

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 12, 2023**SUPREME COURT - CIVIL CASES****WESTERN WORLD INS. GRP. V. KC WELDING, LLC****CIVIL - CONTRACT**

CIVIL PROCEDURE - CAUSE OF ACTION - ACCRUAL - Mississippi law has long recognized that a cause of action accrues when it comes into existence as an enforceable claim, that is, when the right to sue becomes vested; causes of action accrue upon discovery of the injury, not discovery of the injury and its cause; knowledge of the cause of the injury is irrelevant to the analysis, as rather, the inquiry is when the plaintiff knew or should have known of an injury

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DISCOVERY RULE - The discovery rule tolls the statute of limitations for latent injuries, where the plaintiff is precluded from discovering because of the secretive or inherently undiscoverable nature of the wrongdoing in question; the discovery rule will toll the statute of limitations if a latent injury exists until the plaintiff should have reasonably known of some negligent conduct, even if the plaintiff does not know with absolute certainty that the conduct was legally negligent

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - LATENT INJURIES - Under Miss. Code Ann. § 15-1-49(2), in actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury

TORT - DEFINITIONS - LATENT INJURY - A latent injury is defined as one where the plaintiff will be precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question or when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act

FACTS

Sunbelt Shavings, LLC (“Sunbelt”) manufactured and sold wood shavings and was insured by Western World Insurance Group (“Western World”). Sunbelt stored the wood shavings in metal bins with doors at the bottom. On July 12, 2018, Sunbelt requested KC Welding, LLC (“KC”) to send an employee to repair a broken storage bin door. Later that night following KC’s repair, a fire erupted and was not extinguished until the early hours of July 13, 2018. Exactly three years later, on July 13, 2021, Western World sued KC for breach of contract and negligence. KC moved to dismiss the complaint as untimely, but Western World argued the discovery rule tolled the statute of limitations because the totality of the injury could not be discovered until the fire was extinguished on July 13, 2018. The trial court initially determined the fire was not a latent injury, and the cause of action accrued on July 12, 2018, and granted KC’s motion to dismiss. Following a series of letters sent to the trial court, a hearing to reconsider was held and again resulted in dismissal. The trial court emphasized the possibility of an issue of first impression to be heard on appeal regarding the application of the discovery rule to an actively burning fire. Western World appealed.

ISSUES

Whether the trial court erred in (1) determining that the fire was not a latent injury to which the discovery rule applied to toll the accrual of the cause of action and (2) determining that the cause of action accrued on July 12, 2018, when the fire started, and not the following day when it was extinguished.

HOLDING

(1) Because the injury at issue was not hidden or unseen as Western World described the fire as “raging,” because Western World was not precluded from discovering the injury and had requisite knowledge for a cause of action to

accrue when the fire started, because Sunbelt employees discovered that KC employees were welding the storage bin while the wood chips were still in the bin, because Sunbelt employees asked KC employees to leave the premises immediately so they could soak the area with water, and because Western World had knowledge of both the fire, although not precise in detail, and of the earlier actions of KC's employees the day of the fire, the fire was not a latent injury, and the discovery rule did not apply. (2) Because the fire started on July 12, 2018, and because Western World had requisite knowledge of an injury and accrual of a cause of action, the cause of action accrued on July 12, 2018. Therefore, the Supreme Court affirmed the judgment of the Noxubee County Circuit Court.

DISSENT

Justice Kitchens argued the statute of limitations began to run the day the fire was extinguished and not when the fire began. He stated that there was a critical distinction between the knowledge of a harm and discovery that the harm is related to a legally cognizable injury. Because the discovery rule permitted tolling of the statute of limitations for non-latent injuries where the negligence that caused the injury was unknown, the cause of action did not accrue until July 13, 2018. Justice Kitchens highlighted that nothing in the record indicated the plaintiff had any knowledge of what started the fire on July 12, and the insurance claim and accompanying investigation into the fire took place July 13. Thus, the fire itself was not latent, but rather the origin of the fire being traced to the defendant's negligence in repairing the storage bin. Instead, Justice Kitchens would have held that the lawsuit was timely filed because the origin of the fire and the legally cognizable injury was not discovered until July 13, 2018.

