MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 6, 2022

SUPREME COURT - CIVIL CASES

IN RE: HON. JAMES MCCLURE, III & HON. GERALD W. CHATHAM, SR.

CIVIL - OTHER

JUDICIAL ADMINISTRATION - ADMINISTRATIVE OFFICE OF COURTS - RESPONSIBILITIES - Under Miss. Code Ann. § 9-21-13, the Administrative Office of Courts director is statutorily responsible for coordinating the functions and duties of administrative personnel, including court administrators and court administrative aides to judges, to facilitate cooperation and so that the overall administration of justice may be accomplished with efficiency in all courts of the state

JUDICIAL ADMINISTRATION - COURT ADMINISTRATOR - APPOINTMENT - Miss. Code Ann. § 9-17-1 is silent as to the position of deputy court administrator, but addresses the voting procedures for the establishment of the office of court administrator, the appointment or removal of such court administrator, and in setting the annual salary of each court administrator appointed

FACTS

Judge Celeste Embrey Wilson's deputy court administrator resigned at the end of December 2021. In an effort to fill the vacant position, Judge Wilson emailed the other circuit court judges requesting assistance, to which she received little to no response. About a month later, Judge Wilson sought assistance from the Administrative Office of Courts ("AOC") and discussed candidates' minimum qualifications and salary ranges. After receiving no cooperation from the other judges, Judge Wilson asked the AOC if she could legally fill the position without the approval of the other judges. The AOC provided that Judge Wilson was allowed to choose her staff with approval by the AOC and the consent of the affected counties regarding salary. Judge Wilson notified the other judges and filled the position by entering an Order Appointing and Setting Salary for Deputy Court Administrator. Judge James McClure III then emailed Judge Wilson challenging the legality of the order and requesting that she rescind or withdraw the order. After the new deputy court administrator began her employment in Judge Wilson's chambers, Judge McClure and Judge Gerald W. Chatham Sr., filed a Petition for Writ of Prohibition challenging the legality of the order. Judge Wilson responded to the petition, and the parties were directed to appear before the Judicial College for a conference. However, a resolution was not attained.

ISSUE

Whether Judge Wilson's Order Appointing and Setting Salary for Deputy Court Administrator was lawful.

HOLDING

Because under Miss. Code Ann. § 9-17-1 authorization from the other circuit judges in the district was not a prerequisite for Judge Wilson's entry of that order, and because Judge Wilson received approval from the AOC prior to filling the position and provided clear and ample documentation of consent by the affected counties regarding the hire's salary, Judge Wilson's order was lawful. Therefore, the Supreme Court denied the Petition for Writ of Prohibition.

Petition for Writ of Prohibition Denied - 2022-IA-00319-SCT (Oct. 6, 2022)
En Banc Opinion by Presiding Justice Kitchens
Briefed by Olivia Schwab

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MISS. DEP'T OF REVENUE V. EKB, INC.

CIVIL - STATE BOARDS & AGENCIES

TAX LAW - TANGIBLE PERSONAL PROPERTY - DIGITAL PHOTOGRAPHS - The sale of still digital images is not subject to sales tax; moreover, the tangible drive or disk is incidental to the nontaxable photography service being provided and is not subject to sales tax

TAX LAW - NONSALES BUSINESS ACTIVITY - PHOTOGRAPHY - Nonsales business activities are not subject to tax unless expressly enumerated in Miss. Code Ann. § 27-65-23; photography is not among the listed business services and the Legislature has not authorized the MDOR to assess taxes on photography

TAX LAW - NONSALES BUSINESS ACTIVITY - DIGITAL EDITING - The Legislature has not amended Miss. Code Ann. § 27-65-23 to specifically include the service of editing purely digital images

TAX LAW - ASSESSMENT - DUTY TO KEEP RECORDS - The record-keeping duty of Miss. Code Ann. § 27-65-43 applies only to taxable entities under the chapter

