

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 15, 2022***SUPREME COURT - CIVIL CASES*****SAUNDERS V. NAT'L COLLEGIATE ATHLETIC ASS'N****CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

CIVIL PROCEDURE - INJUNCTIVE RELIEF - ESTOPPEL - Debtors should not be estopped from pursuing injunctive-relief claims that would not add value to bankruptcy estates; debtors should be permitted to pursue claims for injunctive relief when knowledge that the claim offered no monetary value to the estate was of no consequence to the trustee or the creditors

CIVIL PROCEDURE - CLAIMS - NONDISCLOSURE - Whether a debtor intended to conceal his claim requires considering more than simply just whether the debtor failed to disclose a claim; a court must look at all the facts and circumstances, including any subsequent actions by the bankruptcy court that might help in determining if the debtor's nondisclosure was purposeful

FACTS

Until December 2010, David Saunders served as football operation coordinator at the University of Mississippi. From January 2011 to October 2014, Saunders then worked as an assistant football coach for the University of Louisiana. Both universities were members of the National Collegiate Athletic Association ("NCAA"). Saunders was alleged to have violated rules while at each institution, which led the NCAA to conduct separate investigations and enforcement proceedings against both schools. In the first proceedings, the NCAA concluded that Saunders had violated NCAA rules while at the University of Louisiana and issued a show-cause directive to any NCAA member institution that may have wanted to employ Saunders in an athletics position from January 2016 to January 2024. The NCAA then pursued the Mississippi-based allegations. After receiving notice of the Mississippi allegations, Saunders's attorney wrote to the NCAA, explaining that the NCAA had exhausted Saunders's personal resources and insisted that the financial strain prevented Saunders from traveling to the hearing to defend himself personally. The NCAA similarly concluded that Saunders had violated NCAA rules while at the University of Mississippi and tacked on eight more years to the prior show-cause directive, extending it through January 2032. In 2018, Saunders filed a voluntary petition for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Florida. Saunders averred in his bankruptcy petition that he had no claims against third parties. Saunders amended his Bankruptcy schedule and again did not identify any potential claim against the NCAA. Saunders ultimately received a bankruptcy discharge. In 2020, Saunders sued the NCAA in Lafayette County Circuit Court, asserting claims for negligence, malicious interference with future employment, denial of due process, and usurpation of judicial function of the State. He requested compensatory damages, punitive damages, declaratory relief from the show-cause restriction on any NCAA member institution seeking to employ him in an athletics position from 2024 to 2032, and attorney's fees and expenses. The NCAA filed its answer and a motion for summary judgment, asserting that Saunders's claims were barred by the doctrine of judicial estoppel because Saunders had not disclosed the claims against the NCAA in his bankruptcy proceedings. Two weeks later, the bankruptcy judge granted the United States Trustee's motion to reopen Saunders's bankruptcy case and appoint a trustee. The appointed bankruptcy trustee then filed a motion to intervene. The trial court held a hearing on both the NCAA's motion for summary judgment and the bankruptcy trustee's motion to intervene. The trial court ruled that Saunders's claims against the NCAA belonged to Saunders's bankruptcy estate, so the bankruptcy trustee was substituted as the real party in interest and plaintiff. Furthermore, the trial court held that while judicial estoppel did not bar the trustee from pursuing the claims, Saunders himself was barred by judicial estoppel from pursuing the claims

against the NCAA. Thus, the trial court granted the NCAA's motion for summary judgment as to all of Saunders's claims against the NCAA and dismissed all of the claims with prejudice. Saunders appealed.

ISSUES

Whether the trial court erred by estopping Saunders from seeking (1) declaratory relief to get out of the 2024 to 2032 show-cause directive and (2) monetary damages over and above what his bankruptcy estate owed to his creditors.

HOLDING

(1) Because Saunders's claims for declaratory and injunctive relief focused on the show-cause notice to potential employers from 2024 to 2032, which offered nothing of value and thus was of no consequence to the Chapter 7 bankruptcy trustee, the trial court erred by judicially estopping Saunders from pursuing the claims for declaratory and injunctive relief. (2) Because the application of judicial estoppel was a fact-specific inquiry that must take into account the totality of the circumstances, the trial court erred by presuming that Saunders should have been estopped based on his mere knowledge of the facts giving rise to his claims against the NCAA, coupled with his failure to list the claims on his bankruptcy schedule. Therefore, the Supreme Court reversed and remanded the judgment of the Lafayette County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Coleman agreed that the trial court's application of the doctrine of judicial estoppel to Saunders's claims for injunctive and nonmonetary relief should have been reversed. However, he disagreed with the decision to reverse the trial court's application of judicial estoppel to Saunders's claims for money damages that arose from events that preceded his bankruptcy filing. He argued that the record showed that the trial court did have a basis for finding that Saunders had reason to know of his claim and that there was more than sufficient evidence to support the application of judicial estoppel.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis agreed that the review of the application of judicial estoppel inadvertence element must consider the totality of the circumstances. However, he argued that the Florida bankruptcy court was not concerned that it had been misled or that judicial estoppel should have been invoked and that any concern to protect a Florida bankruptcy court had been alleviated by its express decision to authorize and sanction the pursuit of Saunders's claims against the NCAA and the bankruptcy trustee's substitution in the case. He noted there was no just reason to invoke judicial estoppel.

