BriefServ℠

Weekly Newsletter

Mississippi Cases Editors: Ashley House & Mason Scioneaux

MISSISSIPPI SUPREME COURT DECISIONS – MAY 4, 2023

SUPREME COURT - CIVIL CASES

PARKER V. ROSS

CIVIL - WILLS, TRUSTS, AND ESTATES

CIVIL PROCEDURE - PROCEDURAL BAR - FAILURE TO RAISE - An issue not raised before the lower court is deemed waived and is procedurally barred because a trial judge cannot be put in error on a matter which was not presented to him for decision

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DEFENSE - A statute of limitations is an affirmative defense that can be waived if not raised

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - SAVINGS STATUTE - Miss. Code Ann. § 15-1-59 provides that if any person entitled to bring an action shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the action after his disability shall be removed as provided by law

CIVIL PROCEDURE - LIMITATION OF ACTION - UNSOUND MIND - The test for determining whether a person is of unsound mind for purposes of tolling a statutory limitations period is whether the individual's mind is so unsound, or weak in the mind, or so imbecile, no matter what cause, that he cannot manage the ordinary affairs of life; the test requires a showing of particularity in the facts rather than mere broad and conclusory assertions

FACTS

James Hal Ross constructed a sequence of trusts before his death to benefit his wife, Suzanne Ross, and his sons from a previous marriage, James Hal Ross Jr., Jason Hurdle Ross, and Roy Hal Parker, as conservator of William Mathew Ross (collectively, "Ross sons"). In July 2005, James's will was probated and the estate was closed. Later, in September 2016, Parker, as conservator of Mathew, filed a complaint, alleging mismanagement of the trusts and the improper selling of trust property by Suzanne. Parker amended the complaint to include the remaining Ross sons as plaintiffs. Suzanne filed a motion to dismiss and sought a venue transfer. In June 2018, the motion to transfer to Rankin County Chancery Court was granted by the Hinds County Circuit Court with no consideration of the motion to dismiss. The Ross sons then filed a supplemental response to the motion to dismiss that was unaddressed before the venue change and contended that the statute of limitations did not bar their action because all of the claims were timely and the statute of limitations was tolled because of Mathew's legal mental disability. The chancery court denied Suzanne's motion to dismiss and allowed the Ross sons to file a second amended complaint. In their second amended complaint, the Ross sons argued that the management of the trusts resulted in assets being transferred away from them. Suzanne filed a motion to dismiss and argued that the statute of limitations had run because James died in 2003, Suzanne's most recent action took place in 2012, and the amended complaint was not filed until 2015. The chancery court found that the general three-year statute of limitations applied and that the complaint was untimely, and granted the motion to dismiss. On appeal, the Ross sons argued that under Miss. Code Ann. § 15-1-7, their claims were subject to a ten-year statute of limitations which applied to the recovery of land, and under Miss. Code Ann. § 15-1-39 their claims were subject to a ten-year statute of limitations because their cause of action was related to the existence of a trust and William's mental disability tolled the statute of limitations. The Ross sons further attached affidavits by doctors and past statements by Suzanne finding that William suffered from autism and needed assistance in managing his affairs. The Ross sons failed to assert the ten-year statute of limitations arguments to the chancery court. The Court of Appeals did not address the failure to assert the ten-year statute of limitations arguments but instead concluded that the chancery court erred by not applying the ten-year statute of limitations to some of the claims. The Court of Appeals reversed and remanded the case

to the chancery court to determine which of the Ross sons' claims dealt with the mismanagement of the trust and recovery of land. The Supreme Court granted appellants' writ of certiorari.

ISSUES

Whether the Court of Appeals (1) erred by basing its decision on an issue that had not been raised before the chancery court; and (2) erred by finding the statute of limitations was not tolled due to the disability of William Mathew Ross.

HOLDING

(1) Because the Ross sons failed to assert the ten-year statute of limitations arguments to the chancery court, because the ten-year statute of limitations arguments were not raised until appellants filed their first brief in the Court of Appeals, because an issue not raised before the lower court was deemed waived and procedurally barred, and because the statute of limitations was an affirmative defense that could be waived if not raised, the Ross sons failed to adequately raise and preserve the statute of limitations affirmative defense for appeal, and the Court of Appeals erred in basing its decision on an issue that had not been raised before the chancery court. (2) Because the primary test for unsoundness of mind was whether one may manage his own ordinary affairs of life and because the Ross sons provided affidavits of professionals and past statements by Suzanne to establish that William could not read or write and was unable to manage his daily affairs without considerable assistance, the Court of Appeals did not err by remanding the tolling and statute of limitations issues to the trial court. Therefore, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals, and reinstated, affirmed in part, reversed in part, and remanded in part the judgement of the Rankin County Chancery Court.

Affirmed in Part & Reversed in Part; Reinstated, Affirmed in Part, Reversed in Part, & Remanded in Part - 2020-CT-01055-SCT (May 4, 2023)
En Banc Opinion by Justice Coleman
Hon. Haydn Judd Roberts (Rankin County Chancery Court)
Chuck McRae & Matthew Bartin Alliston for Appellants - Adrian Westbrook Mills, Luke Dove, Cecil Maison Heidelberg, R. Mark Hodges, James A. Bobo, Joshua Michael Coe, Charles Edward Cowan, Michael Allen Akers, & Mark C. Baker Sr. for Appellees
Briefed by AnnaGrace Meeks
Edited by Thomas Simpson & Mason Scioneaux

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WAGNER V. ANDREACCHIO

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

FIRST AMENDMENT - PUBLIC RECORDS - PUBLICATION - The First Amendment protects the publication of legally obtained public records
CIVIL PROCEDURE - PLEADINGS - MOTION TO DISMISS - A motion to dismiss should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of their claim

