

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 29, 2023**SUPREME COURT - CIVIL CASES****BIDDLE V. BIDDLE****CIVIL - WILLS, TRUSTS, & ESTATES**

CIVIL PROCEDURE - JURISDICTION & VENUE - WAIVER - Questions of venue and jurisdiction must be raised in a timely manner or waived; if not challenged in a timely manner, jurisdiction and venue are proper

WILLS, TRUSTS, & ESTATES - VENUE - DOMICILE - Under Miss. Code Ann. § 91-7-1, venue is proper where the testator had a fixed place of residence or was domiciled

UNDUE INFLUENCE - PRESUMPTION - SPOUSES - A presumption of undue influence arises when 1) a confidential relationship existed between the testator and beneficiary, and 2) the beneficiary in the confidential relationship was actively involved in some way with preparing, procuring, or executing the will; confidential relationships between spouses are treated differently and are not presumed to be the product of undue influence

UNDUE INFLUENCE - PRESUMPTION - SUSPICIOUS CIRCUMSTANCES - Suspicious circumstances surrounding the creation of a will also raise the presumption of undue influence

FACTS

Frederick (“Rick”) Biddle died in April 2017 in Florence, Alabama. His surviving heirs were his wife, Diane, and his two sons, Brian and Richard. Before Rick died, he hired an attorney to revise his will, which included changing the bequest to his granddaughter Nellie, Brian’s daughter, from a direct inheritance to a trust, in addition to reducing the bequest to Brian from \$50,000 to \$1. Rick also left \$50,000 to Richard and \$400,000 and land to Diane; he left the remainder of his assets to Nellie’s trust. After Rick’s death, Diane petitioned the Tishomingo County Chancery Court to probate Rick’s estate and was appointed executrix. Brian and Richard contested the will and asked the court to remove Diane as executrix, asserting that Diane unduly influenced the creation and execution of Rick’s last will. While the case was pending, Rick’s property was distributed and proceeds from property sales went to Nellie’s trust. In January 2020, Diane filed a motion for summary judgment, which was granted. Brian and Richard appealed.

ISSUES

Whether (1) jurisdiction and venue over Rick’s estate was proper in Tishomingo County Chancery Court and (2) the chancery court erred in granting summary judgment on the issue of undue influence.

HOLDING

(1) Because Rick’s will was probated as the last will and testament of a Mississippi resident, because chancery court had subject matter jurisdiction over probate and estate matters, and because Brian and Richard did not timely contest Rick’s domiciliary status when they challenged his domicile for the first time in response to the summary judgment motion, jurisdiction and venue were proper in Tishomingo County Chancery Court. (2) Because confidential relationships between spouses were not presumed to be the product of undue influence, because Diane was present only on a few occasions in Rick’s meetings with his attorney, had no knowledge of their discussions or will drafts, and was not present at the will’s execution, because there was strong evidence that Rick was mentally sharp and free from undue influence, because Rick’s last will did not reflect a great increase in assets to Diane and was less than she would have received if Rick died intestate, because Brian and Richard’s evidence of page substitution was speculative, because Rick’s attorney maintained an original copy of the will, because Rick was not required to initial when he signed the will and it was attested to by two witnesses, and because misspelled names in a will alone did not indicate a suspicious circumstance, Brian and Richard failed to raise the presumption of undue influence either through Diane’s involvement or evidence

of suspicious circumstances. Therefore, the Supreme Court affirmed the judgment of the Tishomingo County Chancery Court.

Affirmed - 2021-CP-00513-SCT (June 29, 2023)

Opinion by Justice Griffis

Hon. C. Michael Malski (Tishomingo County Chancery Court)

Pro se for Appellants - John A. Ferrell for Appellee

Briefed by [Olivia Schwab](#)

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

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PENN-STAR INS. CO. V. THOMPSON

CIVIL - PERSONAL INJURY

INSURANCE - COMMERCIAL GENERAL LIABILITY POLICIES - COVERAGE - For an insurance company to be obligated to cover a loss under a commercial general liability policy, the loss must arise out of the insured's business operations

CONTRACTS - INSURANCE POLICIES - ENFORCEMENT - Insurance policies are contracts and are to be enforced according to their provisions; insurance companies must be able to rely on their statements of coverage, exclusions, disclaimers, definitions, and other provisions in order to receive the benefit of their bargain and to ensure that rates have been properly calculated

