

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 8, 2022***SUPREME COURT - CIVIL CASES*****GILMER V. McRAE****CIVIL - CONTRACT**

TORTS - CONSPIRACY - ELEMENTS - To establish a claim for civil conspiracy, a plaintiff must allege there was: (1) an agreement between two or more persons, (2) to accomplish an unlawful purpose or a lawful purpose unlawfully, (3) an overt act in furtherance of the conspiracy, (4) and damages to the plaintiff as a proximate result

CIVIL PROCEDURE - JUDICIAL DETERMINATION - ATTORNEY'S FEES - It's assumed that an award of attorney's fees pursuant to Miss. R. Civ. P. 11(b) was made by determinations of fact sufficient to support the court's ruling where no specific finding in support of the award was explicitly made

CIVIL PROCEDURE - MOTION TO DISMISS - JUDICIAL DETERMINATION - Miss. R. Civ. P. 15(a) provides that, on a motion to dismiss, leave to amend shall be granted when justice so requires upon conditions and within time as determined by the court, provided matters outside the pleadings are not presented at the hearing on the motion

FACTS

In 2012, the Gilmer Law Firm accepted a legal malpractice case. Gilmer Law Firm and Barry Wade Gilmer executed a contingency fee contract with the client, Bobby Gibson. Seth Little was assigned to the case but left the Gilmer Law Firm in 2013 and began working for the McRae Law Firm, though he continued to work on Gibson's case. Eventually, the case was settled, but the McRae Law Firm never received payment. Chuck McRae hired Michelle Biegel and Bettie Ruth Johnson to sue Gilmer over the attorney's fees generated by the settlement of the legal malpractice case. In 2017, Gilmer filed a lawsuit against McRae, Little, Biegel, and Johnson, alleging, inter alia, that McRae, Biegel, and Jonson committed civil conspiracy. He alleged that Biegel and Johnson, for the purpose of fraudulent pecuniary gain, instructed McRae to call Gibson and record the conversation. Biegel and Johnson moved to dismiss, alleging that an attorney may not be held liable for filing a lawsuit on behalf of a client and because Gilmer failed to allege facts that would give rise to a claim for civil conspiracy. In 2018, Gilmer filed a motion to amend but failed to include a proposed amended complaint. Two days later, he filed an amended motion to amend and attached a copy of his proposed amended complaint. Shortly thereafter, he sent notice that a hearing would be held on the amended complaint the following day, however, no hearing was held, and the trial court did not issue an order on the motion to amend. Gilmer sent another notice of a hearing set for September 2020, but he did not attach any verification from the trial court. The trial court granted the motion to dismiss in November 2020 and, finding his complaint frivolous, ordered Gilmer to pay Biegel and Johnson the cost of the appeal and costs accrued from the suit. Gilmer appealed.

ISSUES

Whether the trial court (1) erred by dismissing Gilmer's complaint pursuant to Miss. R. Civ. P. 12(b)(6); (2) abused its discretion by awarding attorney's fees to Biegel and Jonson; (3) abused its discretion by denying Gilmer's amended motion to amend; and (4) abused its discretion by assigning Gilmer the costs of the interlocutory appeal taken by Biegel and Johnson.

HOLDING

(1) Because Biegel and Johnson were immune from suit as they were acting in their official capacities as McRae's attorneys, and because Gilmer failed to properly allege a claim of civil conspiracy, the trial court did not err by dismissing Gilmer's complaint. (2) Because the trial court made determinations of fact sufficient to award attorney's fees to Biegel

and Johnson by reviewing the pleadings, exhibits, and affidavits filed, the trial court did not abuse its discretion by awarding attorney's fees to Biegel and Johnson. (3) Because the filings indicate that Gilmer failed to seize ample opportunities to ensure his motion was heard and decided by the trial court, and because granting Gilmer's amended motion to amend two years after it was filed would have caused undue delay, the trial court did not abuse its discretion by denying Gilmer's amended motion to amend. (4) Because Gilmer failed to provide any relevant authority in his brief as to the issue, Gilmer was procedurally barred from raising the issue of whether the trial court abused its discretion by assigning Gilmer the costs of the interlocutory appeal taken by Biegel and Johnson. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-CA-00028-SCT (Dec. 8, 2022)

Opinion by Justice Ishee

Hon. Jess H. Dickinson (Madison County Circuit Court)

Jonathan B. Fairbank, Matthew Wade Gilmer, & Barry W. Gilmer for Appellant - Chuck McRae, Seth Little, Robert G. Germany, W. Brady Kellems, Michele Dawn Biegel, & B. Ruth Johnson for Appellees

Consolidated with:

Affirmed - 2021-CA-00570-SCT (Dec. 8, 2022)

Hon. Jess H. Dickinson (Madison County Circuit Court)

Barry W. Gilmer, Jonathan B. Fairbank, & Matthew Wade Gilmer for Appellant - Chuck McRae, Seth Little, W. Brady Kellems, Robert G. Germany, & Michele Dawn Biegel, for Appellee

Briefed by [Anna Beavers](#)

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GREENVILLE PUB. SCH. DIST. V. THOMAS

CIVIL - STATE BOARDS & AGENCIES

STATE BOARDS & AGENCIES - EMPLOYMENT - NONRENEWAL - Miss. Code Ann. § 37-9-113(2) allows an employee aggrieved by her nonrenewal to appeal from the decision of the school board by filing a petition and bond with the chancery clerk within twenty days of the school board's decision

STATE BOARDS & AGENCIES - COURT COSTS - DISCRETION - Generally, the assessment of court costs is within the chancery court's sound discretion

FACTS

Yolanda Thomas was a middle school principal in the Greenville Public School District ("the school district"). The school district opted to not renew her employment, prompting Thomas to contest the nonrenewal of her employment pursuant to Miss. Code Ann. § 37-9-113(2). Counsel for the school district and Thomas disagreed on the bond amount required by the statute to perfect Thomas's appeal. The school district argued that Thomas had to post bond totaling \$7,717.90, the total cost to cover the hearing transcript. Thomas disagreed, claiming that the \$200 cash appeal bond she paid when making a timely notice of appeal from the school board's decision sufficed. The trial court held that Thomas's \$200 appeal bond was adequate to perfect her appeal and that the cost of preparing the transcript was not per se included in the cost of the appeal bond. The school district petitioned for interlocutory appeal.

ISSUES

Whether the trial court erred (1) in its interpretation of the statutory requirements for the cost of a judicial appeal under Miss. Code Ann. § 37-9-113 and (2) by determining that \$200 was a sufficient bond amount to perfect the appeal.

