

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 19, 2023***SUPREME COURT - CIVIL CASES*****MISS. HUB, LLC V. BALDWIN****CIVIL - STATE BOARDS & AGENCIES**

TAX LAW - ASSESSMENT - APPEALS - Miss. Code Ann. § 27-35-119(2) provides that any taxpayer who feels aggrieved at the action of the board of supervisors in equalizing his assessments shall have the right to appeal to the circuit court within twenty days after the date the notice is mailed

TAX LAW - ASSESSMENT - APPEALS - Miss. Code Ann. § 11-51-77(1) provides that any person aggrieved by a decision of the board of supervisors as to the assessment of taxes, may, within ten days after the adjournment of the meeting at which such decision is made, appeal to the circuit court of the county

TAX LAW - OBSOLESCENCE - COST APPROACH - The MDOR states that both functional obsolescence and economic obsolescence can be considered in applying the cost approach to personal property

FACTS

Mississippi Hub, LLC (“MS HUB”) operated an underground natural gas storage facility in Simpson County. In 2007, MS HUB and Simpson County entered into a fee-in-lieu agreement regarding the first phase of the facility’s ad valorem taxes. The parties agreed that MS HUB would pay one-third of what its taxes would have been for ten years in exchange for locating the facility in Simpson County. They also agreed the facility was an industrial personal property for tax purposes, the property’s value would be determined according to Miss. Code Ann. § 27-35-50, and that by request of the company, economic obsolescence would be considered by the tax assessor. In 2017, the Simpson County Tax Assessor, Charles Baldwin, was contacted by MS HUB to discuss market changes in the natural gas storage industry and how it affected the value of the MS HUB facility. MS HUB noted that the facility had changed ownership and was sold for far less than it cost to build. Baldwin concluded that for the 2019 tax year, a twenty percent reduction for economic obsolescence should have been applied. Despite this, the Simpson County Board of Supervisors assessed the property’s true value without adjusting for economic obsolescence. During the board’s 2019 equalization meeting, MS HUB objected to the assessment, which was dismissed without a written explanation. MS HUB later received a notice from the chancery clerk that the ad valorem tax roll was approved by the Mississippi Department of Revenue (“MDOR”). MS HUB then filed a Petition for Declaratory Judgment and, in the alternative, Petition for Appeal from Determination of Ad Valorem Tax Assessment, with Simpson County and Baldwin named as defendants. Simpson County filed a motion for summary judgment, asserting the appeal was untimely and that MS HUB had failed to offer competent evidence of the true value of the facility. The motion for summary judgment was granted. MS HUB appealed.

ISSUES

Whether (1) MS HUB’s appeal was timely; (2) MS HUB should have been limited to the evidence it presented to the Board of Supervisors when it objected to the assessment; and (3) there was a genuine issue on a material fact on the question of the true value of the facility.

HOLDING

(1) Because there were twenty days for an appeal after mailing notice of the final decisions to tax assessment after equalization and recapitulation, and because equalization and assessment were used interchangeably as a result of equalization being part of the assessment process, MS HUB’s appeal was timely. (2) Because Miss. Code Ann. §§ 27-35-119 and 11-51-77 must have been construed together, because prior case law could not have been construed to limit a trial in the circuit court to the evidence presented to the Board of Supervisors, and because no legislative or

administrative functions were at issue, the issue was meritless. (3) Because the MDOR’s regulations specifically allowed for the consideration of economic obsolescence in the cost approach for personal property, and because Simpson County failed to show that MS HUB’s proffered expert did not comply with the mandated approach, Simpson County failed to make a prima facie show that summary judgment should have been granted. Therefore, the Supreme Court reversed and remanded the judgment of the Simpson County Circuit Court.

Reversed & Remanded - 2021-CA-00935-SCT (Jan. 19, 2023)

Opinion by Justice Ishee

Hon. Matthew Gordon Sullivan (Simpson County Circuit Court)

Sheldon G. Alston, Norman Elvin Bailey Jr. & Jacob Arthur Bradley for Appellant - William Robert Allen & Lance Wesley Martin for Appellees

Briefed by [Albert Soussis](#)

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PETTIS V. SIMRALL

CIVIL - CONTRACT

PROFESSIONAL RESPONSIBILITY - ATTORNEY-CLIENT RELATIONSHIP - COMMUNICATION

- Miss. R. Pro. Conduct 4.2 provides that in representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so