FACTS

Scott Burton owned and operated EKB, Inc. ("EKB"), a wedding photography business. His clients contracted for photography packages ranging from $2,500 to $11,000. Every package included the transfer of digital images via DVD or flash drive, while other packages included iPads, linen prints, and/or a coffee-table book of the wedding photos. Burton used his personal computer to adjust and crop images following weddings he was contracted for. Depending on the package the customer purchased, EKB paid the sales tax on DVDs, flash drives, coffee-table books, iPads, and digital frames used for his clients. In 2016, the Mississippi Department of Revenue ("MDOR") audited EKB and Burton, as well as Burton's wife, Emily Burton. Following the audit, MDOR issued a sales tax assessment of $65,957 for the tax period of January 2012 to January 2014. EKB appealed to the Board of Review, which affirmed the assessment. Next, EKB appealed to the Mississippi Board of Tax Appeals, which also affirmed, finding that EKB was in the business of selling tangible personal property. EKB then appealed to the chancery court, which vacated the sales tax assessment and concluded that capturing and selling digital images was neither the sale of tangible personal property under Miss. Code Ann. § 27-65-17, nor a listed taxable business activity under Miss. Code Ann. § 27-65-23. The chancery court also found that MDOR exceeded its statutory authority in assessing sales tax against EKB. MDOR appealed.

ISSUES

Whether (1) the sales tax in Miss. Code Ann. § 27-65-17(1)(a) on "tangible personal property" includes photographs, DVDs, diskettes, flash drives, jump drives, and coffee-table books when those items are used as mediums of transfer for digital photographs under a photography service contract; (2) MDOR could have assessed sales tax under Miss. Code Ann. § 27-65-23 on digital image editing services as an alternative means to tax EKB; and (3) MDOR's tax assessment was prima facie correct due to EKB breaching a duty to keep proper records to determine the amount of tax due.

HOLDING

(1) Because the sale of still digital images was not subject to sales tax under Miss. Code Ann. § 27-65-26 "specified digital products," because the tangible means of transfer of digital images was incidental to the photography service being provided, and because EKB paid sales tax on the mediums used to transfer the photographs to its clients, MDOR was not authorized to collect sales tax on EKB's contracts. (2) Because the Legislature removed photography from the taxable business services in Miss. Code Ann. § 27-65-23, and because merely cropping and touching up digital photos did not constitute the taxable activity of "photo finishing," MDOR incorrectly relied on Miss Code Ann. § 27-65-23 as an alternative means to tax EKB. (3) Because the record-keeping duty under Miss. Code Ann. § 27-65-43 applied only to taxable entities, and because MDOR failed to establish that EKB engaged in a taxable activity, the chancery court did not err by not accepting the MDOR's tax assessment as prima facie correct. Therefore, the Supreme Court affirmed the judgment of the Lafayette County Chancery Court.

Affirmed - 2021-SA-00441-SCT (Oct. 6, 2022)

Opinion by Justice Maxwell
Hon. Lawrence Lee Little (Lafayette County Chancery Court)
Justin Perry Warren, Bridgette Trenette Thomas, & Morton Ward Smith for Appellant - Harris H. Barnes III & James Williams Janoush for Appellees
Briefed by Mason Scioneaux

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MITCHELL V. MISS. DEP'T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - UNEMPLOYMENT BENEFITS - VOLUNTARY LEAVE - Pursuant to Miss. Code Ann. § 71-5-513(A)(1)(a), an employee is disqualified from receiving unemployment benefits if he or she left work voluntarily and without good cause
APPELLATE PROCEDURE - REVIEW - PROCEDURAL BAR - Issues raised for the first time on appeal will not be reviewed
APPELLATE PROCEDURE - RULES - COMPLIANCE - Miss. R. App. P. 28(a)(7) requires the argument section of an appellant's brief to contain the contentions of the appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on

FACTS

Rico Mitchell was employed by Geopave LLC when he was informed of a new assignment for work by his supervisor. The assignment involved driving an asphalt truck from the Gulfport Geopave office to a worksite in St. James, Louisiana. Mitchell and his coworkers would drive back and forth together to the work site in a van. Because of his breathing problems, Mitchell informed his supervisor he did not want to take the long trip with his coworkers while wearing a mask. After rejecting a compromise from his supervisor, Mitchell left the meeting and did not return to work the following day. Geopave then fired Mitchell. He applied for unemployment benefits, but the Mississippi Department of Employment Security ("MDES") held that he was not eligible because he failed to show good cause for leaving his employment voluntarily. Mitchell appealed the denial to an Administrative Law Judge (ALJ) who determined that the denial of benefits was correct. Mitchell then appealed to the MDES Board of Review ("Board") who affirmed the decision. Mitchell next appealed to the circuit court which also affirmed that he was disqualified from receiving employment benefits. Mitchell appealed.