HOLDING

(1) Because the school district's suggested interpretation of Miss. Code Ann. § 37-9-113(2), which would have required Thomas's payment of the costs of appeal to or at the time of posting bond, was incorrect, because an assessment of court costs was within the discretion of the trial court and generally was assessed against the losing party at the end of the proceedings, and because the legislature designated the hearing transcript as a court cost rather than part of the cost of the bond, the trial court did not err in its interpretation of the statutory requirements for the cost of a judicial appeal

under Miss. Code Ann. § 37-9-113. (2) Because Miss. Code Ann. § 37-9-113(2) contained language that authorized the trial court to exercise discretionary authority in determining the bond amount, so long as the bond was not less than \$200, and because the trial court did not abuse its discretion by determining the statutory minimum of \$200 was sufficient to perfect the appeal, the trial court did not err in determining that \$200 was a sufficient bond amount. Therefore, the Supreme Court affirmed and remanded the judgment of the Washington County Chancery Court.

CONCURRENCE IN PART & IN RESULT

Justice Ishee agreed with the majority that the trial court did not commit error by finding that the \$200 cash bond was sufficient. However, he stated that he would have held that a trial court had no authority to require a bond in a penalty greater than required by the statute.

Affirmed & Remanded - 2021-IA-00456-SCT (Dec. 8, 2022)

En Banc Opinion by Justice Chamberlin - Concurrence in Part & in Result by Justice Ishee

Hon. Bennie Le Nard Richard (Washington County Chancery Court)

Dorian E. Turner for Appellant - Lisa M. Ross for Appellee

Briefed by [Mason Borneman](#)

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LOUVIER V. MISS. BAR

CIVIL - BAR MATTERS

BAR MATTERS - REINSTATEMENT - ELIGIBILITY - Miss. R. Discipline 12 provides no person disbarred or suspended for a period of six months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court and that reinstatement to the practice of law following any other discipline shall be only upon proof of compliance with any sanctions

BAR MATTERS - REINSTATEMENT - REQUIREMENTS - An attorney can show that he has rehabilitated himself in conduct and character since a suspension by complying with Miss. R. Discipline 12's jurisdictional requirements, as follows: (1) state the cause or causes for suspension or disbarment, (2) give the name and current address of all persons, parties, firms or legal entities who suffered pecuniary loss due to the improper conduct, (3) make full amends and restitution, (4) show that he or she has the necessary moral character for the practice of law, and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

FACTS

Michael Louvier was found to be in violation of the Miss. R. Pro. Conduct nine times. Louvier was suspended from the practice of law for three years in two separate matters for using client funds for his personal use, failing to provide the client a full accounting, failing to protect the client's interests by not surrendering papers and property the client was entitled, failing to disclose facts necessary to correct misapprehensions known by him, and engaging in conduct prejudicial to the administration of justice. In 2022, Louvier filed a petition for reinstatement, which included letters of support from members in good standing with the Mississippi Bar. The Mississippi Bar took Louvier's deposition. Louvier filed a supplement to his petition with additional letters of support. The Mississippi Bar discovered Louvier was employed as a process server and used his Mississippi Bar number in the space for the process server's social security number. The Mississippi Bar considered this use as potentially being the unauthorized practice of law in violation of the suspension orders by holding himself out as a lawyer. The Mississippi Bar opposed Louvier's petition for reinstatement, noting that the burden of proof for both moral and professional rehabilitation had not been satisfied.

ISSUE

Whether Louvier satisfied the jurisdictional requirements to be reinstated to the practice of law.

HOLDING

Because Louvier provided sufficient evidence of the causes of his suspension, because he provided clear and convincing evidence concerning the existence of pecuniary loss, because he adequately made restitution in the underlying cases, because he was involved in numerous civic and charitable activities since his suspension, because he provided thirty-four letters of support from respected members of the Mississippi Bar, because the impermissible use of his Mississippi Bar number was not sufficient to deny or further delay his reinstatement, because he passed the Multi-State Professional Responsibility Exam with a score of 111 and provided a copy of his National Conference of Bar Examiners score, and because his time as a law clerk and process server maintained his legal learning, Louvier satisfied the jurisdictional requirements to be reinstated to the practice of law. Therefore, the Supreme Court reinstated Louvier to the practice of law.

Reinstatement Granted Effective Ninety Days from the Issuance of the Court’s Mandate - 2022-BR-00205-SCT (Dec. 8, 2022)

En Banc Opinion by Justice Griffis

John Denver Fike for Petitioner - Adam Bradley Kilgore & Melissa Selman Scott for Respondent

Briefed by [Kayla Tran](#)

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MISS. BAR V. PETTY

CIVIL - BAR MATTERS

BAR MATTERS - DISCIPLINE - RECIPROCITY - Pursuant to Miss. R. Discipline 13(b), a final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the State of Mississippi

BAR MATTERS - DISCIPLINE - EXTENT OF SANCTION - Pursuant to Miss. R. Discipline 13(b), when an attorney admitted to practice in the State of Mississippi has been found guilty of misconduct in another jurisdiction, the sole issue to be determined in the disciplinary proceeding in the State of Mississippi shall be the extent of the final discipline to be imposed upon the attorney in this State, which may be more or less severe than the discipline imposed by the other jurisdiction; the sanction imposed in this State generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction’s sanction

BAR MATTERS - EXTENT OF SANCTION - FACTORS - When determining the extent of the sanction for a finding of misconduct in a foreign jurisdiction, the court may consider the following nine criteria: (1) the nature of the misconduct involved, (2) the need to deter similar misconduct, (3) the preservation of the dignity and reputation of the profession, (4) protection of the public, (5) the sanctions imposed in similar cases, (6) the duty violated, (7) the lawyer’s mental state, (8) the actual or potential injury resulting from the misconduct, and (9) the existence of aggravating and/or mitigating factors

FACTS

Bryan Jackson Petty is an attorney licensed in both Mississippi and Tennessee. While representing an indigent client in Tennessee in a dependent and neglect matter in juvenile court, Petty exchanged messages with his client that were sexual in nature. The Board of Professional Responsibility of the Supreme Court of Tennessee (“the Board”) found that there was a significant risk that Petty’s personal interests materially limited his representation of his client. As a result, the Board found that Petty had violated Tenn. R. Pro. Conduct 1.7(a)(2) by creating a concurrent conflict of interest in his representation of his client. The Board publicly censured Petty for the violation. The Mississippi Bar then filed a formal complaint asking the Supreme Court to sanction Petty for his misconduct and order Petty to pay the costs and expenses incurred from filing the complaint.

ISSUE

Whether the extent of the final discipline to be imposed on Petty in Mississippi should vary from that given imposed on him by the Tennessee Bar.

HOLDING

Because the sanction imposed in Mississippi generally mirrors the sanction imposed in a sister state, barring extraordinary circumstances that compel, justify, or support variance from the foreign jurisdiction's sanction, because Petty's answer to the Mississippi Bar complaint made no effort to show that a lesser sanction would have been appropriate, and because the Mississippi Bar likewise had not attempted to show a more severe sanction should have been ordered, the Supreme Court mirrored Tennessee's sanction of a public reprimand. Therefore, the Supreme Court ordered that Petty was subject to a public reprimand and was further assessed the Mississippi Bar's costs and expenses in bringing the action.

