

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 15, 2022***SUPREME COURT - CIVIL CASES*****HOLLIDAY V. DEVAULL****ELECTION CONTEST**

CIVIL PROCEDURE - ELECTION CONTESTS - JUDICIAL REVIEW - Under Miss. Code Ann. § 23-15-927, a petition for judicial review must be filed within ten days after any contest or complaint has been filed with an executive committee

CIVIL PROCEDURE - JURISDICTION - SUBJECT MATTER JURISDICTION - The requirement of filing a sworn copy of the complaint made to the committee is jurisdictional, meaning that if the requirement is not met, the circuit court lacks subject matter jurisdiction to hear the case

FACTS

Nicholas Holliday prevailed against Robert Devaull in the Democratic Primary Runoff Election for Alderman, Ward I, in Aberdeen in June 2020. Devaull filed a complaint with the Aberdeen Municipal Democratic Executive Committee (“Committee”), asserting that substantial errors had occurred during the election and ballot count. After a hearing, the Committee upheld Holliday’s win. In July 2020, Devaull filed a petition for Judicial Review of Election Contest with the circuit court, seeking to invoke the court’s power under Miss. Code Ann. § 23-15-927 and attached an unsworn copy of his complaint filed with the Committee. Later, Devaull amended his petition to include a copy of the transcript from the Committee hearing. In December 2020, Holliday filed a motion under Miss. R. Civ. P. 12(b)(1) asserting that the circuit court lacked jurisdiction because Devaull failed to file a sworn copy of the complaint within the ten-day statutory deadline provided by Miss. Code Ann. § 23-15-927. Also in December 2020, Devaull filed an amended petition, swearing to the allegations in the first petition, including the complaint. Devaull also sought to have his amended petition relate back to the date of the original petition from July 2020. Holliday then filed an answer to the amended petitions and moved to strike Devaull’s second amended petition as an improper attempt to use the relation back provision of Miss. R. Civ. P. 15(c). The circuit court denied Holliday’s motion and tried the case in January 2021. In its final judgment, the circuit court ordered a special election. Holliday filed an omnibus motion challenging the circuit court’s subject matter jurisdiction and its decision to order a special election, which was denied. Holliday appealed.

ISSUE

Whether the circuit court erred in finding it had subject matter jurisdiction to hear the election contest under Miss. Code Ann. § 23-15-927 and authority to order a special election.

HOLDING

Because Devaull failed to comply with the statutory requirement of filing a sworn copy of the complaint made to the Committee before the ten-day deadline in Miss. Code Ann. § 23-15-927, and because the requirement of filing a sworn copy of the complaint was jurisdictional, the circuit court lacked subject matter jurisdiction and was thus without authority to order a new election. Therefore, the Supreme Court reversed and rendered the judgment of the Monroe County Circuit Court.

Reversed & Rendered - 2021-EC-00486-SCT (Sept. 15, 2022)

Opinion by Chief Justice Randolph

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

Walter Howard Zinn Jr. & Mark Coleman McClinton for Appellant - Lydia Quarles & James Ray Mazingo for Appellee

Briefed by [Meaghan Pickles](#)

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WILLIAMS V. WILLIAMS

CIVIL - DOMESTIC RELATIONS

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

APPELLATE PROCEDURE - INTERLOCUTORY APPEAL - CERTIFICATION - If the court decides that an order that does not dispose of all the claims of all the parties and that is not appealable under any other statute or rule should be given the status of a final judgment, Miss. R. Civ. P. 54(b) requires it to take two separate steps before an appeal can be perfected; the court must make an express determination that there is no just reason for delay and it must make an express direction for the entry of judgment

CIVIL PROCEDURE - DISMISSAL - INTERLOCUTORY APPEAL - Without the entry of a Miss. R. Civ. P. 54(b) certificate, a trial court order which disposes of less than all of the claims against all of the parties in a multiple party or multiple claim action, is interlocutory and not appealable

