

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 15, 2023***SUPREME COURT - CIVIL CASES*****RANKIN CNTY. V. BOARDWALK PIPELINE PARTNERS, L.P.****CIVIL - STATE BOARDS AND AGENCIES**

VENUE - SUITS AGAINST COUNTIES - EFFECT OF CODEFENDANTS - Miss. Code Ann. § 11-45-17 mandates that when a county is being sued, such suit should take place in that county's court even if the presence of a codefendant would normally make venue proper in another county; mandatory language in a venue statute has the effect of ranking the venue statute above other venue statutes in circumstances where more than one may apply

VENUE - COUNTIES - STATE AGENCY AS DEFENDANT - A statute mandating venue in a particular county is controlling even when a state agency is a defendant

VENUE - COUNTIES - LOCATION OF PROPERTY AS CONTROLLING - Pursuant to Miss. Code Ann. § 11-5-1, the county in which the real or personal property involved in a suit is located controls over the county in which the defendant resides in determining venue

FACTS

Gulf South Pipeline Company ("Gulf South") was a wholly owned subsidiary of Boardwalk Pipeline Partners, L.P. Gulf South owned an underground natural gas storage facility in Rankin County as well as additional properties that ran through thirty-two Mississippi counties. Since Gulf South was a public service corporation that possessed property in more than one Mississippi county, the Mississippi Department of Revenue ("MDOR") acted as the tax assessor for each of these properties in place of individual county tax assessors. The MDOR apportioned the tax revenues among the counties in which Gulf South's property was located after conducting its assessment. Gulf South's customers own a significant amount of the natural gas stored in Gulf South's Rankin County facility, so that amount was excluded from the MDOR's assessment. The Rankin County tax assessor requested that Gulf South disclose the volume of natural gas owned by each of its Rankin County customers, but Gulf South refused. Following Gulf South's refusal, the Rankin County tax assessor notified Gulf South that it intended to assess Gulf South more than sixteen million dollars for approximately four billion cubic feet of natural gas in dispute. Gulf South then filed suit in the Chancery Court of the First Judicial District of Hinds County to enjoin the assessment and obtain a declaratory judgment that the MDOR is the sole authority with the ability to assess a public service corporation with property located in more than one Mississippi county. Gulf South joined the MDOR as a party. The chancery court granted a temporary restraining order enjoining Rankin County from following through with its assessment or initiating criminal charges based on unpaid tax allegations. Rankin County then filed a motion to transfer venue to Rankin County, which the chancery court denied, finding that Hinds County was a permissible venue because Gulf South owns property in Hinds County that could be impacted by the declaratory judgment. Rankin County petitioned for an interlocutory appeal, which was granted.

ISSUE

Whether the chancery court erred by denying Rankin County's motion to transfer venue.

HOLDING

Because Rankin County, as a defendant, was also the mandatory venue under Miss. Code Ann. § 11-45-17, because Miss. Code Ann. § 11-45-17 controlled despite the MDOR's presence as a codefendant, because the subject of the dispute was Gulf South's natural gas located in Rankin County, and because Gulf South could not point to a statute that would make venue proper in Hinds County, even in the absence of a mandatory controlling provision, venue was

proper in Rankin County, and the chancery court erred by denying Rankin County’s motion to transfer venue. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County Chancery Court.

Reversed & Remanded - 2021-IA-01315-SCT (June 15, 2023)

Opinion by Presiding Justice Kitchens

Hon. J. Dewayne Thomas (Hinds County Chancery Court, First Judicial Dist.)

William “Trey” Jones III, Craig Lawson Slay, Sheldon G. Alston, & Jacob Arthur Bradley for Appellant - William L. Smith, Benjamin Gilbert Bryant, Mark C. Baker Sr., Donald Alan Windham, & W. Lucien Smith for Appellees

Briefed by [Merritt Baria](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 13, 2023

COURT OF APPEALS - CIVIL CASES

KNIGHT V. STATE

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - APPEALS - TIMELINESS - Miss. R. App. P. 4(a) requires an appeal to be filed with the trial court clerk within thirty days of the “order appealed from”; under Miss. R. App. P. 2(c), courts have the discretion to suspend the rules and extend the time for taking an appeal in criminal and post-conviction cases but not in civil cases

CIVIL PROCEDURE - APPEALS - JURISDICTION - The UPCCRA provides that a motion for post-conviction relief shall not be filed in the trial court until the motion shall have been first presented to the Supreme Court and the Supreme Court enters an order allowing the filing of such motion in the trial court

