

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 13, 2022***SUPREME COURT - POST-CONVICTION RELIEF*****MOFFETT V. STATE****CIVIL - DEATH PENALTY - POST CONVICTION**

POST-CONVICTION RELIEF - PROCEDURAL BARS - SUCCESSIVE PETITIONS - In order for a petitioner to overcome the successive-writ bar, he must demonstrate that his right to effective PCR counsel was violated such that his first PCR was a sham, effectively denying him the opportunity to present a meritorious PCR motion

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - WRIT OF HABEAS CORPUS - Petitioners seeking relief in capital cases must file within one year after conviction and following the denial of post-conviction relief, a petitioner has one year to file an application for writ of habeas corpus in federal court

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claimant of ineffective assistance of counsel bears the burden of proof to show that counsel's performance was deficient, and that the deficiency prejudiced the defense

FACTS

In 2006, Eric Moffett was convicted of a sexual assault on a five-year-old girl, Felicia Griffin, culminating in her death. Evidence presented to the jury included DNA evidence, eyewitness testimony, and a confession. The jury determined that the murder was committed while Moffett was engaged in felonious abuse and/or battery of a child and especially heinous, atrocious, or cruel, and sentenced Moffett to death. In 2010, the Supreme Court affirmed the conviction and sentence on direct appeal, and Moffett's motion for rehearing was denied. The United States Supreme Court denied Moffett's petition for writ of certiorari in 2011. In 2014, Moffett filed his first post-conviction relief ("PCR") claiming ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and cumulative error. The Supreme Court denied Moffett's PCR after finding no merit in his claims. In 2015, Moffett filed a petition for habeas corpus in the United States District Court for the Southern District of Mississippi but later moved for a stay of his federal habeas proceedings, which the federal court granted. Moffett filed a motion for leave to file successive petition for PCR.

ISSUES

Whether (1) the issues raised in the successive PCR were procedurally barred; (2) trial counsel rendered ineffective assistance of counsel by failing to either call their retained DNA expert, John Wages, to the stand, or use him to assist defense counsel in challenging the State's DNA evidence; and (3) trial counsel rendered ineffective assistance of counsel by failing to present evidence of Moffett's cognitive impairments caused by childhood exposure to lead.

HOLDING

(1) Because Moffett failed to make a showing that he was denied the opportunity to present a meritorious PCR, and because Moffett failed to file his successive petition for PCR within one year following his conviction and within one year after the federal district court issued the stay, his petition was procedurally barred. (2) Because the record showed that Moffett's trial counsel exhibited competent knowledge of the State's DNA evidence and rigorously cross-examined the State's DNA expert utilizing the reports prepared by Wages, because counsel's choice of whether to call witnesses fell within the ambit of trial strategy and could not give rise to an ineffective assistance of counsel claim, and because Wages would have had to admit condemning facts on cross-examination, Moffett failed to meet the requirement of showing that his trial counsel's performance was deficient and thus, his claim failed. (3) Because the factors were previously considered when Moffett's first PCR counsel presented them as an ineffective assistance of trial counsel claim, the issue was barred by res judicata; notwithstanding the procedural bar, because Moffett failed to establish that

the failure to conduct a mental-health evaluation was due to oversight or dereliction, Moffett’s claim was without merit. Therefore, the Supreme Court denied Moffett’s leave to file successive petition for post-conviction relief.

DISSENT

Presiding Justice King argued that the majority’s finding that Moffett’s ineffective assistance of PCR counsel was untimely was a violation of the separation of powers between the legislature and the judicial department because no statute of limitations existed. He argued that the majority relied on statutes of limitations applicable to claims and lacked authority to create a limitations period.

Leave to File Successive Petition for Post-Conviction Relief Denied - 2018-DR-00276-SCT (Oct. 13, 2022)

En Banc Opinion by Chief Justice Randolph - Dissent by Presiding Justice King

Hon. W. Swan Yerger (Hinds County Circuit Court, First Judicial Dist.)

Krissy Casey Nobile & Elizabeth Anne Franklin-Best (Office of Capital Post-Conviction Counsel) for Petitioner - Ladonna C. Holland, Allison Kay Hartman, & Brad Alan Smith (Att’y Gen. Office) for Respondent

Briefed by [Oliver Samples](#)

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SUPREME COURT – CIVIL CASES

DILWORTH V. LG CHEM, LTD.

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - SPECIFIC JURISDICTION - REQUIREMENTS - To make a *prima facie* case for the exercise of specific jurisdiction, (1) the defendant must have minimum contacts with the forum state, i.e., it must have purposefully directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities; (2) the plaintiff’s cause of action must arise out of or results from the defendant’s forum-related contacts; and (3) the exercise of personal jurisdiction is fair and reasonable

CIVIL PROCEDURE - PERSONAL JURISDICTION - STREAM OF COMMERCE - If a corporation delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State, the corporation should reasonably anticipate being haled into court there, thus, the forum State does not exceed its powers under the Due Process Clause by asserting personal jurisdiction over the corporation

CIVIL PROCEDURE - SPECIFIC JURISDICTION - STREAM OF COMMERCE - Where a product manufacturer serves a market for a product in the forum State and the product malfunctions there, specific jurisdiction exists over the manufacturer

FACTS

In 2018, Melissa Dilworth was injured when her vaping device, specifically the LG 18650 lithium-ion battery, exploded in her pocket. Dilworth sued LG Chem, Ltd. (“LG Chem”) and its Georgia-based subsidiary, LG Chem America, for her injuries. Dilworth’s husband joined the litigation with a loss of consortium claim. The complaint alleged that LG Chem conducted substantial, ongoing business within the state and placed its electronic products into the stream of commerce in the state with the actual knowledge or reasonable expectation that they would be used within the state. Additionally, the complaint alleged that LG Chem targeted the state via its distribution chain and had received significant revenue from the sale of its products in the state. LG Chem and LG Chem America filed motions to dismiss for lack of personal jurisdiction, averring that the company was not registered to do business in the state, did not own or lease property here, and did not have an office or employees here. LG Chem also asserted that it did not produce products that were intended for sale to individual consumers and that its activity in the state related to petrochemical products. The Dilworths opposed the motion to dismiss, pointing out that LG Chem did not deny the allegations that it did business in the state by placing its goods into the stream of commerce with the expectation that they would be sold in the state. The Dilworths also noted that LG Chem’s battery sales into the United States amounted to approximately

three-quarters of one million dollars daily and \$278 million yearly. LG Chem did not controvert the allegation that it knew its batteries were regularly purchased and used for vaping devices. The Dilworths argued that LG Chem’s assertion that the batteries were not intended or authorized for standalone use was not a jurisdictional argument, but rather a merits argument appropriate for trial. Following a hearing on the motion, the circuit court denied the Dilworths’ request for further jurisdictional discovery and dismissed LG Chem and LG Chem America from the suit due to lack of specific personal jurisdiction. The Dilworths appealed.