Reversed & Remanded - 2020-CA-01146-SCT (Dec. 15, 2022)

En Banc Opinion by Justice Maxwell - Concurrence in Part and Dissent in Part by Justice Coleman - Concurrence in Part & Dissent in Part by Justice Griffis

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

Jim Waide & Wayne E. Ferrell Jr. for Appellant - J. Cal Mayo Jr., John Dickson Mayo, & Sarah Katherine Embry for Appellee

Briefed by [Nivory Gordon](#)

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SUPREME COURT - ORDERS

REED V. STATE

EN BANC ORDER

ORDER

Tavares Reed filed an Application for Leave to Proceed in the Trial Court. Reed's convictions and sentences were affirmed in 2000, and the pleading was Reed's ninth petition for post-conviction collateral relief. The Supreme Court found that Reed's claim was time and successive-writ barred, Reed failed to meet any exceptions, and Reed lacked an

arguable basis for his claims. Therefore, the Supreme Court found that the application should have been denied. Further, the Supreme Court found that the application was frivolous, and because Reed was previously warned about frivolous filings, the Supreme Court found that sanctions were warranted. The sanction restricted Reed from filing further applications for post-conviction relief, or pleadings in that nature, that were related to the subject convictions and sentences in forma pauperis. Therefore, the Supreme Court denied Reed's Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Reed's application for post-conviction relief should have been dismissed for lack of merit. However, he disagreed that Reed should have been sanctioned and restricted from filing further petitions for post-conviction collateral relief in forma pauperis. He argued that the sanctions violated Reed's constitutional right to access the courts. Additionally, these sanctions prevented Reed from vindicating his constitutional rights.

Denied with Sanctions - 2017-M-01391 (Dec. 12, 2022)

En Banc Order by Justice Beam - Objection In Part by Presiding Justice King

Briefed by [Anna Palmer](#)

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SUPREME COURT - CRIMINAL CASES

WILLIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - WITNESS TESTIMONY - CONFRONTATION CLAUSE - The Confrontation Clause confers a right to confront those who bear testimony against the defendant; the right extends to and includes the right to fully cross-examine the witness on every material point relating to the issue to be determined that would have a bearing on the credibility of the witness and the weight and worth of his testimony

CRIMINAL PROCEDURE - DEFENSES - SELF-DEFENSE - The plea of self-defense must be supported by evidence of facts and circumstances from which the jury may conclude that a defendant was justified in having committed the homicide because he was, or had reasonable grounds to believe that he was, in imminent danger of suffering death or great bodily harm at the hands of the person killed, to be available to a defendant in a self-defense case

CRIMINAL PROCEDURE - EVIDENTIARY MATTERS - SUFFICIENT EVIDENCE - Sufficient evidence to support a verdict is present when any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

FACTS

Handy Anthony Willis, Jr. and Tamaneka Alexander were in the process of ending a romantic relationship. Once the two broke up, Willis found a new home for Alexander and her kids and agreed to provide the furniture. Willie Martin, a friend of Willis's, agreed to help deliver the furniture with his employer's delivery truck. When the two men arrived at Alexander's new house, Alexander was not home, and the men could not deliver the furniture. Martin testified that, during the drive back, Willis and Alexander were arguing back and forth over text messages. Alexander informed Willis that she and the father of her children had used Willis's truck. Willis responded that he wanted his truck back and sent several other threatening text messages stating, among other things, that someone was going to die. When they arrived back at the house, Willis went inside. Martin testified that when he walked to the front door, he saw Willis and Alexander near the kitchen arguing over keys, and he eventually heard a pop or a gunshot. Martin stood frozen in the doorway until he heard Alexander's daughter crying and screaming. He heard the daughter say, "Anthony, why would you do it? Why did you do it?" As Martin was leaving, he found Willis outside on the ground by a shed. As he approached Willis,

he saw a gun in Willis's hand and could hear Willis say that his life was over. Out of fear, Martin departed. One of Alexander's daughters testified that she heard Willis come in the house fussing, that people were running, then there was a gunshot, and then she heard someone fall. After hearing the fall, the daughter went to investigate, discovered her mom lying on the floor, and called 911. When officers arrived, they found Alexander inside the house with a gunshot wound to her head and Willis in the yard with a gunshot wound to his abdomen. Both were transported to a local hospital, and Alexander did not survive. Captain Pete Williams of the Marion County Sherriff's Department was assigned as the investigation lead. Captain Williams took the testimony of Martin and Alexander's daughter. In 2019, Willis was indicted for the first-degree murder of Alexander and the trial began in 2021. The defense called Captain Williams as its sole witness in the case. A major issue in the trial was whether Captain Williams recorded Martin's second interview. In a preliminary hearing, Captain Williams said he recorded Martin's second interview, yet, at trial, he denied recording it. The trial court conducted a lengthy investigation into whether there had been an honest mistake or potential perjury by Captain Williams, and the trial court eventually concluded that Captain Williams did not commit perjury. At trial, the jury found Willis guilty of first-degree murder of Alexander and sentenced Willis to imprisonment for life without the possibility of parole. Willis then moved for a judgment notwithstanding the verdict or, in the alternative, for a new trial, which was denied. Willis appealed.

ISSUES

Whether the trial court (1) violated Willis's constitutional right to confront Captain Williams; (2) abused its discretion by denying Willis's self-defense jury instruction; and (3) erred in convicting Willis against the sufficiency of the evidence.

HOLDING

(1) Because Captain Williams's testimony was not indispensable to the conviction, and because a reasonable juror could have concluded that Willis shot and killed Alexander from the other evidence presented by the State, the violation of the Confrontation Clause was harmless error. (2) Because the State presented evidence that contradicted every claim of self-defense and because nothing in the record supported Willis's theory that he was in imminent danger of suffering some great personal injury or death at the hands of Alexander, the trial court did not abuse its discretion by denying the self-defense jury instruction. (3) Because the State presented evidence that was sufficient for a rational jury to find each element of first-degree murder was present, there was substantial evidence to support Willis's conviction. Therefore, the Supreme Court affirmed the judgment of the Marion County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Justice Beam argued there was no Confrontation Clause error regarding Captain Williams's testimony. She opined that because the defense was not prevented from examining or cross-examining Captain Williams on every major point regarding the alleged inconsistency between his preliminary-hearing testimony and trial testimony and because the defense did not raise a Confrontation Clause claim in trial court, the matter did not merit constitutional concern.