CIVIL PROCEDURE - APPEALS - JURISDICTION - The proper county in which to appeal a decision from Department of Corrections’s Administrative Remedy Program is the county where the petitioner was incarcerated at the time he requested relief

FACTS

In April 2018, Larry Knight was indicted for two counts of touching a person under the age of sixteen years old for the purpose of gratification of lust or indulging his depraved sexual desires. A jury found Knight guilty of molestation on one count and not guilty on the second count. Knight was sentenced to fifteen years in custody of the Mississippi Department of Corrections (“MDOC”). Knight appealed, and the Supreme Court affirmed his conviction and sentence. In May 2020, Knight sought permission to file a motion for post-conviction relief (“PCR”) in circuit court, arguing his timesheet was incorrect because it listed his sentence as mandatory, but it was not mandatory. The Supreme Court dismissed Knight’s application without prejudice so Knight could seek relief through MDOC’s Administrative Remedy Program (“ARP”). Through the ARP, MDOC determined twice that Knight was not eligible for early release. In January 2021, Knight filed a motion for post-conviction collateral relief in Sharkey County Circuit Court and the Supreme Court to seek judicial review of the ARP’s decision. The Supreme Court dismissed the application so Knight could seek appropriate judicial review in the circuit court. The circuit court treated Knight’s filing as a PCR motion and denied his motion for failure to state a claim upon which relief could be granted because Knight’s conviction made him ineligible for parole or early relief. Knight appealed.

ISSUE

Whether Sharkey County Circuit Court had jurisdiction to consider Knight’s motion for judicial review.

HOLDING

Because Knight’s notice of appeal of the circuit court’s order was untimely, because Knight’s “PCR motion” was actually a petition for judicial review of the MDOC’s ARP decision, because it was a civil action appealing a decision from an

administrative agency, because, even if the Court of Appeals had treated Knight's motion as a PCR, Knight failed to obtain the Supreme Court's permission to file his motion, and because the motion was filed in the wrong county, the Sharkey County Circuit Court did not have jurisdiction to consider Knight's motion for judicial review. Therefore, the Court of Appeals dismissed the appeal.

Appeal Dismissed - 2021-CP-01192-COA (June 13, 2023)

Opinion by Chief Judge Barnes

Hon. Toni Demetresse Terrett (Sharkey County Circuit Court)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Maya Langendoen](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

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ROGERS V. KRESSE

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - ABANDONMENT - Pursuant to Miss. Code Ann. § 93-15-103, abandonment of a minor child may be shown when a parent has deliberately made no contact with the child for at least one year

FAMILY LAW - CUSTODY - REUNIFICATION - Pursuant to Miss. Code Ann. § 93-15-119(a), termination of a parent's parental rights is appropriate when abandonment occurs and reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome

FACTS

Heather Rogers and Chad Kresse had two minor children, but when Rogers and Kresse divorced in 2014, they agreed to share joint legal and physical custody of the children. Shortly after, Kresse requested a modification of custody and alleged that Rogers had created an unstable and immoral home environment for the children. In October 2016, Kresse filed an Emergency Complaint to Suspend Visitation and alleged that Rogers was exposing the children to violence and drug abuse. Rogers was given supervised visitation every other Saturday. On December 1, 2016, a subsequent order was entered which set a trial for August 24, 2017, and granted Kresse discretionary authority to stop visitation if he suspected Rogers to be using drugs. Suspecting drug use, Kresse filed a motion for a drug screen, and the trial court entered an order for drug testing. Subsequently, the court stated that either party could move to put the matter back on the docket. Rogers's drug test came back positive, and neither party attempted to place the matter back on the docket which resulted in dismissal. Following dismissal, Rogers forgot the children's birthdays and admitted on a phone call with Kresse that she was using drugs. Additionally, she had not seen the children since a family funeral in 2017. In January 2020, Rogers filed a Complaint for Visitation, but Kresse alleged that Rogers failed to support the children and that it was her own lifestyle choices that caused her lack of visitation for approximately four years. A guardian ad litem ("GAL") was appointed to analyze the situation, and Kresse filed for the termination of Rogers's parental rights. After hearing testimony from Rogers, Kresse, the GAL, and Rogers's therapist, the chancery court entered a judgment terminating Rogers's parental rights. Rogers appealed.