Public Reprimand & Assessment of Costs - 2022-BD-00402-SCT (Dec. 8, 2022)

En Banc Opinion by Justice Ishee

Adam Bradley Kilgore & Melissa Selman Scott for Complainant - *Pro se* for Respondent

Briefed by [Merritt Baria](#)

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SUPREME COURT - CRIMINAL CASES

BLAND V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - LAY WITNESS TESTIMONY - Opinion testimony is proper if it is rationally based on the perception of the witness, helpful to the clear understanding of testimony, or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge

EVIDENCE - ADMISSIBILITY - JUDICIAL DISCRETION - Relevancy and admissibility of evidence are largely within the discretion of the trial court

FACTS

In 2017, Willie West saw Joseph Earl Bland argue with his girlfriend, Olletta Jones near their car. While West could not hear the discussion, he saw Jones walk away from Bland towards the front of the car and fall to the ground after three flashes came from Bland's hand. West called 911, and the Tunica County Sheriff's Department arrived minutes later. Jones was found deceased, and the sheriff's department called in the Mississippi Highway Patrol to assist because of Bland's familial relationship with one of the deputies. Lieutenant Bryant Sullivant, a highway patrolman, conducted the investigation where he found three spent shell casings, a pistol, and gunshot residue on Bland's hands. Bland testified at trial that he shot Jones in self-defense after an argument ensued when Bland and Jones left the casino. Bland stated that he escalated the argument by making a comment that would be a gut punch to Jones. Bland stated that Jones retrieved the gun from the passenger's seat and drew the firearm on Bland while threatening to kill him. Bland testified he heard the gun click, which triggered his post-traumatic stress disorder ("PTSD") that he developed after witnessing his father's murder when he was four years old. Bland testified the car halted, Jones exited the vehicle, and he pursued her to take the gun before she loaded it. The pair tussled for the gun, and Bland shot Jones. Prior to testifying, Bland's counsel informed the trial court that Bland might bring up his PTSD, which impacted his actions the night of the shooting. The trial court ruled that Bland was not allowed to testify about his PTSD because the defense presented no medical witnesses or identification, nor did they proffer that they would. The jury found Bland guilty of murder. Bland appealed.

ISSUE

Whether the trial court erred by excluding Bland's testimony regarding his PTSD, thereby depriving Bland of his opportunity to assert his theory of self-defense.

HOLDING

Because Bland did not seek to present expert testimony regarding PTSD, because Bland sought to instead introduce his own testimony that he suffered from PTSD, which impacted his actions the night of the shooting, and because Bland did not provide or proffer what his lay testimony would have been on the subject, the trial court did not abuse its discretion by denying Bland's request to testify that he suffered from PTSD. Therefore, the Supreme Court affirmed the judgment of the Tunica County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Presiding Justice Kitchens argued that Bland's testimony that he was in therapy and on medication for PTSD at the time of trial met the requirement for the admission of lay testimony under Miss. R. Evid. 701. Therefore, he argued the trial court erred by denying Bland's request to provide lay testimony of facts within his direct knowledge related to his treatment for PTSD, but the denial did not result in reversible error.

Affirmed - 2021-KA-00973-SCT (Dec. 8, 2022)

En Banc Opinion by Justice Beam - Concurrence in Part & in Result by Presiding Justice Kitchens

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

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Maya Langendoen](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 6, 2022

COURT OF APPEALS - CIVIL CASES

ATKINS V. MOORE

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - CONSERVATORSHIP - SERVICE OF RELATIVES - Miss. Code Ann. § 93-13-253 provides that unless the court finds that the person for whom the conservator is to be appointed is competent and joins in the petition, the notice shall also be given to one relative of the person for whom the conservator is appointed who is not the petitioner and who resides in Mississippi

APPELLATE PROCEDURE - BRIEFS - PROCEDURAL BAR - Factual assertions raised in appellate briefs are not evidence and will not be used as grounds for reversing the trial court's judgment; factual assertions may only be raised on appeal where evidence was entered into the record to support those assertions

WILLS & ESTATES - CONSERVATOR - ACCOUNTING RECORDS - Miss. Code Ann. § 93-13-67 requires a conservator to file an annual accounting that must show, inter alia, each item of expenditure for the ward's maintenance and the presentation and management of the ward's estate, supported by legal vouchers

FACTS

In 2018, Judith Holder Moore filed a petition for letters of conservatorship requesting that she be appointed as conservator of estate and person for her sister, Barbara Holder Atkins, who was suffering from dementia. The petition stated that Atkins was a widow, had two children, and resided at an assisted living facility. However, when Moore served the petition to one of Atkins's children, Mark, the petition did not contain information regarding Atkins's other child, Julius. Prior to a hearing, Mark filed a joinder in the petition and waiver of service. At the hearing, Moore testified briefly regarding Atkins's assets, income, and expenses. After mentioning to the chancery court that Julius was not local and had gotten a few thousand dollars from Atkins occasionally, counsel cautioned Moore not to give Julius any of Atkins's money without court approval. The chancery court did not inquire regarding Julius, and there was no further discussion of him. The chancery court granted Moore letters of conservatorship and appointed her as conservator of Atkins's estate and person. The chancery court ordered Moore to pose a \$50,000 bond, which she did and authorized her to pay certain expenses of Atkins's not to exceed \$1,000 per month. Additionally, the chancery court ordered that Moore should be reimbursed from the estate for attorney's fees and other costs she incurred in bringing the action and for her bond premium. Julius filed a handwritten pro se statement requesting to be notified of any hearings. Moore filed a

