

MISSISSIPPI SUPREME COURT DECISIONS – JULY 28, 2022***SUPREME COURT - CIVIL CASES*****WAYNE CNTY. SCH. DIST. V. QUITMAN SCH. DIST.****CIVIL - OTHER**

PROPERTY - ALLOCATION OF TOWNSHIP FUNDS - CUSTODIAL SCHOOL DISTRICTS - Custodial school districts are prohibited from paying money to non-custodial school districts when no student list has been timely provided by the non-custodial school district

PROPERTY - ALLOCATION OF TOWNSHIP FUNDS - STATUTE OF LIMITATIONS - Miss. Code Ann. § 29-3-119(4) refers to a condition precedent that non-custodial school districts must fulfill and is not a statute of limitations

FACTS

Wayne County School District (“Wayne County”) and Quitman School District (“Quitman”) share four townships. In June 2011, Quitman discovered that Wayne County had failed to include oil and gas production in the pro rata distribution of funds for one of their shared townships as required by Miss. Code Ann. § 29-3-119(2). Wayne County then paid Quitman the correct pro rata share of revenue dating back to January 1, 2010. Wayne County School District sought an attorney general opinion to determine how far back in time they would need to go to pay Quitman in full for unpaid shared revenues. The attorney general’s office stated that Miss. Code Ann. § 29-3-119(4) established a one-year statute of limitations on any claims for unpaid shared revenues. Later that year, Quitman filed suit against Wayne County seeking an allocation of funds between 1978 and 1998. In August 2012, Wayne County School District filed a motion to dismiss declaring that Quitman failed to assert its claim within twelve months in which the funds sought were distributed as outlined in Miss. Code Ann. § 29-3-119(4). In December 2012, Wayne County filed a motion for partial summary judgment, contending that they were entitled to the judgment on any claim for funds prior to January 1, 2010. Quitman filed a motion for partial summary judgment arguing that the one-year statute of limitations conflicts with the Constitution. In April 2013, the trial court determined if Quitman could submit a list of educable children for the years it asserted nonpayment, Wayne County needed to retroactively pay Quitman for those years. In October 2015, Quitman submitted to Wayne County lists of educable students between the years 1983-1998. In January 2017, the trial court ruled in favor of Quitman. Wayne County appealed.

ISSUE

Whether the trial court erred by failing to grant summary judgment to Wayne County because Quitman failed to timely submit student lists as required by Miss. Code Ann. § 29-3-119(4).

HOLDING

Because the one-year period delineated in Miss. Code Ann. § 29-3-119(4) was a condition precedent that non-custodial school districts were required to fulfill, it was not a statute of limitations. Therefore, the Supreme Court reversed and rendered the judgment of the Wayne County Chancery Court.

DISSENT

Justice Griffis argued there was no legal authority outlining the difference between a statutory condition precedent and a statute of limitations. He noted that Miss. Const. art 4, § 104 provided that statutes of limitation shall not run against the state, and since Quitman was a state entity, they enjoyed immunity from the limitations set forth in Miss. Code Ann.

§ 29-3-119(4). He further argued that Wayne County acted as trustee of the sixteenth section funds, and by failing to allocate funds to Quitman, Wayne County breached its fiduciary duty.

On Direct Appeal: Reversed & Rendered. On Cross-Appeal: Affirmed. - 2020-CA-00499-SCT (July 28, 2022)

En Banc Opinion by Justice Coleman - Dissent by Justice Griffis

Hon. Franklin C. McKenzie Jr. (Wayne County Chancery Court)

William A. Whitehead Jr., Watts Casper Ueltschey, J. Shannon Clark, Marcus Douglas Evans, & Karen Elizabeth Howell for Appellant - John G. Compton, Robert H. Compton, Terry L. Caves, & Risher Grantham Caves for Appellees

Briefed by [Spencer Cash](#)