ISSUES

Whether (1) the exercise of personal jurisdiction over LG Chem comported with due process and (2) jurisdictional discovery was proper concerning LG Chem America.

HOLDING

(1) Because LG Chem delivered its products into the stream of commerce with the expectation that they would be sold in the state, and because LG Chem purposefully availed itself of the market for lithium-ion batteries in the state, requiring LG Chem to defend a suit in the state did not offend fair play or substantial justice. (2) Because the record before the circuit court was underdeveloped at the time the motions to dismiss were decided, and because the amount of business LG Chem America conducted in the state and whether it related to the Dilworths was unclear, the dismissal of LG Chem America was premature. Therefore, the Supreme Court reversed and remanded the judgment of the DeSoto County Circuit Court.

Reversed & Remanded - 2021-CA-00629-SCT (Oct. 13, 2022)

Opinion by Presiding Justice Kitchens

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

William R. Sutton, Ryan Michael Skertich, Celene H. Humphries, & Thomas J. Seider for Appellants - Lee Morgan Peacocke & Sean M. Higgins for Appellees

Briefed by [Merritt Baria](#)

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JONES CNTY. SCH. DIST. V. COVINGTON CNTY. SCH. DIST.

CIVIL - REAL PROPERTY

PROPERTY - SIXTEENTH SECTION INCOME - ALLOCATION - Under Miss. Code Ann. § 29-3-123, not only does the school district not have a duty to hold or pay money for the noncustodial district absent the student list, the law forbids it; because the one-year period in Miss. Code Ann. § 29-3-119(4) does not place a time limit on litigation but rather a time limit on when a noncustodial district may make a claim with a custodial district, it is not a statute of limitations

LEGISLATION - STATUTORY INTERPRETATION - CONFLICT - Even when statutes are in apparent conflict, they should if possible be construed in harmony with each other to give effect to each

FACTS

Jones County School District (“JCSD”) and its neighboring school district, Covington County School District (“CCSD”) have four townships partially lying in both districts, with CCSD serving as the custodial school district of all four townships. Prior to 2002, JCSD and CCSD did not exchange lists of educable children residing in the shared townships and CCSD did not pay JCSD any sixteenth-section revenues between 1998 and 2015. In 2016, JCSD filed a complaint against CCSD and the secretary of state, requesting an accounting of the sixteenth-section funds received by CCSD, asking for declaratory judgment concerning the parties’ status and legal relations arising from the revenues, requesting money received, alleging that CCSD breached its fiduciary duty, requesting preliminary injunction directing CCSD to turn over all funds generated from the sixteenth section and restraining CCSD from spending revenue owed to JCSD, and maintaining that JCSD complied with all conditions precedent and demanded prejudgment interest. CCSD asserted a counterclaim seeking declaratory judgment regarding the application of the statute controlling sixteenth-section fund

allocation, Miss. Code Ann. § 29-3-119. Specifically, CCSD alleged that JCSD was precluded from receiving funds. JCSD filed two motions for accounting and a motion for partial summary judgment. Then, JCSD forwarded CCSD backdated lists of educable children from 1997-2002. CCSD. The trial court granted JCSD’s motion in part, ordering CCSD to prepare and provide JCSD with information regarding all funds, their location, the interest being earned on the funds, and all revenues generated from the shared sixteenth-section townships from 2003 to current. JCSD petitioned for interlocutory appeal.

ISSUES

Whether (1) Miss. Code Ann. §§ 29-3-119(4) and -21 were enforceable and (2) an accounting from CCSD going back beyond 2015 was required.

HOLDING

(1) Because the statute conditioning the annual payment of sixteenth-section funds on the exchanging of lists of educable children was a constitutional exercise of the Legislature’s authority to decide the method and procedure for allocating funds, and because the statute giving the noncustodial district one year to contest the sufficiency of the payments was not a statute of limitations and not in conflict with the Constitution, Miss. Code Ann. §§ 29-3-119(4) and -21 were enforceable. (2) Because “available funds” under Miss. Code Ann. § 29-3-119 was construed to mean “expendable funds” to effectuate the purpose of the statutory scheme, there may still have been a need for an accounting. Therefore, the Supreme Court vacated and remanded the judgment of the Covington County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis agreed with the majority’s decision to vacate the trial court’s accounting order and remand for the trial court to consider a new claim for accounting if JCSD pursued one. However, he disagreed with the majority’s enforcement of Mississippi Code Ann. §§ 29-3-119(4) and -121. He asserted the funds belonged to and were intended for the benefit of the JCSD and JCSD was thus entitled to its proportionate share of all sixteenth-section funds received and administered by the CCSD.

Vacated & Remanded - 2019-IA-00985-SCT (Oct. 13, 2022)

En Banc Opinion by Justice Ishee - Concurrence in Part & Dissent in Part by Justice Griffis

Hon. Gerald Marion Martin (Covington County Chancery Court)

Terry L. Caves & Risher Grantham Caves for Appellants - William A. Whitehead Jr., Wilson Douglas Minor, & Richard D. Norton for Appellees

Briefed by [Emilee Crocker](#)

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SCIOTO PROPS. SP-16, LLC V. GRAF

CIVIL - REAL PROPERTY

PROPERTY - COVENANTS - ENFORCEABILITY - Mississippi courts generally do not favor covenants restricting the use of real property, which are subject more or less to a strict construction, but neither will courts disregard the clear and unambiguous working of a restrictive covenant merely because a use is prohibited or restricted

PROPERTY - COVENANTS - ENFORCEABILITY - If the intent to prohibit or restrict real property is expressed in clear and unambiguous wording, enforcement is available

FACTS

In 2016, Scioto Properties SP-16, LLC (“Scioto”) purchased the residence on Lot 62 in The Grove. Scioto was a for-profit company that helped individuals with developmental and/or physical disabilities find residential housing. Under the express terms of the warranty deed, Scioto agreed to abide by any and all protective covenants. The covenants clearly and unambiguously expressed the intent to prohibit commercial use of the property. However, in 2017, Scioto leased the home on Lot 62 to Brandi’s Hope Community Services, LLC (“Brandi’s Hope”). Brandi’s Hope was a for-profit company that provided services to individuals with developmental and/or physical disabilities. A condition of its lease

with Scioto was that Brandi's Hope would use the home solely to provide residential support services to the residents living in the home. Subsequently, Brandi's Hope entered into four separate subleases with four individuals for separate private bedrooms within the house under the condition that the individuals exclusively use Brandi's Hope for residential support services. After the individuals moved in, the owners of the residence directly across the street, Andy Graf and Sheryl Graf, sued Scioto and Brandi's Hope for violating the protective covenant, seeking declaratory judgment and injunctive relief. Scioto and Brandi's Hope sought summary judgment, which the trial court denied. The Grafts, Scioto, and Brandi's Hope submitted to the trial court a joint stipulation of facts, and the Grafts renewed their request for a declaratory judgment. The trial court granted the motion for declaratory judgment, finding that Scioto's and Brandi's Hope's use of the property was commercial and thus prohibited by the protective covenants. Scioto and Brandi's Hope appealed.

