

MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 17, 2022**COURT OF APPEALS - CIVIL CASES****CARTER V. TOTAL FOOT CARE****CIVIL - MEDICAL MALPRACTICE**

CIVIL PROCEDURE - SUMMARY JUDGMENT - NONMOVANT'S BURDEN - In opposition to the motion, the nonmoving party must show there is significant probative evidence that such an issue of fact exists; mere allegations unsupported by detailed and precise facts are not sufficient

CIVIL PROCEDURE - DISCOVERY - ADMISSIONS - Miss. R. Civ. P. 36 provides that requests for admissions propounded, which remain unanswered, are deemed admitted and that any matter admitted under the rule is conclusively established, unless the court on motion permits withdrawal or amendment of the admission

FACTS

In 2019, Dr. Michael Zaleski removed Gloria Carter's left gangrenous toe at Total Foot Care. In February 2020, Carter filed suit in the United States District Court for the Southern District of Mississippi against Dr. Zaleski and Total Foot Care alleging medical malpractice among other claims. In October 2020, the district court dismissed the case for lack of jurisdiction. Carter subsequently filed a complaint in Lamar County Circuit Court alleging the same claims. In December 2020, Total Foot Care and Dr. Zaleski served Carter with requests for admission which she failed to timely respond to and instead filed a "Motion to Consolidate Interrogatory, RFA, and RFP from the District Court with this Court in the Interest of Judicial Economy for Both Parties." Carter contended that the discovery completed in the district court suit should be consolidated for the circuit court to avoid "repetitive discovery." Total Foot Care and Dr. Zaleski filed a Motion for Acknowledgment of Deemed Admissions and for Summary Judgment, alleging that Carter's failure to deny the requests for admissions established that Dr. Zaleski did not breach the standard of care. Carter filed a response in opposition to the motion for summary judgment arguing that she informed Total Foot Care and Dr. Zaleski that the discovery for this case was done in district court. Carter attached an expert report in which a doctor opined that Carter did not receive the proper standard of care, but she did not attach an affidavit from the expert. Carter attached her own affidavit attempting to establish a breach of the standard of care. Carter's attorney did not file a motion to withdraw or amend the admissions that were deemed admitted in accordance with Miss. R. Civ. P. 36. After reviewing supplemental briefings on whether responses to requests for admissions filed in federal court could serve as responses to "similar or the same" requests for admissions filed in circuit court, the circuit court granted summary judgment for Total Foot Care and Dr. Zaleski with prejudice because Carter failed to respond to the requests for admission. Since the matters within the requests were deemed admitted, the issue of the standard of care was conclusively established. Carter appealed.

ISSUE

Whether the trial court erred in granting summary judgment for Total Foot Care and Dr. Zaleski.

HOLDING

Because Carter's failure to timely respond to Total Foot Care and Dr. Zaleski's requests for admissions resulted in a conclusive admission that Dr. Zaleski did not breach the standard of care, the trial court did not err in granting summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2021-CA-00610-COA (May 17, 2022)

Opinion by Judge Lawrence

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

Abby Gale Robinson for Appellant - Benjamin Blue Morgan, Romney Hastings Entrekin & Peeler Grayson Lacey Jr. for Appellees

Briefed by [Meagan Guyse](#)

[Click here to view the full opinion](#)

CUNNINGHAM V. MISS. DEP'T OF CORR.

CIVIL - STATE BOARDS & AGENCIES

JUDICIAL REVIEW - APPEALS - SUFFICIENT RECORD - It is the responsibility of the appellant to provide the court with a record sufficient to review any asserted issues

JUDICIAL REVIEW - PRETRIAL DETENTION - CREDIT FOR TIME SERVED - A prisoner cannot receive credit twice for the same pretrial jail time served for multiple cases

FACTS

In June 2014, Kenneth Cunningham was arrested in Neshoba County on three separate charges of possession of controlled substances. In August 2015, Cunningham was transferred to Lauderdale County. In March 2016, Cunningham was convicted in Neshoba County and was sentenced to time served as reflected on his commitment order, including the 419 days of pretrial detention he spent in Neshoba County before he was transferred. In August 2015, Cunningham was convicted in a separate case in Lauderdale County and sentenced as a habitual offender to serve consecutive terms of seven years followed by one day of a twenty-five-year term in Mississippi Department of Corrections (“MDOC”) custody. In November 2019, Cunningham filed a request for administrative relief, claiming that he was never sentenced in Neshoba County and that the 419 days of pretrial detention he served there should be credited towards his current sentences. MDOC denied the request as time-barred. In June 2019, Cunningham filed a second request for administrative relief, which was also denied by MDOC. Cunningham proceeded to file a motion for judicial review in the circuit court. In response, the circuit court held that MDOC erred by simply denying Cunningham’s first administrative-remedy request as time-barred; however, the circuit court ultimately denied Cunningham’s motion for judicial review, holding that Cunningham’s 419 days of pretrial detention in Neshoba County had already been applied towards his previous sentence in Neshoba County and therefore could not also be applied to his current sentences in Lauderdale County. Cunningham appealed.

