

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 9, 2021***SUPREME COURT - CIVIL CASES*****KELLY V. OCWEN LOAN SERVICING LLC****CIVIL - REAL PROPERTY**

WILLS & ESTATES - INVALID DEED OF TRUST - FAILURE TO SIGN - Under Miss. Code Ann. § 89-1-29, a conveyance, mortgage, deed of trust, or other incumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner

TORTS - NEGLIGENCE - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 15-1-49, there is a three-year statute of limitations for all negligence claims

TORTS - SLANDER-OF-TITLE - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 15-1-35, there is a one-year statute of limitations for all slander-of-title claims

FACTS

In 1993, Harvey L. Lamb and his wife, Idele H. Lamb, conveyed property in Coldwater (“the Subject Property”) to their son Harvey D. Lamb (“Lamb”), via warranty deed. After this conveyance, Lamb lived on the Subject Property with his wife, Sydney J. Lamb (“Sydney”). In March 2010, Lamb executed a Warranty Deed with Restrictions (“2010 Deed”) that conveyed the Subject Property to him and his wife for lifetime, with the remainder at their death or revocation of life estate to their daughter, Julia L. Kelly (“Kelly”). However, Sydney never joined in the execution of this 2010 Deed. Lamb and Sydney then divorced. In connection with the divorce, Sydney executed a Quit Claim Deed & Relinquishment of Life Estate that granted all rights, claims, and titles she had in the Subject Property to Lamb. In May 2015, Lamb received a reverse mortgage from Liberty Home Equity Solutions, Inc. (“Liberty”) and executed a Fixed Rate Home Equity Conversion Deed of Trust (“2015 Deed”), which encumbered the Subject Property. The trustee under the 2015 Deed was Jennifer Shackelford. Lamb died in November 2017; Kelly was Lamb’s sole heir and was appointed administratrix of Lamb’s estate. In 2018, Liberty assigned the 2015 Deed to Ocwen Loan Servicing (“Ocwen”). Ocwen initiated a lawsuit in 2019, alleging Lamb was in default under the 2015 Deed, and thus filed the suit against Kelly and Shackelford. Ocwen sought a declaratory judgment that the conveyance to Kelly under the 2010 Deed was void because Sydney did not join in, and, thus, should be set aside as a cloud on title. In June 2019, Kelly answered Ocwen’s complaint, filed a counterclaim against Ocwen, and filed a cross-claim against Shackelford. Kelly also added Liberty and Professional Services of Potts Camp (“Potts Camp”) as third-party defendants. Against all four defendants, Kelly brought claims of negligence, negligent misrepresentation, negligent infliction of emotional distress, and slander of title. The four defendants filed dispositive motions. Ocwen filed a motion for summary judgment, arguing that, because Sydney never joined the 2010 Deed, the 2010 Deed was void and must be set aside. Shackelford, Liberty, and Potts Camp all filed motions that Kelly’s claims were time-barred by the statute of limitations. After a hearing, the chancery court granted both Ocwen’s motion for summary judgment and the motion to dismiss due to the claim being time-barred by Shackelford, Liberty, and Potts Camp. Kelly appealed.

ISSUES

Whether the chancery court erred by granting (1) Ocwen’s motion for summary judgment because the 2010 Warranty Deed was a void conveyance as to Kelly and (2) Shackelford’s, Liberty’s, and Potts Camp’s motions to dismiss because Kelly’s claims were time barred by the statute of limitations.

HOLDING

(1) Because Sydney did not join the third-party conveyance to Kelly, that conveyance was void, and, therefore, the chancery court did not err in granting Ocwen's motion for summary judgment. (2) Because the latest date that the statute of limitations could have begun to run was June 8, 2015, and because Kelly's claims were not brought until October 28, 2019, the trial court did not err in finding that Kelly's claims were time-barred and subsequently granting the motions to dismiss. Therefore, the Supreme Court affirmed the judgment of the Tate County Chancery Court.

Affirmed - 2020-CA-01217-SCT (Dec. 9, 2021)

Opinion by Justice Chamberlin

Hon. Vicki B. Daniels (Tate County Chancery Court)

Taylor A. Heck & John T. Lamar Jr. for Appellant - Kevin E. Gay, Michael S. McKay, Robert F. Stacy Jr., Stevie F. Rushing, Clarence Webster III, & Rebecca Adelman for Appellees

Briefed by [Macy Walters](#)

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PEARL RIVER VALLEY WATER SUPPLY DIST. V. KHALAF

CIVIL - CONTRACT

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Under Miss. R. Civ. P. 12(b), when matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Miss. R. Civ. P. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56

CIVIL PROCEDURE - PLEADINGS - WRITTEN INSTRUMENTS - Miss. R. Civ. P. 10(d) provides that when any claim or defense is founded on an account or other written instrument, a copy thereof should be attached to or filed with the pleading unless sufficient justification for its omission is stated in the pleading

CIVIL PROCEDURE - PLEADINGS - ATTACHMENTS - Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim

PROPERTY - WATER LAW - DRAINAGE OR DISCHARGE - Riparian law holds that an owner of land which is situated over other lands ("the upper landowner") is liable for water which flows onto land which lies underneath the incline when he has, by artificial means, discharged the water in a manner that unreasonably damages the lower landowner

FACTS

In 1983, the Pearl River Valley Water Supply District ("District") entered into a development lease with Lakeshore Pointe, Inc., in which Lakeshore Pointe leased a parcel of land to be used for residential apartment or condominium units or other use, granted the District's board approval. In 1996, Lakeshore Pointe assigned 14.32 acres of the original lease that was later developed into Windward Bluff Subdivision in Rankin County. In July 2018, Jad J. Khalaf entered into a lease of land in the subdivision abutting the Ross Barnett Reservoir. As the result of a collapsed storm drain pipe, a sinkhole formed on Khalaf's property. The District demanded that Khalaf repair the sinkhole and drain pipe, but he declined to do so, arguing that it was either the District and/or the Windward Bluff Homeowners' Association that were responsible for the repairs. After failed negotiations that resulted in the District repairing the drain pipe and sinkhole on Khalaf's leasehold, the District filed a complaint against Khalaf to recoup the costs of repair, among other relief. The breach of contract complaint alleged that Khalaf's lease made him responsible to repair the storm drain pipe and resulting damage. The District attached several leases to the complaint that supported the property rights in question. In response, Khalaf filed a motion to dismiss for failure to state a claim upon which relief can be granted under Miss. R. Civ. P. 12(b)(6). He attached the Declaration of Covenants for Windward Bluff Subdivision, arguing that the leases and covenants did not place make him responsible for the repair to the drain pipe and sinkhole. The chancery court granted Khalaf's motion to dismiss, ruling that he was not responsible to maintain or repair the storm pipe, as it benefitted the neighborhood, and that either the District, original developer, or the homeowner's association was responsible for the repair. The District appealed.