ISSUES

Whether (1) the trial court erred in finding that Rogers abandoned the minor children; (2) the trial court erred in failing to recognize that Kresse abused his discretion by disallowing visitation; and (3) reunification between Rogers and the minor children was desirable toward obtaining a satisfactory permanency outcome.

HOLDING

(1) Because Rogers failed to place the matter back on the docket pursuant to the December 2016 order and because the lack of visitation was a product of her own absence for two years, Rogers abandoned her children pursuant to Miss. Code Ann. §§ 93-15-103 and 95-15-119. (2) Because the December 2016 order granted Kresse discretionary authority to stop visitation if he suspected Rogers was using drugs, Kresse did not abuse his discretion when he stopped visitation

to protect his children’s wellbeing. (3) Because one child has no memory of Rogers, the other child has only bad memories of Rogers, and both children currently live happy and stable lives, reunification between Rogers and the minor children is not desirable toward obtaining a satisfactory permanency outcome. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2021-CA-00914-COA (June 13, 2023)

Opinion by Judge Emfinger

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Matthew Stephen Lott & William Bryan Bedwell for Appellant - Calvin D. Taylor for Appellee

Briefed by [Olivia Schwab](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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TALLEY V. TALLEY

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE AGREEMENTS - ENFORCEMENT - Provisions of Divorce Agreements concerning life insurance are governed by contract law; the agreements are fixed and final, and may not be modified absent fraud or a contractual provision allowing modification

FAMILY LAW - CHILD SUPPORT - CONTEMPT - In contempt actions involving unpaid child support, a prima facie case of contempt has been established when the party entitled to receive support introduces evidence that the party required to pay the support has failed to do so; the burden then shifts to the paying party to show an inability to pay or other defense; this proof must be clear and convincing and rise above a simple state of doubtfulness

CIVIL PROCEDURE - APPELLATE CLAIMS - PROCEDURAL BARS - Courts will not entertain arguments made for the first time on appeal as the case must be decided on the facts contained in the record and not on assertions in the briefs

FAMILY LAW - CHILD SUPPORT - COLLEGE EXPENSES - The duty of a parent to provide a college education for his or her child contemplates support in addition to tuition and college costs, without which, provision for the college education would be in vain

FAMILY LAW - CONTEMPT - ATTORNEY’S FEES - An award of attorney’s fees in a contempt case is proper and is largely entrusted to the sound discretion of the chancery court; before awarding attorney’s fees, the chancery court must first consider whether a party willfully violated the court’s order

FACTS

In February 1987, Kenneth Talley and Kenya Talley were married. They had two children, Nathaniel and Joseph. In February 2012, Kenya filed for divorce. In June 2014, the chancery court entered an irreconcilable differences judgment of divorce, as well as a child custody, property settlement, and separation agreement (“the Agreement”). In May 2019, Kenneth filed a petition for emancipation or in the alternative, for termination of child support. Kenya filed a counter-petition that requested the chancery court to hold Kenneth in contempt pursuant to the Agreement because he failed to pay his part of medical bills, a vehicle and its maintenance costs, extracurricular activity expenses, and college expense for their two children. In September 2019, Kenneth filed an answer to the counter-petition. At trial, Kenya entered exhibits for proof of payment. The exhibit included an itemized list of all expenses, copies of the checks, credit card statements, and receipts. Kenneth testified that Kenya seldom gave him receipts or appropriate authentication of costs sustained and records of what was paid in the classification of the children’s disputed expenses. However, Kenya argued that Kenneth stated he did not want her to send the bills by email, and refused to provide her with a working email address. Kenya testified that she had numerous conversations with Kenneth about expenses as they were incurred, but she was unable to present text message proof of the conversations with Kenneth because her phone did not work anymore. Kenneth further testified that he did not have the funds to pay for the expenses, nor was he asked about the expenses before they were incurred. Kenneth admitted that he did not pay a majority of the expenses, nor would he reach out directly to the college, car shop, or medical providers to inquire about the status of the bills. Joseph also

testified that Kenneth did not financially contribute to the purchase or upkeep of his vehicle other than purchasing two tires for it. Kenya claimed the tires were a Christmas present. Kenneth did not present any proof regarding the cost of the tires. It was undisputed that Kenneth made a single contribution to Joseph's college tuition for \$967. Kenneth argued that the Agreement's ambiguity and his inability to make the payments should not render him in willful contempt of the chancery court. After two days of trial, both parties filed motions for attorney's fees. In December 2021, the chancery court entered an opinion and judgment holding that both children were emancipated and Kenneth was relieved of his current obligations in certain paragraphs of the Agreement, but that Kenneth had not been relieved of his obligation to maintain a life insurance policy. The chancery court granted Kenya a monetary judgment for Kenneth's portions of the expenses regarding the children and Kenya's request for attorney's fees. The chancery court gave Kenneth a credit for particular payments he had made in the past while indicating certain charges that would not be allowed such as the costs of private school tuition and livestock animals. Kenneth appealed.