FACTS

In May 2019, Tuwanda Williams filed a complaint for divorce against John Williams, Jr., alleging fault grounds of adultery and habitual cruel and inhuman treatment. John filed his answer and denied the fault-based grounds for divorce. After a settlement conference, Tuwanda and John agreed to and signed a Joint Motion to Dismiss Fault Grounds and Consent to Divorce on Ground of Irreconcilable Differences, an Agreed Order Dismissing Fault Grounds, a Judgment of Divorce – Irreconcilable Difference, and a Divorce Agreement on October 23, 2020. After filing their joint motion with the chancery court, Tuwanda changed her mind and told her attorney that she wanted to rescind her consent to the divorce agreement. On October 25, 2020, Tuwanda’s counsel moved to withdraw the divorce agreement, and, in response, John filed a motion seeking to enforce the separation agreement, arguing that the divorce agreement was not contingent upon either party obtaining a divorce and that the agreement could have been enforced independently. In January 2021, Tuwanda then filed a motion asserting that she no longer consented to an irreconcilable differences divorce but wanted to proceed with the complaint for divorce against John. After a hearing on John’s motion, the chancery court entered an order, finding that although Tuwanda made a timely withdrawal of her consent to divorce, the divorce agreement was an enforceable contract and binding on both parties. In July 2021, a document entitled “final judgment” was entered in which the chancellor enforced the divorce agreement, finding again that it was an enforceable contract. Tuwanda then filed a Motion to Dismiss Complaint for Divorce-Fault Grounds,” and timely filed a notice of appeal from the “final judgment” order. Tuwanda then petitioned the Supreme Court for interlocutory appeal, which was denied. Tuwanda appealed.

ISSUES

Whether the order entitled “final judgment” (1) adjudicated all claims and (2) was a final, appealable judgment and should have been dismissed because it was not certified under Miss. R. Civ. P. 54(b).

HOLDING

(1) Because the chancery court’s order entitled “final judgment” did not address Tuwanda’s complaint for divorce or resolve the issue of divorce, the order did not adjudicate all of Tuwanda’s claims. (2) Because the chancery court did not use the specific and express language required under Miss R. Civ. P. 54(b), the order entitled “final judgment” was interlocutory in nature and not appealable. Therefore, the Supreme Court dismissed the appeal for lack of appellate jurisdiction.

Appeal Dismissed - 2021-CA-00875-SCT (Sept. 15, 2022)

En Banc Opinion by Justice Griffis

Hon. Robert George Clark III (Madison County Chancery Court)
Janessa E. Blackmon & Elizabeth R. Carr for Appellant - John Andrew Hammond & Willard Benton Gregg for Appellee
Briefed by [Kara Edwards](#)

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SUPREME COURT - CRIMINAL CASES

BURDEN V. STATE

CRIMINAL - FELONY

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

CRIMINAL PROCEDURE - APPELLATE REVIEW - SUFFICIENCY OF EVIDENCE - When convicting someone of aggravated assault, mere bodily injury is sufficient so long as it was caused with other means likely to produce death or serious bodily harm

CRIMINAL PROCEDURE - APPELLATE REVIEW - WEIGHT OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

FACTS

Derrick Burden lived with his girlfriend, Jessica Hayes, for more than a year before they broke up. Six months after Hayes asked Burden to move out, Burden approached Hayes while she was working but she avoided him. That same evening, Hayes and her former boyfriend, Willie Myers, encountered Burden at the Magnolia Inn motel in Woodville. Hayes testified that Burden was banging on their door and yelling for her. When Burden eventually kicked the door in, he was foaming at the mouth, wide-eyed, and sweating. Myers ran to his truck, and Burden punched Hayes in the head, threatened to kill her, and started to choke her. Hayes further testified that Burden punched and choked her until she lost consciousness. Hayes eventually tried to get to the door, but Burden pushed her into a mirror and continued to strike, choke, and threaten to kill her. Hayes eventually escaped and went to the sheriff's office and then the emergency room, where she was evaluated and treated for bruises and swelling to her head and body. Burden was subsequently indicted on one count of aggravated assault, pled not guilty, and proceeded to trial. After the trial court denied Burden's motion for a directed verdict, a jury convicted Burden of one count of aggravated assault. Burden was sentenced to ten years in prison and then filed a motion for a directed verdict and a motion for a new trial, which were both denied. Burden appealed.

ISSUES

Whether (1) the evidence presented was sufficient for a conviction of aggravated assault and (2) the verdict against Burden was contrary to the weight of the evidence.

HOLDING

(1) Because the record was filled with testimony by Hayes regarding the assault, including medical records and pictures documenting Hayes's injuries, any rational juror could have found beyond a reasonable doubt that Burden committed aggravated assault and the verdict was supported by substantial evidence. (2) Because ample testimony and evidence in the record showed that Burden's actions towards Hayes constituted aggravated assault, a reasonable jury could have found that Burden attempted to cause serious bodily harm and the jury's verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Supreme Court affirmed the judgment of the Wilkinson County Circuit Court.