ISSUE

Whether the circuit court erred in denying Cunningham’s motion for judicial review.

HOLDING

Because Cunningham failed to provide any supporting documents to serve as a factual founding for his appeal, and because Cunningham received credit for his pretrial detention in Neshoba County, there was insufficient evidence to demonstrate that the circuit court erred by denying Cunningham’s motion for judicial review. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2021-CP-00428-COA (May 17, 2022)

Opinion by Judge Smith

Hon. Margaret Carey-McCray (Sunflower County Circuit Court)

Pro se for Appellant - Kimberly Pine Turner & Melissa Ashley Martin Gray (Att’y Gen. Office) for Appellee

Briefed by [Macy Walters](#)

[Click here to view the full opinion](#)

HOOD V. A & A EXCAVATING CONTRACTORS, INC.

CIVIL - PROPERTY DAMAGE

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - THREE YEARS - Pursuant to Miss. Code Ann. § 15-1-49(1), all actions for which no other period of limitations shall be commenced within three years next after the cause of such action accrued, and not after

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DISCOVERY RULE - Pursuant to Miss. Code Ann. § 15-1-49(2), in actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - CONTINUING TORTS - A continuing tort sufficient to toll a statute of limitations is occasioned by continual unlawful acts, not by continual ill effects from an original violation

FACTS

The home of Anthony and Barbara Hood flooded in February 2016, March 2016, and January 2017. The Hoods initially believed the City of Pearl (“City”) was responsible for the flooding, so in August 2017, they filed suit against the City. After the Hoods hired an engineer to assist with their suit against the City, however, they learned from the engineer’s report in April 2018 that the A&A Excavating Contractors LLC (“A&A”) and ALV Development Inc. (“ALV”) contributed to the flooding by negligently failing to implement erosion control measures and stormwater prevention plans for a gravel pit and a newly constructed residential neighborhood. In a second report from the engineer in July 2019, the Hoods also discovered that Asbury Lane Village LLC (“Asbury”) was an additional responsible party. The Hoods filed suit against A&A, ALV, and Asbury in December 2019, and the defendants filed motions for summary judgment, arguing that the Hoods’ claims were barred by the general three-year statute of limitations. The trial court granted summary judgment in favor of the three defendants, holding that the statute of limitations period began to run, at the latest, following the March 2016 flood. Therefore, the statute of limitations expired before the Hoods filed suit in December 2019. The Hoods appealed.

ISSUES

Whether (1) the discovery rule tolled the statute of limitations and (2) the Hoods filed suit within the statute of limitations based on the continuing tort doctrine.

HOLDING

(1) Because the Hoods knew that they had been injured when their house flooded in February 2016 and March 2016 and discovery of the cause of the injury is irrelevant, the discovery rule did not toll the statute of limitations. (2) Because the Hoods presented no evidence of any continual unlawful acts by the defendants that occurred within the three-year statute of limitations, and because the third flooding event was merely an ill effect of any prior alleged acts or omissions, the continuing tort doctrine does not apply. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge McCarty argued that the lawsuit should not have been dismissed as time-barred because the repeated damage to the Hoods’ home and property from the flooding constituted a continuous tort. He argued that under precedent regarding trespasses and continuous torts, each time the Hoods’ home flooded should be construed as creating a separate cause of action that began the running of the statute of limitations. Therefore, since the Hoods’ lawsuit was filed just shy of three years after the last flood in January 2017, the lawsuit was not time-barred.

Affirmed - 2021-CA-00207-COA (May 17, 2022)

Opinion by Presiding Judge Wilson - Concurrence in Part & Dissent in Part by Judge McCarty

Hon. John H. Emfinger (Rankin County Circuit Court)

James D. Shannon & Heather Lynn Hall for Appellants - Robert P. Thompson, James A. Bobo, Mark C. Baker Sr., Michael Allen Akers, Charles Barton Wynn Jr., & Adrian Westbrook Mills for Appellees

Briefed by [Cade Perry Barlow](#)

[Click here to view the full opinion](#)

UNIFUND CCR PARTNERS V. ESTATE OF JORDAN

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - JUDGMENT LIENS - EFFECTS ON PROBATE - A valid judgment lien survives probate so long as the judgment lien is filed or renewed within seven years of the probate time-bar