motion for authority to sell Atkins's home and served Julius with a copy of the motion and notice of the hearing by mail. Moore filed a motion for authority to pay herself a conservator's fee of \$1,395. She set the motion for hearing and served Julius with the motion and notice of the hearing by mail. The chancery court held a hearing on Moore's motion for authority to sell Atkins's home in which Julius was not present. Subsequently, Julius filed a notice of appearance and a motion to set aside the conservatorship and compel Moore to account for her actions as conservator. Julius alleged that Moore failed to serve him with the petition for the conservatorship. Furthermore, Julius filed a motion to appoint a guardian ad litem ("GAL") for Atkins, alleging that he had grave concerns about unspecified actions by Moore. Julius attached copies of checks, account statements, and other documents to his motion, but he did not allege any specific wrongdoing by Moore. Moore then testified that she did not serve Julius with the conservatorship petition because Julius had caused his family considerable problems, and because he was not good for his mother. During a hearing, Moore testified that Julius had taken Atkins's money and had upset Atkins by calling her late at night to accuse Moore of stealing from her. Moore also testified that she had met with police and an investigator from the Attorney General's office to report that Julius had caused Atkins to give him \$3,000, which Moore considered a clear act of theft for which Julius was indicted for exploitation of a vulnerable adult. The hearing was then recessed so that Julius could consult his attorney, since he was under indictment, and during the recess, Julius was taken into custody by law enforcement. Afterward, Moore filed a single-paged inventory of Atkins's assets, which consisted of checking and savings accounts. The next month, the chancery court ordered Moore to increase her bond because the sale of Atkins's home had resulted in an increase in the estate's cash assets and ordered her to complete an annual accounting. The chancery court declined to appoint a GAL and declined to remove Moore as conservator. Julius filed a motion to hold Moore in contempt because she had not increased her bond or filed an annual accounting. Moore then filed an annual accounting and asked the chancery court to discharge her from her conservator duties. The chancery court entered a final judgment denying Julius's requests for relief. The chancery court found that although it previously had declined Julius's requests to examine transactions prior to the conservatorship, the parties had tried the issue by implied consent. The chancery court also found that Julius failed to prove any wrongdoing by Moore prior to the conservatorship. Although Julius questioned certain pre-conservatorship transactions, Moore gave uncontradicted testimony that Julius made the withdrawals at issue and took the money from his mother. Next, the chancery court approved Moore's final accounting for the conservatorship. The chancery court acknowledged that there were deficiencies with Moore's accountings; however, the chancery court found that there was no evidence of any wrongdoing on Moore's part. Granting Moore's request to be discharged as conservator, the chancery court appointed a local attorney as a new permanent conservator. Julius appealed.

ISSUES

Whether the chancery court erred by (1) denying the motion to set aside the conservatorship because Julius was not served; (2) allowing Moore to accuse Julius of exploitation of a vulnerable adult; (3) declining to compel Moore to produce a more complete accounting; and (4) determining that Julius was not entitled to any further relief when Moore did not increase her bond to \$200,000.

HOLDING

(1) Because Miss. Code Ann. 93-13-253 required Moore to serve Julius with process since he was Atkins's only living child who resided in Mississippi, the chancery court erred by condoning or approving Moore's failure to serve Julius; however, given that Moore was no longer serving as conservator, the error did not warrant reversal. (2) Because Julius was not an owner of the bank account from which the funds were taken, because he did not attend the trial or testify to dispute Moore's allegations, and because he pled guilty to the charge of exploitation of a vulnerable adult, the chancery court did not err in barring Julius's unsupported assertions that he was falsely accused of exploitation of a vulnerable person. (3) Because substantial evidence supported the chancery court's findings that Moore did not convert or mispend any of Atkins's funds and committed no wrongdoing while serving as Atkins's conservator, the chancery court did not err in declining to compel Moore to produce a more complete accounting. (4) Because Moore had been discharged as conservator, and because there was no evidence that she took any action while serving as conservator that would give rise to a claim against her bond, the chancery court's alleged error in failing to require a bond was moot and further proceedings regarding the bond would have been of no benefit to Atkins. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

SPECIAL CONCURRENCE

Judge Westbrook agreed that the chancery court did not abuse its discretion when it approved the final accounting; however, she wrote separately to chastise the chancery court's failure to proactively monitor the expenses claimed throughout the duration of the conservatorship and to emphasize the chancery court's role in protecting vulnerable adults.

Affirmed - 2021-CA-00780-COA (Dec. 6, 2022)

Opinion by Presiding Judge Wilson - Special Concurrence by Judge Westbrook
Hon. Joseph N. Studdard (Lowndes County Chancery Court)
Dewitt T. Hicks Jr. & Lydia Quarles for Appellant - *Pro se* for Appellee
Briefed by [Kara Edwards](#)

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THE BANKING GRP., INC. V. S. BANCORP BANK

CIVIL - CONTRACT

CONTRACTS - BREACH - ELEMENTS - To prevail under a breach-of-contract claim, a plaintiff has the burden of proving by a preponderance of the evidence (1) that a valid and binding contract exists; and (2) that the defendant has broken or breached it without regard to the remedy sought or the actual damage sustained

CONTRACTS - INTERPRETATIONS - JURY TRIAL - If the terms of a contract are subject to more than one reasonable interpretation, it is a question properly submitted to the jury

FACTS

In 2018, The Banking Group ("TBG"), a banking recruiting firm, referred a candidate to Southern Bancorp Bank ("SBB") to fill a vacancy at an existing branch in Picayune. Charles West, the sole shareholder of TBG, emailed a recruiting agreement to Joe Ricotta, SBB's eastern regional CEO. The agreement explained that when SBB accepted a TBG referral, TBG would receive a fee of twenty percent of the candidate's starting salary plus any signing bonuses. SBB did not sign the agreement but paid the twenty percent fee for the referred candidate. West said that TBG's standard fee for placements was twenty-five percent, but lowered it to twenty percent in exchange for SBB's exclusive use of TBG for recruiting. In 2020, West sent a letter to Ricotta introducing Chris Hester as an experienced bank manager and related Hester's interest in moving to SBB. West also indicated that Hester would be able to head a new office, which he knew SBB was interested in. West said that he spoke with Ricotta about hiring Hester's team, but that Ricotta denied that he was hiring anyone but Hester. West alleged that Ricotta told him he intended to make Hester an offer. West said he told Ricotta they could use the same agreement they used in 2018 and the fee would be twenty percent. According to West, Ricotta denied hiring other employees and wanted West to sign a document saying TBG would not bill SBB for other hires, but West declined. West prepared and emailed Ricotta a letter agreement, with the same wording as the 2018 letter, with the only difference being West had underlined language regarding future payments if the candidate should terminate and collection fees if a lawsuit was brought. The email subject line referred only to Hester and the letter did not mention any specific candidates' names. Unlike in 2018, Ricotta's letter did not provide TBG any information on Hester's salary or bonus. Ricotta said that at one point, he discussed hiring other individuals with West and said SBB would not pay TBG for the other employees because TBG did not refer them. Ricotta said that after discussions with Hester, SBB decided to open an SBB loan production office, hiring Hester and several others working with Hester at the bank he was leaving. Later, SBB's attorney sent West a letter offering to resolve the matter by paying TBG \$45,000, which TBG declined. TBG filed suit against SBB, alleging that the 2018 letter formed an ongoing referral contract. TBG also alleged that the 2020 agreement included compensation for Hester and for any members of a candidate's team that might also be hired and argued that SBB's refusal to compensate TBG for hiring employees in addition to Hester constituted breach of contract. SBB denied the existence of an ongoing contract. TBG also alleged that the defendants concealed Hester's offer and offers to other individuals, constituting fraud. The trial court held that there was no meeting of the minds sufficient to form a binding contract, denied TBG's motion to alter or amend the judgment, and granted summary judgment to SBB. TBG appealed.

