIONS - Under Miss. Code Ann. § 99-39-23(6), any order dismissing or denying a motion for post-conviction relief shall be a bar to a second or successive motion

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - DNA EXCEPTION - Miss. Code Ann. § 99-39-5(2) provides that a defendant may file a motion for post-conviction relief beyond the three-year statutory limit if the defendant can show that there exists biological evidence not tested, or, if previously tested, that can be subjected to additional DNA testing that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such testing at the time of the original prosecution

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - INEFFECTIVE ASSISTANCE EXCEPTION - An ineffective assistance of counsel claim for post-conviction relief is excepted from the statute of limitations and the successive motions bar if the defendant shows “extraordinary circumstances” that explain the defendant’s failure to assert an ineffective assistance claim within the statutory three-year time limitation

FACTS

In 2007, Sylvester Bell pled guilty to the charge of statutory rape and was sentenced to serve thirty years in the custody of the Department of Corrections as a habitual offender. Bell filed his first motion for post-conviction relief (“PCR”) in 2009, arguing that his indictment was defective and was improperly amended to charge him as a habitual offender. The circuit court denied the motion. On appeal, Bell failed to argue the issues he raised in the motion; rather, he only alleged that the circuit court failed to provide him with a transcript of his plea hearing. The Court of Appeals held that his argument was procedurally barred because he failed to request a copy of the transcript in the circuit court. The Court of Appeals entered an order directing the circuit court to supplement the record with the transcript of Bell’s plea hearing. In 2013, Bell filed a second PCR motion, adding claims that his plea was not knowingly and intelligently given and that his lawyer provided ineffective assistance. Both the circuit court and the Court of Appeals dismissed the motion as an impermissible successive motion. While this case was pending, the circuit court erroneously advised the Court of Appeals that no transcript of the plea hearing existed when, in fact, it had been placed in the record at the appellate court’s order. Bell filed his third PCR motion in 2018, arguing that the conviction should be set aside because his signature on the plea petition was forged and there was no transcript of his plea hearing. The circuit court dismissed the motion as barred by the statute of limitations, and the Court of Appeals affirmed, reiterating that there was, in fact, a transcript of the plea hearing in the record. In 2019, Bell filed his fourth PCR motion, alleging that the State collected a rape kit during its initial investigation and sent biological evidence to the crime lab, but the State never specified the DNA to be tested. Bell also resumed his assertion that there was no transcript of his plea hearing and thus his sentence was illegal. Additionally, Bell alleged that his attorney provided ineffective assistance by failing to inform him of the elements of his crime and possible defenses, misinforming him about the length of his possible sentence, and failing to investigate the circumstances of his arrest. The circuit court dismissed Bell’s claim as barred by both the statute of limitations and the statute prohibiting successive PCR motions. Bell appealed.

ISSUE

Whether the trial court properly dismissed Bell’s fourth PCR motion based on the successive-motions bar and the statute of limitations.

HOLDING

Because Bell filed his fourth PCR motion more than twelve years after his conviction and all his prior PCR motions that were either dismissed or denied, Bell’s claims failed as a matter of law unless excepted from both the statute of limitations and successive-motions bar. Because Bell failed to meet his threshold burden of demonstrating that there

now existed biological evidence from which his case could be tested, his DNA testing claim was barred by the statute of limitations. Because Bell erroneously claimed that there was no record of his plea hearing, the argument that his sentence was illegal was without merit. Because Bell failed to show an extraordinary circumstance that would explain his failure to assert his ineffective-assistance claim within the statutory three-year limitation or in his prior PCR motions, his ineffective-assistance claim was also barred as successive and untimely. Therefore, the trial court affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2020-CP-00592-COA (Oct. 26, 2021)

Opinion by Presiding Judge Wilson

Hon. Linda F. Coleman (Tunica County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Morgan Jones](#)

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HODGIN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE - Under Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

POST-CONVICTION RELIEF - STANDING - SUCCESSIVE-MOTIONS BAR - Under Miss. Code Ann. § 99-39-23(6), an order dismissing or denying a motion for post-conviction relief shall be a bar to a second or successive motion for post-conviction relief

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTION - The post-conviction relief statute allows a prisoner to file a motion after the expiration of the statute of limitations if he can show that he has new evidence that was not discoverable at the time of trial that could have caused a different result in the conviction

POST-CONVICTION RELIEF - SUCCESSIVE-MOTIONS BAR - EXCEPTION - Ineffective-assistance-of-counsel claims may be excepted from the successive-motions bar only in extraordinary circumstances