FACTS

Murphy's Welding, LLC ("Murphy's Welding") was a welding business owned by James Allen Murphy. Murphy's Welding had a commercial general liability policy issued by Penn-Star Insurance Company ("Penn-Star"). The Penn-Star policy described the business operation of Murphy's Welding as welding and cutting. In December 2019, Christopher Partridge, an employee of Murphy's Welding was having mechanical issues with his personal truck rendering it out of service. As such, Partridge intended to use Murphy's towing truck and trailer to tow his truck to Murphy's shop and repair the vehicle since his vehicle was inoperable. After business hours, Partridge unsuccessfully attempted to load his truck onto the welding trailer. Partridge testified that he called Murphy to tell him he was going to use the forklift. Murphy disputed that Partridge called him and that he gave Partridge permission to use the forklift. Regardless, Partridge used Murphy's forklift to tow his personal vehicle from his residence to the welding shop. Partridge and fellow employee, John Hollings, used the forklift to lift the rear of Partridge's vehicle underneath the vehicle's hitch and bolted the vehicle to one fork. While operating the forklift in reverse, Partridge towed his truck backwards towards Murphy's shop at around two to three miles-per-hour while Hollings walked behind the forklift down the side of the highway. Hollings was unable to see the forklift towing the vehicle at times. LaTonya Thompson's vehicle approached the opposite direction that Partridge was towing his vehicle and hit the passenger side of Partridge's vehicle. The collision caused the vehicle that the forklift was carrying to break loose and "shoot" across the highway into a ditch. Thompson and her husband were injured as a result. The Thompsons filed a complaint seeking damages against Partridge and Murphy's Welding. The Thompsons alleged that Murphy's Welding was liable for Partridge's actions under the doctrine of respondeat superior. Penn-Star intervened and sought a declaration that the commercial general liability policy carried by Murphy's Welding did not cover the Thompsons' claims and that Penn-Star did not have a duty to defend Murphy's Welding or any other party regarding the suit. At a deposition, Partridge testified that he had Murphy's permission to use the forklift to tow his truck to the shop. Partridge testified he had unlimited access to the shop and all equipment to use when needed. Murphy testified that he allowed his employees to use his shop and his truck if they needed to go somewhere. Murphy testified that his employees were allowed to use the forklift for whatever they needed around the shop. Penn-Star moved for summary judgment on the issue of coverage. The trial court denied Penn-Star's motion finding that the injuries the Thompsons sustained were incurred through Partridge's use of the forklift which was covered by the commercial general liability policy. Penn-Star petitioned for interlocutory appeal.

ISSUE

Whether the commercial general liability policy issued to Murphy's Welding by Penn-Star applied to the losses sustained by the Thompsons.

HOLDING

Because Partridge was not performing a duty related to Murphy's Welding business operations of welding or cutting as required under the commercial general liability policy issued by Penn-Star, because Partridge was not exercising a benefit of his employment when the accident occurred since the accident neither involved Murphy's shop nor truck, because Partridge's use of the forklift was not directly associated with his employment since Partridge's actions occurred after work hours, off his employer's premises, and while Partridge was on a substantial deviation from his work duty, because there was no evidence that the forklift itself caused the accident, because Partridge's use of the forklift could not have been characterized as reasonable and anticipated, and because Partridge's use of the forklift was insufficient to warrant coverage under the policy even if Murphy allowed his employees to use his shop and equipment after hours, the commercial general liability policy issued to Murphy's Welding by Penn-Star did not apply to the losses sustained by the Thompsons. Therefore, the Supreme Court reversed, rendered, and remanded the judgment of the Bolivar County Circuit Court.

Reversed & Rendered; Remanded - 2022-IA-00106-SCT (June 29, 2023)

Opinion by Justice Griffis

Hon. Linda F. Coleman (Bolivar County Circuit Court, Second Judicial Dist.)

Joshua J. Wiener & Donna Brown Jacobs for Appellant - Charles M. Merkel Jr. & Edward P. Connell Jr. for Appellees

Briefed by [AnnaGrace Meeks](#)

Edited by [Nivory Gordon](#) & [Ashley House](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 27, 2023

COURT OF APPEALS - CIVIL CASES

BRENT V. MISS. DEP'T OF HUM. SERVS.

CIVIL - WORKERS' COMPENSATION

INSURANCE - THIRD-PARTY SUIT - REIMBURSEMENT - Miss. Code Ann. § 71-3-71 provides if an employee files suit against a third party, the employer or insurer may intervene and "shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action after deducting the reasonable costs of collection; Miss. Code Ann. § 71-3-71 does not require a showing that EME expenses be proved "medically necessary" to be reimbursable

CIVIL PROCEDURE - WORKERS' COMPENSATION - DECLARATORY OPINIONS - Miss. Workers' Comp. Comm'n Proc. R. 2.24-301 provides that declaratory opinions will not be issued when there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or other make an answer unnecessary

CIVIL PROCEDURE - WORKERS' COMPENSATION - DECLARATORY OPINIONS - Miss. Workers' Comp. Comm'n Proc. R. 2.24-302 provides a declaratory opinion will not be issued where a similar request or proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal

CIVIL PROCEDURE - WORKERS' COMPENSATION - DECLARATORY OPINIONS - Miss. Workers' Comp. Comm'n Proc. R. 2.24-303 precludes declaratory opinions that may adversely affect the interests of the State, the Commission, or any of their officers or employees in any litigation which is pending

WORKERS' COMPENSATION - SETTLEMENT AGREEMENTS - REIMBURSEMENT - According to Miss. Code Ann. § 71-3-15, compensation benefits recoverable to an employer/insurer under Miss. Code Ann. § 71-3-71 include EME expenses of the injured

