

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 22, 2022**SUPREME COURT - CIVIL CASES****SEALS V. STANTON****CIVIL - DOMESTIC RELATIONS**

CIVIL PROCEDURE - JURISDICTION - REQUIREMENT OF NOTICE - Under Miss. R. Civ. P. 81(d)(5), in matters of paternity, child support, and child custody, if the action is not heard on the day the hearing is set, an order of continuance can be made the day of the hearing without the need of an additional summons

CIVIL PROCEDURE - CONTEMPT - DIRECT CRIMINAL CONTEMPT - If an attorney informs the court in advance that they will not appear for a hearing and then fail to appear for that hearing, the court possesses knowledge of the attorney's lack of appearance, and the contempt can be classified as direct criminal contempt

CIVIL PROCEDURE - CONTEMPT - CONSTRUCTIVE CRIMINAL CONTEMPT - A party's failure to appear before the court is constructive criminal contempt because the party's actions and reasons are yet to be known to the court, and thus the party must be provided with procedural due process safeguards including a specification of charges, notice, and a hearing

CIVIL PROCEDURE - CONTEMPT - ATTORNEY'S FEES - It is proper to award attorney's fees when evidence is presented to show how a party's intentional misconduct causes the opposing party to expend time and money needlessly; in order to determine if attorney's fees are reasonable, evidence must be presented to support the award

FACTS

In 2017, Kimberlyn Seals gave birth to a child, and Ernest B. Stanton II, the father, filed a complaint requesting that the chancery court enter a judgment of filiation, make a determination of child support, award joint legal custody with a set standard visitation schedule, and require Seals to pay all court costs and attorney's fees. Seals filed an answer and counterclaims, requesting child support, sole physical and legal custody of the child, with Stanton having limited visitation, and that Stanton be required to pay his own attorney's fees and all final court costs. Months later, Seals changed counsel and was represented by Derek Hopson. In September 2019, the chancery court made a ruling, directing the attorneys to prepare a temporary order to establish custody, visitation, and support, and then entered the temporary order that required the parties to attend a final hearing if they were unable to agree to a permanent schedule of visitation. Seals filed a motion for reconsideration, which Stanton opposed, and a hearing for permanent visitation was set for April 7, 2020. A telephonic hearing was held to discuss visitation issues, where Seals requested temporary suspension of Stanton's visitation which was denied. After a petition for interlocutory appeal for Seals was denied, Felecia Perkins and Jessica Ayers filed an entry of appearance on behalf of Seals. On April 6, 2020, Perkins and Ayers requested a continuance of the April 7 hearing and emailed the court administrator to inform them that neither Ayers nor Perkins would appear at the hearing. The court administrator informed Ayers that their motion was untimely and that they were expected to appear at the hearing. On April 7, 2020, Seals, Perkins, Ayers, and Hopson failed to appear at the scheduled hearing and after attempts to contact them, the chancery court received no response. When the chancery court contacted Hopson, he responded that he had been fired as Seals's attorney. However, Hopson had never filed a motion seeking to withdraw and he was neither granted permission to withdraw. The chancery court subsequently entered an Order for Contempt of Court against Seals, Perkins, Ayers, and Hopson for failure to appear at the final hearing and separately for violation of the Temporary Order. The chancery court also assessed a \$250 per day fine against Seals and each attorney and awarded attorney's fees to Stanton. Seals and the attorneys filed a Motion to Set Aside Order for Contempt of Court as Void ab Initio, alleging that the chancery court did not have personal jurisdiction, that they were not given

proper notice, that they were not afforded proper safeguards of notice and a hearing for the contempt order, and that the court should have recused from the contempt hearing. The chancery court held a status conference where the parties' attorneys offered oral arguments, emails, and other documents for review. The chancery court then entered a Jurisdictional Final Judgment that upheld the contempt order, suspended child support payments, upheld the award of Stanton's attorney's fees, held that the Temporary Order would remain in effect, and clarified that Seals's attorneys, not Seals, were assessed a total fine of \$3,000, jointly and individually. Seals filed a Motion for Findings of Fact and Conclusions of Law and the chancery court entered a Final Judgment on Motion for Findings of Fact and Conclusions of Law, affirming and restating the information in the Jurisdictional Final Judgment. Seals then filed a Motion for Stay of Judgment Pending Appeal Without Supersedas Bond, which was not ruled on. Seals and her attorneys appealed.

ISSUES

Whether the chancery court (1) lacked jurisdiction over the parties; (2) erred in finding Perkins and Ayers to be in direct criminal contempt of court; (3) erred in finding Hopson to be in direct criminal contempt of court; (4) erred in finding Perkins, Ayers, and Hopkins to be in contempt of court for violating the Temporary Order; and (5) erred in awarding attorney's fees to the defendant.

HOLDING

(1) Because Seals and the attorneys all had actual notice of the final hearing date, failure to issue an additional Miss. R. Civ. P. 81 summons after continuing and resetting the hearing by agreement did not divest the chancery court of jurisdiction. (2) Because the email and the motion for continuance revealed that Perkins and Ayers were aware of their obligation to attend the hearing and they stated their intention to be absent from it, because they knew their presence as Seals's representation was required, because the chancery court directly expressed that it deemed their reason for being absent was without merit, and because the email indicated that they intended to disregard the order by being absent, the conduct of Perkins and Ayers constituted direct criminal contempt; however, the sanction imposed on Perkins and Ayers exceeded the limit allowed by Miss. Code Ann. § 9-1-17. (3) Because Hopson's failure to appear was not included in the email sent to the court administrator, because Hopson did not withdraw as counselor and the chancery court had no reason to know he would not be present, and because Hopson did not give notice to the chancery court that he would not attend, Hopson's actions, intentions, or reasons were not known by the chancery court, and thus constitute constructive criminal contempt and the chancery court erred by punishing Hopson. (4) Because the chancery court did not specify which provisions of the Temporary Order the attorneys violated to be held in direct criminal contempt, and because this type of disobedience was civil in nature but the chancery court's punishment of the fine was a criminal sanction, the matter was remanded for a determination of whether an indirect civil contempt proceeding should have commenced because it involved depriving Stanton of his right to visitation. (5) Because the record lacked evidentiary support for the specified amount of attorney's fees, the portion of the order regarding attorney's fees was vacated. Therefore, the Supreme Court affirmed in part, reversed and remanded in part, and vacated in part the judgment of the Coahoma County Chancery Court.