FACTS

In 1994, Lenzy Louis Hodgin was indicted on five counts of fondling a child and one count of sexual battery. Hodgin pled guilty to one count of fondling, and, in exchange, the state agreed to pass the other charges to an “inactive file.” Hodgin was sentenced to serve ten years in the custody of the Mississippi Department of Corrections. In 1995, Hodgin filed a motion for post-conviction relief (“PCR”), alleging that his plea was involuntary because he pled guilty with a group of defendants and that he would not have pled guilty if he had known that the sentence recommended by the state was the maximum sentence. The circuit court denied Hodgin’s motion, and the Supreme Court affirmed, finding that his arguments were without merit. In 2018, Hodgin filed a second PCR motion, alleging that his guilty plea was involuntary and that he received ineffective assistance of counsel because his attorney told him he would likely only serve nine to eighteen months if he pled guilty. To corroborate this, Hodgin submitted an affidavit from a nephew who claimed to have overheard Hodgin’s attorney tell Hodgin that he would only serve nine to eighteen months. The state filed a response, arguing that Hodgin’s motion was barred by the statute of limitations and successive-motions bar and submitted an affidavit from Hodgin’s counsel denying that he told Hodgin that he would only serve nine to eighteen months. The circuit court denied Hodgin’s PCR motion, finding that it was barred by the statute of limitations and the successive-motions bar. Hodgin appealed.

ISSUES

Whether the trial court erred in finding Hodgin’s second PCR motion (1) was barred by the statute of limitations; (2) was barred by the successive-motions bar; and (3) did not meet the statutory exception to the statute of limitations and the successive-motions bar.

HOLDING

(1) Because a motion for post-conviction relief must be filed within three years after a judgment of conviction, the trial court did not err in finding that Hodgins's motion filed twenty-four years after he pled guilty was time-barred by the statute of limitations. (2) Because an order dismissing or denying a motion for post-conviction relief shall be a bar to second or successive motion, the trial court properly held that Hodgins's second motion for post-conviction relief was invalid under the successive-motions bar. (3) Because Hodgins did not introduce new evidence that was not reasonably discoverable at trial that could have caused a different result in the conviction, and because Hodgins failed to allege any extraordinary circumstances for filing a second motion, the trial court did not err in finding that Hodgins did not meet a statutory exception to the statute of limitations and the successive motions bar. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2020-CP-00584-COA (Oct. 26, 2021)

Opinion by Presiding Judge Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court)

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

Briefed by [Macy Walters](#)

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COURT OF APPEALS - CRIMINAL CASES

CARTER V. STATE

CRIMINAL - FELONY

EVIDENCE - HEARSAY - EXCLUSIONS - Miss. R. Evid. 801(d)(1)(C) provides that a statement is not hearsay if (1) the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and (2) the statement is one of identification of a person made after perceiving the person

CRIMINAL LAW - FELONY - FIREARM POSSESSION - Miss. Code Ann. § 97-37-5(1) provides that it shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm; to prove possession of a firearm by a felon, the State must prove: (1) the person was in possession of a firearm and (2) the person had been convicted of a felony crime

CRIMINAL LAW - FIREARM POSSESSION - CONSTRUCTIVE POSSESSION - Constructive possession of a firearm can be established by showing that the firearm was under the dominion and control of the defendant and can be proved by circumstantial evidence, which may carry the same weight as direct evidence

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL STRATEGY - A trial strategy, once tried and rejected by the jury, is not a sufficient basis to reverse a conviction on an ineffective-assistance-of-counsel claim

FACTS

In April 2016, the Ellisville Police Department received a 911 call from Shana Carter reporting gunshots. Upon arrival at the scene, Shana told Officer Mike Williams that her son, Anthony Carter ("Carter"), shot at her other son and was located in a house across the street with multiple weapons. After an hour standoff with officers, Carter came out of the house and was arrested. While searching the house, police found a rifle hidden in the house, as well as several spent bullet casings. An investigator testified that the gun was clean despite being found in the attic covered in dust. The officers found no one else in the house. At trial, Officer Williams testified that, after Carter was arrested, Shana provided a handwritten statement, which she dated and signed. The statement was read to the jury without objection from defense

counsel. The statement detailed an altercation that happened the night of the arrest between Carter, his ex-girlfriend, and his brother. The statement recounted that after an argument between the three, Carter went to the house across the street from Shana's, got a gun, and fired numerous shots. After the statement was read, the State called Shana to testify. On direct examination, the State showed Shana the statement and she testified to its accuracy except for the part about Carter having and shooting a gun. Further, the State played a television interview for the jury in which Shana told a reporter that Carter had a gun. Shana insisted she did not see Carter with a gun and was misinformed at the time of the interview. On cross-examination, Shana indicated she was not of sound mind and on narcotics. The defense called both of Carter's brothers to testify, and they both denied that Carter was in possession with a gun that night. The defense's final witness was Carter, who admitted to the alleged altercations with his ex-wife and his brother but denied having a gun that day. The jury found Carter guilty of possession of a weapon by a felon, and Carter was sentenced to seven years in the custody of the Mississippi Department of Corrections. The trial court denied Carter's post-trial motions. Carter appealed.

