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Mississippi Cases Editors: Ashley House & Mason Scioneaux

# MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 29, 2024

## *SUPREME COURT - CIVIL CASES*

## BEEBE V. FAMILY MGMT., INC.

**CIVIL - WILLS, TRUSTS, & ESTATES**

**CIVIL PROCEDURE - TRUSTS - REFORMATION OF TRUST -** Pursuant to Miss. Code Ann. § 91-8-415, the court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement

**CIVIL PROCEDURE - WEIGHT OF PROOF - CLEAR & CONVINCING EVIDENCE -** Clear and convincing evidence is a weight of proof that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the truth of the precise facts of the case

**CIVIL PROCEDURE - UNIFORM TRUST CODE - DETERMINATION OF INTENT -** Pursuant to Unif. Tr. Code § 425 comt., in determining the settlor's original intent, the court may consider evidence relevant to the settlor's intention even though it contradicts an apparent plain meaning of the text

### FACTS

In 1992, Elton G. Beebe Sr. ("Elton"), as settlor, along with five trustees, created the Elton G. Beebe Irrevocable Family Mortgage Trust ("the Trust"), which named sixteen individuals as lifetime beneficiaries, including Gladys Beebe ("Gladys"). Earl Keyes drafted the Trust. Article I, Section 1.1 of the Trust provided that "this Trust instrument is hereby expressly made irrevocable, and it shall not at any time or by any person or persons be capable of amendment, modification, or alteration in any manner." Article III, Section 3.2 provided that "unless all of the principal of this Trust is previously distributed, this Trust shall terminate upon the death of the last of the named beneficiaries to die; at such time, any remaining principal and accumulated income of the Trust shall be distributed in equal shares to the descendants of the named beneficiaries, or their issue, per stirpes." It was undisputed that Section 3.2 was unambiguous. In 2020, Family Management, Inc. ("FMI") filed a petition to modify or reform the Trust. The petition stated that Elton had recently undertaken a review of his assets, estate, businesses, and existing trust(s). Elton discovered that Article III, Section 3.2 of the Trust did not accurately reflect his intent. The petition stated that Elton intended that, upon the death of the last of the named beneficiaries, the Trust's assets would be distributed to Elton's lineal descendants, per stirpes, as opposed to the lineal descendants of all sixteen initial beneficiaries. FMI requested that the trial court modify Article III, Section 3.2 to reflect Elton's true intent. Attached to the petition was Elton's affidavit, which stated that the Trust contained a scrivener's error and did not accurately reflect his wishes and intentions that he had conveyed to Keyes. Elton stated that his intention and wish was that the Trust provide a lifetime benefit only to the sixteen named individuals. Once all said individuals were deceased, Elton intended for the Trust to be administered for the benefit of his lineal descendants. At trial, Elton testified that Keyes drafted the Trust and brought it to Elton to read, but Elton did not read it. In 2020, Elton discovered the termination clause. Hibernia Dyess Williams, an employee of Elton for more than thirty years, testified that she did not believe Section 3.2 reflected Elton's intent. Elton Glynn Beebe Jr., Elton's son, testified that he was aware of Section 3.2, but had no reason to believe that the provision was not what his father intended. The trial court found that FMI had proved Elton's original intent and mistake of fact by clear and convincing evidence and granted the requested reformation of the Trust to conform to Elton's intent. Gladys appealed.

### ISSUE

Whether the trial court erred by finding that FMI had submitted clear and convincing evidence to support reformation of the termination provision of the Trust.

### HOLDING

Because Elton's testimony was reliable and corroborated by Williams's testimony, and because the trial court found that Gladys did not present any evidence disputing Elton's intent at the time he executed the Trust, the trial court did not abuse its discretion by finding that FMI had proved by clear and convincing evidence Elton's intention at the time he created the Trust and the mistake in the expression affecting the Trust. Therefore, the Supreme Court affirmed the judgment of the Madison County Chancery Court.