DISSENT

Presiding Justice Kitchens argued that the alleged conduct of Perkins, Ayers, and Hopson amounted to constructive criminal contempt and that there was no reason to remand the contempt charge for violation of the Temporary Order because the Supreme Court was required to ascertain a contempt order's primary purpose to determine the type of contempt. Further, he noted the facts presented support a finding of constructive criminal contempt that entitled the attorneys to due process protections. Additionally, he argued that the chancellor should have recused from the contempt proceedings because it was necessary for the attorneys to be tried by another judge in a case of constructive criminal contempt and the chancery court erred by awarding attorney's fees because there had been no determination of whether the attorneys willfully violated the chancery court's orders.

Affirmed in Part; Reversed & Remanded in Part; Vacated in Part - 2020-CA-00741-SCT (Sept. 22, 2022)

Opinion by Chief Justice Randolph - Dissent by Presiding Justice Kitchens

Hon. Catherine Farris-Carter (Coahoma County Chancery Court)

Felecia Perkins & Jessica Nicole Ayers for Appellants - Vatteria McQuitter Martin & Deshun Terrell Martin for Appellee

Briefed by [Doug Reynolds](#)

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SUPREME COURT - CRIMINAL CASES

SCOTT V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - PREJUDICE - Under Miss. R. Civ. P. 23.5, upon motion of any party, the court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by a party, resulting in substantial and irreparable prejudice to the movant's case

CRIMINAL PROCEDURE - VOIR DIRE - IMPARTIAL JURY - A judge's duty is not to ensure that a perfect jury is empaneled, but rather to make sure that the one that is empaneled can render an impartial verdict

CRIMINAL PROCEDURE - MISTRIAL - DISRUPTIVE CONDUCT - A defendant cannot create disruptive conduct in order to provoke a mistrial

FACTS

In 2020, Sayle Oil in Yalobusha was robbed by a man who entered the store, jumped the counter, threatened the women working there, and stole cash from the register. After authorities were notified and issued a be-on-the-lookout was issued, a police officer in Bruce notified Yalobusha County law enforcement that he had pulled over Kendrick Scott earlier, and Scott matched the description. After he was identified and arrested, Scott was interviewed and confessed that he robbed the store and acted alone. Scott was subsequently indicted. During jury selection, Scott interrupted and proclaimed that he was "guilty as hell." In response, Scott's counsel requested a brief recess, which the trial court allowed. When voir dire resumed, Scott's counsel asked the potential jurors if anything that happened would impact their ability to be fair and impartial during the trial. The thirteen jurors who answered affirmatively were either dismissed for cause or not seated. Right before the jury was seated, Scott's counsel moved for a mistrial on the basis Scott was prejudiced by his outburst, to which the State disagreed. The trial court denied the motion, noting that the outburst was questioned about during voir dire. The trial proceeded and the jury found Scott guilty of robbery. Based on Scott's three previous robbery convictions, he was sentenced as a habitual offender to a mandatory term of life in prison. Scott appealed.

ISSUE

Whether Scott was substantially and irreparably prejudiced by his own outburst during voir dire such that the trial court abused its discretion by not granting him a mistrial.

HOLDING

Because the trial court made sure not to seat any jurors who struggled to set aside Scott's comments and clearly instructed the jury to only consider the evidence presented at trial, because Scott could not, through his unprovoked conduct, have created the necessity of a mistrial, and because Scott was tried by jurors who swore they could be impartial, there was no evidence that Scott suffered substantial prejudice from a disruption of his own doing and there was no abuse of discretion in the trial court's denying the request for a mistrial. Therefore, the Supreme Court affirmed the judgment of the Yalobusha County Circuit Court.

Affirmed - 2021-KA-01015-SCT (Sept. 22, 2022)

Opinion by Justice Maxwell

Hon. James McClure III (Yalobusha County Circuit Court)

George T. Holmes & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Emilee Crocker](#)

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WATTS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - VOIR DIRE - QUESTIONING - Pursuant to Miss. Code Ann. § 13-5-69, the parties or their attorneys in all jury trials shall have the right to question jurors who are being impaneled with reference to challenges for cause, and for peremptory challenges

CRIMINAL PROCEDURE - VOIR DIRE - ODOM TEST - In the event that a prospective juror fails to respond to an unambiguous question despite having relevant knowledge pertaining to the question at issue, the *Odom* test is applied; under *Odom*, the trial court determines whether the question propounded to the juror was (1) relevant to the voir dire examination, (2) unambiguous, and (3) whether the juror has substantial knowledge of the information sought to be elicited; if the determination is in the affirmative, the court should determine if prejudice could reasonably be inferred and if it could, a new trial should be ordered

FACTS

In 2016, Cortez Watts and his girlfriend, Tanyatta Kinnel, were at a casino in Tunica County. Two others, Derek Phillips and Barry McCray were also at the casino. After leaving the casino, Phillips texted Kinnel and when Phillips and McCray approached Kinnel, she asked Phillips to get out of the vehicle, and then she began to run. Phillips then stated that Watts approached him from behind, demanded the money won at the casino and attempted to pull a gun. Phillips ran and Watts chased him and shot him in the neck. After a jury trial in April 2021, Watts was found guilty of conspiracy to commit armed robbery, attempted armed robbery, aggravated assault, and possession of a firearm by a convicted felon. Watts filed a motion for judgment notwithstanding the verdict or for a new trial and argued that two jurors, Vivian Smith and Natassia Joyner, withheld important information during voir dire. Watts claimed that both jurors failed to disclose they were related to Kerris Black, an individual killed by Watts's brother James Watts. Watts requested an evidentiary hearing to question the jurors and develop essential facts. The State agreed and an evidentiary hearing was held in July 2021. At the hearing, Smith testified she knew Black but was not close to him, and although she knew Black was killed, she did not know any other details surrounding Black's death. Additionally, Smith testified that the circuit clerk, Sharon Granberry Reynolds, was her sister. Joyner testified that Smith and Reynolds were her great aunts and that she was distantly related to Black, but she did not know him well. Joyner also testified she knew Black was killed but did not know other details surrounding his death. Reynolds testified that she was the circuit clerk when Black was killed and when James was indicted. Reynolds also testified she knew James was Watts's brother and that Smith and Joyner were related to Black but did not think she had to notify the court. Jamorris Watts, Watts's half-brother, testified that he was best friends with Joyner's half-brother and that they had discussed Black's death on occasion with Joyner's half-sister. Jamorris also stated he believed Joyner had personal knowledge of Black's death and knew who killed him, but he admitted he did not know if Joyner and Black had a relationship. Jamorris also stated that he knew from social media that Joyner was in contact with Black's family. After the hearing, the trial court found no merit in Watts's assignments of error and denied his motion for judgment notwithstanding the verdict. Watts appealed.