ISSUES

Whether the chancery court erred in (1) declining to convert Khalaf's motion to dismiss into a motion for summary judgment and (2) dismissing the District's complaint for failing to state a claim upon which relief can be granted.

HOLDING

(1) Because Khalaf properly attached the covenants to his motion to dismiss because they were referenced in a lease filed with the complaint, and because they were central to the District's claim that he was responsible for the storm drain, the trial court did not err by declining to convert Khalaf's motion to dismiss to a motion for summary judgment. (2) Because Khalaf took the leasehold subject to the covenants reserving storm drainage easements to the Windward Bluff Homeowners' Association and the District, he was not required to show that the homeowner's association agreed to take responsibility for the faulty storm drain, and, instead, was only required to show that he was not responsible; thus, the trial court did not err in dismissing the District's complaint. Therefore, the Supreme Court affirmed the judgment of the Rankin County Chancery Court.

DISSENT

Justice Beam argued that, although the leasehold between Khalaf and the District required the leasehold be used comparably with the Declaration of Covenants for the subdivision, it did not mean that Khalaf's leasehold was automatically added into the declaration of covenants by operation of the lease agreement. She further argued that if the homeowner's association was not responsible for maintaining that particular storm drain, then Khalaf should have been responsible for the storm drain because of the leasehold agreement that expressly relieved the District. Therefore, the chancery court's dismissal should have been reversed and remanded for further proceedings.

Affirmed - 2020-CA-00928-SCT (Dec. 9, 2021)

En Banc Opinion by Presiding Justice Kitchens - Dissent by Justice Beam

Hon. John C. McLaurin Jr. (Rankin County Chancery Court)

Troy Philip Huskey (Att'y Gen. Office) for Appellant - Philip Carey Hearn & Jad Jamal Khalaf for Appellee

Briefed by [Le'Ronda Gates](#)

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RGH ENTERS., INC. V. GHAFARIANPOOR

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

TORTS - VICARIOUS LIABILITY - SCOPE OF EMPLOYMENT - The doctrine of respondeat superior imputes vicarious liability from an employee to an employer when the employee's acts were within the scope of the authority conferred

TORTS - VICARIOUS LIABILITY - DEVIATION - If an employee deviates or departs from his work to accomplish some purpose of his own not connected with his employment, the relation of master and servant is thereby temporarily suspended, and the employer is not vicariously liable

FACTS

In 2018, Seied and Nancy Ghafarianpoors' home in Madison County sustained water damage. Their insurance carrier recommended that RGH Enterprises ("RGH") perform the remediation work. After three RGH employees removed damaged property and repaired the home, the Ghafarianpoors discovered that jewelry and other valuables were missing. Two of the employees confessed to stealing valuables from the home. The Ghafarianpoors brought suit against RGH, alleging negligence and vicarious liability for the actions of the two employees. RGH filed a motion for summary judgment on the claims. The trial court granted summary judgment as to the negligence claims, however, it denied summary judgment as to the vicarious liability claim. RGH appealed.

ISSUE

Whether the Ghafarianpoors could recover under a theory of respondeat superior.

HOLDING

Because the RGH employees were only authorized to clean and repair damage to the home, and because they did not possess actual or apparent authority to steal from the Ghafarianpoors, the Ghafarianpoors could not recover under a theory of respondeat superior. Therefore, the Supreme Court reversed and remanded the judgment of the Madison County County Court.

Reversed & Remanded - 2021-IA-00013-SCT (Dec. 9, 2021)

Opinion by Chief Justice Randolph

Hon. Edwin Y. Hannan (Madison County County Court)

William Dribben Montgomery for Appellant - John Hinton Downey for Appellees

Briefed by [Mariel Soehner](#)

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WIGGS V. TAYLOR

CIVIL - ELECTION CONTEST

CIVIL PROCEDURE - SANCTIONS - CLEAR ERROR OF JUDGMENT - Under the abuse-of-discretion standard of review, without a showing of a definite, firm conviction that a trial court made a clear error of judgment in its conclusion, the court's imposition of sanctions will be affirmed

CIVIL PROCEDURE - ATTORNEY'S FEES - LITIGATION ACCOUNTABILITY ACT - The Litigation Accountability Act of 1988, outlined in Miss. Code. Ann. § 11-55-5(1), requires an award of attorney's fees after a finding that a party brought frivolous claims

FACTS

Shirley Smith Taylor and Tea Keeler filed election contests in the Quitman County Circuit Court after they lost their respective bids during the November 2019 elections for Quitman County Chancery and Circuit Clerk. Brenda Wiggs and T.H. Scipper requested that Taylor and Keeler be sanctioned and that the court award them attorney's fees under Miss. R. Civ. P. 11(b) and the Litigation Accountability Act of 1988. Following a two-day trial in July 2020, the circuit court dismissed the consolidated election contests with prejudice, finding that Taylor and Keeler pursued six frivolous claims. The circuit court only admonished Taylor, Keeler, and their attorneys for pursuing meritless allegations instead of awarding monetary sanctions. Wiggs and Scipper appealed.

ISSUES

Whether the circuit court erred by denying Wiggs and Scipper's request for attorney's fees under (1) Miss. R. Civ. P. 11(b) and (2) the Litigation Accountability Act of 1988.

HOLDING

(1) Because the circuit court's judgment did not create a definite, firm conviction that the court committed a clear error in judgment, and because the circuit court did not abuse its discretion by denying an award of attorney's fees, the circuit court's judgment to deny monetary sanctions under Miss. R. Civ. P. 11(b) was affirmed in part. (2) Because the circuit court erred in its application of the Litigation Accountability Act by failing to impose sanctions on Taylor and Keeler for bringing frivolous claims, the circuit court's judgment was reversed in part and remanded for proceedings to determine the amount of costs and reasonable attorney's fees owed to Wiggs and Scipper. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Quitman County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2020-EC-00909-SCT (Dec. 9, 2021)

Opinion by Justice Chamberlin

Hon. Jeff Weill Sr. (Quitman County Circuit Court)

Jamie F. Jacks & Daniel J. Griffith for Appellants - Margarett Meeks for Appellees

Briefed by [Emily Duck](#)

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WINFIELD V. MISS. BAR

CIVIL - BAR MATTERS

BAR MATTERS - REINSTATEMENT - REQUIREMENTS - For an attorney to be reinstated, they must (1) state the cause(s) for suspension or disbarment; (2) give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct; (3) make full amends and restitution; (4) show that he or she has the necessary moral character for the practice of law; and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