ISSUES

Whether (1) substantial evidence existed for the Board to find that Mitchell voluntarily left his job and (2) Mitchell could have succeeded on his other arguments regarding due process violations and perjury.

HOLDING

(1) Because Mitchell testified that he was under no restrictions when he returned to work, because Mitchell nor other documentary evidence ever indicated that a physician told Mitchell that he could not work, and because Mitchell did not report to work and failed to alert Geopave or give the company an explanation for his failure to appear, the Board's decision was based on substantial evidence. (2) Because Mitchell failed to set forth the arguments previously, and because Mitchell failed to comply with Miss. R. App. P. 28(a)(7), the assignments of error were not addressed. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2021-CC-00795-COA (Oct. 4, 2022)
Opinion by Judge Westbrooks

Hon. Dale Harkey (Jackson County Circuit Court)
Pro se for Appellant - Albert B. White for Appellee
Briefed by Micah McGaha

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PATTERSON V. MISS. DEP'T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - UNEMPLOYMENT BENEFITS - GOOD CAUSE - Under Miss. Code Ann. §71-5-513(A), the claimant bears the burden of proving good cause for leaving their employment
ADMINISTRATIVE LAW - UNEMPLOYMENT BENEFITS - MISCONDUCT - Under Miss. Code Ann. §71-5-513(A), the employer bears the burden of proving misconduct to discharge an employee

FACTS

Brinda Patterson was a seamstress for Golden Manufacturing Company ("Company") at the beginning of the COVID-19 pandemic. After the Company closed for two weeks in March of 2020 due to the pandemic, Patterson did not return to work because she feared contracting the virus. In May of 2020, the Company terminated Patterson's employment for her nonappearance and Patterson filed for unemployment benefits with the Mississippi Department of Employment Security ("MDES"). MDES conducted an investigation following Patterson's claim that the Company was not complying with safety requirements and determined that the Company failed to meet the burden of proof to show that Patterson's employment was terminated due to misconduct. The Company appealed to the Administrative Law Judge ("ALJ") who reversed Patterson's award of unemployment benefits because she voluntarily left work without good cause. Patterson appealed to the MDES Board of Review ("Board"), which upheld the ALJ's decision. Patterson then appealed to the trial court, which found that the Board's decision was supported by substantial evidence and was not arbitrary or capricious. Patterson appealed.

ISSUE

Whether the Board erred in finding that Patterson was not entitled to unemployment benefits when she chose not to return to work because of COVID-19.

HOLDING

Because Patterson failed to meet her burden of proof to show good cause for voluntarily leaving her employment, because Patterson was aware of the termination policy, because Patterson chose not to return to work after exceeding the provided hours of absences, and because her doctor indicated that she was able to work and did not advise her to leave work, the Board's decision was supported by substantial evidence and was not arbitrary or capricious. Therefore, the Court of Appeals affirmed the judgment of the Prentiss County Circuit Court.

CONCURRENCE IN RESULT

Judge Westbrooks agreed that as the law stands, the Board did not err in finding that Patterson did not meet the burden of proof of good cause. However, she argued that the issue had a lack of directive in the statute for emergencies such as a global pandemic and urged the Legislature to include an exception to the statute for national and state emergencies.

DISSENT

Judge McCarty argued that due to Patterson's long history with the Company and concerns for her health in an unprecedented circumstance, Patterson's behavior was not misconduct, and she should have been eligible for unemployment benefits.

Affirmed - 2021-CC-01150-COA (Oct. 4, 2022)
Opinion by Judge Lawrence - Concurrence in Result by Judge Westbrooks & Dissent by Judge McCarty
Hon. John R. White (Prentiss County Circuit Court)
Pro se for Appellant - Albert B. White for Appellee

Briefed by Constance Hartline

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COURT OF APPEALS - POST-CONVICTION RELIEF

JOHNSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BARS - SUCCESSIVE MOTIONS - Under Miss. Code Ann. § 99-39-23(6), any order dismissing the petitioner's motion or otherwise denying relief is a final judgment and shall be conclusive until reversed; such judgment shall be a bar to a second or successive motion

POST-CONVICTION RELIEF - PROCEDURAL BARS - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief must be filed within three years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - DENIAL - It is proper for a circuit court to dismiss a motion for post-conviction relief without an evidentiary hearing where it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief

POST-CONVICTION RELIEF - APPELLATE ARGUMENT - WAIVER - Under Miss. Code Ann. § 99-39-21(1), the failure to rise an issue in the circuit court operates as a waiver and renders that issue procedurally barred on appeal

FACTS

Roy Lee Johnson was indicted for sexual battery in violation of Miss. Code Ann. § 97-3-95(1)(d). In March 2016, Johnson pled guilty to sexual battery. Johnson filed at least three previous post-conviction relief ("PCR") motions after his conviction. The circuit court denied Johnson's first motion in July 2017, and his subsequent appeal to the Supreme Court was dismissed as untimely. Sometime after, Johnson filed a Motion for Post-Conviction Collateral Relief to Vacate, Set Aside Illegal and Unlawful Conviction and Sentence in the circuit court. In December 2018, Johnson filed a Motion to Quash the Indictment. The circuit court denied both motions finding that they were successive. The circuit court addressed the first PCR motion, noting that because the second page of the indictment was signed by the jury foreman, Johnson's argument that the indictment was flawed was incorrect. With regard to the Motion to Quash the Indictment, the circuit court held that Johnson's argument of ineffective counsel was factually impossible. Johnson appealed, and the Court of Appeals dismissed the appeal as untimely. In May 2021, Johnson filed another PCR motion. In July 2021, the circuit court denied and dismissed the motion for failure to state grounds upon which post-conviction relief could be granted and because the motion was successive. Johnson appealed.

ISSUES

Whether (1) Johnson's motion was barred as successive; (2) Johnson's motion was filed after the expiration of the statute of limitations; (3) Johnson was entitled to an evidentiary hearing; and (4) Johnson's issues raised for the first time on appeal were waived.

HOLDING

(1) Because on multiple prior occasions Johnson had submitted PCR motions containing the argument that his indictment was defective that were denied, and because none of the allegations in the motion involved fundamental rights that would give rise to an exception from the statutory bar on successive motions, the motion was barred as successive. (2) Because the motion was filed outside of the three-year window for PCR motions, the motion was time-barred. (3) Because it plainly appeared from the face of the motion Johnson was not entitled to any relief, and because Johnson failed to show the extraordinary circumstances that would have necessitated an evidentiary hearing, the circuit court properly denied Johnson an evidentiary hearing. (4) Because Johnson's other arguments were not presented to the circuit court and were raised for the first time on appeal, and because there was no showing of any error that affected

his fundamental rights, those issues were waived and procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2021-CP-00970-COA (Oct. 4, 2022)
Opinion by Judge Westbrooks
Hon. Caleb Elias May (Neshoba County Circuit Court)
Pro se for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee
Briefed by Kaehla Outlaw

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TAYLOR V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Under the Uniform Post-Conviction Collateral Relief Act, parties have three years from the entry of judgment to timely file a PCR motion, unless the party can offer sufficient evidence to show that a fundamental right has been violated
CRIMINAL LAW - SENTENCE ENHANCING STATUTE - USE OF FIREARM - Pursuant to Miss. Code Ann. § 97-37-37(1), any person who commits a felony while using or displaying a firearm shall be subject to an additional five-year term of imprisonment
CRIMINAL LAW - INDICTMENTS - SENTENCE ENHANCEMENT - Case law does not require that an indictment include an actual reference to the sentence enhancement; rather federal and Mississippi jurisprudence only require that indictment include the facts involved in such an applicable sentence enhancement, such that those facts are required to be proven beyond a reasonable doubt

FACTS

In March 2014, Michael Taylor was indicted for armed carjacking ("Count I") and conspiracy to commit armed carjacking ("Count II"). Taylor then pled guilty to Count I and the State agreed to dismiss Count II. After a finding that Taylor entered his guilty plea to Count I knowingly, intelligently, and voluntarily, the circuit court sentenced him to thirty years in custody of the Mississippi Department of Corrections ("MDOC", with fifteen years suspended and fifteen years to serve). Pursuant to Miss. Code Ann. § 97-37-37(1), the firearm-enhancement statute, the circuit court sentenced Taylor to an additional five years, to run consecutively to the thirty-year sentence. In July 2021, Taylor filed a motion for post-conviction collateral relief ("PCR"), arguing that the firearm enhancement was illegal and violated his right to due process and equal protection under the law. Taylor asserted that the circuit court erred in enhancing his sentence because the indictment failed to reference the firearm-enhancement statute and because he received no notice that he would be subject to an enhanced sentence. The circuit court summarily dismissed the motion as time barred. Taylor appealed.