ISSUES

Whether (1) Smith and Joyner's voir dire omissions had a prejudicial effect on jury selection and (2) Reynolds's failure to alert the trial court or the parties of her family's ties to Black and Watts caused an appearance of unfairness.

HOLDING

(1) Because Smith and Joyner testified that they were not close to Black and that they lacked knowledge of the circumstances surrounding Black's death, because the trial court noted that Smith's voice and demeanor indicated a lack of emotional attachment to Black, and because the trial court stated it was obvious that Joyner considered Black a distant or remote relative and she had no emotional attachment to Black, the trial court did not err by finding, under *Odom*, that Smith and Joyner lacked substantial knowledge of the information sought to be elicited in voir dire. (2) Because Watts failed to identify any duty the circuit clerk had to notify the trial court or the parties of the potential relationship between the jurors and her or between the jurors and Black, and because Smith and Joyner had no direct connection to Watts or Watts's family, Reynolds's knowledge did not establish an appearance of unfairness. Therefore, the Supreme Court affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2021-KA-00873-SCT (Sept. 22, 2022)

Opinion by Presiding Justice King

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

George T. Holmes & Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Spencer Cash](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 20, 2022

COURT OF APPEALS - CIVIL CASES

GUINN V. CLAIBORNE

CIVIL - DOMESTIC RELATIONS

APPELLATE PROCEDURE - APPEALS - FAILURE TO FILE - An appellate court may take an appellee's failure to file a brief as a confession of error and reverse if the record is complicated or of large volume and the case has been thoroughly briefed by the appellant with apt and applicable citation of authority; if the record can be conveniently examined and such examination reveals a sound and unmistakable basis or ground upon which judgment may be safely affirmed, the court may disregard the appellee's error and affirm

FAMILY LAW - DIVORCE - ADULTERY - A party seeking a divorce on the grounds of adultery must show by clear and convincing evidence both an adulterous inclination and a reasonable opportunity to satisfy that inclination

FAMILY LAW - DIVORCE - RESPONSIBILITY OF CLAIMANT - Even when an opposing party fails to answer, the claimant must still prove by sufficient evidence his entitlement to the requested relief and a divorce will not be granted on the uncorroborated testimony of the claimant alone

FAMILY LAW - DIVORCE - IRRECONCILABLE DIFFERENCES - A divorce based on irreconcilable differences has certain statutory requirements that must be met and strict compliance with the statute is required

FACTS

Terrance Guinn initially sought a divorce from Kisha Claiborne on the ground of irreconcilable differences, but Guinn failed to obtain Claiborne's required signature. Guinn filed an amended complaint for divorce on the grounds of adultery and habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. In 2021, the chancery court held a hearing on Guinn's amended divorce complaint. Claiborne failed to contest or appear at the hearing. Guinn presented the parties' minor son as the sole witness during the hearing. Guinn's direct examination consisted of questions focused on the child's relationship to Claiborne and his knowledge of Claiborne's ongoing relationship with another individual. Following the completion of Guinn's direct examination, the chancellor asked the child additional questions, where he testified that he was Guinn and Claiborne's son, he was seventeen years old, he had recently moved back to Mississippi from Chicago, Illinois, and Claiborne lived in Chicago. Next, the chancellor placed Guinn under oath and asked additional questions regarding the parties' minor children and property rights, as the amended divorce complaint failed to mention the parties' children and any settled property rights between the parties. Guinn's responses revealed Claiborne had given birth to other children during the marriage and Guinn had made multiple purchases since his marriage to Claiborne. Guinn was then provided an opportunity to further amend his divorce complaint, but Guinn declined. Instead, Guinn requested the chancellor deny his complaint. In denying the amended divorce complaint, the chancery court concluded that Guinn failed to satisfy the evidentiary burden to prove adultery and failed to comply with the statutory requirements for an irreconcilable-differences divorce. Guinn appealed.

ISSUES

Whether (1) Claiborne's failure to file a brief in response to Guinn's appellate brief constituted a confession of error; (2) the chancery court erroneously denied Guinn a divorce on the ground of adultery; and (3) the chancery court erred

by failing to grant a divorce on the ground of irreconcilable differences and by finding fault with Guinn's failure to provide information regarding the parties' minor children.

HOLDING

(1) Because the trial record was easy to examine and revealed a sound basis for the Court of Appeals to affirm the chancery court's judgment, Claiborne's failure to file an appellate brief did not constitute a confession of error and was not dispositive of the issues raised on appeal. (2) Because Guinn failed to provide any corroborative evidence to prove adultery, and because the brief testimony of the parties' minor son left important facts unanswered and/or unclear, no abuse of discretion or manifest error resulted from the chancery court's finding that Guinn presented insufficient evidence to prove adultery. (3) Because Guinn failed to comply with all the statutory requirements necessary to obtain an irreconcilable-differences divorce, Guinn's assignment of error lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Claiborne County Chancery Court.

Affirmed - 2021-CP-00997-COA (Sept. 20, 2022)

Opinion by Judge Smith

Hon. E. Vincent Davis (Claiborne County Chancery Court)

Pro se for Appellant - No Appearance for Appellee

Briefed by [Joe M. Curry II](#)

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MOSS V. MOSS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT- To prove habitual cruelty, a party must show conduct that either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance

FAMILY LAW - DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT - In determining whether the habitual cruel and inhuman treatment standard is met, there is a dual focus on the conduct of the offending spouse and the impact of that conduct on the offended spouse; also, in determining whether the habitual cruel and inhuman treatment standard is met, courts may take into consideration the totality of the offending spouse's conduct

CIVIL PROCEDURE - EXPERT WITNESS - INTERROGATORY - Miss. R. Civ. P. 26(b)(4)(A)(i) prevents trial by ambush; if an answer to an interrogatory regarding an expert witness who will testify at trial is deemed insufficient by opposing counsel, some means of notice of such insufficiency must be given to the opposing party in order to let them know that additional information is desired