Affirmed - 2021-KA-00734-SCT (Dec. 15, 2022)

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

Hon. Prentiss Greene Harrell (Marion County Circuit Court)

Jonathan Matthew Eichelberger & Madeline Marcantel Iles for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Tyler White](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 13, 2022
COURT OF APPEALS - CIVIL CASES

CLARK V. VICKSBURG HEALTHCARE, LLC

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - LAYMAN'S EXCEPTION - A physician's negligence may be established only through the testimony of an expert witness, except where a layman can observe and understand the negligence as a matter of common sense and practical experience

CIVIL PROCEDURE - COURT DISCRETION - CONTINUANCES - The trial court has broad discretion in granting or denying a motion for a continuance

CIVIL PROCEDURE - DISCOVERY - SCHEDULING ORDERS - Trial courts are afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines to assure orderly pre-trial preparation resulting in timely disposition of the cases

FACTS

In 2017, Jakyra Clark and her infant son, J.C., visited Vicksburg Healthcare LLC ("River Region") because her son was suffering from a cold and nasal congestion. River Region diagnosed her son with an RSV infection and admitted him to the hospital for observation. Nurse Kay Winpigler performed the initial check-in on J.C. During the initial check-in, J.C. fell on the floor, hitting his head and suffering a non-depressed linear skull fracture. Winpigler stated in her deposition that while she was attempting to check J.C.'s blood pressure, the railing on the bed was down and when she lifted her hand from the child to turn the blood pressure machine around, he fell from the bed onto the floor. Clark described the event differently in her deposition. Clark stated that Winpigler dropped J.C. after picking him up to weigh him. In 2019, Clark filed a complaint on behalf of her son seeking damages for negligence and breach of warranty. The negligence claim was broken into four subparts, alleging that River Region failed to safely secure J.C., properly train its staff, utilize bed guard rails, and update its nurses' training procedures. After the deadlines set by the trial court expired and Clark did not designate a medical expert witness, River Region moved for summary judgment, arguing that Clark failed to designate a medical expert witness, failed to make out a *prima facie* case for medical negligence, and that the claim for breach of warranty was not applicable. Clark argued that the layman's exception for not designating a medical expert witness was sufficient to establish her claim under the facts and attached portions of her deposition and Winpigler's deposition. After reviewing the pleadings and hearing oral arguments, the trial court granted the motion. Clark appealed.

ISSUES

Whether the trial court erred in (1) granting summary judgment; (2) failing to grant J.C.'s motion for a continuance and motion to modify the scheduling order; and (3) entering a scheduling order without the agreement of both parties.

HOLDING

(1) Because a juror could have easily understood without the aid of an expert that the nurse was negligent by allowing an infant to fall to the floor while checking vital signs, and because the deposition testimonies were sufficient to create a genuine issue of material fact as to whether River Region breached the standard of care, the layman's exception applied only to the portion of the medical negligence claim for lack of an expert witness of Clark's complaint and the trial court erred in granting summary judgment as to this portion of the claim; however, summary judgment was proper as to the other portions of the complaint because the layman's exception did not apply and J.C. failed to secure a medical expert to testify as to those alleged breaches of the standard of care. (2) Because the trial court mooted these motions because it granted summary judgment on the underlying claims, and because a portion of J.C.'s negligence claim was remanded to the trial court for reconsideration, the matters raised in the motions for continuance and modification of the scheduling order could have been resubmitted to the trial court should the need still exist. (3) Because the trial court advised both parties to submit a proposed scheduling order, because both parties failed to agree on a scheduling order, and because trial courts were afforded considerable discretion in managing the pre-trial discovery process, including by

the entry of scheduling orders, the trial court did not abuse its discretion by entering its own scheduling order. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Warren County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Greenlee agreed that summary judgment should have been reversed and the case remanded for the trial court to apply the layman's exception to the failure of the nurse to properly secure J.C. However, he argued that because the trial court never addressed or analyzed the other portions of the negligence claim, but rather treated the issue as one claim of negligence, he would remand without ruling on those issues.

Affirmed in Part; Reversed & Remanded in Part - 2021-CA-00173-COA (Dec. 13, 2022)

En Banc Opinion by Judge Emfinger - Concurrence in Part & Dissent in Part by Judge Greenlee

Hon. M. James Chaney Jr. (Warren County Circuit Court)

Anita M. Stamps & Larry Stamps for Appellant - R.E. Parker Jr., Clifford C. Whitney III, & Penny B. Lawson for Appellees

Briefed by [Nivory Gordon](#)

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HOLLIDAY CONSTR., LLC V. GEORGE CNTY.

CIVIL - CONTRACT

CONTRACTS - ILLEGAL AWARDS - SUBSTANTIAL COMPLETION - If a project was not substantially completed and a determination was made that the contract was illegally awarded, the circuit court can either decide to (1) award the contract to the next lowest bidder or (2) allow the County to reject all bids and re-advertise for the project
CONTRACTS - BREACH - COMPENSATORY DAMAGES - To prove contractual compensatory damages, the appealing party must prove that the contract would have been awarded to them and that the contract has been substantially completed

FACTS

In 2020, George County ("the County") began soliciting proposals for disaster debris removal and disposal services from damage caused by Hurricane Zeta. The County's Request for Proposals ("RFP") did not require proposers to have a certificate of responsibility from the Mississippi State Board of Contractors ("MSBOC"). The County accepted the lowest and best bid received, which was from Custom Tree Care Inc. ("CTC"). Holliday Construction, LLC ("Holliday") submitted the next lowest bid. Holliday protested the County's award of the contract to CTC, asserting that CTC was not qualified nor entitled to the award because CTC did not hold a certificate of responsibility. The County ultimately denied Holliday's protest and awarded the contract to CTC. Holliday then filed a request with the MSBOC to provide an opinion as to whether or not a certificate of responsibility was required. Prior to receiving a response from the MSBOC, Holliday filed an appeal and complaint in the circuit court, alleging that the County's contract with CTC had to be overturned because CTC did not have a certificate of responsibility, the County's award to CTC was arbitrary and capricious, that Holliday was the best company to carry out the contract, and if not, Holliday should have been awarded compensatory damages for lost profits. Additionally, Holliday requested the circuit court to stay the contract or enter a preliminary injunction against the County to keep it from awarding the contract to CTC. The County responded and stated again that a certificate of responsibility did not apply to the work outlined in the RFP and that Holliday had no legal argument for claiming it did. Holliday filed a memorandum in support of its complaint and attached an opinion it received from the MSBOC opinion. The MSBOC determined that a certificate of responsibility was required to perform the work outlined in the RFP. The circuit court granted Holliday's request to stay the contract with CTC. The circuit court issued an order stating that the stay of performance of the contract was to remain and remanded the matter to the County to either consider the MSBOC's opinion or provide all relevant information to the MSBOC to obtain an official opinion as to whether the certificate of responsibility was required. The County requested an MSBOC opinion on the RFP. While waiting on a response, the County decided to issue a new RFP requiring a certificate of responsibility. Holliday submitted a bid, but the County accepted the lowest and best bid from AAA General Contractors ("AAA").