WILLS & ESTATES - ADMINISTRATRIX DUTIES - REASONABLE DILIGENCE - An administratrix has a duty to use reasonable diligence to locate all ascertainable creditors of the decedent's estate, and failure to do so will result in such creditors' claims not being time-barred

WILLS & ESTATES - ASCERTAINABLE CREDITORS - ADMINISTRATRIX AFFIDAVITS - A self-serving and conclusory affidavit that an administratrix has discharged her duties to use reasonable diligence to locate ascertainable creditors of the decedent's estate, with nothing more and no description of the actions undertaken, will not suffice to prove an administratrix has discharged this affirmative duty

FACTS

In 2009, Unifund CCR Partners ("Unifund") was awarded two default judgments against Frances Jordan. In 2015, Unifund renewed the first judgment, and in 2016, it renewed the second judgment. Ms. Jordan passed away in 2020, leaving behind her will which directed that "all of [her] just debts be paid." Subsequently, her daughters petitioned in chancery court to open an estate for their mother, attaching her will and requesting the court to name them the estate's administratrix. The court granted their petition. Additionally, an inventory of Ms. Jordan's assets was filed, which was composed only of her home, with an estimated value of \$120k to \$150k. The daughters also filed an affidavit swearing that they had made a reasonably diligent effort to identify all creditors and their claims on their mother's estate and that they had mailed notice to such creditors. Consequently, the daughters published notice in April 2020 to creditors in the local newspaper warning that if they did not respond in a timely manner, their claims would be barred. However, the daughters failed to mail notice to Unifund, despite the existence of the two judgments against Ms. Jordan in Forrest County. No creditors brought claims after the publication of notice, and the estate was closed in early August 2020. In October 2020, Unifund filed two claims against the estate based on its renewed default judgments, but the chancery court found that the claims were time-barred. Unifund appealed.

ISSUE

Whether the chancery court erred in ruling that Unifund's claims on Ms. Jordan's estate were time-barred.

HOLDING

Because Unifund maintained its judgment liens on the decedent's property, because judgment liens are not subject to probate, because the daughters' conclusory affidavit did not evidence reasonably diligent efforts to locate Unifund, and because the administratrix daughters would have identified Unifund as a creditor had they made reasonably diligent efforts to do so, the chancery court erred in ruling that Unifund's claims on the estate were time-barred. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Forrest County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Westbrook agreed with the majority that Unifund's claims were not time-barred due to its status as a judgment-lien creditor. However, she disagreed that Unifund was a reasonably ascertainable creditor and that the administratrix daughters' efforts to notify Unifund as a creditor of the estate did not constitute reasonable diligence.

Reversed, Rendered, & Remanded - 2021-CA-00761-COA (May 17, 2022)

Opinion by Judge McCarty - Concurrence in Part & Dissent in Part by Judge Westbrook

Hon. Sheila Havard Smallwood (Forrest County Chancery Court)

Charles Patton Henley Jr. for Appellant - Michael Adelman for Appellee

Briefed by [Garner Vance](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - POST-CONVICTION RELIEF

DORTCH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - APPELLATE PROCEDURE - FAILURE TO RAISE AN ISSUE - Pursuant to Miss. R. of App. Pro. 28(a)(3) and (7), if an appellant fails to raise an issue in an appellant's brief, the issue is deemed to be waived for purposes of the appeal

POST-CONVICTION RELIEF - PROBATION - REVOCATION - Pursuant to Miss. Code Ann. § 47-7-37.1, if a court finds by a preponderance of the evidence that a probationer or person under post-release supervision has absconded, the court may revoke their probation and impose any or all of the sentence notwithstanding the time passed since the arrest on the revocation warrant

FACTS

In 2015, Taje Dortch pled guilty to robbery and was sentenced to serve eight years in the custody of the Mississippi Department of Corrections ("MDOC") followed by seven years of post-release supervision ("PRS"). In June 2020, a warrant was issued for Dortch for allegedly violating the terms of his PRS. In August 2020, Dortch was arrested, and the circuit court set a revocation hearing. At the hearing, the judge ordered a revocation of Dortch's PRS and for him to be taken into MDOC's custody for five years, with fourteen days' credit for time served. Dortch did not defend or refute the PRS violation allegations. In November 2020, Dortch filed a post-conviction relief ("PCR") motion and a motion to vacate judgment. Both motions asserted Dortch's due process rights were violated because the circuit court failed to hold an informal preliminary revocation hearing within seventy-two hours of his arrest. Further, Dortch argued his PRS was improperly revoked because over thirty days passed between the issuance of his arrest warrant and the revocation hearing without a showing of good cause. Dortch's motions were dismissed in December 2020 because the court found that he waived the lack-of-preliminary-hearing issue, and all the necessary due process safeguards were afforded to Dortch. In January 2021, Dortch filed another motion to vacate judgment which was dismissed for the same reasons outlined in the prior order. Dortch appealed.