FACTS

In 2009, Leverne Brent, a branch director for Mississippi Department of Human Services (“MDHS”), sustained a work-related injury when she slipped and fell at a building owned by Madated LLC (“Madated”). MDHS and Mississippi State Agencies Workers’ Compensation Trust (“employer/insurer”) paid Brent’s workers compensation benefits and for her medical treatment. Brent was initially diagnosed as a left-wrist sprain, but it turned out to be a more extensive injury that led to two vertebral fusion surgeries and a rotator cuff surgery. Brent was later referred to NewSouth Neuro Spine for a psychiatric rehab consultation. After receiving treatment for depression, Brent’s case manager referred her to a clinical psychologist for a behavioral psychological evaluation. The psychologist rendered an opinion that Brent’s work injury exacerbated her pre-existing depression and anxiety but that Brent did not need any further mental health treatment. The employer/insurer paid for Brent’s physical assessment, psychiatric rehab consultation, and psychiatric evaluation. In July 2012, Brent filed suit in circuit court against Madated, alleging negligence for a dangerous condition at the entrance of the building that caused her to fall. During the litigation, the employer/insurer filed a motion to intervene in the lawsuit to recover \$358,210.77 that was paid in compensation and medical expenses. The circuit court granted the motion. Brent negotiated a settlement with Madated for \$750,000.00, but she disputed that the employer/insurer’s compensation and expense coverage totaled \$358,210.77. In October 2017, Brent filed a motion to strike the employer/insurer’s petition to intervene because no order granting intervention had been issued until after she reached a settlement with Madated. Alternatively, Brent’s motion sought to limit the amount of reimbursement that should be allowed, identifying some examples of charges she claimed were fraudulent. In response, the employer/insurer offered to settle and accept reimbursement of \$335,216.27 if it was also paid \$21,113.02 for the rest of the related medical expenses. During a hearing, the circuit court approved the overall settlement with Madated. The parties agreed to place \$335,216.27 in an escrow account to be disbursed to employer/insurer after ordered by the circuit court. The terms and provisions of the settlement were written in a court order. In its submission for reimbursement, the employer/insurer included \$3,137.50 for Brent’s employer medical evaluation (“EME”) expenses. Brent argued the expenses were not recoverable under Miss. Code Ann. § 71-3-71. In August 2019, an attorney who did not represent Brent requested a declaratory opinion from the Mississippi Worker’s Compensation Commission (“the Commission”) as to whether EME expenses were recoverable from a settlement of a suit filed by the insurer against a third party under Miss. Code Ann. § 71-3-71. The Commission issued an opinion concluding that the payment of the EME expenses were neither compensation nor the result of medical treatment and, thus, not recoverable as asserted compensation and medical expenses under Miss. Code Ann. § 71-3-71. In October 2019, the circuit court signed an order that the disputed EME expenses remain in the escrow account while all other sums be paid to employer/insurer. In March 2021, the circuit court entered an order finding that the EME expenses should be classified as medical expenses. Further, the circuit court held that the EME expenses were reimbursable under Miss. Code Ann. § 71-3-71. Brent motioned for the circuit court to reconsider its ruling and attached the declaratory judgment adopted by the Commission that argued there was no authority otherwise for treating the EME expenses as medical expenses. In May 2022, the circuit court denied Brent’s motion to reconsider. Brent appealed.

ISSUE

Whether the circuit court erred in finding the EME expenses reimbursable medical expenses.

HOLDING

Because the Commission’s declaratory judgment was rendered separate from and after Brent’s workers’ compensation case and lawsuit against Madated, because the Commission’s declaratory opinion was issued in violation of the Commission’s rules, because the circuit court did not need to defer to the Commission’s opinion, because the EME expenses were specifically included as medical expenses under Miss. Code Ann. § 71-3-15, because Miss. Code Ann. § 71-3-71 did not require a showing that medical expenses be proved medically necessary to be reimbursable, and because Brent’s EME expenses were clearly necessary to further treatment, the circuit court did not err in finding the EME expenses reimbursable medical expenses. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2022-SA-00529-COA (June 27, 2023)

Opinion by Judge McDonald

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court, First Judicial Dist.)

John Hunter Stevens for Appellants - Alan M. Purdie, Dion Jeffery Shanley, & Michael Edwin D'Antonio Jr. for Appellees

Briefed by [Kaehla Outlaw](#)

Edited by [Nivory Gordon](#) & [Ashley House](#)

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GRANTHAM V. GINN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CUSTODY - MODIFICATION - Modification of custody requires the noncustodial parent to prove: (1) that a material change of circumstances has occurred in the custodial home since the most recent custody decree, (2) that the change adversely affects the child, and (3) that modification is in the best interest of the child

FAMILY LAW - CUSTODY MODIFICATION - BURDEN OF PROOF - The party seeking modification of custody bears the burden of proving by a preponderance of the evidence that a material change in circumstances has occurred in the custodial home