BAR MATTERS - REINSTATEMENT - TIME OF FILING - Miss. R. Discipline 12.1 was amended in July 2019 to require disbarred attorneys to wait at least five years before petitioning for reinstatement; attorneys disbarred before this date are governed by the rule prior to its amendment and need only wait three years before filing a petition for reinstatement

BAR MATTERS - REINSTATEMENT - POSITION OF THE BAR - Though not a requirement under Miss. R. Discipline 12, the Bar's support will bolster a petition for reinstatement

FACTS

Michael Winfield was disbarred in June 2017 by the Court and a complaint tribunal due to his mishandling of estate funds. In February 2021, Winfield filed his petition for reinstatement with the support of the Bar. Winfield's petition acknowledged violations of the Mississippi Rules of Professional Conduct and listed the names and current addresses of the persons that suffered potential pecuniary loss as a result of those violations. Winfield repaid the funds to the estate, never denied the actions leading to disbarment, and took full responsibility for those actions. He reported significant involvement in his church, submitted nineteen letters of recommendation, and worked since his disbarment as a paralegal learning how to manage cases. Further, Winfield passed both the Mississippi Bar Exam and the Multi-State Professional Responsibility Exam. Winfield sought reinstatement by the Court.

ISSUE

Whether Winfield satisfied the jurisdictional requirements for reinstatement.

HOLDING

Because Winfield provided an adequate account of the actions resulting in his suspension, identified and made full amends with the injured parties, and demonstrated the necessary moral character and requisite legal education, Winfield satisfied the jurisdictional requirements of Miss. R. Discipline 12. Therefore, the Supreme Court granted Winfield's petition for reinstatement.

Reinstatement Granted - 2021-BR-00128-SCT (Dec. 9, 2021)

En Banc Opinion by Justice Chamberlin

Pro se for Petitioner - Adam B. Kilgore for Respondent

Briefed by [Channing Curtis](#)

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SUPREME COURT - ORDERS

IN RE: CODE OF JUDICIAL CONDUCT

ORDER

ORDER

This en banc order by the Supreme Court, made in consideration of the Court's own motion, amends Canon 5F of the Code of Judicial Conduct. Canon 5F concerns the Judicial Election Oversight Committee. This amendment changes the committee's name from "Special Committee on Judicial Election Campaign Intervention" to "Judicial Election Oversight Committee" and gives the committee the obligation to "enforce the standards of judicial conduct in judicial elections." The amendment also removes the responsibility of the committee to "deal expeditiously with allegations of ethical misconduct" that was previously required under 5F(1). Additionally, the committee is no longer required but may publish all formal opinions as was previously required under 5F(4)(c). This amendment shall be published in the next edition of the *Mississippi Rules of the Court* and in the *Southern Reporter, Third Series (Mississippi Edition)*.

[Exhibit A](#), referenced in and attached to the order, shows the amended Canon 5F.

OBJECTION

Presiding Justice Kitchens argued that the majority's amendments to Canon 5F do nothing to enhance the ethical conduct in judicial elections. Rather, it weakens Canon 5F while attempting to maintain the illusion of support for ethical judicial elections. Therefore, he argued it would be best to leave Canon 5F as it existed before the order.

Ordered - 89-R-99013-SCT (Nov. 30, 2021)

En Banc Opinion by Justice Beam - Objection by Presiding Justice Kitchens
Briefed by [Anna Tucker](#)

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WHITTLE V. STATE

EN BANC ORDER

ORDER

Tremayne Whittle filed an Application for Leave to Proceed in the Trial Court. The Supreme Court found that Whittle's DNA claim did not meet the standard for excepting a request for DNA testing from the time bar, and that his Nurse's Scales Biological Laboratory claim was indiscernible. Further, the Court found that Whittle's hearsay and defective-indictment claims lacked any arguable basis to merit relief from the bars. Additionally, Whittle's newly-discovered-evidence and ineffective assistance of counsel claims were insufficient to merit relief from the bars. Therefore, the Court found that the petition should be denied. The Court also noted that this is the second unsuccessful post-conviction application Whittle has filed. The Court issued a warning that future filings deemed frivolous could result in monetary sanctions or in restrictions on Whittle's ability to file applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Whittle's Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Whittle's application for post-conviction relief did not merit relief and should be denied. However, he disagreed with the majority's decision to issue a warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued that an individual who, even incorrectly, believes that he has been deprived of her freedom should not be expected to sit silently by and wait to be forgotten. Further, he argued that imposing monetary sanctions on a criminal defendant proceeding in forma pauperis only serves to punish or preclude that defendant from the defendant's lawful right to appeal and ultimately violates a defendant's constitutional rights. Rather, he argued that the Supreme Court should only deny or dismiss motions that lack merit.

Denied with Sanctions Warning - 2018-M-01768 (Nov. 29, 2021)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice King
Briefed by [Garner Vance](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 7, 2021

COURT OF APPEALS - CIVIL CASES

BRYANT V. BRYANT

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - PROPERTY SETTLEMENT AGREEMENTS - A property settlement agreement cannot deprive the court of its authority to modify support and educational needs of a child

FAMILY LAW - CHILD CUSTODY - BEST INTEREST OF THE CHILD - The ultimate determination of the best interest of the child is a determination to be made by the court

FAMILY LAW - DIVORCE - PROPERTY SETTLEMENT AGREEMENTS - Property settlement agreements made by the parties should be enforced absent a finding of a material change of circumstance adversely affecting the children

FACTS

Jennifer and Kenneth Bryant divorced for irreconcilable differences in March 2016. They had three children born during their marriage and shared legal and physical custody. As part of the divorce, the parties entered a Property, Child Support, and Child Custody Agreement (“PSA”) that provided for all matters concerning the minor children. The PSA contained a specific provision regarding the children’s education. Further, it granted Kenneth final decision-making authority if the parties could not agree on major decisions concerning the children. In 2020, when the events surrounding this appeal occurred, Kenneth and his wife Alicia, a teacher in Lake Cormorant, lived in Hernando, as did Jennifer and the children. Per the PSA, the eldest child was enrolled in Magnolia Heights, a private school, and the younger children were starting kindergarten in the fall of 2020. Kenneth informed Jennifer that he would be enrolling all the children in the Lake Cormorant public school system. Subsequently, Jennifer filed a motion requesting that the chancellor order the children to attend Hernando public schools. The chancellor granted the motion. Additionally, at the request of Kenneth’s attorney, the chancellor ordered that if Kenneth could afford private school for all three children and if both parents decided that would be in the children’s best interests, Kenneth would be solely responsible for all costs associated with private school. Kenneth appealed.

ISSUE

Whether the chancellor erred in the order that the children attend a public school in Hernando and that if Kenneth wanted to send the children to private school, he was responsible for the payment of all tuition.