PROFESSIONAL RESPONSIBILITY - ATTORNEY-CLIENT RELATIONSHIP - INTENT - A

relationship between a lawyer and a client arises when a person manifests to a lawyer the person’s intent that the lawyer provide legal services for the person, and either (a) the lawyer manifests to the person the consent to do so, or (b) the lawyer fails to manifest lack of consent to do so, and the lawyer reasonably knows or should know that the person reasonably relies on the lawyer to provide services

PROFESSIONAL RESPONSIBILITY - ATTORNEY-CLIENT RELATIONSHIP - PARTNERSHIP

REPRESENTATION - The representation of a general partnership by an attorney does not automatically give rise to an attorney-client relationship between the attorney and any of the individual partners

PROFESSIONAL RESPONSIBILITY - DISQUALIFICATION - APPEARANCE OF IMPROPRIETY -

The appearance of impropriety, standing alone, is an insufficient ground on which to base a disqualification

FACTS

Newell Simrall, John Karsten Simrall, and Catherine Rea are relatives and shareholders in the closely-held corporation B.N. Simrall & Son, Inc. (“the Corporation”). In 2010, Karsten, Rea, and Dorman Leist became a part of an amended partnership agreement for the general partnership Simrall & Simrall (“the Partnership”). In 2012, J. Lawson Hester filed a lawsuit on behalf of Newell. The lawsuit named Karsten, the Corporation, the Partnership, and other individuals associated with Karsten as the defendants; the defendants were represented by Penny Lawson. James Pettis and Hester were law partners and Pettis had represented Newell in the past in Newell’s dealings with Karsten regarding the negotiation of a stock purchase and land transfer agreement with Karsten (“the Agreement”). The alleged breach of the Agreement was the act that brought about the underlying litigation. Pettis was involved in the negotiation of the agreement between Newell and Karsten, however, he was not retained to represent Newell in the litigation and did not enter an appearance on behalf of Newell. In 2017, Rea removed herself from the Partnership while the litigation was still ongoing. In 2019, Rea learned that Karsten was aiming to sell land that was the property of the Corporation. In April 2019, Newell and Rea had a meeting with Pettis at his workplace regarding the sale. Rea then conversed with Lawson over the telephone to inform her that she had spoken to Pettis. Next, a meeting with the shareholders and board of directors of the Corporation was held. During both meetings, Pettis questioned Rea about whether she was represented by Lawson or any other attorney in the underlying litigation. Rea answered in the negative and responded that she was not represented by another attorney and did not desire to gain representation for the underlying litigation. Prior to the meeting, Pettis informed Lawson by mail that a board and shareholder meeting was taking place to gain

information of Karsten’s attempted sale of the Corporation’s land. Lawson did not reply to the letter and Lawson and Karsten did not attend the meeting. After the meeting, Pettis delivered a copy of the meeting’s minutes to Lawson’s office. At the delivery, Lawson told Pettis that she was Rea’s attorney and that Pettis should not have held a meeting with Rea because her counsel was not present. Lawson then filed a Motion to Disqualify Counsel for the plaintiff for a violation of Miss. R. Pro. Conduct 4.2 and a Motion to Withdraw as Counsel for the defendants for a perceived conflict of interest among the defendants and Rea. Newell filed a response to both motions. In September 2019, the chancery court entered an agreed order granting Lawson’s motion to withdraw. In 2021, the chancery court entered a judgment disqualifying both Pettis and Hester as the plaintiff’s counsel because when Pettis met with Rea, an individual that already had representation, Pettis violated the Miss. R. Pro. Conduct. Pettis filed a motion for reconsideration, which was denied. Pettis petitioned for interlocutory appeal.

ISSUES

Whether the chancery court (1) improperly disqualified Pettis pursuant to Miss. R. Pro. Conduct 4.2 and (2) had the authority and subject matter jurisdiction to preemptively disqualify Pettis.

HOLDING

(1) Because Rea clearly manifested an intent not to have representation in the litigation, because Rea had no expectation of representation by Lawson or any other attorney, because Rea did not act in reliance upon a presumption of representation by Lawson or any other attorney, because Rea uniformly denied an attorney-client relationship existed between herself and Lawson, because Pettis did not have knowledge of the alleged representation, and because a more substantial showing than the appearance of impropriety was required to justify the disqualification of one’s counsel, the chancery court’s disqualification of Pettis was improper. (2) Because Pettis was not acting in a matter before the chancery court, because Rea was not a party to the underlying litigation, and because Pettis did not represent Newell in the litigation, no conflict of interest existed, and the chancery court lacked subject matter jurisdiction and authority to disqualify Pettis. Therefore, the Supreme Court reversed, rendered, and remanded the judgment of the Warren County Chancery Court.