Affirmed - 2022-CA-00527-SCT (Oct. 12, 2023)

En Banc Opinion by Justice Ishee - Dissent by Presiding Justice Kitchens

Hon. Lee Sorrels Coleman (Noxubee County Circuit Court)

Timothy Dale Crawley, Terry L. Welch, Jeffrey W. Gunn, & Robert Davis House for Appellants - George Ellis Abdo III for Appellee

Briefed by [Thomas Andersen](#)

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

[Click here to view the full opinion](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 10, 2023

COURT OF APPEALS - CIVIL CASES

BRITT V. ORRISON

CIVIL - OTHER

APPELLATE PROCEDURE - FAILURE TO CITE AUTHORITY - PROCEDURAL BAR - Failure to provide any authority in an appellate brief in support of the assignment of error results in abandonment of the issue and therefore bars that issue from appellate review

CIVIL PROCEDURE - MOTION FOR RECUSAL - FILING REQUIREMENTS - Under Uniform Chancery Court Rule 1.11, a party moving for recusal must file an affidavit and motion for recusal within 30 days of a judge being assigned to the case or within 30 days after the filing party knew or should have known the facts underlying the grounds asserted

FACTS

In January 2012, Brian Britt and Craig Bradley Orrison entered into a contract for the sale of Britt's two-story log house, the Wilson House Inn Bed & Breakfast ("Wilson House"). The contract required that Orrison would remove the Wilson House from the property at his expense. By July 2012, Orrison had not taken any action to move the Wilson House off of the property, so Britt paid a moving company to have it moved to one of Britt's adjoining properties. Britt filed a complaint against Orrison for specific performance, temporary injunction, and other relief relating to Orrison's breach of contract. The parties entered into a settlement agreement in September 2012 that was memorialized in an order by

the chancery court and required Orrison to move the Wilson House from its then-present location within 28 days of the order. On October 24, 2012, Britt filed a petition for contempt against Orrison after he failed to relocate the Wilson House within the twenty-eight-day deadline mandated by the order. The chancery court set aside the September order and did not rule on Britt’s motion for contempt. Litigation continued over the next four years, during which time the chancery court denied Britt’s requests for costs stemming from an appeal and also denied Britt’s motion seeking recusal of the chancellor. Britt appealed.

ISSUES

Whether the trial court erred in (1) denying Britt’s request for court costs stemming from his prior appeal; (2) dismissing Britt’s October 24, 2012, petition for contempt; and (3) denying Britt’s motion for recusal of the chancellor.

HOLDING

(1) Because Britt’s request for appellate costs stemming from his prior appeal was still pending in the chancery court, the Court of Appeals lacked jurisdiction to consider the issue of Britt’s request for court costs on appeal. (2) Because the failure to comply with a court order was prima facie evidence of contempt and Orrison failed to comply with the terms of the settlement agreement, the trial court erred in dismissing Britt’s October 24, 2012, petition for contempt. (3) Because Britt failed to comply with the requirements of Uniform Chancery Court Rule 1.11 and because Britt failed to provide any authority in his appellate brief in support of this assignment of error, the trial court did not err in denying Britt’s motion for recusal of the chancellor. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Jackson County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2022-CP-00165-COA (Oct. 10, 2023)

Opinion by Presiding Judge Carlton

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

Pro se for Appellant - Nathan Lamar Prescott for Appellees

Consolidated with: 2017-CP-00700-COA

Consolidated with: 2015-TS-01292

Briefed by [Sydney Bailey](#)

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

[Click here to view the full opinion](#)

HOFFMAN V. MISS. DEP’T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - SELF-EMPLOYMENT - PERMISSIBLE DOCUMENTATION - To support a claim for self-employment, a claimant may prove his self-employment through documentation including, a 1099 form, Income Tax Return, Business License, Federal ID Number, Business Receipt, Bank Statement, Cancelled Check, or Affidavit

ADMINISTRATIVE LAW - AGENCY’S ROLE - WEIGHT & CREDIBILITY - It is the role of the agency, in its expertise, to determine the weight of the evidence and the credibility of the witnesses

CONSTITUTIONAL LAW - CONFRONTATION CLAUSE - APPLICABILITY - A defendant’s right to be confronted with the witnesses against them is primarily available to defendants in a criminal matter, not in a civil matter

ADMINISTRATIVE LAW - UNEMPLOYMENT BENEFITS - OVERPAYMENT - Under Miss. Code Ann. § 71-5-19(4)(b), a claimant receiving an overpayment is liable to repay unemployment insurance benefits received when the claimant was disqualified from receiving such benefits; the decision of whether to require repayment belongs to the Mississippi Department of Employment Security