Affirmed - 2021-KA-00782-SCT (Sept. 15, 2022)

Opinion by Justice Coleman

Hon. Lillie Blackmon Sanders (Wilkinson County Circuit Court)
George T. Holmes (Pub. Def. Office) for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee
Briefed by [Jacoby Gilmore](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 13, 2022

COURT OF APPEALS - CIVIL CASES

GARDNER V. JACKSON

CIVIL - MEDICAL MALPRACTICE

TORTS - NEGLIGENCE - ELEMENTS - To prevail on a claim of negligence, a plaintiff must prove (1) a duty owed, (2) breach of that duty, (3) damages, and (4) that the breach was the proximate cause of the damages

MEDICAL MALPRACTICE - NEGLIGENCE - EXPERT TESTIMONY - For a plaintiff to properly establish the negligence of a physician, an expert witness must articulate a specific, objectively-determined standard of care; not only must the expert identify and articulate the requisite standard of care that was not complied with, but the expert must also establish that the failure was the proximate cause, or proximate contributing cause, of the alleged injuries

FACTS

In 2006 and 2012, Tammie Gardner underwent surgery, performed by Dr. Mark S. Elliot at Plastic Surgery of Meridian without complication. In 2014, after complaints of pain, asymmetry, and hardening of implants, Gardner underwent a breast augmentation and mastopexy by Dr. William Dotie Jackson at Mississippi Premier Plastic Surgery PLLC (“Premier”). Prior to performing the surgery, Dr. Jackson requested Dr. Elliot’s medical file on Gardner which noted that Dr. Elliot used a superior pedicle when he performed her initial surgeries. Initially, Dr. Jackson wrote that he would use an inferior pedicle, but after reviewing the records from Dr. Elliot, Dr. Jackson made a mental note to perform a superior pedicle on Gardner. However, Dr. Jackson never changed his initial notes. Shortly after the surgery, Dr. Jackson had to perform emergency surgery on Gardner to try to save her breasts from removal but ultimately had to remove both breasts due to infection. In 2016, Gardner sued Dr. Jackson and Premier for negligence and gross negligence. At trial, Gardner argued that the nationally accepted standard of care for a breast augmentation and mastopexy was to use the same pedicle approach as previous surgeons. Thus, Gardner argued that Dr. Jackson should have used a superior pedicle because Dr. Elliot had used a superior pedicle. Gardner called Dr. Carey J. Nease as an expert witness and Dr. Jackson as an adverse witness to prove the standard of care. Dr. Jackson, while testifying, did not plainly state the nationally accepted standard of care. Dr. Nease testified to the importance of determining which pedicle to use and the risks of failing to preserve the pedicle. Further, Dr. Nease agreed that Dr. Jackson’s approach was the cause of Gardner’s tissue necrosis, but Dr. Nease was never asked to articulate the appropriate standard of care or determine if that standard of care was breached. Following Gardner’s case-in-chief, Dr. Jackson and Premier moved for a directed verdict which the trial court granted, finding that Gardner’s expert witness did not establish the nationally recognized standard of care applicable to a plastic surgeon performing breast augmentation and mastopexy operation. Gardner appealed.

ISSUE

Whether the trial court erred in granting Dr. Jackson and Premier’s motion for a directed verdict.

HOLDING

Because Gardner failed to present expert testimony that established an objective, nationally accepted standard of care, Gardner failed to make her prima facie case and the trial court did not err in granting the motion for a directed verdict. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2020-CA-01313-COA (Sept. 13, 2022)

Opinion by Judge Lawrence

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

John Preston Scanlon, Jerry L. Mills, & William Stacy Kellum III for Appellant - H. Wesley Williams III & Chris J. Walker for Appellees

Briefed by [Madison McLean](#)

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McGILBERRY V. ROSS

CIVIL - LEGAL MALPRACTICE

TORTS - LEGAL MALPRACTICE - DUTY OF CARE - A lawyer's duty of care is to exercise the knowledge, skill, and ability ordinarily possessed and exercised by the members of the legal profession similarly situated, and to prevail on a claim for legal malpractice based on an allegation of negligence, or breach of the standard of care, one must prove by a preponderance of the evidence (1) an attorney-client relationship, (2) the attorney's negligence in handling the client's affairs, and (3) proximate cause of the injury

