

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 7, 2023**SUPREME COURT - CIVIL CASES****THOMAS V. BOLIVAR CNTY.****CIVIL - OTHER**

MISS. TORT CLAIMS ACT - STATUTE OF LIMITATIONS - TOLLING - Miss. Code Ann. § 11-46-11(3)(a)-(b) provides that all actions brought under the Mississippi Tort Claims Act shall be commenced within one year of the date of the actionable conduct, except that filing a notice of claim within the required one-year period will toll the statute of limitations for ninety-five days from the date of receipt of the notice of claim and that the claimant will have an additional ninety days to file suit after the claimant receives a notice of denial claim or the expiration of the ninety-five day tolling period, whichever comes first

MISS. TORT CLAIMS ACT - STATUTE OF LIMITATIONS - TOLLING PERIOD EXTENSION - Pursuant to Miss. Code Ann. § 1-3-67, if the last day of a tolling period established by Miss. Code Ann. § 11-46-11(3)(a)-(b) is a Saturday, Sunday, or a legal holiday, the tolling period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or the clerk's office is closed

CIVIL PROCEDURE - COMMENCEMENT OF ACTION - DATE - Pursuant to Miss. R. Civ. P. 3(a) and Miss. R. Civ. P. 5(e)(1), an action is commenced on the date that the complaint is filed with the clerk of the court

CIVIL PROCEDURE - COMMENCEMENT OF ACTION - FILING OF COMPLAINT - Pursuant to Miss. R. Civ. P. 5(e)(2) and Administrative Procedures for Mississippi Electronic Courts ("APMEC") §§ 1(D), 6(A)(1), a complaint is completely filed on the date of the physical delivery of the complaint, the civil cover sheet, and the filing fee to the appropriate clerk of court if the appropriate court uses the Mississippi Electronic Courts ("MEC") system

CIVIL PROCEDURE - COMMENCEMENT OF ACTION - SUBMISSION OF SUMMONS - Pursuant to Miss. R. Civ. P. 3(a), Miss. R. Civ. P. 4(a), and Administrative Procedures for Mississippi Electronic Courts ("APMEC") § 6(A)(1)-(2), the immediate submission of a summons to be issued is not required for the commencement of an action even if the appropriate court uses the Mississippi Electronic Courts ("MEC") system

FACTS

On January 14, 2020, Aelicia L. Thomas struck a downed utility pole while driving on a road in Bolivar County and sustained injuries from the collision. On January 13, 2021, Thomas sent a notice of claim to the Bolivar County Chancery Clerk pursuant to Miss. Code Ann. § 11-46-11(3)(a), a section of the Mississippi Tort Claims Act, alleging that Bolivar County caused her injuries by breaching its duty to warn motorists of the downed utility poles. On January 14, 2021, the Bolivar County Chancery Clerk received Thomas's notice of claim, and as a result, the one-year statute of limitations was tolled for ninety-five days pursuant to Miss. Code Ann. § 11-46-11(3)(a). As Thomas did not receive a notice of denial claim during the tolling period, Thomas had an additional ninety (90) days to file suit after the tolling period had expired pursuant to Miss. Code Ann. § 11-46-11(3)(b). Thus, the statute of limitations for Thomas's cause of action established by Miss. Code Ann. § 11-46-11(3) was to expire on Sunday, July 18, 2021. On Monday, July 19, 2021, a paralegal hand-delivered Thomas's complaint, civil cover sheet, and filing fee to the clerk of either the Circuit Court or Chancery Court of Bolivar County. All Bolivar County courts of record use the Mississippi Electronic Courts ("MEC") system. The civil cover sheet was filed and dated Monday, July 19, 2021. However, the undated complaint was not filed and entered into the MEC system until Tuesday, July 20, 2021. On November 4, 2021, Thomas submitted a summons to be issued to the Bolivar County Chancery Clerk. In December 2021, Bolivar County filed a motion for judgment on pleadings pursuant to Miss. R. Civ. P. 12(c), asserting that Thomas's claim should be dismissed as time-barred because Thomas's complaint was not filed within the applicable statute of limitations and Thomas had failed to issue a summons

