

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 25, 2024**SUPREME COURT - CIVIL CASES****EVANS V. MC&J INVESTMENTS, LLC****CIVIL - REAL PROPERTY**

PROPERTY - STATUTE OF FRAUDS - ORAL AGREEMENT - Pursuant to Miss. Code. Ann. §15-3-1 oral agreements for the sale of land must be in writing

PROPERTY - STATUTE OF FRAUDS - PROMISSORY ESTOPPEL - When someone has acted to his detriment solely in reliance of an oral agreement, estoppel may be raised to defeat a statute of frauds defense

PROPERTY - STATUTE OF FRAUDS - PROMISSORY ESTOPPEL - The elements of promissory estoppel are (1) the making of a promise, even without consideration, (2) the intention that the promise be relied upon and in fact is relied upon, and (3) a refusal to enforce the promise would sanction the perpetuating of fraud or would result in injustice

PROPERTY - FORECLOSURE - INADEQUATE CONSIDERATION - If there is no irregular conduct at a foreclosure sale, the foreclosure may not be set aside unless the consideration for the purchase is so inadequate so as to shock the conscience of the Court or if fraud is present

PROPERTY - ADEQUACY OF CONSIDERATION - UNCONSCIONABILITY - The line of unconscionability so as to shock the conscience of the court lies around approximately forty percent of the fair market value

FACTS

Samuel and Sandra Evans executed a deed of trust for real property in 2003. Samuel and Sandra defaulted on their payments and were then notified by Bank of America (“BOA”) that a foreclosure sale was scheduled for January 4, 2017. Samuel and Sandra engaged in conversations with BOA to become current on their payments so as to avoid foreclosure. BOA sent Samuel and Sandra a document which contained the specified reinstatement amount to be paid by January 3, 2017, to avoid the foreclosure sale. Samuel alleged that a BOA employee stated that as long as their certified funds were received by BOA before the foreclosure date, the sale would not occur. Samuel and Sandra later learned that the foreclosure sale had occurred, but neither Samuel nor Sandra were present at the sale. Julious McClinton was a managing member of MC&J Investments (“MC&J”) and a real estate investor. The foreclosed real property was purchased by MC&J and after the sale it received a substituted trustee’s deed. In 2018, Samuel and Sandra filed suit against BOA, MC&J, and another third party, claiming that the foreclosed property was sold for inadequate consideration and that BOA never had the authority to sell the property since Samuel and Sandra mailed their reinstatement payment to BOA on January 4, 2017. In 2020, Samuel and Sandra dismissed their claims against BOA and the third party without prejudice but continued with their claim against MC&J. At trial in 2022, Samuel testified that McClinton made an oral agreement with him that he would sell Samuel back the property, but the agreement was not in writing. The trial court found that the bid price was reasonable but because there was no writing of the agreement between Samuel and McClinton, it could not be enforced under the Statute of Frauds. The trial court decided that the foreclosure sale to MC&J should not be vacated. Samuel and Sandra appealed.

ISSUES

Whether the trial court erred by (1) finding the Statute of Frauds prevented the enforcement of a promise to sell back the property to Samuel and Sandra and (2) finding that the price paid at the foreclosure sale was not so inadequate as to shock the conscience and cause the foreclosure sale to be set aside.

HOLDING

(1) Because the agreement between Samuel and McClinton was for the sale of land but was not in writing and because there was insufficient evidence of Samuel's reliance on McClinton's alleged promise, the agreement was unenforceable under the Statute of Frauds and promissory estoppel did not apply. (2) Because MC&J paid what was owed on the real property and due to the condition of the real property, MC&J's purchase price was not so inadequate as to shock the conscience of the court. Therefore, the Supreme Court affirmed the judgment of the Clay County Chancery Court.

Affirmed - 2022-CA-01248-SCT (Jan. 25, 2024)

Opinion by Justice Griffis

Hon. Rodney Purvis Faver (Clay County Chancery Court)

Bennie L. Jones Jr. for Appellants - Mark A. Cliett for Appellee

Briefed by [Allie Zaring](#)

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

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HARDAWAY V. HOWARD INDUS., INC.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - INSURANCE REQUIREMENT - SELF-INSURED EMPLOYERS -

Miss. Code Ann. § 71-3-75(2) allows an employer to be qualified as a self-insured employer by functioning as their own insurance by paying into an account that funds the payment of its employees' medical bills

WORKERS' COMPENSATION - COMPLIANCE - DELEGATION - Employers can contract for another entity to act as the office responsible to the Mississippi Workers' Compensation Commission for the proper filing of all commission forms and the sole contact for the commission for the administration of all claims filed