ISSUE

Whether the circuit court erred in failing to get Dortch in front of the court within thirty days of the arrest warrant.

HOLDING

Because Dortch absconded from the jurisdiction of DeSoto County causing the delay and because Dortch offered no defense against his revocation charges at the hearing, the circuit court had discretion to revoke Dortch's probation notwithstanding the statutory thirty-day time limit. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2021-CP-00103-COA (May 17, 2022)

Opinion by Chief Judge Barnes

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

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

Briefed by [Elise Tucker](#)

[Click here to view the full opinion](#)

PICKLE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PETITION - PLEADING - A pleading cognizable under the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”) will be treated as a post-conviction relief motion that is subject to the procedural rules promulgated therein, regardless of how the plaintiff has denominated or characterized the pleading

POST-CONVICTION RELIEF - FILING - TIMING - A post-conviction collateral relief motion must be filed within three years after a judgment

POST-CONVICTION RELIEF - FILING - SUCCESSIVE MOTIONS - An order dismissing or denying a post-conviction collateral relief motion shall be a bar to a second or successive motion

FACTS

In 1978, C.D. Pickle Jr. was convicted of capital murder and sentenced to life imprisonment. Between 1997 and 2019, Pickle filed six motions for post-conviction collateral relief (“PCR”), all of which were denied. Pickle also sought two out-of-time appeals, which were also denied. Pickle then filed three separate motions in 2021: a motion for writ of mandamus, a motion for alternative sentencing under the Youth Court Act, and a motion for a new trial or, alternatively, judgment notwithstanding the verdict on the basis that the final judgment in his 1978 conviction and sentence was never stamped as “final” and entered into the docket. The circuit court entered three motions denying each of Pickle’s motions. Pickle appealed.

ISSUE

Whether the circuit court erred in denying Pickle’s request for post-conviction collateral relief.

HOLDING

Because Pickle’s current PCR motion was barred as both timely and successive, because Pickle failed to demonstrate he met an exception to the UPCCRA’s procedural bars, because the record was devoid of any evidence to support Pickle’s contention that his 1978 judgment was improperly filed and recorded, because Pickle’s motion for alternative sentencing under the Youth Court Act was procedurally barred and lacked merit, and because Pickle’s attempt to file an out-of-time appeal was procedurally barred, there was no error in the circuit court’s denial of Pickle’s request for post-conviction collateral relief. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2021-CP-00972-COA (May 17, 2022)

Opinion by Judge Smith

Hon. Richard A. Smith (Leflore County Circuit Court)

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

Briefed by [Mariel Soehner](#)

[Click here to view the full opinion](#)

SKINNER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - RES JUDICATA - PRIOR PROCEEDINGS - Claims that have been considered and rejected or substantially reviewed in prior proceedings are barred by the doctrine of res judicata

POST-CONVICTION RELIEF - SENTENCING - LIMITS - To determine if a particular sentence is grossly disproportionate, a court must first compare the gravity of the offense to the severity of the sentence; where a sentence is grossly disproportionate to the crime committed, the sentence is subject to attack on the grounds that it violates the Eighth Amendment prohibition of cruel and unusual punishment

POST-CONVICTION RELIEF - EVIDENCE - PRIOR FELONY CONVICTIONS - Trial courts are not required to allow into evidence defenses to previous felony convictions disguised as mitigation

FACTS

In 2011, James Skinner was convicted of felony evasion and sentenced to life without parole as a habitual offender. To sentence him as a habitual offender, the State amended the felony-evasion indictment prior to trial and included two out-of-state juvenile felony convictions and one felony conviction from Rankin County. Altogether, Skinner has eight

prior felony convictions. After prior appeals, the Court of Appeals affirmed Skinner’s convictions and the circuit court affirmed his sentence in 2013 and denied a motion for post-conviction relief in 2017. In January 2021, Skinner appealed the denial of his motion for post-conviction relief.

ISSUES

Whether (1) the circuit court erred by finding that his claims were procedurally barred by res judicata; (2) Skinner’s life-without-parole sentence for his felony-evasion conviction was unconstitutionally disproportionate; and (3) the circuit court erred by refusing to consider the mitigating circumstances of his juvenile convictions.