FACTS

Logan was born to Houston Grantham and Julia Ginn. When the parties separated, they entered into an agreed order that awarded Houston and Julia joint legal custody, Julia sole physical custody, and Houston reasonable visitation. Child Protective Services (“CPS”) investigated Julia after multiple reports made by Houston. During a second investigation by CPS, Julia failed a drug test. Logan was placed in Houston’s care. Julia testified her understanding of the agreement was that Logan would be returned to her after she completed Narcotics Anonymous classes and passed several urine tests. Houston filed a petition for modification of child custody alleging a material and substantial change in the parties’ circumstances. During this time, Houston refused to let Julia see Logan. Julia entered a drug-rehabilitation program and passed two random drug tests at the time of trial. Julia was only allowed to see Logan once during that time. The CPS specialist testified that she attempted to contact Julia to schedule a meeting to discuss Logan’s return to Julia’s care, but the attempts were unsuccessful. Julia testified that she attempted to text and email the CPS specialist. Ultimately, CPS closed the case and notified Houston that Logan would remain in his care. Julia filed a petition for emergency relief and for a citation of contempt based on Houston denying her visitation and contact with Logan. After a hearing, the trial court entered several orders that provided Julia in-person and telephonic visitation with Logan. The trial court found there was a material change in circumstance which included Julia’s drug abuse, personal choices regarding boyfriends, and multiple changes in residence. However, Houston failed to prove that the change had an actual adverse affect on Logan or that modification was in Logan’s best interest. Houston was unable to point to any instances when Logan suffered neglect or injury from Julia. The trial court also considered conflicting testimony from Houston and his mother versus Julia, her husband, her mother, and her friend regarding the quality of Julia’s relationship with Logan. The trial court found that the most significant adverse effect on Logan stemmed from Houston’s refusal to let him see his mother for months. The trial court found Julia’s testimony credible that she coped with being away from Logan by using drugs and did not use drugs while Logan was present. The trial court considered the testimony of the therapist who had counseled Logan and concluded there was no evidence Logan experienced harm in Julia’s care. The only concern Logan verbalized to the therapist was not being able to see his mother for a long time. The trial court denied Houston’s request for modification of the custody agreement. Houston appealed.

ISSUE

Whether the trial court erred by failing to modify the custody agreement.

HOLDING

Because Houston failed to prove that Julia’s conduct had adversely affected Logan, and because Houston failed to prove that a custody modification was in Logan’s best interest, the trial court did not err by failing to modify the custody agreement. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Chancery Court.

Affirmed - 2021-CA-01314-COA (June 27, 2023)

Opinion by Judge Smith

Hon. Kiley Catledge Kirk (Carroll County Chancery Court)

George Howard Spinks for Appellant - Michelle Dean Easterling & Lydia Quarles for Appellee

Briefed by [Baylee Howard](#)

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

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SDBT ARCHIVES LLC V. PENN-STAR INS. CO.

CIVIL - INSURANCE

INSURANCE - POLICIES - CANCELLATION STATUTE - Miss. Code Ann. § 81-21-19 allows for separate notices of cancellation and separate interests in an insurance policy

STATUTE - INTERPRETATION - PLAIN MEANING - If the words of a statute are clear and unambiguous, the reviewing court applies the plain meaning of the statute and refrains from using principles of statutory construction

CONTRACTS - INSURANCE - MORTGAGE CLAUSE - Courts have interpreted the standard mortgage clause as creating a separate contract of insurance between the mortgage holder/mortgagee and the insurer

FACTS

SDBT Archives LLC (“SDBT”) borrowed money from BGA Finance Inc. (“Finance”) to pay its property insurance premium for a policy issued by Penn-Star Insurance Company (“Penn-Star”). SDBT owned a commercial storage warehouse financed through a loan program with South Delta Planning and Development District Inc. (“South Delta”). In July 2017, SDBT sought renewal of its property insurance coverage and obtained a commercial insurance policy from Penn-Star for the period from July 31, 2017, to July 31, 2018. Under the terms of the agreement, SDBT granted Finance power of attorney to cancel the Penn-Star policy on SDBT’s behalf and collect all return premiums in the event SDBT failed to make timely loan repayments. In February 2018, SDBT failed to make its monthly payment to Finance. Finance gave SDBT notice to bring the loan current within ten days, or Finance would cancel the policy under the premium finance company (“PFC”) cancellation statute. When SDBT failed to make the payment within ten days, Finance cancelled SDBT’s policy, effective March 8, 2018. On March 15, 2018, Penn-Star mailed South Delta a separate notice of cancellation of insurance, informing South Delta that since SDBT defaulted on its premium finance payment, South Delta’s interest in the policy would end on April 18, 2018. On March 10, 2018, two days after SDBT’s interest in the policy was cancelled but before South Delta’s interest was cancelled, SDBT’s warehouse suffered over \$800,000 in roof damage from a hailstorm. Penn-Star denied SDBT’s claim on the grounds the policy was not in effect on March 10. However, South Delta filed a claim under the policy, which Penn-Star paid because South Delta’s interest in the policy was still in effect on March 10. SDBT filed suit against Penn-Star, alleging the policy was not properly cancelled prior to the hailstorm. In particular, SDBT argued that a separate contract of insurance did not exist between the mortgagee and the insurer, and the circuit court incorrectly applied Miss. Code Ann. § 81-21-19. Finding no genuine issue of material fact regarding the insurance coverage, the circuit court denied SDBT’s motion for partial summary judgment and granted Finance’s and Penn-Star’s motions for summary judgment. SDBT appealed.

ISSUE

Whether the circuit court erred in interpreting Miss. Code Ann. § 81-21-19 to allow Finance to separately cancel SDBT’s insurance coverage and finding that adequate notice of cancellation was given to SDBT.