HOLDING

Because the chancellor’s finding that it was in the children’s best interest to be enrolled in the Hernando school district was not manifestly wrong, and because the final decision-making power afforded to Kenneth by the PSA could not usurp that of a chancellor to reevaluate the matter upon the motion of either party, the chancellor did not err. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

DISSENT

Presiding Judge Wilson argued that under PSA provision granting Kenneth final decision-making authority, Kenneth was entitled to decide where the children should attend school, and there was no legal basis for the chancellor to order the children to attend school in the Hernando school district. Further, he argued that the chancellor may modify legal custody and grant decision-making authority to the other parent, if there is proof of a material change in circumstances that adversely affects the child, which was not present here.

Affirmed - 2020-CA-00883-COA (Dec. 7, 2021)

Opinion by Judge Westbrooks - Dissent by Presiding Judge Wilson
Hon. Vicki B. Daniels (DeSoto County Chancery Court)
Jerry Wesley Hisaw for Appellant - Charles E. Winfield & Ashlyn Brown Matthews for Appellee
Briefed by [Carter Babaz](#)

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ELLIS V. OXFORD TRADING POST, LLC

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

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

CIVIL PROCEDURE - APPEALS - SUMMARY JUDGMENT - Where summary judgment dismisses some of the parties to a lawsuit, but not all of the parties, Miss. R. Civ. P. 54(b) allows the court to enter a final, appealable judgment as to the party dismissed only upon an expressed determination that there is no just reason for delay and upon an expressed direction for the entry of the judgment

CIVIL PROCEDURE - APPEALS - INTERLOCUTORY ORDERS - Interlocutory orders are not appealable and will be presently dismissed unless the Supreme Court grants permission to appeal under Miss. R. App. P. 5

FACTS

In 1974, while searching the Homochito River, Eugene Lewis, Eddie Ellis, and Jerry Haney found a Native American canoe. Shortly after, in that year, the three men agreed that each owned a one-third interest in the canoe and hired counsel to draft a written agreement reflecting such. In 1976, Ellis signed a handwritten document assigning his interest in the canoe to Haney. Linda Jo, Ellis's wife, was unaware of this document but agreed the signature was her husband's. When Haney died in 1999, his interest in the canoe passed to his son, Terry, and he gave him the document bearing Ellis's signature. Haney also informed his son that the other discoverer of the canoe, Lewis, had signed a similar document, though this was disputed by Lewis. Lewis testified that Haney's wife, Marjorie, had asked him to sign a similar document but he refused. In 2014, Terry sold the canoe to Oxford Trading Post, LLC ("OTP") for \$5,500. At the time of the sale, Terry gave OTP's representative, Jeremy Brock Smith, a copy of Ellis's assignment of his interest, an affidavit from Marjorie stating that both Ellis and Lewis had conveyed their interest in the canoe to Haney, and Terry's own affidavit that he was the sole owner of the canoe. OTP then sold the canoe to John L. Morris and White Oak Ventures that same year for \$35,000. Both Linda Jo and Lewis were unaware of the sale until Linda Jo's daughter discovered the canoe for sale on OTP's website. Linda Jo and Lewis sued Smith, OTP, Morris, and White Oak in the Adams County Circuit Court in 2015. Eventually, Linda Jo and Lewis amended the complaint to include Terry and Marjorie as defendants, and the case was transferred to the Lafayette County Circuit Court under the doctrine of forum non conveniens. Linda Jo and Lewis alleged that Terry and Marjorie intentionally, or with gross negligence, misrepresented to the other defendants that they owned the canoe. They also alleged that Smith, OTP, Morris, and White Oak intentionally, or with gross negligence, failed to conduct due diligence to determine the true ownership of the canoe. They alleged that all defendants acted in concert and conspired to deprive them of their rightful interests in the canoe and demanded a share of the sale proceeds or a return of the canoe. OTP, with no other defendant joining, filed a motion for summary judgment in 2019, claiming there was no genuine issue of material fact as to whether OTP intentionally or with gross negligence failed to discern ownership of the canoe or conspired to deprive Linda Jo and Lewis of their ownership rights. The Lafayette County Circuit Court granted the motion in 2021, disposing only the claims against OTP since no other defendant joined the motion. Linda Jo and Lewis appealed.

ISSUE

Whether the circuit court erred in granting summary judgment in favor of OTP.

HOLDING

Because the circuit court’s judgment did not dispose of all claims against all parties, it was not an appealable final judgment; because the circuit court judgment did not contain the express certifications required by Miss. R. Civ. P. 54(b) to render summary judgment as to one defendant appealable, the judgment was interlocutory and not appealable; and because Linda Jo and Lewis had not sought permission of the Supreme Court under Miss. R. App. P. 5 to appeal the circuit court’s interlocutory order, the Court of Appeals lacked jurisdiction. Therefore, the Court of Appeals dismissed the appeal from the judgment of the Lafayette County Circuit Court.

Appeal Dismissed - 2021-CA-00247-COA (Dec. 7, 2021)

Opinion by Judge McDonald

Hon. Kent E. Smith (Lafayette County Circuit Court)

Thomas M. McNeely Jr. & Lucien C. Gwin Jr. for Appellants - Richard Runft Barrett for Appellee

Briefed by [Morgan Jones](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

ROWSEY V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURE - SUPREME COURT’S PERMISSION - If a case is affirmed on direct appeal, the petitioner must receive permission from the Supreme Court to seek post-conviction relief in the circuit court

POST-CONVICTION RELIEF - SUPREME COURT’S PERMISSION - JURISDICITON - If the petitioner falls to get permission from the Supreme Court to seek post-conviction relief in a circuit court, the circuit court lacks jurisdiction to hear the motion

FACTS

In October 1995, James Rowsey was convicted of murder by the circuit court and was sentenced to life imprisonment. In February 1998, the Court of Appeals affirmed Rowsey’s conviction and sentence on direct appeal. In 2006, Rowsey filed an application for leave in the Supreme Court requesting permission to file a post-conviction relief (“PCR”) motion in the circuit court. The request was denied by the Supreme Court in July 2006. In October 2020, Rowsey filed a PCR motion in the circuit court asking for a reversal of his conviction. That motion was dismissed in January 2021 because the circuit court determined Rowsey failed to get permission from the Supreme Court as required by law. Rowsey appealed.

ISSUE

Whether the circuit court erred by dismissing Rowsey’s PCR motion for lack of jurisdiction.

HOLDING

Because Rowsey’s conviction and sentence were affirmed on direct appeal, and because Rowsey failed to obtain permission from the Supreme Court to file his PCR motion in the circuit court, the circuit court lacked jurisdiction to consider the motion. Therefore, the Court of Appeals affirmed the judgment of the Panola County Circuit Court.