FACTS

In 2014, the Andreacchios' son Christian passed away. The Meridian Police Department ruled his death a suicide, but the Andreacchios believed Christian's death was the result of a homicide. As a result, the Mississippi Bureau of Investigations stepped in to investigate. In 2016, the Andreacchios requested the investigative file. The request was denied because the investigation was ongoing. In 2018, the Mississippi Attorney General's Office presented the matter to a grand jury, which did not find probable cause to return an indictment relating to Christian's death. Then, after the grand jury presentation, the Andreacchios asked Special Assistant Attorney General Marvin Sanders for a copy of the investigative file. Sanders initially rebuffed their request by citing policy about not releasing records of ongoing investigations. The Andreacchios then filed a request through the procedures outlined in the Mississippi Public Records Act. In response, Sanders informed the Andreacchios the file was going to be released because the investigation was

over. In July 2019, Sanders mailed the Andreacchios a jump drive containing the investigative file with portions redacted. Sanders also mailed jump drives to three others who had made similar public records requests. Wagner, the uncle of Christian's girlfriend at the time of his death, also asked Sanders for a copy of the file. Sanders then emailed Wagner portions of the investigative file. Wagner began posting information from the file that included Christian's autopsy photos on a website called Truth in Justice. The Andreacchios sued Wagner for intentional infliction of emotional distress, gross negligence, and invasion of privacy. The Andreacchios later amended their complaint to add Sanders as a defendant and to add a claim of conspiracy to commit intentional infliction of emotional distress. Wagner responded with a motion to dismiss that stated the investigative file was public record furnished to him by the Attorney General's Office and therefore protected by the First Amendment. Sanders responded with a motion for judgment on the pleadings and asserted res judicata, based on the Mississippi Ethics Commission's order that Sanders release the investigative file, arguing he did not violate the Public Records Act. Following a hearing, the trial court denied both motions. Wagner petitioned for interlocutory appeal.

ISSUES

Whether the trial court erred in denying Wagner's motion to dismiss.

HOLDING

Because the investigative file was a public record and because Wagner's receipt of the investigative file was not unlawful, the trial court erred in denying Wagner's motion to dismiss. Therefore, the Supreme Court reversed and rendered the judgment of the Lamar County Circuit Court.

DISSENT

Justice Griffis argued that it could not be determined whether Wagner lawfully obtained the investigative file. Therefore, the trial court's denial of the motion to dismiss was proper.

Reversed & Rendered - 2021-IA-01199-SCT (May 4, 2023)
En Banc Opinion by Justice Maxwell
Hon. Anthony Alan Mozingo (Lamar County Circuit Court)
Jason Hood Strong, Thomas Ray Julian, & Seth Magill Hunter for Appellant - Cynthia Hewes Speetjens & Ira Kimbrell Rushing for Appellees
Briefed by Ross Dockins
Edited by Kayla Tran & Mason Scioneaux

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Wallace v. State

Civil - Other

STATUTES - DEFINITIONS - INTERPRETATION - When there are several different sections of a Code that deal with the same subject-matter, these sections are to be construed to give harmony to each, so that each shall stand with as full effect as possible consistently with the other related sections and each section shall be made to fit into the general and dominant policy of the particular system of which they are a part

LAW ENFORCEMENT - ACCUSATIONS AGAINST OFFICERS - PROBABLE CAUSE HEARING - Under Miss. Code Ann. § 99-3-28(1)(a)(i), a sworn law enforcement officer in this state that is accused of a misdemeanor or felony while in the performance of official duties is entitled to a probable cause hearing before a circuit court judge to determine if adequate probable cause exists for the issuance of a warrant

LAW ENFORCEMENT - OFFICERS - DEFINITION - Under Miss. Code Ann. § 45-6-3(c), a law enforcement officer is defined as any person appointed full-time by the State or any political subdivision, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminal and the enforcement of the criminal and traffic laws of this state or the ordinances of any political subdivision thereof

LAW ENFORCEMENT - APPOINTMENTS - CERTIFICATION - Under Miss. Code Ann. § 45-6-11(3)(a), a person cannot be appointed or employed as a law enforcement officer or a part-time law enforcement officer unless that person has been certified as being qualified; certified shall mean the Board on Law Enforcement Officer Standards and Training has acknowledged that all requirements mandated by the Law Enforcement Officers Training Program have been achieved and that a certificate has been issued as documentation of the same

LAW ENFORCEMENT - OFFICERS - POLICE POWERS - Under Miss. Code Ann. § 45-6-17(1), any full-time or part-time law enforcement officer who is not certified as qualified shall not be authorized to exercise the powers of law enforcement officers generally, and particularly shall not be authorized to exercise the power of arrest

LAW ENFORCEMENT - OFFICERS - TRAINEES - Under Miss. Code Ann. § 45-6-3(e), a law enforcement trainee shall mean any person appointed or employed in a full-time, part-time, reserve or auxiliary capacity by the state or any political subdivision thereof for the purposes of completing all the selection and training requirements established by the board to become a law enforcement officer or a part-time law enforcement officer; the term "law enforcement trainee" also includes any employee of the Department of Public Safety so designated by the Commissioner of Public Safety; individuals under this paragraph shall not have the authority to use force, bear arms, make arrests or exercise any of the powers of a peace officer

FACTS

In April 2020, Matthew Wallace was hired by the Centreville Police Department. In September 2021, Wallace and another officer were dispatched to a scene where multiple juveniles were riding all-terrain vehicles in the town limits. After arriving on the scene, an altercation occurred. During the altercation, Wallace retrieved the police-issued pepper spray and released it onto the juveniles. Subsequently, one of the juveniles and his mother filed charges against Wallace for simple assault on a minor. A probable cause hearing was set for Wallace in September 2021. However, prior to the hearing, the State motioned for the trial court to determine whether Wallace was entitled to a probable cause hearing. At a hearing for the State's motion, Wallace testified that he had worked for the Centreville Police Department for eighteen months, he did not graduate from a law enforcement academy, and he was not a certified law enforcement officer. The trial court determined that Wallace was not a law enforcement officer under Miss. Code Ann. § 45-6-3 because he had not completed his certification. Thus, he was not eligible for a probable cause hearing under Miss. Code Ann. § 99-3-28(1)(a)(i). Following this determination, Wallace made a motion pursuant to Miss. Code Ann. § 99-3-28(1)(a)(i) asserting that he was entitled to a probable cause hearing because he was a law enforcement officer with the Centreville Police Department, and the charges filed against him were the result of actions taken during the scope and course of his employment as a law enforcement officer. In November 2021, the trial court issued an order denying Wallace's motion for a probable cause hearing because Wallace was not a sworn law enforcement officer authorized to make arrests under Miss. Code Ann. § 99-3-28. Further, the trial court based its decision on Miss. Code Ann. §§ 45-6-11(3)(a) and -17(1) that required Wallace to be certified, but he was not certified. Wallace appealed.