upon the filing of her complaint and thus, had filed an incomplete suit within the tolling period. In April 2022, the trial court held a hearing on the motion. The trial court granted the motion and dismissed Thomas’s complaint as time-barred on the grounds that Thomas had filed her complaint one day after the applicable statute of limitations period established by Miss. Code Ann. § 11-46-11(3) had run and that Thomas had failed to submit a summons for issuance within the tolling period established by Miss. Code Ann. § 11-46-11(3) in a mandatory MEC court. Thomas appealed.

ISSUES

Whether the trial court erred in dismissing Thomas’s complaint as time-barred on the grounds that (1) Thomas had filed her complaint outside of the applicable statute of limitations established by Miss. Code Ann. § 11-46-11(3) and (2) that Thomas had failed to submit a summons for issuance within the tolling period established by Miss. Code Ann. § 11-46-11(3) in a mandatory MEC court.

HOLDING

(1) Because the last day of the tolling period established by Miss. Code Ann. § 11-46-11(3) was on a Sunday, July 18, 2021, because the tolling period was further extended by Miss. Code Ann. § 1-3-67 from Sunday, July 18, 2021 to Monday, July 19, 2021, because Thomas’s complaint, civil cover sheet, and filing fee were hand-delivered to the clerk of court on July 19, 2021, and because Thomas’s action was commenced on July 19, 2021 when she completely filed her complaint, the trial court erred in dismissing Thomas’s complaint as time-barred on the ground that she filed her complaint outside of the applicable statute of limitations. (2) Because Thomas was not required to immediately submit a summons to be issued to the clerk of a mandatory MEC court in order to commence her action and because Thomas commenced her action on the last day of the statute of limitations, the trial court erred in dismissing Thomas’s complaint as time-barred on the ground that Thomas had failed to submit a summons for issuance within the applicable tolling period in a mandatory MEC court. Therefore, the Supreme Court reversed and remanded the judgment of the Bolivar County Circuit Court.

Reversed & Remanded - 2022-CA-00445-SCT (Sept. 7, 2023)

Opinion by Presiding Justice King

Hon. Albert B. Smith III (Bolivar County Circuit Court)

S. David Norquist & Christopher Nicklaus Bailey for Appellant - Daniel Judson Griffith & Mary McKay Griffith for Appellee

Briefed by [Joseph Muldrew](#)

Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

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SUPREME COURT - ORDERS

CRUMP V. STATE

EN BANC ORDER

ORDER

Jermaine Crump filed an application for leave to proceed in the trial court. However, the application was considered successive because Crump had filed previous petitions for post-conviction relief that were all denied. The Supreme Court stated that the issues raised had already been considered and rejected, and thus were barred by res judicata. Further, Crump’s petition was untimely and frivolous. The Supreme Court found that, notwithstanding the procedural bars, Crump presented no arguable basis for his claims. The Supreme Court denied the petition and sanctioned Crump because Crump had previously been warned that future frivolous filings would result in losing the ability to file applications for post-conviction relief in forma pauperis. Therefore, the Supreme Court ordered that Crump not be allowed to file any further applications for post-conviction relief, or similar pleadings, related to Crump’s conviction and sentence unless Crump were to pay the applicable docket fee.

OBJECTION

Presiding Justice King opposed the Supreme Court's order restricting Crump from filing further petitions for post-conviction relief in forma pauperis. He argued it unconstitutional to impose monetary sanctions on indigent defendants because it punishes and violates their rights by restricting their access to the court system. He would have simply found that Crump's petition lacked merit.