Affirmed - 2021-CP-00143-COA (Dec. 7, 2021)

Opinion by Judge Smith

Hon. Smith Murphey (Panola County Circuit Court, Second Judicial Dist.)

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

Briefed by [William Doherty](#)

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COURT OF APPEALS - CRIMINAL CASES

JONES V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - PROCEDURAL BARS - STATUTE OF LIMITATIONS - Miss. R. Crim. P. 25.3 constructively denies all post-trial motions not ruled upon after thirty days; Miss. R. App. P. 4(a) requires all notices of appeal to be filed within thirty days after the date of entry of the judgment or order appealed from

CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY OF EVIDENCE - When determining the sufficiency of the evidence, the court must ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt; if a reasonable trier of fact could evaluate all the evidence and find the essential elements of the charged crime to be proven beyond a reasonable doubt, the court will uphold the jury's verdict

CRIMINAL PROCEDURE - EVIDENCE - JURY RESPONSIBILITIES - The jury carries the responsibility to listen to the evidence, observe the demeanor of the witnesses, and decide the credibility of the witnesses and what weight to give any particular piece of evidence; the jury alone determines the weight and worth of any conflicting testimony

CRIMINAL PROCEDURE - EVIDENCE - WEIGHT OF EVIDENCE - When reviewing a challenge to the weight of the evidence, the appellate court must determine whether the trial court abused its discretion; when determining if a trial court abused its discretion in denying a motion for new trial, the appellate court will weigh the evidence in the light most favorable to the verdict and will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

In February 2015, Dae'Shon Jones was convicted of kidnapping and aggravated assault in relation to a January 2014 incident at his home during which Dimitri Milsap was bound with duct tape, put in a closet for three hours, and subsequently forced to sit in a bathtub full of scalding hot water, leaving him with third-degree burns. At Jones's criminal trial, several of the State's witnesses testified that Jones helped kidnap Milsap and was present when Milsap was forced into the bathtub full of hot water. However, two of those witnesses were questioned about conflicting statements they had previously given in which they failed to implicate Jones as having participated in the incident. Nevertheless, each of those witnesses testified that the series of events described in court was true, and the officer who took those conflicting statements testified that he did not force either of those witnesses to incriminate Jones. The defense then called as a witness Marketa Moore, who lived in Jones's home but was gone for work for most of the day in question. Moore testified that she did not see Jones or know where Jones was on the day of the incident. Jones then testified on his own behalf, claiming that he did not become aware of what happened to Milsap until police officers came to his home at a later date to execute a search warrant. He further testified that he had left his home on the morning of the day in question to go to Hattiesburg, not returning until early the following morning. Jones proceeded to claim that the other witnesses were lying about his involvement and whereabouts on the day of the incident, specifically testifying that Moore had dropped Jones off at his grandmother's house that morning before he left for Hattiesburg. Nonetheless, Jones was convicted in February 2015 on one count of kidnapping and one count of aggravated assault. Jones filed a motion for judgment notwithstanding the verdict and a motion for new trial, but the court denied both motions. Notably, the trial court did not issue its denial until February 2020, five years after Jones filed those motions, despite Miss. R. Crim. P. 25.3 having been adopted and made effective in July 2017. Rule 25.3 constructively denies any post-trial motion not ruled upon after thirty days, meaning that Jones's motions should have long since been denied, leaving any appeal thereof procedurally barred by Miss. R. App. P. 4(a). Jones appealed.

ISSUES

Whether (1) Jones’s appeal was procedurally barred; (2) the trial court erred in holding the evidence presented at trial was sufficient to support Jones’s convictions of kidnapping and aggravated assault; and (3) the trial court erred in holding the jury’s verdict was not contrary to the overwhelming weight of the evidence.

HOLDING

(1) Because justice and fundamental fairness required a suspension of the rules so that Jones could proceed with his direct appeal of the trial court’s denial, the Court of Appeals suspended the relevant rules and allowed Jones’s appeal to proceed. (2) Because the evidence presented at trial could have led a reasonable trier of fact to find that the State proved the essential elements of kidnapping and aggravated assault beyond a reasonable doubt, the trial court did not err in holding the evidence presented at trial was sufficient to support Jones’s convictions. (3) Because the jury was presented with sufficient evidence to convict Jones of kidnapping and aggravated assault, and because the trial court did not abuse its discretion, the trial court did not err in holding the jury’s verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Jasper County Circuit Court.

Affirmed - 2020-KA-00366-COA (Dec. 7, 2021)

Opinion by Judge Lawrence

Hon. Eddie H. Bowen (Jasper County Circuit Court, First Judicial Dist.)

Larry Stamps & Anita M. Stamps for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [John C. Nelson, Jr.](#)

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RICKS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - AGGRAVATED ASSAULT - ELEMENTS - If, after review, the court finds that any rational trier of fact could have found each and every one of the elements of the crime beyond a reasonable doubt, when viewing the evidence in the light most favorable to the prosecution, the verdict must stand

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - Miss. Code Ann. § 97-3-7(2)(a) provides that a person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life

CRIMINAL LAW - ELEMENTS OF A CRIME - INTENT - The presumption of the law is that each person intends the natural consequences of his actions, but in cases where intent is not expressly evident, it can still be shown through the acts of the person involved at the time, and by showing the circumstances surrounding the incident

FACTS

McAndrew Ricks, an inmate at the Leake County Jail, was charged with aggravated assault for causing serious bodily injury to another inmate, Ricky Jackson, when Ricks poured hot coffee on Jackson during an altercation between the two at the jail. When Jackson wiped a piece of rice off his table onto the floor in the common area, Ricks, who was responsible for cleaning the common area, asked Jackson to sweep up the rice. Ricks handed a broom to Jackson, and verbal threats were exchanged, which included Ricks’s threat to throw his coffee on Jackson. At trial, the two inmates’ testimonies conflicted over whether Jackson had “jabbed” Ricks with the broomstick after Ricks’s threat to pour his coffee on Jackson. Nonetheless, on cross examination, Ricks admitted to making his threat prior to supposedly being poked with the broomstick. The jury found Ricks guilty, and, in September 2020, the trial court entered its judgment convicting Ricks of aggravated assault pursuant to Miss. Code Ann. § 97-3-7(2)(a). Ricks filed a motion for a new trial or for JNOV. The trial court denied the motion. Ricks appealed.

ISSUE

Whether the State provided sufficient evidence to prove Ricks intended to cause serious bodily injury to Jackson when he poured his hot coffee on him to support a conviction for aggravated assault.