ISSUES

Whether (1) the trial court erred in allowing the Shana's prior unsworn statement and television interview to be presented to the jury as substantive evidence of Carter's guilt; (2) the evidence was sufficient to support Carter's conviction of being a felon in possession of a firearm; and (3) Carter's trial counsel was ineffective for failing to object to the admission of "incompetent evidence" and failing to request a cautionary limited instruction.

HOLDING

(1) Because Shana testified at trial and was subject to cross-examination, and because Shana's statement identified Carter as the shooter based on her perception, the trial court did not err in admitting the handwritten statement and the television interview under Miss. R. Evid. 801(d)(1)(C) as substantive evidence of Carter's guilt. (2) Because the parties stipulated that Carter was previously convicted of a felony, and because various witnesses' testimonies at trial, in conjuncture with Shana's written statement and video statement that identified Carter as the shooter, were sufficient circumstantial evidence to prove Carter's constructive possession of a firearm, there was sufficient evidence to support the Carter's conviction. (3) Because Carter's trial counsel's actions were part of the defense's trial strategy, which was rejected by the jury, and because Shana's prior statements were properly admitted and there was sufficient evidence to support Carter's conviction, there was no reasonable probability that the outcome of the trial would have been any different, and, therefore, Carter's ineffective assistance of counsel claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2019-KA-01854-COA (Oct. 26, 2021)

Opinion by Judge Lawrence

Hon. Dal Williamson (Jones County Circuit Court, First Judicial Dist.)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Samuel Taylor Rayburn](#)

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FIGUEROA V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - JURY INSTRUCTIONS - DEFENSES - In homicide cases, the trial court should instruct the jury about a defendant's theories of defense, justification, or excuse that are supported by the evidence, no matter how meager or unlikely

CRIMINAL LAW - JURY INSTRUCTIONS - REFUSAL - A defendant must offer some evidence to support his theory of defense before the trial court is obligated to instruct the jury on it; a trial judge properly refuses a requested instruction that is not supported by the evidence

CRIMINAL LAW - GUILTY VERDICT - SUFFICIENCY OF THE EVIDENCE - The sufficiency of evidence supporting a guilty verdict is viewed in the light most favorable to the state, looking specifically at whether rational jurors could have found the state proved each element of the crime

CRIMINAL LAW - SUFFICIENCY OF THE EVIDENCE - WEATHERSBY RULE - When a defendant or a defendant's witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge

FACTS

In June 2016, Frankie Mitchell died of a stab wound to her chest. The stabbing occurred near the front steps of Louis Alberto Figueroa's home in Forest. Figueroa's daughter Erica testified that Mitchell arrived at the home during the night to speak with Figueroa. Shortly after, Erica heard Figueroa scream and saw her grandfather holding Figueroa as he dropped a knife. Mitchell was found unresponsive on the ground outside the home. Figueroa was bleeding, and his father took him to the hospital. Someone called 911 to get help for Mitchell, however, by the time the Forest Police Department responded, Figueroa was gone, and Mitchell had died. Police officers noted two knives at the scene and a knot near one of Mitchell's eyes. Figueroa's blood-alcohol content was .267 percent. A nurse from the hospital stated that Figueroa yelled that he had killed someone and later said that it was his girlfriend and that it was in self-defense. Investigator Tim Rigby first spoke with Figueroa on June 21, 2016, during which Figueroa gave his first account about what occurred. The next day, Figueroa asked to speak with Rigby again because he had not told Rigby "the whole truth about what happened." Figueroa then gave his second statement and issued a written statement which he concluded by stating it was in self-defense. Figueroa filed a motion for directed verdict which was denied. Subsequently, he took the stand and testified that he did not stab and did not kill Mitchell. On cross-examination, Figueroa testified that he gave two different statements to Rigby because he was still under the influence of painkillers and was still in shock when he gave his first statement. Figueroa requested jury instructions on the excuse of the accident and the justification of self-defense. The trial judge granted the accident instructions but refused the self-defense instruction, finding the evidence did not support it. The trial judge instructed the jury on the elements of first-degree murder and the lesser included offense of heat-of-passion manslaughter. The jury found Figueroa guilty of manslaughter, and he was sentenced to twenty years in the custody of the Department of Corrections. Figueroa filed a motion for a new trial, which the trial court denied. Figueroa appealed.