TORTS - LEGAL MALPRACTICE - DUTY OF LOYALTY - When a legal-malpractice claim is based on an allegation of breach of fiduciary duty, the plaintiff must establish (1) the existence of an attorney-client relationship, (2) the acts constituting a violation of the attorney's fiduciary duty, (3) that the breach proximately caused the injury, and (4) the fact and extent of the injury

CIVIL PROCEDURE - APPELLATE REVIEW - PROCEDURAL BAR - The failure to cite relevant authority, or the failure to connect the relevant authority to a case procedurally bars consideration on appeal

FACTS

After she was fired in 2016, Cynthia McGilberry retained Lisa Ross as her attorney in an action in federal court involving allegations of racial and sexual discrimination against her former employer, Select Specialty Hospital ("Select"). When Select filed a motion for summary judgment, Ross filed two motions seeking additional time to respond but failed to respond by either deadline. The United States District Court for the Southern District of Mississippi granted Select's motion for summary judgment, finding no genuine issue of material fact existed for a determination by a jury. In June 2019, McGilberry filed a legal malpractice claim against Ross in circuit court alleging that Ross was negligent by failing to respond to the motion for summary judgment, including breach of the duty of loyalty, breach of fiduciary duty, breach of contract, and tortious infliction of emotional distress. In May 2021, after various motions and filings by both parties, Ross moved for summary judgment. The circuit court granted the motion for summary judgment and dismissed the action. The circuit court noted that McGilberry failed to show credible proof, by expert testimony or otherwise, essential to survive Ross's motion for summary judgment. McGilberry appealed.

ISSUES

Whether (1) Ross's mistakes constituted professional negligence and (2) McGilberry asserted valid claims for breach of contract, bad faith breach of contract, and tortious infliction of emotional distress.

HOLDING

(1) Because McGilberry requested two extensions in an attempt to determine a legitimate and ethical response to the motion and was unable to do so, because the district court's decision to grant summary judgment was not based on or because of the failure to respond, because McGilberry failed to produce any evidence that she would have been successful in the prosecution of her underlying action had Ross filed a response, and because McGilberry did not submit proof in the circuit court to create a genuine issue of material fact, there was no evidence that Ross breached her duty of care or of any genuine issues of material fact to submit to a jury. (2) Because McGilberry provided little argument, failed to cite any authority, and did not provide credible evidence to support the elements of the causes of action, her briefing was insufficient to demonstrate reversible error. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-CP-01076-COA (Sept. 13, 2022)

Opinion by Judge Greenlee

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - William E. Whitfield III & James E. Welch Jr. for Appellee

Briefed by [Olivia Schwab](#)

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**ONE HUNDRED FIFTY-THREE THOUSAND THREE HUNDRED FORTY DOLLARS
(\$153,340.00) IN U.S. CURRENCY V. STATE EX REL. RANKIN CNTY. SHERIFF'S
OFF.**

CIVIL - OTHER

CIVIL PROCEDURE - FORFEITURE - CONTROLLED SUBSTANCE LAWS - In a civil forfeiture case, the question is whether, given all of the evidence taken together, a rational trier of fact could have found that the funds were the product of or the instrumentalities of violations of the State's Uniform Controlled Substances Laws

CIVIL PROCEDURE - FORFEITURE - MONEY SUBJECT TO FORFEITURE - Miss. Code Ann. § 41-29-153 provides that all money which is used, or intended for use, in violation of the chapter is subject to forfeiture

CIVIL PROCEDURE - FORFEITURE PROCEEDING - EXCESSIVE FINE ANALYSIS - There is a two-part analysis to determine whether a forfeiture is an excessive fine; first, under the instrumentality test, the forfeited property must have a sufficiently close relationship to the illegal activity and second, under the proportionality test, forfeiture of the property must not impose upon the owner a penalty grossly disproportionate to his offense

CIVIL PROCEDURE - FORFEITURE - CIRCUMSTANTIAL EVIDENCE - Forfeiture can be based on wholly circumstantial evidence and inference