WORKERS' COMPENSATION - INDEPENDENT TORT ACTIONS - BAD FAITH - To prevail in a bad faith claim against an insurer, the plaintiff must show that the insurer lacked an arguable or legitimate basis for denying the claim, or that the insurer committed a willful or malicious wrong, or acted with gross and reckless disregard for the insured's rights

FACTS

Vince Hardaway developed bilateral carpal tunnel syndrome and reported his injury to Howard Industries, Inc. ("Howard"). Howard forwarded a report to the senior claims specialist at CorVel Enterprises ("CorVel"), who managed Howard's workers' compensation claims. Hardaway continued work but was restricted to light-duty work and experienced periods when he could not work. Hardaway received payments from CorVel for temporary total disability during the periods he was not working, but he did not receive temporary partial disability during the periods he worked and received less weekly wage than his pre-injury wages. Hardaway was eventually fired for insubordination, and Howard continued paying for medical treatment for several months. Hardaway filed a Motion to Compel Temporary Partial Disability Benefits, arguing that he was denied temporary partial disability for several periods. The senior claims specialist at CorVel subsequently issued a check for temporary partial disability benefits. Additionally, the administrative law judge ("ALJ") awarded Hardaway temporary partial disability benefits. Hardaway filed suit against Howard and CorVel for bad faith failure to pay workers' compensation benefits, gross negligence, and punitive damages. The trial court granted Howard's motion for summary judgment, finding that Howard had not actively participated in the administration of Hardaway's claim or "intentionally refused to pay with reasonable promptness the temporary partial disability benefits." The trial court also found that Howard could delegate its responsibilities to CorVel. Hardaway appealed.

ISSUES

Whether the trial court erred by finding that (1) Howard had satisfied its statutory duty to comply with the Mississippi Workers' Compensation Act by delegating its administrative duty as a self-insured employer to CorVel and (2) the conduct of Howard did not rise to the level of gross negligence or an independent tort.

HOLDING

(1) Because Howard delegated to CorVel the responsibility of investigating and paying its workers' compensation claims, and because CorVel then became the office responsible to the Mississippi Workers' Compensation Commission for the proper filing of commission forms, the trial court did not err by finding that Howard had satisfied its statutory duty to comply with the Mississippi Workers' Compensation Act by delegating its administrative duty as a self-insured employer to CorVel. (2) Because Howard did not actively participate in Hardaway's workers' compensation claims, and because Hardaway failed to produce evidence to prove that Howard acted in bad faith to deny Hardaway's workers' compensation benefits, the trial court did not err by finding that the conduct of Howard did not rise to the level of gross negligence or an independent tort. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2022-CA-00787-SCT (Jan. 25, 2024)

Opinion by Justice Chamberlin

Hon. Dal Williamson (Jones County Circuit Court)

Jonathan B. Fairbank for Appellant - Laura W. Givens, Robert P. Thompson, & Richard Lewis Yoder Jr. for Appellee

Briefed by [Joshua Arias](#)

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

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SUPREME COURT - ORDERS

SHOEMAKER V. STATE

EN BANC ORDER

ORDER

Ricky Shoemaker Sr. was convicted of one count of sexual battery and one count of gratification of lust, for which he received a twenty-year sentence and a concurrent fifteen-year sentence, respectively, with five years suspended and five years of supervised probation. Shoemaker was additionally ordered to register as a sex offender. The Supreme Court denied his petition for certiorari review in 2018. In 2019, Shoemaker filed his first application seeking leave to pursue post-conviction relief in the trial court, and the Supreme Court denied him relief. Shoemaker appealed the denial of his Petition for Post-Conviction Relief as an application for leave to proceed in the trial court under Miss. Code Ann. § 99-39-7. Shoemaker argued that his indictment was defective, that his attorney was ineffective, and that it was error to allow prior-bad-acts testimony at trial. The Supreme Court denied Shoemaker's application, finding his claims were time-barred, barred as a successive writ, and failed to satisfy any of the statutory exceptions to the application to the procedural bars. The Supreme Court further found the application was frivolous and warned Shoemaker that any future filings deemed frivolous may result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief in forma pauperis.

OBJECTION IN PART

Presiding Justice King agreed that Shoemaker's application for post-conviction relief should be denied. However, he disagreed that the application was frivolous and with its warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. Because Shoemaker made reasonable arguments in his application for post-conviction relief, he argued that Shoemaker's application was not frivolous and he should not have been warned of future sanctions and restrictions, as such restrictions would violate his constitutional right of access to the courts.