Reversed, Rendered & Remanded - 2021-IA-01253-SCT (Jan. 19, 2023)

Opinion by Justice Chamberlin

Hon. Vicki R. Barnes (Warren County Chancery Court)

Jason E. Dare & Robert A. Biggs III for Appellant - Travis T. Vance Jr. for Appellee

Briefed by [AnnaGrace Meeks](#)

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SUPREME COURT - ORDERS

CHISM V. STATE

EN BANC ORDER

ORDER

The Supreme Court denied Adam Chism’s Application for Leave to File Motion for Post-Conviction Collateral Relief, noting that (1) the Supreme Court had previously considered and rejected Chism’s claim, (2) Chism’s claim lacked merit, and (3) Chism’s claim was frivolous. Therefore, the claim was insufficient to merit relief from the time, waiver, and successive writ bars. The Supreme Court warned Chism that any future filings deemed frivolous would potentially result in both monetary sanctions and restrictions on filings for post-conviction collateral relief in forma pauperis.

OBJECTION IN PART

Presiding Justice King disagreed with the Supreme Court’s warning that any future filings by Chism would result in both monetary sanctions and restrictions on filings for post-conviction collateral relief in forma pauperis. He noted that the

monetary sanctions and filing restrictions in forma pauperis would serve only to punish Chism. Instead, he recommended that the Supreme Court simply deny or dismiss Chism’s motions which lacked merit. Additionally, he noted that filing restrictions placed on Chism would ultimately remove Chism’s access to the courts, violating his constitutional rights.

Denied with Sanctions Warning - 2018-M-01436 (Jan. 13, 2023)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice King

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 17, 2023

COURT OF APPEALS - CIVIL CASES

BROOKS V. JEFFREYS

CIVIL - PERSONAL INJURY

TORTS - NEGLIGENCE - ELEMENTS - To prevail on a claim of negligence, the plaintiff must prove duty, breach of duty, causation, and injury by a preponderance of the evidence

TORTS - NEGLIGENCE - DUTY - A defendant who creates a hazardous condition has a duty to make safe or warn of that condition

TORTS - NEGLIGENCE - SUMMARY JUDGMENT - Issues of fact sufficient to require a denial of a motion for summary judgment are obviously present where one party swears to one version of the matter in issue and another says the opposite

FACTS

Patricia Brooks hired CBR Cleaning Services (“CBR”) to clean her home, specifically her floors. In February 2019, while CBR employees cleaned, Brooks walked across her living room to mark an appointment on her calendar. While her back was turned, a CBR employee pushed a wet mop across the floor. After Brooks turned and started walking back, she fell, sustaining a broken leg and other injuries to her ankle and knees. Brooks sued CBR’s owner Renee Jeffreys, individually and on behalf of CBR, for negligence. Brooks alleged that CBR created a dangerous condition while her back was turned and failed to warn Brooks of the wet floors. Jeffreys denied responsibility and alleged that Brooks was given adequate warning that the floor was wet prior to her fall. In support of a motion for summary judgment, Jeffreys offered depositions of Brooks, herself, and other CBR employees, arguing that Brooks’s own negligence caused the damages. In the deposition of Brooks, she denied that she was ever warned about the wet floors and claimed she did not know the workers were mopping. However, two CBR employees testified in their deposition that Brooks was warned of their mopping and that the floors were wet. Brooks responded to the motion, arguing there was contradictory testimony as to whether Brooks was warned of the wet floors, creating a genuine issue of material fact, and that there was conflicting evidence over whether Brooks was aware the floors were wet. The trial court granted summary judgment in favor of CBR, finding that the wet floors were a type of danger Brooks could appreciate and expect and that the wet floors were open and obvious, barring a negligence claim. Brooks appealed.

ISSUE

Whether the trial court erred in granting summary judgment in favor of CBR.

HOLDING

Because a question of material fact existed as to whether Jeffreys and CBR created a dangerous condition when the CBR employees mopped behind Brooks, because a genuine issue of material fact existed as to whether Jeffreys and CBR employees took reasonable precautions to protect Brooks, and because there was conflicting evidence whether

Brooks was aware the area behind her had been mopped and was wet before she turned around, the grant of summary judgment was improper. Therefore, the Court of Appeals reversed and remanded the judgment of the Hancock County Circuit Court.