HOLDING

Because Ricks admitted that he threatened to pour hot coffee on Jackson before Jackson ever touched him with the broomstick, and because Ricks said he had no intention to pour the coffee on Jackson until after Jackson poked him with the broomstick, there was sufficient evidence that would lead a reasonable trier of fact to find that the essential elements of aggravated assault had been proved beyond a reasonable doubt. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

Affirmed- 2020-KA-01089-COA (Dec. 7, 2021)

Opinion by Judge Lawrence

Hon. Mark Sheldon Duncan (Leake County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Regan Monk](#)

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WALKER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - BURDEN OF PROOF - INDICTMENT - Although the State has the burden of proof as to all the essential elements of the crime, the State is not required to prove factual information included in an indictment where that information is not an essential or necessary element of the crime or where the information does not change the crime charged

CRIMINAL LAW - CRIMES AGAINST THE GOVERNMENT - FALSE REPRESENTATIONS - Miss. Code Ann. § 97-7-10 provides in relevant part: “[w]hoever, with intent to defraud the state or any county, or other subdivision of state or local government, knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall, upon conviction, be punished...”

CRIMINAL LAW - INDICTMENT - VARIATIONS - Not every variance between the language of an indictment and the proof is material so as to require reversal based upon that variation; rather, the central question is whether the variance is such as to substantially alter the elements of proof necessary for a conviction

EVIDENCE - CRIMES OR OTHER BAD ACTS - EXCEPTION - Miss. R. Evid. 404(b)(1) generally provides that evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with that character; however, it is well-settled that a defendant who “opens the door” to the particular issue runs the risk that collateral, irrelevant, or otherwise damaging evidence may come in on cross-examination

CRIMINAL LAW - BAD ACT EVIDENCE - PREJUDICE - Under *Martin*, it is not per se prejudicial for a jury to hear an isolated instance of a crim or bad act during the course of trial; thus, the burden is properly on the defense counsel to seek a mistrial or ask for a limiting instruction

EVIDENCE - WARRANTLESS SEARCH - PRIVACY - A prisoner has no expectation of privacy in their prison cell, thus the Fourth Amendment prohibitions on warrantless search and seizures do not apply; the limited privacy rights of a prison inmate in a contraband cell phone and its contents are a case-specific exception allowing warrantless search and seizure

CRIMINAL PROCEDURE - RIGHT TO COUNSEL - WAIVER - If the defendant still wishes to waive their right to counsel after the court conforms with the requirements of Miss. R. Crim. P. 7.1(c), the court must determine if the waiver is exercised knowingly and voluntarily and make their finding a matter of record

CRIMINAL PROCEDURE - RIGHT TO COUNSEL - HYBRID COUNSEL - Hybrid representation exists when an attorney continues to participate in the trial after a defendant decides to proceed pro se; hybrid representation of a defendant is sufficient representation to satisfy a defendant’s right to council and moot claims over proper waiver of right to counsel

CRIMINAL PROCEDURE - JURY VENIRE - CONSTITUTIONALITY - Miss. Code Ann. § 13-5-1’s exclusion of persons under twenty-one from jury venire is consistently held to be a constitutional exclusion requiring

more than vague assertions; to show violation of the fair cross-section requirement of a jury venire requires the defendant to show the distinctive group is not only underrepresented on the defendant's jury, but across other juries in the same jurisdiction

FACTS

Demario Walker was indicted for making and using a fraudulent court order with intent to defraud the government in violation of Miss. Code Ann. § 97-7-10. The indictment provided, in part, that Walker “on or between June 15, 2017, and June 16, 2017, with the intent to defraud the Circuit Court...unlawfully, willfully, feloniously, and intentionally...prepared and submitted to the Circuit Court [C]lerk of Greene County, Mississippi, a court order Granting Motion to Provide Records, Granting Motion for Legal Assistance, and granting Motion for Summary Judgment, which contained the false signature of Judge Kathy King Jackson...” In August 2018, Walker was arraigned and in February 2020, Walker was tried. During the State's case-in-chief, Alicia Box, the chief records officer for the Mississippi Department of Corrections (“MDOC”), testified that on June 15, 2017, she received a phone call from someone who identified “herself” as a court official and requested documents from Walker's prison records. Box said she scanned the documents and forwarded them to the email address provided by the caller (court.docs.orders@usa.com). The next morning, Box received an email from the email address provided by the caller with an attached document with an uncertified order purportedly electronically signed by Judge Jackson. The order was entitled “Order Granting Motion to Provide Records, Granting Motion for Legal Assistance, and granting Motion for Summary Judgment” (“the *Walker* order”). The *Walker* order provided, among other relief, that Box was to provide Walker with a full and complete copy of his prison record at no cost to him upon receipt of the order or not less than fourteen days. Box testified that she forwarded the order the MDOC's records office and then notified her supervisor because it was unusual for her to receive those types of orders and requests by email. Box and her supervisor alerted MDOC's Criminal Investigations Division (“CID”) of the situation and turned over the emails and orders. Then, Cecelia Bounds, the Greene County Circuit Court Clerk, testified for the State. Bounds testified that on the morning of June 16, 2017, she received a phone call where the caller was asking for information in Walker's case. Bounds testified that the call caught her attention because the call was from a 202-area code, which was not a local area code. Bounds stated that the caller introduced themselves as Walker's representative and asked whether an order had been filed in Walker's case. Bounds told the caller that she did not give that information over the phone and the call ended. Bounds testified that later that morning, she received another phone call from the same number where the caller purported to be an MDOC representative and asked whether an order had been filed in Walker's case. During the call, Bounds testified that she heard an intercom go off in the background from the caller's end, which set off “red flags” in her mind because it made Bounds think the caller was an inmate in the prison. Bounds said she thought the voice on the phone was very similar to Walker's voice. After the phone calls, Bounds contacted Investigator James Cooksey of MDOC's CID and told him she thought the calls came from an inmate. Further, Bounds testified that she received a phone call from an MDOC official requesting verification of orders MDOC had received and requesting certified copies of the orders. Bounds identified the *Walker* order as one of those orders. Bounds testified that she did not have the orders in her files so she asked the official to email her the uncertified order. When Bounds received the order, she immediately recognized that the signature on the order was not Judge Jackson's signature; she also knew that Judge Jackson did not nothing electronically. Bounds testified that the *Walker* order had a valid numerical style of a case pending in the Greene County Circuit Court, but it was not the correct cause number for Walker's case, which also indicated to her that it was an invalid order. Chief Investigator Cooksey testified that he contacted his supervisors after Bounds told him that an inmate was calling the clerk's office. Cooksey was advised that the suspected inmate should be placed on lockdown and his belongings should be searched for the cell phone. SMCI inmate Marcus Morris testified that he was told to Walker's belongings, but he did not find a cell phone while packing Walker's belongings. Officers Adrian Keys and Christopher Woolman searched Walker and his belongings, discovering a cell phone charger hanging between Walker's legs. The officers searched Walker's belongings and found a cell phone wrapped in cellophane inside a coffee cup full of coffee. Chief Investigator Cooksey and Investigator Russell Houston used computer software to extract the cell phone's contents and found text messages and email accounts that linked the phone to Walker and the fraudulent orders. The Investigators also found that Walker had made phone calls to SMCI and the Green County Circuit Clerk's Office, and that there was evidence Walker was using fake names to file fraudulent tax returns. The State rested, and the defense moved for a direct verdict, asserting the State failed to prove Walker had submitted a fraudulent document to the County Circuit Clerk. The directed verdict motion was denied. Walker took the stand in his own defense, and admitted that he