Denied With Sanctions Warning - 2019-M-00832 (Jan. 16, 2024)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King

MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 23, 2024

COURT OF APPEALS - CIVIL CASES

BUENA VISTA LAKES MAINTENANCE ASSOC., INC. V. JONES

CIVIL - OTHER

CONTRACTS - INTERPRETATION - AMBIGUITY - A contract is ambiguous if it susceptible to two reasonable interpretations; the mere fact that the parties disagree about the meaning of a provision of a contract does make the contract ambiguous as a matter of law

CONTRACTS - INTERPRETATION - INTENT - A reviewing court should seek the legal purpose and intent of the parties from an objective reading of the words employed in the contract to the exclusion of parol or extrinsic evidence; the reviewing court is not a liberty to infer intent contrary to that emanating from the text at issue

PROPERTY - COMMON INTEREST COMMUNITY - RESTRICTIONS - A homeowner's association has the power to control the use and enjoyment of property; the extent of power is defined in the declaration, but usually encompasses use and size of buildings upon individual lots and regulations of the property commonly enjoyed by all lot owners

FACTS

The Buena Vista Lakes Maintenance Association Inc. ("Buena Vista") was a subdivision in DeSoto County governed by its homeowner's association ("HOA"). In October 2021, the HOA held its annual meeting to vote on Amendment XX to the bylaws. This amendment would ban property owners from leasing their property for any duration. At the meeting, there were 399 eligible votes, but only 206 of those vote were represented. After determining that a quorum was present, the board proceeded with the meeting. Of the 206 votes, 138 votes were casted in favor of Amendment XX to 68 votes casted against it. During the meeting, Kyle Jones, a property owner and member of the HOA, voiced his opposition to the board's interpretation of the bylaws and argued that a vote to amend the bylaws required a two-thirds majority of all eligible votes and not a two-thirds majority of those votes cast at the meeting. However, the 206 votes cast at the meeting did not represent the entire 399 eligible votes. The HOA was governed by its bylaws, which stated, "[a]mending bylaws requires a two-thirds (2/3) vote." The bylaws also contained a note that stated the two-thirds vote was according to the Robert's Rules of Order, which also stated that "[a] two-thirds vote means two-thirds of the votes cast." Further, the bylaws had footnotes with illustrative examples as guidance to help voters understand that a two-thirds vote was meant to describe two-thirds of the votes cast. On October 18, 2021, Jones filed suit in DeSoto County Chancery Court, arguing that an amendment could only be passed by two-thirds of all eligible votes. Jones argued that since 138 votes out of 399 would not constitute a two-thirds majority, the bylaw was ambiguous and void, and that such an amendment would be against public policy. Buena Vista argued that two-thirds meant two-thirds of all eligible votes cast meaning that the 138 votes out of 206 would constitute a valid two-thirds majority. The Chancery Court found that the term "two-thirds vote" was ambiguous and that the amendment violated public policy. Buena Vista appealed.

ISSUES

Whether the chancery court erred as a matter of law in (1) finding the Buena Vista bylaws ambiguous; and (2) erred in finding Amendment XX violated public policy.

HOLDING

(1) Because the plain language of the bylaws directly addressed the voting process by which bylaws were to be amended, because the language used in the bylaws was consistent, despite the parties' misuse of phrases, because the language used in the bylaws, as well as the illustrative examples throughout, made the bylaws subject to only one reasonable interpretation, and because Jones's disagreement with this interpretation did not make the language ambiguous, the chancery court erred in finding the bylaws ambiguous. (2) Because Jones chose to purchase property in a neighborhood governed by the Buena Vista HOA, because he was fully aware of the HOA's authority to affect his use and enjoyment of his property, because Buena Vista followed its own bylaws when it conducted the vote on Amendment XX during its 2021 annual meeting, and because Amendment XX reflected a validly approved restriction on the use of member property, the chancery court erred in finding the bylaws authorizing the vote on Amendment XX violated public policy. Therefore, the Court of Appeals reversed and remanded the judgment of the DeSoto County Chancery Court.

Reversed & Remanded - 2022-CA-01153-COA (Jan. 23, 2024)

Opinion by Judge Lawrence

Hon. Vicki B. Daniels (DeSoto County Chancery Court)

Derek Evan Whitlock for Appellant - M. W. Zummach for Appellee

Briefed by [Summie Carlay](#)

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

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DIVINITY V. HINDS CNTY. SCH. DIST.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - STANDARD OF REVIEW - EVIDENCE - The appellate court shall overturn a Workers' Compensation Commission decision when no evidence or only a scintilla of evidence supports the decision
APPELLATE PROCEDURE - FAILURE TO RAISE AN ISSUE - PROCEDURAL BAR - An argument not raised before the lower court is not eligible to be considered on appeal