Reversed & Remanded - 2021-CA-01113-COA (Jan. 17, 2023)

Opinion by Chief Judge Barnes

Hon. Lawrence Paul Bourgeois Jr. (Hancock County Circuit Court)

James Kenneth Wetzel & Garner James Wetzel for Appellant - Scott Timothy Ellzey & Madison Chandler Wright for Appellee

Briefed by [Meaghan Pickles](#)

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LIBERTY NAT'L LIFE INS. CO. V. HANCOCK

CIVIL - CONTRACT

CONTRACTS - ARBITRATION - MOTION TO COMPEL - To determine the validity of a motion to compel arbitration under the Federal Arbitration Act, courts consider whether there is a valid arbitration agreement and whether the parties' dispute is within the scope of the arbitration agreement

CONTRACTS - ARBITRATION - SUBMISSION - Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit

FACTS

In 2018, Liberty National Life Insurance Company ("Liberty National") agents Derrick Walker and Alex Rogers approached 22-year-old Kinslee Hancock and offered her a life insurance policy for "free." This would occur by allowing the premiums to come out of her account and she be reimbursed in cash by the agents. Kinslee filled out the paperwork, obtaining a \$41,000 life insurance policy. The agents further explained they wanted her to sign up so they could benefit financially. One of the agents stated the policy was only for a four-month duration, and Kinslee could cancel the policy after that time period. As a result, Kinslee signed the documents and agreed to allow her bank account to be drafted. However, according to Kinslee's complaint, the agents did not pay her back, and she told one of the agents she wanted to cancel the policy. Kinslee then received a Facebook message from one of the agents asking to add her life insurance back for another month, so it would not affect his pay for the following four months. The agent asked for Kinslee to be charged one more time while reimbursing cash in return. Kinslee did not reply. Without her permission, the agent then forged the reinstatement form with Kinslee's signature, and the policy was renewed and Kinslee was charged again for the premiums. Kinslee found out about the payments being taken from her account when she received an overdraft fee as a result of the withdrawal. Despite Kinslee asking for the withdrawals to stop, Liberty National drafted the premium amount out of her bank account the next month. She then contacted the director of the Liberty National office, David Knight, who reimbursed her. Kinslee then sued for fraud, misrepresentation, breach of duty of good faith and fair dealing, unjust enrichment, forgery, and other torts. Walker admitted that he forged Kinslee's signature on the reinstatement form. Liberty National then filed a Motion to Compel Arbitration, Motion to Stay and for Other Relief, arguing that Kinslee's claims were subject to an arbitration agreement. Kinslee argued there was not a valid agreement to arbitrate because her signature was forged on the application reinstating her policy. After a hearing, the trial court denied the motion to compel arbitration, holding that the reinstatement lacked mutual assent. Liberty National appealed.

ISSUE

Whether there was a valid contract that forced the parties to arbitrate following the subsequent fraudulent reinstatement of the life insurance policy after the initial life insurance policy had been canceled.

HOLDING

Because it was undisputed that Kinslee never agreed to renew the life insurance policy that contained the arbitration clause, thus there was no meeting of the minds between the parties, because the record did not reveal evidence to dispute Kinslee's allegation that she did not agree to the reinstatement, because there was no contract left to enforce

once it was terminated, and because the fraud to restart the life insurance policy did not arise out of the original contract, Kinslee could not have been compelled to arbitrate her disputes arising from the reinstatement since she did not agree to have those disputes arbitrated. Therefore, the Court of Appeals affirmed and remanded the judgment of the Pontotoc County Circuit Court.

DISSENT

Judge Emfinger argued that the original contract contained a valid arbitration provision that covered the claims made by Kinslee, including fraud in the reinstatement of the life insurance policy. He opined that because Kinslee’s claims were covered within the scope of the valid arbitration agreement, and because she offered no evidence in support of contractual defenses, Liberty National’s motion to compel arbitration should have been granted.

Affirmed & Remanded - 2021-CA-00605-COA (Jan. 17, 2023)

En Banc Opinion by Judge McCarty - Dissent by Judge Emfinger

Hon. John R. White (Pontotoc County Circuit Court)

Wayne Williams for Appellant - William O. Rutledge III, Joseph Rutledge McMillin & Kaylyn Havrilla McClinton for Appellee

Briefed by [Kara Edwards](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

CREEL V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - EX POST FACTO - A person convicted should be sentenced pursuant to the statute existing on the date of his offense to avoid an ex post facto problem

CRIMINAL PROCEDURE - SENTENCING - EX POST FACTO - A sentence as a habitual offender is not a new jeopardy or additional penalty for earlier crimes, but rather, it is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is repetitive