The County did not enter a contract with AAA because of the circuit court's stay and Holliday did not seek to enjoin the new bidding procedure or bring it to the attention of the circuit court. The MSBOC issued an opinion letter, stating that a certificate of responsibility was required for the work under the first RFP, so the County terminated its contract with CTC. The County then awarded the contract to AAA, subject to the circuit court's approval, and requested the circuit court lift the stay. Holliday responded to the County's report and motion for partial summary judgment, arguing the circuit court had no authority to grant the County's request to hire AAA and that the circuit court was obligated to affirm or reverse the County's original decision. Holliday further argued that it was entitled to an award of the remaining original RFP work and the lost profits on the work CTC had performed instead of Holliday. The circuit court then affirmed the County's termination of the contract with CTC and determined the contract was null and void. The circuit court also stated that the other actions taken by the County exceeded the remand order and thereby voided a proposed contract with AAA. Thus, the County was directed to consider the other proposals for the original RFP and submit the findings for review. The County reported that it planned to reject the proposals and re-advertise. The circuit court affirmed the County's resolution rejecting the bids and denied all other requests for relief. Holliday appealed.

ISSUES

Whether (1) the County's award of the original contract to CTC was arbitrary and capricious and (2) Holliday was entitled to compensatory damages for the month of work CTC completed on the contract.

HOLDING

(1) Because no MSBOC opinion had been rendered at the time the County executed the contract with CTC, and because the County took appropriate action after receiving MSBOC's opinion that the County's assessment was incorrect and in violation of the law, the County's actions were not arbitrary and capricious. (2) Because Holliday had the opportunity to bid on the new contract, because Holliday failed to show that it was entitled to the original award of the contract, because the work on the project had not been substantially completed, and because the circuit court had the authority to allow the County to reject all bids, re-advertise, and allow companies to re-bid, Holliday was not entitled to compensatory damages. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

Affirmed - 2021-CA-00667-COA (Dec. 13, 2022)

Opinion by Judge McDonald

Hon. Kathy King Jackson (George County Circuit Court)

Samuel C. Kelly & Alston Frank Ludwig for Appellant - Michael James Bentley, Robert Payne Shepard, & James Stephen Fritz Jr. for Appellee

Briefed by [Spencer Cash](#)

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HORNSBY V. HORNSBY

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - MODIFICATION - A chancellor may modify child support if there has been a substantial or material change in the circumstances of one or more of the interested parties arising subsequent to the entry of the decree to be modified; the change must be one that materially affects the moving party's ability to meet his child support obligations

CIVIL PROCEDURE - CONFLICTING TESTIMONY - CREDIBILITY - When there is conflicting testimony, the chancellor, as the trier of fact, is the judge of the credibility of witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation

CIVIL PROCEDURE - ATTORNEY'S FEES - HARASSMENT - Under Miss. R. Civ. P. 11(b), if any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay to the opposing party reasonable attorney's fees

CIVIL PROCEDURE - ATTORNEY'S FEES - MERITLESS ACTION - Under Miss. Code Ann. § 11-55-5(1), reasonable attorney's fees and costs shall be awarded if the opposing party or attorney brings an action, or asserts any claim or defense, that is without substantial justification or was interposed for delay or harassment

FACTS

In 2017, the chancery court granted Jane Burgundy Hornsby a divorce from Fred Hornsby on the ground of adultery. The parties agreed that Jane would have physical custody of their two children, that Fred would have visitation, that they would share joint legal custody, and that Fred would pay monthly child support. In 2018, Fred filed a petition to modify custody and a petition for contempt against Jane, alleging that Jane's move from Biloxi to Texas was a material change in circumstances that adversely affected the children. Fred argued in the alternative that the chancery court modify his visitation schedule and reduce his child support. Fred also asked the chancery court to find Jane in contempt for failing to communicate with him about the children's activities and parenting decisions. The chancery court denied Fred's petition to modify custody but did modify his visitation schedule. The chancery court also reduced Fred's child support payments by half for the summer months when the children were to live with him, reduced Fred's share of the children's out-of-pocket medical expenses by half, and ordered the parties to split the children's visitation-related travel costs. In 2019, Fred filed a second petition to modify custody or, in the alternative, to modify child support, alleging that Jane refused to communicate with him, that she was attempting to alienate the children from him, that her actions were child abuse, and that Jane's actions constituted a material change in circumstances. Alternatively, Fred requested additional visitation and a reduction in child support because he experienced a reduction in income and his family needs costs had increased. Fred also requested that the chancery court find Jane in contempt and award him attorney's fees based on her failure to provide him with information related to their children and for failure to reimburse him for half of the travel expenses for the children. Jane denied that she was in contempt and alleged that Fred's allegations were baseless and made only for the purpose of harassment. Jane requested attorney's fees. Fred voluntarily dismissed his request to modify custody, and the chancery court denied Fred's request for a reduction in child support and his petition to hold Jane in contempt. In addition, the chancery court found that Fred's contempt petition was filed for the purpose of harassment against Jane, and awarded Jane attorney's fees. Fred filed a motion for reconsideration, but it was denied. Fred appealed.

ISSUES

Whether the chancery court erred by (1) denying Fred's petition for a reduction in child support; (2) not holding Jane in contempt; and (3) awarding Jane attorney's fees.