FACTS

Leneice Divinity was injured performing her job as a special education teacher in 2014. The initial injury report included only an injury to her knee, but over the course of her treatment, Divinity began to complain of pain in her back and upper extremities. In September 2015, Divinity filed a petition to controvert the Mississippi Workers' Compensation Commission. In October 2015, Hinds County School District ("Employer") and Bridgefield Casualty Insurance Company ("Carrier") admitted compensability, but contested the extent and nature of Divinity's injury and denied Divinity had been determined to be temporarily or permanently disabled. Divinity subsequently filed a "Motion to Compel Payment of Indemnity Benefits" and a "Motion to Compel Medical Treatment." The administrative law judge ("ALJ") ordered the Employer and Carrier to continue to pay for Divinity's medical treatment and pay temporary disability payments beginning in April 2016 until Divinity reached maximum medical improvement. In October 2016, the Employer and Carrier filed a "Motion to Suspend Payment of Temporary Disability and to Deny Medical Treatment." An ALJ ordered the Employer and Carrier to pay for Divinity's knee surgery and temporary total disability benefits until Divinity reached maximum medical improvement. In July 2019, Dr. Webb performed an independent medical evaluation and estimated Divinity would reach maximum medical improvement from a psychiatric standpoint in three months. In June 2021, the ALJ's order held that Divinity was entitled to temporary total disability benefits from February 2015 to March 2019, permanent partial disability benefits for eight and three-quarter weeks beginning in July 2017, all medical services required by the nature of her injury and recovery, and a ten percent penalty on any untimely paid installments of compensation. In September 2021, the ALJ relieved the Employer and Carrier of responsibility to provide additional injections or physical therapy. In December 2021, the Employer and Carrier were no longer required to pay for or reimburse Divinity's prescriptions. Divinity then requested a review hearing from the Mississippi Workers' Compensation Commission ("Commission"). In January 2022, the Commission dismissed Divinity's petition without prejudice. In May 2022, Divinity filed a Motion to Compel Disability Benefits, and the motion was dismissed. In November 2022, Divinity moved to compel the Employer and Carrier to approve and pay for medical treatments caused

by her work-related injury. The full Commission entered its final order affirming the ALJ's June 2021 order. Divinity appealed.

ISSUES

Whether the (1) ALJ's findings were arbitrary and capricious or not supported by substantial evidence; (2) June 2021 order was the correct order to review; and (3) Commission erred in allowing a misrepresentation to be included in a Form B-18 Payment Report, making Divinity eligible for penalty payments.

HOLDING

(1) Because the ALJ reviewed nearly thirty pieces of evidence when making his decision, and because the medical records provided substantial evidence that Divinity's injury evolved throughout the years of treatment and was not caused by the initial injury at work, the ALJ's findings were supported by substantial evidence, and thus, were neither arbitrary nor capricious. (2) Because the Commission affirmed the June 2021 order based on Divinity's request for review, because Divinity's argument cited findings that were made in the June 2021 order, the Commission reviewed and affirmed the correct order. (3) Because Divinity failed to raise the issue with the Commission, the issue was procedurally barred, and because notwithstanding the procedural bar, there was no evidence that any payments made under the June 2021 order were late, and Divinity was not entitled to penalty payments. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2022-WC-01282-COA (Jan. 23, 2024)

Opinion by Judge Lawrence

Mississippi Workers' Compensation Commission

Pro se for Appellant - Roger C. Riddick & Mackenzie Nicole Ellis for Appellees

Briefed by [John Walker Webb](#)

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

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HARRIS V. RATCLIFF

CIVIL - PERSONAL INJURY

DISCOVERY - EXPERT WITNESSES - DESIGNATION - Judges enjoy substantial discretion relating to discovery, such as extensions of time to designate expert witnesses and expert witness substitution

DISCOVERY - VIOLATION - SANCTION - The trial court has the discretion to punish prejudicial discovery violations

EVIDENCE - MEDICAL TESTS - ADMITTANCE - To be admitted into evidence, medical tests must have an expert witness to testify in order to explain those tests

FACTS

On July 30, 2015, Deborah Ratcliff rear-ended Ashley Harris's vehicle in Lamar County. Ratcliff worked for Arbor Pharmaceuticals ("Arbor") and was acting within the scope of her employment when the crash occurred. Although Harris initially denied medical treatment, she began suffering from a concussion that worsened and ultimately led to her losing her job. Harris received treatment for these injuries over the next several years, commuting to various states to receive treatment as well as therapy. HMR Funding, LLC ("HMR") helped Harris schedule her appointments and pay for this treatment. Harris ultimately brought suit in Forrest County Circuit Court, and the case received a transfer to Lamar County after Arbor's objection to venue (the same counsel represented both Arbor and Ratcliff). After a lengthy discovery process and procedural battle over the designation of expert witnesses, Arbor ultimately did not formally designate its experts by the deadline, informally providing Harris with the names of two of its experts and a general description of their testimonies. In April 2019, Harris requested permission to conduct an out-of-time deposition on Dr. Kerri Tom. After another procedural battle, the trial took place on June 21, 2021. Before trial, Arbor objected to Harris's proposed exhibit of a Diffusion Tensor Imaging ("DTI") brain scan of Harris's brain. The court then granted