POST-CONVICTION RELIEF - GUILTY PLEA - VALIDITY - A guilty plea is binding if entered voluntarily, knowingly, and intelligently, meaning that the defendant is advised concerning the nature of the charge against him and the consequences of the plea

FACTS

In 2018, Christopher Creel was charged with felony driving under the influence (“DUI”) for having at least three prior DUI convictions under Miss. Code Ann. § 63-11-30. Creel was also indicted as a violent habitual offender under Miss. Code Ann. § 99-19-83. While the charge was pending, Creel was charged with a fifth DUI in 2019. He was charged with felony DUI as a subsequent offense under Miss. Code Ann. § 63-11-30(2)(d), as well as felony evasion. In 2019, Creel pled guilty to two counts of felony DUI as a non-violent habitual offender and he was sentenced to two concurrent ten-year sentences. Creel also pled guilty to felony evasion as a non-violent habitual offender and was sentenced to a five-year sentence to run consecutively to the DUI sentences. Creel filed a post-conviction collateral relief (“PCR”) motion, claiming that his sentences violated the ex post facto clauses of the United States and Mississippi constitutions. The trial court found that it plainly appeared Creel was not entitled to relief and dismissed his motion. Creel appealed.

ISSUES

Whether (1) Creel was properly sentenced under the statute in place at the time of his offenses and (2) Creel’s guilty pleas were entered knowingly, intelligently, and voluntarily.

HOLDING

(1) Because the trial court sentenced Creel under the version of Miss. Code Ann. § 63-11-30 that was in effect at the time Creel committed his fourth and fifth felony DUI offenses, because Creel's sentence was not a new or additional penalty for his prior DUI convictions but instead a stiffer penalty for his new fourth and fifth DUI convictions, and because Creel had constructive notice of the amendment to Miss. Code Ann. § 63-11-30(2) before committing his fourth and fifth DUI offenses, Creel's sentence was not an ex post facto violation. (2) Because Creel stated that he made his guilty pleas freely, voluntarily, and with a full understanding, because Creel's attorney supported his guilty pleas as voluntarily and knowingly made, and because Creel understood the charges against him, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2021-CP-00977-COA (Jan. 17, 2023)

Opinion by Judge Lawrence

Hon. M. Bradley Mills (Rankin County Circuit Court)

Pro se for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Mason Scioneaux](#)

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HATHORNE V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - INDICTMENT - CONTROLLED SUBSTANCES - An indictment that uses a code or trade name for a controlled substance rather than a chemical description does not fail to allege an essential element; however, it is insufficient to allege an unlisted pseudonym for a controlled substance and leave the jury to connect the dots

POST-CONVICTION RELIEF - WAIVER - DEFENSES - Miss. Code Ann. § 99-39-21 provides that the failure by a prisoner to raise objections, defenses, claims, questions, issues, or errors either in fact or law which were capable of determination at trial and/or on direct appeal shall constitute a waiver thereof and shall be procedurally barred

FACTS

Kelton Hathorne was arrested in 2015 after attempting to flee a traffic stop. Hathorne was handcuffed, patted down, and placed in the back of Officer Brad Nix's patrol car. Officer Nix searched the back of the patrol car after arriving at the station and found a bag containing a crystallized substance. The substance was tested and revealed to be a designer drug known as ethylone. Police further determined the substance belonged to Hathorne and he was charged with possession of a Schedule One Controlled Substance. At trial, a forensic scientist and drug analyst testified to the identification of the substance but did not correlate it to any of the controlled substances listed as Schedule One. The jury found Hathorne guilty and he was sentenced to thirty years. Hathorne's conviction was affirmed on appeal and the Supreme Court denied certiorari. Hathorne then filed an application for leave to file a motion for post-conviction relief following a decision by the Court of Appeals in *Payne v. State*. Hathorne argued his indictment did not charge a crime, and the Supreme Court granted his application. The trial court denied relief. Hathorne appealed.

ISSUES

Whether (1) the indictment was defective and (2) Hathorne's claim was barred by the Uniform Post-Conviction Collateral Relief Act.

HOLDING

(1) Because neither the forensic scientist and drug analyst nor any other witness stated that ethylone contained any Cathinone or amphetamine, because there was no direct connection of ethylone to any named Schedule One substance, which failed to connect the dots for the jury, because the State provided no evidence that ethylone was a recognized trade name or that its pseudonym was in widespread use, and because there was no evidence that ethylone was on any federal schedule, the indictment was defective. (2) Because Hathorne's claim was capable of determination at trial or on

direct appeal, Hathorne’s challenge to the indictment was barred. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

DISSENT

Judge McCarty argued that where an indictment was defective and also failed to charge a crime, the conviction must have been vacated and the incarcerated person be free. He further argued that upholding Hathorne’s conviction and sentence for a law that does not exist, a new crime has been defined and there was a risk in overrunning the boundaries of the judiciary by creating a new crime ex post facto.