HOLDING

(1) Because substantial evidence supported the chancery court's finding that Fred's income was sufficient not only to meet his child support obligation but also to allow Fred and his current wife to live comfortably, the chancery court did not abuse its discretion by denying Fred's request for a reduction in child support. (2) Because Fred failed to prove by a preponderance of the evidence that Jane willfully, intentionally, or purposefully violated her court ordered obligations, and because there was conflicting evidence on the issue of whether Jane failed to reimburse Fred for the children's travel expenses, the chancery court's finding of fact was not manifestly erroneous. (3) Because the chancery court found that Fred had falsely accused Jane of refusing to communicate with him and refusing to reimburse him for travel expenses, and because the chancery court also noted additional incidents and accusations as further evidence of Fred's purpose and intent, the chancery court did not manifestly err or abuse its discretion by finding that Fred's contempt petition was vexatious, without substantial justification, and filed for the purpose of harassment against Jane. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2020-CA-01091-COA (Dec. 13, 2022)

Opinion by Presiding Judge Wilson

Hon. M. Ronald Doleac (Harrison County Chancery Court, Second Judicial Dist.)

Pro se for Appellant - Scott Derrick Smith for Appellee

Briefed by [Doug Reynolds](#)

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PETERSON V. AABC PROP. MGMT., LLC

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - CONSTRUCTION - INTENT - Ascertaining and giving effect to the testator's intention based on the testator's wording is the paramount and controlling consideration under which the court construes the language of a will or codicil

WILLS & ESTATES - CONSTRUCTION - PLAIN MEANING - The words in wills and codicils should be construed according to their ordinary and grammatical sense unless it is apparent that they were used in a different sense

FACTS

In 2013, Noel Obert died from a self-inflicted gunshot wound to the head. He named Michael Peterson, his son-in-law, as executor of his estate. In 1999, Noel sold a trailer park he owned for \$700,000 to Web, his son, who owned AABC Property Management, LLC ("AABC"). Web executed a promissory note for the \$700,000, and made monthly payments to Noel from October 1999 to August 2013, when Noel died. Web and his ex-wife also financed one of Noel's trailer homes, executing a promissory note for \$50,000, for which they made monthly payments as well. In 2012, Noel executed a valid codicil to his will, stating, "In the event of my death accidental or by sickness prior to final payoff of the AABC (trailer park mortgage), the mortgage is to be considered paid in full on that date." In 2015, Peterson filed complaints on behalf of Noel's estate, seeking the balances of the two promissory notes. AABC claimed that Noel forgave the trailer-park debt based upon the codicil executed in 2012. Additionally, Web and his ex-wife claimed that the house note had been paid in full. In 2019, Peterson filed a complaint for a declaratory judgment regarding the applicability of the codicil since Noel committed suicide. The chancery court decided the determination could not be made until Noel's medical records were released. The medical records showed that Noel was struggling with multiple health issues, including cancer and catheterizations, and expressed thoughts of suicide to medical staff. Web, his sister, and his ex-wives also testified to Noel's increasing pain, depression, and the repeatedly stated intentions to kill himself he made in 2012. In 2020, Peterson filed a motion for summary judgment, which the chancery court partially granted. The chancery court determined that Noel's suicide was not an accidental death within the meaning of the codicil, but found that the remaining issue of whether Noel's suicide would qualify as death by sickness under the codicil would be decided at trial. In 2021, the chancery court entered a judgment, finding that Noel died as a result of sickness within the meaning of the codicil. Therefore, the \$700,000 note was forgiven. Additionally, based on the receipts, financial statements, and testimony offered by Web regarding the payments made for the house, the chancery court determined that the \$50,000 house note had been paid in full. Peterson appealed.

ISSUES

Whether the chancery court erred by (1) partially denying Peterson's motion for summary judgment; (2) ruling that Noel died as a result of sickness within the meaning of the codicil; and (3) finding the \$50,000 house note had been paid in full.

HOLDING

(1) Because the appeal from the denial of the motion for summary judgment was interlocutory in nature, and because Peterson did not seek interlocutory review but instead proceeded to a trial on the merits, Peterson's issues related to the partial summary judgment were rendered moot by the trial. (2) Because the testamentary intent given to the plain meaning of by sickness would not have required Noel to continue living in pain until he died naturally, because suicide due to chronic pain caused by cancer and catheterizations was within the meaning of the words by sickness in the codicil, and because the chancery court did not abuse its discretion in determining that but for Noel's chronic pain caused by his cancer and catheterizations he would not have committed suicide, the chancery court did not err in ruling that Noel died as a result of sickness within the meaning of the codicil. (3) Because Web provided receipts, financial statements, and testimony regarding the amounts of each payment and the dates on which they were made, the chancery court did not err in finding the \$50,000 house note had been paid in full and did not abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2021-CA-00612-COA (Dec. 13, 2022)

Opinion by Chief Judge Barnes
Hon. James B. Persons (Harrison County Chancery Court, Second Judicial Dist.)
Wayne L. Hengen for Appellant - Michael F. Cavanaugh for Appellees
Briefed by [Conner Linkowski](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

COLENBERG V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS - Under Miss. R. Crim. P. 15.3(c), before the trial court may accept a plea of guilty, the court must determine that there is a factual basis for the plea; a factual basis for a plea may be established by the admission of the defendant, but the admission must contain factual statements constituting a crime or be accompanied by independent evidence of guilt; a factual basis is not established by the mere fact that a defendant enters a plea of guilty

CRIMINAL PROCEDURE - GUILTY PLEA - MISINFORMATION - When a defendant pleads guilty but then later alleges that the plea was involuntary due to counsel's misinformation, the defendant must show to the court by a preponderance of the evidence that (1) the defendant's attorney affirmatively misinformed him regarding his eligibility for earned time or trusty time, (2) the attorney's erroneous advice was not corrected, and (3) the defendant pled guilty in reliance on the erroneous advice

