

**MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 2, 2023****SUPREME COURT - CIVIL CASES****LEE V. STATE FARM MUT. AUTO. INS. CO.****CIVIL - CONTRACT**

**CONTRACTS - TORT CLAIMS ACT - UNINSURED MOTOR VEHICLE** - The Legislature amended Miss. Code Ann. § 83-11-103 to broaden the definition of uninsured motor vehicle to include any motor vehicle owned or operated by a person protected under the MTCA

**CIVIL PROCEDURE - STATUTORY INTERPRETATION - LEGISLATIVE INTENT** - If statutes are susceptible to more than one interpretation, they must be given that which will best effectuate their purposes rather than one which would defeat them

**FACTS**

Niyokia Lee and James Cooper sustained damages in separate, independent automobile accidents caused by negligent city emergency responders. The negligent police officer, fireman, and the governmental entities employing them were afforded immunity under the Mississippi Tort Claims Act (“MTCA”), so they both sought to recover under their State Farm Mutual Automobile Insurance Company (“State Farm”) car insurance policies’ uninsured motorist (“UM”) provisions. State Farm denied coverage to both, citing Mississippi’s Uninsured Motorist Act. State Farm stated that because the police officer and fireman were protected under the MTCA, neither Lee nor Cooper were entitled to recover. State Farm adhered to the view and denied coverage despite the fact that the Legislature had revised the UM Act to expand the definition of uninsured motor vehicle to include a motor vehicle owned or operated by a person protected by immunity under the MTCA. The two trial courts reached opposite results. The Harrison County Circuit Court, where Lee’s accident occurred, granted summary judgment in favor of State Farm, holding that Lee was not eligible for UM coverage because the police officer was immune. However, the Rankin County Circuit Court granted summary judgment in favor of Cooper, finding that UM coverage did not apply because of the Legislature’s amendment of the UM Act to include vehicles operated by persons immune under the MTCA. Lee and State Farm appealed.

**ISSUE**

Whether State Farm should have provided uninsured motorist coverage for damages sustained in collisions with negligent city responders protected by MTCA immunity.

**HOLDING**

Because when Miss Code Ann. §§ 83-11-101(1) and § 83-11-103(c)(vi) were read together, it was apparent that the Legislature intended to expand uninsured motorist coverage to vehicles operated by employees protected by MCTA immunity, both Lee and Cooper were entitled to uninsured motorist coverage for damages sustained from their collisions with city vehicles operated by immune city employees. Therefore, the Supreme Court reversed and remanded the judgment of the Harrison County Circuit Court and affirmed and remanded the judgment of the Rankin County Circuit Court.

**Reversed & Remanded - 2021-CA-00882-SCT (Feb. 2, 2023)**

Opinion by Justice Maxwell

Hon. Lisa P. Dodson (Harrison Country Circuit Court)

David Paul Pitre for Appellant - John A. Banahan & Michael Riley Moore for Appellee

**Consolidated with:**

**Affirmed & Remanded - 2021-IA-01006-SCT (Feb. 2, 2023)**

Hon. M. Bradley Mills (Rankin County Circuit Court)  
William H. Creel Jr., Michael F. Myers, & Trenton G. Winford for Appellant - Lance L. Stevens for Appellee  
Briefed by [Tyler White](#)

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## TRANSMONTAIGNE OPERATING CO., L.P. V. LORESCO I, LLC

### CIVIL - REAL PROPERTY

**PROPERTY - EASEMENT - PURPOSE** - An easement is an interest in land owned by another person, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose

**PROPERTY - EASEMENTS - EXPRESS GRANT** - In the case of an express grant, the fact of the creation of the easement, as well as its nature and extent, is determined by the language of the deed, taken in connection with the circumstances existing at the time of making it