a mistrial with a new trial date for June 15, 2022. Between the trials, Harris learned that one of her expert witnesses suffered a medical emergency, winding up in a coma. Harris had conducted a recorded deposition of this witness. Harris called Tom to testify, and during her testimony, Tom discussed some aspects of Harris's condition unfamiliar to Arbor's counsel. On cross-examination, Tom revealed that she had testified from her private notes that she kept locked in her safe at work; these notes had not been turned over during discovery, and Arbor objected to this testimony. The court found the failure to disclose these notes a discovery violation and struck Tom's testimony as a sanction. The jury ultimately awarded Harris \$400,000 in damages. However, she had claimed medical damages over \$700,000 in medical damages, so she filed a motion for a new trial or for additur, which the court denied. Harris appealed.

ISSUES

Whether the court abused its discretion by (1) allowing Arbor an additional extension of the expert disclosure deadline; (2) striking Tom's testimony; (3) denying Harris leave to substitute Dr. Lacy Sapp; and (4) excluding Harris's DTI brain scan from evidence at trial.

HOLDING

(1) Because the judge had substantial discretion relating to discovery issues and because Harris failed to cite authority on this issue, the court did not abuse its discretion by granting Arbor an extension to designate expert witnesses. (2) Because Harris's counsel committed a discovery violation that proved prejudicial, the court did not abuse its discretion by excluding Dr. Tom's testimony. (3) Because the court's decision to deny the witness substitution of a new witness in favor of Sapp's video testimony was well reasoned under the circumstances, the trial court did not abuse its discretion by denying the witness substitution. (4) Because the court relied on Harris's representation that she was not going to offer the DTI scan into evidence, because Harris had no witness to interpret the scan, and because one of Arbor's expert witnesses did not change his opinion about Harris having normal brain scans after seeing the scan, Harris did not show an abuse of discretion on this issue. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2022 CA-00596-COA (Jan. 23, 2024)

Opinion by Judge Greenlee

Hon. Claiborne McDonald (Lamar County Circuit Court)

Daniel Myers Wade for Appellant - Donna Marie Meehan & Michael D. Simmons for Appellees

Briefed by [Matt Hennington](#)

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

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SILVER DOLLAR SALES, INC. V. BATTAH

CIVIL - TORTS-OTHER THAN PERSONAL INJURY AND PROPERTY DAMAGE

TORTS - TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS - ELEMENTS - For a claim of tortious interference with a business relationship, the plaintiff must prove (1) the defendant's acts were intentional and willful; (2) the acts were calculated to cause damages to the plaintiff in their lawful business; (3) the acts were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the defendant's part; and (4) actual damages and loss resulted

CIVIL PROCEDURE - MOTION PRACTICE - DIRECTED VERDICT - If the plaintiff's evidence and any reasonable inferences that may be drawn from it are sufficient for reasonable jurors to find for the plaintiff, then the defendant's motion for directed verdict should be denied

APPELLATE PROCEDURE - VERDICT - SPECULATION AND CONJECTURE - Although the appellate court will view the evidence in the light most favorable to the appellant, speculation and conjecture alone will not support a verdict

FACTS

Randy Sparks owned Silver Dollar Sales Inc. (“Silver Dollar”) and TBS Traders Inc. (“TBS”). TBS provided financing to River City Traders Inc. (“River City”), a Mississippi grocery wholesaler, owned by Scott Olson. In 2001, River City and TBS entered into a “Sales and Consignment Agreement” (“Consignment Agreement”), where River City used TBS’s credit to buy wholesale groceries from third parties, including Silver Dollar. In exchange, TBS earned a three percent fee. The Consignment Agreement stated River City could only work exclusively with TBS. In September 2007, Michael Battah offered to provide River City with additional credit in exchange for yearly payments. River City and Battah’s company QQB Factors LLC (“QQB”) entered into an informal arrangement, behind TBS’s back, where QQB leased part of River City’s warehouse, where it stored \$1,000,000 of groceries, giving River City priority to purchase them. River City did not buy enough product, so Battah demanded that River City pay for QQB’s on-site expenses to justify their arrangement. In December 2007, Battah realized his venture with River City was unprofitable, so QQB sold its remaining inventory, ending the arrangement. On December 26, 2007, Olson represented to Sparks that River City’s inventory and accounts receivable balance was \$4.6 million, but by January 11, 2008, River City’s combined balance was \$3.5 million less than represented sixteen days prior. On January 11, 2008, River City went out of business and caused TBS and Silver Dollar to incur substantial losses. TBS later assigned its claims against Olsen and River City to Silver Dollar. In February 2008, Olson had begun working for Battah. In 2016, Silver Dollar asserted claims against Olson and Battah for fraudulent transfer, conversion, and conspiracy. Silver Dollar also asserted a claim against Battah for tortious interference with contract and business relations. In April 2022, the case proceeded to jury trial, where Battah motioned for a directed verdict. The circuit court granted Battah’s motion for a directed verdict and dismissed all claims against Battah with prejudice. Silver Dollar appealed.