ISSUES

Whether the circuit court erred by (1) dismissing Taylor's motion as time-barred and (2) failing to give Taylor proper notice that he would be sentenced to additional time pursuant to the firearm enhancement statute thus violating his right to due process and equal protection under the law.

HOLDING

(1) Because Taylor filed the PCR motion over seven years after his conviction and failed to show a violation of a fundamental right, thus failing to meet an exception to the enforcement of the statute of limitations, Taylor's PCR motion was time-barred. (2) Because Taylor's indictment included the facts necessary to support the sentence enhancement, because Taylor's plea petition indicated that he had previously been convicted of a felony, because the record reflected that the circuit court discussed the sentence enhancement with Taylor, and because he expressed his understanding that his sentence would be enhanced, Taylor's argument lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-CP-00917-COA (Oct. 4, 2022)
Opinion by Judge Smith
Hon. M. Bradley Mills (Madison County Circuit Court)
Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by Caitlyn Dills

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DAMPIER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SENTENCING - RE-SENTENCING - Where prisoners seek post-conviction relief based upon *Miller* and their conviction and sentence were final when *Miller* was decided, such prisoners are not entitled to a resentencing before a jury but, instead, are entitled to an evidentiary hearing in the trial court, at which that court will consider and apply the *Miller* factors; while *Miller* requires an individualized sentencing hearing, there is no constitutional or statutory right to a jury for that hearing

CRIMINAL PROCEDURE - JUVENILE OFFENDER - *MILLER* FACTORS - *Miller* does not impose additional fact-finding before a juvenile offender may receive greater punishment of life without parole; the factors are not elements of the crime that the sentencer must find beyond a reasonable doubt to impose a life-without-parole sentence

CRIMINAL PROCEDURE - JUVENILE OFFENDER - SENTENCING - *Miller* allows life without parole sentences for defendants who committed homicide when they were under eighteen, but only so long as the sentence is not mandatory – that is, only so long as the sentencer has discretion to consider the mitigating qualities of youth and impose a lesser punishment

CRIMINAL PROCEDURE - WITNESSES - EXPERT FUNDING - Each *Miller* factor The determination of whether a defendant must be pe provided expert funding is made on a case-by-case basis; a defendant must demonstrate a substantial need in order to justify the trial court expending public funds for an expert to assist the defense

CRIMINAL PROCEDURE - JUVENILE OFFENDER - SENTENCING - *Miller* does not prohibit sentences of life without parole for juvenile offenders; rather, it requires the sentencing authority to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison

FACTS

In July 2004, Harry McGuffee Jr. was shot and killed while working at his car dealership in Florence. The following year, De'Andre Dampier and Jermaine Rogers were indicted for capital murder and conspiracy to commit murder. Dampier was sixteen years old at the time of the shooting and was tried before a jury in August of 2006. At trial, the State presented two statements that Dampier had given to police in July 2004, which described his involvement in the shooting. Dampier stated that he had only driven Rogers to McGuffee's car dealership, then proceeded to a nearby apartment where Rogers later picked him up. The circuit court found that Dampier had participated in planning to rob McGuffee's dealership, knew that Rogers possessed a firearm before, drove Rogers to the dealership, blocked the entrance to the dealership during the robbery, and drove a stolen vehicle from the lot after McGuffee had been murdered. A cellmate of Dampier testified that Dampier had told him he planned the robbery and had stolen cash, a cell phone, and a vehicle. Dampier attacked the credibility of the cellmate; however, the jury heard, the cellmate confirm he had not struck a deal, nor asked for a deal in exchange for giving information to authorities. The jury convicted Dampier of capital murder and the circuit court sentenced Dampier to life in prison without eligibility for parole. The Supreme Court affirmed Dampier's conviction and sentence on direct appeal. In 2014, the Supreme Court granted Dampier leave to file a post-conviction relief motion in the circuit court, based on the United State Supreme Court's 2012 *Miller* decision. The circuit court entered an agreed order which vacated Dampier's sentence and set the case for a

Miller hearing. Dampier asserted in a related motion that he had a statutory right to jury sentencing at his *Miller* hearing, which the circuit court denied. Before the *Miller* hearing, Dampier also filed motions for funds for expert assistance for a mitigation expert and a psychologist, which the circuit court ultimately granted $3,000 towards. Following the *Miller* hearing, the circuit court reviewed the *Miller* factors and determined the factors weighed in favor of a life without parole sentence. Subsequently, the circuit court imposed that sentence and denied Dampier's request to be sentenced to life imprisonment with eligibility for parole. Dampier appealed.

