

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 4, 2022**SUPREME COURT - CIVIL CASES****HL&C MARION, LLC v. DIMA HOMES, INC.****CIVIL - REAL PROPERTY**

PROPERTY - REAL PROPERTY CONVEYANCES - SEARCHING RECORDS - Pursuant to Miss. Code Ann. § 27-43-5, the chancery clerk must identify lienholders in the chancery clerk's office in order to provide notice within the time fixed by law for notifying owners, send by certified mail with return receipt requested to all such lienors on the record

CIVIL PROCEDURE - NOTICE & SERVICE - STATUTORY DUTIES - Pursuant to Miss. Code Ann. § 27-43-3, the clerk shall be required to publish the name and address of the reputed owner of the property and the legal description of the property in a public newspaper of the county in which the land is located; a property sale will be void if the clerk fails to comply with the requirements set forth in the statute

PROPERTY - LAND TAX SALE - REDEMPTION PERIOD - Pursuant to Miss. Code Ann. § 27-43-3, a judgment creditor has an interest in the land within the statute's specific meaning; parties with the interest in land have the right to pay the property taxes to redeem a parcel within two years after a tax sale

CONSTITUTIONAL LAW - STATUTORY INTERPRETATION - RIGHT OF REDEMPTION - Pursuant to Miss. Const. art. IV § 79, the right to determine legal conditions for redemption is a power given to the legislature, which enacted a two-year period; any decision providing otherwise runs afoul of the constitution and statutes of our state

FACTS

In 2007, Phillip and Anna Kennedy ("the Kennedys") contracted with DIMA Homes, Inc. ("DIMA") to build a house on their property in Marion County. After construction on the home was completed in August 2007, the Kennedys had a remaining balance of \$70,069 owed to DIMA. In 2011, DIMA brought a suit against the Kennedys in the Marion County Chancery Court to recover the past due balance. In August 2012, the chancery clerk entered a default judgment against the Kennedys. In 2013, DIMA received a final judgment lien against the Kennedys that was recorded in the Marion County records. Since 2013, DIMA has continuously held a valid and enforceable judgment lien against the property. Nearly three years later, in 2016, ACC Tax Sales Property, LLC ("ACC") purchased the property as a result of the Kennedys' unpaid ad valorem taxes. The chancery clerk issued a Notice of Forfeiture to Lienors addressed to the United States Business Administration and a Notice of Forfeiture to Landowners addressed to the Kennedys. In 2018, the notice to the Kennedys was sent via certified mail and signed for by a third party. However, DIMA was not served with notice of the tax sale, although the clerk's tax search information referenced the DIMA's 2011 civil action, and the Marion County affidavit of tax sale referenced DIMA's enrolled judgment. After ACC acquired the property, ACC subsequently conveyed its interest to HL&C Marion, LLC ("HL&C") by quitclaim deed. In 2019, HL&C initiated its suit to confirm and quiet title. Again, DIMA was not notified of the conveyance from ACC to HL&C. In 2020, the chancery court found that the failure to give written notice of the sale resulted in an extension of the two-year redemption period and set aside the tax sale in favor of DIMA. The Court of Appeals affirmed the decision of the chancery court. HL&C petitioned for writ of certiorari.

ISSUE

Whether the chancery court erred by ruling that HL&C, a judgment lienholder, was entitled to notice of a tax forfeiture under Miss. Code. Ann. § 27-43-5.

HOLDING

Because Miss. Code Ann. § 27-43-5 only required the chancery clerk to search the land records kept within the chancery clerk's office and notify interested parties revealed by that search, because the chancery court and the Court of Appeals improperly expanded the statutory duties of the chancery clerk to require a search of the judgment roll, and because the clerk, as required under Miss. Code Ann. § 27-43-5, conducted the required search and provided the proper notice, the chancery court erred by ruling that HL&C was entitled to notice of a tax forfeiture. Therefore, the Supreme Court reversed and rendered the judgment of the Marion County Chancery Court.