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SUPREME COURT - ORDERS

JACKSON V. STATE

EN BANC ORDER

ORDER

David Jackson was convicted of possession of cocaine with intent to distribute and, as a habitual offender, sentenced to thirty years. In 2001, Jackson's conviction and sentence were reaffirmed by the Court of Appeals. In 2018, the Supreme Court warned Jackson that any future frivolous filings related to his conviction and sentence may result in restrictions on his filing of further post-conviction collateral relief petitions or similar pleadings in forma pauperis. A year later, Jackson filed a frivolous pleading, and the Court ordered him to be restricted as warned in 2018. On March 1, 2022, Jackson filed a petition for post-conviction relief. The Court ordered (1) Jackson's petition for post-conviction relief to be denied and (2) Jackson to be restricted from filing further post-conviction collateral relief petitions or similar pleadings that are related to his 2001 conviction and sentence in forma pauperis. The Court argued Jackson's petition for post-conviction relief should be denied because the statute of limitations had passed, several claims were barred by res judicata, and Jackson presented a meritless claim of newly discovered evidence. In addition, the Court argued Jackson should be restricted because he presented a frivolous petition for post-conviction relief as warned against back in 2018. Therefore, the Supreme Court denied Jackson's petition for post-conviction relief.

OBJECTION

Presiding Justice King objected to the order restricting Jackson from filing further petitions for post-conviction relief in forma pauperis. He argued the Court's order to restrict Jackson's further filings was wrongful because it barred indigent defendants like Jackson from pursuing future petitions as they would likely be unable to pay for the applications. Thus, he contended the Court promoted efficiency over justice, infringing on the oath each justice took before taking their positions to do equal right to the poor and rich. Furthermore, he argued the order violated Jackson's constitutional entitlements such as access to the courts and essentially embodied how court orders serve to punish indigent defendants with the pocketbook restriction and thus preclusion of future petitions. Instead, he implored that the Supreme Court should simply deny or dismiss motions that lack merit.

Denied - 2014-M-00623 (July 25, 2022)

En Banc Order by Justice Chamberlin - Objection by Presiding Justice King

Briefed by [Emilee Crocker](#)

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KIRK V. STATE

EN BANC ORDER

ORDER

Marvin Kirk filed a motion for Post-Conviction Collateral Relief. First, the Supreme Court found that Kirk's petition was barred as untimely. Further, the Court found that because Kirk's previous petitions for post-conviction relief were rejected, his present petition was barred as successive. Next, the Court argued that Kirk's petition should be denied because Kirk presented no arguable basis for his claims. In addition, the Court noted that Kirk had previously been warned about restrictions on his ability to file applications for post-conviction relief in forma pauperis that could result from frivolous filings. The Court found that Kirk's present petition was frivolous and warranted sanctions. Therefore, the Supreme Court ordered that Kirk's motion for Post-Conviction Collateral Relief be denied; Kirk's ability to file further applications for post-conviction collateral relief related to the conviction and sentence in forma pauperis be restricted; and the Clerk of the Court be prohibited from accepting any future filings unless Kirk paid the applicable docket fee.

OBJECTION

Presiding Justice King argued that the Court prioritized efficiency over justice by barring Kirk's petition. First, he argued against the fact that the Court has made it a practice to punish indigent defendants instead of focusing on the case's merits. Further, he argued that the Court's decision to deny Kirk's filing actions in forma pauperis violated the Constitution because it granted unfettered access in civil causes to any tribunal in the State. He argued that the decision also cut off Kirk's fundamental right to vindicate his constitutional rights. Therefore, he argued that the Court should have denied or dismissed Kirk's Motion for Post-Conviction Collateral Relief for lack of merit, but instead, the Court chose to punish and impose a fee on the indigent defendant.