FACTS

John Hoffman, a freelance paralegal, filed a claim for Pandemic Unemployment Assistance (“PUA”) under the CARES Act, stating he was self-employed but unable to work because of the COVID-19 pandemic. The Mississippi Department

of Employment Security (“MDES”) provided Hoffman with a list of the acceptable forms he could use to show his unemployment status. In July 2021, the MDES disallowed Hoffman’s eligibility for PUA benefits and required Hoffman to repay the PUA benefits received. The MDES informed Hoffman that he failed to provide timely proof or that his documentation did not meet the proof of unemployment requirements. Hoffman appealed MDES’s order. The Administrative Law Judge (“ALJ”) affirmed MDES’s order and determined that Hoffman’s bank statements did not provide proof of employment, self-employment, or documentation that Hoffman was offered work and was unable to because of the COVID-19 pandemic. Hoffman appealed to the circuit court. Attached to the file, Hoffman attached a document from MDES on which Hoffman declared he was self-employed and worked approximately twenty hours per week. Hoffman also provided a judgment against an electric company and bank statements listing general deposits and withdrawals. The circuit court affirmed and held that bank statements reflecting various deposits did not establish self-employment, only that deposits were made. The circuit court further concluded its finding was based on the inadequacy of Hoffman’s documentation. Hoffman appealed.

ISSUES

Whether the circuit court (1) erred in finding Hoffman failed to prove he was self-employed; (2) violated Hoffman’s right to a fair hearing; and (3) erred in finding Hoffman was required to repay the overpayment amount.

HOLDING

(1) Because Hoffman failed to provide the required documents to support his claim for self-employment, because Hoffman failed to prove that the deposits listed in the bank statements were from or related to self-employment, and because Hoffman failed to show why MDES erred in finding his documentation was insufficient to prove self-employment, the circuit court properly found that Hoffman failed to prove he was self-employed. (2) Because Hoffman was in a civil matter rather than a criminal matter, and because the ALJ properly conducted the hearing, the circuit court did not violate Hoffman’s right to a fair hearing. (3) Because MDES disqualified Hoffman from receiving unemployment benefits, and because Hoffman received an overpayment of unemployment benefits, the circuit court properly found that Hoffman was required to repay the overpayment amount pursuant to Miss. Code Ann. § 71-5-19(4)(b). Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2022-CC-00948-COA (Oct. 10, 2023)

Opinion by Judge McCarty

Hon. Randi Peresich Mueller (Hancock County Circuit Court)

Pro se for Appellant - Albert B. White for Appellee

Briefed by [Zachary Perez](#)

Edited by [Kennedy Gerard](#) & [Ashley House](#)

[Click here to view the full opinion](#)

YOUNG V. NIBLETT

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - MODIFICATION - The party seeking custody modification must show: (1) a material change in circumstances occurred since the issuance of the decree sought to be modified; (2) that the material change adversely affected the minor child; and (3) that it would be in the child’s best interest for custody to change

FAMILY LAW - CUSTODY MODIFICATION - ALBRIGHT FACTORS - The chancellor must find, after weighing the *Albright* factors, that the modification of custody is in the minor child’s best interest

FAMILY LAW - CUSTODY MODIFICATION TEST - APPLICATION - A rigid, formalistic approach or strict word requirement should not thwart the chancellor from transferring custody of a child from one parent to another when the child’s welfare would be best served by the transfer, as determined by the chancellor

FAMILY LAW - GUARDIAN AD LITEM - RECOMMENDATIONS - When a guardian ad litem’s appointment is mandatory, the chancellor must include a summary of the guardian ad litem’s recommendations in his or her findings of fact and conclusions of law

FACTS

In June 2017, Jacob Niblett and Vivian Niblett Young divorced. The chancery court granted Niblett and Young joint legal custody of their two minor daughters, A.N. and C.N. The chancery court awarded Vivian sole legal custody and Jacob visitation rights. Vivian remarried and moved in with Jonathon Young who had two sons from a previous marriage. In April 2018, Jacob filed a motion for contempt and alleged Vivian did not comply with the visitation schedule and took their daughters across state lines without properly notifying him. Vivian filed a cross-claim for contempt and modification. Vivian's claim alleged that Jacob's pickup time caused A.N. to miss part of school, Jacob did not pay his share of the children's expenses, and Jacob's visitation rights should be suspended or terminated because of his dangerous behavior. After August 2018, Vivian withheld visitation from Jacob for over a year. Jacob had two psychological evaluations which revealed Jacob suffered from acute situational disturbance and acute stress disorder from being separated from his daughters. A.N. also had an evaluation which revealed she had an adjustment disorder. In July 2019, the appointed guardian ad litem ("GAL") began investigating the case. In September 2019, Jacob filed an emergency motion that claimed Vivian violated the chancery court's order to allow him violation. Jacob then began to have supervised visits. In April 2020, the GAL concluded Jacob was not a danger and recommended he receive visitation rights. A.N. received another psychological evaluation which revealed suicidal ideations associated with her treatment in Vivian and Jonathon's home in which she expressed how she was being treated poorly by her stepfather and stepbrothers. In response to this evaluation, Vivian and Jonathon punished A.N. for a month for the statements she made during her evaluation. In February 2021, the GAL concluded an adverse material change had occurred to A.N. and recommended that Jacob and Vivian share joint legal custody with Jacob having physical custody, and Vivian having visitation. In February 2022, the chancery court granted Jacob sole physical custody of A.N. and C.N. and denied Vivian's motion for reconsideration. In its final judgment, the chancery court discussed the *Albright* factors and gave specific reasons why he found that a particular factor weighed in favor of a certain parent. The chancery court found several factors were neutral between Jacob and Vivian. Importantly, the chancery court did not find any factors that weighed in Vivian's favor. Ultimately, the chancery court found that A.N. and C.N. had been "impacted" by living with Vivian and Jonathan constantly thinking about the consequences of their actions. The chancery court denied Vivian's motions to appeal and motion to amend the final judgment. Vivian appealed.