ISSUES

Whether (1) Miss. Code Ann. § 99-3-28(1)(a)(i) required Wallace to be certified for the statute to apply and (2) Wallace was a sworn law enforcement officer under Miss. Code Ann. § 45-6-3(c).

HOLDING

(1) Because Miss. Code Ann. § 99-3-28(1)(a)(i) provided Wallace was only entitled to a probable cause hearing if he was a sworn law enforcement officer as defined by Miss. Code Ann. § 45-6-3(c), because Miss. Code Ann. §§ 45-6-11(3)(a) and -17(a) provided that Wallace be certified before he was appointed as a law enforcement officer with vested authority, because Miss. Code Ann. §§ 99-3-28(1)(a)(i) and 45-6-3(c) were to be read together with Miss. Code Ann. §§ 45-6-11(3)(a) and 45-6-17(1) since the statutes pertained to the same subject matter and did not conflict with or supersede each other, Miss. Code Ann. § 99-3-28(1)(a)(i) required Wallace to be certified for the statute to apply. (2) Because Wallace admitted he was not certified under Miss. Code Ann. § 45-6-11(3)(1), because Wallace stated he did not graduate from a law enforcement academy, because Wallace did not complete all selection and training requirements, because Wallace was not a law enforcement officer by statute who had the power to bear arms and make arrests, because law enforcement trainees were not entitled to probable cause hearings, and because a law enforcement trainee could not be employed for more than one year, Wallace was not a sworn law enforcement officer under Miss. Code Ann. § 45-6-3(c). Therefore, the Supreme Court affirmed the judgment of the Amite County Circuit Court.

Affirmed - 2022-CA-00119-SCT (May 4, 2023)
Opinion by Justice Coleman
Hon. Debra W. Blackwell (Amite County Circuit Court)
Aisha Arlene Sanders for Appellant **-** Ashley Lauren Sulser (Att'y Gen. Office) for Appellee
Briefed by Kayla Tran
Edited by Kennedy Gerard & Ashley House

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 2, 2023

COURT OF APPEALS - CIVIL CASES

HAWTHORNE V. MISS. STATE HOSP.

CIVIL - WORKERS' COMPENSATION

JUDICIAL PROCESS - SANCTIONS - JUDICIAL DISCRETION - A court has the inherent power to impose discretionary sanctions on a party as a result of noncompliance with a court order
CIVIL PROCEDURE - DISCOVERY - EX PARTE CONTACT - Nonconsensual ex parte contact is not a permitted formal discovery method and therefore an employer, the carrier, their legal representatives, or agents may not engage in such contact with treating physicians after litigation has begun
WORKERS' COMPENSATION - CREDIBILITY OF EVIDENCE - CONFLICTING MEDICAL TESTIMONY - With conflicting medical testimony, the Commission has the responsibility to apply its expertise and determine which evidence is more credible

FACTS

Charles Hawthorne, a police officer, was employed by Mississippi State Hospital ("hospital") and injured his knee trying to restrain a patient on the job. Following the incident, Hawthorne filed a workers' compensation claim. The Administrative Judge ("AJ") that oversaw the case ordered an independent medical evaluation ("IME"). Accordingly, ex parte communication between attorneys and the doctor or the doctor's staff was explicitly prohibited by the IME order. Nonetheless, counsel for the hospital contacted the doctor. Subsequently, the doctor deleted a line about Hawthorne's knee injury and its impact on Hawthorne, effectively amending his original report. Hawthorne's counsel learned of the contact and subsequent amendment and filed a motion for sanctions against the hospital's counsel for noncompliance with the order's ex parte communication requirement. The AJ determined the hospital's counsel had not engaged in improper ex parte communication with the hospital and that Hawthorne had not suffered an industrial loss of use from his work-related injury. Hawthorne sought review from the Mississippi Workers' Compensation Commission ("MWCC"). After review, MWCC found the hospital's counsel's ex parte contact violated the IME order and sanctioned the hospital's counsel, striking the amended report and ordering the hospital to pay all costs related to the doctor's deposition. In addition, MWCC found that Hawthorne had suffered a forty percent loss of industrial use of his left lower extremity. Hawthorne appealed, and the hospital cross-appealed.

ISSUES

Whether MWCC erred by (1) not levying stronger sanctions against the hospital's counsel and (2) finding that Hawthorne sustained a forty percent loss of industrial use of his left lower extremity.

HOLDING

(1) Because the hospital's counsel admitted to violating the AJ's order that prohibited ex parte communications when counsel contacted the hospital's nurse to change the report, and because MWCC had the discretion to impose sanctions that it determined appropriate for noncompliance with the IME order, the MWCC did not err by not levying stronger sanctions against the hospital's counsel. (2) Because MWCC considered the evidence as a whole and found Hawthorne unable to perform the substantial acts of his usual employment, and because the finding was supported by substantial

credible evidence, MWCC did not err by finding that Hawthorne sustained a forty percent loss of industrial use of his lower left extremity. Therefore, on direct appeal, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission. On cross-appeal, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2022-WC-00040-COA (May 2, 2023)
Opinion by Judge McCarty
Mississippi Workers' Compensation Commission
K. Caroline Boyd for Appellant **-** Michael D. Young & Andrew W. Alderman for Appellee
Briefed by Emilee Crocker
Edited by Doug Reynolds & Ashley House

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Manley v. Manley

Civil - Domestic Relations

FAMILY LAW - PROPERTY SETTLEMENT AGREEMENTS - INTENT - The provisions of a property settlement agreement executed prior to the dissolution of marriage must be interpreted by courts as any other contract
FAMILY LAW - CHILD SUPPORT - ARREARAGES - Although a parent is entitled to receive child support credit for expenses he paid directly to a child, the evidence of direct payments must be clear and convincing
FAMILY LAW - CHILD SUPPORT - MODIFICATION - Party making extrajudicial modification to child support obligations does so at that party's own peril