### DISSENT

Justice Griffis argued that there was no clear and convincing evidence that Elton's intent in 1992 was different than what was written in the Trust. He also argued that Elton had a duty to read and understand the Trust when he signed it. Therefore, the trial court erred by finding that FMI had submitted clear and convincing evidence to support reformation of the termination provision of the Trust.

**Affirmed - 2022-CA-01176-SCT (Feb. 29, 2024)**
En Banc Opinion by Presiding Justice King - Dissent by Justice Griffis
Hon. Cynthia L. Brewer (Madison County Chancery Court)
Sheldon G. Alston, Jacob Arthur Bradley, & Margaret Kathryn Duff for Appellants - James Williams Janoush & Harris H. Barnes III for Appellee
Briefed by Emily Phillips
Edited by Nivory Gordon & Ashley House

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## *Supreme Court - Orders*

## *In Re*: Rules & Reguls. for Certification and Continuing Educ. for Miss. Court Admin.

**Order**

### ORDER

This Order amends the Rules and Regulations for Certification and Continuing Education for Mississippi Court Administrators, made in consideration of the Court's own motion, and amends Rules 1, 2, 3, and 4. The amendments become effective January 1, 2025.

Exhibit A, referenced and attached to the Order, shows the amendments to the Rules and Regulations for Certification and Continuing Education for Mississippi Administrators.

**Ordered - 89-R-99020-SCT (Feb. 22, 2024)**
Order by Presiding Justice King
Briefed by Jarius Colley
Edited by Kennedy Gerard & Mason Scioneaux

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## THOMAS V. STATE

### ORDER

**ORDER**

Christopher Thomas filed an Application for Leave to Proceed in the Trial Court, in which he made *Brady* and newly-discovered-evidence claims. The Court found that both claims failed to satisfy any of the statutory exceptions to the procedural bars under Miss. Code Ann. § 99-39-5 and -27. Further, the Court found that this, Thomas's fourth filing, was frivolous and warned Thomas that future filings deemed frivolous may result not only in monetary sanctions but also in restrictions on filing applications for post-conviction collateral relief in forma pauperis. Therefore, the Court ordered that the Application for Leave to Proceed in the Trial Court be denied.

**OBJECTION IN PART**

Presiding Justice King argued that although the application should be denied, its filing was not made frivolous because Thomas made reasonable arguments. Further, Presiding Justice King disagreed with the Court's warning, arguing that the imposition of monetary sanctions on a criminal defendant proceeding in forma pauperis only serves to punish or preclude that defendant from his lawful right to appeal, and, therefore, his access to the courts, violating a defendant's constitutional rights.

**Denied with Sanctions Warning - 2022-M-01005 (Feb. 23, 2024)**
Order by Justice Griffis - Objection in Part by Presiding Justice King
Briefed by Minnie Blackman
Edited by Emilee Crocker & Mason Scioneaux

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## WALLACE V. STATE

### EN BANC ORDER

**ORDER**

Sam Webster Wallace filed an Application for Leave to Proceed in the Trial Court. However, the application was considered successive because Wallace had filed two previous petitions for post-conviction relief that were both denied. The Supreme Court stated that the issue regarding the habitual offender enhancement had already been considered and rejected, and thus were barred by res judicata. Further, Wallace's petition was time-barred, successive and frivolous, without exception under Miss. Code Ann. § 99-39-5 and -27. Therefore, the Supreme Court denied the petition and warned Wallace that future frivolous filings would result in losing the ability to file applications for post-conviction relief in forma pauperis.

**OBJECTION**

Presiding Justice King opposed the Supreme Court's finding that the filing was frivolous and opposed the order warning Wallace against filing further frivolous petitions for post-conviction relief in forma pauperis. He argued the application presented reasonable arguments, and thus the application was not made with "no hope of success." Further, he argued the imposition of monetary sanctions on a criminal defendant proceeding in forma pauperis only served to punish or preclude that defendant from his lawful right to appeal. He would have simply found that Wallace's petition lacked merit.