HOLDING

(1) Because the circuit court evaluated Skinner’s claim on appeal and determined that there was no evidence of gross disproportionality, the circuit court was correct in finding that his claims were procedurally barred by res judicata. (2) Because Skinner was not sentenced pursuant to the felony evasion statute only, but rather his sentence was enhanced due to violating another statute, and because Skinner met all the requisites of the habitual-offender sentencing requirements, Skinner’s sentence was not grossly disproportionate and was therefore constitutional. (3) Because Skinner was sentenced as an adult for a crime that he committed as an adult, the circuit court did not err by refusing to consider the mitigating circumstances of his juvenile convictions. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge McCarty agreed that Skinner’s sentence did not violate the Eighth Amendment, but argued that a more thorough analysis should be conducted to safeguard constitutional rights.

DISSENT

Judge McDonald argued that Skinner’s claim was not barred by res judicata because the Court did not substantively review his claim in the direct appeal of his conviction. Further, she argued that Skinner’s life without parole sentence was grossly disproportional to the maximum five-year penalty for felony evasion and in violation of the Eighth Amendment.

Affirmed - 2021-CA-00080-COA (May 17, 2022)

En Banc Opinion by Judge Lawrence - Concurrence in Part & Dissent in Part by Judge McCarty - Dissent by Judge McDonald
Hon. John H. Emfinger (Rankin County Circuit Court)

Jacob Wayne Howard for Appellant - Candice Leigh Rucker (Att’y Gen. Office) for Appellee

Briefed by [Allyson Avant](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - CRIMINAL CASES

JOLLY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CONFESSIONS - REVIEW - The trial court sits as the fact-finder when determining the issue of whether an accused’s confession has been intelligently, knowingly, and voluntarily given

CRIMINAL PROCEDURE - CONFESSIONS - MANIFEST ERROR - An appellate court will only reverse the trial court’s determination of whether an accused’s confession has been intelligently, knowingly, and voluntarily given when such determination is manifestly wrong

CRIMINAL PROCEDURE - CONFESSIONS - ADMISSIBILITY - In order for a defendant’s confession to be admissible, over an objection, the trial court must find that the confession was knowingly, intelligently, and voluntarily given and was not a product of police threats, promises, or inducements

FACTS

After an interview of a rape victim, Stacy, by Beth Reynolds, a forensic interviewer, and Officer Gordon Atkins, an investigator for the Neshoba County Sheriff's Department, Atkins and other officers went to locate Jolly, the accused, at his home for questioning regarding Stacy's allegations. When Jolly was located, Atkins and Officer Brad Stuart detained and transported him to the Neshoba County Sheriff's Department. When they arrived at the sheriff's department, Jolly's official interrogation was conducted by Atkins and Stuart. Before the questioning began, Atkins read Jolly a *Miranda* warning and waiver form. Jolly signed the waiver form and, thereafter, hand-wrote and signed a statement in which he admitted to having sex with Stacy. On July 8, 2020, a Neshoba County grand jury indicted Jolly on four counts of statutory rape, and on March 8, 2021, the case was tried in the Neshoba County Circuit Court. At trial, the State called Stacy as its first witness. According to Stacy, Jolly raped her many times, beginning when she was eleven. The State then called Atkins to testify. Atkins explained that after he witnessed the interview of Stacy, he went back to Neshoba County to find Jolly. The officers tracked Jolly down and took him to the sheriff's department. Jolly objected to the admission of his handwritten statement, and, as a result, the court conducted a suppression hearing outside the presence of the jury. During the suppression hearing, Jolly was asked whether Atkins went over the waiver form with him, and he stated that Atkins had not. However, during the interrogation, Jolly gave both an oral and written statement to Atkins and Stuart. Although he did write and sign the statement, according to Jolly, Atkins allegedly told him what to write. In response to Jolly's testimony, Atkins and Stuart both testified during the suppression hearing. Both officers countered Jolly's testimony, stating that Jolly was fully advised of his *Miranda* rights and that he voluntarily gave his oral and written statements. Jolly's oral statement was not recorded. Jolly's written statement contained several misspelled words, and some were scratched through and marked with his initials. In the statement, Jolly stated that he and Stacy had sex fifty to sixty times or more, but he never forced her. Jolly identified specific places where he and Stacy engaged in sexual intercourse, including the same locations Stacy mentioned during her interview. However, at the suppression hearing, Jolly stated that he never had sexual intercourse with Stacy. Jolly argued that he only wrote and signed the statement because Atkins promised him that he would receive a bond. Jolly also testified that on the day of the interrogation, he had been up for a couple of days and was on crystal methamphetamine, but he did not tell the officers this information because he did not want his boss and family members to know of his drug use. Atkins and Stuart testified that Jolly did not appear to be under the influence of any drugs or alcohol while being questioned. Based on their observations, Jolly fully understood his rights and that he was waiving those rights by signing the waiver. Stuart testified that neither he nor Atkins threatened or offered Jolly any type of reward for his statement. At the close of the suppression hearing, Jolly argued that his statement should be suppressed because he was threatened and intimidated by Sheriff Clark, he was not read his rights before he wrote his statement, he did not understand he had the right to a lawyer or the right to remain silent, and he did not understand that he could ask for an attorney and stop the questioning. Further, according to Jolly, he was told that if he ever wanted a bond, he would have to write a statement. After hearing testimony from Atkins, Stuart, and Jolly, as well as arguments of counsel, the circuit court found that Jolly was properly read and advised of his rights and that he freely and voluntarily waived his rights. Thus, the circuit court held that Jolly's confession was admissible. Testimony before the jury then resumed. Jolly testified and maintained his contention that he never engaged in sexual intercourse with Stacy. Concerning his written statement, Jolly told the jury that he only confessed to having sexual intercourse with Stacy because Atkins promised him a bond in exchange for doing so. Jolly also maintained his position that he did not understand that he was confessing to having sex with Stacy when he wrote his statement and he continued to allege that Atkins told him the words to write in his statement. At the end of the trial, the jury found Jolly guilty of all four counts of statutory rape. Jolly appealed.