ISSUES

Whether the trial court erred in (1) finding no genuine issue of material fact in dispute as to the existence of a contract and (2) failing to consider TBG's fraud claims.

HOLDING

(1) Because whether a contract existed was a question for the fact-finder, because the terms were subject to more than one reasonable interpretation, and because there were material facts in dispute as to the existence of the contract and the terms of the contract, the trial court erred when it found no genuine issue of material fact in dispute as to the existence of a contract. (2) Because the trial court dismissed the case without making any ruling on TBG's fraud claims, the trial court erred in granting SBB's motion for summary judgment on that ground. Therefore, the Court of Appeals reversed and remanded the judgment of the Lamar County Circuit Court.

Reversed & Remanded - 2021-CA-01077-COA (Dec. 6, 2022)

Opinion by Judge McDonald

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

Michael Brant Pettis, Matthew Ward McDade, & James Everett Lambert III for Appellant - Jeffrey Dale Rawlings for Appellees

Briefed by [Meaghan Pickles](#)

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DESOTO CNTY. V. VINSON

CIVIL - STATE BOARDS & AGENCIES

PROPERTY - PLAT ALTERATION - NOTICE - Pursuant to Miss. Code Ann. § 17-1-23(4), a landowner may petition a county's board of supervisors to alter or vacate such map or plat of land in a subdivision, giving an accurate description of the property, the map or plat of which is to be vacated or altered and the names of the persons to be adversely affected thereby or directed interested therein; before taking such action, the parties named shall be made aware of the action and must agree in writing to the vacation or alteration

PROPERTY - PLAT ALTERATION - INTERESTED PARTIES - Persons adversely affected by or directly interested in a proposed plat alteration must be given notice and the right to appear, object, and give reasons why the plat should not be altered or vacated

PROPERTY - PLAT ALTERATION - MANDATORY PROCEDURES - Statutory plat alteration procedures are mandatory for landowners to secure alteration or vacation of a plat or map

FACTS

In July 2019, Robert Farley, at the behest of Gladys Allison, the landowner, and Nick Harris, the property developer, submitted a Major Subdivision Application to the DeSoto County Board of Supervisors ("the Board") requesting permission to divide a lot into two residential lots. Anthony and Quma Vinson owned property adjacent to the lot. At a hearing before the county's planning commission, the Vinson's attorney argued that an individual that submits a plat alteration application was required to obtain the approval and agreement in writing of any adversely affected persons and that the Vinson's approval had not been given. Without the Vinson's approval, the planning commission approved the application. Later, the Board reviewed the application at a hearing and the Vinson's attorney again argued that before the application could be approved, the landowner seeking division was required to obtain the approval and signatures of those adversely affected by the division of the lot. The Board concluded that there were no adversely affected parties required to sign the plat and approved the application. After this decision, the Vinsons and other neighboring landowners filed an appeal of the Board's decision with the circuit court. The circuit court reversed the Board's decision and the Board placed the application on its agenda for a future meeting. At the meeting, the Board again approved the application. The decision was appealed and the circuit court again reversed the Board's decision, concluding that the Board had exceeded its statutory authority since the application did not have the approval or signed agreement of the directly interested or adversely affected parties. Desoto County appealed.

ISSUE

Whether the application to subdivide a residential lot that failed to gain the approval and signatures from persons who were adversely affected or directly interested in the vacation or alteration of the residential lot could be approved.

HOLDING

Because under Miss. Code Ann. § 17-1-23(4), a landowner was required to accompany their application with the names of persons adversely or directly interested and their signatures approving the vacation or alteration of the property, because the landowner did not include a statement that there were no adversely affected or directly interested parties, because adjacent landowners were implied as directly interested parties, and because Board approved the landowner's application to subdivide the residential lot without any approval from directly interested or adversely affected persons and without any attempt to identify anyone as such, the circuit court did not err in reversing the approval of the landowner's application to subdivide her residential lot. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

DISSENT

Presiding Judge Wilson argued that it was up to the Board to determine the factual issue of which persons were adversely affected or directly interested in the proposed alteration. In addition, he argued although the landowner did not include a statement that there were no persons adversely affected or directly interested, this was a harmless error that would not have affected the Board's decision because if the landowner was required to start the application process over, the Board would presumably reach the same conclusion. Further, he argued that there was nothing in the record to support the notion that the Vinsons and other neighbors would have been adversely affected by the plat alteration. Therefore, he found that the Board correctly found that the adjacent landowners were not adversely affected by or directed interested by the landowner's desire to alter the land and would have affirmed the Board's decision.

Affirmed - 2021-CC-00864-COA (Dec. 6, 2022)

Opinion by Chief Judge Barnes - Dissent by Presiding Judge Wilson
Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)
Samuel Thomas Barber for Appellant - J. Keith Treadway for Appellees
Briefed by [AnnaGrace Meeks](#)

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RHEA V. CAREER GEN. AGENCY, INC.

CIVIL - CONTRACT

CIVIL PROCEDURE - MOTION TO RECONSIDER - TIMELINESS - Miss. R. Civ. P. 59(e) provides that motions shall be filed not later than ten days after the entry of judgment, and the advisory committee notes to Miss. R. Civ. P. 59 explicitly state that a trial court has no authority or discretion to extend the ten-day time period

CIVIL PROCEDURE - MOTION TO RECONSIDER - TIMELINESS - Any notice of appeal following the denial of a Miss. R. Civ. P. 60(b) motion to reconsider limits an appellate court's review to whether reconsideration was properly denied under Miss. R. Civ. P. 60(b)

TORTS - CONTINUING TORTS - STATUTE OF LIMITATIONS - When a tortious act has been completed, the period of limitations will not be extended on the ground of a continuing wrong; a continuing tort sufficient to toll a statute of limitations is occasioned by continual lawful acts, not by continual ill effects from an original violation