HOLDING

Because the plain language of § 81-21-19 clearly contemplated separate notices of cancellation and separate interests in the policy and because the cancellation date of the insured and the mortgagee was not required to be the same, Finance and Penn-Star fully complied with the PFC cancellation statute in cancelling the policy, and the circuit court did not err. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2022-CA-00099-COA (June 27, 2023)

Opinion by Chief Judge Barnes

Hon. Richard A. Smith (Washington County Circuit Court)

C. Victor Welsh III & Ann Russell Chandler for Appellant - Edward J. Currie Jr., Joseph Walter Gill, Charles Edwin Ross, & Dennis Jason Childress for Appellees

Briefed by [Meaghan Pickles](#)

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

BELL V. STATE

CIVIL - POST CONVICTION RELIEF

POST-CONVICTION RELIEF - TIMELINESS - TIME BAR - In the case of a guilty plea, petitioners must file a petition for post-conviction relief within three years of entry of the judgment of conviction

POST-CONVICTION RELIEF - DNA EVIDENCE – EVIDENTIARY BURDEN - Petitioners must prove the existence of biological or DNA evidence to obtain relief in a post-conviction relief petition

FACTS

In 2007, Sylvester Bell was found guilty to the charge of statutory rape. In 2009, Bell argued his indictment was defective and improperly amended to charge him as a habitual offender, his guilty plea was not knowingly or intelligently given, his lawyer provided ineffective assistance, and his plea and conviction should be set aside because he did not sign his petition and there was no transcript of his plea hearing. More recently, Bell argued his attorney misrepresented the length of Bell's sentence and eligibility for parole, failed to investigate the circumstances surrounding his arrest, and there was DNA evidence that had not been tested. This matter was Bell's fifth post-conviction relief petition. Here, Bell alleged he was denied access to certain transcripts and DNA testing. Since 2016, the Court of Appeals has held that Bell's claims were successive and time-barred. The trial court dismissed this petition on the basis that it was successive. Bell appealed.

ISSUE

Whether the trial court erred in dismissing Bell's petition for post-conviction relief.

HOLDING

Because Bell's claims were filed well beyond the three-year window following his 2007 guilty plea, because Bell failed to prove the claims were subject to a statutory exception, and because Bell expressly admitted that he committed the crime charged, the trial court properly dismissed Bell's fifth post-conviction relief petition as time-barred and successive. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2022-CP-01141-COA (June 27, 2023)

Opinion by Judge McCarty

Hon. Charles E. Webster (Tunica County Circuit Court)

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

Briefed by [Holdon Guy](#)

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

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MANGUM V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - PROCEDURAL BAR - EXCEPTIONS - The Court of Appeals may suspend Miss. R. App. P. 4(a) to allow an out-of-time appeal in criminal cases and civil post-conviction relief actions

CRIMINAL PROCEDURE - GUILTY PLEA - COLLATERAL CONSEQUENCES - Trial courts must advise defendants of material or direct consequences of a guilty plea and are not required to inform defendants of collateral consequences, such as being required to register as a sex offender

FACTS

In 1981, Gerald Mangum pled guilty to murder, rape, and burglary of a dwelling. Mangum was released on parole in 2017 and required to register as a sex offender. In August 2021, Mangum filed his eighth motion for post-conviction relief (“PCR”). In the latest PCR motion, Mangum asserted that his guilty plea for rape was involuntary and that he was not advised he would be required to register as a sex offender. The Hinds County Circuit Court found that when Mangum pled guilty in 1981, the requirement to register as a sex offender was not yet enacted. However, retroactive application of said requirement did not violate the ex post facto clauses of either the United States or Mississippi Constitutions. On August 31, 2021, the circuit court denied Mangum’s PCR motion. The following month, Mangum filed a motion for reconsideration and a request for factual findings and conclusions of law. The motion asserted that the circuit court did not make findings of fact or conclusions of law as to the voluntariness of Mangum’s plea. In June 2022, the circuit court denied Mangum’s motion. Mangum appealed.

ISSUES

Whether (1) the Court of Appeals had jurisdiction to consider Mangum’s appeal and (2) Mangum’s guilty plea was involuntary because he was not informed of the consequences of his plea.

HOLDING

(1) Because under *Gordon* the Court of Appeals could suspend Miss. R. App. P. 4(a) for criminal cases and civil post-conviction relief actions in the interest of justice, the Court had the jurisdiction to consider the appeal even though the appeal was untimely. (2) Because trial courts are only required to inform defendants of direct or material consequences of their guilty plea and because the requirement to register as a sex offender was a collateral consequence, the trial court was not required to inform Mangum of that collateral requirement; thus, Mangum’s guilty plea was not involuntary. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2022-CP-00689-COA (June 27, 2023)

Opinion by Judge Greenlee

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Morgan Rushing](#)

Edited by [Kayla Tran](#) & [Mason Scioneaux](#)

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SANDERS V. REEVES

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - JURISDICTION - Post-conviction relief requests must be made in the county of conviction, not the county of incarceration

CONSTITUTIONAL LAW - JUDICIAL REVIEW - POLITICAL QUESTION - State courts cannot issue judgment on issues of policy choice by another branch of government

FACTS

George Sanders was sentenced in Lincoln County Circuit Court to 20 years in custody as a habitual offender. Several years into his incarceration, Sanders filed suit in Jefferson County against the current Governor, Tate Reeves, and cited the U.S. Constitution in calling for the abolition of the habitual offender statute. The trial court dismissed the lawsuit for lack of jurisdiction. Sanders appealed.