ISSUES

Whether the chancery court erred by (1) failing to modify the life insurance provision of the Agreement; (2) finding Kenneth in willful contempt for failing to pay his portion of medical, vehicle, college, and extracurricular expenses; and (3) awarding Kenya attorney's fees.

HOLDING

(1) Because Kenneth failed to plead with specificity the relief he requested concerning life insurance, because Kenneth failed to provide the chancery court with any information about the current life insurance policy, and because Kenneth failed to support his argument the Agreement should have been modified, and because Kenneth failed to allege fraud or any other extenuating circumstances that would have warranted the modification of the Agreement, Kenneth's claim that the chancery court erred by failing to modify the life insurance provision of the Agreement was without merit. (2) Because Kenya provided exhibits and testimony at trial that proved Kenneth failed to pay his portion of the children's medical, vehicle, college, and extracurricular expenses, because Kenneth failed to present proof regarding payments he allegedly made, because Kenneth admitted he did not pay medical expenses, expenses for the vehicle except for its tires, college expenses, and extracurricular expenses, and because Kenneth's claims that some bills predated the Agreement were barred on appeal because he failed to raise the claims at trial, the chancery court did not err in holding Kenneth in contempt for unpaid medical expenses, vehicle expenses, college expenses, and extracurricular expenses. (3) Because the chancery court found Kenneth in willful contempt for failing to pay expenses on behalf of the minor children pursuant to the Agreement, the chancery court did not err by awarding Kenya attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Chancery Court.

Affirmed - 2022-CA-00005-COA (June 13, 2023)

Opinion by Judge Emfinger

Hon. Jacqueline Estes Mask (Monroe County Chancery Court)

A. E. (Rusty) Harlow Jr., Kathi Chrestman Wilson, & Morgan Kay Jackson for Appellant - Stephen P. Spencer & William C. Spencer Jr. for Appellee

Briefed by [AnnaGrace Meeks](#)

Edited by [Thomas Simpson](#) & [Ashley House](#)

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COURT OF APPEALS - CRIMINAL CASES

ALLEN V. STATE

CRIMINAL - FELONY

EVIDENCE - AUTHENTICITY OF EVIDENCE - ADMISSIBILITY - Once there is a prima facie case showing authenticity, the evidence goes to the jury, which will then determine the ultimate question of whether the evidence is what it was claimed to be

EVIDENCE - RELEVANT EVIDENCE - ADMISSIBILITY - Relevant evidence is generally admissible, so long as its probative value is substantially outweighed by a danger of unfair prejudice; evidence of a crime, wrong, or other act may be admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

EVIDENCE - ADMISSIBILITY - ENTRAPMENT - Once a defendant makes out a prima facie case of entrapment, evidence of predisposition is relevant and always admissible

EVIDENCE - HEARSAY - ADMISSIBILITY - Hearsay is a statement that (1) the declarant does not make while testifying at the current trial or hearing and (2) that a party offers in evidence to prove the truth of the matter asserted in the statement; a statement by a party opponent is an exception to hearsay

EVIDENCE - HEARSAY - CONFRONTATION CLAUSE - A general hearsay objection is insufficient to preserve an alleged Confrontation Clause violation for appellate review; the Confrontation Clause only applies to statements that are testimonial while nontestimonial hearsay is subjected to the evidentiary rules concerning reliability

EVIDENCE - ADMISSIBILITY - ERRONEOUS ADMISSION - Where the prejudice from an erroneous admission of evidence dims in comparison to other overwhelming evidence, the admission will stand