FACTS

James Rhea began working for Career General Agency ("CGA"), a subsidiary of GuideOne America Insurance Company ("GuideOne") in 1971 as an independent insurance agent and continued working there for forty-five years. Rhea claimed it was common practice for CGA to allow its agents to sell for other associated insurance companies. One of those insurance companies, Dairyland Insurance Company ("Dairyland"), came to Rhea and offered him a contract to sell insurance which he accepted. Then in 2007, GuideOne informed Rhea that he had violated his employment

contract by signing the Dairyland contract. GuideOne also stated that he would be fired unless he signed a promissory note for \$100,000, requiring monthly payments through 2012. Rhea also had to sign over his Dairyland contract and forfeit his contractually guaranteed bonuses. Rhea alleged that he signed the note under duress, fearing losing his job and pension. Rhea signed another promissory note with identical terms in 2009, which extended the term of repayment to 2017. Rhea was terminated in October 2017 when the note was fully paid. In 2018, Rhea filed a complaint with the circuit court against CGA and GuideOne, claiming unconscionability, conversion, unjust enrichment, and negligent infliction of emotional distress. In 2019, CGA and GuideOne filed a motion to dismiss, arguing that Rhea failed to state a claim in which relief could be granted under Miss. R. Civ. P. 12(b)(6) and that the statute of limitations barred Rhea's claim. Rhea responded and reasserted his claims for conversion, breach of good faith and fair dealing, and unjust enrichment, and conceded that he did not have viable claims for negligent infliction of emotional distress and unconscionability. Additionally, Rhea cited the doctrines of continuing tort and equitable estoppel to argue that the statute of limitations did not bar his claims. The circuit court held a hearing on the motion to dismiss, and CGA argued that the three-year statute of limitations period began running in 2007 when the first promissory note was signed. Rhea claimed that the statute of limitations period restarted every time CGA took a payment from Rhea because it was done under duress from the initial contract and that he did not file the action earlier out of fear of losing his livelihood. The circuit court granted the motion to dismiss, agreeing that the three-year statute of limitations period for Rhea began in 2007. Rhea, however, was not aware of the order until three months later, when his counsel contacted the circuit clerk's office. Rhea subsequently filed a motion for a new trial, amended judgment, or reconsideration under Miss. R. Civ. P. 59. He asked the circuit court to consider that he was unable to file the motion within the time limit without notice of the order and that the motion was brought in good faith. At a hearing on the motion to reconsider, the circuit court determined the motion was timely filed. At the hearing, Rhea testified about the duress he faced when signing the promissory note. Rhea further explained that while he might have had an exclusive agency relationship with GuideOne, they did not operate their business in that way. The circuit court denied Rhea's motion to reconsider, stating that neither the doctrine of continuing tort nor equitable estoppel applied to extend the statute of limitations. Rhea appealed.

ISSUES

Whether the circuit court (1) had jurisdiction over Rhea's motion to reconsider and (2) erred in denying Rhea's motion for reconsideration.

HOLDING

(1) Because Rhea's motion was filed more than ten days after entry of the circuit court's order, the circuit court did not have the authority or discretion to rule that Rhea's motion to reconsider was timely filed, and the Court of Appeals, therefore, did not have jurisdiction to review the denial of Rhea's motion to reconsider. (2) Because Rhea did not demonstrate that the circuit court deviated from any legal rule or that the outcome of the case was prejudiced, and because there was no plain error in the circuit court's failure to discern the applicability of the Uniform Commercial Code's statute of limitations for negotiable instruments, the circuit court properly denied Rhea's motion to reconsider. Therefore, the Court of Appeals dismissed the appeal in part and affirmed in part the judgment of the Union County Circuit Court.

SPECIAL CONCURRENCE

Judge McCarty emphasized the significance of Miss. R. App. P. 4(h), which provides relief when a plaintiff does not receive a written notice of an entry of judgment or order within twenty-one days of its entry and there is no prejudice. He explained that a trial court may then reopen the time for appeal if the motion is filed within 180 days of entry of the judgment or order or within seven days of receipt of such notice, whichever is earlier. He urged litigants to keep the subsection of rules in mind when facing a unique situation like the present case.

Appeal Dismissed in Part; Affirmed in Part - 2021-CA-00580-COA (Dec. 6, 2022)

Opinion by Chief Judge Barnes - Special Concurrence by Judge McCarty

Hon. John Kelly Luther (Union County Circuit Court)

William O. Rutledge III & Kaylyn Havrilla McClinton for Appellant - Christopher Lynn Ehresman for Appellees

Briefed by [Albert Soussis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

McLendon v. State

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - GUILTY PLEA - FACTUAL BASIS - Guilty pleas may be factually established in numerous ways, including by a statement of the prosecutor, testimony of live witnesses, prior proceedings, and actual admission by the defendant

POST-CONVICTION RELIEF - GUILTY PLEA - FACTUAL BASIS - The mere fact that the factual basis for a guilty plea does not provide all the details which may be produced at trial does not make the guilty plea invalid; if sufficiently specific, an indictment or information can be used as the sole source of the factual basis

FACTS

William McLendon was charged with selling more than two but less than ten dosage units of a controlled substance within 1,500 feet of a school and as a habitual offender. He pled guilty, and the trial court sentenced him to an eight-year sentence. McLendon filed a motion for post-conviction collateral relief (“PCR”) with the circuit court, asserting that there was no factual basis for his guilty plea, that the prosecution erred in prosecuting him because there was no factual basis for his charges, and that he received ineffective assistance of counsel because there was no factual basis for his guilty plea. The trial court found that it plainly appeared from the face of the motion that McLendon was not entitled to relief and summarily dismissed McLendon’s PCR motion. McLendon appealed.

ISSUE

Whether the trial court erred by dismissing the claims in McLendon’s PCR motion.

HOLDING

Because the State provided the factual basis of McLendon’s charges by stating it would call the confidential source who McLendon sold the controlled substance to as well as the crime lab expert who tested the ten dosage units of oxycodone acetaminophen, because McLendon testified under oath that the factual basis presented by the State was true, and because McLendon admitted that he sold the controlled substance within 1,500 feet of a school and acknowledged that he was a habitual offender when he pled guilty under oath, the trial court did not err by dismissing McLendon’s PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2022-CP-00057-COA (Dec. 6, 2022)

Opinion by Justice Emfinger

Hon. Anthony Alan Mazingo (Marion County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Mason Scioneaux](#)

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COURT OF APPEALS - CRIMINAL CASES

BURCHETT V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - MANSLAUGHTER - HEAT OF PASSION - Heat of passion refers to a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter; heat of passion includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror, but words alone and disagreements among people are not enough to invoke the passion required for this defense

CRIMINAL LAW - MANSLAUGHTER - HEAT OF PASSION - Heat of passion is judged on an objective, reasonable-person standard; that the accused subjectively experienced passion and anger is not enough to reduce a killing to manslaughter

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - A defendant is entitled to have jury instructions given which present his theory of the case if the theory is supported by the evidence, no matter how meager or unlikely, but the trial court maintains discretion to refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