### FACTS

TransMontaigne Operating Company, LP (“TransMontaigne”) and Loresco I, LLC (“Loresco”) owned neighboring properties which were both obtained from Amerada Hess Corporation (“Hess”). In 1999, TransMontaigne acquired 104 acres from Hess that included a petroleum terminal facility but did not include the property where the oil refinery was located (“Refinery Property”). In the Sale of Assets Agreement, Hess agreed not to develop or use the Refinery Property for any commercial purpose that could have impeded or proved hazardous to its refined oil product storage business, but a larger tract was not subject to any development or use restrictions. As part of the Warranty Deed, Hess and TransMontaigne agreed to an express reciprocal easement, which permitted each party to use the paved roads on their respective properties. In 2016, Hess sold Loresco approximately one thousand acres, including the Refinery Property and some surrounding acreage. Hess also conveyed to Loresco any and all rights to the express reciprocal easement and Loresco began using its property for activities that differed from Hess’s prior use. In 2019, TransMontaigne sought declaratory and injunctive relief limiting the scope of Loresco’s use of the easement to Hess’s historical use of the easement. TransMontaigne and Loresco then filed competing motions for summary judgment. After a hearing on both motions, the chancellor granted Loresco’s motion for summary judgment and denied TransMontaigne’s. The chancery court found that there was no limiting language which would restrict the use of the easements for future landowners and granted Loresco’s motion for summary judgment. TransMontaigne appealed.

### ISSUE

Whether Loresco, as the successor in title to an express reciprocal easement, was limited to using the easement the same way as the predecessor.

### HOLDING

Because the Warranty Deed between TransMontaigne and Loresco’s predecessor granted a non-exclusive easement and right-of-way for the use of roads to their respective properties, because the deed was transferred to Loresco for ingress and egress to the property, and because the scope of the easement was not uncertain and ambiguous, Loresco was not limited by the historical use of the easement. Therefore, the Supreme Court affirmed the judgment of the Lamar County Chancery Court.

### DISSENT

Justice Griffis argued that TransMontaigne was entitled to a summary judgment that would have restricted Loresco’s access to the property. He further opined that genuine issues of material fact existed, so Loresco was not entitled to a judgment as a matter of law. He further noted that TransMontaigne should have been allowed to offer evidence of the historical use of the easement, Loresco’s unrestricted use of the property, and whether TransMontaigne abused its reasonable judgment. Therefore, he would have reversed the grant of the summary judgment motion and remanded.

**Affirmed - 2021-CA-00980-SCT (Feb. 2, 2023)**

En Banc Opinion by Justice Maxwell - Dissent by Justice Griffis  
Hon. Rhea Hudson Sheldon (Lamar County Chancery Court)  
A. Andre Hendrick, Robert A. Biggs III, Colette A. Oldmixon, & Jason Edward Dare for Appellant - Patrick H. Zachary & Vicki R. Leggett for Appellee  
Briefed by [Jack Surber](#)

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## ***SUPREME COURT - ORDERS***

### **BILLIE V. STATE**

#### **ORDER**

#### **ORDER**

The Supreme Court denied Sherman Billie's pro se Motion for Post-Conviction Collateral Relief noting that Billie's claims were successive, time-barred, barred by res judicata, and frivolous. Therefore, the Supreme Court warned Billie that future filings deemed frivolous could result in monetary sanctions or restrictions on filing applications for post-convictions collateral relief in forma pauperis.

#### **OBJECTION IN PART**

Presiding Justice King disagreed that the application was frivolous, noting that Billie made reasonable arguments in the application. Additionally, he disagreed that future filings by Billie should result in monetary sanctions or restrictions on filing, reasoning that imposing monetary sanctions on a criminal defendant proceeding in forma pauperis would punish and preclude that defendant from his lawful right to appeal and unconstitutionally cut off access to the courts. Therefore, he suggested the Supreme Court should simply deny or dismiss motions that lack merit instead of punishing the defendant for filing the motion.

#### **Denied with Sanctions Warning - 2022-M-00416 (Jan. 25, 2023)**

Order by Justice Beam - Objection in Part by Presiding Justice King  
Briefed by [Naomi Migoya](#)

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### **COOK V. STATE**

#### **EN BANC ORDER**

#### **ORDER**

The Supreme Court denied Joseph Cook's fourth motion for post-conviction relief, noting that the application was time-barred, successive, and lacked an arguable basis. Therefore, since Cook had been previously warned that any future filings deemed frivolous would result in both monetary sanctions and restrictions on filings for post-conviction collateral relief in forma pauperis, the Supreme Court restricted Cook from filing any further applications for post-conviction collateral relief or any pleadings of that nature that are related to his conviction and sentence in forma pauperis.

#### **OBJECTION**

Presiding Justice King disagreed with the monetary sanctions and restrictions placed on Cook. He noted that the Supreme Court was prioritizing efficiency over justice by imposing monetary sanctions on an indigent defendant and

that the restriction was a punishment and a violation of Cook’s constitutional right to access the courts. Therefore, he would have rather found that the petition for post-conviction relief lacked merit.