Denied - 2022-M-00044 (July 21, 2022)

Order by Justice Beam - Objection by Presiding Justice King

Briefed by [Mariah Rhodes](#)

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SUPREME COURT - CRIMINAL CASES

WILSON V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - MANIFEST NECESSITY - A new trial is not barred because of double jeopardy if there existed a manifest necessity for the mistrial

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER COMMENTS - When improper comments are made during the trial that may bias the jury, there exists a manifest necessity for a mistrial

CRIMINAL PROCEDURE - VERDICTS - WEIGHT OF EVIDENCE - A verdict made against the weight of the evidence will only be reversed if it is so contrary to the weight of the evidence that it sanctions an unconscionable interest

EVIDENCE - CONFLICTING TESTIMONY - JURY DECISION - When testimony conflicts, the jury is responsible for determining the credibility of the testimony

FACTS

Dwayne Wilson struck Stacy Pierce with a bat and was indicted for aggravated assault. In November 2020, the trial court granted a mistrial based on a biased jury after the defense counsel made an improper statement about Pierce. The trial was reset, and Wilson moved to dismiss the charges based on double jeopardy and argued there was no manifest necessity for a mistrial. In April 2021, the second trial was held, and Wilson was found guilty of aggravated assault. Wilson appealed.

ISSUES

Whether (1) the trial court erred in granting the State's motion for a mistrial which violated Wilson's fifth amendment protection against double jeopardy and (2) the trial court abused its discretion by denying Wilson's motion for a new trial against the overwhelming weight of the evidence.

HOLDING

(1) Because the trial court found that defense counsel's improper statement biased the jury in the first trial, and because the biased jury created a manifest necessity for a mistrial, Wilson's retrial was not barred by double jeopardy. (2) Because the jury determined that conflicting testimony did not support Wilson's theory of self-defense, and because the verdict was not so contrary to the weight of the evidence that it sanctioned an unconscionable interest, the trial court did not abuse its discretion by denying Wilson a new trial. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

DISSENT

Presiding Justice King argued that the trial court could have instructed the jury to disregard the defense counsel's improper statement rather than declaring a mistrial. He argued that, because such an instruction would have cured any potential prejudice, no manifest necessity for a mistrial existed. Therefore, the second trial violated Wilson's Fifth Amendment right against double jeopardy.

Affirmed - 2021-KA-00473-SCT (July 28, 2022)

En Banc Opinion by Justice Griffis - Dissent by Presiding Justice King

Hon. Dal Williamson (Jones County Circuit Court)

George T. Holmes & Hunter N. Aikens (Pub. Def. Office) for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Doug Reynolds](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 26, 2022

COURT OF APPEALS - CIVIL CASES

GARNER V. GARNER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - EQUITABLE DISTRIBUTION - To determine what constitutes an equitable distribution of marital property, to court applies the *Ferguson* factors, which include: (1) contribution to the accumulation of the marital property; (2) dissipation of the assets; (3) the market or emotional value of assets subject to distribution; (6) the extent to which property division may eliminate the need for alimony; (7) the financial security needs of the parties; and (8) any other factor that in equity should be considered; under *Spahn*, equitable distribution does not require equal distribution

FAMILY LAW - ALIMONY - ARMSTRONG FACTORS - To guide the court in awarding alimony, the court applies the *Armstrong* factors, which include: (1) the income and expenses of the parties; (2) the health and earning capacities of the parties; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence or absence of minor children in the home, which may require that one or both of the parties

either pay, or personally provide, child care; (7) the age of the parties; (8) the standard of living of the parties, both during the marriage and at the time of the support determination; (9) the tax consequences of the spousal support order; (10) fault or misconduct; (11) wasteful dissipation of assets by either party; or (12) any other factor deemed by the court to be just and equitable in connection with the setting of spousal support

FAMILY LAW - REHABILITATIVE ALIMONY - PURPOSE - The purpose of rehabilitative alimony is to enable a spouse to become self-supporting and prevents that party from becoming destitute while searching for a means of income

FAMILY LAW - CUSTODY - ALBRIGHTFACTORS - To determine what is in the child's best interest in custody disputes, the court applies the *Albright* factors, which include: (1) the age, health, and sex of the child; (2) a determination of the parent that has had the continuity of care prior to the separation; (3) which has the best parenting skills and (4) which has the willingness and capacity to provide primary child care; (5) the employment of the parent and responsibilities of that employment; (6) physical and mental health and age of the parents; (7) emotional ties of the parent and child; (8) moral fitness of the parents; (9) the home, school, and community record of the child; (10) the preference of the child at the age sufficient to express a preference by law; (11) stability of the home environment and employment of each parent, and (12) other factors relevant to the parent-child relationship