ISSUES

Whether the trial court erred by (1) refusing Figueroa's proposed jury instruction on self-defense and (2) denying Figueroa's motion for a directed verdict.

HOLDING

(1) Because Figueroa's testimony was directed specifically, and in detail, to establishing that the killing had been unintentional and accidental, and because Figueroa presented no evidence of a purposeful killing in self-defense, the trial court properly denied his jury instruction request. (2) Because there was sufficient evidence for a rational juror to find Figueroa guilty, the trial court did not err by denying the motion for a directed verdict. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Greenlee argued the trial judge abused his discretion by refusing Figueroa's requested self-defense instruction. Because there was evidence to support that Mitchell stabbed Figueroa, that Mitchell followed Figueroa to his home, and that a struggle ensued between the two, he argued it was a reversible error for the court to refuse the proposed self-defense instruction. He noted that a criminal defendant has a right to assert alternative theories of defense even if they are inconsistent alternative theories.

Affirmed - 2020-KA-00114-COA (Oct. 26, 2021)

En Banc Opinion by Presiding Judge Wilson - Concurrence in Part & Dissent in Part by Judge Greenlee

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

Mark K. Tullos for Appellant - Meta S. Copeland (Att'y Gen. Office) for Appellee

Briefed by [Anna Tucker](#)

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GROVES V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - APPEALS - ARGUABLE ISSUES - A framework adopted by the Supreme Court governs cases where appellate counsel represents an indigent criminal defendant and does not believe his or her client's case presents any arguable issues on appeal

CRIMINAL LAW - APPEALS - ARGUABLE ISSUES - Appellate counsel must file a *Lindsey* brief certifying that there are no arguable issues to support the client's appeal and that counsel has reached that decision after searching the record thoroughly, including a list of specific elements to examine

CRIMINAL LAW - APPEALS - ARGUABLE ISSUES - After appellate counsel files their certified brief stating that their client has no arguable issues on appeal, he or she must inform the criminal defendant of their right to file a pro se brief so the court may determine whether there is an arguable issue; if the court finds an arguable issue, appellate counsel is required to provide supplemental briefing on that issue

FACTS

In August 2019, Candice Primer was at Piggly Wiggly and driving a black Nissan Altima owned by her parents. Once inside, Primer realized that she left her money in the car, so she went back outside to acquire the money and unintentionally left her keys inside the car. After exiting the store less than ten minutes later, Primer realized that her car was missing from the parking lot. She consequently called her mother and the police to report the incident. Primer and her mother drove around in search of the car when they were informed that the car was seen at McDonald's. At the same time, a be-on-the-lookout-notice was placed on the car, and Investigator Stephen Bell, as he was patrolling and searching for the missing Nissan Altima, saw a car matching the description in the McDonald's parking lot. After Bell confirmed that the license plate and VIN were the same as those of Primer's missing car, Christopher Groves was arrested and taken to the police station. During his interview, Groves told police that after he realized that he had forgotten his EBT card, Groves started walking home from Piggly Wiggly. Groves then said he was approached by a man in a black car who informed Groves that the car was stolen and asked if Groves wanted to buy it. Groves told police that he subsequently bought the car for \$500 and drove it to McDonald's. Groves was indicted for one count of automobile theft under Miss. Code Ann. §§ 97-17-41(1) and 97-17-42. In September 2020, a jury found Groves guilty, and he was sentenced to five years in the custody of the Mississippi Department of Corrections. Groves filed a post-trial motion for a new trial, which was denied. Groves appealed. Groves's appellate counsel filed a *Lindsey* brief after finding no arguable issues on appeal, and Groves was granted time to file a supplemental brief pro se, but he did not.

ISSUE

Whether the trial court erred in denying Groves's post-trial motion for a new trial.

HOLDING

Because no issues were raised on appeal, and because no arguable issue that would warrant supplemental briefing nor any reversible error could be identified, the trial court did not err in denying Groves's post-trial motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2020-KA-01059-COA (Oct. 26, 2021)

Opinion by Judge Westbrook

Hon. Mark Sheldon Duncan (Leake County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Emily Duck](#)

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