**Denied with Sanctions - 2017-M-00455 (Jan. 26, 2023)**

En Banc Order by Justice Griffis - Objection by Presiding Justice King  
Briefed by [Arreyah Whitlock](#)

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## FANNINGS V. STATE

### ORDER

#### ORDER

James Arthur Fannings, Jr. filed a Petition for Application for Leave to Proceed Into the Trial Court, his fifth application. The Supreme Court found Fannings failed to present an arguable basis for his claims, found no exceptions to the statutory bar, and determined the filing to be frivolous. Further, the Supreme Court warned Fannings that future filings deemed frivolous could result in monetary sanctions or restrictions on his ability to file applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Fanning’s Petition for Application for Leave to Proceed Into the Trial Court.

#### OBJECTION IN PART

Presiding Justice King disagreed that the application was frivolous and warranted a warning for sanctions or restrictions from further applications for post-conviction collateral relief in forma pauperis. He argued that Fannings’s arguments, although weak, should not have been labeled frivolous. Additionally, he claimed that imposing monetary sanctions on an indigent defendant and restricting access to the court system further punishes that defendant and ultimately violates his constitutional rights. Instead, he argued that Fannings’s application should have been found to lack merit.

**Denied with Sanctions Warning - 2015-M-01061 (Jan. 30, 2023)**

Order by Justice Maxwell - Objection In Part by Presiding Justice King  
Briefed by [Thomas Simpson](#)

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## IN RE: THE RULES OF CIV. PROC. [MISS. R. CIV. P. 45]

### CORRECTED EN BANC ORDER

#### ORDER

This en banc Order by the Supreme Court, made in consideration of the Advisory Committee on Rules’ motion, amended Rule 45 of the Mississippi Rules of Civil Procedure. Rule 45 of the Mississippi Rules of Civil Procedure was amended in part to authorize attorneys to issue subpoenas. The attorney must be admitted to practice in the State or have been admitted pro hac vice in the pending action and be the counsel of record in the pending action. The amended rule requires that a copy of all subpoenas be served on all parties as soon as the subpoena form has been filled out even though the subpoena itself has not yet been served at that time. Once a subpoena has been served, the serving party is required to promptly file a proof of service with the clerk and immediately serve a copy of the proof of service on all parties. It was also amended to prohibit the production or inspection of documents until the tenth day after service of the subpoena on the subpoena recipient. The amendment to Rule 45 becomes effective within thirty days.

Exhibit A, referenced and attached to the Order, shows the amendments to Rule 45, and Exhibits B, C, and D show the form subpoenas.

**Ordered - 89-R-99001-SCT (Jan. 30, 2023)**  
Corrected En Banc Order by Justice Coleman  
Briefed by [Katherine Hancock](#)

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**MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 31, 2023**  
**COURT OF APPEALS - POST-CONVICTION RELIEF**

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**McCONN V. STATE**

**CIVIL - POST-CONVICTION RELIEF**

**POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - REQUIREMENTS** - A claim of ineffective assistance of counsel requires proof (1) that counsel’s performance was objectively deficient and (2) that the defendant suffered prejudice as a result

**POST-CONVICTION RELIEF - SUMMARY DISMISSAL - SUPPORTING EVIDENCE** - Summary dismissal of a PCR motion is proper where it appears beyond a doubt that the movant can prove no set of facts in support of his claim which would entitle him to relief; to avoid summary dismissal, the movant must present sufficient evidence such that his allegations are not overwhelmingly belied by the plea hearing transcript and related documents

**FACTS**

Lee McConn was indicted on two counts of selling controlled substances. As a subsequent drug offender and nonviolent habitual offender, he was facing a sentence of up to fifty-six years in custody without eligibility for parole. In 2020, McConn pled guilty to both counts and was sentenced to nine years in custody, followed by post-release supervision, and a twenty-year suspended sentence. McConn later filed a pro se post-conviction relief (“PCR”) motion, alleging his attorney provided ineffective assistance by failing to accept a prior plea offer which would have required him to only serve four years in prison. McConn asserted that his attorney failed to accept the deal before time expired and that he failed to inform him of a court date where could have accepted the deal. Once the deal expired, McConn alleged that his attorney told him he needed to accept a new, less favorable plea offer, which he accepted. Along with his PCR motion, McConn attached an affidavit from his bail bondsman stating that McConn and his attorney were not present at a docket call for the plea deal with a sentence of four years. The circuit court denied McConn’s PCR motion after finding no evidence of any other plea offer than the one McConn accepted. McConn appealed.