Reversed & Rendered - 2020-CT-00750-SCT (Aug. 4, 2022)

En Banc Opinion by Justice Coleman

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

Christopher M. Howdeshell for Appellant - Mark A. Nelson, Ned Andrew Nelson & Samuel Denon Newman for Appellee

Briefed by [Nivory Gordon](#)

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HUMPHREY V. HOLTS

CIVIL - OTHER

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - When the only reasonable interpretation of the ruling is that it finally terminates the litigation in the trial court, the ruling is a final judgment and no further act by the court is necessary

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

FACTS

Omar K. Humphrey filed a complaint against defendants Steve Holts and John Champion. The complaint asserted the same claims against both defendants and made little distinction between the two. Holts responded with a motion to dismiss the complaint. Champion neither filed a response nor joined Holts's motion. The trial court ordered the dismissal of the complaint without mention of specific parties. Humphrey appealed, and the Court of Appeals dismissed the appeal. The Court of Appeals reasoned that because multiple parties were involved and the order did not make a distinction between parties, it was not a final, appealable judgment. Humphrey petitioned for writ of certiorari.

ISSUE

Whether the Court of Appeals erred by dismissing the appeal for want of an appealable judgment.

HOLDING

Because the trial court's order dismissed the entire complaint as to all issues and parties and required no further action by the trial court, the judgment was final and appealable. Therefore, the Supreme Court reversed and remanded the judgment of the Court of Appeals.

SPECIAL CONCURRENCE

Presiding Justice King agreed with the majority's holding but wrote separately to address the issue of Champion's unresponsiveness to Humphrey's complaint. He argued that the Court of Appeals should specifically address the issue of Champion's lack of responsiveness on remand.

The Judgment of the Court of Appeals is Reversed, & the Case is Remanded to the Court of Appeals - 2021-CT-00046-SCT (Aug. 4, 2022)

En Banc Opinion by Justice Chamberlin - Special Concurrence by Presiding Justice King

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

Imhotep Alkebu-Lan for Appellant - Jerry Wesley Hisaw for Appellees

Briefed by [Katherine Hancock](#)

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SUPREME COURT - ORDERS

NELSON V. STATE

ORDER

ORDER

Derrick Nelson filed an Application for Leave to Proceed in the Trial Court, arguing that he received ineffective assistance of counsel based on his counsel's recommendation that he not testify at trial. The Supreme Court found that Nelson had not presented an arguable basis for his claims and that the petition should be denied. Initially, Nelson appealed his conviction of murder and sentence to life in the custody of the Mississippi Department of Corrections. The Court of Appeals reversed and remanded Nelson's conviction and sentence. However, the Supreme Court affirmed the conviction and sentence. Subsequently, Nelson filed three applications for leave to proceed, all of which have been denied. In this fourth application, the Court found the petition was successive. The Court held that Nelson failed to present any reasoning that the exceptions to the procedural bars were applicable. Additionally, the Court issued a warning that future filings deemed frivolous could result in monetary sanctions or in restrictions on his ability to file applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Nelson's Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Nelson's application for post-conviction relief should be dismissed. However, he disagreed that the application was frivolous and the 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 the imposition of monetary sanctions upon a criminal defendant proceeding in forma pauperis only serves to punish or preclude that defendant from his lawful right to appeal and ultimately violates a defendant's constitutional rights. Ultimately, he opined that the Supreme Court should only deny or dismiss motions that lack merit.

Denied - 2020-M-01417 (July 27, 2022)

Order by Justice Ishee - Objection In Part by Presiding Justice King

Briefed by [Tyler White](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 2, 2022

COURT OF APPEALS - CIVIL CASES

AINSWORTH V. PLUNK

CIVIL - WILLS, TRUSTS, & ESTATES

TRUSTS - IMPLIED TRUST - DEFINITION - In the absence of a written trust agreement, equity will, in the proper circumstance, recognize that property legally titled in the name of one individual is, in reality, held for the use and benefit of another and will enforce the true owner's rights accordingly; it will do so by imposing an equitable trust

on the bare legal title to the property in order to protect the interest of that person actually entitled to the benefits of ownership of the property

TRUSTS - IMPLIED TRUSTS - CONSTRUCTIVE TRUST - A constructive trust is a fiction of equity created for the purpose of preventing unjust enrichment by one who holds legal title to property which, under principles of justice and fairness, rightfully belongs to another; it is a judicially imposed remedy that arises by operation of law against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy

TRUSTS - IMPLIED TRUSTS - RESULTING TRUST - A resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved

TRUSTS - CONSTRUCTIVE AND RESULTING TRUSTS - BURDEN OF PROOF - The party advocating a constructive or resulting trust must show by clear and convincing proof that a constructive or resulting trust is necessary as a matter of law; the proof must establish the facts and circumstances giving rise to the trust with an extraordinary degree of certainty and clarity

FACTS

Before Jacob Ainsworth remarried, he deeded his land to his daughters, Marilyn Plunk and Crystal Ainsworth, in order to keep his land from being deemed a marital asset should he get divorced. Jacob testified that he wanted the land back if he were to get divorced. Jacob got divorced. Four years later, Jacob asked Marilyn to deed the 204 acres back to him. He then promised to execute a new deed and make Marilyn and Crystal tenants in common. Crystal and Marilyn signed a quitclaim deed that conveyed their interest in the land back to Jacob. During this time, Crystal also adopted an African-American child. When Marilyn then asked when Jacob would deed the land back to Marilyn and Crystal, he said he would only deed the land back if Crystal gave back her adopted baby. Marilyn and Crystal hired an attorney who also asked Jacob when he would deed the land back. Jacob never denied that there was an agreement but said that he did not know when or whether he would deed the land back. Marilyn and Crystal filed a complaint against their father asking for the land to be conveyed back to them or for their father to compensate them for the value of the property. The chancery court found that Jacob attempted to commit fraud when he secreted away assets before marriage. The chancery court also found that Jacob tricked his daughters into reconveying because he admitted that he had lied to them when he said he would reconvey the land. The chancery court further refused to accept Jacob's explanation that Crystal adopting an African-American child had no bearing on his asking his daughters to sign a deed to the land back to him. The chancery court noted that he only asked for the land back when Crystal planned to adopt the child and, after she deeded it back to him, he told her she would have to give the child up if she wanted the land back. Since the testimony of Marilyn, Crystal, and their attorney was credible, and in light of Jacob's history of deception, the chancery court found that there was an unwritten agreement between Jacob and his daughters that resulted in harm to the plaintiffs and granted Marilyn and Crystal the land. Jacob appealed.

ISSUE

Whether the chancery court erred in ruling that there was clear and convincing evidence that a resulting or constructive trust arose.

HOLDING

Because Jacob acted fraudulently when he secreted away his assets in anticipation of his divorce prior to his marriage, because Jacob admitted that he lied to Marilyn and Crystal when he said he would reconvey the land to them, because Jacob only asked for his land back when he learned of Crystal's adoption of an African-American baby and then conditioned his reconveyance of that land on Crystal giving up the child, because Jacob never denied that an agreement existed between him and his daughters, and because Jacob's testimony was not credible, the chancery court did not err when it held that there was clear and convincing evidence that a constructive trust arose and was an applicable remedy. Therefore, the Court of Appeals affirmed the judgment of the Smith County Chancery Court.

Affirmed - 2021-CA-00488-COA (Aug. 2, 2022)

Opinion by Judge McCarty

Hon. David Shoemake (Smith County Chancery Court)

Mark K. Tullos for Appellant – *Pro Se* for Appellees

Briefed by [Kennedy Gerard](#)

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GREEN V. POIRRIER PROPS. L.L.C.

CIVIL - REAL PROPERTY

PROPERTY - CHANCERY COURT - FINDINGS - An appellate court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or applied an erroneous legal standard

APPELLATE PROCEDURE - APPELLATE BRIEF - REQUIREMENTS - M.R.A.P. 28(a)(7) states that the argument section in an appellant’s brief shall contain the contentions of the appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on of the brief should contain the appellant’s contentions about the issues

APPELLATE PROCEDURE - REPRESENTATION - PRO SE - Pro se parties are held to the same rules of procedure and substantive law as represented parties