ISSUES

Whether (1) Dampier had a statutory right to be re-sentenced by a jury; (2) Dampier's life-without-parole sentence was disproportionate as a matter of law; (3) Dampier was wrongly denied adequate funds for a mitigation investigator; and (4) the circuit court applied the correct legal standard and considered the *Miller* factors in sentencing Dampier to life without parole.

HOLDING

(1) Because Miss. Code Ann. § 99-19-101(1) governed the initial sentencing of a minor convicted of capital murder post-*Miller*, and because nothing in prior precedent suggested that the hearing must have occurred under a state's statutory sentencing scheme and not under a state's statutory post-conviction relief scheme, Dampier was not entitled to be re-sentenced by a jury. (2) Because there was no authority for the proposition that the "circumstances of the homicide offense" *Miller* factor should have been considered to the exclusion of the other four factors, and because no evidence suggested Dampier's life-without-parole sentence was grossly disproportionate, the disproportionality assignment of error was without merit. (3) Because Dampier waived any issue that he was purportedly denied adequate funds for his mitigation expert, because the reasons for needing expert funds never developed beyond the level of general speculation, and because Dampier suffered no prejudice from the denial of funds for his expert psychologist, his Sixth and Fourteenth Amendment rights were not violated with respect to funding. (4) Because Dampier was provided a full and fair evidentiary hearing, and because the circuit court considered and analyzed each of the *Miller* factors based on the testimony and evidence presented at the hearing, the circuit court applied the correct legal standard and appropriately considered each of the *Miller* factors and did not abuse its discretion in sentencing Dampier to life without parole. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Judge Westbrooks dissented, arguing Dampier had a right to be sentenced by a jury under the plain language of Miss. Code Ann. § 99-19-101. She further noted that Dampier's vacated sentence required that he be sentenced under the statutory scheme and that precedent required him to be sentenced by a jury. Therefore, she stated that his sentence should have been reversed and remanded for a jury re-sentencing.

Affirmed - 2021-KA-00280-COA (Oct. 4, 2022)
En Banc Opinion by Presiding Judge Carlton **-** Dissent by Judge Westbrooks
Hon. Dewey Key Arthur (Rankin County Circuit Court)
George T. Holmes (Pub. Def. Office) & Tamarra A. Bowie for Appellant **-** Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee
Briefed by Morgan Rushing

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HOLDER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - BURGLARY - ELEMENTS - The charge of burglary has only two required elements – the (1) breaking and entering the dwelling house or inner door of such dwelling house of another, and (2) with the intent to commit some crime therein

EVIDENCE - JURY VERDICT - REVIEW - All evidence supporting a guilty verdict is accepted as true and the appellate court disregards evidence favorable to the defendant when being asked to overturn a jury verdict based on an allegation of insufficient evidence; the prosecution must be given the benefit of all reasonable inferences that can be reasonably drawn from the evidence

CRIMINAL LAW - BURGLARY - BREAKING ELEMENT - The breaking element of burglary is conducted by an act of force, regardless of how slight, necessary to be used in entering a building; any effort expended to enter another's property to commit a crime constitutes a breaking

EVIDENCE - PHYSICAL EVIDENCE - ABSENCE - The absence of physical evidence does not negate a conviction where there is testimonial evidence