**ISSUE**

Whether McConn’s attorney provided ineffective assistance by failing to accept a prior plea offer that would have required him to serve a shorter prison term.

**HOLDING**

Because McConn stated under oath that he was satisfied with his attorney’s advice and that he pled guilty freely and voluntarily, and because McConn did not produce competent evidence that a prior plea offer existed and did not show good cause for failing to produce evidence to support his claim, the circuit court properly denied McConn’s PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Wayne County Circuit Court.

**Affirmed - 2021-CP-00431-COA (Jan. 31, 2023)**

Opinion by Presiding Judge Wilson  
Hon. Charles W. Wright Jr. (Wayne County Circuit Court)  
*Pro se* for Appellant - Alexandra Rodu Rosenblatt (Att’y Gen. Office) for Appellee  
Briefed by [Hannah Elliott](#)

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## *COURT OF APPEALS - CRIMINAL CASES*

### **PITTS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - DISCOVERY - EXPERT WITNESSES** - Miss. R. Crim. P. 17.3 requires that a defendant promptly disclose any reports, statements, or opinions of experts that the defendant may offer into evidence  
**EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY** - When determining the admissibility of expert testimony, trial courts must consider whether the expert opinion is based on scientific knowledge (reliability) and whether the expert opinion will assist the trier of fact to understand or determine a fact in issue (relevance)

**EVIDENCE - ADMISSIBILITY - TENDER-YEARS EXCEPTION** - To satisfy the element of the tender-years exception that statements have substantial indicia of reliability, the trial court must make an overall determination that a child declarant was particularly likely to be telling the truth

**CRIMINAL PROCEDURE - ERRORS - CUMULATIVE ERROR** - The cumulative-error doctrine provides that where one error, standing alone, may not warrant reversal, reversal may be required if the errors, taken together, create such an atmosphere of bias, passion, and prejudice that they effectively deny the defendant a fundamentally fair trial

#### **FACTS**

A.G.C., the child of Jeffery Pitts, told her grandmother and mother that her “daddy put his finger in [her] vagina, in [her] ‘gina and in [her] bootie and he made it go really fast.” A.G.C.’s mother then filed a report online with Child Protection Services (“CPS”) and with the Richland Police Department. A.G.C. was interviewed by CPS and underwent a forensic interview. In 2021, a grand jury indicted Pitts for one count of sexual battery under Miss. Code Ann. § 97-3-95. The State noticed its intent to elicit hearsay testimony under the tender years exception and to elicit Miss. R. Evid. 404(b) testimony of the other bad acts committed by Pitts. The trial court considered the tender years factors under Miss. R. Evid. 803(25) and ultimately found the statements admissible. The trial court reasoned that the child had no apparent motive to lie, and there was nothing about the general character of the declaring that weighed toward excluding the testimony. The trial court found that all of the factors weighed in favor and provided substantial indicia of reliability to find that the statements were admissible. Second, the trial court held a pre-trial hearing to determine whether A.G.C. would testify, along with Pitts’s other daughter, A.P., under Miss. R. Evid. 404(b) to other sexual acts Pitts committed in addition to those in the indictment. However, this evidence was never introduced at trial. Pitts sent notice of his intent to call two expert witnesses, Dr. Mark Webb and Dr. Gerald O’Brien. The State filed a motion in limine to exclude both witnesses for discovery violations and because the experts did not meet the requirement of Miss. R. Evid. 702 and were not allowed to opine on the credibility of witnesses. The trial court found that the experts’ testimony was not helpful to the jury and that any probative value was substantially outweighed by the danger of unfair prejudice and excluded both experts. At trial, the State’s first witness was Officer Ryan Halbert who testified that he met with A.G.C.’s mother and took a report of Pitts’s alleged sexual abuse of A.G.C. The State then called Detective Amanda Brown who testified that she took over the investigation from Officer Halbert and scheduled the forensic interview. A.G.C. testified next at trial. However, before her testimony, the State requested a screen be placed in front of her to protect her from the trauma of having to look at her father while she testified. The trial court granted the motion and allowed the screen to be erected, but also required a computer monitor be arranged so Pitts could see A.G.C. Pitts testified at trial that during the weekend in question, he was watching television with A.G.C. and his other daughter. Pitts testified that A.G.C. stated her vagina was itching, so he applied Butt Paste and informed her mother to examine her to alert her mother to the itching and Butt Paste application. Pitts denied having ever inappropriately touched A.G.C. The jury found Pitts guilty of sexual battery and he was sentenced to a term of thirty years, with twenty years to serve and ten years suspended. Pitts was also ordered to register as a sex offender. Pitts filed a motion for a judgment notwithstanding the verdict or, in the alternative, a new trial, which was denied. Pitts appealed.