**Denied with Sanctions Warning - 2023-M-01122 (Feb. 23, 2024)**
En Banc Order by Justice Maxwell - Objection in Part by Presiding Justice King
Briefed by Hunter Seidler
Edited by Kara Edwards & Mason Scioneaux

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## SUPREME COURT - CRIMINAL CASES

## GARTH V. STATE

### CRIMINAL - MISDEMEANOR

**CRIMINAL PROCEDURE - PERFECTING APPEALS - NOTICE & BONDS -** To perfect an appeal from the justice court, an adjudged guilty must simultaneously file a written notice of appeal, and both a cost bond and an appearance bond within thirty days of such judgment

**CRIMINAL PROCEDURE - PERFECTING APPEALS - NOTICE & BONDS -** Miss. R. Crim. P. 29.1(a) provides that a written notice of appeal and posting of the cost bond and the appearance bond perfects the appeal, and no authority permits the filing of the required bonds past the thirty-day appeal time

### FACTS

In 2022, Lady B. Garth, an alderwoman for the City of Aberdeen, attempted to disrupt the board of alderman's meeting. Garth was convicted of disturbance in a public place and sentenced to serve five days in jail and ordered to pay a fine and court costs. The circuit court issued its judgment on December 20, and, thirty days later, on January 19, a written notice of appeal was faxed to the circuit court, but the cost bond and appearance bond were not simultaneously posted. On January 25, thirty-six days after Garth was adjudged guilty, the circuit clerk received the cost bond and appearance bond check. The State moved to dismiss the appeal as not timely perfected. After a hearing, the circuit court dismissed Garth's appeal, because Garth failed to simultaneously post the cost and appearance bond which deprived the circuit court of appellate jurisdiction. Garth appealed.

### ISSUE

Whether the circuit court erred in dismissing Garth's appeal.

### HOLDING

Because Garth conceded that the cost bond and appearance bond were both posted outside of the thirty-day window to appeal, the circuit court did not err by dismissing Garth's appeal. Therefore, the Supreme Court affirmed the judgment of the Monroe County Circuit Court.

**Affirmed - 2023-KM-00182-SCT (Feb. 29, 2024)**
Opinion by Justice Maxwell
Hon. Kelly Lee Mims (Monroe County Circuit Court)
Ashley Nicole Harris for Appellant - Candace Cooper Blalock for Appellee
Briefed by Margaret Gardner
Edited by Doug Reynolds & Ashley House

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## HARRIS V. STATE

### CRIMINAL - FELONY

**EVIDENCE - WAIVER - PROCEDURAL MISCONDUCT -** Though the failure to object contemporaneously generally waives a claim of procedural misconduct during closing argument, an appellate court may review such a claim if the prosecutor's statement was so inflammatory that the trial court should have objected on its own motion

**EVIDENCE - IMPERMISSIBILITY - "SEND-A-MESSAGE" ARGUMENTS -** A "send-a-message" argument that encourages juries to use their verdict to 'send-a-message' to the public or to other potential criminals instead of rendering a verdict based solely on the evidence introduced at trial constitutes an impermissible argument that may result in reversable error

**EVIDENCE - IMPERMISSIBILITY - GOLDEN-RULE ARGUMENTS -** A golden-rule argument that asks the jurors to place themselves in the position of a party to the case constitutes an impermissible argument that may result in reversable error

**EVIDENCE - ADMISSIBILITY - CREDIABILITY OF DEFENDANT -** A prosecutor may comment on the defendant's "creditability and demeanor" when the defendant chooses to testify, thereby placing his credibility and demeanor before the jury