ISSUE

Whether the circuit court manifestly erred in denying Jolly's motion to suppress Jolly's statement.

HOLDING

Because the circuit court acted within its discretion in finding that Jolly's minimal education did not prove a lack of the capacity to voluntarily waive his rights, and because the circuit court acted within its discretion by admitting Jolly's confession and there was testimony in the record to support that decision, the circuit court's ruling was not manifestly wrong. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2021-KA-00318-COA (May 17, 2022)

Opinion by Judge McDonald
Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)
Justin Taylor Cook (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by [Chatham M. DeProspero](#)

[Click here to view the full opinion](#)

MCLAUGHLIN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CAPITAL MURDER - DEFINITION - Under Miss. Code Ann. § 97-3-19(2)(e), the killing of a person without the authority of law by any means or in any manner shall be capital murder when done with or without any design to effect death, by any person engaged in the commission of the crime of robbery or in any attempt to commit such felonies

CRIMINAL LAW - ACCOMPLICE LIABILITY - ESTABLISHMENT - To establish accomplice liability, the state must show that the defendant was present, consenting, aiding, and abetting the actual perpetrator in the commission of the crime charged

CRIMINAL LAW - ARMED ROBBERY - ELEMENTS - To convict a defendant of armed robbery under Miss. Code Ann. § 97-3-79, the prosecution must prove that the defendant committed (1) a felonious taking or attempt to take; (2) from the person or the presence; (3) the personal property of another; (4) against his will; (5) by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon

CRIMINAL LAW - THIRD-DEGREE ARSON - ELEMENTS - Under Miss. Code Ann. § 97-17-7, any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of whatsoever class or character shall be guilty of arson in the third degree

CRIMINAL LAW - CONSPIRACY - FORMATION OF AGREEMENT - The only element required to prove the crime of conspiracy to commit armed robbery is two or more persons agreeing to commit armed robbery; the crime of conspiracy may be inferred from the circumstances, particularly by declarations, acts, and conduct of the alleged conspirators

EVIDENCE - ADMISSIBILITY - PHOTOGRAPHS - Photographs are deemed to have evidentiary value if admitted to (1) aid in describing the circumstances of the killing, (2) aid in describing the location of the body and cause of death, and (3) supplement or clarify witness testimony

FACTS

In 2016, Malcolm McLaughlin inquired about potential buyers for a black Dodge Charger. McLaughlin asked Zamarius Harden if he knew anyone interested in purchasing the vehicle, to which Harden named Kiaris Porter as a potential buyer. Later, Laughlin, Harden, Shaneka Brown, and Keishawn Rose drove to Porter's home to show him the vehicle. After showing Porter the vehicle, McLaughlin drove Brown, Harden, Rose, and Porter to the bank and Porter withdrew the funds needed to purchase the vehicle. While Porter was in the bank, McLaughlin, Brown, Harden, and Rose discussed robbing Porter. After leaving the bank, McLaughlin drove down a dead-end road where Brown pointed a gun to the back of Porter's head and demanded he give up his money. Porter was later found deceased, lying face down in blood with his left pocket turned inside out. After investigation, the police determined Porter had been shot twice in the back of the head and had been robbed. Later that day, the police responded to a call regarding a burning black Dodge Charger. McLaughlin, Brown, Harden, and Rose were arrested. Brown and Harden pled guilty and testified on behalf of the State and against McLaughlin. At trial, the State called witnesses who testified about McLaughlin's role in Porter's death, the armed robbery, and the burning of the vehicle. Witnesses Brown, Harden, and Rose testified that after Rose shot Porter, McLaughlin took money from Porter's pockets. They further testified that McLaughlin was driving the Dodge Charger, that he was trying to sell the vehicle, that Porter was shot in that vehicle, and that McLaughlin dropped them off at Harden and Rose's home before driving off in that same vehicle. Brown testified that McLaughlin told her that he got rid of the vehicle, which led her to believe that McLaughlin was going to burn the