ISSUES

Whether the chancery court erred in (1) identifying a material change in circumstances; (2) applying all of the prongs for the modification-of-custody test; and (3) failing to include the qualifications and recommendations of the GAL in the final judgment.

HOLDING

(1) Because the chancery court provided the GAL's findings and the events it considered in determining there was a pattern of concerning conduct by Vivian and Jonathan that created an environment adverse to the best interest of A.N. and C.N. in its bench opinion and final judgment, and because the chancery court was in the best position to determine whether there was an adverse material change in circumstances, the chancery court did not err in finding a material change in circumstances. (2) Because the chancery court properly weighed the *Albright* factors, and because the chancery court determined there was a material change in circumstances that adversely affected A.N. and C.N. since they had been impacted by living with Vivian and Jonathan, the chancery court correctly applied all of the prongs for the modification-of-custody test. (3) Because the chancery court included a summary of the GAL's recommendations in its bench opinion and final judgment, its failure to include the GAL's qualifications was not reversible error. Therefore, the Court of Appeals affirmed the judgment of the Smith County Chancery Court.

Affirmed - 2022-CA-00294-COA (Oct. 10, 2023)

Opinion by Judge Westbrook

Hon. David Shoemake (Smith County Chancery Court)

L. Wesley Broadhead for Appellant - Nancy E. Steen for Appellee

Briefed by [John Walker Webb](#)

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

[Click here to view the full opinion](#)

COURT OF APPEALS - CRIMINAL CASES

BOLTON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTION - LARCENY - Larceny is a lesser-nonincluded offense of burglary rather than a lesser-included offense of burglary; therefore, defendants are not entitled to a larceny jury instruction when on trial for burglary

CRIMINAL PROCEDURE - EVIDENCE - TESTIMONY - Small inconsistencies in testimony do not render the testimony implausible and contrary to the weight of the evidence at trial

CRIMINAL PROCEDURE - EVIDENCE - RULES - When an appellant does not provide any support for his or her assertions in a pro se brief, the arguments are procedurally barred; moreover, when an issue is raised for the first time on appeal, that issue is barred from review because the trial court did not address the issue

FACTS

In March 2023, Officer Jacob Hiatt responded to a burglary call at the Hattiesburg Public Works Department. After arriving at the scene, Hiatt found that, between 1:25 P.M. and 2:32 P.M. the previous day, someone had burglarized a storage shed. Maurice Sutton told Hiatt that the burglar had kicked in the door to the shed and had stolen various items. Specifically, three weed-eaters and one backpack blower were missing from the shed. The video surveillance footage consequently displayed an individual taking three weed-eaters from the shed and loading them into the trunk of a silver Mercury Grand Marquis. Hiatt photographed both the burglar and the car, and law enforcement released them to the public. The man in the footage was identified as Willie Ray Bolton, and James Sims Jr. was identified as the owner of the car. At trial, Bolton requested a jury instruction for the lesser-included offense of larceny, which the trial court denied. Sims then testified that on the day of the burglary, Bolton mowed Sims's yard and then asked to borrow Sims's car to get some beer around 11:30 A.M. Sims stated that Bolton returned with beer and was gone anywhere from fifteen minutes to two hours. Sims, however, could not specify the exact length of time, and in his sworn statement to the police, he claimed that Bolton had only been gone for fifteen minutes. Sims disputed this assertion at trial but adamantly claimed that Bolton was not gone for longer than three hours. Bolton argued that Sims' testimony did not give Bolton enough time to complete the crime. Sims also did not observe any weed-eaters in the trunk of the car. Once Sims learned that his car was used in a burglary, he confronted Bolton about this issue; according to Sims, Bolton initially denied the allegations but later confessed. Sims then went to the Hattiesburg Police Department where he identified the car in the photographs as his and the person in the photographs as Bolton. Bolton was then indicted on one count of burglary as a habitual offender. At trial, the jury found Bolton guilty of business burglary, and the court sentenced him to seven years in the custody of the Mississippi Department of Corrections. Bolton then filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial. The trial court denied the motion. Bolton appealed.