FACTS

In 2018, an officer stopped a recreational vehicle ("RV") traveling on Interstate 20 in Rankin County. Gene Taylor was driving the RV. When \$153,340 were found during a search of the vehicle and a K-9 alerted to the odor of drugs on the currency, the State petitioned for forfeiture of the seized currency, asserting that Taylor was involved in a drug-courier endeavor. Taylor filed an answer asserting the money belonged to him. In 2020, a forfeiture hearing was held in county court. The State called Deputy Ronnie Decell, the arresting officer to testify. Deputy Decell testified that Taylor was stopped for careless driving but did not appear to be impaired, so he issued a warning. Deputy Decell obtained Taylor's driver's license information and criminal history, finding that Taylor had previously been charged with possession of marijuana. When he returned to the RV, Deputy Decell asked Taylor about his criminal history and whether he had anything illegal in the vehicle. Taylor replied that he only possessed a vape pen that contained THC oil and did not mention his prior drug charge. Deputy Decell asked if there were any narcotics, large amounts of U.S. currency, or items being transported for someone else in the vehicle, to which Taylor said "no." Deputy Decell intended to search the vehicle because THC was illegal in Mississippi, but Taylor refused to consent to a search of the RV and was arrested for possession of the vape pen. A certified K-9 then alerted to the vehicle and Taylor invoked his right to counsel. Taylor was transported to the Rankin County Jail, and the RV was searched. During the search, deputies found two boxes containing \$147,540 and a duffle bag containing \$5,800 and a K-9 later alerted to the odor of drugs on the currency. Captain Nick McLendon testified for the State as an expert witness and stated that Taylor's actions and appearances fit the profile of a drug courier. Captain McLendon focused on Taylor's untruthfulness about his prior criminal history, travel patterns, concealed currency, and the odor of drugs in making his determination. Further, Captain McLendon acknowledged that no drugs, weapons, small baggies, scales, air freshener, tools, tape, drug ledgers, or hidden compartments were found and that there were not any reports tracing the currency to drugs, but testified that drug-courier profiling was based on a totality of the circumstances. After Taylor's motion to dismiss was denied by the county court, Taylor testified on his own behalf. Taylor stated a number of reasons for his traveling, that he hoarded money and did not trust banks, that the currency in the RV was a part of his life savings, and that he did not tell Deputy Decell about the money because he did not consider it to be a large amount. Taylor introduced a drug interdiction and drug

courier expert, Dr. Howard Campbell, who testified that Taylor did not fit the profile of a drug courier because he was an elderly Japanese-American with health problems and his travel patterns were unpredictable. The county court entered a bench opinion and order for judgment as well as an order of forfeiture holding that the \$153,340 be forfeited to the Rankin County Sheriff's Office. The county court found that Taylor was involved in a drug courier endeavor, that his explanations were far-fetched and not credible, and that he had no claim to any of the money. Taylor appealed to the circuit court, which affirmed the county court's order of forfeiture. Taylor appealed.

ISSUES

Whether (1) the evidence supported the forfeiture of the currency; (2) the forfeiture amounted to an excessive fine; and (3) testimony that Taylor met a drug-courier profile was sufficient evidence to prove that the currency was forfeitable.

HOLDING

(1) Because testimony revealed Taylor's untruthfulness about his prior criminal charges, course of travel, and the large amount of currency in the RV, and because Taylor presented no evidence that the money belonged to him aside from his own testimony, which lacked credibility, the evidence was sufficient for a rational trier of fact to find that the currency was the product of or the instrumentality of violations of the Uniform Controlled Substances Law. (2) Because Taylor's seized property possessed a sufficiently close relationship to drug trafficking, and because the record contained sufficient evidence to show that the currency facilitated a violation of the Uniform Controlled Substances Law, the forfeiture did not result in an excessive fine. (3) Because a number of factors were used in Captain McLendon's determination that Taylor met the profile of a drug courier, and because forfeiture could be based on wholly circumstantial evidence and inference, the evidence was sufficient to prove the currency was forfeitable. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Judge Westbrook argued that the county court failed to appropriately apply the proportionality test. She argued the county court should have considered whether the value of the property seized was proportional to the crime, and because the county court did not analyze whether the \$153,340 was proportional to Taylor's conduct, it committed clear error. Furthermore, she argued the circuit court exceed its scope of review when it substituted its own judgment for that of the county court. Therefore, she would have reversed the circuit court's judgment and remanded for the county court to apply the correct and full legal standard.