## FACTS

Percy Harris was married to Shauna Wright ("Shauna"). The two experienced marital difficulties leading to the incident on December 22, 2019. As Shauna and Harris began to argue, several gunshots went off within the house, alarming Shauna's son, M.K. M.K. proceeded to call 911 and told the police the home address and that he "heard some pops." When officers arrived, they found Harris with his left hand wrapped in a towel as he informed them that he believed his wife had shot herself. Harris was handcuffed, and officers found Shauna in the tub of the master bathroom with no signs of life. Harris was taken to the hospital for treatment of his injured hand. Upon his release, investigators interviewed him, but Harris could not account for Shauna's stab wounds or for the three times she was shot in the head. In July 2021, the Lamar County Grand Jury indicted Harris for the first-degree murder of Shauna. In October 2022, Harris' jury trial commenced. Harris testified in his own defense that while arguing, Shauna took his gun and pointed it at herself. Harris testified that he tried to block the gunshot and injured his hand in the process. In her closing arguments, the prosecutor commented on her years of prosecutorial experience and the need to hold Harris accountable for his actions. She further noted Harris's inability to "come up with a real tear" when presented with crime scene photographs. Following the trial, the jury returned a guilty verdict, and the court sentenced Harris to life imprisonment. Harris appealed.

## ISSUE

Whether the prosecutor committed misconduct in her closing arguments.

## HOLDING

Because Harris failed to make a contemporaneous objection to the prosecutor's comments at trial and because the prosecutor's comments contained neither a "send a message" argument nor a golden-rule argument, the prosecutor's comments were not so inflammatory that the trial court should have objected on its own motion. Therefore, the Supreme Court affirmed the judgment of the Lamar County Circuit Court.

**Affirmed - 2022-KA-01195-SCT (Feb. 29, 2024)**
Opinion by Justice Chamberlin
Hon. Clairborne McDonald (Lamar County Circuit Court)
W. Daniel Hinchcliff & George T. Holmes (Pub. Def. Office) for Appellant - Lauren G. Cantrell (Att'y Gen. Office) for Appellee
Briefed by Hayward Gordon
Edited by Nivory Gordon & Mason Scioneaux

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# LOTT V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - *MIRANDA* RIGHTS - VOLUNTARY WAIVER -** A waiver is considered voluntary if it is the result of a free and deliberate choice rather than intimidation, coercion, or deception

**CRIMINAL PROCEDURE - *MIRANDA* RIGHTS - VALID WAIVER -** For a waiver of one's Miranda rights to be considered valid, the state must prove beyond a reasonable doubt that the waiver was made voluntarily, knowingly, and intelligently

**CRIMINAL PROCEDURE - *MIRANDA* RIGHTS - KNOWING & INTELLIGENT WAIVER -** A waiver is knowing and intelligent if it is made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it

## FACTS

Monique Lott was convicted of second-degree murder. After Lott was arrested, she executed a written request to speak with an officer. Lott signed a *Miranda* waiver before giving the statement. The entire interview was recorded, and at no point did Lott actually express confusion about her representation status. Lott said the attorney had told her that he had been appointed to represent her for the preliminary hearing and that he may or may not be appointed again to represent her if she was indicted by the grand jury. During the interview, the officer informed Lott that she had a right to have her attorney present or to have one appointed for her for the interview. At trial, Lott moved to suppress the interview, arguing that her statement was rendered involuntary by her alleged confusion about whether the attorney appointed for her preliminary hearing still represented her at the time. The trial court held that Lott voluntarily waived her rights and admitted the statement. Lott appealed.

## ISSUE

Whether the trial court erred by admitting a statement Lott gave to officers following her arrest but prior to her indictment because of her alleged uncertainty about whether the attorney who had been appointed for her preliminary hearing still represented her.

## HOLDING

Because Lott's attorney no longer represented her and told her such, because the officer may have believed Lott had attorney, because the officer correctly informed Lott that she had the right to an attorney before continuing the interview and would be provided with one if she had asked, and because nothing in the record suggested Lott did not understand her rights when she waived them, the trial court did not err by admitting Lott's statement that was voluntarily given to officers following her arrest. Therefore, the Supreme Court affirmed the judgment of the Grenada County Circuit Court.