Affirmed - 2021-CA-00306-COA (Jan. 17, 2023)

Opinion by Judge Greenlee - Dissent by Judge McCarty

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Sanford E. Knott for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Jacoby Gilmore](#)

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SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - CONTRADICTORY TESTIMONY -

Where an affidavit is overwhelmingly belied by unimpeachable documentary evidence in the record such as a transcript or written statements of the affiant to the contrary, to the extent that the court can conclude that the affidavit is a sham, no hearing is required

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - NEWLY-DISCOVERED EVIDENCE -

To be entitled to an evidentiary hearing, a defendant must demonstrate, by affidavit or otherwise, that there are unresolved issues of fact that, if concluded favorable to the defendant, would warrant relief; however, this may not be accomplished through the defendant’s own unsupported allegations

FACTS

Doris Smith was sentenced to forty years for second-degree murder and fifteen years for attempted robbery after she pled guilty to both charges. At the time of the plea hearing, Smith stated that she was entering her pleas voluntarily and that she was not under the influence of alcohol or drugs. Additionally, Smith’s attorney stated that Smith was of sound mind. While recalling the events of the crime, Smith stated that she committed the murder, but following the conviction, Smith argued that her pleas were involuntary and filed a motion for post-conviction collateral relief (“PCR”) to vacate the judgment against her. With this motion, Smith attached a personal affidavit claiming that a bandana found at the crime scene belonged to Andre Thompson and that he was the one who committed the murder but had threatened her to take the blame. Additionally, Smith attached several affidavits claiming that she was under the influence of drugs when she confessed to police and when she entered her plea. Smith also attached an affidavit from her husband, which stated that Smith was afraid of Thompson and that she was high on drugs the day before entering the plea. There were other affidavits from Smith’s sister and father stating that Smith was on drugs the day prior and during the plea hearing. The trial court denied Smith’s PCR motion without an evidentiary hearing, holding that her claim was frivolous and lacked merit. The trial court further found that all necessary facts and information required for a guilty plea were ascertained, that Smith failed to specifically allege the documents contained material facts not previously presented, and that Smith failed to provide sufficient evidence that her plea was involuntary. Smith appealed.

ISSUES

Whether (1) Smith knowingly, intelligently, and voluntarily pled guilty to second-degree murder and attempted robbery and (2) the trial court erred when it denied Smith’s PCR motion without conducting an evidentiary hearing.

HOLDING

(1) Because Smith’s self-serving affidavit was the only evidence presented to support her allegation that Thompson coerced and threatened her, because Smith’s assertions of coercion, threat, and intoxication in her affidavit directly contradicted her sworn statements and her attorney’s statements at the plea hearing, the trial court did not err in finding the issue lacked merit. (2) Because Smith waived her right to a trial and her right to confront the report and its author when she voluntarily pled guilty, and because the evidence of the bandana was available to Smith prior to her entering the guilty pleas, Smith’s motion failed to allude to, allege, or raise the existence of any material fact that was not previously available to be presented. Therefore, the Court of Appeals affirmed the judgment of the Wilkinson County Circuit Court.

Affirmed - 2021-CA-01259-COA (Jan. 17, 2023)

Opinion by Judge McDonald

Hon. Lillie Blackmon Sanders (Wilkinson County Circuit Court)

Wayne Dowdy for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Olivia Schwab](#)

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COURT OF APPEALS - CRIMINAL CASES

ANDERSON V. STATE

CRIMINAL - FELONY

EVIDENCE - OTHER BAD ACTS - ADMISSIBILITY - Where another crime or act is so interrelated to the charged crime so as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences, proof of the other crime or act is admissible

EVIDENCE - OTHER BAD ACTS - ADMISSIBILITY - While other-bad-acts evidence is inadmissible to prove propensity, under Miss. R. Evid. 404(b)(2), other-bad-acts evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel’s performance was (1) deficient and (2) that the deficiency prejudiced the defense of the case