Denied with Sanctions - 2018-M-00410 (Aug. 31, 2023)

En Banc Order by Justice Maxwell - Objection by Presiding Justice King

Briefed by [Selena Houston](#)

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

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SUPREME COURT - CRIMINAL CASES

McCOLLUM V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - WARRANTS - PROBABLE CAUSE - There must be a substantial basis for concluding that probable cause exists in order for a search warrant to properly be issued

CRIMINAL PROCEDURE - PROCEDURAL BARS - RULING ON MOTIONS - The burden is on the movant to obtain a ruling on a pre-trial motion, and failure to do so constitutes a procedural bar

CRIMINAL PROCEDURE - PLAIN ERROR DOCTRINE - APPLICATION - For the plain-error doctrine to apply, there must have been an error that resulted in a manifest miscarriage of justice or seriously affects the fairness, integrity, or public reputation of judicial proceedings

EVIDENCE - ADMISSIBILITY OF EVIDENCE - HEARSAY - Statements do not constitute hearsay when admitted to explain an officer's course of investigation or motivation for the next investigatory step by that officer

CRIMINAL PROCEDURE - EVIDENCE - SEQUESTRATION RULE - Under Miss. R. Evid. 615, at a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony; to remedy a sequestration rule violation, the trial judge may allow a cross-examination, allow the witness to testify after determining the defense would not be prejudiced by the rule violation, citing the witness for contempt, or barring the witness from testifying altogether

FACTS

On October 14, 2019, Brian Mangum was visiting a property he owned when he discovered that the home and his shop had been broken into. Lieutenant Investigator Leon Wedgeworth subsequently arrived at the property. Mangum reported items missing from his home and shed. Later that day, Mangum installed a cellular trail camera that could detect motion and send real-time pictures to Mangum's cell phone. The next day, the trail camera transmitted a picture of a blue pickup truck with a political sticker on the driver's side door and duct tape on the passenger side door handle. After, Investigator Wedgeworth met Mangum at a scrap yard, L&D Scrap, where they identified items belonging to Mangum. Investigator Wedgeworth also obtained scale purchase tickets from L&D Scrap that were dated October 15; the day the trail camera captured the blue pickup truck. The recipient on the tickets was listed as Charles Ray McCollum, and a copy of his driver's license was attached. After searching the National Crime Information Center ("NCIC") for McCollum's driver's license and vehicle tag information, Investigator Wedgeworth learned that the tag number listed on NCIC for McCollum matched the tag number of the vehicle that had been identified as belonging to McCollum. Over McCollum's objection, the NCIC report was admitted into evidence with the words "Vehicle Used" handwritten at the top of the report. Investigator Wedgeworth testified that he had written that on the NCIC report because that vehicle was identified as being used to sell scraps to scrap yards after searching the database LeadsOnline. In a proffer, Investigator Wedgeworth explained that scrap yards and pawnshops report the items they purchase to LeadsOnline and

that law enforcement uses the database in its ordinary course of business. On October 18, Mangum traveled to his property and called law enforcement when the trail camera again transmitted pictures of the same blue pickup truck on the property. When Mangum arrived on the property, he observed McCollum appearing out of the woods. Investigator Wedgeworth arrived at the property, identified, and arrested McCollum. Investigator Wedgeworth filed an application for a search warrant for McCollum's residence. In the search warrant affidavit, Investigator Wedgeworth provided that the vehicle bearing Mississippi tag CV1-3557 was identified as the vehicle used in the crime and was on camera during the commission of the crime. McCollum filed a motion to suppress the search warrant and argued that the affidavit had contained misleading and false statements to establish probable cause, but the trial court never ruled on McCollum's motion. During the search of McCollum's residence, law enforcement recovered items Mangum had reported missing. During Investigator Wedgeworth's testimony, a witness for the State, Patsy Harper, an employee of L&D Scrap, had entered the courtroom without the knowledge of the trial court or the attorneys. Because the sequestration rule had been invoked, McCollum moved for a mistrial under Miss. R. Evid. 615. After the trial court determined that Harper had been in the courtroom inadvertently, it denied McCollum's motion for a mistrial. Because of the violation, the trial court ruled that Harper would not be allowed to testify. After McCollum expressed concerns about the contents of the scrap purchase tickets being testified to, the trial court stated that it would instruct the jury to disregard the testimony at the close of evidence if McCollum wished. McCollum declined the trial court's offer to provide the limiting instruction. The jury found McCollum guilty of grand larceny. McCollum appealed.