FAMILY LAW - DIVORCE - SEPARATE MAINTENANCE - When a divorce has been properly granted, a claim for separate maintenance is a moot issue

FACTS

Clay and Vicky Moss were married in February 1987 and separated around July 2018. In August 2018, Vicky filed for divorce based on habitual cruel and inhuman treatment. She stated that Clay would examine and control the type of clothing that she was allowed to wear and called her a "tramp" or "slut" when such clothing was immodest and often made her change clothes. In 2017, Clay wrote to Vicky threatening suicide and challenging the paternity of their eldest daughter. Furthermore, he criticized how she performed household duties, said she was not a good role model for her children, and isolated her from her friends. In 2011, while Vicky and Clay were working as Christian missionaries in Malaysia, the mission staff voiced their concerns over Clay's relationship with a fifteen-year-old girl at the school. Vicky warned Clay to leave the girl alone and to stop giving her too much attention. At the same time, Clay began to ask Vicky for different sexual favors and began to watch pornography. Due to Clay's relationship with the fifteen-year-old girl, Clay was placed on immediate leave and Vicky and Clay were required to receive marriage counseling. Further, Clay was

prohibited from communicating with any students and from transporting his children to and from school. One day after being placed on leave, Clay flew to Australia without notifying his family, and as a result, the Mosses were forced to move back to the United States. In 2017, Vicky and Clay started discussing separation, but Clay refused to agree to a divorce unless Vicky denounced her faith. Clay sent emails admitting that he had “crushed [Vicky’s] spirit,” and that his conduct was “tough love.” Vicky also noted, upon their separation, Clay would park his car at the family’s home and would knock on her window in the middle of the night. Between 2017 and 2018, Clay left Vicky three letters threatening suicide. In 2018, after a suicide threat, Clay checked himself into St. Dominic Hospital where he was released one day later. Vicky began seeing a counselor, who prescribed her medication for depression. After Vicky filed for divorce and Clay answered, Vicky testified at trial that Clay’s conduct caused her to be anxious, cry uncontrollably, and feel worthless. She also stated that the stress from Clay’s actions caused her to pick at her eyelashes, lose sleep, and experience chest pain and headaches. In December 2020, the trial court granted Vicky a divorce on the ground of habitual cruel and inhuman treatment, finding that Clay’s behavior showed incessant, constant humiliation, shame, and correction of Vicky. Clay appealed.

ISSUES

Whether (1) the trial court erred in granting Vicky a divorce on the ground of habitual cruel and inhuman treatment; (2) the trial court erred in allowing Vicky’s counselor to testify as an expert witness; and (3) Clay’s counterclaim for separate maintenance should have been remanded.

HOLDING

(1) Because the trial court deemed Vicky’s testimony to be more credible than Clay’s, because Clay was manipulative and threatening towards Vicky, because Clay fleeing to Australia was indicative of guilt, because Vicky received medical treatment for her symptoms of anxiety and depression and her testimony was corroborated, because Clay’s conduct, in totality, constituted habitual cruel and inhuman treatment, because Clay’s cruelty and humiliation towards Vicky were continuous and incessant, and because Clay’s notes to Vicky threatening suicide were deemed manipulative when considered in context, there was substantial evidence to support the trial court’s granting of the divorce on the ground of habitual cruel and inhuman treatment. (2) Because the trial court deemed Vicky to be a credible witness, because Clay knew about Vicky’s testimony on her physical and mental health, because the counselor described the same symptoms Vicky testified to, because opposing counsel had sufficient notice to depose the counselor, because Vicky herself testified to the symptoms she experienced, because the trial judge personally observed Vicky pulling out her eyelashes, which was the definition of trichotillomania, because the trial court received testimony from Vicky’s daughters regarding the impact of Clay’s conduct, and because the trial court did not consider the counselor’s testimony aside from that on trichotillomania, habitual cruelty could have been established without the counselor’s testimony and the trial court’s allowing the counselor to testify was not an abuse of discretion. (3) Because the trial court properly granted Vicky a divorce on the ground of habitual cruel and inhuman treatment, the issue of separate maintenance was moot. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2021-CA-00452-COA (Sept. 20, 2022)

Opinion by Chief Judge Barnes

Hon. Haydn Judd Roberts (Rankin County Chancery Court)

Andrew Stephen Sorrentino for Appellant - Matthew Thompson & Chad Kenneth King for Appellee

Briefed by [Kayla Tran](#)

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PHILLIPS V. CITY OF OXFORD

CIVIL - PERSONAL INJURY

TORTS - EMERGENCY VEHICLES - LIABILITY - Miss. Code Ann. § 63-3-315 requires the driver of an emergency vehicle to slow down as necessary for safety upon approaching a red light or stop signal or any stop sign

while responding to an emergency call, but the driver of the emergency vehicle is required to proceed cautiously past such red light, stop sign, or signal

TORTS - MISS. TORT CLAIMS ACT - RECKLESS DISREGARD EXCEPTION - Miss. Code Ann. § 11-46-9(1)(c) provides that reckless disregard constitutes an exception to governmental immunity under the MTCA

TORTS - DEGREE OF CULPABILITY - RECKLESS DISREGARD - Reckless disregard will be found where the conduct involved evinced not only some appreciation for the unreasonable risk involved but also a deliberate disregard of that risk and the high probability of harm involved

FACTS

Officer Matthew Brown of the Oxford Police Department (“OPD”) responded to a dispatch requesting assistance with a single-vehicle-rollover wreck. While in route to the accident, Officer Brown struck Patricia Phillips’s vehicle, which precipitated an emergency room visit for Phillips and her child. Officer Brown’s dash camera footage captured his pursuit and indicators in the video footage were designed to light up when lights, sirens, or brakes were applied. Officer Brown’s brake indicator did not light up at any point during his response, but it was unclear whether this was due to his failure to brake or a malfunction in the indicator system. The dash camera also recorded his speeds. Officer Brown traveled at speeds between 45 and 89 miles per hour and his route included residential areas which were occupied by pedestrians and a biker. Officer Brown was traveling six miles over the speed limit through a red-light intersection when he collided with Phillips, even after other officers indicated over the OPD radio that they were on the scene. Officer Brown acknowledged that he was going at a high rate of speed and did not slow down enough to fully clear the intersection. Phillips filed a complaint against the City of Oxford (“Oxford”) to recover for injuries under Miss. Code Ann. §11-46-7(1) and alleged that Officer Brown violated Miss. Code Ann. §63-3-315 when he failed to slow down as necessary for safety and proceed cautiously through the intersection. Oxford Police Chief Jeff McCutchen testified that Officer Brown was in compliance with training, but OPD disciplined Officer Brown for safety and policy violations because he put himself and the public at risk after an emergency response was no longer necessary. The trial court held Officer Brown’s actions did not rise to the level of reckless disregard, and therefore Oxford was entitled to police protection immunity. The trial court made no findings regarding whether Officer Brown violated Miss. Code. Ann. § 63-3-315. The trial court entered its final judgment in favor of Oxford. Phillips appealed.