FACTS

In November 2012, George Manley and Julia Manley were granted a divorce based on the grounds of irreconcilable differences. A property settlement agreement ("PSA") executed by the parties was incorporated into the divorce judgment. Then, in August 2019, Julie filed a motion requesting that the chancery court cite George for contempt. According to the PSA, George was obligated to pay one-half of all retirement pay each month, which he had not done, and his child support was to be adjusted annually upon the presentation of his tax return to Julie. However, Julie asserted that George failed to provide any documentation of his prior year's income, and he had not paid child support since March 2019. Julie requested that the chancery court hold George in contempt of the parties' divorce judgment and order him to pay past-due amounts. In March 2021, the chancery court found that the retirement pay provision required the parties to equally divide George's total military retirement pay and that the amount of George's total monthly retirement pay at the time of the agreement was $1,643. The chancery court entered its final judgment in favor of Julie and found George in civil contempt for failing to pay Julie the monthly amount of $821.50 of retirement pay as required by the PSA. The chancery court found George liable to Julie for payment of past-due obligations to reflect the difference in what George paid Julie and the amount he owed. The chancery court also determined that the child support arrearage totaled $10,200.00 for all support through March 2021. Additionally, George owed $65,377.60 in unpaid retirement pay pursuant to the PSA. George appealed.

ISSUES

Whether the chancery court erred in (1) finding that George failed to comply with his obligations in the PSA requiring him to divide and distribute half of his military retirement to Julie and (2) failing to give George credit for alleged in-kind contributions that he made directly to the children as child support.

HOLDING

(1) Because the chancery court used George's total gross military retirement pay and the total amount of income George would have received if he had not signed a Veterans Administration ("VA") waiver, because documents at the time of George and Julie's PSA and divorce indicate $1,643 was intended to mean George's gross pay and was also corroborated by the PSA, and because under the terms of the PSA as written, the Court of Appeals was constrained to find that

"retirement pay" as listed in George and Julie's PSA meant "gross pay" which also included George's disability pay from his VA waiver, the chancery court did not err in finding that George failed to comply with his obligations in the PSA that required him to divide and distribute half of his military retirement to Julie. (2) Because the only evidence George presented to prove that he made in-kind contributions directly to their son and daughter or to prove that the contributions were used for purposes consistent with the child support order came from his own testimony, the chancery court did not err in failing to give George credit for alleged in-kind contributions that he made directly to the children as child support. Therefore, the Court of Appeals affirmed the judgment of the Clarke County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Presiding Judge Carlton agreed that the chancery court's award of past-due child support should be affirmed. However, he argued that the chancery court erred in determining the amount of payment Julie was entitled to receive based upon George's gross pay and total military retirement income pursuant to the Uniformed Services Former Spouse's Protection Act ("USFSPA"). The chancery court did not have the authority to include the portion of George's pay that he waived through the VA as part of Julie's share. Therefore, he argued the chancery court incorrectly treated the entirety of George's retirement pay and disability pay as marital property.

Affirmed - 2021-CA-00700-COA (May 2, 2023)
Opinion by Judge Smith - Concurrence in Part & Dissent in Part by Presiding Judge Carlton
Hon. Charles E. Smith (Clarke County Chancery Court)
James A. Williams & Joseph Anthony Denson for Appellant - Stephen Paul Wilson for Appellee
Briefed by Kara Edwards
Edited by Kayla Tran & Ashley House

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Parker v. Canton Manor

Civil - Workers' Compensation

WORKERS' COMPENSATION - PETITION TO CONTROVERT - STATUTE OF LIMITATIONS - Miss. Code Ann. § 71-3-35(1) provides a workers' compensation claim must be filed within two years from the date of injury, and the statute of limitations does not begin to run until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained

WORKERS' COMPENSATION - PETITION TO CONTROVERT - COMPENSABLE INJURY - If an employee suffers an injury that initially seems insignificant but progresses over a period of time to disabling proportions, the statute of limitations does not begin to run until the disabling characteristics of the work-related injury become known

CIVIL PROCEDURE - MOTION PRACTICE - MOTION TO DISMISS - A complaint should not be dismissed based on the statute of limitations unless it appears beyond any doubt that the plaintiff will be unable to prove any set of facts under which her complaint was filed within the limitations period; the non-moving party bears no burden of proof in responding to a motion to dismiss

WORKERS' COMPENSATION - PROCEDURAL RULES - MOTION TO DISMISS - No law or rule authorizes the Commission to summarily dismiss a petition to controvert based on the employer's assertion of an affirmative defense when (a) the claimant's allegations, if true, are sufficient to negate the affirmative defense, and (b) the employer offers no evidence in support of its affirmative defense

FACTS

Patricia Smith Parker filed two petitions to controvert with the Mississippi Workers' Compensation Commission ("Commission") against Canton Manor in June 2021. Each petition alleged two separate incidents in December 2018 and April 2019, wherein residents at Canton Manor physically hit her. The petitions alleged she experienced initial discomfort and bruising because of the incidents but did not experience severe pain resulting from the two incidents until May 3, 2020. Parker further alleged the incidents led to a temporary disability beginning May 3, 2020. Canton

Manor answered and subsequently filed motions to dismiss, alleging Parker's claims were barred by the statute of limitations because Parker filed each petition more than two years after the date of her injury and no compensation had been paid. Parker responded and alleged the claims were timely because they were filed within two years of time when the compensable nature of her injury became reasonably apparent. Neither party submitted evidence nor requested an evidentiary hearing. The administrative judge held a telephonic hearing that was not transcribed and subsequently issued nearly identical orders dismissing each case. The administrative judge found Parker "was fully aware that she sustained injuries at work on" the alleged dates, that neither injury was a "latent injury," and the statute of limitations barred both claims. Parker filed a petition to review by the full Commission in both cases. Canton Manor attached two exhibits in support of its response to both petitions: minutes from a "Safety Committee" meeting dated December 28, 2018; and an employee incident report dated April 1, 2019. The minutes documented the December 2018 incident as "resident playing too rough & staff & resident went to floor." The employee incident report documented the second incident as "redness/swelling to [Parker's] right upper arm" because of a "hit." Canton did not file a motion to introduce additional evidence before submitting the exhibits. The Commission subsequently affirmed the administrative judge's decision and dismissed Parker's claims. Parker appealed.