FACTS

Larmont Burchett worked at Griffin Incorporated. He assembled armored cars with his co-worker, Deandrae Jones. The two frequently worked close together. In Burchett's short tenure, he complained to his supervisor, Carlos Young, about how Jones treated him. Burchett told Young that he did not take kindly to Jones's jokes. One day, Young noticed that Burchett was sitting in a daze. He told Young that he was not feeling well and was sent home to see the doctor. Young saw Burchett leave the site. Less than five minutes later, Young saw Burchett return. Young heard multiple gunshots and promptly hid from Burchett. When the shooting stopped, Burchett returned to his Jeep and drove away. Moments later, Young discovered that Jones had been shot multiple times. He died from his injuries. Burchett was later arrested in Memphis, Tennessee, and indicted for the deliberate-design first-degree murder of Jones. At trial, Burchett proceeded pro se with hybrid representation from counsel. Two witnesses testified that they saw Burchett shoot Jones. An audio recording of Burchett's interview during his detainment in Memphis was played at trial. On the recording, Burchett described that although the jokes stopped, Jones would still tease Burchett by kicking his tools over. He also hinted in the recording that it happened the morning of the shooting. There were also witnesses who testified that Burchett was calm the morning before the shooting. The defense offered no witnesses and Burchett did not testify on his own behalf. For jury instructions, Burchett offered a lesser-included offense instruction informing the jury that, if the defendant acted lawfully, willfully, and feloniously, but without malice in the heat of passion, then the jury could return a verdict of manslaughter instead of murder. The trial court ultimately declined Burchett's instructions, holding that no evidence was presented to support such an instruction. The jury found Burchett guilty of deliberate-design murder. Burchett appealed.

ISSUES

Whether (1) the trial court properly rejected the heat of passion manslaughter instruction and (2) Burchett's pro se issues had merit.

HOLDING

(1) Because none of the evidence offered implied that Burchett was induced into an emotional state of mind characterized by anger, rage, hatred, furious resentment, or terror, because the heat of passion defense was determined from the standpoint of an objective, reasonable man and disregarded the subjective response of Burchett, and because the only proof of the heat of passion defense was of minor occurrences or inconveniences that did not reach the point where a normal mind would have been roused to the extent that reason was overthrown and passion usurped the mind destroying judgment, the trial court did not abuse its discretion in denying the jury instruction. (2) Because the issuance of a grand jury indictment was proof of the existence of probable cause, because Burchett waived his arraignment

hearing, and because having counsel in a hybrid capacity did not violate Burchett's right to proceed pro se, Burchett's pro se claims had no merit. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Westbrook agreed that the pro se claims had no merit. However, she argued that the evidence of Burchett's altercation with Jones and the continuing aggressive nature of their relationship was enough to accept Burchett's jury instruction because it proved those components affected his state of mind and such instruction should have been given if any evidence, however meager, was presented to support it. Therefore, she argued that the trial court erred in refusing Burchett's jury instructions.

Affirmed - 2021-KA-00776-COA (Dec. 6, 2022)

En Banc Opinion by Judge McCarty - Concurrence in Part & Dissent in Part by Judge Westbrook

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

George T. Holmes (Pub. Def. Office), Charles Mitchell McGuffey, Spencer Mark Ritchie, & *Pro se* for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Kaehla Outlaw](#)

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DAVIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER TESTIMONY - The court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by a party, a party's attorney, or someone acting at the behest of a party or a party's attorney, resulting in substantial and irreparable prejudice to the movant's case; the grant of a mistrial is left to the sound discretion of the trial court

EVIDENCE - ADMISSIBILITY - OTHER CRIMES - Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith

FACTS

Dontarious Vontae Davis entered and robbed a fitness center during Caroline Love's work shift. Because the fitness center only had forty dollars, Davis demanded that Love give him her cash. She did not have any cash, so Davis grabbed Love and ordered her to take him to an ATM and withdraw money. Love believed that Davis was armed with a gun and brought him to the ATM as she was told. At the ATM, Love withdrew two hundred dollars, but when a car pulled up behind them, she signaled to the car that she was in danger. At that moment, Love offered Davis to take the money and leave or risk getting caught, so Davis fled. Love immediately went to the Sheriff's office where she identified Davis from several photo line-ups. Additionally, the ATM camera captured Davis during the encounter. Davis was indicted for armed robbery and kidnapping. At trial, a law enforcement witness unwarrantedly brought up Davis's prior burglary conviction. Davis's counsel objected and asked for a mistrial, but because the State had previously told the witness what could not be said during trial and because each juror stated that they would disregard the statement, the trial court did not declare a mistrial. The jury found Davis guilty of armed robbery and kidnapping. Davis appealed.

ISSUE

Whether the trial court abused its discretion in denying Davis's motion for mistrial.

HOLDING

Because reversal turned not solely on whether the statement was improper, but also on whether the improper statement was purposely elicited by the district attorney to prove Davis's character, whether there was a sustained objection, and whether the jury was properly instructed, because the State did not intentionally elicit improper testimony, because any harm done by the statement was cured by an objection and the jury instruction, and because the trial court polled each

juror as to whether he or she would be able to disregard the statement and each juror declared he or she would, Davis failed to show the improper statement caused substantial and irreparable prejudice, and the trial court did not abuse its discretion in denying his motion for mistrial. Therefore, the Court of Appeals affirmed the judgment of the Webster County Circuit Court.

SPECIAL CONCURRENCE

Judge McDonald argued that the testimony of the experienced law enforcement witness referencing Davis's prior incarceration and the reason for incarceration was intentional misconduct and should have warranted a mistrial as if the State had intentionally elicited the improper testimony. However, the trial court's error was harmless because the victim's testimony and ATM photograph were sufficient evidence to support Davis's conviction regardless of the improper testimony.

Affirmed - 2021-KA-00759-COA (Dec. 6, 2022)

Opinion by Judge McCarty - Special Concurrence by Judge McDonald

Hon. Joseph H. Loper Jr. (Webster County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Olivia Schwab](#)

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OWENS V. STATE

CRIMINAL - FELONY

APPELLATE REVIEW - WEIGHT OF THE EVIDENCE - UNCONSCIONABLE INJUSTICE - A jury verdict will not be disturbed unless it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

APPELLATE REVIEW - JURY FINDINGS - DEFERENCE TO JURY - It is the function of the jury to pass upon the weight and worth of the evidence and to determine the credibility and veracity of witnesses