ISSUES

Whether (1) the trial court erred when it found that Officer Brown’s conduct failed to rise to the level of reckless disregard based on the totality of the circumstances and (2) Officer Brown’s violation of Miss. Code Ann. § 63-3-315 and his violation of Oxford police department policy constituted reckless disregard as a matter of law.

HOLDING

(1) Because the minimal safeguards employed by Officer Brown during his emergency response (turning on his lights, siren, and slowing down so as not to run into vehicles ahead of him) did not give him the freedom to drive recklessly, because the exercise of “some care” was not sufficient to relieve municipal liability for emergency responders’ reckless conduct without a full review of the totality of the circumstances, because entering the intersection at six miles per hour over the speed limit did not constitute proceeding cautiously under the statute, because Officer Brown’s actions showed a conscious indifference to the general safety of the public in violation of OPD policy and the statute, and because Chief McCutchen’s testimonial evidence was not credible since he testified that Officer Brown’s response was appropriate but acknowledged that OPD disciplined Officer Brown for safety and policy violations, the trial court erred when it found that Officer Brown’s conduct failed to rise to the level of reckless disregard and that Oxford was entitled to police-protection immunity. (2) Because reckless disregard was examined using a totality of the circumstances analysis, the Court of Appeals declined to adopt the theory of “reckless disregard per se” when an officer has violated a life-saving policy. Therefore, the Court of Appeals reversed and remanded the judgment of the Lafayette County Circuit Court.

DISSENT

Judge Lawrence argued that the substantial-evidence standard of review required that the Court of Appeals accept the findings of fact made at the trial court level as long as they were supported by substantial evidence. Because he believed the trial court’s findings were supported by substantial, credible, and reasonable evidence, he argued that the trial court’s factual findings should have been affirmed.

Reversed & Remanded - 2021-CA-00639-COA (Sept. 20, 2022)

En Banc Opinion by Judge Westbrook - Dissent by Judge Lawrence

Hon. Grady Franklin Tollison III (Lafayette County Circuit Court)

Bradford Keith Morris for Appellant - Wilton V. Byars III & Joseph Miles Forks for Appellee

Briefed by [Oliver Samples](#)

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ST. ANDRIE V. SINGING RIVER HEALTH SYS.

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - AMENDING PLEADINGS - RELATION BACK - Pursuant to Miss. R. Civ. P. 15(c)(1), an amendment relates back to the date of the original complaint and suspends the running of the statute of limitations when the claim asserted in the amended complaint arises out of the conduct, transaction, or occurrence set forth in the original complaint so that the other party has been put on notice regarding the claim raised by the amended pleading

CIVIL PROCEDURE - AMENDING PLEADINGS - RELATION BACK - To determine whether an amendment relates back to the original complaint, the court considers whether the opposing party has been put on notice regarding the claim raised by the amended pleading

FACTS

Wanda St. Andrie was diagnosed with multiple sclerosis (“MS”) by Dr. Terrence Millette and began treatments in 2005. In 2011, Millette became employed by Singing River Hospital System (“SRHS”), where he continued to treat St. Andrie for MS. SRHS sent a letter to Millette’s patients regarding questions raised about his diagnoses and treatments of patients with MS in 2016. As a result, St. Andrie arranged to see another neurologist, Dr. Laura Minto, who advised St. Andrie that she never had MS. In 2017, St. Andrie served SRHS with notice of a claim under the Mississippi Tort Claims Act (“MTCA”), and in 2018, St. Andrie filed a medical malpractice suit against Millette and SRHS. In her original complaint, St. Andrie alleged that Millette negligently misdiagnosed her with MS, and as Millette’s employer, SRHS was vicariously liable for his negligence. In 2020, St. Andrie filed an amended complaint asserting an independent negligence claim against SRHS for failing to exercise reasonable care to safeguard her from danger, primarily regarding Millette’s pattern of misdiagnosing patients with MS. SRHS then filed a motion for summary judgment, arguing that St. Andrie’s new independent negligence claim was barred by the MTCA one-year statute of limitations because it did not relate back to the date of her original complaint. In response, St. Andrie alleged that her new action was timely because she could not have discovered SRHS’s independent negligence until SRHS’s actual or constructive knowledge of Millette’s negligence came to light during the trial in a related case. Further, St. Andrie argued that her new claim was timely because it related back to the date of her original complaint. The circuit court granted SRHS’s motion for summary judgment on St. Andrie’s independent negligence claim, finding that the claim did not relate back to the date of the original complaint because the new claim had legal and proof requirements separate and apart from the original complaint. The circuit court also found at St. Andrie should have discovered the new claim prior to the trial on the related case because the evidence was developed in common discovery, which St. Andrie was permitted to participate in. The circuit court directed the entry of a final judgment dismissing the claim and denied St. Andrie’s motion for reconsideration. St. Andrie appealed.

ISSUE

Whether the circuit court erred by granting SRHS’s motion for summary judgment on St. Andrie’s independent negligence claim.

HOLDING

Because St. Andrie’s independent negligence claim in her amended complaint arose out of the same conduct, transaction, or occurrence as her original complaint, the new claim related back to the date of her original complaint; thus, it was not barred by the statute of limitations and the circuit court erred by granting SRHS’s motion for summary judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Circuit Court.

CONCURRENCE IN RESULT

Judge Greenlee disagreed with the majority, arguing that St. Andrie's new claim did not relate back to the original complaint because it was an entirely new claim that required separate facts, witnesses, and evidence. He stated that the case should have been reversed and remanded because there was a clear dispute regarding when St. Andrie learned of her claim, and it was unclear from the circuit court's ruling when it deemed that the limitations period began to run.