ISSUES

Whether the trial court erred by (1) denying the motion to suppress evidence obtained from the search of McCollum's residence; (2) allowing inadmissible hearsay evidence; and (3) overruling McCollum's motion for a mistrial.

HOLDING

(1) Because there was ample evidence presented that probable cause existed to allow the trial court to issue a warrant, and because the statements in the affidavit were not needed to find probable cause and were not made with the intent of being false or misleading, there was no plain error, and the trial court did not err by denying the motion to suppress evidence obtained from the search of McCollum's residence. (2) Because Investigator Wedgeworth's testimony that he used LeadsOnline and NCIC to identify McCollum as the suspect was used to describe the course of Investigator Wedgeworth's investigation, and because the introduction of the NCIC report with the notation "Vehicle Used" did not result in prejudice and harm or adversely affect a substantial right of McCollum because the jurors likely assumed that the State was presenting the report because it believed the vehicle was used in the crime, the trial court did not err by allowing inadmissible hearsay evidence. (3) Because the trial court permissibly excluded the State's witness from testifying altogether after finding the witness inadvertently violated the sequestration rule, the trial court did not err by overruling McCollum's motion for a mistrial. Therefore, the Supreme Court affirmed the judgment of the Simpson County Circuit Court.

DISSENT

Presiding Justice King argued that because Investigator Wedgeworth testified that he had no evidence that McCollum was on Mangum's property on October 14, the search warrant affidavit contained false statements that were crucial to establish probable cause. Therefore, he argued the trial court erred by denying the motion to suppress evidence obtained from the search of McCollum's residence. Additionally, he argued that the trial court allowed inadmissible hearsay evidence by admitting Investigator Wedgeworth's testimony that he used LeadsOnline to determine that McCollum's vehicle had been used to sell scrap to scrap yards and the NCIC report with the handwritten notation "Vehicle Used." Therefore, the judgment required reversal.

Affirmed - 2021-KA-01276-SCT (Sept. 7, 2023)

En Banc Opinion by Justice Coleman - Dissent by Presiding Justice King

Hon. Stanley Alex Sorey (Simpson County Circuit Court)

George T. Holmes & Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Reynolds Ward](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 5, 2023
COURT OF APPEALS - CIVIL CASES

URBAN V. URBAN

CIVIL - CUSTODY

CIVIL PROCEDURE - MOTION PRACTICE - SUMMONS REQUIREMENT - Under Miss. R. Civ. P. 59(e), filing a motion within ten days makes the judgment not final, which results in the motion not being a petition for modification requiring a Miss. R. Civ. P. 81 summons

CIVIL PROCEDURE - MOTION PRACTICE - MOTIONS TO ALTER OR AMEND JUDGMENT - In order to succeed on a Miss. R. Civ. P. 59(e) motion, the movant must show: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent manifest injustice

EVIDENCE - PROCEDURAL BARS - HEARSAY OBJECTIONS - When the hearsay goes into evidence without objection, the trial court has no opportunity to evaluate the proffered testimony under Miss. R. Evid. 803(24), which therefore waives the issue on appeal

CONTRACTS - EQUITABLE ESTOPPEL - BURDEN OF PROOF - A party asserting equitable estoppel must show (1) that he has changed his position in reliance upon the conduct of another and (2) that he has suffered detriment caused by his change of his position in reliance upon such conduct

EVIDENCE - APPELLANT'S DUTY - PROVIDING NECESSARY MATERIALS - The appellant must designate the necessary transcripts, pleadings, and information for inclusion in the record