used the cell phone but maintained that it was shared by other inmates. He also testified that he used the cell phone to send out business emails, and he denied that he drafted or attempted to transmit the orders. The jury found Walker guilty of fraudulent statements and representations, and the trial court sentenced Walker as a nonviolent habitual offender to serve five years in MDOC's custody and ordered Walker to pay a \$7,500 fine. Walker appealed.

ISSUES

Whether (1) the State increased its burden of proof regarding the “use[d]” element of the statute by naming the Greene County Circuit Court Clerk in the indictment; (2) the jury heard ample evidence that the *Walker* order was fraudulent; (3) the jury could reasonably infer that Walker knew that the *Walker* order was fraudulent and that he made it with intent to defraud; (4) there was sufficient evidence before the jury to allow it to reasonably infer that Walker knowingly and willfully used the fraudulent *Walker* order with the intent to defraud the MDOC, and, in turn, the circuit court and circuit clerk; (5) the trial court constructively amended Walker's indictment; (6) the trial court erred in allowing the State to elicit testimony regarding his use of the cell phone to conduct illegal activities; (7) Investigator Smith's reference to the cell phone's contents impermissibly prejudiced Walker's case; (8) the trial court erred in denying a motion to suppress evidence based on the warrantless search of a cellphone; (9) the trial court erroneously failed to obtain a knowing and voluntary waiver of Walker's right to counsel before allowing him to proceed pro se; (10) the trial court erroneously forced Walker to represent himself; (11) Walker's right to counsel was violated by a failure to provide pre-indictment counsel; (12) it was reversible error for the trial court to allow Judge Jackson to testify despite the State's failure to disclose her as a witness; (13) the trial court erred in denying Walker's motion for additional funds to employ an independent investigator; (14) Miss. Code Ann. §§ 13-5-1 and 13-5-8 unconstitutionally excluded distinctive groups from jury venire; (15) the jury venire was a fair cross-section of Greene County's citizens; (16) the trial court abused its discretion when it did not allow Walker to “get some of this information” and re-urge his motion on potential systematic exclusion in the jury venire; and (17) having only four African American females out of 150 individuals in Walker's jury venire proves the systematic exclusion of African American individuals from jury venires.

HOLDING

(1) Because the particular governmental entity receiving the fraudulent order was not an essential or necessary element of the crime under Miss. Code Ann. § 97-7-10, nor did the particular entity receiving the fraudulent order change the crime charged, the issue was without merit. (2) Because the testimony of both Judge Jackson and Circuit Clerk Bounds made clear that Judge Jackson did not use an electronic signature and that she did not sign the order, and because Bounds testified that there was no case pending in the circuit court with the cause number contained on the order, the jury heard ample evidence that the *Walker* order was fraudulent. (3) Because the State presented sufficient evidence that Walker made the fraudulent *Walker* order on the contraband cell phone, and because the evidence showed that Walker had an incentive to pursue relief through the fraudulent order based on his previous inability to obtain his prison records from the MDOC just weeks before the *Walker* order was prepared, the jury could reasonably infer that by making the *Walker* order, Walker intended to fraudulently manipulate the circuit court system to obtain his prison records by a Senior Circuit Court judge, rather than pursue any further requests directly through the MDOC. (4) Because Walker's testimony that he represented himself in the case and Bound's testimony regarding the 202 area code would allow a jury to reasonably infer that Walker knew that before complying with the non-certified *Walker* order that an MDOC official would need to confirm its validity with the circuit court, there was sufficient evidence for the jury to reasonably infer that Walker knowingly and willfully used the fraudulent *Walker* order with the intent to defraud the MDOC, and, in turn, the circuit court and circuit clerk. (5) Because the indictment contained the essential elements of the crime under Miss. Code Ann. § 97-7-10, because the factual allegation that the fraudulent order was submitted to the Greene County Circuit Court Clerk was not a necessary or essential element of the charge, and because the variance between the indictment and the proof did not materially affect Walker's overall defense that he did not commit the crime charged at all, there was no material variation to warrant reversal and Walker's indictment plainly put him on notice that he was charged with violating Miss. Code Ann. § 97-7-10. (6) Because the use of the taxtax006@gmail.com email address and whom it may have belonged to was initiated by Walker in an attempt to show there was no link between him and the account, and because Walker pursued such line of questioning even after he was warned that it could lead to further questioning by the State concerning underlying circumstances surrounding the emails, the trial court did not abuse its discretion in allowing the State to continue the line of questioning about the email account in attempting to identify “Michael” or “Kendrick Crockett” and link the improper use of that account to Walker. (7) Because the trial court