FACTS

In 2019, Ikeheem Colenberg was indicted for first-degree murder, attempted murder, shooting into an automobile, and drive-by shooting. Colenberg initially pled not guilty but later pled guilty to second-degree murder and drive-by shooting. The circuit court held a hearing to ensure that Colenberg pled guilty knowingly, intelligently, and voluntarily. The circuit court asked Colenberg if he had read and understood his plea petition, if his attorney had explained everything to him, and about his attorney's representation. Colenberg confirmed that he had been properly advised and answered affirmatively. Colenberg also stated that he understood that due to his guilty plea, the State was not required to prove anything. Colenberg admitted that he committed the offenses and stated that he understood the State's sentencing recommendation. The circuit court found that his guilty plea was entered knowingly, intelligently, and voluntarily. In 2020, Colenberg filed a post-conviction collateral relief ("PCR") motion alleging that he received ineffective assistance of counsel, that his plea was involuntary based on this ineffective assistance, and that there was no factual basis to support his plea. Colenberg attached to his PCR motion affidavits from himself, his father, and his sister, all attesting that Attorney Edward Blackmon misinformed him about his eligibility to receive earned time and trusty time. The circuit court held an evidentiary hearing on the PCR motion at which Colenberg's father and sister testified, both stating again that Colenberg received incorrect advice. Both Blackmon and his co-counsel testified, in contrast, that neither of them gave erroneous advice regarding eligibility for earned time or trusty time. The circuit court denied Colenberg's PCR motion, ruling that Colenberg did not establish by a preponderance of the evidence that there was not a sufficient factual basis for his guilty plea or that his guilty plea was involuntary. Colenberg moved for reconsideration, which was denied. Colenberg appealed.

ISSUES

Whether the circuit court's denial of Colenberg's PCR motion was clearly erroneous because (1) the State provided no factual basis to support his guilty plea and (2) Blackmon misinformed him regarding his eligibility to receive earned time and trusty time, constituting ineffective assistance of counsel and making his guilty plea involuntary.

HOLDING

(1) Because Colenberg signed the petition under oath and confirmed that his lawyer had gone over the petition with him and that he understood everything in it, because Colenberg's sworn plea petition and plea colloquy establish that he admitted he had killed someone without authority of law and by an act eminently dangerous to others, the facts before the circuit court were sufficient to establish a factual basis for the plea. (2) Because there was no affirmative showing that Colenberg was misinformed, because Colenberg's plea petition informed Colenberg that he would not receive good time credits and that neither earned time nor good time would be applied to reduce his parole eligibility date, because Colenberg stated that he had been properly advised and that no one had promised him anything or threatened him, the circuit court did not err by finding that Colenberg knowingly, intelligently, and voluntarily pled guilty. Therefore, the Court of Appeals affirmed the judgment of the Jefferson County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Presiding Judge Wilson agreed that the record established a minimally sufficient factual basis for the plea, but he argued that the circuit court did not make sufficient findings of fact as to Colenberg's involuntary plea and ineffective assistance claims to support the ruling. He noted the circuit court did not make findings of fact as to whether Colenberg's plea counsel provided incorrect advice, and if so, whether he pled guilty in reliance on misinformation. He further stated that if Colenberg was incorrectly advised, the misinformation would not have been cured or corrected by the plea petition or during the plea hearing. Therefore, he argued the judgment should have been reversed and remanded.

Affirmed - 2021-CA-00673-COA (Dec. 13, 2022)

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

Hon. Tomika Harris Irving (Jefferson County Circuit Court)

Noah M. Drake & Ottowa E. Carter Jr. for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Hannah Elliott](#)

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SIGGERS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - JURISDICTION - CIRCUIT COURTS - Circuit courts have exclusive original jurisdiction to consider the merits of a PCR motion

POST-CONVICTION RELIEF - JURISDICTION - PROCEDURE - Under Miss. Code Ann. § 99-39-7, a PCR motion shall be filed as an original civil action in the trial court, except in cases in which the petitioner's conviction and sentence have been appealed to the Supreme Court and there affirmed or the appeal dismissed; where the conviction and sentence have been affirmed on appeal or the appeal has been dismissed, the motion under this article shall not be filed in the trial court until the motion shall have first been presented to a quorum of the justices of the Supreme Court, convened for said purpose either in termtime or in vacation, and an order granted allowing the filing of such motion in the trial court

FACTS

In 1995, Reno Siggers was convicted of murder and sentenced to life in prison. In 2011, the Mississippi Parole Board granted Siggers a conditional parole. In 2019, Siggers was charged with and indicted for aggravated domestic assault. As a result, his parole was revoked. In 2020, he was again paroled. In 2021, because of his wife's testimony of Siggers strangling and biting her, arrest warrants were issued for aggravated domestic violence and simple domestic violence. Siggers was arrested and charged with aggravated domestic violence and simple domestic violence. The Parole Board issued a retake warrant indicating that Siggers violated his parole agreement by testing positive for marijuana and being charged with aggravated domestic violence and simple domestic violence. Once again, Siggers's parole was revoked. Then, Siggers filed a post-conviction relief ("PCR") motion alleging that his parole was wrongfully revoked. He argued that the Parole Board failed to hold the final revocation hearing within the statutory guidelines, and as a result, he should have been released from custody. Siggers also challenged the arrest warrants and affidavits for the domestic violence

charges and vaguely claimed ineffective assistance of counsel. The trial court entered an order denying Siggers's PCR motion based on lack of jurisdiction, explaining he needed permission from the Supreme Court. Siggers appealed.

ISSUE

Whether the trial court erred in dismissing Siggers's PCR motion for lack of jurisdiction.

HOLDING

Because the record did not reflect that Siggers was convicted for crimes that led to his parole revocation or that he appealed any conviction or sentence, Siggers was not required to proceed under Miss. Code Ann. § 99-39-7 and seek leave from the Supreme Court prior to filing his PCR motion; therefore the trial court erred in dismissing Siggers's PCR motion for lack of jurisdiction pursuant to Miss. Code Ann. § 99-39-7. Therefore, the Court of Appeals reversed and remanded the judgment of the Tunica County Circuit Court.