ISSUE

Whether the trial court erred in declaring that Brandi's Hope use of the residence violated the protective covenant prohibiting commercial and professional uses of properties in the residential neighborhood.

HOLDING

Because the trial judge relied on the specific terms of the lease and sublease instead of the mere existence of the lease and sublease to conclude the protective covenants had been violated, because it was clear that Brandi's Hope leased Scioto's property for commercial use, because the trial court based its ruling on the fact that the provision of services preceded and was a condition of any residential use, because the paid-for residential support services were integral rather than incidental to the operation of the home, and because The Grove's covenants expressly prohibiting commercial use of any residence in the neighborhood were clear, the trial court did not err in declaring that Brandi's Hope used the property commercially and thus violated the protective covenant of the residential neighborhood. Therefore, the Supreme Court affirmed the judgment of the Lee County Chancery Court.

Affirmed - 2021-CA-00525-SCT (Oct. 13, 2022)

Opinion by Justice Maxwell

Hon. Jacqueline Estes Mask (Lee County Chancery Court)

Marjorie Selby Self & William Holcomb Hussey for Appellants - Margaret Sams Gratz & Michael B. Gratz Jr. for Appellees

Briefed by [Kayla Tran](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 11, 2022

COURT OF APPEALS - CIVIL CASES

ARRINGTON V. ANDERSON

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - SUMMONS - ISSUANCE AND FORM - Miss. R. Civ. P. 4(b) mandates that a summons be directed to the defendant and state the name and address of the party to be served

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - TOLLING - In order to toll the statute of limitations beyond 120 days, a plaintiff must seek an enlargement of the Miss. R. Civ. P. 4(h) deadline or dismiss the suit and refile

CIVIL PROCEDURE - DUAL COMPLAINTS - PRIORITY JURISDICTION - Filing a new complaint while a motion is pending in the first matter is not an option, as the second complaint would be dismissed based on the principle of priority jurisdiction

FACTS

In February 2015, Harold Arrington and Justin Anderson were in an automobile accident. In two separate but identical lawsuits, Arrington sued Anderson and Arrington's insurance company, Allstate Insurance Company, asserting

negligence and seeking damages for injuries. The first lawsuit was filed one day before the statute of limitations expired in February 2018 and the summons was issued 119 days after Arrington filed the complaint. In June 2018, Arrington filed the second lawsuit against Anderson. In response, Anderson filed a motion for summary judgment seeking dismissal of the first lawsuit for insufficient service of process and seeking dismissal of the second lawsuit as time-barred and prohibitive claim-splitting. The county court dismissed the first lawsuit for insufficient process and service and as being barred by the statute of limitations, after finding that the summons was altered after it left the clerk's office. The second lawsuit was dismissed as time-barred and as prohibitive claim-splitting. After his motions for reconsideration were denied, Arrington appealed to the circuit court which affirmed the county court's orders. Arrington appealed.

ISSUES

Whether the county court erred in (1) treating Anderson's motion for summary judgment as a motion to dismiss; (2) dismissing the first lawsuit due to insufficient process; and (3) finding that the complaint in the second lawsuit was barred by the statute of limitations.

HOLDING

(1) Because Anderson's motion clearly stated that he was seeking dismissal of Arrington's complaint in the first lawsuit due to insufficient process, because Anderson specified the facts surrounding his claim of insufficient process, and because Arrington did not object to the motion being treated as one to dismiss, the county court did not err in treating Anderson's motion for summary judgment as a motion to dismiss. (2) Because the county court determined that the summons issued in the first lawsuit and served on Anderson was not directed to Anderson as required by Miss. R. Civ. P. 4, and because the county court explained that Arrington did not serve Anderson with a sufficient summons within the time frame allowed by the order and failed to request additional time to serve Anderson, the county court did not err in dismissing the first lawsuit due to insufficient process. (3) Because Arrington did not dismiss the first lawsuit and refile it but instead filed the second lawsuit against Anderson while the first lawsuit was still pending, the county court did not err in dismissing the second lawsuit. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

Affirmed - 2021-CA-00233-COA (Oct. 11, 2022)

Opinion by Presiding Judge Carlton

Hon. Kelly Lee Mims (Lee County Circuit Court)

Anna Marie Chandler for Appellant - Jason Randolph Hollingsworth & Goodloe Tankersley Lewis for Appellee

Briefed by [Mason Borneman](#)

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HOWARD INDUS., INC. V. HAYES

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - SANCTIONS - DELAY OF PROCEEDINGS - Miss. Code Ann. §71-3-59(2) provides that if the full Commission determines that the proceedings in respect to a claim have been delayed without reasonable ground, the full commission shall require the delaying party or attorney advising such party to pay the reasonable expenses; sanctions are authorized when any claim or defense is asserted without substantial justification or when conduct by an attorney causes unnecessary delay or harassment

WORKERS' COMPENSATION - SANCTIONS - MISREPRESENTATION - Presenting truthful evidence and testimony to the Commission is so important an obligation that the worker's compensation statutes make it a crime to present false or misleading evidence in order to withhold benefits; sanctions are appropriate upon a finding of misrepresentation to the court and Miss. Code Ann. § 71-3-59(2) authorizes the Commission to impose sanctions on a party and/or its attorney

WORKERS' COMPENSATION - BENEFITS - PERMANENT PARTIAL DISABILITY - Miss. Code Ann. §71-3-7(1) provides that compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury

or occupational disease; to be entitled to permanent partial disability payments for body-as-a whole injuries, a claimant must show that he has a permanent medical impairment rating or permanent work restrictions that result in a loss of wage-earning capacity

WORKERS' COMPENSATION - BENEFITS - INDUSTRIAL LOSS OF USE - Miss. Code Ann. §71-3-17(c)(26) provides for compensation when there has been either an anatomical loss of a body member or when there has been a vocational or industrial loss of use of a member