vehicle. Detective Magee also testified that a security camera captured McLaughlin standing on the hood of the Dodge Charger and that McLaughlin was the last person seen with the vehicle. Witness Camille Porter testified that she saw a black Dodge Charger pick her son up on the morning he was found deceased. Through a photo lineup, Camille was also able to identify McLaughlin as the person who picked up her son. McLaughlin was further developed as a suspect through a Facebook post made by Harden. Detective Magee testified that when McLaughlin was found at a hotel, he was wearing the same clothing he wore during the commission of the crime which contained Porter's DNA. Dr. Mark LeVaughn also testified that the cause of Porter's death was multiple gunshot wounds caused by two contact gunshot wounds to the back of the neck. During Dr. LeVaughn's testimony, the State moved to admit a photograph of Porter's brain to which the defense objected, arguing the photograph was highly prejudicial and not probative. The State argued that the photograph showed the "actual bullet pathway and it shows the injury that occurs and why someone dies from a bullet wound" as Porter did and that the jury needed to see the photograph for Dr. LeVaughn to properly explain Porter's injuries. The circuit court admitted the photograph as Exhibit S-11. McLaughlin was convicted of capital murder, third-degree arson, conspiracy, and felon in possession of a firearm. He was sentenced to serve life in prison for the murder, three years for third-degree arson, five years for conspiracy, and ten years for felon in possession of a firearm, all of which to run concurrently with one another. McLaughlin filed a motion for a new trial, arguing the State did not provide sufficient evidence to prove that he had the required mental state to rob or kill Porter, that he burned or participated in burning the Dodge Charger, and to convict him of conspiracy. The circuit court granted the motion regarding McLaughlin's conviction for felon in possession of a firearm and set that charge aside but denied the motion for the convictions of capital murder, third-degree arson, and conspiracy. McLaughlin appealed.

ISSUES

Whether (1) the evidence presented was sufficient to support McLaughlin's capital murder conviction; (2) the evidence presented was sufficient to support McLaughlin's third-degree arson conviction; (3) the evidence was sufficient to support McLaughlin's conspiracy conviction; (4) the State violated McLaughlin's Fifth Amendment right to remain silent; (5) the circuit court erred in admitting Exhibit S-11; and (6) retroactive misjoinder of McLaughlin's felon in possession of a firearm conviction entitled him to a new trial.

HOLDING

(1) Because the State only had to prove that Porter was killed while McLaughlin was involved in the commission of robbing Porter, and because the State proved the elements of armed robbery under the accomplice-liability theory by alleging and proving a plan to rob Porter, the evidence presented was sufficient to support McLaughlin's capital murder conviction. (2) Because the State presented evidence that could allow a rational juror to find the essential elements of third-degree arson had been proven beyond a reasonable doubt, the evidence was sufficient to support McLaughlin's third-degree arson conviction. (3) Because the State provided testimony from Detective Magee that Brown, Harden, Rose, and McLaughlin discussed robbing Porter while Porter was in the bank, because Harden testified there was a plan in place to rob Porter, and because the jury could infer from their declarations, actions, and conduct that there was a plan to rob Porter, the evidence was sufficient to support McLaughlin's conspiracy conviction. (4) Because, notwithstanding McLaughlin's issue on appeal being procedurally barred due to his counsel failing to object or make a motion for a mistrial, the court relied on plain-error review, and despite finding a Fifth Amendment violation, the violation did not prejudice McLaughlin due to the immense evidence presented by the State, thus, the State did not prejudice McLaughlin and there was no reversible error. (5) Because the photograph was used by Dr. LeVaughn to testify regarding the pathway of the bullets had meaningful evidentiary value, the circuit court did not err in admitting the photograph of Porter's brain as Exhibit S-11. (6) Because the evidence used to support the vacated count of felon in possession of a firearm did not prejudice McLaughlin's defense on his other counts of capital murder, third-degree arson, and conspiracy, because the circuit court was required to review the strength of the State's evidence on the other charges and determine whether the evidence was strong enough to sustain those convictions, and because the State presented evidence sufficient to convict McLaughlin of the other charges, McLaughlin was not entitled to a new trial based on retroactive misjoinder. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2020-KA-00360-COA (May 17, 2022)