ISSUE

Whether the trial court erred in granting Battah’s motion for a directed verdict because there was sufficient evidence for reasonable jurors to find for Silver Dollar on its claim of tortious interference with business relations.

HOLDING

Because the evidence failed to establish that Battah’s acts were intentional and willful, calculated to cause damage to TBS, done with the unlawful purpose of causing damage and loss, and without right or justifiable cause, because the evidence actually showed that Battah entered into an informal arrangement with River City in an effort to increase his profitability, because there was no evidence, outside of speculation and conjecture, that Battah conspired to convert TBS’s property, and because there was no evidence that Battah’s conduct and limited dealings with River City proximately caused actual damages to TBS, the circuit court did not err when it granted Battah’s motion for a directed verdict on the grounds of tortious interference with business relations. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

DISSENT

Judge McDonald argued that Battah’s conduct, viewed in the light most favorable to the plaintiff, interfered with the exclusivity of River City and TBS’ agreement. She argued that Battah’s unwritten agreement with River City was sufficient evidence that a reasonable jury could have inferred tortious interference. Therefore, the trial court erred in granting Battah’s motion for a directed verdict.

Affirmed - 2022-CA-00476-COA (Jan. 23, 2024)

En Banc Opinion by Presiding Judge Wilson - Dissent by Judge McDonald

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

Grady F. Tollison Jr., Taylor Hamilton Webb, & Daniel Hudson Sparks for Appellant - Richard D. Underwood for Appellee

Briefed by [Youssef Kishk](#)

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

BOYETT V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - DENIAL OR DISMISSAL - DE NOVO STANDARD OF REVIEW - A circuit court's denial or dismissal of a post-conviction relief motion will only be distributed if the circuit court abused its discretion and the decision is clearly erroneous

POST-CONVICTION RELIEF - FILING - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 99-39-5(2), a post-conviction relief motion must be filed within three years after the judgment of conviction unless the argument raised meets one of the express statutory exceptions

POST-CONVICTION RELIEF - FILING - STATUTORY EXCEPTIONS - The statutory exceptions for a post-conviction relief require (1) an intervening decision by our state or federal courts, (2) newly discovered evidence, (3) sentence expiration, (4) an unlawful revocation of probation, parole, or conditional release, or (5) a post-conviction relief motion filed in a capital case

FACTS

In August 2002, Jessie Boyett Jr. pled guilty to aggravated assault of a law enforcement officer and rape and was sentenced to serve a total of fifty years in the custody of the Mississippi Department of Corrections. In October 2022, Boyett filed a post-conviction relief motion claiming that the State had committed a *Brady* violation, that his counsel was ineffective, and that newly discovered evidence warranted a new trial. The circuit court denied Boyett's requested relief and dismissed the post-conviction relief motion. Boyett appealed.

ISSUES

Whether the circuit court erred in (1) treating Boyett's Motion to Vacate Judgment as a post-conviction relief motion; (2) not voiding the judgment by ignoring the "structural errors" in Boyett's plea; and (3) dismissing Boyett's post-conviction relief motion.

HOLDING

(1) Because Boyett's argument lacked merit, the circuit court properly treated Boyett's motion as a motion for post-conviction collateral relief. (2) Because the circuit court's treatment of Boyett's Miss. R. Civ. P. 60(b) motion as a post-conviction motion was proper, the circuit court did not overlook "structural errors" in Boyett's plea. (3) Because Boyett filed his post-conviction relief motion more than three years after he pled guilty in 2002, the motion was filed past the permissible period to file and the circuit court did not err by finding that Boyett's claims were barred. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2022-CP-01239-COA (Jan. 23, 2024)

Opinion by Judge Westbrook

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

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

Briefed by [Sydney Bailey](#)

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

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DUNCAN V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - CASE AND CONTROVERSY - MOOTNESS - Cases in which an actual controversy existed at trial but expired by time of review become moot

APPELLATE PROCEDURE - CASE AND CONTROVERSY - BENEFIT TO PETITIONER - When an existing controversy expires because the petitioner had already received the relief requested, a judgment on the merits produces no practical benefit to him

APPELLATE PROCEDURE - CASE AND CONTROVERSY - ADVISORY OPINIONS - Appellate courts do not have the power to issue advisory opinions nor settle abstract or academic questions