FACTS

In January 2020, Gareth Urban and Tina Urban divorced. The divorce decree granted Tina sole legal and physical custody of their minor child while ordering Gareth to pay child support and giving him weekend and holiday visitation. In April 2020, Tina filed an emergency request to suspend Gareth's visitation, and in May 2020, Tina filed a petition for contempt against Gareth for failure to pay child support, in which Gareth cross-petitioned for contempt against Tina for prohibiting his visitation. In June 2020, the chancery court heard Tina's request and appointed a Guardian Ad Litem ("GAL"). In January 2021, it was discovered that the GAL recommended that Gareth have physical custody of the child because Tina was home-schooling the child during COVID-19. In the August 2020 temporary order, the chancery court granted both Tina and Gareth legal custody, but only Gareth was awarded physical custody, along with having final decision-making authority for medical and education issues. In December 2020, the chancery court entered a fourth temporary order granting Tina primary physical custody, with Gareth having alternate weekend visitations. In a later hearing, testimony was provided that Gareth had not been taking their child to counseling sessions each week, as ordered by the chancery court, and the child had several school absences and tardies. The GAL changed the recommendation to allow Tina to have custody because Gareth ostracized the child from Tina, which upset the child. In March 2021, Tina filed a complaint for contempt, modification, and other relief. After, in March 2021, Gareth petitioned for a modification of child custody. Summons were served by both Tina and Gareth pursuant to Miss. R. Civ. P. 81. The chancery court relieved the GAL from further duties. In June 2021, the chancery court modified Gareth's visitation and continued the hearing to October 2021, also mailing Gareth notice of this. In September 2021, Gareth filed a motion for contempt to request assistance from the chancery court and a motion to modify visitation. At the October 2021 hearing, Gareth's wife, Ashley Urban, testified that the child's best interest was to live with her and Gareth since the child had their own room at their home, as opposed to living with Tina and two other families in a three-bedroom home. However, the child's maternal grandfather testified that the child horrifically cried when Gareth was given sole custody in August 2020. Gareth also testified that he was unable to pay child support because he and Ashley were unemployed. In November 2021, the chancery court signed a final judgment granting Tina and Gareth joint legal custody, and Gareth primary physical custody. The chancery court did not provide the reasons for doing so nor did it apply the *Albright* factors. The chancery court denied Tina's petition for contempt since Gareth was unemployed, and ordered Tina to pay child support. In December 2021, Tina moved to alter or amend the judgment or for a new trial under Miss. R. Civ. P. 59(e). Tina asserted that

Garet had not shown a material change in circumstances since the issuance of the original custody decree and further asserted that Garet failed to prove the chancery court's order was in the child's best interest. Garet moved to strike the motion and requested sanctions. In January 2022, a hearing was held on Tina's Miss. R. Civ. P. 59(e) motion. The chancery court ordered Garet to appear, but he failed to do so. Despite this, the chancery court commenced the proceedings. Tina argued that Garet's actions were not in the child's best interests, and she asked the chancery court to revise the judgment and return custody to her. The chancery court entered its revised final judgment which returned sole legal and physical custody to Tina. Garet appealed.

ISSUES

Whether (1) Garet received sufficient service on the Miss. R. Civ. P. 59(e) motion; (2) Tina met her burden of proof under Miss. R. Civ. P. 59(e); (3) Tina committed fraud on the chancery court and the chancery court was negligent or biased; (4) the chancery court erred by admitting hearsay; (5) the chancery court should have invoked equitable estoppel against Tina; and (6) the chancery court erred by refusing to adopt the GAL's recommendation.