FACTS

In 2007, Selina Hayes fell while working as a coal winder for Howard Industries and injured her head, neck, shoulders, and back. Hayes earned \$12.43 per hour at the time of the injury. Following this injury, Hayes received benefits from Howard Industries. In September 2008, Hayes's doctors approved her to return to work with some lifting restrictions. In 2015, Hayes was injured again while lifting an eight-gauge wire over her head and underwent surgery on her right shoulder. Hayes received worker's compensation payments while she was unable to work. In 2016, Hayes filed a petition to controvert with the Mississippi Workers' Compensation Commission ("MWCC") claiming that Howard Industries failed to pay permanent disability benefits for her second injury. Howard Industries denied Hayes's claims of temporary or permanent disability. However, Howard Industries' claims consultant, Larry Jackson, later sent the MWCC records of payments to Hayes, including records of payments for Hayes's temporary total disability and notice of their suspension. In 2017, Hayes's doctor cleared her to return to work with restrictions. Additionally, a physical therapist determined that Hayes could only work five days a week for a total of forty hours per week with no lifting above her shoulders and a twenty-pound weight limit. Upon Hayes's return, Howard Industries accommodated her by placing her in the role of coil winder trainer. In this role, Hayes earned less than other coil winder trainers because she was unable to work overtime. In 2019, Richard Yoder, Howard Industries' attorney, submitted a report from their proposed expert in vocational rehabilitation, Peter Mills. The vocational report showed that the role of coil winder trainer included twenty hours per week of overtime, meaning that Hayes's no-overtime restriction resulted in a loss of earnings. Three days later, Yoder filed an attachment to the report and a new summary form. Contrary to the first report, Yoder's new summary form did not show overtime, indicating that Hayes's no-overtime restriction did not result in any loss of earnings.

At an administrative hearing in 2019, Mills admitted that the attachment to his first report showed that coil winder trainers work approximately twenty hours per week of overtime. Although his written report stated that he had been retained to evaluate the coil winder trainer position in general, Mills stated that the first attachment to his report was a mistake, and that he only meant to evaluate Hayes's specific job. Mills stated that he changed the report because Yoder informed him that the information contained was incorrect. Hayes's attorney asked to recess the hearing so that he could get confirmation of overtime requirements from other coal winder trainers. The Administrative Judge ("AJ") agreed to recess the hearing. Hayes's attorney subpoenaed all wage records from other coil winder trainers at Howard Industries, as well as other company financial records. The AJ reset the recessed hearing four times, but in 2020, the recessed hearing reconvened. Hayes's supervisor testified to the accuracy of the coil winder trainers' twenty hours of overtime per week. Mills testified that Yoder had never told him to falsify a report and stated that his job was to analyze Hayes's position only, not the coil winder trainer position generally. Hayes's attorney moved for sanctions against Howard Industries, Yoder, and Mills, and requested that they pay his attorney's fees. He also argued that Mills's second report should have been stricken from the record. The AJ held that Hayes's wage-earning capacity was reduced from both her 2007 and 2015 injuries and found that her injuries resulted in a significant loss of access to jobs in her geographical area. The AJ stated that Hayes's current wages in her accommodated position were an unreliable indication of future wages outside Howard Industries. Further, the AJ concluded that Mills's second report contained material misrepresentations influenced by Yoder, stated that Mills's reports caused over a year of delay in the proceedings, and imposed a \$1,000 civil penalty against Howard Industries. The AJ also ordered Howard Industries to pay Hayes benefits consistent with the order and \$1,500 to Hayes for attorney's fees. In 2021, after Howard Industries filed a petition for review, the full MWCC affirmed the AJ's findings of Hayes's loss of wage-earning capacity and affirmed that Hayes sustained a thirty-eight percent loss of industrial use of her right arm from her injury in 2015. The MWCC affirmed the AJ's order to pay Hayes benefits but amended the award of permanent partial disability payments for the 2007 injury and the 2015 injury based on its own calculations. Further, the MWCC amended the award of sanctions and attorney's fees to require Yoder to pay the sanctions and fees because Yoder submitted the report and instructed Mills to change it. Howard Industries appealed, and Hayes cross-appealed.

ISSUES

Whether (1) the evidence supported the award of sanctions and attorney’s fees against Yoder, Howard Industries, or Mills; (2) the MWCC erred by not sanctioning Mills or Howard Industries; (3) the MWCC erred in finding that Hayes suffered a loss of wage earning capacity as a result of her 2007 injury, which entitled her to permanent partial-disability payments; and (4) the evidence supported the MWCC’s finding of a thirty-eight percent industrial loss of use as a result of Hayes’s 2015 injury.

HOLDING

(1) Because Yoder had a duty of candor to the MWCC and the MWCC found that he misled them, because Mills admitted he only prepared the second report at Yoder’s instruction with information Yoder provided, because the MWCC found that the misleading nature of Mill’s testimony and the reports offered by Yoder caused unnecessary delay in the proceedings, the MWCC’s decision was supported by substantial evidence. (2) Because Hayes failed to cite any authority or present a proper argument of her issue on cross-appeal, the issue was procedurally barred; notwithstanding the procedural bar, because no proof was presented that Yoder acted on the instructions of Howard Industries that would have made the company liable under any theory of agency, and because Miss. Code Ann. §71-3-59(2) authorized the MWCC to impose sanctions on a party and its attorney, not against an expert witness, the MWCC did not err in directing that Yoder alone pay the sanctions and attorney’s fees. (3) Because Hayes did not have the “necessary production job” protection in her coil winder position, because she presented un rebutted expert testimony to her loss of access to jobs both locally and nationally if she was terminated, because both of Hayes’s vocational experts testified to factors relating to Hayes’s loss of wage-earning capacity, and because all factors affecting loss of wage-earning capacity were considered, not just loss of earnings, the evidence as a whole supported the MWCC’s finding that Hayes sustained a loss of wage-earning capacity for which she was entitled to permanent partial disability benefits. (4) Because Hayes’s industrial loss of use percentage was higher than her medical impairment percentage, the MWCC did not err in finding a thirty-eight percent industrial loss of use. Therefore, on direct appeal, the Court of Appeals affirmed the decision of the Mississippi Workers’ Compensation Commission. On cross-appeal, the Court of Appeals affirmed the decision of the Mississippi Workers’ Compensation Commission.

CONCURRENCE IN PART & DISSENT IN PART

Judge Wilson agreed that Hayes’s awards of permanent partial disability should have been affirmed. However, he argued that sanctions against Yoder should have been reversed and rendered, arguing that Yoder did not make any false statements or offer misleading evidence. He argued that it was clear that the report was amended, that the report’s title correctly represented the report as referring to Hayes’s accommodated position only, that the report did not misrepresent the coil winder trainer position because it did not indicate that other coil winder trainers did not work overtime, and that although there was a potential misunderstanding regarding the purpose of Mills’s report, Mills’s testimony resolved any confusion.