ISSUE

Whether the Commission properly dismissed Parker's claims as being barred by the statute of limitations.

HOLDING

Because Parker alleged in her petitions to controvert that she neither experienced severe pain nor suffered disabling injuries until May 3, 2020, because she filed her claims in June 2021, because the statute of limitations did not begin to run until by reasonable care and diligence it was discoverable and apparent that a compensable injury had been sustained, because Parker alleged sufficient facts in support of her claims and proved beyond any doubt that her claims were not barred by the statute of limitations, and because Canton Manor failed to offer any evidence in support of its statute of limitations affirmative defense, Parker's claims were not barred by the statute of limitations, and the Commission summarily dismissed Parker's petitions to controvert merely based on the one-page motions to dismiss. Therefore, the Court of Appeals reversed the Commission's order and remanded without prejudice to Canton Manor's right to present evidence in support of its affirmative defense.

Reversed & Remanded - 2022-WC-00206-COA (May 2, 2023)
En Banc Opinion by Presiding Judge Wilson
(Mississippi Workers' Compensation Commission)
Bennie L. Jones Jr. & Roberta Lynn Haughton for Appellant - Betty B. Arinder & Lana E. Gillon for Appellees

Consolidated with:

Reversed & Remanded - 2022-WC-00207-COA (May 2, 2023)
(Mississippi Workers' Compensation Commission)
Bennie L. Jones Jr. & Roberta Lynn Haughton for Appellant - Betty B. Arinder & Lana E. Gillon for Appellees
Briefed by Thomas Simpson
Edited by Kara Edwards & Mason Scioneaux

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Court of Appeals - Orders

Fox v. State

En Banc Order

ORDER

Anthony Gerald Fox filed a motion for bail pending his direct appeal of his conviction for culpable negligence manslaughter. During the hearing on Fox's motion for bail pending appeal, the trial court did not allow all of Fox's witnesses to testify. Still, it would consider Fox's submitted affidavits and letters. Each of Fox's five witnesses who testified at trial stated that they did not believe Fox was a special danger to the community. The record also showed that Fox was released on bail while his trial was pending, and the Clinton Police Department employed him until his conviction. The State argued Fox failed to meet his burden of proof for his motion but did not call any witnesses to testify that Fox presented a danger to the community, showed no evidence of threatening behavior from Fox, and offered no evidence to rebut Fox's evidence that the conditions placed on his release would be sufficient to assure his court appearance. The State presented testimony that Fox's wife damaged a prosecutor's vehicle and that an audience spectator yelled expletives following the jury's announcement of Fox's conviction. At the end of the hearing, the trial court stated some individuals who took the stand threatened the court, the judge, and the jury. The trial court ultimately denied Fox's request for bail pending appeal, finding that Fox's release would constitute a special danger to a person or the community and that there were no peculiar circumstances of the case that rendered it proper for him to be released after a felony conviction for manslaughter pending an appeal to the Supreme Court. Therefore, because the trial court's denial of Fox's motion was not an abuse of discretion, the Court of Appeals denied Fox's motion for bail pending appeal.

OBJECTION

Judge Carlton argued the trial court abused its discretion by denying Fox's motion for bail pending appeal because the State offered no evidence at the bail hearing or trial of Fox showing threatening behavior. She argued that there was no evidence to support that Fox instructed those individuals to damage a prosecutor's car or yell expletives after the jury's announcement of his conviction. Further, the State failed to present evidence to rebut Fox's evidence that the conditions placed on his release would assure his court appearance or that Fox was a special danger to the community.

Denied - 2022-KA-00988-COA (May 1, 2023)
En Banc Order by Judge Emfinger - Objection by Presiding Judge Carlton
Briefed by Meaghan Pickles
Edited by Emilee Crocker & Ashley House

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COURT OF APPEALS - CRIMINAL CASES

AMOS V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - CHARACTER EVIDENCE - Miss. R. Evid. 404(b) generally prohibits evidence of a crime, wrong, or other act used to prove a person's character in order to show that on a particular occasion the person acted in accordance with that character; such evidence may be admissible under a non-exhaustive list of factors, including to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

EVIDENCE - ADMISSIBILITY - JUDICIAL DISCRETION - Outside of the exceptions explicitly listed under Miss. R. Evid. 404(b)(2), trial judges may also admit evidence of other crimes or bad acts at their discretion, like telling the complete story to avoid jury confusion

EVIDENCE - ADMISSIBILITY - RELEVANCE - Miss. R. Evid. 401 provides that evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the case

EVIDENCE - ADMISSIBILITY - UNFAIR PREJUDICE - Miss. R. Evid. 403 provides that relevant evidence should not be excluded unless its probative value is substantially outweighed by the danger of unfair prejudice

EVIDENCE - ADMISSIBILITY - ISSUE ON APPEAL - To preserve an issue for appeal, the issue on appeal must be on the same grounds raised at trial

FACTS

Derrick Amos was convicted of three counts of statutory rape by a Newton County Circuit Court jury. Before the trial, Amos's defense counsel filed a motion in limine to exclude evidence that Amos allegedly provided the minor victim with illegal drugs, or that Amos or others were involved in felony exploitation of a minor or sex trade of a minor, because such evidence would be highly prejudicial. In response, the State argued that it anticipated that the minor victim would testify that it was common for her and Amos to do drugs together and to have sex and that the evidence was probative to show motive and opportunity to commit the crimes Amos was charged with. The circuit court withheld ruling on the issue until trial. During the trial, one of the State's witnesses was asked on direct examination about his drug use and whether he ever used methamphetamine with Amos or received drugs from Amos. Amos's counsel objected to the testimony and moved for a mistrial. The circuit court overruled the motion for a mistrial but sustained the objection and instructed the jury to disregard the testimony. The witness then testified that he had allowed Amos to use a room in the witness's house in exchange for drugs on the day in question. Amos's counsel objected and argued that the testimony was not relevant to the crimes Amos was being charged with. The State responded that the minor victim had previously testified to using drugs with Amos at the witness's home on the day in question and that Amos had supplied the drugs, so the testimony was relevant. The circuit court overruled Amos's objection. The jury found Amos guilty on all counts. Amos filed a motion for a new trial and argued that the circuit court erred by allowing inadmissible character evidence of prior bad acts in the form of testimony about Amos's drug use and drug transfers. The circuit court denied Amos's motion for a new trial. Amos appealed.