#### **ISSUES**



Whether (1) the construction of a screen preventing Pitts from viewing the child witness violated the Confrontation Clause; (2) the placement of a screen in the courtroom constituted harmless error; (3) the screen tainted the presumption of Pitts's innocence in the minds of the jury and his Due Process rights were violated as a result; (4) the trial court erred by excluding the testimony of Pitts's expert witnesses; (5) the trial court erred by admitting prior bad acts under Miss. R. Evid. 404(b); (6) the trial court erred by allowing witnesses to testify pursuant to the tender-years exception; and (7) there was cumulative error.

### **HOLDING**

(1) Because, at all times, Pitts was permitted to hear the child's live testimony and view her, because the child was subject to full and thorough cross-examination, because the jury, judge, and defense attorney all were able to view the child and her demeanor at every moment during every word of her testimony, and because Pitts viewed the child's emotions and demeanor in real time and had unfettered access to his attorney at all times while in the same courtroom, Pitts's confrontation rights were not violated by the screen preventing Pitts from viewing the child witness. (2) Because the screen did not prejudice the jury against Pitts, and because there was overwhelming evidence of his guilt at trial, any error of the placement of the screen was harmless. (3) Because Pitts failed to raise a Due Process violation with the trial court, the issue was waived; notwithstanding the procedural bar, because placing the screen in front of the child victim was to protect the child, not to place undue fault or burden on Pitts, the screen was not inherently prejudicial to Pitts. (4) Because the defense committed a clear discovery violation by not promptly disclosing the experts, and because the expert opinions were not based on reliable scientific means, the trial court did not abuse its discretion in excluding both experts' testimony. (5) Because the evidence of prior bad acts was never introduced at trial, the issue was moot. (6) Because the trial court conducted a thorough tender-years analysis on the record and found the child was likely telling the truth, because the child's testimony was not a ruse to place prior bad acts in front of the jury, because no prior bad acts were ever placed in front of the jury, because there was no concern of confusing the jury, and because the testimony was used to describe the child's initial disclosure that led to the charges against Pitts, the trial court did not abuse its discretion in admitting the testimony. (7) Because Pitts was not prejudiced by the use of the screen in the courtroom, because there was no prior bad-acts testimony introduced, and because the trial court did not error in excluding the expert testimony and admitting the hearsay testimony under the tender-years doctrine, there was no cumulative error. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

### **DISSENT**

Presiding Judge Wilson dissented, arguing Pitts's conviction should have been reversed and remanded for a new trial. He argued that the trial court was required to make a case-specific and individualized finding that testifying would have traumatized A.G.C before she was allowed to testify in the absence of face-to-face confrontation. Further, he argued that in the absence of such a finding or evidence that A.G.C. would have been traumatized, the use of the screen violated Pitts's rights under the Confrontation Clause. Lastly, he opined that the constitutional error should not have been dismissed as harmless and that Miss. Code Ann. § 99-43-101 likely violated the separation of powers.