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2021-WC-00694-COA (Oct. 11, 2022)

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

Mississippi Workers’ Compensation Commission

Robert P. Thompson & Laura Walsh Givens for Appellant/Cross-Appellee - Roger K. Doolittle & Floyd E. Doolittle for Appellee/Cross-Appellant

Consolidated with:

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2021-WC-00695-COA (Oct. 11, 2022)

Mississippi Workers’ Compensation Commission

Robert P. Thompson & Laura Walsh Givens for Appellant/Cross-Appellee - Roger K. Doolittle & Floyd E. Doolittle for Appellee/Cross-Appellant

Briefed by [Meaghan Pickles](#) & [Kara Edwards](#)

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MEEK V. CHEYENNE STEEL, INC.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - PLEADINGS - AFFIRMATIVE DEFENSES - Under Miss. Code Ann. § 71-3-37, an employer's failure to file to controvert the right to compensation does not prevent the employer from raising any defense when the claim is subsequently filed by the employee; the law does not require affirmative defenses to be raised until after an employer responds to a petition to controvert

EMPLOYMENT LAW - DRUGS & ALCOHOL - TESTING - Under Miss. Code Ann. § 71-7-27(2), any private employer who does not make an election to conduct drug and alcohol testing will be deemed to not be conducting an employee drug and alcohol testing policy or program pursuant to the provisions of Chapter 7 of the Mississippi Code, and in that event, the rights and obligations of the employer and its employees are not subject to or affected by the provisions of the chapter

WORKERS' COMPENSATION - PROXIMATE CAUSE - ILLEGAL DRUGS - Under Miss. Code Ann. § 71-3-121(1), if an employee has a positive test indicating the presence, at the time of a work-related injury, of any drug illegally used, it is presumed that the proximate cause of the injury was the use of the drug

FACTS

In 2018, Miles Meek suffered an injury during the scope of his employment at Cheyenne Steel, Inc. ("Cheyenne"). He was transported to a hospital, where he was treated for injuries to his hip, shoulder, groin, and back. Meek was also given a preliminary drug screen that tested positive for marijuana. Cheyenne then began paying temporary total-disability benefits and permanent partial-disability benefits. In 2019, Meek's treating doctors assigned a two-percent impairment rating and a six-percent permanent partial-impairment rating but released Meek with light-duty restrictions and a lifting restriction. After returning to work, Meek claimed that Cheyenne did not accommodate his restrictions, but Cheyenne's co-owner and vice president testified that Cheyenne tried to accommodate him, but because Meek was difficult and could not do his job, they terminated him. Meek filed a petition to convert, and Cheyenne pled intoxication as an affirmative defense. At a hearing before an Administrative Judge ("AJ"), Meek argued that the drug test did not contain sufficient data to raise the presumption that marijuana was the proximate cause of his injury, so Cheyenne should have been barred from pleading intoxication. Cheyenne responded by stating that it did not receive the drug test results until 2020 in response to a subpoena and that Meek's previous admission to marijuana use combined with the positive test result supported the presumption of an intoxication defense. Meek stated that he did not know about the positive drug test, did not use marijuana during the work week or on the job, and did not remember the last time he used it prior to his accident. The AJ found that Meek failed to rebut the presumption of intoxication and denied and dismissed his claim. Subsequently, Meek filed a petition for review by the full Mississippi Workers Compensation Commission ("MWCC"), who then remanded the case to the AJ to issue findings of fact and conclusions of law. However, the AJ did not issue findings of fact or conclusions of law regarding the issue of intoxication but concluded that Meek did not prove the existence of permanent disability exceeding the two percent impairment rating to his hip. Meek appealed, and Cheyenne cross-appealed the order. The MWCC reversed the AJ's order, stating that Cheyenne had properly pled the affirmative defense of intoxication, that Meek had presented no evidence that misled him or caused him to make decisions to his detriment, and that the payment of benefits did not prohibit Cheyenne from asserting an intoxication defense. Further, the MWCC found that Meek's intoxication was the proximate cause of the injury and dismissed his claim. Meek appealed.

ISSUES

Whether the (1) MWCC erred in holding that Cheyenne was not estopped from raising intoxication as an affirmative defense after the employer had paid benefits; (2) MWCC erred in its application of the Mississippi Code as it pertained to drug testing; and (3) MWCC's decision was inconsistent with its decision in *Cartwright v. Southeast Ready Mix Inc.*

HOLDING

(1) Because Cheyenne first set out affirmative defenses in its answer to the petition to controvert filed by Meek, and because Cheyenne testified that it was unaware of Meek's drug test results until it subpoenaed records to prepare for the hearing on the petition to controvert, the MWCC did not err in holding that the principle of estoppel did not bar

Cheyenne's affirmative defense of intoxication. (2) Because there was no indication that Cheyenne had implemented a drug testing policy or that it requested the drug test, and because the hospital made a unilateral decision to administer the test, the statutes regarding employer drug and alcohol testing were inapplicable to Meek. (3) Because Meek's drug test showed a presence of marijuana at the time of his injury, and because marijuana was a Schedule 1 Controlled Substance that was illegal at the time of Meek's accident with no mechanism existing to legally ingest it, the very presence of marijuana in Meek's system at the time of his accident was enough to violate Miss. Code Ann. § 71-3-121(1) and the application of *Cartwright* would not have changed the outcome. Therefore, the Court of Appeals affirmed the decision of the Mississippi Workers' Compensation Commission.

Affirmed - 2021-WC-01219-COA (Oct. 11, 2022)

Opinion by Judge Westbrook

Mississippi Workers' Compensation Commission

Christopher Hederi Neyland for Appellant - Matthew Jason Sumrall for Appellees

Briefed by [Albert Soussis](#)

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PONDER V. PONDER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - MODIFICATION - Miss. Code Ann. § 43-19-34(4) provides that an upward retroactive modification of child support may be ordered back to the date of the event justifying the upward modification

FAMILY LAW - CHILD SUPPORT - MODIFICATION - A petition seeking an upward modification in child support is sufficient to put the opposing party on notice that a retroactive modification may be ordered

FAMILY LAW - CHILD SUPPORT - ATTORNEY'S FEES - Fees incurred litigating matters such as custody modification or child support are not recoverable on the basis of contempt

FACTS

In 2014, Charles Ponder and Amy Ponder were granted an irreconcilable-differences divorce and the parties were approved to share joint physical and legal custody of their child. In 2016, Charles, who was unemployed, filed a petition to modify custody. In 2017, the chancery court entered an agreed order of modification granting Amy physical custody and Charles visitation, providing the parties share joint legal custody, and stating that Charles had an obligation to pay child support, but the obligation would be inactive for ninety days. The agreed order provided that if Charles found employment during the ninety-day period he was to notify Amy so that the proper order could be entered for child support. The agreed order also expressed that if Charles did not obtain employment during the ninety-day period, opposing counsel would be formally notified and either party could act in the best interest of the child. At the conclusion of the ninety-day period, Charles had not acquired employment and did not provide Amy with formal notice of his failure to obtain employment. Eighteen months later, in 2019, Amy filed a petition for modification requesting that the chancery court order Charles to pay child support. After a hearing, the chancery court ordered Charles to pay Amy child support retroactive to the end of the ninety-day period under the agreed order and awarded Amy attorney's fees due to Charles's failure to comply. Charles then filed a motion to amend the judgment, which was denied. Charles appealed.