FACTS

In 1994, Wendell Duncan was convicted of conspiracy and burglary and sentenced to twelve years. In 1995, he was convicted of armed robbery and sentenced to thirty years. Months later, he was convicted of assault on a law enforcement officer and sentenced to five years. All three sentences were ordered to run consecutively. Duncan completed the sentence for conspiracy and burglary in 2006 and began the armed robbery sentence. After ten years, he was granted parole in 2017 and began serving the sentence for assault, which was completed in 2022. However, he was not released from the custody of the Mississippi Department of Corrections (“MDOC”). In October 2022, Duncan filed a post-conviction relief (“PCR”) motion alleging that he was being unlawfully held after completing his sentences. While the motion was pending, he was paroled and released from MDOC’s custody in January 2023. The circuit court subsequently denied Duncan’s PCR motion and dismissed it as moot. Duncan appealed.

ISSUE

Whether the circuit court erred by ruling Duncan’s PCR motion was moot because he had already been released on parole.

HOLDING

Because Duncan was released from MDOC’s custody for parole while the PCR motion was pending, the issue became moot, and a judgment on the merits would produce no practical benefit to Duncan. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2023-CP-00406-COA (Jan. 23, 2024)

Opinion by Judge Westbrook

Hon. W. Ashley Hines (Washington County Circuit Court)

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

Briefed by [Jonathan Gandara](#)

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

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COURT OF APPEALS - CRIMINAL CASES

EDWARDS V. STATE

CRIMINAL - FELONY

EVIDENCE - HEARSAY - OFFICER’S INVESTIGATION - Out-of-court statements do not constitute hearsay when admitted not to prove the truth of the matter asserted but rather to explain an officer’s course of investigation and basis of information for their actions

EVIDENCE - HEARSAY - CONFRONTATION CLAUSE - The confrontation clause does not bar the use of even testimonial statements for purposes other than establishing the truth of the matter asserted

FACTS

Ernest Edwards was charged with the attempted capital murder of Chancery Court Judge Charles Smith. With no immediate leads, investigators used the testimony of postal workers near the site of the attempted murder and Edwards's family members to form their case. At trial, law enforcement officers testified regarding statements made by postal workers near the site of the attempted murder to show the information upon which the officers acted in charging Edwards. Edwards objected to the testimony, arguing that it was inadmissible hearsay and violated his right to confront those witnesses against him, as they were not called as witnesses at trial. The trial court overruled the objections, and the jury convicted Edwards of attempted capital murder. Edwards appealed.

ISSUES

Whether the testimony offered by the law enforcement officers (1) was hearsay and (2) violated Edwards's right to confront the witnesses against him.

HOLDING

(1) Because of the strength of the State's case, because the State did not introduce the contested testimony to prove the truth of the matter asserted in those statements, and because the State used the testimony to demonstrate the reason for the officers's actions, the testimony offered by the law enforcement officers was not hearsay. (2) Because the confrontation clause did not bar the use of even testimonial statements for purposes other than establishing the truth of the matter asserted, the out-of-court statements used in testimony did not violate Edwards's rights when used to demonstrate the reasoning for the officers's actions. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Circuit Court.

Affirmed - 2022-KA-00719-COA (Jan. 23, 2024)

Opinion by Presiding Judge Wilson

Hon. Andrew K. Howorth (Lafayette County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Thomas Andersen](#)

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HARRIS V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - COURT'S DISCRETION - A trial judge enjoys a great deal of discretion when determining the admissibility of evidence and unless the judge's discretion is abused, the court will not reverse the ruling

EVIDENCE - ADMISSIBILITY - CUMULATIVE EVIDENCE - The court may, but is not required to, exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, wasting of time, or needlessly presenting cumulative evidence

EVIDENCE - CORROBORATIVE EVIDENCE - CUMULATIVE EVIDENCE - Where corroborative evidence exists and the hearsay evidence is merely cumulative, the admission may be held to be harmless

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL - An appellate court will rarely consider a claim of ineffective assistance of counsel on direct appeal and will only do so when the record affirmatively shows ineffectiveness of constitutional dimensions, or the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

SUFFICIENCY OF THE EVIDENCE - SEX CRIMES - VICTIM'S TESTIMONY - The unsupported word of the victim of a sex crime is sufficient to support a guilty verdict where that testimony is not discredited or contradicted by other credible evidence