Reversed & Remanded - 2021-CA-00042-COA (Sept. 20, 2022)

En Banc Opinion by Presiding Judge Wilson - Concurrence in Result by Judge Greenlee

Hon. James D. Bell (Jackson County Circuit Court)

Norman William Pauli Jr & Richard T. Gallagher Jr. for Appellant - Brett K. Williams, A. Kelly Sessoms III, & Jason R. Scheiderer for Appellee

Briefed by [Merritt Baria](#)

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W.C. v. J.C.

CIVIL - OTHER

CIVIL PROCEDURE - DISMISSAL - SATISFACTION OF JUDGMENT - Miss. R. Civ. Pro. 60(b)(5) provides that on motion and upon such terms as are just, the court may relieve a party from an order if the judgment has been satisfied, released, or discharged

CIVIL PROCEDURE - RELIEF FROM JUDGMENT - TIMELINESS - A motion made pursuant to Miss. R. Civ. Pro. 60(b)(4), (5), or (6) must be made within a reasonable time after entry of the judgment and the court must take into account whether the opposing party has been prejudiced by the delay and whether there is good reason for the defaulting party's failure to take appropriate actions sooner

CIVIL PROCEDURE - JURISDICTION - INVOLUNTARY COMMITMENT - Miss. Code Ann. § 41-21-104 grants the chancery court continuing jurisdiction over a person committed to an inpatient or outpatient treatment program one year after completion of the treatment program

EVIDENCE - ADMISSABILITY - HEARSAY EXCEPTION - Miss. R. Evid. 803(4) provides a hearsay exception for statements that are reasonably pertinent to medical diagnosis or treatment, describe medical history, and are supported by circumstances that substantially indicate trustworthiness

DOMESTIC RELATIONS - COMMITMENT - DISCHARGE - The question of discharge is properly one for hospital authorities and the courts must defer to the medical professionals when determining whether or not to discharge a patient

DOMESTIC RELATIONS - INSTITUTIONALIZATION - MINOR CHILDREN - Miss. Code Ann. § 41-21-67(5)(a)-(b) provides that if a person has been found to pose an immediate substantial likelihood of physical harm to himself or others and is subsequently held for treatment, the law requires that if an individual resides or has visitation rights with a minor child, and if the individual is considered to be a danger to the minor child, the mental health professional shall notify the Department of Child Protection Services prior to discharge

FACTS

In December 2019, W.C. filed an affidavit to have his wife, J.C., with whom he shares three minor children, involuntarily committed. The affidavit stated that, while not diagnosed with mental illness, J.C. exhibited bizarre behavior and posed a threat of physical harm to herself or others. According to the "certificate of physician/psychologist" filed with the chancery court, J.C. did not meet the statutory commitment criterion, and the doctors who performed the pre-evaluation screening and filed the certificate noted that J.C. was not a danger to herself or others and did not need mental treatment. Nonetheless, at the commitment hearing, J.C.'s attorney signed an agreed order for commitment on her behalf. The order required J.C. to immediately enter Pine Grove Behavioral Health ("Pine Grove") and follow all treatment and discharge recommendations. Pine Grove was required to release J.C.'s records to the chancery court to the extent necessary to allow the chancery court to determine whether J.C. was compliant with the order and to inform the

chancery court if J.C. did not comply. The order also required J.C. to provide proof to the court that she was enrolled in the program. The order stated that upon completion of the requirements, the petition would be dismissed and the file permanently sealed. J.C. completed treatment and was discharged eighteen days later. In November 2020, J.C. filed a motion to set aside the agreed order and dismiss the cause of action because the order called for ongoing treatment that she did not need. She attached the certificate of the examining physician from the original commitment hearing and a form from the Professionals Health Network Inc. – an organization required to monitor her after the commitment proceedings – which stated she had no need for intervention and was psychologically stable. At a hearing on the motion to set aside the agreed order, W.C. objected but was informed by the chancery court that he did not have standing. The chancery court dismissed the original action and denied W.C.’s motion to reconsider or amend the judgment. W.C. appealed.

ISSUES

Whether (1) the agreed order was properly dismissed; (2) the motion to set aside was untimely filed; (3) the chancery court failed to enforce the terms of the agreed order; (4) there was admissible evidence presented to the court; (5) W.C. had standing to object to the dismissal of the order of commitment; and (6) the chancery court failed to protect the interests of W.C. and J.C.’s children.

HOLDING

(1) Because J.C. successfully completed the terms of the agreed order, it was properly dismissed under Miss. R. Civ. Pro. 60(b)(4). (2) Because W.C. pointed to no prejudice he incurred as a result of the delay, because it was reasonable for a chancery court to reconsider an order after eleven months when the terms require completion of treatment, and because the chancery court had continuing jurisdiction for one year after completion of treatment, the chancery court had jurisdiction over the matter when the motion to set aside was filed. (3) Because J.C. entered into the inpatient program, completed the program, and was discharged after approximately eighteen days in compliance with the requirements of her treatment, and because her failure to provide the chancery court documentation of her enrollment did not negate the fact that all parties agreed she attended and completed the program, the chancery court did not abuse its discretion by following the substance over the form of the agreed order and when it made an equitable determination under the circumstances. (4) Because the order did not specify that any particular documents be submitted to dismiss the petition, because the certificate of examining physicians was an earlier filing, and because the letter from the Professionals Health Network, Inc. fell within a hearsay exception as reasonably pertinent to J.C.’s earlier treatment, the issue of admissible evidence was without merit. (5) Because the chancery court had to rely on medical determinations in matters of sustaining commitment, because W.C. was not the correct person to object to the medical diagnoses given to J.C. by her doctors, and because the physician evaluations indicated that J.C. was not a danger to herself or others and had no diagnosis of mental illness, W.C. did not have standing to object to the dismissal of J.C.’s agreed order. (6) Because the chancery court was not required to assess the interests of the minors, because two psychiatrists determined J.C. to be no danger to herself or others, and because J.C. was deemed to have no diagnosis of mental illness, there was no ground for the chancery court to convene a hearing to protect the interests of the minor children, and the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Chancery Court.