HOLDING

(1) Because the child custody matter was not dormant since Tina filed the Miss. R. Civ. P. 59(e) motion within ten days of the judgment granting Garet physical custody, and because the Miss. R. Civ. P. 59(e) motion did not reignite a dormant action or raise a new issue, the motion was not a petition for modification that required a Miss. R. Civ. P. 81 summons and Garet received sufficient notice on the Miss. R. Civ. P. 59(e) motion. (2) Because Tina provided a need to correct a clear error of law after the chancery court permanently modified custody despite not having found a material change in circumstances that adversely affected the child, because the chancery court failed to conclude that a change in custody was in the best interest of the child, and because the chancery court corrected its error by returning sole legal and physical custody to Tina, Tina met her burden of proof under Miss. R. Civ. P. 59(e). (3) Because Garet's claims that Tina committed fraud on the chancery court were presented for the first time on appeal, and because the facts were not developed since the chancery court did not have an opportunity to fully address the allegations, Garet's claims that Tina committed fraud on the chancery court and that the chancery court was negligent or biased were procedurally barred from being raised on appeal. (4) Because Garet did not assert which pieces of evidence were hearsay or on what occasion hearsay was improperly admitted, and because Garet did not object to the admission of any evidence as hearsay, Garet waived his claim that the chancery court erred by admitting hearsay. (5) Because Garet did not provide how Tina induced him or how he suffered due to a change in his position, and because Garet did not provide any evidence to conclude that Tina should have been estopped from making any argument, Garet's claim that the chancery court should have invoked equitable estoppel against Tina was procedurally barred. (6) Because Garet failed to provide the Court of Appeals copies of the GAL's report to determine whether the chancery court erred by refusing to adopt the GAL's recommendation, it declined to address this issue. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2022-CP-00195-COA (Sept. 5, 2023)

Opinion by Judge Westbrook

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

Pro se for Appellant - *Pro se* for Appellee

Briefed by [Mattie Hooker](#)

Edited by [Emilee Crocker](#) & [Ashley House](#)

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COURT OF APPEALS - CRIMINAL CASES

GOODE V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - GRUESOME PHOTOGRAPHS - A photograph that is gruesome, grisly, unpleasant, or inflammatory may be admitted so long as it has probative value and its instruction serves a meaningful evidentiary purpose

CRIMINAL PROCEDURE - DIRECTED VERDICT - REASONABLE DOUBT - The relevant question in determining whether a directed verdict should be granted is whether, after viewing all of the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF THE EVIDENCE - The relevant question in reviewing the weight of the evidence is, in a light most favorable to the verdict, is the verdict so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - If jury instructions, taken as a whole, fairly, but not necessarily perfectly, state the law, no error results and reversal is not warranted

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - THEORY OF CASE - A defendant is entitled to have jury instructions given which present his theory of the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - To be entitled to a lesser-included offense instruction, the defendant must point to evidence in the record from which a jury could reasonably find him guilty of the crime with which he was charged and at the same time find him guilty of the lesser-included offense

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - EYEWITNESS-IDENTIFICATION - Eyewitness-identification jury instructions are not necessary where multiple witnesses identify the suspect or when there is other corroborating evidence linking the suspect to the crime