Reversed & Remanded - 2021-CP-01180-COA (Dec. 13, 2022)

Opinion by Presiding Judge Carlton

Hon. Albert B. Smith III (Tunica County Circuit Court)

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

Briefed by [Mariah Rhodes](#)

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COURT OF APPEALS - CRIMINAL CASES

BARFIELD V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - PARTIES TO OFFENSES - ACCESSORIES AFTER THE FACT - Under Miss. Code Ann. § 97-1-5, the elements of the crime of accessory after the fact are: (1) a completed felony has been committed; (2) the accused concealed, received, relieved, aided or assisted a felon, knowing that such person had committed a felony; and (3) such aid or assistance was rendered with intent to enable such felon to escape or avoid arrest, trial, conviction or punishment after the commission of such felony

CRIMINAL LAW - EVIDENCE - UNCORROBORATED TESTIMONY OF ACCOMPLICES - Under *Jones v. State*, if accomplice witness testimony is uncorroborated, the trial court must make the legal determination whether the testimony is uncorroborated and whether the testimony is unreasonable, self-contradictory, or substantially impeached; when it finds critical portions of the testimony to be uncorroborated, the trial court must give a jury instruction that conforms with *Jones v. State*

CRIMINAL LAW - EVIDENCE - CO-DEFENDANT'S GUILTY PLEA - A co-defendant's guilty plea or conviction is generally inadmissible because such plea of guilty or conviction is no evidence of the guilt of the party being tried, although evidence of a guilty plea does not carry the same danger of prejudice as evidence of a jury verdict of guilt

FACTS

James Kelly enlisted Tyrone Broxton to help in Kelly's effort to lure DeMarquis Houston to a trailer in order to avenge an alleged robbery by Houston. Kelly arranged for Joanna Brook Gilmer to bring Houston to the trailer under the guise of smoking weed. Gilmer and Houston entered the trailer to wait for Kelly to arrive with the weed. Gilmer and Houston started having sex, and Broxton and Kelly emerged from the back of the trailer, where the two had been lying in wait for Houston. Kelly pointed a gun at Houston and zip-tied his hands and feet. Gilmer left. Kelly then elicited information from Houston about the robbery and put tape over Houston's mouth. Broxton stepped outside and Kelly followed. While outside, they heard a commotion inside the trailer and went inside to see Houston still naked, seizing up like he was having a seizure. After Houston died, Kelly and Broxton put the body in a freezer. Nearby, Justus Barfield lived

with his friend Ian Caleb Thompson. Kelly, Barfield, and Thompson all knew each other, and one day Thompson came home to Kelly visiting with Barfield. Kelly told Thompson and Barfield about having Houston's body in a freezer and his need to dispose of the body. Later that evening, Kelly returned to Thompson's house with Houston's body in the freezer in the back of his truck. Kelly wanted to hide the body in Thompson's pond and sought Barfield and Thompson's assistance. Thompson said they could do it, and retrieved a forklift while Kelly and Barfield waited. Next, Thompson and Kelly slid the freezer onto the forklift, and Thompson drove the forklift to the pond with Kelly and Barfield following behind. Thompson and Kelly pushed the freezer into the pond, but it would not sink. Barfield watched from the bank as Thompson and Kelly managed to get the freezer back on the bank. Discussing how to proceed, Thompson and Barfield told Kelly they would not touch the body. Thompson drove everyone to his shop for Kelly to obtain items to submerge the body. After Kelly obtained various materials, Thompson dropped Kelly off at the pond, and Thompson and Barfield went home. Time passed and, at some point, Barfield told Thompson that he saw something protruding from the water. Both men went to the pond and observed what appeared to be Houston's body floating. Thompson contacted Kelly and told him he needed to do something about it. After investigator Derek Wyatt of the Neshoba County Sheriff's Department received tips about Houston's disappearance and retrieved data from Kelly's court-ordered GPS monitoring device, Neshoba County Sheriff Eric Clark obtained a search warrant for Thompson's pond. Law enforcement officials drained the pond and found Houston's body wrapped and submerged with various materials to weigh it down. After a trial, a jury found Barfield guilty of accessory after the fact to murder. The circuit court sentenced Barfield to a twenty-year term with ten years to serve, ten years suspended, and five years of supervised probation. At the time of Barfield's trial, Kelly awaited trial on a charge of capital murder. Gilmer and Broxton had already pled guilty to manslaughter, and Thompson had pled guilty to accessory after the fact to murder. Barfield's post-trial motion for judgment notwithstanding the verdict was denied. Barfield appealed.

ISSUES

Whether (1) the evidence was legally sufficient to prove Barfield guilty as an accessory after the fact to murder; (2) the circuit court committed plain error by giving an erroneous aiding and abetting instruction; (3) the circuit court erred by failing to properly instruct the jury concerning accomplice testimony; (4) the circuit court erred by refusing to instruct the jury that Barfield had no duty to reveal to the police that he knew where Houston's body was concealed; (5) the circuit court erred by instructing the jury as to the definitions of "conceal" and "participate"; (6) the circuit court erred by allowing improper redirect and rebuttal testimony; (7) the circuit court erred by allowing the testimony of Broxton and Thompson that they pled guilty to charges of manslaughter and accessory after the fact to murder; and (8) the jury issued a guilty verdict against the overwhelming weight of evidence.

HOLDING

(1) Because Barfield kept himself in a position to help in aiding and abetting Thompson and Kelly, because his intent to assist could have been inferred by his presence during the effort to conceal Houston's body, because he told Thompson about the body part emerging out of the water which prompted Thompson to call Kelly to fix the situation, because the Court of Appeals was required to consider as true all evidence consistent with Barfield's guilt, and because the State was given the benefit of all favorable inferences that could have been reasonably drawn from the evidence, the evidence was legally sufficient for a jury to find Barfield guilty beyond a reasonable doubt. (2) Because Barfield, Thompson, and Kelly were together for a significant period of time on the evening when Houston's body was concealed, because the accessory-after-the-fact charge did not require that one person take all the acts necessary to constitute the offense and all three men participated in different capacities to effectuate the concealment, because all who participated in the endeavor of concealing the body were criminally liable, and because conflicting testimony over the extent of Barfield's involvement was an issue for the jury to resolve, the circuit court committed no error in giving Jury Instruction S-3. (3) Because the circuit court made the legal determination required by *Jones v. State* regarding accomplice testimony when part of Thompson's testimony was uncorroborated, because the circuit court advised the defense that if Barfield submitted an instruction that conformed with *Jones* then it would be given, and because the jury instruction given by the circuit court was identical to the instruction mandated by *Jones*, the circuit court did not err by giving Jury Instruction D-8A. (4) Because the circuit court ruled that Jury Instruction S-3 adequately covered the issue that Barfield had no duty to report the crime to law enforcement, and because the Court of Appeals read all the instructions together, the jury was adequately instructed and, therefore, Barfield's assignment of error was not persuasive. (5) Because Barfield offered no meaningful argument as to any specific problem with the definitions of "conceal" and "participate," because