Affirmed - 2021-CA-00237-COA (Sept. 20, 2022)

Opinion by Judge Westbrook

Hon. Percy L. Lynchard Jr. (Desoto County Chancery Court)

Philip Mansour Jr. for Appellant - Charles E. Winfield & Ashlyn Brown Matthews for Appellee

Briefed by [Anna Beavers](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BARS - STATUTE OF LIMITATIONS - Under the Uniform Post-Conviction Collateral Relief Act in Miss. Code Ann. § 99-39-5(2), a motion for post-conviction collateral relief must be filed within the three-year statute of limitations; however, there are specific types of fundamental rights that survive PCR procedural time bars, but the mere assertion of a constitutional right violation is not sufficient

CRIMINAL PROCEDURE - SENTENCING - SENTENCING STATUTES - A sentencing court must apply the sentencing statute in place at the time of the crime

CRIMINAL PROCEDURE - INDICTMENT - WEIGHT OF CONTROLLED SUBSTANCE - An indictment is not defective for failing to list a quantity of cocaine in the context of a sale of cocaine charge because the penalty does not differ according to the weight of cocaine sold

FACTS

In 2007, Ananias Smith was indicted on two counts of the sale of cocaine in violation of Miss. Code Ann. § 41-29-139(a)(1) and one count of possession of marijuana in violation of Miss. Code Ann. § 41-29-139(c). In 2011, the trial court ordered the indictment to be amended to add two prior convictions for a habitual offender designation under Miss. Code Ann. § 99-19-81. The parties agreed to remand one count of the sale of cocaine and the count of possession of marijuana. Shortly after, Smith pled guilty to the remaining single count on a reduced charge of possession of cocaine between two and ten grams under Miss. Code Ann. § 41-29-139(c)(1)(C). Smith was sentenced to sixteen years in prison as a non-violent habitual offender and to pay restitution upon release. At the time of the crime, the maximum sentence allowed by statute for possession of a Schedule II substance between two and ten grams at the time was sixteen years. In 2021, Smith filed a motion for post-conviction collateral relief (“PCR”), alleging that his sentence exceeded the statutory maximum for his crime and that he was denied effective assistance of counsel during sentencing because his attorney did not advise him that the sentence was excessive. The circuit court dismissed Smith’s motion as untimely and for lack of merit. Smith appealed.

ISSUES

Whether (1) Smith’s PCR motion was barred by the statute of limitations; (2) Smith’s sixteen-year sentence was illegal, and his counsel ineffective for failing to advise him of the alleged illegality at the time of his plea; and (3) Smith’s indictment was defective for failing to list a specific weight of cocaine.

HOLDING

(1) Because Smith filed his PCR motion ten years after his sentencing, and because Smith failed to show that any exception to the three-year statute of limitations applied, Smith’s PCR motion was barred as untimely. (2) Because at the time of the commission of Smith’s crime the maximum sentence was sixteen years, and because a sentencing court should have applied the sentencing statute in place at the time of the crime, Smith’s sixteen-year sentence was not illegal, and thus, the assertion that his counsel was ineffective failed. (3) Because weight was not an essential element of the crime of the sale of cocaine, because the penalty for the sale of cocaine does not differ according to weight, and because Smith waived his right to argue his indictment was faulty when he pled guilty to possession of cocaine, Smith’s indictment was not defective for failing to list a specific weight of cocaine sold. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2021-CP-00915-COA (Sept. 20, 2022)

Opinion by Judge Westbrook

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

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

Briefed by [Mason Borneman](#)

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COURT OF APPEALS - CRIMINAL CASES

BROCK 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 deficient performance prejudiced the claimant's defense; allegations of ineffective assistance of counsel are assessed by the totality of the circumstances

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - ACQUITTAL - A jury instruction that instructs jurors to acquit the innocent and that all persons are presumed innocent until proven guilty beyond a reasonable doubt does not create any injustice for a defendant

CRIMINAL PROCEDURE - BURDEN OF PROOF - REASONABLE DOUBT - Reasonable doubt defines itself, and any attempts to define reasonable doubt are improper

FACTS

In 2019, Smith County Sherriff's Deputy Marquize Nixon witnessed Paula Brock's vehicle cross into the opposite lane of traffic and fail to stop at a stop sign. Upon initiating a traffic stop, Deputy Nixon discovered Brock was driving with a suspended license. When Deputy Nixon requested that Brock get out of her vehicle, Deputy Nixon observed a strong scent of marijuana and Brock informed Deputy Nixon that she had marijuana but that she did not have other any illegal substances. After Deputy Jason Runnels arrived on the scene of the traffic stop to assist Deputy Nixon, Deputy Runnels discovered that Brock also had a plastic bag that appeared to contain a crystal-like substance in her purse. Brock admitted that the substance belonged to her. Later tests that were performed on the crystal-like substance confirmed that the substance was methamphetamine. Brock was arrested for possession of methamphetamine and marijuana, and she was issued three traffic violation citations. After a jury trial, Brock was found guilty of possessing more than two grams but less than ten grams of methamphetamine and was sentenced to eight years in prison and to pay a fine of \$2,000. Brock filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial, which was denied. Brock appealed.

ISSUE

Whether Brock's trial attorney provided ineffective assistance of counsel.

HOLDING

Because Brock failed to establish that her attorney's efforts were both deficient and prejudicial after considering the totality of the circumstances, because neither the isolated statements nor the inclusion of the jury instruction at issue impermissibly shifted the burden of proof, and because the record showed that the circuit court properly instructed the jury, Brock failed to show any reasonable probability that, but for her counsel's unprofessional errors, the result of the proceedings would have been different. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

Affirmed - 2021-KA-00739-COA (Sept. 20, 2022)

Opinion by Judge Smith

Hon. Stanley Alex Sorey (Smith County Circuit Court)

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

Briefed by [AnnaGrace Meeks](#)

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GERMAN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DEFENSES - INSANITY - A defendant may not be held criminally liable for his actions at the time of the alleged crime if he was laboring under such a defect of reason from disease of the mind that either (a) he did not understand the nature and quality of his act, or (b) if he did understand the nature and quality of his act, he did not appreciate his wrong; whether a defendant was insane at the time of the alleged crime is an issue for the jury, which may accept or reject expert and lay testimony

EVIDENCE - OBJECTIONS - WAIVER - The failure to object to testimony at trial waives any assignment of error on appeal

FACTS

Michael German attacked Christine Upchurch with a metal pegboard hook at a Target in Horn Lake. Toneshia Cooper and Halle Taylor, Target employees, both testified at trial they believed German may have been high on drugs during the alleged attack. Lieutenant Kevin Nelson spoke with German after the attack, and German stated he had been released from Lakeside Behavioral Health System a week prior. Nelson stated German did not appear confused after the attack, rather his demeanor fluctuated between extremely calm and extremely remorseful. Nelson did not test German for drugs. German was indicted for aggravated assault, and prior to trial, defense counsel requested a mental examination to determine whether German was competent to stand trial. Dr. William Criss Lott performed the evaluation and testified that although German was “acutely mentally ill,” he believed German understood the nature and quality of his actions. Dr. Tucker Johnson, an expert in the field of clinical psychology, testified on German’s behalf that German was legally insane at the time of the attack. The circuit court determined that German was competent to stand trial. A jury found that German was not legally insane at the time of the offense and found him guilty of aggravated assault. German was then sentenced to serve fifteen years followed by five years of post-release supervision. German filed a motion for a judgment notwithstanding the verdict or a new trial, which the circuit court denied. German appealed.