FACTS

In March 2007, the Bolivar County Sheriff's Department responded to a shooting outside of Club Amnesia ("the club") in Gunnison. At the scene they found Timothy Devine's body on the sidewalk where he had been shot and killed. Derrick Goode was identified as the shooter by several eyewitnesses, and after several days on the run, he turned himself in to law enforcement. At trial, Michael Gadison, Keyanna Williams, Detective Thompson, Dr. Steven Hayne, Bryant Jennings, and Goode testified about the incident. Gadison testified that he and his cousins, Reginald and Wykevion Fortney were at the club the night of the incident. Gadison explained that Goode drove up to the club very quickly and exited the vehicle with three other men. Gadison stated that Goode and Wykevion began arguing shortly after Goode arrived. Gadison next testified that he could see a gun handle through Goode's shirt and that Goode clutched at the gun handle between ten and fifteen times over the course of the altercation, which Williams and Bryant corroborated in their testimony. Next, Gadison testified that Devine approached Goode and told him to stop messing with Wykevion. Gadison claimed he was twenty feet away when he saw Devine turn his head to spit and when he turned back, Goode drew his firearm and shot Devine. Gadison further testified that Devine had a blunt in his hand, did not have a gun, and that Goode shot about two or three times. Keyanna Williams was also with Reginald, Wykevion, and Gadison the night of the shooting. Williams testified that he noticed Goode and Devine arguing, saw Goode shoot Devine after he turned to spit, and in total heard about three gunshots. Thompson testified that he received a call from dispatch about a shooting at the club. Upon arriving at the scene, Thompson saw Devine's body and learned that Goode was a suspect. Thompson also took photographs which depicted Devine's body at the scene of the crime, the bullet holes in Devine's body, and the cigarette in Devine's hand. Hayne provided expert testimony during the trial, performed Devine's autopsy, and identified the autopsy photographs. He explained that only the shot to Devine's head was fatal and explained the internal aspect of the gunshot wound. Jennings, who was with Devine the whole time at the club, testified that he saw Goode and Devine talking, did not know what the conversation was about, and saw Goode pull the gun from his waist and start shooting Devine from a very close range. The state rested and Goode moved for a directed verdict, which the trial court rejected. Finally, Goode testified that he was on his way to Memphis the night of the incident and stopped through Gunnison to speak with Charles Fortney, who Goode claimed was trying to set him up and bring him harm. Goode testified that he spoke to Reginald and Wykevion at the club and when Devine approached, began speaking to Goode aggressively and erratically. Goode further stated that he was at the club alone and when the shots rang out, he ran away like everyone else. After departing and while on the way to Memphis, Goode said learned he was a suspect in

the shooting death of Devine. He spoke with a bail bondsman and an attorney who advised him to turn himself into the authorities, which he did. After jury instructions and closing arguments, the jury convicted Goode of murder and the court ordered a punishment of life imprisonment. Goode filed a motion for judgment notwithstanding the verdict, or, alternatively, a new trial and bail pending appeal. The trial court denied the motion. Goode appealed.

ISSUES

Whether the trial court erred (1) by allowing the S1 and S4 series of photographs into evidence; (2) by denying Goode's motion for a directed verdict; (3) by finding the jury's verdict was not against the overwhelming weight of the evidence; and (4) by refusing to allow Goode's proposed jury instructions D-1, D-2, D-6, D-11, and D-12.

HOLDING

(1) Because the photographs had a legitimate evidentiary purpose of showing the surrounding circumstances and injuries caused during the murder, because the photograph's depiction of the victim's hands were relevant to the defense's self-defense jury instruction, and because the photographs were not overly gruesome, they were admissible evidence, and the trial court did not err. (2) Because three eyewitnesses testified that they saw Goode shoot Devine and because Haynes provided corroborating evidence regarding where and how Devine was shot, a jury could reasonably infer from the evidence that Goode murdered Devine, and therefore the trial court did not err in denying Goode's motion for directed verdict. (3) Because three eyewitnesses saw Goode shoot Devine in a deliberate manner, because the eyewitnesses' testimony conflicted with Goode's testimony, and because it was solely in the jury's discretion to weigh the conflicting testimony, the jury's verdict was not against the overwhelming weight of the evidence. . (4) Because the peremptory instruction that instructed the jury to find a not guilty verdict found in instruction D-1 was not allowed when there was sufficient evidence to convict a defendant, because defining reasonable doubt as found in instruction D-2 was improper, because Goode forfeited a manslaughter instruction by denying causing harm to Devine, yet included a manslaughter instruction in D-6, and because the eyewitness-identification instruction, included by Goode in instructions D-11 and D-12, was not necessary because multiple eyewitnesses identified Goode as the suspect, the trial court did not err in excluding defendant's jury instructions D-1, D-2, D-6, D-11, and D-12. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2021-KA-01310-COA (Sept. 5, 2023)

Opinion by Judge Lawrence

Hon. Charles E. Webster (Bolivar Count Circuit Court, First Judicial Dist.)