FACTS

In 2017, Marcus Harris brought his wife and his fourteen-year-old daughter from another relationship, referred to as "T.H.", to Tunica for a family getaway and to gamble at a casino. While her father and stepmother gambled, T.H. went

to bed, fully clothed, in their shared hotel room. At a certain point in the night, Harris returned to the hotel room alone and began groping his daughter while she lay in bed. He pushed his hands down her pants, touched her private area, and attempted to penetrate her. He also rubbed his “lower part” against her. Eventually, his wife returned to the hotel room and they all went to bed. Afterwards, T.H. told her biological mother about the incident, who then notified the police. Following this report, Lieutenant Favian Jones set up and observed a forensic interview with T.H., after which he had an arrest warrant issued for Harris. Jones then interviewed Harris, who admitted to all the details of the night except for the illegal touching. At trial, the prosecution called Jones to the stand to testify about the details surrounding the interview with Harris. The State then moved to introduce the video of the interview Jones had with Harris into evidence. Although the court scolded the prosecution for what it coined a “waste of time,” and although the defense objected to the evidence on the grounds that playing the tape would place more weight on a particular piece of evidence, the court allowed the video to be played. Harris was found guilty of touching of a child for a lustful purpose by an authority figure and was sentenced to seven years in prison. Harris appealed.

ISSUES

Whether (1) the State’s repeated use of certain critical testimony denied Harris a fair trial; (2) Harris’s counsel provided ineffective assistance of counsel; and (3) the evidence was insufficient to support the verdict.

HOLDING

(1) Because the trial judge had a great deal of discretion in admitting the videotape, because the Rules of Evidence did not mandate the judge to exclude evidence that may have been cumulative, because there was corroborative evidence that would have rendered the videotape harmless even if it was cumulative, and because the video revealed additional relevant evidence separate from Jones’s testimony, the judge did not abuse his discretion and Harris received a fair trial. (2) Because the record was sufficient to review Harris’s claim of ineffective counsel only on certain issues, the Court of Appeals declined to address the claim in piecemeal fashion and reserved Harris the right to argue his claims in post-conviction proceedings. (3) Because T.H.’s testimony was not discredited by other contradictory evidence and because the jury found her testimony credible, there was sufficient evidence to support the guilty verdict. Therefore, the Court of Appeals affirmed the trial court’s decision.

Affirmed - 2022-KA-00647-COA (Jan. 23, 2024)

Opinion by Judge Lawrence

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Benjamin Duddy](#)

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

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

EVIDENCE - SUFFICIENCY OF EVIDENCE - NEW TRIAL - 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

In July 2020, the body of Lorenzo Halthon was found on the side of a road in Lowndes County with five .380-caliber shell casings and a projectile. Two projectiles were recovered from Halthon's body upon examination. A week later, Donta Kirby was stopped by Trooper Wade Jones for traffic violations, who, after searching Kirby's car, found a .380-caliber handgun. Kirby fled the scene and was arrested approximately twelve hours later. An examination by the crime lab determined that the projectiles involved in Halthon's death were fired from the handgun discovered in Kirby's car. Kirby admitted that the gun "had a body on it" and that he was with Halthon the night he was killed. Further, Halthon's wife testified that Kirby was the last person to see Halthon alive. Surveillance footage recovered from a nearby business showed a black truck similar to Kirby's at the scene of Halthon's death around the time a neighbor heard gunshots. Upon searching Kirby's apartment, police found a .380-caliber firearm among Kirby's belongings. Kirby was indicted for first-degree murder of Halthon, possession of a .380 handgun by a felon, and possession of a .380-caliber handgun by a felon. The trial court amended the indictment to include a habitual offender designation under Miss. Code Ann. § 99-19-81. At trial, Kirby argued that he only fled the scene because of the multiple weapons found in his vehicle, not specifically due to the murder weapon being located. Kirby also argued that he received the murder weapon after Halthon's killing had been committed by someone else. Kirby was subsequently found guilty of all three charges. Kirby appealed.

ISSUES

Whether (1) Kirby received effective assistance of counsel; (2) Kirby was given a sufficient opportunity to cross-examine; and (3) there was sufficient evidence to convict Kirby.

HOLDING

(1) Because the ineffective assistance of counsel claims would be better suited in a motion for post-conviction relief rather than on direct appeal, because counsel's performance was presumed effective, and because Kirby's counsel's decisions were considered trial strategy that did not amount to ineffective assistance of counsel, Kirby received effective assistance of counsel. (2) Because the witness was not called by the State as an eyewitness to the crime, because the witness was not called by the State to offer evidence on Halthon's murder or to offer any information against Kirby, and because the witness's criminal history was not timely or relevant to Halthon's murder, the trial court did not abuse its discretion by limiting cross-examination of the witness and excluding additional evidence of alleged acts for which the witness had not been convicted. (3) Because the evidence was found in Kirby's apartment in a bag containing prescriptions and personal documents bearing Kirby's name, and because a reasonable juror could infer that the .380-caliber firearm was in Kirby's constructive possession, the State presented sufficient evidence to convict Kirby. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2022-KA-00320-COA (Jan. 23, 2024)

Opinion by Judge Smith

Hon. Lee J. Howard (Lowndes County Circuit Court)

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Briefed by [Forrest Carman](#)

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