Affirmed - 2020-CA-01409-COA (Sept. 13, 2022)

En Banc Opinion by Judge Greenlee - Dissent by Judge Westbrook

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

Ammie Thi Nguyen for Appellants - Michael Shelton Smith II, John K. Bramlett Jr., and Christopher Todd McAlpin for Appellee

Briefed by [Ross Dockins](#)

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COURT OF APPEALS - CRIMINAL CASES

ROWELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER INCLUDED OFFENSE - To be entitled to a lesser-included offense instruction, a defendant must point to some evidence in the record from which a jury could reasonably find him not guilty of the crime with which he was charged and at the same time find him guilty of a lesser-included offense

CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY & WEIGHT - In evaluating the legal sufficiency of the evidence, the critical inquiry is whether the evidence shows beyond a reasonable doubt that the accused

committed the act charged and that he did so under such circumstances that every element of the offense existed; in a challenge to the weight of the evidence, only those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable justice will be disturbed on appeal

APPELLATE PROCEDURE - REVIEWING EVIDENCE - RECORD - A reviewing court cannot consider matters which do not appear in the record and must limit itself to the facts that do appear in the record

FACTS

Forrest County Sherriff's deputies received a request from Perry County Sherriff's deputies to assist in stopping a vehicle traveling on the highway. Forrest County Sherriff's Deputy Daniel Benoit spotted the vehicle traveling at high speed and attempted to stop the vehicle and turned on his blue lights and siren. However, the vehicle did not stop, and Benoit testified that he was going over 125 miles per hour but still did not get within a quarter mile of the vehicle. The pursuit entered a residential area and Benoit lost the vehicle. Shortly after radioing where Benoit thought the vehicle was going, a Perry County deputy stopped the vehicle, which was occupied by Derek Rowell and a woman. Both passengers were arrested and given their *Miranda* rights. The deputy stated the woman was in the driver's seat when the vehicle was stopped but Rowell admitted to law enforcement that they had swapped positions in the vehicle. Prior to trial, Rowell's counsel moved to have two admissions made by Rowell during his parole revocation hearing suppressed, one of which contained Rowell's statement that he saw the blue lights. The trial court denied the motion to suppress because the statements were made under oath. Further, the trial court refused a proposed jury instruction for a lesser-included offense of misdemeanor eluding because it lacked a factual basis. Rowell was convicted of felony eluding and sentenced to serve five years in the custody of the Mississippi Department of Corrections. Rowell appealed.

ISSUES

Whether (1) the trial court erred by refusing to instruct the jury on a lesser-included offense; (2) the evidence supported Rowell's conviction; and (3) Rowell's testimony made during the revocation hearing should have been admitted.

HOLDING

(1) Because Rowell was given a visible or audible signal as required by the felony eluding statute but refused to stop, because there was sufficient evidence to find that Rowell drove recklessly, no reasonable jury could have found Rowell not guilty of felony eluding but guilty of the lesser-included offense, and therefore the trial court did not err by refusing to instruct the jury on a lesser-included offense. (2) Because two officers testified about Rowell's speed during the chase, because Rowell admitted that he saw the lights but did not stop, because he admitted he was the driver during the chase, and because there was no evidence presented that controverted the State's proof, there was sufficient evidence for a reasonable jury to find Rowell guilty of felony eluding and the verdict was not against the overwhelming weight of evidence. (3) Because the transcript of Rowell's revocation hearing was not included in the record, the issue was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2021-KA-00793-COA (Sept. 13, 2022)

Opinion by Judge McCarty

Hon. Jon Mark Weathers (Forrest County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Morgan Rushing](#)

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SIMS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY OF EVIDENCE - When reviewing a challenge to the sufficiency of evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - EVIDENCE - CIRCUMSTANTIAL EVIDENCE - A conviction may be had on circumstantial evidence alone; all proof need not be direct, and the jury may draw any reasonable inferences from all the evidence in the case

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

EVIDENCE - ADMISSIBILITY - AUTOPSY PHOTOS - Even if photographic evidence is gruesome, grisly, unpleasant, or inflammatory, it may still be admitted so long as it has probative value and its introduction serves a meaningful evidentiary purpose; a meaningful evidentiary purpose describes the circumstances of the killing, its location, or the cause of death, or supplements a witness's testimony