Brandon Isaac Dorsey for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Jay Palen](#)

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

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KILCREASE V. CITY OF TUPELO

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - APPEALS - JURISDICTION - Pursuant to Miss. R. Crim. P. 29.1(a), any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court, to circuit court, by filing simultaneously a written notice of appeal, and both a cost bond and an appearance bond within thirty days of such judgment

CRIMINAL PROCEDURE - APPEALS - RECORD - For an appellate court to be able to consider a fact on appeal, it must appear in the trial court record, and not just as an assertion in the appellant's brief

CRIMINAL PROCEDURE - CONVICTION - PRONOUNCEMENT OF JUDGMENT - Pursuant to Miss. R. Crim. P. 26.5, judgment must be pronounced in open court at any time after conviction in the presence of the defendant unless waived

CRIMINAL PROCEDURE - APPEALS - DEADLINE - There is no method to extend the deadline to perfect an appeal past the thirty days allowed by Miss. R. Crim. P. 29.1

CRIMINAL PROCEDURE - APPEALS - BURDEN - The appellant has the burden of demonstrating some reversible error to the Court

FACTS

Christian Kilcrease worked at a medical clinic. On June 23, 2017, Tupelo Police Officer Brittney Williams was dispatched to respond to a call for shots fired in the medical clinic. She interviewed witnesses in the area and left the scene after finding no evidence of a disturbance. Less than thirty minutes later, someone called 911 again, stating that a shooter was on the premises of the medical clinic. Tupelo police officers again responded to the call and cleared the building. Kilcrease was hiding in a locked office inside the clinic. When law enforcement entered the office, they ordered Kilcrease to raise her hands, but she refused to come out and did not comply with police orders. She was taken into custody and charged with failure to comply and false reporting to 911. She was sentenced for forty-eight hours in the Lee County Jail and a fine of \$274. Two and a half years later, in May 2021, the county judge sua sponte entered an order dismissing the appeal for failure to file the appearance bond with the clerk within thirty days of Kilcrease's conviction and sentence. The notice of appeal was filed on November 21, 2018, and the appearance bond showed that it was signed that day but not filed until November 26, 2018, due to the office closing early for the Thanksgiving holiday. In June 2021, the county court entered an order denying Kilcrease's motion for reconsideration or a new trial. Twelve days later, Kilcrease filed a notice of appeal of the dismissal to circuit court. In February 2022, the circuit court entered its order affirming the county court's dismissal of the appeal. The court found that the appearance bond had not been filed within the required thirty days. Kilcrease appealed.

ISSUES

Whether (1) the circuit court erred in affirming the county court's dismissal of the appeal for lack of jurisdiction and (2) the municipal court order was void because of an inadequate record.

HOLDING

(1) Because the Mississippi Rules of Criminal Procedure contained no provision to extend the thirty-day deadline to perfect an appeal, the county court was without jurisdiction to hear Kilcrease's appeal and properly dismissed the appeal. (2) Because an appellate court could not consider an issue first raised in a reply brief and because the dates of the trial in municipal court, and how the judgment was pronounced, were not part of the record on appeal, the municipal court's order was not void, and the circuit court did not err in finding Kilcrease did not properly raise the question of the validity of the court order. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

DISSENT

Judge McDonald argued that Kilcrease was prevented from timely filing her appeal because the clerk's office closed early on the previous business day, which would have been within the thirty-day deadline notwithstanding the early closing. She also argued that because Kilcrease obtained the conviction through email, this supported the claim that neither she nor her attorney were present in open court when the municipal court convicted her. Because of this, the record contained enough support for the court to have considered Kilcrease's serious claims, and by not doing so, denied her due process rights.

Affirmed - 2022-KM-00194-COA (Sept. 5, 2023)

En Banc Opinion by Judge Emfinger - Dissent by Judge McDonald

Hon. Kelly Lee Mims (Lee County Circuit Court)

Alvin Chase for Appellant - Stephen N. Reed for Appellee

Briefed by [Emily Kaplan](#)

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