FACTS

Gregg and Rachel Garner married, had two children, and divorced due to irreconcilable differences. At trial, Rachel produced evidence that Gregg was physically and verbally abusive and displayed erratic, disturbing behavior in front of the children. Rachel produced video of some of these incidents; in one video, a child could be heard repeatedly yelling "Daddy, stop!" while Gregg shouted obscenities at Rachel and threw what appeared to be silverware at her. In another video, Gregg approached Rachel and, according to his testimony, slapped the phone out of her hand when he realized she was filming him. Rachel's close friends and the family's nanny all testified to Gregg's abusive and erratic behavior. Both Rachel and the nanny testified that Gregg often drank alcohol during the day and obtained an Adderall prescription that he kept from Rachel. On one occasion, Rachel testified that Gregg locked himself in a bedroom and drank whiskey, later exiting the room with a gun to his head in front of Rachel and their daughter. Gregg admitted that these incidents occurred in his testimony and expressed his regret. The guardian ad litem ("GAL") gave a report that described Gregg's behavior as "abhorrent" and asserted that these incidents were "shocking, repulsive, and unquestionably marked adverse psychological events in the children's lives." Still, the GAL recommended that the parents share joint legal custody with Rachel retaining sole physical custody and Gregg having frequent visitation rights. The chancery court distributed 48% of the marital estate to Gregg with the indebtedness attached to the property exceeding his available income. Further, the chancery court awarded Gregg rehabilitative alimony sufficient to meet his monthly child support obligation for two years. Lastly, the chancery court granted sole legal and physical custody of the couple's children to Rachel Garner while Gregg was awarded frequent visitation. Gregg appealed.

ISSUES

Whether the chancery court failed to (1) conduct a proper *Ferguson* analysis for distributing the marital property; (2) conduct a proper *Armstrong* analysis for awarding rehabilitative alimony; and (3) conduct a proper *Albright* analysis in granting sole legal and physical custody to Rachel.

HOLDING

(1) Because equitable distribution did not necessarily have to be an equal distribution, and because the chancery court acknowledged Gregg's argument that his income would not allow him to satisfy the indebtedness, considered Gregg's abusive, violent and unstable behavior, found that Gregg greatly depleted the couples' accumulated American Express points, and acknowledged that Rachel's direct contributions to the marital assets far exceeded Gregg's, the chancery court properly applied the *Ferguson* factors in distributing the marital property. (2) Because the chancery court was not required to make both parties financially equal, because the chancery court analyzed all of the *Armstrong* factors when it considered Gregg's earning potential and noted that the demise of the marriage was caused by Gregg's unwillingness to curtail his combative temperament, and because the purpose of rehabilitative testimony was to give the former spouse the opportunity to enter the work force and Gregg was already self-employed, the chancery court correctly applied the *Armstrong* factors and Gregg's rehabilitative alimony award was proper. (3) Because the chancery court conducted a thorough analysis of each *Albright* factor and only one factor favored Gregg, because Gregg's abusive and violent behavior factored prominently in the analysis, and because substantial evidence existed to allow the court to disregard

the GAL's recommendation for joint legal custody, the chancery court correctly applied the *Albright* factors and the custody determination was proper. Therefore, the Court of Appeals affirmed the judgment of the Lee County Chancery Court.

Affirmed - 2021-CA-00038-COA (July 26, 2022)

Opinion by Judge McCarty

Hon. Jacqueline Estes Mask (Lee County Chancery Court)

D. Kirk Tharp & Thomas A. Waller for Appellant - Richard Shane McLaughlin for Appellee

Briefed by [Oliver Samples](#)

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COURT OF APPEALS - CRIMINAL CASES

BOYD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

CRIMINAL PROCEDURE - JURY INSTRUCTION - IMPERFECT SELF-DEFENSE - Under the theory of imperfect self-defense, an intentional killing may be considered manslaughter if done without malice but under a bona fide but unfounded belief that it was necessary to prevent death or great bodily harm