FACTS

Henderson's Economy Pharmacy's alarm was triggered on October 7, 2017. The Clarksdale Police Department was contacted by the alarm company, and two officers were dispatched to the pharmacy. The officers found no evidence of a burglary at the pharmacy and left the scene. On October 9, 2017, the pharmacist-owner, Val Soldevila, noticed the back door of the pharmacy was unlocked. Soldevila noticed the alarm system was no longer working. Later, Officer William Read would testify that the alarm wire had been cut or unplugged. Soldevila noticed the narcotics cabinet was pried open with most of the narcotics missing. Soldevila called 911, and Officer Norman Starks and Officer Read arrived at the pharmacy to begin processing the scene. Neveah Hospice, a nearby business, had security camera footage from October 7, 2017. The footage showed the officers responding to the triggered alarm and then leaving. Later, the video showed a suspect leaving the back door of the pharmacy with a backpack on. The suspect walked down the highway toward the Double Quick gas station and out of view of the camera. Officer Read would later testify to the suspect's characteristics including the suspect's clothing. Officer Read contacted Double Quick gas station to obtain video footage of the time in question. Officer Read took a still photograph from the video of a black male standing in the gas station. Officer Read believed the male he photographed matched the description of the male suspect seen in the Neveah Hospice video. Officer Read sent the photograph to the police station to see if anyone could identify the suspect. Officer Daryll Taylor identified the male in the photograph as Ronald Owens. Officers obtained a warrant for Owens's arrest and he turned himself into police custody later that day. Officers obtained a search warrant for Owens's home and found a red and black bag, a prescription pill bottle for Lortab with Owens's name on it from a different pharmacy, and a prescription medicine bottle without Owens's name on it, which had an Economy Pharmacy label on it. Soldevila later testified that the Economy Pharmacy bottle found was a supply bottle used to fill prescriptions. Owens was indicted for burglary of a business. At trial, Officer Starks was the State's first witness. Officer Starks testified the burglar entered through the top of the roof, and he did not see any red bags or duffel bags in the pharmacy. Officer Read then testified

that he could tell the suspect had “black pants, [and] kind of white colored shoes.” Officer Read further testified in the Double Quick video he could see a person with a backpack that looked similar to the one that the person had when they left the pharmacy. Read testified that he could not say for certain the person in the Neveah Hospice video and the Double Quick video were the same person. Read stated he believed it to be the same person because both suspects had on a backpack. Officer Eddie Earl, a criminal investigator for the Clarksdale Police Department testified that in the search of Owens’s home, Earl found a red and black bag that he believed to be the same bag the person was wearing in the Double Quick video. Officer Darrell Taylor testified he identified Owens from the photograph Officer Earl showed him. Officer Taylor stated he knew the person in the photograph was Owens because Owens had called the police several times and Officer Taylor had seen Owens around the neighborhood. Officer Taylor also identified Owens by his features. Next, Soldevila testified the pharmacy door was already unlocked when he tried to unlock the back door and that the alarm system was not working when he entered the pharmacy. Soldevila testified that he saw where there had been a break-in. Further, he testified that over \$17,000 in narcotics and controlled substances had been stolen. Soldevila stated he did not recognize the red bag that was found at Owens’s home, but the pill bottle Owens possessed was a stock bottle that should have been only obtained by prescription. The bottle contained Promethazine, which was one of the narcotics that was stolen during the burglary. However, Soldevila could not confirm whether the bottle was stolen during the burglary. Soldevila testified he could not “specifically” state the bottle found in Owens’s home was the one stolen from the Economy Pharmacy narcotics cabinet. At the conclusion of the evidence, Owens moved for a directed verdict and the trial court denied the motion. The jury found Owens guilty of burglary of a business. Owens was sentenced to seven as a habitual offender. Owens filed a post-trial motion for judgment notwithstanding the verdict or new trial, which was denied. Owens appealed.

ISSUE

Whether the verdict convicting Owens of burglary was so contrary to the weight of the evidence that to allow it to stand would sanction an unconscionable injustice.

HOLDING

Because there was no valid reason presented for Owens to possess the refill bottle from Economy Pharmacy, and because the security footage showed the suspect’s face and the color of the bag on his shoulder to be red and black and a red and black bag was found at Owens’s house, because Officer Taylor identified Owens as the person in the Double Quick video carrying a red and black bag, and because a jury could reasonably infer from the evidence presented that Owens was guilty, the jury’s verdict to convict Owens was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

DISSENT

Judge McCarty pointed out that the backpack in the Neveah Hospice video was black, but the backpack in the Double Quick footage was red. Furthermore, he noted that Soldevila did not identify the bag found at Owens’s home as a bag from the pharmacy and he could not say that the pill bottle found at Owens’s home was stolen during the robbery in question. Finally, he pointed out the police failed to test any of the physical evidence found at the scene that could have provided more credible evidence, and the evidence that was presented at trial established only that Owens went to the Double Quick for breakfast that morning. Therefore, because a conviction in light of an utter lack of evidence would sanction an unconscionable injustice, he would have reversed and rendered the conviction.

Affirmed - 2021-KA-00887-COA (Dec. 6, 2022)

Opinion by Judge Lawrence - Dissent by Judge McCarty

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

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Ross Dockins](#)

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STATE V. HUDSON

CRIMINAL - FELONY

CRIMINAL LAW - BURGLARY - ELEMENTS - To convict a defendant of burglary under Miss. Code Ann. § 97-17-23, the prosecution must prove that the defendant committed (1) the unlawful breaking and entering of the dwelling house or inner door of such dwelling house of another (2) with the intent to commit a crime once entry has been gained
CRIMINAL PROCEDURE - DIRECTED VERDICT - APPEAL - Miss. Code Ann. § 99-35-103(b) requires the State's issues on appeal of an adverse verdict to be pure questions of law unmixed with decisions and facts

FACTS

Jamerio Hudson was arrested after fleeing from officers responding to a report of a suspicious vehicle. Police subsequently discovered items in the car that did not belong to the occupants. Among those items was a camera bag displaying the name and phone number of Tomica Stowers. After the police called Stowers, she realized her home had been burglarized. Stowers confirmed the camera bag was hers and that it was last seen in her home before she left for work. Hudson was indicted for a burglary of a dwelling by a grand jury. At trial, Stowers testified that her home had been destroyed, explaining that much of her home was damaged and many items, including the camera bag, were missing. She also testified that she did not see Hudson or anyone resembling him near the home when she left for work. Further testimony revealed that all the items missing from Stowers's home were discovered in the back of the car at the time of Hudson's arrest. At the conclusion of the State's case in chief, Hudson moved for a directed verdict, arguing that the testimony only showed that Hudson was a passenger in the vehicle. He further argued that none of the evidence or testimony offered placed Hudson at Stowers's home and none of the evidence showed that Hudson trespassed into Stowers's home. The trial court granted Hudson's motion for directed verdict and acquitted him of his burglary charge because the State presented legally insufficient evidence to obtain a conviction. The trial court denied the State's motion for reconsideration. The State appealed.

ISSUE

Whether the State was authorized to appeal from the directed verdict acquitting Hudson of a burglary of a dwelling.

HOLDING

Because the State failed to present sufficient factual evidence to sustain a burglary of a dwelling conviction, and because the question on appeal involved an issue mixed with law and fact, the State was barred from appealing the directed verdict acquitting Hudson. Therefore, the Court of Appeals dismissed the appeal from the Hinds County Circuit Court.

Appeal Dismissed - 2021-KA-01232-COA (Dec. 6, 2022)

Opinion by Judge Lawrence

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

David Fitzgerald Linzey (Dist. Att'y Office) for Appellant - George T. Holmes (Pub. Def. Office) for Appellee

Briefed by [Jacoby Gilmore](#)

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