ISSUES

Whether (1) the State presented sufficient evidence of German’s sanity at the time of the aggravated assault and (2) German waived any issue about Dr. Lott’s testimony when he failed to contemporaneously object to the testimony.

HOLDING

(1) Because the State presented evidence that German was remorseful immediately following the attack and both experts testified they believed German knew or appreciated that his behaviors were wrong, because the jury’s finding that German was sane was supported by substantial evidence, and because the jury’s finding was not so contrary to the evidence that allowing it to stand would have sanctioned an unconscionable result, the issue was without merit. (2) Because German failed to preserve the issue by objecting to Dr. Lott’s testimony at trial, the issue was waived. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2021-KA-00933-COA (Sept. 20, 2022)

Opinion by Judge Greenlee

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

John Keith Perry Jr. for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Maya Langendoen](#)

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JOHNSON V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - BURGLARY - ELEMENTS - The essential elements of burglary of a dwelling are (1) unlawful breaking and entering, and (2) intent to commit a crime therein; a breaking is conducted by an act of force, regardless of how slight, necessary to be used in entering a building and to constitute burglary, a structure must generally be closed

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - FAILURE TO INSTRUCT - Failure to instruct the jury on the essential elements of a crime is plain error; to determine if plain error has occurred, the court considers: (1) whether the trial court deviated from a legal rule, (2) whether the error is plain, clear or obvious, and (3) whether the error prejudiced the outcome of the trial

CRIMINAL LAW - AUTOMOBILE THEFT - VALUE ELEMENT - The 2014 amendment to Miss. Code Ann. § 97-17-42 based the punishment for automobile theft on the value of the vehicle, by reference to the grand larceny and petit larceny statutes; the vehicle's value is an essential element of automobile theft and the jury must make a factual finding for the statutory sentencing range to be determined

FACTS

In 2019, the Amite County Sheriff's Office was alerted by Dennis Coggins's neighbor that Coggins's truck was missing from his driveway while Coggins was incarcerated. As a result, Investigator Dewayne Whetstone went to Coggins's property and discovered that his driveway gate was open, the lock had been cut, and Coggins's truck was not on the property. Furthermore, Investigator Whetstone discovered that Coggins's home and shed doors were open, with the lock to the shed missing. Investigator Whetstone testified that Coggins's home and shed seemed to have been rummaged through, and another investigator photographed Coggins's property. Coggins testified that a barbed wire fence surrounded his property on three sides and a gate across the driveway on the fourth, and at the time of his arrest, the front door and shed were locked and the gate to his driveway was closed and locked. After reviewing the photographs, Coggins noted that the padlock on his shed door had been cut off, someone had rummaged through his home, and his gate was left open with the lock missing. Additionally, Coggins observed that items had been stolen from his home and shed, including TVs, \$8,500, his 2008 Chevrolet Silverado, two minibikes, and a dirt bike. Coggins testified that he was previously incarcerated with Earnest Johnson and asked Johnson to go to his house and retrieve bond money for him upon his release and offered to sell Johnson his truck. Coggins stated that Johnson said he was uncomfortable going into Coggins's house without written permission. According to Coggins, there were no further discussions involving Coggins's money and truck, and Coggins never revealed to Johnson where the money was located or the amount. After it was confirmed that the truck was missing, Johnson was stopped by law enforcement and was the driver and sole occupant of the missing Chevrolet. According to Investigator Whetstone, Johnson then admitted that he stole Coggins's belongings in retaliation and that he made multiple trips to Coggins's house, each time taking property. Upon recovering his vehicle, Coggins noticed that his truck had sustained body damage and sold it for \$5,000. Johnson later testified that Coggins had asked him to retrieve money for bond and told him where to find the money. Johnson stated that upon release, he went to Coggins's house and retrieved the money but decided not to give it to Coggins. Johnson then stated that Coggins planned to allow him to use the truck for his new business. Johnson further testified that he could not remember whether Coggins's gate was open, but the residence door was open and the house was wrecked when he arrived. Johnson also admitted that he did not repay the money he stole from the residence, but noted that he always intended to return the minibikes and dirt bike. The jury convicted Johnson of burglary of a dwelling and automobile theft, and he was sentenced to twenty-five years for burglary of a dwelling and ten years for automobile theft, both to be served concurrently. Johnson then unsuccessfully moved for a judgment notwithstanding the verdict or, alternatively, a new trial. Johnson appealed.

ISSUES

Whether the trial court erred in (1) denying Johnson's motion for judgment notwithstanding the verdict to challenge the legal sufficiency of the evidence for his conviction of burglary of a dwelling and (2) omitting the value of Coggins's truck from a portion of the jury instructions because the value constituted an essential element of the automobile-theft charge.

HOLDING

(1) Because the trial court instructed the jury on the elements of burglary of a dwelling and the definition of "breaking," and because the jury could reasonably find the State's witnesses more credible due to Johnson's admission that he entered Coggins's residence to take cash from the home without any intention of delivering the money to Coggins and resolve any evidentiary conflicts in the State's favor, there was sufficient evidence for a rational juror to find that the

State proved the “breaking” element of burglary of a dwelling beyond a reasonable doubt. (2) Because the 2014 amendment to Miss. Code Ann. § 97-17-42 made the vehicle’s value an essential element of automobile theft, and because the jury was never properly instructed as to the value of Coggins’s truck, the omission of the value element from the jury instructions constituted a reversible error. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Amite County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2021-KA-00571-COA (Sept. 20, 2022)

Opinion by Judge Smith

Hon. Lillie Blackmon Sanders (Amite County Circuit Court)

Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt (Att’y Gen. Office) for Appellee

Briefed by [Albert Soussis](#)

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