FACTS

In August 2013, Poirrier Properties L.L.C. and Poirrier Farms, Inc. (“Poirrier”) filed a complaint against Carnell Green alleging that Green entered Poirrier’s property and cut timber without consent. The two parties owned adjacent properties and disputed the boundary line. Green’s filed an answer that denied the allegations and later filed a counterclaim asserting that the disputed timber was on his property and that he had acquired the property by adverse possession. In February 2019, Poirrier filed an amended complaint asserting a timber-trespass claim, requesting to remove any cloud on title and determine heirship of Green’s parents. During a 2021 hearing, the trial court heard various testimonies, including expert testimony from a land surveyor, about the property lines and the calculation of damages. The trial court held that Green’s property and Poirrier’s property adjoined at the Amite/Wilkinson county line, that Green failed to prove he had adversely possessed Poirrier’s property, and rendered a judgment against Green. Green appealed.

ISSUES

Whether (1) Green’s failure to follow the rules of appellate procedure barred his claim and (2) the chancery court was manifestly wrong, clearly erroneous, or applied an erroneous legal standard.

HOLDING

(1) Because Green failed to provide an argument section in his brief or any legal authority in support of his claim, his claim was procedurally barred. (2) Because the chancery court relied on a surveyor’s testimony, because Green failed to prove adverse possession, and because the chancery court cancelled Green’s remaining claims against Poirrier as clouds on title, the chancery court’s findings were supported by substantial evidence and the chancery court was not manifestly wrong or clearly erroneous and did not apply an erroneous legal standard. Therefore, the Court of Appeals affirmed the judgment of the Amite County Chancery Court.

Affirmed - 2021-CP-00704-COA (Aug. 2, 2022)

Opinion by Judge Greenlee

Hon. Debra K. Halford (Amite County Chancery Court)

Pro se for Appellant - Christopher Eric Kelley for Appellees

Briefed by [Anna Palmer](#)

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TERPENING V. F.L. CRANE & SONS, INC.

CIVIL - PERSONAL INJURY

TORTS - VICARIOUS LIABILITY - SCOPE OF EMPLOYMENT - An employer is not liable for an employee's tortious actions where the employee is not acting in furtherance of the employer's interests

TORTS - EMPLOYMENT - GOING AND COMING RULE - Under the going and coming rule, it is a general rule that an employer is not liable for the acts of his employees going to and returning from work

FACTS

Levi Hill was employed by F.L. Crane & Sons, Inc. ("F.L. Crane") as a helper. In February 2018, Hill was helping F.L. Crane's foreman with a layout on a construction site in Pensacola, Florida. For the specific job, Hill drove the truck that his parents had purchased from his home in George County to Pensacola, Florida. One day, after completing his work, Hill clocked out of work at 2:00 p.m. and headed home to George County. On the way home, Hill's truck crossed over and collided with a vehicle driven by Ginger Callegan, who died as a result of her injuries from the accident. Valerie Terpening filed a complaint as administratrix of the Estate of Callegan and on behalf of all wrongful death beneficiaries, asserting claims for negligence, negligence per se, respondeat superior, negligent employment, negligent entrustment, and punitive damages. Terpening claimed that Hill was an employee or agent of F.L. Crane and was operating his employer's vehicle within the scope of his employment or agency at the time of the accident. F.L. Crane filed for summary judgment, asserting that Hill was driving home in a personal vehicle and not acting within the scope of his employment. Further, under the "going and coming" rule, F.L. Crane claimed it could not be held vicariously liable for Hill's actions. The circuit court agreed with F.L. Crane and granted summary judgment in its favor. Terpening appealed.

ISSUES

Whether (1) F.L. Crane was vicariously liable for Hill's actions based on the "going and coming rule;" (2) F.L. Crane was vicariously liable for Hill's actions based on the "traveling employee" doctrine; and (3) the circuit court erred by granting F.L. Crane's motion for summary judgment.