ISSUES

Whether the chancery court (1) abused its discretion when it ordered Charles to pay retroactive child support and (2) erred when it awarded Amy attorney's fees.

HOLDING

(1) Because Charles expressly agreed to the terms of the 2017 agreed order, because the chancery court did not modify the agreed order but had discretion to award retroactive child support, and because the petition seeking an upward modification was sufficient to put Charles on notice that a retroactive modification could have been ordered, the issue

was without merit and the chancery court did not abuse its discretion. (2) Because contempt was not a basis to award attorney's fees, because Amy did not incur attorney's fees as a result of Charles's failure to comply with the agreed order, and because there was no evidence that Amy was unable to pay her attorney's fees, there was no legal basis to award attorney's fees. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Jackson County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2020-CA-01196-COA (Oct. 11, 2022)

Opinion by Presiding Judge Wilson

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Lauren Elizabeth Kelley for Appellant - E. Foley Ranson for Appellee

Briefed by [AnnaGrace Meeks](#)

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WHARTON V. STATE

CIVIL - OTHER

APPELLATE PROCEDURE - FAILURE TO ANSWER - CORRECTION - If an appellant fails to file the appellant's brief within the time provided by Miss. R. App. P. 31(b) or within the time as extended, the appeal may be dismissed on motion of appellee or on the Supreme Court's own motion; the party in default has fourteen days to correct the deficiency after he receives notice

CIVIL PROCEDURE - SERVICE OF PROCESS - ABSENCE - In the absence of proper service of process, the court lacks jurisdiction, so any default judgment that it enters is void; if the judgment is void, it must be set aside

CIVIL PROCEDURE - SERVICE BY MAIL - NON-RESIDENT - For service of process to be completed upon an out-of-state resident, the State must (1) send a copy of the summons and complaint by certified mail with return receipt requested; (2) the envelope must be marked restricted delivery; and (3) service of process by this method will be deemed complete when the State obtains a return receipt indicating that the individual accepted the envelope or receives the envelope back marked "refused"

CIVIL PROCEDURE - SERVICE BY PUBLICATION - NON-RESIDENT - To complete service of process via publication upon a non-resident defendant whose address is known, the State must (1) be authorized to do so by statute; (2) show by sworn affidavit, petition, or complaint that the defendant is a nonresident; (3) provide the defendant's address in the sworn complaint, petition or affidavit; (4) publish the summons once a week for three consecutive weeks (5) in a public newspaper of the county where the action is pending, and (6) if the address of the defendant is known, (6) the clerk shall send a copy of the summons to the defendant's known address via first-class mail with postage prepaid

FACTS

During a traffic stop in 2019, the Pearl Police Department searched Charles Wharton's vehicle and seized \$408,658.00. The State filed a petition for forfeiture and issued a summons via certified mail. The State also published a summons in the Rankin County News for three consecutive weeks. Even though the State had Wharton's known address, the published summons did not include Wharton's address. After Wharton failed to answer, the State filed an application for default and the clerk filed an entry of default against Wharton. The next day, Wharton filed an answer to the complaint for forfeiture. The trial court granted the motion for default judgment and ordered that the property be forfeited to the State, finding that Wharton was duly served and failed to plead or otherwise defend. Wharton filed a motion to set aside the default judgment, arguing that the State did not provide notice at the time the order was filed and that the State failed to serve him with process. The trial court denied Wharton's motion. Wharton appealed.

ISSUES

Whether (1) the appeal should have been dismissed; (2) the State failed to properly serve Wharton; (3) Wharton waived the defense of insufficient service of process by filing an answer to the complaint; and (4) whether the case should have

been reversed and remanded or reversed and rendered since a void judgment was entered and the statute of limitations had passed.

HOLDING

(1) Because Wharton’s brief was filed only two days after the deadline and was well within the fourteen days given to a party to correct a deficiency, the appeal should not have been dismissed. (2) Because Wharton’s address was obviously known to the State, because the State never received a return receipt confirming service of process, because the State failed to strictly comply with Miss. R. Civ. P. 4 and its requirements for service by publication, the State did not properly serve Wharton and therefore, never obtained jurisdiction and its entry of default was void. (3) Because Wharton filed a Miss. R. Civ. P. 60 motion notifying the trial court of the insufficient service of process and requesting that the default judgment be set aside, and because service of process was not completed according to the procedural rules, the answer filed did not act as a legal waiver of the defense of insufficiency of service of process. (4) Because the State should have had an opportunity to seek additional time to effect service if good cause could be shown, the case was reversed and remanded. Therefore, the Court of Appeals reversed and remanded the judgment of the Rankin County Circuit Court.

Reversed & Remanded - 2021-CA-00136-COA (Oct. 11, 2022)

Opinion by Judge Lawrence

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

Samuel Clinton Martin for Appellant - Michael Shelton Smith II & Christopher Todd McAlpin for Appellee

Briefed by [Jacoby Gilmore](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

VILLAREAL V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - CONSPIRACY TO COMMIT INSURANCE FRAUD - Miss. Code Ann. § 97-1-1(1)(h) provides that conspiracy to commit insurance fraud is a felony and carries a maximum sentence of five years’ imprisonment

CRIMINAL PROCEDURE - SENTENCING - CONSPIRACY TO COMMIT FALSE PRETENSES - Miss. Code Ann. § 97-19-39(2) provides that obtaining money or other property with a value of \$500 or more by fraud or false pretense is a felony punishable by up to ten years’ imprisonment

CRIMINAL PROCEDURE - PLEAS - CRIMINAL DISPOSITION - Errors in a notice of criminal disposition created after a defendant’s pleas and conviction cannot alter the substance of the plea and conviction

FACTS

In 2017, Monnie Villareal was indicted for insurance fraud (Count I), conspiracy to commit insurance fraud (Count II), false pretenses (Count III), and conspiracy to commit false pretenses (Count IV). Villareal pled guilty to Count II, and the remaining counts were nolle prosequed. The trial court sentenced Villareal to five years of imprisonment in the custody of the Mississippi Department of Corrections (“MDOC”) with credit for time served and the remainder suspended on post-release supervision (“PRS”). In 2020, the trial court revoked Villareal’s PRS for violating his PRS terms and sentenced Villareal to serve three years with the remainder of his sentence suspended on PRS. In 2021, Villareal filed a motion for post-conviction relief alleging that the sentence was illegal. Villareal asserted that the maximum sentencing for his crime was six months because he claimed to have only pled guilty to conspiracy to commit misdemeanor false pretenses. The trial court denied Villareal’s motion, stating that Villareal pled guilty to conspiracy to commit insurance fraud, a felony with a maximum sentence of five years. Villareal appealed.

ISSUE

Whether the trial court erred in denying Villareal's motion for post-conviction relief.