FACTS

In 2016, Belton Sims arrived at the emergency room with his four-year-old son Messiah Griffith early in the morning. Sims told a nurse that Messiah was not breathing and that he had drowned in the bathtub. Messiah, however, had abrasions and contusions to the head, neck, trunk, and extremities, as well as internal head and abdominal injuries. A doctor concluded that Messiah had not drowned. Although Messiah appeared dead on arrival, resuscitation was attempted. When informed that Messiah was dead, Sims displayed no emotion. Sims told the deputy coroner that he had gotten home around 11:00 p.m. the night before, that he gave Messiah a bath, went to get a towel, and when he returned Messiah had drowned. Sims could not explain what happened between 11:00 p.m. and 3:35 a.m. when he arrived at the hospital. Sims was also seen outside appearing like he was about to flee. An autopsy was performed on Messiah's body, noting various significant and severe injuries, including internal abdominal bleeding and bleeding under the scalp. Photographs were taken during the autopsy of Messiah's scalp and admitted into evidence over defense counsel's objection. Dr. Mark LeVaughn, who performed the autopsy, testified that there was no evidence that Messiah had drowned, but rather, the cause of death was multiple blunt trauma due to a beating. Dr. LeVaughn further testified that Messiah had likely died shortly after incurring the injuries and that he had probably been dead for several hours before being brought to the hospital. Sims was interviewed by law enforcement and claimed that he had performed CPR on Messiah and that Messiah's abdominal injuries were the result of a bike wreck. However, Dr. LeVaughn testified that the injuries were not consistent with a bike wreck. Sims also admitted to drinking alcohol on the night of the incident. Further, law enforcement did not find water in the bathtub or on the floor around the bathtub, nor any bath towels. At trial, the mothers of Sims's children, Shantania Applewhite and Brittany Griffith testified about the night of Messiah's murder. Applewhite testified that Sims threatened her because their son did not want to go home with Sims, that she woke to find that she and her mother's tires had been slashed and that one of Sim's relatives told her that Messiah was dead. Messiah's mother, Brittany, testified her brother told her to check on Messiah, and she then learned from Sims that Messiah had allegedly drowned. Brittany further testified that Messiah seemed nervous around Sims leading up to his death and that he previously had marks on his body after visiting Sims. After the State rested, Sims moved for directed verdict, which was denied. Then, the defense requested a mistrial or continuance because defense witnesses did not appear to testify, which was also denied. After the defense rested its case, the trial court denied Sims's renewed motion for a direct verdict and the jury found Sims guilty of capital murder with an underlying felony charge of felonious abuse and/or battery of a child. He was sentenced to life imprisonment without parole. Sims then filed a motion for judgment notwithstanding the verdict or a new trial, which was denied. Sims appealed.

ISSUES

Whether (1) the evidence was sufficient for the jury to convict Sims; (2) the jury's verdict was against the overwhelming weight of the evidence; and (3) whether the trial court erred by admitting the autopsy photograph of Messiah's scalp into evidence.

HOLDING

(1) Because evidence was presented that Messiah had fatal injuries that occurred less than six hours before he died, because he would have been immediately symptomatic, because Dr. LeVaughn found no evidence that Messiah had drowned but instead the cause of death was multiple blunt trauma due to a beating, because Sims had no explanation for the large gap in time between the bath and arriving at the hospital, because Sims had mentioned drinking alcohol that night, because there was testimony that Sims was angry that night, because Messiah seemed to be afraid of Sims, and because a conviction may be had on circumstantial evidence alone, a rational juror could have inferred that Sims

was the person who killed Messiah and found the essential elements of the crime beyond a reasonable doubt. (2) Because the State presented sufficient evidence to show Sims's culpability, because the jury listened to the witnesses testify at trial and assessed their credibility, and because the jury resolved conflicts in the evidence and found Sims guilty, the verdict was not so contrary to the overwhelming weight of the evidence that allowing it to stand was an unconscionable injustice. (3) Because Dr. LeVaughn explained that Messiah did not arrive to the autopsy with his scalp tissue peeled back and that it was peeled back during the autopsy, and because the photographs were used to explain Messiah's injuries and aided Dr. LeVaughn's testimony explaining that Messiah's head injury would have made Messiah immediately symptomatic, the evidence could have been used by the jury to infer that Sims killed Messiah and the trial court did not abuse its discretion in admitting the photo. Therefore, the Court of Appeals affirmed the judgment of the Jefferson Davis County Circuit Court.

Affirmed - 2021-KA-00682-COA (Sept. 13, 2022)

Opinion by Judge Greenlee

Hon. Prentiss Greene Harrell (Jefferson Davis County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Ashely Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Mason Scioneaux](#)

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