ISSUES

Whether the trial court erred by (1) denying Bolton's request for the jury to be instructed on the "lesser offense" of larceny; (2) denying Bolton's motion for a new trial; and (3) by allowing Sutton to testify at trial.

HOLDING

(1) Because Bolton was indicted for burglary, not larceny, and because larceny was not included in the charged offense, the trial court did not err by denying Bolton's request for the jury to receive an instruction of the "lesser offense" of larceny. (2) Because the inconsistencies in Sims's testimony did not prove so great as to make his story implausible, the verdict was not contrary to the overwhelming weight of the evidence, and the trial court did not err by denying Bolton's motion for a new trial. (3) Because Bolton's pro se appellate brief did not provide any record support or any supporting authority for his assertion that the trial court erred by allowing Sutton to testify at trial, because Bolton never raised these issues in the trial court proceedings, and because, notwithstanding the procedural bars, the record reflected that the State disclosed Sutton as a witness prior to trial, there was no merit to Bolton's argument and the trial court erred

by allowing Sutton to testify at trial. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2022-KA-01118-COA (Oct. 10, 2023)

Opinion by Presiding Judge Carlton

Hon. Jon Mark Weathers (Forrest County Circuit Court)

George T. Holmes (Pub. Def. Office) & *Pro se* for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Matt Hennington](#)

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

[Click here to view the full opinion](#)

CRUTCHFIELD V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - FIRST-DEGREE MURDER - DELIBERATE DESIGN - Deliberate design or premeditation requires full awareness of what one is doing and consideration of the consequences; it may be formed quickly

CRIMINAL LAW - FIRST-DEGREE MURDER - DELIBERATE DESIGN - Returning to the scene of a fight after obtaining a weapon points directly to a considered plan with the purpose of killing

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF THE EVIDENCE - For a new trial based on a verdict against the weight of the evidence, the verdict must be so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable justice

FACTS

Jason Crutchfield rode his bike to an apartment to find Jonathan Morgan. After Crutchfield insulted Morgan’s girlfriend, Morgan fought with Crutchfield. Crutchfield subsequently rode a mile to retrieve a gun. Then Crutchfield rode back to Morgan’s apartment with the gun and fired multiple shots toward him, one of which was fatal. Crutchfield admitted to firing multiple shots at Morgan in a videotaped interview with police that was played at trial. Crutchfield was convicted of first-degree murder. Crutchfield moved for judgment notwithstanding the verdict or a new trial, which the trial court denied. Crutchfield appealed.

ISSUES

Whether Crutchfield’s first-degree murder verdict was (1) supported by sufficient evidence and (2) against the weight of the evidence.

HOLDING

(1) Because the evidence showed Crutchfield planned to kill Morgan by traveling to retrieve the gun that he used to shoot and kill Morgan, because any rational jury could have found all the essential elements of first-degree murder beyond a reasonable doubt, and because the jury was instructed on second-degree murder and manslaughter, Crutchfield’s first-degree murder verdict was supported by sufficient evidence. (2) Because the jury could determine if Crutchfield’s interview admitting to shooting Morgan was credible, Crutchfield’s first-degree murder verdict was not against the weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2022-KA-00815-COA (Oct. 10, 2023)

Opinion by Judge McCarty

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Caroline Byrd](#)

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

JACKSON V. STATE

CRIMINAL - FELONY

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - REVERSIBLE ERROR - Circumstantial evidence is admissible only when it is sufficient to tie the accused to the scene or act of a crime

EVIDENCE - SUFFICIENCY OF EVIDENCE - CHALLENGE - For sufficiency of the evidence challenges, the relevant question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution

EVIDENCE - MULTIPLE DEFENDANTS - SEVERANCE - Evidence used in another trial may not be used, regardless of the connection between the two defendants or the alleged crime