ISSUE

Whether the circuit court erred in dismissing the lawsuit for lack of jurisdiction.

HOLDING

Because the relief being requested was post-conviction in nature and the complaint was filed in the county of incarceration, not conviction, and because the habitual offender statutes were passed and could only be amended by the Legislature and the Governor, the trial court did not err in dismissing the lawsuit for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Jefferson County Circuit Court.

Affirmed - 2022-CP-01059-COA (June 27, 2023)

Opinion by Judge McCarty

Hon. Tomika Harris Irving (Jefferson County Circuit Court)

Pro se for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Constance Hartline](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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COURT OF APPEALS - CRIMINAL CASES

FRILEY V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - PRIOR BAD ACTS - Evidence of prior bad acts is admissible under Miss. R. Evid. 404(b)(2) if the evidence offered seeks to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

EVIDENCE - ADMISSIBILITY - PROBATIVE VALUE - Evidence is admissible if its probative value is not substantially outweighed by possible prejudicial effects on the defendant

APPELLATE PROCEDURE - BRIEFING - STATEMENT OF ISSUES - Miss. R. App. P. 28 requires a list of statement of issues; if those issues are not listed, the claim is procedurally barred and thus will not be reviewed

APPELLATE PROCEDURE - BRIEFING - LEGAL AUTHORITY - Miss. R. App. P. 28 requires the appellant's brief cite to authorities, statutes, and parts of the record relied on; the appellant should cite to meaningful or relevant authority that develops the argument in a meaningful way

FACTS

Raymond Friley lived with his mother, Mary. Mary would occasionally babysit her great-granddaughter Jane in the home while Jane's mother, Stephanie Sanchez, was at work. In March 2017, Jane, who was five months old, came home to Sanchez from Mary's house with an unexplained rash on her face. Two years later, Jane began exhibiting strange behaviors like putting plastic over her head and pulling it tight as well as humping things such as inflatables. Sanchez searched Friley's room and discovered lots of plastic products such as big rolls of industrial plastic to sheet plastic, bubble wrap, and ziplock bags. She also found plastic children's floaties. Sanchez also attempted to look at Friley's computer, but the computer was password protected. In June 2019, Sanchez went to Mary's home to visit her dying grandfather but neither her grandfather nor Friley was there. While she was there, Sanchez discovered that Friley's laptop was unlocked. She found photos of Jane as a baby in Friley's bed with an oxygen or nebulizer-type mask, tubing in her nose and mouth, zipped up in a plastic comforter-type bag and crying. There were also videos of similar occurrences of Jane with plastic around her head with no air in it or tubes in her nose. Sanchez contacted the Warren County Sheriff's Department, which then executed a search warrant on the home. Law enforcement found and collected numerous plastic and electronic devices from Friley's room. Friley was arrested and charged with felony child abuse. Friley had a previous molestation conviction in which he attacked a young female while a pool toy and plastic bag were put over her face. Mary testified that her husband had a C-pap machine but that Friley had no need for oxygen. Investigator Ashley Boldig for the Attorney General's office testified that she discovered hundreds of stock images of children wearing breathing masks or clear tubing on their faces and that his browser history contained searches for child pornography and child abuse statutes and penalties. Christy, a girl whom Friley sexually assaulted at age eight or nine, also testified that Friley entered a pool shower and digitally sexually assaulted her while putting a pool noodle and fully blown-up ziplock bag against her face. Friley was convicted of child abuse and sentenced to life imprisonment. Friley appealed.

ISSUES

Whether (1) the trial court erred in allowing testimony about prior bad acts; (2) the trial court erred in allowing allegedly cumulative, overly-prejudicial, and irrelevant evidence obtained from Friley's computer; and (3) Friley was subject to ineffective assistance of counsel.

HOLDING

(1) Because the trial judge had a great deal of discretion as to the relevancy and admissibility of evidence and because the probative value of the evidence offered was not substantially outweighed any danger of unfair prejudice, the trial court did not err in admitting testimony of Friley's prior bad acts. (2) Because the admission of this evidence demonstrated Friley's motive, lack of accident, and intent, the trial court did not err in admitting the internet searches and pictures from Friley's computer as evidence. (3) Because Friley's pro se brief did not conform to Miss. R. App. P 28 and because the allegations of ineffective assistance of counsel were not based on facts apparent from the record, the claim could not be reviewed on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2021-KA-00791-COA (June 27, 2023)

Opinion by Chief Judge Barnes

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) & *Pro se* for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee

Briefed by [Micah McGaha](#)

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

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PRATHER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF -

Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

EVIDENCE - TESTIMONY - HEARSAY - Testimony is not hearsay and is thus admissible if it is offered for some purpose other than to prove the truth of the matter asserted

CRIMINAL PROCEDURE - DIRECTED VERDICT - REQUIREMENTS - A motion for a directed verdict on the grounds that the State has failed to make out a prima facie case must state specifically wherein the State has failed to make out a prima facie case; motions for a directed verdict must be specific and not general in nature