HOLDING

Because Villareal's plea petition clearly stated that the maximum sentence for conspiracy to commit insurance fraud was five years, because it was clearly established in Villareal's plea hearing that Villareal pled guilty to conspiracy to commit insurance fraud, because Villareal admitted that he was guilty of the crime set out in Count II of the indictment, because conspiracy to commit insurance fraud was a felony carrying a maximum sentence of five years' imprisonment, because Villareal's indictment charged him with conspiracy to commit felony false pretenses, and because the notice of criminal disposition erroneously stating he had pled guilty to misdemeanor insurance fraud did not alter the substance of Villareal's plea and conviction, the trial court properly denied Villareal's motion for post-conviction relief. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2021-CP-00440-COA (Oct. 11, 2022)

Opinion by Presiding Judge Wilson

Hon. Robert P. Krebs (Jackson County Circuit Court)

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

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

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COURT OF APPEALS - CRIMINAL CASES

CARNLEY V. STATE

CRIMINAL - FELONY

EVIDENCE - PRESERVING THE ISSUE - PROFFER - When testimony is not allowed at trial, a record of the proffered testimony must be made in order to preserve the point for appeal; the appellate court must be able to see from the record itself whether the offered testimony would be material and of benefit to the merits of the case, and whether its exclusion was actually harmful and prejudicial to the proponent of the evidence

EVIDENCE - EXPERT TESTIMONY - BASIS OF OPINION - Miss. R. Evid. 703 provides that an expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed; if experts in the particular field would reasonably rely on the kinds of facts or data in forming an opinion, they need not be admissible

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS - To prevail on a claim for ineffective assistance of counsel, the claimant must prove counsel's performance was deficient and the deficient performance prejudiced the claimant; the claimant must overcome a strong presumption that, under the circumstances, the challenged action might be considered sound trial strategy

CRIMINAL PROCEDURE - JURY DELIBERATION - SHARPLIN INSTRUCTION - If jurors cannot reach unanimity, and if the trial court feels that there is a likelihood that the jury might reach a verdict, the trial judge may simply instruct jurors to continue their deliberations; in the alternative, the trial court may give an instruction stating, "I know that it is possible for honest men and women to have honest different opinions about the facts of a case, but, if it is possible to reconcile your differences of opinion and decide the case, then you should do so"

CRIMINAL PROCEDURE - CUMULATIVE-ERROR DOCTRINE - PREJUDICE - Individual errors may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

FACTS

Joshua Carnley began messaging Samantha, a sixteen-year-old girl, on social media. Carnley and Samantha made plans for Samantha to sneak out of her house one night. Samantha said she made it clear to Carnley that she did not want to

engage in sexual intercourse. When Carnley picked Samantha up, the two went to “his spot.” Once at the location, the two began to kiss in the back seat of Carnley’s car. Carnley pulled down his pants, and Samantha tried to push him away and hit him, but Carnley persisted. Samantha informed Carnley multiple times she did not want to do it, but Carnley continued to remove Samantha’s pants. Carnley proceeded to force himself upon Samantha and proceeded to penetrate her, despite her attempts to stop him. Carnley then drove Samantha home, where she texted her friend and aunt to inform them of what happened. Samantha was examined at the hospital, went to the police station and filed a report, underwent an examination by a gynecologist, and completed a forensic examination by the Wesley House. Carnley was later arrested and indicted for rape. At trial, Samantha testified about the incident. On cross-examination, defense counsel asked if she recalled what she told an officer in a prior statement. When Samantha said she did not recall, defense counsel did not try to introduce the alleged prior inconsistent statement or show it to Samantha. The officer who met Samantha and her mother then testified. On cross-examination, defense counsel attempted to ask about Samantha’s statements during the prior interview, but the State objected on hearsay grounds. The trial court sustained the objection. Defense counsel then argued the purpose of questioning the officer about the videotaped statement was to have the video played, but counsel never proffered the officer’s testimony or the video of the interview. The gynecologist, who was accepted as an expert, then testified regarding his examination of Samantha, stating that he believed Samantha had been sexually assaulted based on his emotional and physical findings. Carnley then testified that Samantha consented to sexual intercourse with him and that she never resisted. During deliberations, the jury asked the trial court for guidance if they could not agree on a unanimous decision. The trial court considered offering a *Sharplin* instruction but ultimately decided to instruct the jury to continue deliberations. The jury found Carnley guilty of rape. Carnley appealed.

ISSUES

Whether (1) the trial court erred by not allowing Carnley to impeach Samantha with her alleged prior inconsistent statements to the police officer; (2) the trial court erred by admitting the gynecologist’s testimony because he testified regarding Samantha’s mental state; (3) Carnley’s trial counsel was ineffective for failing to impeach the victim’s previous inconsistent statements, adequately rebut the State’s expert witness, raise hearsay objections, and request further DNA testing; (4) the trial court erred by failing to give the jury a *Sharplin* instruction; and (5) the trial court committed cumulative error.

HOLDING

(1) Because Carnley’s trial counsel never proffered the officer’s testimony or the video recording of the officer’s interview with Samantha, it could not be determined from the record on appeal whether the exclusion of the evidence was harmful and prejudicial. (2) Because the gynecologist based his conclusion on both emotional and physical findings he personally observed, because monitoring Samantha’s emotional state was a fundamental part of his examination, because the statements were made for medical diagnosis or treatment, and because Carnley’s substantive or fundamental rights were not affected, the trial court did not err in admitting the doctor’s testimony. (3) Because Carnley’s trial counsel’s decisions could have been considered trial strategy, and because the failure to request further DNA testing would have been more appropriately brought during post-conviction proceedings, Carnley’s trial counsel was not deficient regarding the first three claims. (4) Because the procedure utilized by the trial court was the one established by precedent and codified by the Miss. R. Crim. P., and because both sides assented to the continuation of jury deliberations, the trial court did not err in instructing the jury to continue deliberations. (5) Because Carnley’s other issues did not have merit, there was no cumulative error. Therefore, the Court of Appeals affirmed the judgment of the Newton County Circuit Court.