FACTS

In March 2015, Myrtle Messenger was shot and killed when she opened the door of her home. After an investigation conducted by the Mississippi Bureau of Investigations (“MBI”), officers identified Dantrail Jackson as a possible suspect in Messenger’s murder. While canvassing the area, officers went to an alleyway approximately thirty to forty yards away from Messenger’s home. The officers identified four individuals in the alleyway, including Jackson. The officers left and returned later after learning that Jackson was a suspect in Messenger’s murder, but Jackson was not there. The officers found a .357-caliber revolver, a 9mm semi-automatic pistol, and latex gloves under a wet brush pile near where Jackson had been. The crime laboratory determined that Messenger was killed with the .357 revolver. Officers later learned that earlier that day, Jackson had been involved in an altercation with Michael, the grandson of Messenger, for Michael talking to Jackson’s girlfriend. Upon receiving a search warrant for Jackson’s apartment, Jackson was arrested and charged with murder. A grand jury indicted Jackson, and Connell Gray, with murder with an enhancement of committing a felony with a firearm. Jackson and Gray were tried separately. Gray was convicted in December 2019. At Jackson’s trial, after calling multiple witnesses, the only evidence tying Jackson to the murder was that he was present in the alleyway near the crime scene and had been in an altercation with Michael earlier that day. No gunshot residue was found on Jackson’s person. However, the State’s expert witness from the forensics laboratory stated that this was not conclusive to absolve Jackson of the killing. Additionally, no fingerprints were found on the .357 or the 9mm. Another forensic expert tested the items found in the alleyway and concluded that none of the DNA on the items matched Jackson. In fact, no one testified that Jackson had ever touched, owned, or possessed the known murder weapon. The jury convicted Jackson of first-degree murder and sentenced him to life in prison. Jackson appealed.

ISSUE

Whether the evidence was sufficient to support Jackson’s first-degree murder conviction.

HOLDING

Because the State produced no evidentiary proof of guilt tying Jackson to the crime other than the circumstantial evidence that Jackson was in somewhat close proximity to the crime scene and had argued with Michael earlier that day, and because the State failed to prove Jackson was guilty of first-degree murder beyond a reasonable doubt, the evidence was insufficient to support Jackson’s first-degree murder conviction. Therefore, the Court of Appeals reversed and rendered the judgment of the Coahoma County Circuit Court.

DISSENT

Judge Emfinger argued that the jury heard all of the evidence presented and found that each element of first-degree murder was established beyond a reasonable doubt. As such, he argued the majority erred by concluding that no rational jury could have found Jackson guilty of first-degree murder beyond a reasonable doubt.

Reversed & Rendered - 2022-KA-00009-COA (Oct. 10, 2023)

Opinion by Judge Lawrence - Dissent by Judge Emfinger

Hon. Albert B. Smith III (Coahoma County Circuit Court)
Robert Greer Whitacre for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee
Briefed by [Forrest Carman](#)
Edited by [Emilee Crocker](#) & [Ashley House](#)

[Click here to view the full opinion](#)

KIRKLAND V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - SEXUAL ABUSE - TOUCHING OF A MINOR - Miss. Code Ann. § 97-5-23(1) provides that any person above the age of eighteen years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, or with any object, any child under the age of sixteen years, with or without the child’s consent shall be guilty of a felony

CRIMINAL PROCEDURE - SEVERANCE - CORLEY FACTORS - In determining whether a multi-count indictment is proper, the trial court should consider (1) the time period between offenses, (2) whether the evidence proving each count would be admissible to prove each of the other counts, and (3) whether the crimes are interwoven

CRIMINAL PROCEDURE - EVIDENCE - DEMONSTRATIVE EVIDENCE - Because the types of demonstrative evidence and the purposes for which it is sought to be introduced are extremely varied, trial courts are afforded broad discretion in ruling upon the admissibility of many types of demonstrative evidence

CRIMINAL PROCEDURE - MISTRIAL - ERROR & PREJUDICE - A mistrial is only appropriate when there is an error in the proceedings resulting in substantial and irreparable prejudice to the defendant’s case

CRIMINAL PROCEDURE - EVIDENCE - FAILURE TO DISCLOSE - If, at trial, the prosecution attempts to introduce evidence which has not been timely disclosed to the defense, and the defense objects to the introduction for that reason, the trial court shall allow a reasonable opportunity to familiarize himself with the evidence

FACTS

In 2020, Frederick Cliff Kirkland was indicted on nine counts of touching of a child for lustful purposes in violation of Miss. Code Ann. § 97-5-23(1) occurring between the years 2013 and 2018. Counts I through V related to victim M.B.; Counts VI through VIII related to victim K.M.; and Count IX related to victim S.F. All victims maintained a close relationship with Kirkland’s granddaughter. They each testified to frequently spending time at Kirkland’s home, being picked up from school by Kirkland, going to do different activities which Kirkland paid for, and being touched on their genitals and/or breasts by Kirkland in his home. On Dec. 10, 2019, M.B. disclosed her abuse to her cheerleading coach Anderson, and M.B. received a tattoo of this date on her left wrist. Anderson subsequently contacted law enforcement leading to Kirkland’s conviction. The case was tried over five days in May 2022. Before trial, the defense counsel motioned to sever the nine counts according to the three victims to not unfairly prejudice the jury against Kirkland. The trial court denied this motion and instructed the jury to weigh the evidence for each count separately. At trial, the defense witnesses, including Kirkland, denied the allegations and testified that the three victims would often ask Kirkland for massages and wanted him to sleep in the same bed as them. During examination by the State, M.B. displayed to the court her tattoo of the date of disclosure, to which the defense counsel objected as a discovery violation and motioned for a mistrial. The trial court did not find a discovery violation and denied the motion for a mistrial. The grand jury found Kirkland guilty on all nine counts and sentenced him to thirty-five years in custody. Kirkland’s post-trial motion for a judgment notwithstanding the verdict was also denied. Kirkland appealed.