CRIMINAL LAW - AGGRAVATED ASSAULT - ELEMENTS - Miss. Code Ann. § 97-3-7(2)(a) provides that a person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life

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

Dillon Barton arrived at Sam Melcher's house to pay him for helping Barton's aunt move. James Williams and Olivia Townley were at the house also. As Barton was leaving, Donovan Prather and Brandon Runnels arrived at Melcher's house. Both were armed. Prather told everyone to go inside except for Barton. Prather then pointed his pistol at Barton and ordered him, "Give me everything you got." Barton surrendered his truck keys, phone, and cash. Afterward, Prather forced Barton into his own truck and began occasionally hitting him with his hand and pistol. Prather kept Barton in his truck for six-and-a-half hours. Afterward, Prather and Runnels released Barton and left momentarily. Melcher, Townley, and Williams helped Barton with his injuries. When Prather returned, Barton fled. Melcher discovered Barton in the woods after convincing Prather to return Barton's keys and leave. Under Melcher's suggestion, Barton headed home with Townley while she attended to his injuries. Prather and Runnels trailed Barton and Townley as they were leaving. After losing Prather and Runnels, Barton arrived home and his dad called the police. Prather was charged with aggravated assault, armed robbery, and kidnapping. At trial, Barton and Townley testified to their experiences that night. Officer Tony Cooper and Deputy David Hunt also testified to what they were told about the incident. Officer Cooper testified that Barton told him that Prather threatened to kill him if he did anything "funny." Prather objected to Officer Cooper's testimony related to what Barton told him as cumulative since Barton had already testified about what Prather said. The trial court then instructed the State to move along. Officer Cooper then testified that Townley told him that Prather and Runnels ordered everyone into the house and that if anyone came outside, they would be shot. Lieutenant Archie Williams testified about arresting Prather with a rifle next to him in his vehicle. Lastly, Dr. Patti Manning testified she treated Barton's injuries after the robbery. Dr. Manning testified that Barton had multiple injuries from Prather including two abrasions, a contusion on the right eye, and a laceration on his right cheekbone. Dr. Manning testified that Barton told her that he had been held up by gunpoint and hit in the face with a pistol. There were also photos entered into evidence of Barton's injuries, clothes, and blood-stained vehicle from the night of the robbery. Rather than Prather contending the evidence was insufficient to support his aggravated-assault conviction at trial by arguing the injuries suffered by Barton constituted "serious bodily injury," Prather moved for a directed verdict on the grounds that the State did not meet its burden of proof on the three charges of the indictment. The trial court denied Prather's motion for a directed verdict. A jury found Prather guilty on all counts. Prather then filed a motion for judgment notwithstanding the verdict arguing that the State failed to prove every element of the crimes of aggravated assault. The trial court denied this motion as well. Prather appealed.

ISSUES

Whether (1) Prather's trial counsel was ineffective by failing to object to prejudicial inadmissible hearsay testimony; (2) there was sufficient evidence to support Prather's conviction for aggravated assault; and (3) the verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because Prather failed to overcome the presumption that his trial counsel deciding not to object to Officer Cooper and Deputy Hunt's testimonies regarding their investigation was trial strategy, because Prather's trial counsel failing to object to Officer Cooper and Deputy Hunt's testimonies would not have constituted ineffective assistance of counsel if their testimony was offered for a non-hearsay purpose, and because Prather's trial counsel made a proper objection to a perceived harm from Officer Cooper's testimony as being cumulative after Officer Cooper testified what Barton had told him when Barton had already testified about it, Prather's trial counsel was not ineffective by failing to object to prejudicial inadmissible hearsay testimony. (2) Because Prather's motions for a directed verdict and judgment notwithstanding the verdict were general in nature, Prather was procedurally barred from raising the issue on appeal that there was insufficient evidence to support Prather's conviction for aggravated assault, and because notwithstanding the procedural bar, evidence and testimony supported Barton's claim that Prather caused him serious bodily injury, Prather's argument there was insufficient evidence to support an aggravated assault conviction was meritless. (3) Because Prather's claim regarding the severity of Barton's injuries was found without merit, because the State was not obligated to present other eyewitnesses, because any inconsistencies in the witnesses' testimony were not material to the issue at question, and because the jury resolved any conflict in the evidence and determined the credibility of the witnesses' testimony, the jury did not err in finding Prather guilty of the charges and the verdict was not so contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2021-KA-01416-COA (June 27, 2023)

Opinion by Chief Judge Barnes

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Jacoby Gilmore](#)

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

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SOILEAU V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - GUILTY PLEAS - Miss. Code Ann. 99-35-101 provides that any person convicted of an offense in a circuit court may appeal that conviction to the Supreme Court, except when such person enters a plea of guilty and is subsequently sentenced; when a person pleads guilty, that person may not challenge such guilty plea on direct appeal

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - GUILTY PLEAS - Where a direct appeal is unavailable due to the entrance of a guilty plea and subsequent sentencing, a person may properly file a post-conviction relief motion to challenge the circumstances of the plea or sentence

FACTS

In June 2021, Warren Soileau Jr. pled guilty in the Walthall County Circuit Court to one count of possession of a firearm by a felon. Prior to the sentencing, Soileau moved to withdraw his guilty plea. The circuit court denied the request and sentenced Soileau to ten years in custody with credit for time served and with the remainder of his sentence suspended, followed by five years of post-release supervision. Ten days after the sentencing order was entered, Soileau moved to vacate the order or undergo a new trial, which the circuit court denied. Soileau appealed.