ISSUES

Whether the circuit court erred by allowing the State to introduce evidence of alleged prior bad acts.

HOLDING

Because witness testimony about Amos's drug use and drug transfers was admissible to prove Amos's motive and opportunity for statutory rape, because the testimony was relevant in proving the fact that Amos had supplied the minor victim with drugs, because Amos failed to object to the testimony on Rule 404(b) grounds at trial and therefore waived the right to bring the issue up on appeal, and because the testimony was necessary to furnish a complete story and avoid jury confusion, it was not substantially more prejudicial than it was probative, and the circuit court did not err by allowing the State to introduce evidence of alleged prior bad acts. Therefore, the Court of Appeals affirmed the judgment of the Newton County Circuit Court.

Affirmed - 2022-KA-00171-COA (May 2, 2023)
Opinion by Judge McDonald
Hon. Mark Sheldon Duncan (Newton County Circuit Court)
George T. Holmes (Pub. Def. Office) for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee
Briefed by Doug Reynolds
Edited by Emilee Crocker & Mason Scioneaux

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Applewhite v. State

Criminal - Felony

CRIMINAL LAW - ACCOMPLICE LIABILITY - AIDING & ABETTING - In order to be held criminally liable as an aider and abettor in the commission of a felony, one must do something that will incite, encourage, or render aid to the actual perpetrator in the commission of the crime
CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow

the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

FACTS

Dontavious Applewhite was indicted for one count of capital murder with a firearm enhancement and one count of aggravated assault with a firearm enhancement for the death Kelvin Blackburn. Applewhite and Darrell Walter entered a building where a group of people were gambling. Witnesses saw the two men stand around the table while the others were gambling. Walter stepped outside the room and returned with a gun pointed at Blackburn, demanding the money in his shirt pocket. Blackburn tried to take the gun from Walter, and multiple shots were fired inside and outside of the building. Blackburn was shot multiple times and died from his injuries. At trial, three of the witnesses who were gambling said they were unable to see Applewhite with a gun or shooting a gun. However, one of the gamblers, Jason Roberson, testified to seeing Applewhite with a gun. Roberson did not see Applewhite shoot his gun. David Jackson, the owner of the building, testified to only seeing Walter with a .22-caliber revolver. Detective Darryl Linzy, the dispatched officer at the scene interviewed Applewhite and testified at trial. Detective Linzy said that Applewhite admitted to having a .40-caliber semi-automatic gun with him that night and fired it outside of the building. Detective Linzy could not recover Applewhite's gun. The state also presented evidence that two guns, a 9mm pistol and a .22-caliber revolver were fired inside the building. Only shell casings from the 9mm pistol were recovered outside the building. The trial court, after severing Walter's case from Applewhite's, returned a guilty verdict and sentenced Applewhite to life imprisonment for capital murder, ten years for aggravated assault, and five years for the firearm enhancement, to run concurrently with the aggravated assault sentence. Applewhite filed a motion for judgment notwithstanding the verdict, or in the alternative, a new trial. The motion was denied. Applewhite appealed.

ISSUES

Whether the trial court erred (1) in determining that the evidence was sufficient to support Applewhite's convictions and (2) in denying Applewhite a judgment notwithstanding the verdict, or alternatively, a new trial.

HOLDING

(1) Because Applewhite admitted to firing a gun outside the building, because Walter's gun was accounted for, and because shell casings from a gun other than Walter's were found outside of the building, the evidence was sufficient to show that Applewhite was acting in concert with Walter and was guilty of his convicted crimes. (2) Because the results of the verdict did not sanction an unconscionable injustice, the trial court did not err in denying Applewhite's motion. Therefore, the Court of Appeals affirmed the judgment of the Quitman County Circuit Court.

DISSENT

Judge Westbrooks argued that the evidence was not sufficient to prove beyond a reasonable doubt that Applewhite aided and abetted Walter in the capital murder and aggravated assault. She stated that neither Applewhite's presence at the scene nor his proximity to one of the firearms was enough to proof beyond a reasonable doubt that Applewhite was guilty, and the conviction rested upon pure speculation. Therefore, the trial court erred.

Affirmed - 2022-KA-00290-COA (May 2, 2023)
En Banc Opinion by Presiding Judge Carlton - Dissent by Judge Westbrooks
Hon. Linda F. Coleman (Quitman County Circuit Court)
Kathrine Collins Curren for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee
Briefed by Jacoby Gilmore
Edited by Doug Reynolds & Mason Scioneaux

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EHRHARDT V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - FORENSIC EXAMINATION - WARRANTS & DISCOVERY - Forensic examination can recover illegal images from devices even if they were hidden, erased, compressed, password-protected, or encrypted

CRIMINAL PROCEDURE - IDENTIFIED BYSTANDER & VICTIM-EYEWITNESS - RELIABILITY - An informant such as Microsoft is not treated the same as a confidential informant in a narcotics case or the same as other unknown informants when it finds evidence of criminal activity on a platform that they own and manage; courts do not have to prove the reliability of Microsoft because the information provided by Microsoft is more than idle rumor or irresponsible conjecture

CRIMINAL PROCEDURE - MISTRIAL - INADMISSIBLE EVIDENCE - A mistrial is not warranted every time a jury is exposed to inadmissible evidence, rather a mistrial is only warranted when the harm done would render the defendant without hope of receiving a fair trial

CRIMINAL PROCEDURE - MOTIONS - JUDGMENT NOTWITHSTANDING THE VERDICT - Evidence is to be viewed in the light most favorable to the verdict and the evidence in the record must be substantially supportive of the verdict to deny a motion for a judgment notwithstanding the verdict

CRIMINAL PROCEDURE - MOTIONS - NEW TRIAL - Evidence is to be viewed in the light most favorable to the verdict; a motion for a new trial must be denied unless the verdict is so contrary to the overwhelming weight of the evidence that it favors the grant of a new trial

FACTS

In December 2016, Microsoft sent twenty-eight cybertips to the National Center for Missing and Exploited Children ("NCMEC") as a result of Skype conversations between three Skype users which included the Internet Protocol ("IP") addresses used to exchange the material. Twenty-eight images containing child exploitation were uploaded and exchanged between these three users. After notifying the Attorney General's office and subpoenaing Comcast via a grand jury, Comcast identified Robert Donald Ehrhardt III as the person paying for the material with the IP address associated with the account. His physical address in Brandon, Mississippi was identified and searched and twenty-four items were taken from his home and forensically analyzed. Multiple devices were identified to have child exploitation material on them. Ehrhardt was indicted, tried, and convicted by a jury for five counts of child exploitation. Ehrhardt's motion for a judgment notwithstanding the verdict or for a new trial was denied. Ehrhardt appealed.