FACTS

In April 2020, Adrian Hinton returned to his Rawls Springs home to find his side door ajar and his shotgun absent. Hinton resided with his girlfriend Adriana Thigpen. Hinton reported the burglary and told Investigator Keith Leroy that Thigpen's cousin, Alex Holder, called him numerous times on the day of the burglary asking to visit Hinton and Thigpen at their home. Hinton told Holder that he was not allowed on their property but feared that Holder was at their house anyway. That is when Hinton returned home and discovered his door open and his shotgun missing. Investigator Leroy called the phone number that Holder used to call Hinton, but Charlotte Hill answered. Hill told Investigator Leroy that she had given Holder a ride to a house in Rawls Springs. Upon arrival, Hill said that Holder told her that he needed to see if his cousin was home and used Hill's phone to make a call. Then, Hill saw Holder leave the car, walk toward the house, and get back in Hill's car with a long gun. As they were driving, Holder threw the gun out the window. Investigators never found the gun. Holder was indicted for one count of burglary of a dwelling and one count of felon in possession of a firearm. At trial, Holder unsuccessfully moved for a directed verdict after testimony from Hinton, Hill, Thigpen, and Investigator Leroy. The jury convicted Holder on both counts, and he was sentenced to serve twenty-five-year and ten-year sentences concurrently. Holder filed an additional unsuccessful motion for judgment notwithstanding the verdict or, alternatively, a new trial. Holder appealed.

ISSUES

Whether the State's evidence was insufficient to establish (1) that Holder was present at Hinton's residence when the burglary occurred and (2) any breaking and entering occurred at Hinton's residence or that Holder specifically committed an unlawful breaking and entering at Hinton's residence.

HOLDING

(1) Because the jury had the right to determine the truth or falsity of witnesses' testimony, because the testimony of Hinton and Hill, with no apparent connection, both confirmed Holder's actions on the day of the burglary, and because courts disregard evidence favorable to a defendant when asked to overturn a jury verdict, the record contained sufficient evidence for a rational juror to conclude that the State proved Holder's identification beyond a reasonable doubt as the perpetrator of the burglary of Hinton's residence. (2) Because Thigpen and Hill testified that the door was closed and locked, and because there was testimonial evidence of Holder's presence at Hinton's residence and about the gun, there was sufficient evidence in the record for the jury to find a breaking and entering occurred at Hinton's residence and that Holder committed a breaking and entering of Hinton's residence. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2021-KA-01016-COA (Oct. 4, 2022)
Opinion by Judge Smith
Hon. Jon Mark Weathers (Forrest County Circuit Court)
Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee
Briefed by Holdon Guy

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WILLIS v. STATE

CRIMINAL - FELONY

EVIDENCE - WAIVER - FAILURE TO OBJECT - Failure to contemporaneously object to the admission of evidence constitutes a waiver of the issue on appeal; additionally, failure to timely object to evidence bars the issue on appeal

EVIDENCE - AUTHENTICATION - TELEPHONE CONVERSATIONS - Telephone conversations are authenticated when the evidence shows that a call was made to a number assigned at the time by the telephone company to a particular person and self-identification shows that the person answering is the person who was called

FACTS

In 2020, Rayfield Willis was at the house of his next-door neighbor, Kercsheila Jackson. At that time, Jackson was not at her home, but her friend, Omecia Skaggs, was present and two of Jackson's children were at the house. Early that morning, Skaggs, Willis, and two other people were sitting and drinking on the front porch of Jackson's house. At one point, Skaggs told Willis he was being too loud because children were sleeping inside the house. Willis became visibly upset and began swearing at Skaggs. Willis left the front porch, only to show up a few minutes later with a pistol in his hand. When Jackson returned to her home, Skaggs informed her of Willis's behavior. Jackson proceeded to her porch and found Willis standing in his yard. Jackson told Willis she wanted him to stay on his side of the driveway, and the two continued to argue with one another. As Jackson turned to go inside the house, Jackson heard two gunshots go off. Jackson did not see the first shot go off but turned around and saw the flash of fire leave the revolver in Willis's hand at the second shot fired. Jackson also noted that Willis's girlfriend, Jacqueline Ruff, was close to Willis's porch at the time of the incident. Crystal Springs Police Officer Joseph McKenny responded to the scene and stated that Willis admitted to him that he had discharged the gun into the air. At trial, Willis called Ruff as his witness. On the stand, Ruff testified that the revolver was hers, that she had purchased the revolver approximately two to three days before the incident, and that Willis knew of the location of the revolver. In addition, testimony provided by Skaggs, Jackson, and Officer McKenny indicated that Willis was a felon when the incident occurred. Furthermore, Ruff stated she gave a statement to the district attorney's investigator Keith Denson, but she denied telling him that Willis had the gun nor that he fired the gun. When Denson was brought back to the stand as a rebuttal witness, Denson testified that a week before the trial took place, he had spoken to Ruff via a phone conversation. Denson authenticated a Memorex CD recording of their conversation and verified that the contents of the disk were a true and accurate depiction of that interview, which received no objection from Willis. After the CD conversation began playing, Willis's attorney objected, but the trial court continued to play the recording, stating the evidence had already been granted and permitted. As the recording was played, Ruff identified herself and admitted that on the night in question, Willis knew about the gun that she had purchased. Further, Ruff admitted that she kept the gun under her mattress and that Willis shot the gun in the air one time on the night in question. Willis filed a motion for a new trial, arguing that the trial court erred in allowing Denson to testify and in admitting the taped conversation with Ruff, arguing that the testimony was not provided during discovery. In addition, Willis filed a motion for judgment notwithstanding the verdict. The trial court denied these motions. Willis appealed.