ultimately sustained Walker's objections to the "scam" text, but Walker failed to seek a limiting instruction or move for a mistrial, the issue was without merit. (8) Because Walker's phone was contraband found in his prison cell and he had no legitimate privacy interest in the contents of the contraband cellphone, and because the government had a substantial interest in enforcing its rules and the laws of the State, the warrantless search of the contraband cell phone did not violate Walker's rights under the Fourth Amendment or Article III, Section 23 of the Mississippi Constitution, and the trial court did not err in denying a motion to suppress evidence based on a warrantless search. (9) Because Walker still wanted to proceed pro se after the trial court followed the requirements of Miss. R. Crim. P. 7.1(c), and because the trial court explicitly ascertained on the record that Walker wanted to proceed pro se, the trial court did not fail to obtain a knowing and voluntary waiver of Walker's right to counsel before allowing him to proceed pro se. (10) Because an attorney shared equal responsibility in Walker's defense and continued to participate in the trial after Walker opted to proceed pro se, the trial court did not erroneously force Walker to represent himself. (11) Because Walker knowingly, intelligently, and voluntarily waived his right to counsel at the September 2019 competency hearing and still had the benefit of standby counsel's input, and because the record reflected that Walker had the assistance of hybrid counsel during trial, Walker failed to show an adverse effect or prejudice sufficient to find violation of a right to provide pre-indictment counsel. (12) Because Walker objected to the testimony at the end of Judge Jackson's direct examination, and because Walker knew the contents of Judge Jackson's testimony since November 2019, the trial court allowing Judge Jackson's testimony was not reversible error. (13) Because there was no conflict of interest between Walker and the State investigators, and because Walker failed to develop any substantiated assertions that the State purportedly deleted data from the extraction report on his phone, Walker failed to present concrete reasons supporting an allocation of funds for an independent investigator, and the trial court did not abuse its discretion in denying Walker's motion for additional funds. (14) Because the exclusion of persons under the age of twenty-one from jury service does not violate the federal constitution, and because Walker provided no evidence to support his assertion that "young adults, blacks, Hispanics, poor people, and other segments of the community" traditionally do not vote, Miss. Code Ann. §§ 13-5-1 and 13-5-8 do not unconstitutionally exclude distinctive groups. (15) Because Walker failed to provide the trial court with any data or evidence that African Americans, individuals between the ages of twenty-one and thirty, or indigent individuals were underrepresented on jury venires compares to the number of those persons in Greene County, and because Walker failed to offer any proof that the alleged underrepresentation of the groups he identified was based on the systemic exclusion in the jury process, Walker failed to furnish support for his claim that the jury venire was not a fair cross-section of Greene County citizens. (16) Because Walker failed to preserve the issue for appellate review, and because Walker failed to identify what information he sought besides purported statements from inmates describing jury venires in their trials, which he did not describe in detail, nor did he proffer any such statements as required by Miss. R. Evid. 103(a)(2), the trial court did not err in denying Walker's request to furnish "some information" at some future date just one day before trial. (17) Because Walker did not offer any evidence in the trial court of the racial composition of Greene County or evidence of "systematic exclusion" of any distinctive group in the jury selection process, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Greene County Circuit Court.

Affirmed - 2020-KA-00228-COA (Dec. 7, 2021)

Opinion by Presiding Judge Carlton

Hon. Dale Harkey (Greene County Circuit Court)

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

Briefed by [Samuel Taylor Rayburn](#) & [Evan Thomas](#)

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WINTERS V. STATE

CRIMINAL - FELONY

EVIDENCE - CHARACTER EVIDENCE - USES - Pursuant to Miss. R. Evid. 404(b), evidence of a crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion, the person acted in

accordance with the character, but it is permitted for proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - JURY INSTRUCTION - Special instruction for the burden of proof in circumstantial evidence cases is not required, as the “beyond a reasonable doubt” standard is the only burden of proof for both direct and circumstantial evidence cases

CRIMINAL LAW - CONTROLLED SUBSTANCES - POSSESSION - Pursuant to Miss. Code. Ann. § 41-29-139(c)(1)(D), it is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except otherwise authorized

CRIMINAL LAW - VERDICTS - WEIGHT OF EVIDENCE - An appellate court’s role is to view the evidence in the light most favorable to the verdict and disturb the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable justice

FACTS

On February 3, 2019, Clinton Winters and Kimberly King used Facebook Instant Messenger to plan to meet at her residence in Pope and smoke methamphetamine later that day. They spent the next several days smoking meth and visiting casinos in Tunica. On February 8, 2019, Winters had a meeting with his federal probation officer in Batesville. While en route, he and King stopped at a gas station where Investigator Justin Maples and Officer Beau Dickson were waiting to arrest him for stealing a trailer. Winters gave his meth to King to hide on her person before they exited the vehicle. Maples and Dickson smelled marijuana on King and Winters during questioning. Maples then arrested Winters for grand larceny and searched him and his vehicle for drugs. After no drugs were found on Winters, Dickson turned to King. She immediately handed over two marijuana cigarettes, Winters’s hidden meth, a glass pipe, and a meth-filled flashlight. Both were arrested and taken to the police station for additional questioning. Winters and King provided statements to the police after waiving their *Miranda* rights. King gave a written statement, claiming no knowledge of Winters stealing a trailer or the contents of the flashlight while bolstering her voluntary abandonment of Winters’s hidden meth. Winters gave an audio statement alleging that Marcus Price asked him to relocate a trailer from Batesville to Webb. Price had given him \$1,200, a quarter sack of marijuana, and meth. His written statement reiterated the method of payment, and he told officers that the meth from Price was found on King. The State indicted Winters for possession of ten to thirty grams of meth in October 2019. His trial commenced on June 1, 2020. King, acting as the State’s star witness, testified that Winters used Facebook Messenger to ask her to do drugs with him. Those messages, along with King’s written statement, were introduced into evidence by the State. She also testified that she was holding on to Winters’s meth in Batesville. Maple and Dickson testified, detailing their account of the incident at the gas station and the resulting arrests. They then authenticated Winters’s statements’ admission into evidence. A forensic scientist for the State testified that there were 1.819 grams of meth in the flashlight, and King held 11.756 grams of meth for Winters. As the only witness testifying on his behalf, Winters denied the Facebook messages, the meth that was found on King’s person, and the audio and written statements taken at the police station. The jury found him guilty of possession of a controlled substance pursuant to Miss. Code. Ann. § 41-29-139(c)(1)(D). Winters filed a motion for judgment notwithstanding the verdict, or alternatively, a new trial. The circuit court denied the motion. Winters appealed.

ISSUES

Whether (1) the circuit court erred in allowing information related to Winters’s grand larceny charge and prior felony convictions into evidence under Miss. R. Evid. 404(b); (2) the circuit court erred in denying Winters’s request for a circumstantial evidence instruction; (3) there was insufficient evidence to support Winters’s conviction of possession of a controlled substance; and (4) the verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because Winters did not object to the evidence with specificity in the trial court, and because the State could not tell the complete story about Winters’s conduct without including his probation officer, the circuit court did not err in allowing information related to Winters’s grand-larceny charge and prior felony convictions under Miss. R. Evid. 404(b). (2) Because the State presented direct evidence that Winters was in possession of a controlled substance, because the Supreme Court overruled the need for a special jury instruction for circumstantial evidence, and because the jury instruction properly articulated the applicable law, the circuit court did not err by denying Winters’s request for a circumstantial evidence instruction. (3) Because constructive possession only requires the controlled substance to be

found near the person, because evidence is viewed in the light most favorable to the State, and because a reasonable trier of fact could have found that the State proved Winters's possession of a controlled substance beyond a reasonable doubt, there was sufficient evidence to support Winters's conviction of possession of a controlled substance. (4) Because the State presented eyewitness testimony and Winters's written statement as evidence, the verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Panola County Circuit Court.

Affirmed - 2020-KA-00809-COA (Dec. 7, 2021)

Opinion by Judge Lawrence

Hon. Smith Murphey (Panola County Circuit Court, Second Judicial Dist.)

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

Briefed by [Idena Allen](#)

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