#### **Affirmed - 2021-KA-00740-COA (Jan. 31, 2023)**

En Banc Opinion by Judge Lawrence - Dissent by Presiding Judge Wilson

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

J. Edward Rainer & Kimberly Marie Phillips for Appellant - Lauren Gabrielle Cantrell & Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Anna Palmer](#) & [Nivory Gordon](#)

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## **WILLIAMS V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - TESTIMONY - LAY WITNESSES** - Miss. R. Evid. 701 allows a lay witness to provide testimony limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to the

clear understanding of the testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Miss. R. Evid. 702

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS** - In order to prove ineffective assistance of counsel, the movant must show that (1) his attorney's performance was deficient and (2) the deficiency deprived the defendant of a fair trial

**CRIMINAL PROCEDURE - COUNSEL - ADEQUACY OF REPRESENTATION** - Strategic choices made by counsel after a thorough investigation of law and facts relevant to plausible options are virtually unchallengeable

### **FACTS**

Charles Cordell Williams was charged with armed robbery for his involvement in the robbery of a grocery store. At trial, the State offered the testimony of several witnesses and Williams testified on his own behalf. Williams testified that he made his way to the grocery store after being paid gas money to take his cousin, David Brown along with a friend, Andrew Walker, to pick up money. When the person was not at home for them to retrieve the money, they went to buy marijuana, where an unnamed friend joined them, stopped at the grocery store, stopped at a barber shop, and then returned to the grocery store. Williams testified that he stayed in the car while the other men entered the store, and shortly after the unnamed friend jumped back into the car, pointed a gun at him, and instructed him to drive. Elizabeth White, the only employee at the store at the time of the robbery, testified that three masked men entered the store. She further identified the man who ran behind the counter to grab the store's money bag and her purse as Williams, although she had never seen him before. Two of the men fled in a getaway car while the third man ran around the back of the store as Deputy Sheriff Mackie Sexton arrived. Deputy Sexton went to the store to grab a snack but started to pursue the getaway car when White pointed to them as the group was fleeing. Deputy Sexton testified that Deputy Sheriff Shane Latch joined the pursuit, which ended when the getaway car ran off the road in Tennessee, due to deputies blowing out the tires of the getaway car. Brown was found with \$2,113 in his possession and Williams was found thereafter. After arresting Walker, Detective Jerry Rogers recovered the store's money bag that had been thrown out of the window and joined Detective Heather Russell in viewing the store's surveillance cameras. Detective Russell testified about the investigation. When asked, without objection, who committed the crime, Detective Russell testified that Williams was the one who grabbed the bag from behind the counter. On cross-examination, Detective Russell testified that Brown said he heard Williams say in the car that they were going to rob someone. However, further cross-examination revealed that Brown had lied about the event on two other occasions. The owner of the store then testified that video surveillance footage from the store showed that Williams entered the store hours before the robbery wearing and purchased two cans of Sprite. The cans of Sprite, along with Williams's debit card, were later found during a search of the vehicle. Williams attempted to rebut this by saying that the man in the video was wearing different clothing than he was on the day of his arrest. After they deliberated and watched the surveillance videos again, the jury convicted Williams of armed robbery. Immediately after convicting Williams, the jury heard testimony from various sources to determine proper sentencing. When the jury could not unanimously agree to life in prison, they were dismissed and the circuit court sentenced Williams to serve twenty-five years day for day as a habitual offender. Williams filed both a failed motion for a new trial and an untimely pro se motion for a new trial. Williams appealed.

### **ISSUES**

Whether Williams's counsel provided ineffective assistance when he (1) did not object to the opinion testimony of Detective Russell concerning her theory of the case and (2) elicited hearsay testimony from Detective Russell placing Williams in the vehicle involved in the robbery.

### **HOLDING**

(1) Because Detective Russell's theory of the case was admissible under Miss. R. Evid. 701 as lay testimony rationally based on what she saw and concluded, because any objection defense counsel might have raised could have been overruled without the circuit court abusing its discretion, because Detective Russell's opinion was merely a summary of her findings and not an opinion on the ultimate issue in the case, and because defense counsel's failure to object, assuming it was error, was harmless due to the substantial evidence presented to support a guilty verdict, Williams's attorney did not provide ineffective assistance of counsel by failing to object to Detective Russell's opinion testimony. (2) Because defense counsel was afforded the strong presumption that their decisions were made for strategic and reasonable purposes, and because, after the damaging hearsay testimony, Williams's counsel went on to elicit testimony from Detective Russell that attacked the credibility of Brown's statements to her in his post-arrest interview by showing



that he lied concerning other matters, the Court of Appeals could not say that the elicitation of incriminating hearsay evidence was ineffective assistance and not merely trial strategy. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

**Affirmed - 2022-KA-00100-COA (Jan. 31, 2023)**

Opinion by Judge McDonald

Hon. Michael Paul Mills Jr. (Alcorn County Circuit Court)

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

Briefed by [Kennedy Gerard](#)

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