EVIDENCE - AUTHENTICATION - PRIMA FACIE SHOWING - Under Miss. R. Evid. 901, a party need only make a prima facie showing of authenticity, not a full argument on admissibility; once a prima facie case is made, the evidence goes to the jury and it is the jury who will ultimately determine the authenticity of the evidence, not the court

CRIMINAL PROCEDURE - CROSS EXAMINATION - FAIR TRIAL - When witness testimony departs significantly from earlier statements, the State has a legitimate basis to suggest that attempts to influence the witness's testimony occurred, which is not so highly inflammatory and prejudicial to the defense as to affect the fundamental fairness of the trial

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - OBJECTING TO CLOSING ARGUMENT - Failing to object to a prosecutor's closing argument must be so prejudicial and serious as to deprive the defendant of a fair trial to sustain a claim of ineffective assistance of counsel

FACTS

In 2019, Alize Joemise Boyd was indicted for two counts of murder of Christopher Eric Smith and Jason Wayne Lovell and one count of aggravated assault of Paula Genise Russell. In 2018, Boyd and Smith arranged for Smith to sell Boyd a quarter pound of marijuana. The transaction was arranged through Facebook messages and occurred at Russell's house. At some point during the transaction, a fight began. Smith was shot more than once, and Lovell was shot in the chest and in the head. Russell was also shot in the arm. The State alleged the initial altercation was caused by Boyd attempting to leave without paying for the marijuana. Russell testified that she did not witness the transaction but did witness Boyd attempting to leave with the marijuana. She then saw Smith tackle Boyd to the floor where they began fighting, but then dispersed, as Boyd pulled a gun to shoot Smith and Lovell. Boyd contended that Smith planned to rob him by taking the money he came with and taking back possession of the marijuana. Boyd testified that Smith struck him in the head and knocked him to the ground, while Lovell held him down and joined in on the beating. Boyd then contended that he fired his weapon in self-defense as he was trying to retreat. Facebook messages were admitted into evidence without proof or objection to authenticity. In addition, the testimonies of Boyd and other witnesses supported the content of the messages. However, Boyd denied sending the messages. The content of the text messages was

consistent with Boyd's testimony but inconsistent with his statement given the day after the shootings. The prosecutor referenced the text messages not in evidence, but the jury was already instructed by the court to give no weight to any argument, statement, or remark that had no basis in evidence. Trial counsel's opening and closing arguments focused on Boyd's claim of self-defense, and the self-defense instruction was given to the jury. Boyd was sentenced to two life sentences for murder and a term of twenty years for aggravated assault. Boyd appealed.

ISSUES

Whether Boyd received ineffective assistance of counsel when his counsel failed (1) to request a jury instruction regarding imperfect self-defense manslaughter; (2) to object to testimony regarding unauthenticated messages and their admissibility; (3) to object to cross-examination questions regarding text messages sent by Boyd while incarcerated; and (4) to object to improper comments during closing arguments.

HOLDING

(1) Because the trial strategy was to show Boyd acted in necessary self-defense, the failure of Boyd's counsel to request an imperfect self-defense instruction was neither indicative of deficient performance nor prejudicial to Boyd's defense. (2) Because not challenging the admission of Facebook messages was a strategic decision made by Boyd's counsel, because Boyd's testimony was consistent with the messages, and because the authenticity of the messages was for the jury to decide, the failure of Boyd's counsel to object to testimony and admissibility of the messages were not deficient nor prejudicial to Boyd's defense. (3) Because Boyd denied sending text messages to Russell, and because any objection to questions regarding whether Boyd sent the messages would have been properly overruled, the failure of Boyd's counsel to object to cross-examination questions was not deficient nor prejudicial to Boyd's defense. (4) Because not objecting to the improper comments regarding messages that were not introduced into evidence was a strategic decision made by Boyd's counsel, and because the jury was instructed to disregard any portion of the argument with no basis in the evidence, the failure of Boyd's counsel to object was not so prejudicial as to deprive Boyd of a fair trial. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2021-KA-00066-COA (July 26, 2022)

Opinion by Judge Emfinger

Hon. Michael Paul Mills Jr. (Alcorn County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Kayla My-Linh Tran](#)