ISSUES

Whether the trial court erred in denying Ehrhardt's (1) motion to suppress the items found during the search of his home; (2) motion for mistrial; and (3) motion for a judgment notwithstanding the verdict or for a new trial.

HOLDING

(1) Because it was reasonable for the trial court to believe that any child exploitation material Ehrhardt had stored on his electronic devices at the time of the NCMEC cybertip could still be found on his devices when the warrant was issued, because the information supplied by Microsoft was in the nature of a bystander or victim-eyewitness and negated the requirement to prove the reliability of the informant since it was based on more than idle rumor or irresponsible conjecture, and because there was a substantial basis for the trial court to find probable cause to approve the warrant, the trial court did not err in denying Ehrhardt's motion to suppress the items found during the search of his home. (2) Because Ehrhardt timely objected to the witness's improper comment during examination, because the trial court properly instructed the jury to disregard the comment both verbally and in written instructions, and because there was a presumption that the jury followed the trial court's instruction, the trial court did not err in denying Ehrhardt's motion for a mistrial. (3) Because there was sufficient evidence presented that Ehrhardt was the user of the IP address that solicited the child exploitation material and that he was the owner of the devices in which the material was found, because the overwhelming weight of the evidence was not contrary to the verdict, and because the evidence was to be viewed most favorably to the verdict, the trial court did not err in denying Ehrhardt's motion for judgment notwithstanding the verdict or for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2021-KA-01143-COA (May 2, 2023)
Opinion by Judge Emfinger
Hon. M. Bradley Mills (Rankin County Circuit Court)

Merrida Coxwell, Courtney Denise Sanders, & Charles Richard Mullins for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee
Briefed by Micah McGaha
Edited by Kara Edwards & Ashley House

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LIDDELL V. STATE

CRIMINAL - FELONY

PROFESSIONAL RESPONSIBILITY - TRIAL PUBLICITY - EXTRAJUDICIAL STATEMENTS - Miss. R. Prof. Conduct 3.6 prohibits a lawyer from making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonable should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding; an ethical violation by the prosecutor does nothing to negate the guilt of an indicted defendant and does not per se have any effect on the fairness of the trial
CRIMINAL PROCEDURE - PROHIBITED DISCLOSURES - MEDIA COMMENTS - Miss. R. Crim. P. 18.9 states before a trial concludes, no defense attorney, prosecuting attorney, clerk, deputy clerk, law enforcement official nor other officer of the court, may release or authorize release of any statement for dissemination by any means of public communication on any matter concerning the defendant's guilt or innocence, or other matters relating to the merits of the case, or the evidence in the case
CRIMINAL PROCEDURE - MISTRIAL - PREJUDICE - A mistrial based on a district attorney's pretrial comments to a local newspaper may be granted if it is shown the defendant has suffered substantial and irreparable prejudice; mistrial is reserved for those instances where the trial court cannot take any action which would correct improper occurrences inside or outside the courtroom; the grant of a mistrial is left to the sound discretion of the trial judge

FACTS

In April 2019, Stacy Liddell was inside of his home when he observed two males on bicycles stop in front of his house and take one of his bicycles from his yard. Liddell testified that he had banged on the window and warned the individuals to stop and return the bicycle, but they did not obey the order, so Liddell retrieved his gun. Liddell testified that he heard two or three gunshots as he opened his door and heard more gunshots coming from the direction of the individuals when saw them down the street. Liddell testified that he fired his gun back at the individuals, which struck fourteen-year-old Roderick Johnson, who subsequently succumbed to his injuries. On the morning of Liddell's trial, the district attorney commented to a local news station discussing the facts of Liddell's case and whether the Castle Doctrine would apply. The comments were then published by the news station. As a result, Liddell made a motion for a mistrial or the entry of a gag order. Liddell argued it was improper for the State to make such comments to the media under Miss. R. Crim. P. 18.9 and Miss. R. Prof. Conduct 3.6. since the trial was open to the public and live-streamed. The State argued that a gag order would not be appropriate because the trial court had already instructed the jury not to review, watch, or talk about any media coverage of the case and granted a motion in limine excluding any reference to the Castle Doctrine, so the State did not discuss the merits of the case in its comments. However, the trial court acknowledged that some facts mentioned were not available in the indictment, and that those facts were unethical, inappropriate, and should not have been made. As a result, the trial court entered a gag order for the district attorney and every representative of the district attorney's office until the conclusion of the trial, and the jury was instructed to not to review, watch, or talk about any media coverage of the case. Later, Liddell again renewed the motion for a mistrial based on the news article published by several news outlets. In response, the trial court polled the jury to see whether they had seen the articles or were aware that such articles existed. Three jurors admitted to seeing or hearing that there was news coverage of the trial, but claimed they did not read or watch the actual coverage. The trial court found, based on the poll, that the jury did not read or consider anything from the media. Liddell admitted at trial to shooting Johnson in self-defense and was found guilty of second-degree murder and sentenced to thirty years in custody. Liddell appealed.

ISSUE

Whether the trial court erred in failing to declare a mistrial after the district attorney made multiple public comments to media outlets regarding Liddell's case that were then published in media outlets.