ISSUES

Whether the trial court (1) abused its discretion by denying Kirkland’s motion to sever in which he requested that the trial court hold three separate trials as to the three victims and (2) erred by finding no discovery violation when the State did not tell the defense that M.B. had her disclosure date tattooed on her left wrist.

HOLDING

(1) Because the offenses overlapped in time and underscored a common scheme of abuse in using M.R. to prey on the three victims, because Kirkland's pattern of grooming and abuse were so similar among the offenses that they could individually be admitted as evidence to prove the other offenses, and because Kirkland's behavior in grooming and touching the victims contained a common thread in both their sexual nature and location, the trial court did not abuse its discretion in denying severance and instructing the jury to consider each count separately. (2) Because the date of M.B.'s disclosure was known to both parties, even though the corresponding wrist tattoo was not known to the defense counsel and because trial court had broad discretion upon the admissibility of demonstrative evidence, the trial court did not err in finding that M.B.'s tattoo was not a discovery violation but was cumulative evidence, which did not prejudice the jury nor unfairly strengthen the State's case enough to warrant a mistrial or a cautionary instruction. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2022-KA-00851-COA (Oct. 10, 2023)

Opinion by Presiding Judge Carlton

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, Second Judicial Dist.)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Jonathan Gandara](#)

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

[Click here to view the full opinion](#)

RODGERS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - ELEMENTS - BURDEN OF PROOF - An appellate court does not decide whether the State proved the requisite elements of a crime, but decides whether a reasonable juror could rationally say that the State proved the requisite elements; the evidence is viewed in the light most favorable to the State to determine if any rational juror could have found the essential elements of the crime beyond a reasonable doubt; the State is required to prove each element of the indicted offense beyond a reasonable doubt

CRIMINAL LAW - CONSPIRACY - FORMATION OF AGREEMENT - Under Miss. Code Ann. § 97-1-1, in order to prove a defendant is guilty of conspiracy, the State is required to show that two or more people conspired to commit a crime; the crime of conspiracy is complete upon formation of the agreement, which need not be formal or express, but may be inferred from the circumstances, particularly by declarations, acts, and conduct of the alleged conspirators

CRIMINAL LAW - CONSPIRACY - PLACE OF OCCURENCE - If the indictment alleges conspiracy in a particular county, then the State is required to prove the alleged conspiracy occurred in that particular county

CRIMINAL LAW - CONSPIRACY - ELEMENTS - The elements of a conspiracy require recognition on the part of its conspirators that they are entering into a common plan and knowingly intend to further its common purpose; it requires a "union of the minds" of the conspirators; by nature, it is a joint or group offense requiring a concert of free will

FACTS

James Rodgers and Melissa Moncure had been in a back-and-forth relationship for roughly nine years. In 2017, Rodgers asked Moncure to pick up a money transfer for him at a Walmart in Hinds County. Moncure agreed and drove to the Walmart to pick up the \$130 in cash. Moncure then delivered the money to Rodgers at his home in Yazoo County, at which point he asked her to drive him to an unspecified location. Moncure again agreed, and during the drive the two of them began smoking marijuana. At a certain point, Rodgers withdrew methamphetamine from his person and placed it on the dashboard. Shortly thereafter, Moncure was pulled over at a safety checkpoint in Madison County by Deputy Rylon Thompson. During the traffic stop, Thompson smelled marijuana emanating from the car and began searching the vehicle. Thompson discovered 21 grams of meth, a large sum of money consisting of smaller denomination bills,

and an electronic scale. Both Rodgers and Moncure were charged with two counts: possession of methamphetamine with intent to distribute and conspiracy to sell methamphetamine. Moncure later accepted a plea deal and gave three conflicting statements. Moncure initially stated that she was not aware of the meth until Rodgers placed it on the dashboard, but then claimed full responsibility for the meth. Moncure later recanted her second statement, saying Rodgers pressured her into accepting culpability. A recording of a prison phone call between Rodgers and Moncure in which Moncure stated she had no idea what was going on in regard to the meth was also introduced at trial. Rodgers was convicted of all charges. Rodgers appealed.

ISSUE

Whether the evidence was insufficient to convict Rodgers of conspiracy to sell methamphetamine in Madison County.