HOLDING

(1) Because Hill was not acting within the course and scope of his employment at the time of the accident, the "going and coming" rule was applicable and F.L. Crane was not vicariously liable. (2) Because the circuit court based its decision upon similar past rulings, the circuit court did not err by declining to apply the traveling employee doctrine outside of the realm of workers' compensation and F.L. Crane was not vicariously liable. (3) Because no genuine issue of material fact existed, and because the circuit court did not err when it determined that Hill was not acting in the course and scope of his employment, the circuit court did not err in granting summary judgment in favor of F.L. Crane. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2021-CA-00544-COA (Aug. 2, 2022)

Opinion by Judge Greenlee

Hon. Dale Harkey (Jackson County Circuit Court)

Courtney Parker Wilson & Douglas Lamont Tynes Jr. for Appellant - Cody Carol Bailey & Alston Frank Ludwig for Appellee

Briefed by [Hannah Elliott](#)

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COURT OF APPEALS - CRIMINAL CASES

BAYS V. STATE

CRIMINAL - FELONY

EVIDENCE - HEARSAY EXCEPTIONS - STATEMENT OF IDENTIFICATION - Miss. R. of Evid. 801(d)(1)(C), allows a statement to be admitted into evidence as non-hearsay if it is a statement that identifies a person as someone the declarant perceived earlier and if the declarant testifies at trial and is subject to cross-examination

EVIDENCE - ADMISSION - HARM OUTWEIGHED - An error is harmless when the weight of the evidence against the defendant is sufficient to outweigh the harm done by allowing admission of the evidence

EVIDENCE - SEXUAL HISTORY - INTRODUCTION - Pursuant to Miss. R. of Evid. 412(b), newly discovered evidence of a victim's past sexual contact with someone else to prove that the defendant was not the perpetrator is admissible if the defendant submits a written motion and offer of proof at least fifteen days before trial

EVIDENCE - WITNESS TESTIMONY - RE-CALLING WITNESSES - Pursuant to Miss. R. of Evid. 611(a), the trial court is within its discretion to deny a defendant's request to re-call a witness where the witness has already taken the stand and has been subject to cross-examination

FACTS

Willie Bays's twelve-year-old daughter, Sarah, resided with her great-grandmother and legal guardian, Willie Smith. Bays lived at Smith's house off and on. Sarah's cousin, Shirley Anderson, also frequented Smith's house to help take care of Sarah and Walker. In August 2017, Smith and Anderson contacted law enforcement and reported a sexual assault after Sarah stated that Bays sexually assaulted her. An investigator scheduled a physical-sexual assault examination and forensic interview for Sarah. Subsequently, Bays was arrested and indicted on a charge of sexual battery by an authority figure. During the trial, the trial court admitted hearsay testimony from Anderson regarding Sarah's statement about the sexual encounter as a non-hearsay statement of identification under Miss. R. Evid. 801(d)(1)(C). Sarah, Walker, and Sarah's sexual assault nurse examiner also testified. Sarah was subject to direct examination, cross-examination, and redirect examination. The trial court denied Bays the opportunity to re-call Sarah to impeach her testimony by submitting three-year-old evidence of an alternate perpetrator. The jury found Bays guilty of one count of sexual battery by a person in a position of trust or authority. Bays appealed.

ISSUES

Whether the trial court erred by (1) admitting Anderson's testimony of Sarah's statement under Miss. R. Evid. 801(d)(1)(C) and (2) preventing Bays from offering evidence of an alternate perpetrator and by not allowing him to re-call Sarah for the purpose of recanting or impeaching her testimony.

HOLDING

(1) Because the weight of the evidence of Bays's guilt outweighed any harm that may have occurred by admitting Anderson's testimony of Sarah's hearsay statements, the trial court did not err by admitting Anderson's testimony of Sarah's statement. (2) Because Bays did not comply with Miss. R. of Evid. 412 requiring a written motion and offer of proof fifteen days before trial, because the evidence of an alternate perpetrator was three years old and not newly discovered, and because Bays had the opportunity to impeach Sarah's testimony during cross-examination, the trial court acted within its discretion in denying Bays's request to re-call Sarah. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2021-KA-00244-COA (Aug. 2, 2022)

Opinion by Judge Smith

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Conner Linkowski](#)

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NALLS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - PRESERVING OBJECTIONS - CONTEMPORANEOUS OBJECTION - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the statements during trial; it is incumbent on the party asserting error to make a contemporaneous objection and obtain a ruling in order to preserve the objection

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - There is no constitutional violation where an enhanced sentence is enforced based on felonies committed before the passing of a habitual-offender statute