ISSUE

Whether the Court of Appeals had jurisdiction of Soileau’s direct appeal following the entrance of a guilty plea and subsequent sentencing.

HOLDING

Because Soileau pled guilty and was sentenced, Soileau’s guilty plea barred him from challenging the plea on direct appeal, and the Court of Appeals lacked jurisdiction of Soileau’s direct appeal. Therefore, the Court of Appeals dismissed the appeal from the Walthall County Circuit Court.

Appeal Dismissed - 2022-KA-00499-COA (June 27, 2023)

Opinion by Judge Smith

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

Douglas Edward Miller for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Caitlyn Dills](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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STEVENSON V. STATE

CRIMINAL - FELONY

EVIDENCE - ACCOMPLICE TESTIMONY - CORROBORATING EVIDENCE - Only a small amount of corroboration of an accomplice’s testimony is required to affirm a conviction; the particular testimony needing corroboration is the portion tying the defendant to the crime

EVIDENCE - ACCOMPLICE TESTIMONY - PRIOR INCONSISTENT STATEMENTS - Prior inconsistent statements of an accomplice, if explained at trial, do not necessarily render the testimony self-contradictory and substantially impeached

EVIDENCE - TESTIMONY - JURY’S CONSIDERATION - It is within the province of the jury to accept parts of the testimony and to reject parts of the testimony of any witness, and the jury may give consideration to all inferences flowing from the testimony

CRIMINAL LAW - APPELLATE COURTS - WEIGHT OF EVIDENCE - Appellate courts should only overturn the lower court’s verdict when the evidence is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

In September 2018, Natchez Police Department responded to a drive-by shooting at the Holiday Apartments. Lewis Jackson, one of three victims, was outside the apartment when the shooting occurred, while the other two victims were inside. When the police arrived at the scene, all three victims described the vehicle involved in the shooting as a gold SUV. The SUV was discovered at Darnell Stevenson’s and Darryl Hurts’s residence the next day. Jamien Washington was also identified as the owner of the SUV. Stevenson, Hurts, and Washington were arrested and charged with the murder of Jackson, the aggravated assault of Joshua Beamer and Alisha Mason, and drive-by shooting. In March 2020, Stevenson was indicted for first-degree murder, two counts of aggravated assault, and drive-by shooting. Eight months later, Hurts pled guilty to conspiracy to commit second-degree murder and agreed to testify against Stevenson and Washington. Stevenson’s trial began in October 2021. Commander Scott Frye of the Natchez Police Department testified at trial. During his testimony, Frye stated that multiple .40-caliber and .223-caliber bullets were recovered at the scene of the shooting and within the SUV. Frye also testified that Stevenson had no DNA or fingerprints in the SUV. Further, blood tested from the SUV was discovered to be Washington’s. Investigator Juan McDonald testified that Stevenson gave a description of the suspect’s vehicle before he passed away at the hospital. McDonald also testified that the crime lab matched blood recovered from the SUV to Washington. Officer Best was a responding officer that testified Stevenson was shot in his back. Hurts testified against his cousin, Stevenson, as part of the plea deal. Hurts testified that they were driving around in the SUV when Stevenson told Washington to keep driving around because he wanted to see somebody get killed. Hurts testified that Stevenson was seated in the back of the SUV when Stevenson

started shooting. Stevenson then jumped out of the SUV and continued shooting on foot. Hurts said he ducked under the front dash of the SUV when Stevenson and Washington started shooting. Hurts testified that Washington injured his arm and bled in the SUV. When asked about a photo of Hurts holding a gun on the night of the shooting, Hurts testified that everyone was passing around the weapons and taking pictures with them. Starks Hathcock testified as a forensic scientist specializing in firearms identification. Hathcock testified that all shell casings at the scene were fired from the same two guns. After the State's evidence was presented, Stevenson moved for a directed verdict which the trial court denied. The jury found Stevenson guilty of the lesser-included offense of second-degree murder, two counts of aggravated assault, and drive-by shooting with firearm enhancements. Just shy of a month later, Stevenson filed a motion for a new trial on the grounds that the State failed to show a proper chain of custody in evidence it produced at trial. The trial court denied Stevenson's motion for a new trial. Stevenson appealed.

ISSUE

Whether the trial court erred in denying Stevenson's motion for a directed verdict where no credible evidence placed him at the scene of the incident.

HOLDING

Because Hurts's testimony was corroborated by other witnesses and forensic evidence, because the photo of Hurts with the gun did not self-contradict or substantially impeach Hurts's testimony, because a rational juror could have found Stevenson guilty of the crimes charged against him, and because the credibility and reasonableness of Hurts was within the province of the jury, the trial court did not err in denying Stevenson's motion for a directed verdict. Therefore, the Court of Appeals affirmed the judgment of the Adams County Circuit Court.

Affirmed - 2021-KA-01286-COA (June 27, 2023)

Opinion by Presiding Judge Lawrence

Hon. Debra W. Blackwell (Adams County Circuit Court)

Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

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