FACTS

In February 2021, Officer Lee Sanders with the Madison Police Department found an unconscious man, later identified as Austin Elliott, inside a vehicle. Officer Sanders noticed pills in the cup holder. Despite medical efforts, Elliott died of a drug overdose. Officer Sanders obtained permission to search Elliott's cell phone and identified two suspects Carlos Allen and Nicholas Attkisson. The search of Elliott's phone led Officer Sander to believe that Allen had supplied Elliott with the pills, and Attkisson had planned to get two of the pills from Elliott. Law enforcement took Attkisson into custody, and he agreed to be a confidential informant. Attkisson stated that he had known Allen for approximately two years and had engaged in approximately 200 to 300 prior drug transactions with him. Attkisson texted Allen and arranged a purchase for later that day. Investigator Stephen Tucker set up a sting operation which resulted in Attkisson purchasing eleven dosage units of fentanyl. Law enforcement then conducted a traffic stop on Allen and recovered the money received from Attkisson, two cell phones, a firearm, and various narcotics including one hundred forty-six dosage units of fentanyl, seventeen dosage units of hydrocodone and acetaminophen, and four dosage units of amphetamine. During opening statements, Allen's counsel suggested Allen was simply a drug addict and lacked specific intent required to be found guilty of trafficking. Further, Allen's counsel argued that law enforcement needed to place the blame on someone and that person ended up being Allen. Allen's counsel also suggested an entrapment defense by asserting that the transaction may not have happened but for law enforcement providing Attkisson money, a car, and inducing him to set up a transaction with Allen. To rebut the entrapment defense, the State sought to admit the text messages from Allen's cell phone into evidence to show evidence of prior drug transactions with multiple individuals.. The circuit court held the text messages were relevant to prove intent and were "highly probative." After the circuit court's ruling, Investigator Ryan Wigley performed an extraction on Allen's cell phone that revealed Elliott texted Allen the day before Elliott was found unconscious. The text Elliott sent Allen said that he would "come get more blues" after he was paid. The State also sought to admit the text messages between Allen and three other individuals, Rachel Brown, Big Homie, and an unknown contact into evidence. Allen objected and argued the text messages were irrelevant, more prejudicial than probative, and contained inadmissible hearsay. Allen also argued the texts could have been sent from "bots." The circuit court held that the text messages were relevant and noted that their probative value had already been considered. Additionally, the circuit court held the text messages were not hearsay because they were admissions by a party opponent. Allen's objection was overruled, and the text messages were admitted into evidence. Allen texted Brown that he had forty milligrams of Vyvanse and Brown replied she wanted them. Big Homie texted Allen to drop something off to "keep [him] going." The unknown contact texted Allen that they needed "a 100 and a 40." Investigator Wigley testified that based on his experience and training as an officer, he believed the texts were referring to selling pills. After considering the evidence, a jury found Allen guilty of selling more than ten dosage units but less than twenty dosage units of fentanyl, trafficking controlled substances while in the possession of a firearm, possessing more than two dosage units but less than ten dosage units of hydrocodone with acetaminophen while in the possession of a firearm, and

possessing more than two dosage units but less than ten dosage units of amphetamine while in the possession of a firearm. Allen appealed.

ISSUES

Whether the circuit court erred by admitting text messages between Allen and Rachel Brown, Big Homie, and an unknown contact into evidence because they (1) were not authenticated at trial because the State failed to establish the identities of the alleged drug seekers or that the messages were about selling drugs; (2) were irrelevant and more prejudicial than probative; and (3) contained inadmissible hearsay.

HOLDING

(1) Because the text messages were relevant to show that Allen possessed and sold drugs to multiple individuals, because Investigator Wigley testified that he believed the text messages referenced selling pills based on his training and experience, because Attkisson indicated he arranged drug purchases with Allen through text messages and that he had purchased drugs from Allen fifteen to twenty-five times within approximately a month, and because the text messages between Allen and Rachel Brown, Big Homie, and an unknown contact followed the same pattern as the text messages between Allen and Attkisson, the circuit court did not err by admitting the text messages because there was a prima facie showing that they were about selling drugs. (2) Because the text messages were relevant to show intent and a common plan of arranging drug sales by text messages to multiple individuals, because the circuit court provided the jury a limiting instruction that the text messages were only to be considered for the purposes of showing intent, knowledge, motive, plan, and absence of mistake, because the text messages were relevant to rebut Allen's entrapment defense, the circuit court did not err by admitting the text messages into evidence because they were relevant and their probative value was not substantially outweighed by the danger of unfair prejudice. (3) Because the text messages were admitted into evidence as a statement by a party opponent, because the text messages were not used for the truth of the matter asserted, because the text messages were used to show intent or a common plan as well as Allen's habit of arranging drug sales by text messages, because the evidence of Allen's guilt was overwhelming, because Allen did not properly assert a Confrontation Clause violation when claiming the messages could have been from bots, and because the Confrontation Clause would have only applied if the text messages were testimonial, the circuit court did not err by admitting the text messages into evidence because they did not contain inadmissible hearsay nor violated the Confrontation Clause. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2022-KA-00331-COA (June 13, 2023)