HOLDING

Because Moncure’s initial statement and the recorded phone call both indicated that she was not aware of any agreement between herself and Rodgers to sell meth, because the only evidence that may have indicated a conspiracy was the money order, which Moncure picked up in Hinds County and delivered to Rodgers in Yazoo County and not in Madison County, because there was no proof the 21.82 grams were part of any conspiracy to sell, distribute, or transfer drugs in Madison County, because Moncure never truly recognized the alleged conspiracy she was part of with Rodgers, because Moncure only agreed to give Rodgers a ride to an unknown destination, because Moncure was unaware that Rodgers brought methamphetamine into her vehicle, and because a rational juror could not have concluded that Rodgers committed conspiracy in Madison County, the evidence was insufficient to convict Rodgers of conspiracy to sell methamphetamine in Madison County. Therefore, the Court of Appeals affirmed the first count of possession with intent to distribute, but reversed and rendered the second count of conspiracy to sell methamphetamine.

Affirmed in Part; Reversed & Rendered in Part - 2022-KA-00179-COA (Oct. 10, 2023)

Opinion by Judge Lawrence

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

George T. Holmes & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell & John K. Bramlett Jr. (Att’y Gen. Office) for Appellee

Briefed by [Benjamin Duddy](#)

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

[Click here to view the full opinion](#)

WHITE V. STATE

CRIMINAL - FELONY

EVIDENCE - RELEVANT EVIDENCE - ADMISSIBILITY - The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

EVIDENCE - PRIOR BAD ACTS - PROBATIVE & PREJUDICIAL - If the court determines the prior bad acts evidence is more probative than prejudicial, it may be admitted, with the trial court’s giving an instruction to the jury explaining the limited purposes for which the evidence may be considered

APPELLATE PROCEDURE - APPELLANT’S RECORD - ASSERTED ERROR - An appellant must present the appellate courts with a record sufficient to show the occurrence of the error he asserts and also that the matter was properly presented to the trial court and timely preserved

FACTS

Jaquarus White was arrested for the armed robbery of Clark’s Gas Station (“Clark’s”). Upon his arrest, White signed a *Miranda* waiver which led to his subsequent interrogation by law enforcement officials. During this taped interrogation, White admitted to robbing Clark’s. However, the tape from this interview was corrupted. White was released on bond in October 2020. Shortly thereafter, Clark was arrested for the armed robbery of the Alliance Energy (“Alliance”)

convenience store. Once again, White signed a *Miranda* waiver and was interrogated. In the second taped interrogation, White denied robbing Alliance but again confessed to robbing Clark's. The tape from the Alliance robbery interrogation was not corrupted. In February 2021, a grand jury indicted White for armed robbery. Upon learning of the State's intention to use the Alliance interrogation tape as evidence of White's admission to robbing Clark's, White filed a motion in limine to exclude the footage and a motion for a continuance. The circuit court held a hearing on both motions, granting the motion for a continuance and denying the motion in limine. At trial, the circuit court allowed the jury to view and consider Clark's store surveillance video and certain portions of White's interrogation video. The jury found White guilty of armed robbery. White filed a motion for judgment notwithstanding the verdict, or for a new trial, arguing the jury's verdict was not supported by the evidence and that the circuit court erred in denying his motion in limine. The circuit court denied White's motion for judgment notwithstanding the verdict or for a new trial. White appealed.

ISSUE

Whether the circuit court erred in admitting prior bad acts evidence that prejudiced White.

HOLDING

Because the jury was shown only the relevant portions of the Alliance robbery interview where White admitted to robbing Clark's, because White made no contemporaneous objection to specific portions of the interview that established prejudice or irrelevance, because White voluntarily waived his *Miranda* rights and admitted to the Clark's robbery, because White's admissions were probative and relevant to his guilt, because the jury did not receive any information indicating that White was being charged with a different crime, and because the circuit court promptly gave the jury a limiting instruction, the circuit court did not admit prior bad acts evidence that prejudiced White. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2022-KA-00607-COA (Oct. 10, 2023)

Opinion by Judge McDonald

Hon. Dal Williamson (Jones County Circuit Court, Second Judicial Dist.)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Summie Carlay](#)

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

[Click here to view the full opinion](#)

MISSISSIPPI CASES EDITORS
ASHLEY HOUSE & MASON SCIONEAX

ASSOCIATE CASES EDITORS
EMILEE “EMME” CROCKER
KARA EDWARDS
KENNEDY GERARD
DOUG REYNOLDS
THOMAS SIMPSON
KAYLA TRAN

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Ashley House & Mason Scioneaux, newsletter@mississippilawjournal.org

All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007. Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Ashley House or Mason Scioneaux, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org