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - REQUIREMENTS - To prevail on a claim of ineffective assistance, the defendant must show both that counsel's performance was deficient and that he was prejudiced as a result

CRIMINAL PROCEDURE - WEIGHT OF EVIDENCE - MOTION FOR NEW TRIAL - In reviewing the denial of a motion for a new trial based on an objection to the weight of the evidence, the court 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 March 2019, Lonnie Nalls Jr., and Lamarcus Ware were indicted for the attempted murder of Jeremy Jones; Nall was also indicted for possession of a firearm by a felon and charged as a violent habitual offender. Ware pled guilty to aggravated assault in September 2019. Nalls's first trial in October 2020 resulted in a hung jury. At Nalls' second trial, Brian Ledlow testified that he saw Ware and Nalls shooting from a vehicle; one of their bullets hit Jones. Ledlow stated that he identified the shooters as Nalls and Ware to law enforcement that night. Jones testified that Ware was shooting a handgun while driving the vehicle and Nalls was shooting an assault rifle in the back seat. Jones stated that he was unable to provide a statement at the time but provided one about a month after the shooting and identified Nalls and Ware as the shooters. Officer Gary Galloway testified that he spoke with Jones at the scene; he stated that Jones identified Nalls and Ware as the shooters and stated that Nalls had been driving the vehicle. Officer Galloway testified that Ledlow left the scene before he was able to speak to him but stated in his report that he identified a possible witness and spoke with him briefly. Officer Galloway stated in his prior sworn testimony that Ledlow was the first person to speak with law enforcement that night. According to Officer Galloway, Ledlow stated that Ware was driving the vehicle and Nalls was in the front seat. Investigator Danny Poe testified that he spoke with Ledlow who identified Nalls and Ware as the shooters. Investigator Poe also testified that a recorded statement from Jones, while he was hospitalized, identified Nalls and Ware as the shooters. After the State rested its case, Ware testified on behalf of the defense. Ware stated that he shot Jones and that Nalls had nothing to do with it; he testified that he did not know Nalls at the time of the shooting and Nalls was not in the vehicle with him. Ware admitted that he acted in concert with someone when he pled guilty and acknowledged that he did not tell the judge he acted alone. Nalls was ultimately convicted of attempted murder and possession of a firearm by a felon. The trial court sentenced Nalls, as a violent habitual offender, to serve two consecutive terms of life without eligibility for parole. Nalls filed a motion for JNOV and a motion for JNOV or a new trial. The trial court denied Nalls's motion for JNOV or a new trial. Nalls appealed.

ISSUES

Whether (1) the Court of Appeals had jurisdiction; (2) the trial court erred by admitting portions of Ledlow's testimony that were contradictory to the testimony he presented during the first trial; (3) the trial judge was biased; (4) the trial court erred by sentencing Nalls as a violent habitual offender; (5) Nalls received ineffective assistance of counsel at trial; and (6) the jury's verdicts were against the overwhelming weight of the evidence.

HOLDING

(1) Because the State did not object to the timeliness of Nalls’s notice of appeal, though Nalls’s notice of appeal was not timely filed, the Court of Appeals suspended the requirements of Miss. R. App. Pro. 2(c). (2) Because Nalls did not contemporaneously object to Ledlow’s testimony at trial and seemingly raised the issue for the first time during his sentencing hearing, the trial court did not err by admitting the testimony. (3) Because Nalls did not provide any citation to the record to support his argument, the issue could not be considered. (4) Because Nalls’s sentence was not a new penalty for his earlier crime, but rather a stiffened penalty for his recent crimes, and because these crimes occurred after the previous crime qualified as a per se crime of violence, the trial court did not err in sentencing Nalls as a violent habitual offender. (5) Because the record affirmatively showed that Nalls’s ineffective assistance claim based on his attorney’s failure to question the credibility of a witness was without merit, Nalls did not receive ineffective assistance of counsel. (6) Because the jury’s verdicts were not so contrary to the overwhelming weight of the evidence that to allow them to stand would sanction an unconscionable justice, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2021-KA-00592-COA (Aug. 2, 2022)

Opinion by Judge Greenlee

Hon. W. Ashley Hines (Washington County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) & *Pro se* for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Claire Dixon](#)

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