HOLDING

Because there was no evidence on the record that the improper pretrial statements made by the district attorney suggested Liddell was denied his right to a fair trial by an impartial jury or suffered substantial and irreparable prejudice, because the record showed the trial court reminded the jury numerous times prior to opening statements, after the renewed motion for a mistrial, prior to recessing for the afternoon, and prior to jury deliberations not to read or listen to any news articles about the case, not to conduct their own investigation, and not to browse the internet or social media about the case, or any person involved in the case, because the jury poll showed Liddell did not suffer any prejudice by the district attorney's comments and that the jury followed the trial court's instructions about the media, the trial court did not err in failing to declare a mistrial after the district attorney made multiple public comments to media outlets regarding Liddell's case that were then published in media outlets. Therefore, the Court of Appeals affirmed the judgement of the Hinds County Circuit Court.

Affirmed - 2021-KA-00952-COA (May 2, 2023)
Opinion by Presiding Judge Carlton
Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by Kayla Tran
Edited by Kennedy Gerard & Ashley House

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WELLS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CROSS-EXAMINATION - SCOPE - While the scope of cross-examination is ordinarily broad, it is within the sound discretion of the trial court, and the trial court possesses the inherent power to limit cross-examination to relevant factual issues

CRIMINAL PROCEDURE - TRIAL - RECEPTION OF EVIDENCE - A criminal defendant is entitled to present his defense to the finder of fact, and it is fundamentally unfair to deny the jury the opportunity to consider the defendant's defense where there is testimony to support the theory; but the right to present this defense is limited by considerations of relevance and prejudice.

CRIMINAL PROCEDURE - NEW TRIAL - STANDARD OF REVIEW - A circuit court may grant a new trial if required in the interests of justice and if the defendant has not received a fair and impartial trial

CRIMINAL PROCEDURE - VERDICTS - JUROR TESTIMONY - Miss. R. Crim. P. 24.6(c) provides that after the verdict has been received by the court and entered on the record, the testimony or affidavits of the jurors shall not be received to impeach the verdict, except as permitted by the Miss. R. Evid.

CRIMINAL PROCEDURE - EVIDENCE - JUROR TESTIMONY - Miss. R. Evid. 606 states that a juror may not testify about any statement made or incident that occurred during the jury's deliberations, the effect of anything on that juror's or another juror's vote, or any juror's mental processes concerning the verdict or indictment unless extraneous prejudicial information was improperly brought to the jury's attention or an outside influence was improperly brought to bear on any juror

CRIMINAL PROCEDURE - VERDICTS - JURY POLLING - Miss. R. Crim. P. 24.5 provides that after a verdict is returned, but before the jury is discharged, the court shall on a party's request, or may on its own, poll the jurors individually and if the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury

FACTS

Geor'Barri Wells testified that two men, Shaquille and Aaron Townson, attacked Wells at a birthday party outside a Greenville hotel in May 2018. Wells shot and killed Shaquille allegedly in self-defense. Delnica Mason suffered a gunshot wound to the arm when she tried to break up the fight. A grand jury indicted Wells with one count of first-degree murder of Shaquille, one count of attempted murder of Aaron, one count of aggravated assault of Mason, and a firearm enhancement. During the jury trial, the trial court limited Wells's cross-examination of two witnesses, Eric Carter and Donald Morris. Wells asserted both witnesses discussed whether another individual, Jamarcus Montgomery, had a gun on the night in question. The State argued Wells failed to turn over evidence of another person in possession of a gun on the night at issue. The trial court limited questioning of Carter to whether Carter had seen a gun. Morris testified outside the presence of the jury that he did not definitely see a gun and only asked another man if Montgomery had a gun. Furthermore, the State established that Montgomery was inside the hotel during the shooting, and defense counsel admitted she failed to tie Montgomery's gun to the shooting. After a jury trial, the jury acquitted Wells of the attempted murder charge and firearm enhancement but found him guilty of second-degree murder and aggravated assault. The trial court sentenced Wells to thirty years for the second-degree murder charge, with five years suspended, and twenty years for the aggravated-assault conviction, which ran concurrently. Wells subsequently filed a motion for judgment notwithstanding the verdict ("JNOV") or, alternatively, a new trial. Specifically, Wells attached an affidavit from Juror 6 providing Juror 41 had a hearing impairment, and that there was no way Juror 41 could hear all or most of the witnesses' testimony. The affidavit further provided that Juror 41 seemed confused during trial and deliberations. The trial court also polled each juror individually to determine whether the verdicts were unanimous, and Wells submitted that Juror 41 was unable to give clear responses to four questions, according to the transcript. The trial court denied the motion. Wells appealed.

ISSUES

Whether the trial court (1) erred by limiting Wells's cross-examination of Carter during trial; (2) erred by excluding testimony from Morris that would have developed Wells's theory of defense; and (3) abused its discretion in denying Wells's motion for a JNOV or new trial.

HOLDING

(1) Because defense counsel failed to turn over evidence of another person in possession of a gun that night, because the trial court possessed the inherent power to limit cross-examination to relevant factual issues, and because the trial court allowed Wells to question Carter whether he had seen a gun, the argument was without merit. (2) Because Morris testified outside the presence of the jury that he did not definitely see a gun, because Morris only asked another man if Montgomery had a gun, because Montgomery was inside the hotel during the shooting and not outside the hotel with Wells, because defense counsel admitted to the circuit court that she could not tie Montgomery's gun to Wells's shooting of Shaquille, and because Wells did not assert any alternative theories or testify that he saw anyone else with a gun, Morris's testimony was irrelevant and did not violate Wells's right to present a full defense. (3) Because the attached affidavit provided testimony concerning statements made or incidents that occurred during the jury's deliberations, and because Wells failed to establish any exceptions under Rule 606, the affidavit provided by Juror 6 was improper, and the trial court could not consider the affidavit. Moreover, because the trial court polled each juror individually to determine whether the verdicts were unanimous and because Juror 41's responses supported the jury's verdict and confirmed that the verdicts were unanimous despite her appearing to have trouble following the circuit court's polling, Wells was not prejudiced by the juror's responses, and the court did not abuse its discretion in denying the motion for JNOV or a new trial. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2022-KA-00157-COA (May 2, 2023)
Opinion by Presiding Judge Carlton
Hon. Richard A. Smith (Washington County Circuit Court)
Mollie Marie McMillin (Pub. Def. Office) for Appellant - Casey B. Farmer (Att'y Gen. Office) for Appellee
Briefed by Kennedy Gerard
Edited by Thomas Simpson & Mason Scioneaux

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