ISSUE

Whether the trial court erred in admitting Denson's audiotaped telephone interview with Ruff into evidence.

HOLDING

Because Willis failed to object to the admission of the evidence in a timely manner by raising an objection after the tape was entered into evidence, and because the recorded conversation was properly authenticated and Ruff properly identified herself at the beginning and end of the phone conversation by providing her name, address, and ability to discuss the details of the events of the shooting clearly, the issue of the recording's admissibility was barred from being raised on appeal and, notwithstanding the procedural bar, the trial court did not abuse its discretion in admitting the evidence. Therefore, the Court of Appeals affirmed the judgment of the Copiah County Circuit Court.

Affirmed - 2021-KA-00936-COA (Oct. 4, 2022)

Opinion by Judge McDonald
Hon. Tomika Harris Irving (Copiah County Circuit Court)
Mollie Marie McMillin (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee
Briefed by Sierra Albano

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WILSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INVESTIGATORY STOP - REASONABLE SUSPICION - Police officers may detain a person for a brief, investigatory stop consistent with the Fourth Amendment when the officers have reasonable suspicion, grounded in specific and articulable facts, which allows the officers to conclude the suspect is wanted in connection with criminal behavior

CRIMINAL PROCEDURE - TRAFFIC VIOLATION - PROBABLE CAUSE - The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred

FACTS

Officer Ryan Darby of the Hernando Police Department discovered drugs in Stanley Wilson's vehicle after he initiated a traffic stop of Wilson's vehicle. Officer Darby initiated the traffic stop because he did not see a state-issued license tag displayed on the vehicle and because he observed Wilson acting in a suspicious manner. During the traffic stop, Officer Darby learned that Wilson had outstanding warrants for his arrest, and Wilson then consented to a search of his vehicle. As a result of the search, pill bottles containing oxycodone pills were discovered. Wilson was indicted as a recidivist and habitual offender for possession of oxycodone with intent to sell. Wilson filed a pretrial motion to suppress the evidence obtained from his vehicle at the traffic stop, arguing that Officer Darby lacked reasonable suspicion to stop his vehicle, and therefore no probable cause existed for the search of the vehicle. The trial court denied his motion to suppress the evidence. At the end of a bench trial, the trial court found Wilson guilty of possession of forty dosage units or more of oxycodone, and he was sentenced as a habitual offender to serve ten years. Wilson filed a motion for a new trial, which the trial court denied. Wilson appealed.

ISSUE

Whether the trial court erred in denying Wilson's motion to suppress the evidence that was obtained from the traffic stop.

HOLDING

Because Officer Darby had reasonable suspicion to initiate an investigatory stop of Wilson's vehicle, the trial court did not err in denying Wilson's motion to suppress the evidence. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

DISSENT

Judge Westbrooks argued that Officer Darby's initial traffic stop of Wilson's vehicle was not reasonable because Wilson conspicuously displayed his tag in such a way that it could be easily and clearly read, as shown by the photographs entered into evidence. She further argued that Officer Darby could not have reasonably believed that Wilson committed obstruction of traffic when there was no traffic to obstruct. Because Officer Darby could not support the traffic violation with either reasonable suspicion or probable cause and because his explanations for the stop were unreasonable, she argued that the traffic stop was an illegal violation of Wilson's constitutional rights.

Affirmed - 2021-KA-00608-COA (Oct. 4, 2022)
En Banc Opinion by Presiding Judge Carlton - Dissent by Judge Westbrooks
Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)
Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee
Briefed by Madison McLean

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