Affirmed - 2021-KA-00438-COA (Oct. 11, 2022)

Opinion by Judge McCarty

Hon. Caleb Elias May (Newton County Circuit Court)

W. Terrell Stubbs for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Ross Dockins](#)

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CARRUTHERS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF -

Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - OBJECTIONS - In general, the failure of counsel to make certain objections may fall within the ambit of trial strategy, and therefore may not give rise to a claim for ineffective assistance of counsel

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - INVESTIGATION - Counsel has a duty to conduct an investigation of the facts and circumstances of the case, but a defendant claiming ineffective assistance of counsel must state with particularity what the investigation would have revealed and how it would have altered the outcome

EVIDENCE - ADMISSIBILITY - PRIOR CONVICTIONS - Evidence of prior drug sales and convictions for distributing a controlled substance are admissible to prove intent when the defendant is charged with possessing a controlled substance with intent to distribute

FACTS

In 2018, a confidential informant ("CI") with the New Albany Police Department used a hidden camera to record Walter Carruthers cutting, weighing, and selling methamphetamine in his home. About three weeks later, Carruthers posted a Facebook video of himself holding a long gun and saying he had "things for sale" in the same room in which he sold the methamphetamine to the CI. About two months later, Dorian Robertson, a suspect in a burglary, told police that Carruthers traded him methamphetamine for property Robertson took in the burglary. The police obtained and executed a search warrant for Carruthers's home, finding: the long gun that Carruthers held in the Facebook video; scales and other drug paraphernalia in his bedroom; and approximately fifty grams of methamphetamine under his bed. Police arrested Carruthers along with Clay Potts and Reggie Boles who were in the home. Carruthers was indicted for trafficking methamphetamine as a subsequent offender while in possession of a firearm and within 1,500 feet of a church as well as possession of a firearm by a felon and as a habitual offender. At trial, Carruthers and Potts testified that there was "no dope" in Carruthers's home until Boles brought it to the home. However, Potts also testified that people knew you could get drugs at Carruthers's home and that he went there to get methamphetamine. Carruthers claimed the long gun belonged to his uncle and denied that the methamphetamine under his bed belonged to him. The jury found Carruthers guilty on both counts. The trial court denied Carruthers's motion for judgment notwithstanding the verdict or a new trial. Carruthers appealed.

ISSUES

Whether Carruthers's trial attorney deprived him of the effective assistance of counsel and a fair trial by failing to (1) object to leading questions, hearsay, drug sale photographs, the Facebook video, evidence of criminal activity in the vicinity, non-expert testimony, references to "trafficking," improper "vouching," testimony by the police chief, or the prosecution's closing argument; (2) investigate the facts; and (3) stipulate Carruthers's prior felony conviction.

HOLDING

(1) Because most of the objections that Carruthers argued his attorney should have made could have properly been considered either sound trial strategy or meritless, and because Carruthers failed to show that he was prejudiced as a result of the failures to object, his trial attorney did not provide ineffective assistance of counsel. (2) Because Carruthers did not show that his attorney failed to investigate the facts of the case or how any additional investigation would have altered the outcome, Carruthers did not receive ineffective assistance of counsel as a result of his trial attorney's failure to investigate. (3) Because Carruthers's trial counsel filed a motion in limine to exclude the prior convictions, and because the prior convictions were admissible to prove intent, his trial attorney did not provide ineffective assistance by failing to stipulate. Therefore, the Court of Appeals affirmed the judgment of the Union County Circuit Court.

Affirmed - 2021-KA-00654-COA (Oct. 11, 2022)

Opinion by Presiding Judge Wilson

Hon. Kent E. Smith (Union County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Anna Beavers](#)

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DANIELS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - JURY ADMONISHMENT - A trial court may declare a mistrial if there is an error resulting in substantial and irreparable prejudice to the movant’s case; where serious and irreparable harm has not resulted, the judge should admonish the jury to disregard the impropriety

EVIDENCE - ADMISSIBILITY - PRIOR BAD ACTS - Evidence of other crimes, wrongs, or acts may be admissible for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

EVIDENCE - ADMISSIBILITY - OTHER CRIMES - The State has a legitimate interest in telling a rational and coherent story of what happened, and where substantially necessary to present to the jury the complete story of the crime, evidence or testimony may be given even though it may reveal or suggest other crimes

CRIMINAL LAW - DEFENSES - INSANITY - When the defense is insanity, either general or partial, the admission of evidence of every act of the accused’s life relevant to the issue of sanity and is admissible evidence

CRIMINAL PROCEDURE - APPEALS - ISSUE PRESERVATION - Once the court rules definitively on the record on an issue, a party need not renew an objection to preserve a claim of error for appeal

FACTS

In 2020, Jeremiah Daniels was apprehended in Benton County following a high-speed police pursuit into Benton County from Tippah County. Daniels was indicted in Tippah County as a non-violent habitual offender for two counts of robbery with a deadly weapon, two counts of attempted aggravated assault, one count of burglary of a dwelling, and one count of grand larceny. Daniels also faced separate criminal charges in Benton County following the police pursuit. Before trial, the trial court ordered Daniels to undergo a mental-health evaluation and a *M’Naghten* analysis. Dr. Dominic Galvez, a licensed psychologist, performed an evaluation and testified at the competency hearing, and the trial court found Daniels competent to stand trial. The trial court granted the State’s motion to allow into evidence Daniels’s Benton County charges. Daniels presented an insanity defense at trial, which prompted the State to file a second motion seeking to allow into evidence details of Daniels’s prior criminal history, use of controlled substances and alcohol, and all evidence to the issue of Daniel’s sanity. The trial court granted the motion in part but held in abeyance its ruling on the admissibility of Daniels’s criminal history. During voir dire, the trial court stated Daniels was charged as a habitual offender introducing the case, and after the jury was selected and sworn, the defense made a motion for a mistrial based on the habitual offender reference before the jury panel. The trial court denied the motion and stated the error would be harmless. Following the ruling, the trial court gave a limiting instruction to the jury to disregard prior conviction evidence that was not related to specific elements of the crimes before the court. Consequently, the trial court denied Daniels’s renewed motion for a mistrial. At the close of evidence, the defense renewed its motion for a directed verdict and for a mistrial, which the trial court denied. The jury found Daniels guilty of all six counts. Daniels unsuccessfully moved for judgment notwithstanding the verdict or a new trial. Daniels appealed.

ISSUES

Whether the trial court erred (1) by informing the jury that Daniels was charged as a habitual offender and in denying Daniels’s subsequent motion for a mistrial; (2) because the jury heard evidence of Daniels’s prior convictions through reference to a Benton County charge; and (3) by allowing reference to Daniels’s prior convictions.

HOLDING

(1) Because there was no indication that the defense made a contemporaneous objection to the trial court's habitual offender reference, because any purported error was harmless, because the jury was admonished to disregard the impropriety, and because there was no indication that any juror disregarded the trial court's limiting instruction, the trial court did not err handling the habitual offender reference. (2) Because Daniels's alleged crimes in Benton County were a continuation of the string of events originating in Tippah County, because the evidence was admissible pursuant to Miss. R. Evid. 404(b)(2), and because the Benton County charges were relevant and admissible because Daniels asserted an insanity defense, the trial court did not err by allowing into evidence Daniels's Benton County charges. (3) Because the trial court did not definitively rule on the admissibility of Daniels's prior convictions, and because the defense did not object to the recording of Daniels talking about his prior convictions, the issue was waived. Therefore, the Court of Appeals affirmed the judgment of the Tippah County Circuit Court.

Affirmed - 2021-KA-01067-COA (Oct. 11, 2022)

Opinion by Presiding Judge Carlton

Hon. Kent E. Smith (Tippah County Circuit Court)

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

Briefed by [Maya Langendoen](#)

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