Opinion by Judge Greenlee

Hon. Dewey Key Arthur (Madison County Circuit Court)

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

Briefed by [Ross Dockins](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

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WALLACE V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - MANSLAUGHTER - HEAT OF PASSION - Words of reproach, criticism or anger do not constitute sufficient provocation to reduce an intentional and unjustifiable homicide from murder to manslaughter

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - Lesser-included-offense jury instructions should not be granted on mere speculation

EVIDENCE - ADMISSIBILITY - OTHER CRIMES - Evidence of other acts is admissible in order to tell the complete story so as not to confuse the jury

EVIDENCE - ADMISSIBILITY - DOMESTIC VIOLENCE - In domestic violence cases, evidence of other violent incidents may be admissible to show the escalating level of violence, culminating in the subject offense

FACTS

In May 2019, Gary Wallace called 911 and reported that he had found his girlfriend of six months, Perry Clark, dead. Biloxi Police Department officers Robert Dronet and Shane Grimmatt responded and later testified that the apartment was unusually dark with every light turned off. They additionally testified that Clark was lying on the bedroom floor covered in blood with injuries to her face and nose. Blood covered the sheets and was splattered on the wall. Clark was later pronounced dead at the hospital. Photographs of Wallace later taken showed that he had blood on his left arm, an open cut on his right hand, and red marks on his shoulders. Dronet's body camera footage showed that Wallace stated that he left the apartment to buy more beer but then changed his mind and went home to find Clark lying on the bedroom floor, bleeding. He then waited an hour and called the police. He further stated that he cut his finger trying to make the call and attempted to give Clark mouth-to-mouth. Wallace was also asked why Clark had a black eye and why he seemed intoxicated, to which he responded that Clark had recently fallen at the Hard Rock Casino and that he had drunk a few beers after donating blood plasma. Dronet found a small knife under Clark's body and no signs of forced entry. Wallace's sister Jamie Ratcliff testified that she went to Wallace's apartment earlier that evening, took Wallace and Clark to the store, and then left. She called Wallace later, who stated that he and Clark had been having sex in the shower, and Ratcliff heard Clark tell Wallace that she loved him. Ratcliff additionally testified that one week prior, she had asked Clark why she had bruises on her face, to which she replied that she fell at the Hard Rock Casino. Clark then asked Ratcliff to take her to the hospital. Then Wallace got agitated and caused a violent scene attacking both Clark and Ratcliff. Wallace eventually calmed down, and Ratcliff stayed at the apartment for a couple more hours. Wallace never left Ratcliff alone with Clark. A postmortem analysis of Clark's fingernails found Clark's DNA and the DNA of another person. Wallace's DNA was then found on the bloody gray shirt that Clark was wearing. Dr. Mark LeVaughn, the pathologist who performed Clark's autopsy, testified that Clark was "beaten and strangled." Wallace was indicted for first-degree murder, and it went to a jury trial. Wallace did not testify or call any witnesses, and the jury was instructed on the indicted offense and second-degree murder. The jury found Wallace guilty of first-degree murder and sentenced him to life in prison. Wallace appealed.

ISSUES

Whether the trial court erred by (1) refusing a heat-of-passion manslaughter jury instruction and (2) allowing Ratcliff to testify about Clark's injuries and Wallace's conduct one week before the murder.

HOLDING

(1) Because lesser-included-offense instructions should not be granted on mere speculation, because there was not "even a scintilla of evidence" that Clark provoked Wallace or that he acted in the heat of passion, and because Wallace simply speculated that "something happened" between the time he and Clark had sex in the shower and her subsequent murder, the trial court did not err in refusing a heat-of-passion manslaughter jury instruction. (2) Because evidence of other acts was admissible in order to tell the complete story so as not to confuse the jury, because in this domestic violence case, evidence of other violent incidents was admissible to "show the escalating level of violence," and because the State was entitled to offer Ratcliff's contrary testimony, which suggested that Wallace had a history of violence against Clark that apparently escalated and culminated on the night of her murder, the trial court did not err in allowing Ratcliff to testify about Clark's injuries and Wallace's conduct one week before the murder. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2022-KA-00332-COA (June 13, 2023)

Opinion by Presiding Justice Wilson

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, Second Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Albert Soussis](#)

Edited by [Kara Edwards](#) & [Mason Scioneaux](#)

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