Barfield had not shown how he was adversely affected or prejudiced by the definitions, and because Barfield did not cite any relevant authority to support his contention, the issue was procedurally barred. (6) Because the scope of re-direct examination was limited to matters brought out during cross-examination, and because on re-direct the State asked questions regarding matters not raised on cross-examination, the trial court properly limited the scope of the re-direct examination; however, because Thompson's rebuttal testimony was brief and did not bring up new matters that were not covered in the State's case-in-chief but was in direct response to Barfield's testimony, because Thompson's testimony was offered to rebut Barfield's testimony, and because Barfield had the opportunity to cross-examine Thompson and did not seek surrebuttal, the circuit court did not abuse its discretion by allowing Thompson's rebuttal testimony. (7) Because a party who failed to make an objection at trial over a co-defendant's guilty plea must rely on plain error to raise the issue on appeal, and because the admissions of Broxton, Gilmer, and Thompson did not affect Barfield's fundamental or substantive rights or cause a manifest miscarriage of justice, the claim of plain error failed. (8) Because it was for the jury to resolve the conflicts in the testimony of Barfield and Thompson, because the jury heard the evidence and was properly instructed as to the law, and because the Court of Appeals viewed the evidence in the light most favorable to the verdict, allowing the jury's verdict to stand did not sanction an unconscionable injustice. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

DISSENT

Judge McCarty argued that only the first element was proved under Miss. Code Ann. § 97-1-5, and because all three elements of accessory after the fact to murder were not proved beyond a reasonable doubt, the Court of Appeals should have reversed and rendered. He argued that Barfield's presence at the scene of a crime alone did not meet the burden that he concealed, received, relieved, aided, or assisted Kelly or Thompson in hiding the body when the evidence said he did nothing at all. He disagreed with the affirmation that Barfield deliberately associated himself with the crime by walking with Thompson and Kelly to the pond because walking was not a crime, and he argued that there was no evidence that Barfield planned, transported, or assisted with hiding the freezer in the pond. Therefore, he argued the evidence was insufficient to meet the burden of proof required for a conviction of accessory after the fact to murder.

Affirmed - 2021-KA-00660-COA (Dec. 13, 2022)

Opinion by Judge Emfinger - Dissent by Judge McCarty

Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)

James A. Williams for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Oliver Samples](#)

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SMITH V. STATE

CRIMINAL - FELONY

EVIDENCE - WITNESSES - EXPERT TESTIMONY - Expert testimony must be based on sufficient facts or data and the product of reliable principles and methods, and the expert must have reliably applied the principles and methods to the facts of the case

EVIDENCE - WITNESSES - EXPERT TESTIMONY - Expert testimony must be relevant and reliable to be admissible

FACTS

John Bennett was found dead in his home. The night before John was found, Elizabeth Peets Bowlin and Jesse Smith were at John's house. Elizabeth testified that Smith, without warning, shot John in the head with a pistol twice. She said Smith then threatened to shoot her and her daughter next if she didn't go with him. They left the house and went to the home of Mike Domanick, who called law enforcement after seeing that Smith was wanted for questioning. A detective testified that there were drugs and two spent .22 shell casings found at John's house. Detective Clint Earls interviewed Smith and described him as nervous, anxious, and in self-preservation mode. Detective Earls stated that Smith admitted he was at John's house the night of the murder and admitted that he hid a .22 caliber handgun

underneath a portable building where Mike had taken him. Smith was then arrested and indicted for the first-degree murder of John. Before trial, Smith sought to admit Steven Howard as an expert in firearms, and a *Daubert* hearing was held. During the hearing, Howard explained he had an associate degree in gunsmithing and had been a gunsmith his whole life. Howard reported he personally tested the .22 pistol recovered by law enforcement and determined that the two shots were fired in quick succession due to a light trigger pull of 2.25 pounds. The State questioned whether Howard possessed sufficient qualifications to be an expert and argued that the proffered testimony was unreliable. The trial court ruled that Howard was not allowed to testify as an expert, finding that he was disqualified under *Daubert*. Smith's defense was that John committed suicide and John's father admitted that John struggled with depression and had previously attempted to harm himself. However, the State's forensic pathology expert testified that the manner of death was homicide. In addition, Lori Beall testified for the State as an expert in firearms identification and ballistics. Beall determined the shots came from a .22 caliber pistol and concluded that the shell casings at the scene came from Smith's gun. She further stated that the .22 did not fire at two pounds of trigger pull pressure but did fire at 2.25 pounds, the same calculation reached by Howard. Smith was found guilty. Smith appealed.

ISSUES

Whether (1) the trial court erred by excluding Smith's proposed expert witness's testimony and (2) the jury verdict was against the overwhelming weight of evidence.

HOLDING

(1) Because Smith was not deprived of the reliable and factual basis for the opinion that the handgun had a 2.25 pound trigger pull, because Elizabeth testified that she saw Smith shoot John twice in the head, and because Investigator Earls also testified that Smith took him to the location of the gun where Smith had hidden it, the exclusion of Howard was in error but did not prejudice Smith to the extent it required a new trial. (2) Because the evidence of murder rested in part on Elizabeth's testimony and defense counsel exposed inconsistencies in her testimony, and because it was the jury's role to weigh Elizabeth's testimony, upholding the conviction given the level of proof did not sanction an unconscionable justice. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2021-KA-01104 (Dec. 13, 2022)

Opinion by Judge McCarty

Hon. David H. Strong Jr. (Lincoln County Circuit Court)

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

Briefed by [Emilee Crocker](#)

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