FACTS

In 2020, Clarence Parker drove up his driveway where he encountered a silver Tahoe. As the Tahoe left, Parker made note that the driver was wearing a camouflage hoodie and of the license plate number. Parker saw his dog outside, which would have required someone to enter his home to let the dog out. Parker called the Union County Sheriff’s Department on suspicion he had been robbed. Once Deputy Brian Carpenter arrived, he and Parker both went inside Parker’s house. Parker found a pottery cup and his wife’s jewelry box missing along with several other items. Parker gave Deputy Carpenter a description of the driver of the Tahoe and the license plate number. Parker then gave him video recordings obtained from security cameras from Parker’s in-law’s house. The video recordings showed the driver of the Tahoe entering Parker’s house. Deputy Carpenter was unable to identify the vehicle from the license plate number, but he used a special computer program to narrow down the Tahoe’s possible owners. The search revealed Beverly Agnew as a possible owner of the Tahoe. Deputy Carpenter also issued a “Be on the Lookout” alert for the Tahoe in neighboring counties. The Marshall County Sheriff’s Department responded to the alert stating similar incidents involving a silver Tahoe had been reported. After Deputy Carpenter was able to confirm the probable owner of the Tahoe was Agnew, he interviewed Agnew and showed Agnew photographs from the home surveillance footage. Agnew identified Anderson as the individual in the photographs and informed investigators that Anderson had rented a room at the Clarion Inn in Tupelo. Investigators secured an arrest warrant for Anderson and a search warrant for the hotel room. When investigators searched Anderson’s hotel room, they only found a jewelry hanger. A hotel manager informed

investigators that a woman, who was later identified as Sherry Holland, emptied the hotel room the previous night. Anderson was then arrested. Deputy Carpenter traveled to Holland's house to question her. Holland told Deputy Carpenter that Anderson called her and informed her that he had been arrested for a traffic violation and he needed Holland to go to his hotel room and remove his belongings. Holland went and took Anderson's belongings to her home. Holland surrendered the items to law enforcement and identified Anderson in the photo taken from Parker's surveillance video. Parker identified the stolen items and the camouflage hoodie that was worn by the driver of the Tahoe. After Parker's home was burglarized, the Lafayette County Sheriff's Department reported the home of Phyllis Wait was also burglarized. Wait's neighbor reported a silver Tahoe turning into the driveway of Wait's house. Wait was called to the sheriff's department to identify the stolen items from Anderson's hotel room. Wait identified items that were stolen from her house. Anderson was subsequently indicted for the burglary of Parker's dwelling in violation of Miss. Code Ann. § 97-17-23(1). Anderson was also charged as a habitual offender under Miss. Code Ann. § 99-19-81 because of Anderson's prior felony convictions. During Anderson's trial, Parker, Deputy Carpenter, and Holland testified. Anderson's objection to Wait was overruled and Wait testified that her home was burglarized and that the back door to her home had been kicked in and jewelry, two car titles, birth certificates, and an iPad were stolen. Anderson moved for a directed verdict once the State rested, which the circuit court denied. The jury found Anderson guilty and the circuit court sentenced Anderson as a non-violent habitual offender to serve twenty-five years. Anderson filed a motion for judgment notwithstanding the verdict or a new trial. The circuit court denied the motion. Anderson appealed.

ISSUES

Whether (1) the circuit court erred in admitting other-bad-acts evidence and (2) Anderson's representation was constitutionally ineffective.

HOLDING

(1) Because the evidence of the Marshall County burglary was so interrelated to the charged crime that the State had to include it to tell a coherent story of the crime, because the identification of the Tahoe involved in the Marshall County burglary led to the identification of Anderson as the perpetrator of the burglary at issue, and because the reference to the Marshall County burglary was admissible for the alternative purpose of proving both identity and Anderson's modus operandi, the circuit court did not err in admitting the evidence. (2) Because the alleged hearsay testimony that Anderson cited as error was admissible, because the hearsay testimony regarding that burglary was necessary to show the course of the investigation, and because Anderson's counsel did not contemporaneously object to that testimony because he had already unsuccessfully challenged it in his pre-trial motion in limine, Anderson's allegation that his counsel failed to object did not amount to constitutionally ineffective assistance. Therefore, the Court of Appeals affirmed the judgment of the Union County Circuit Court.