Opinion by Judge Lawrence
Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)
Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee
Briefed by [Le'Ronda Gates](#)

[Click here to view the full opinion](#)

THOMPSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - TESTIMONY - EXCLUSION - Failure of a witness to comply with a sequestration order does not automatically render the witness’s testimony inadmissible; the decision to exclude a witness’s testimony rests within the trial court’s sound discretion

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CUMULATIVE INSTRUCTIONS - The trial court does not have to give cumulative instructions on mere suspicion when it has sufficiently instructed the jury on the appropriate burden of proof

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REFUSAL - A court may refuse a jury instruction that incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - REQUIREMENTS - An ineffective assistance of counsel claim can be addressed on direct appeal when (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulated that the record is adequate to allow the appellate court to make finding without consideration of the finding of fact of the trial judge

FACTS

After the divorce of Antonio Winters and Lucy Brown, a custody dispute ensued over Winters’s son. The dispute mainly centered around an alleged Amber alert that was issued when the child was with Winters and his girlfriend, Styvekka Thompson. Winters and Thompson met with the chief of police to inquire about the Amber alert and provide documentation of custody. The chief advised the couple to handle their custody dispute in chancery court. After the meeting, Thompson and Winters went to Brown’s workplace where a camera captured their interaction. The video showed the couple entering the store where Winters and Brown had an altercation. Brown then called 911 and told officers that Winters and Thompson left in a white Tahoe. Brown subsequently left work and while driving she noticed a white Tahoe. Brown attempted to avoid the SUV but it began following her. When the SUV approached her right side, she saw Thompson in the driver’s seat and Winters in the passenger seat. Brown later testified that Winters passed Thompson a gun and that Thompson fired it into Brown’s car, shooting her in the left upper arm. Nurse Mitchell Bates’s car was behind Brown’s car when Brown was shot. She immediately called 911 and then administered first aid to Brown. While on the phone with the dispatcher, she described the scene and during that time Brown stated that Winters and his girlfriend had shot her. She repeated the statement to investigators once they arrived on the scene. At trial, both Brown and Bates testified. The jury also heard recorded calls between the police during their search for the suspects, which included their knowledge that they were searching for Winters and his girlfriend, whom they believed had the last name Cain. The chief of police also testified that he saw Winters and Thompson get in a white Tahoe prior to the events. Both Winters and Thompson took the stand, testifying that Thompson had entered a grey Volvo after leaving Brown’s workplace. On cross-examination, the State attempted to show that Cain was part of Thompson’s name as shown on a verified voter registration card by calling the circuit clerk. The circuit clerk testified her office had a verified voter registration card for Thompson that listed her full name as “Styvekka Keeta Cain.” The document was admitted into evidence with no objection by the defense. The jury found Thompson guilty of one count of drive-by shooting and she was sentenced to eight years in custody and five years post-release supervision. Thompson appealed.

ISSUES

Whether (1) the verdict was against the overwhelming weight of the evidence; (2) the trial court erred by permitting the circuit clerk’s testimony; (3) the trial court erred by refusing a proposed jury instruction; and (4) Thompson’s trial counsel was ineffective.

HOLDING

(1) Because it was for the jury to determine which version of the facts was more credible and which witnesses were more credible and the worth of their testimony, the verdict was not against the overwhelming weight of the evidence. (2) Because Thompson was given a chance to object to the court allowing the circuit clerk to testify despite being present throughout the trial, and because Thompson's counsel declined the opportunity to conduct a full cross-examination of the circuit clerk, there was not a showing of prejudice sufficient to constitute an abuse of discretion and the trial court did not err by permitting the testimony. (3) Because the heavy burden of proof was already covered by a jury instruction, it was not an abuse of discretion to refuse the proposed jury instruction. (4) Because the jury instruction would have been properly refused because it was not supported by the evidence, and because Thompson did not prove any prejudice flowing from her counsel's decision, she did not receive ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Attala County Circuit Court.

Affirmed - 2020-KA-01279-COA (May 17, 2022)

Opinion by Judge McCarty

Hon. George M. Mitchell Jr. (Attala County Circuit Court)

Mark Kevin Horan & Bradley David Daigneault for Appellant - Candice Leigh Rucker (Att'y Gen. Office) for Appellee

Briefed by [Anna Tucker](#)

[Click here to view the full opinion](#)

MISSISSIPPI CASES EDITOR

EMILY DUCK

ASSOCIATE CASES EDITORS

CHASE BAKER

KELSEY DAVIS

MORGAN ARRINGTON JONES

DALLAS MARTIN

REGAN MONK

J. EVAN THOMAS

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Emily Duck, newsletter@mississippilawjournal.org

All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007. Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Emily Duck, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org