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WALKER V. STATE

CRIMINAL - FELONY

EVIDENCE - TESTIMONY - SUFFICIENCY - The unsupported word of the victim of a sex crime alone is sufficient to support a guilty verdict where the testimony is not discredited or contradicted by other credible evidence

APPELLATE PROCEDURE - REVIEW - RECORD EVIDENCE - Miss. R. App. P. 28(a)(7) requires that an appellant's brief contain the contentions of an 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

EVIDENCE - HEARSAY - TENDER YEARS EXCEPTION - Under Miss. R. Evid. 803(25), a statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability, and (b) the child either (1) testifies at the proceedings, or (2) is unavailable as a witness

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - PRESERVING OBJECTION - Unless there is plain error in allowing counsel's alleged improper remarks during closing argument, the complaining party must make a contemporaneous objection to preserve the issue for appeal

FACTS

In 2021, Johnny Ray Walker Jr. was found guilty of sexual battery against his ten-year-old niece, K.H. after she reported that he sexually assaulted her in June 2019. On June 28, 2019, Michael Ball, K.H.'s father, dropped K.H. and her two siblings off at a relative's house where his cousin, Brittany McDonald, agreed to watch the children. Walker, the children's cousin, was also at the relative's house on this day. K.H. reported that the assaults occurred when McDonald left the house that day. A few months after the assault, K.H. confided in some cousins that she had been sexually assaulted by Walker, and the mother of one of the cousins notified K.H.'s father, Ball. Shortly thereafter, Ball took K.H. to the Jefferson Davis County Sheriff's Department to make a report. Ball and K.H. provided statements to Investigator Tim Culpepper, and K.H.'s siblings corroborated details of her testimony. Culpepper referred K.H. to the Kids Hub Child Advocacy Center ("KHCAC") for a forensic interview. Robin Bixler interviewed K.H. at the KHCAC and later testified at trial as an expert in the field of forensic interviews. Bixler testified that K.H.'s responses to questions and description of events were consistent with that of a child who had been assaulted. Culpepper testified that Walker denied the allegations when interviewed. Following Walker's interview, he was charged with sexual battery. On March 24, 2021, Walker's trial began and concluded the following day, with the jury finding Walker guilty of sexual battery. The same day, Walker filed both a motion for a new trial and a motion for judgment notwithstanding the verdict. The trial court denied both motions and sentenced Walker to a term of forty-two years in the custody of the Mississippi Department of Corrections. Walker appealed.

ISSUES

Whether (1) the State failed to produce any physical, scientific, or corroborative evidence; (2) Walker's due process rights were violated when his trial occurred during the height of the COVID-19 pandemic; (3) the State engaged in misconduct that contributed to unethical emotional manipulation; (4) the trial court abused its discretion in allowing both Bixler and Culpepper's testimony; and (5) the trial court abused its discretion by giving an improper jury instruction.

HOLDING

(1) Because K.H.'s testimony was not discredited or contradicted by other credible evidence, the jury's verdict was properly supported by sufficient evidence. (2) Because Walker provided no proof to substantiate his claim that the COVID-19 pandemic negatively impacted the jurors' participation in the trial and deliberation, his due process rights were not violated. (3) Because Walker failed to point to any evidence of any action by the State amounting to prosecutorial misconduct, this claim was procedurally barred. (4) Because the trial court, after a hearing outside the jury's presence, determined that K.H.'s statement's time, content, and circumstances provided substantial indicia of reliability, because K.H. testified, and because Bixler's forensic interview was another step in the investigative process, the trial court did not abuse its discretion in allowing both Bixler and Culpepper's hearsay testimony under the tender age exception. (5) Because the trial court had already read the full instruction to the jury, because the State's jury instruction was not plain error, and because Walker failed to make a contemporaneous objection, the trial court did not abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Jefferson Davis County Circuit Court.

Affirmed - 2021-KA-00483-COA (July 26, 2022)

Opinion by Judge Emfinger

Hon. Anthony Alan Mozingo (Jefferson Davis County Circuit Court)

Vanessa J. Jones for Appellant - Candice Leigh Rucker & Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Merritt Baria](#)

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