Affirmed - 2021-KA-01340-COA (Jan. 17, 2023)

Opinion by Judge McDonald

Hon. John Kelly Luther (Union County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Ross Dockins](#)

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JONES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER COMMENT - Unless serious and irreparable damage results from an improper comment, the judge should admonish the jury then and there to disregard the improper comment

CRIMINAL PROCEDURE - DIRECT APPEAL - INEFFECTIVE ASSISTANCE OF COUNSEL - Ineffective- assistance-of-counsel claims may be brought on direct appeal when: (1) the record affirmatively shows

ineffectiveness of constitutional dimension; or (2) the parties stipulate that the record is adequate and the Court determines that the findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed

FACTS

In 2018, Rosetta Ellis's mobile home located in Port Gibson had been set on fire. Once the fire was extinguished, Ellis's body was found lying face down on her bed with a blanket covering her body. When her body was turned over, there were bruises on her face and a considerable amount of blood coming from her nose and mouth. A deputy from the Claiborne County Fire Department who responded to the scene first testified that the home appeared "kind of ransacked" with items strewn everywhere. The Claiborne County Coroner testified that Ellis appeared to have injuries consistent with head trauma, and observed a scarf wrapped around her neck and her purse found underneath her body. The deputy fire marshal testified that upon his investigation of the fire, the fire was deliberately started in three different locations inside the home: the living room, the master bedroom, and the hallway to a second bedroom. A neighbor testified that she observed Roy Jones walking along the pathway from Ellis's home back to his home and that no one else was seen in the vicinity at that time. On the day of Ellis's death, Jones's movements were being monitored via an electronic ankle monitor which indicated that Jones was near Ellis's home between 9:13 a.m. and 12:17 p.m. on the day of the crime. Three days after the crime, Jones was interviewed about Ellis's murder and the fire at her home. The investigator testified that Jones's responses about his whereabouts at the time of the fire were inconsistent with the GPS records from the ankle monitor. The investigator also interviewed a jailhouse informant who gave a statement regarding admissions Jones made to him about the details of Ellis's murder. After Jones's arrest, the investigator discovered scratches on Jones's hands, back, and shoulder. The investigator obtained DNA samples from Jones which matched DNA samples found inside Ellis's home and underneath Ellis's fingernails. An expert in forensic pathology testified that Ellis had multiple indications of blunt force trauma to her head, including blood in her hair, scalp lacerations, and a fractured skull. Additionally, the lack of soot found in Ellis's larynx indicated that Ellis was likely already dead before the fire started. The autopsy revealed that Ellis's cause of death was strangulation which was likely caused by the scarf wrapped around her neck. After the State rested its case-in-chief, the defense moved for a directed verdict. The circuit court denied the motion, and the jury found Jones guilty of capital murder with the underlying felony of robbery. Jones filed a motion for a new trial, which the circuit court denied as untimely. Jones appealed.

ISSUES

Whether (1) the circuit court erred in denying Jones's motion for a mistrial; (2) the State provided sufficient evidence to convict Jones of capital murder with the underlying felony of robbery; (3) Jones's conviction was against the overwhelming weight of the evidence; and (4) Jones's trial attorney rendered ineffective assistance of counsel.

HOLDING

(1) Because the circuit court immediately interrupted the potential juror's response, because the circuit court granted the motion to strike the comment from the record, because the prospective jurors were repeatedly questioned about their ability to remain fair and impartial, and because the circuit court properly instructed the jurors at the conclusion of Jones's trial about their duty to consider only admissible testimony and evidence and to disregard any remarks the circuit court excluded, the comment did not result in such irreparable harm or prejudice to Jones so as to warrant a mistrial. (2) Because the jury was free to consider whether any inconsistencies existed in witness testimony and to choose which portions of testimony to accept or reject, because the State presented evidence that Ellis died from strangulation rather than smoke inhalation and that Ellis's home appeared uncharacteristically messy following her death, because the jury heard testimony that Jones was in the vicinity of Ellis's residence around the time of her murder, because Jones's ankle monitor confirmed that he was in the vicinity of Ellis's residence both before and near the time of her death, and because DNA consistent with Jones's DNA sample was found under Ellis's fingernails, the State provided sufficient evidence for a rational juror to conclude that the State proved each element of robbery and for a reasonable juror to convict Jones of capital murder with the underlying felony of robbery. (3) Because the jury weighed the testimony and the evidence and settled questions of both weight and credibility in favor of the State, the verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. (4) Because the record did not affirmatively show ineffectiveness of constitutional dimensions or lack of merit, and because the State did not stipulate that the record was adequate for appellate review of Jones's claims on direct appeal, Jones's ineffective-assistance claims could not be appropriately addressed on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Claiborne County Circuit Court.

Affirmed - 2021-KA-01263-COA (Jan. 17, 2023)

Opinion by Judge Smith

Hon. Tomika Harris Irving (Claiborne County Circuit Court)

Alison O'neal McMinn & Catherine Leigh Pettis for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Madison McLean](#)

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