**Affirmed - 2022-KA-00395-SCT (Feb. 29, 2024)**
Opinion by Justice Ishee
Hon. George M. Mitchell Jr. (Grenada County Circuit Court)
George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee
Briefed by Robert "Duncan" Jones
Edited by Kayla Tran & Ashley House

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# MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 27, 2024

## *COURT OF APPEALS - CIVIL CASES*

## ACEIL V. ALCORN STATE UNIV.

### CIVIL - CONTRACT

**CIVIL PROCEDURE - MOTION TO RECONSIDER - JURISDICTION -** Whether raised by the parties or not, the Court is required to note its own lack of jurisdiction

**CIVIL PROCEDURE - MOTION TO RECONSIDER - MISS. R. CIV. PRO. 59 -** A motion to set aside or reconsider an order granting summary judgment will be treated as a motion under Miss. R. Civ. P. 59(e)

**CIVIL PROCEDURE - APPELLATE JURISDICTION - FINAL JUDGMENT -** When a notice of appeal is filed prior to the trial court's disposition of a Rule 59 motion, the appeal becomes effective when the Rule 59 motion is disposed of; until disposal of the Rule 59 motion, there is no final appealable judgment

## FACTS

Dr. Sam Aceil was employed as a professor at Alcorn State University ("ASU"). In September 2017, ASU recommended termination of Aceil's employment to the Mississippi Board of Trustees of the State Institutions of Higher Learning ("IHL") on the grounds of insubordination, contumacious conduct, and for cause. Aceil submitted a request for review of his termination to the IHL. The IHL denied Aceil's request for review. On May 8, 2020, Aceil filed a complaint against ASU and the IHL in the Hinds County Circuit Court alleging breach of his tenured faculty employment contract with ASU. The Hinds County Circuit Court transferred venue to the Claiborne County Circuit Court. ASU and the IHL filed their answers and affirmative defenses and a motion for summary judgment. Aceil failed to respond to their motion for summary judgment and filed an amended complaint, which ASU moved to strike. The circuit court granted the motion to strike, finding that Aceil's complaint did not comply with the requirements of Miss. R. Civ. P. 15(a). On September 8, 2022, the circuit court granted summary judgment in favor of ASU and the IHL after finding that Aceil failed to demonstrate any genuine issues of material fact. On September 16, 2022, Aceil filed a motion asking the circuit court to reconsider its order granting summary judgment to ASU and the IHL. On September 30, 2022, by filing a notice of appeal before the circuit court ruled on the post-judgment motion, Aceil appealed.

## ISSUE

Whether the Court of Appeals lacked jurisdiction to consider Aceil's appeal.

## HOLDING

Because Aceil had not yet brought his Rule 59 motion for hearing before the circuit court and because the circuit court had not yet ruled on his Rule 59 motion, the Rule 59 motion remained pending when Aceil filed his notice of appeal, and the Court of Appeals lacked jurisdiction to hear the appeal. Therefore, the Court of Appeals dismissed the appeal.

**Appeal Dismissed - 2022-CP-01021-COA (Feb. 27, 2024)**
Opinion by Presiding Judge Carlton
Hon. Tomika Harris Irving (Claiborne County Circuit Court)
*Pro se* for Appellant - Amanda Green Alexander & Quentin A. Daniels for Appellees
Briefed by Isabella Escobedo
Edited by Kennedy Gerard & Mason Scioneaux

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# WILBOURN V. WILBOURN

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - CUSTODY - TEMPRORARY ORDERS -** Temporary orders in child-custody-modification cases can be considered "permanent" if the party asserting permanence can sufficiently demonstrate that the temporary order went "unchallenged" and had been in place for a long period of time
**CIVIL PROCEDURE - EXCLUSION OF EVIDENCE - DISCRETION -** Miss. R. Evid. 403 permits a chancellor to exclude evidence that is cumulative or the presentation of evidence that will cause undue delay
**FAMILY LAW - CUSTODY - *ALBRIGHT* FACTORS -** The court considers the following factors in determining the child's best interests: (1) age, health and sex of the child; (2) a determination of the parent that has had the continuity of care prior to the separation; (3) which has the best parenting skills and which has the willingness and capacity to provide primary child care; (4) the employment of the parent and responsibilities of that employment; (5) physical and mental health and age of the parents; (6) emotional ties of parent and child; (7) moral fitness of the parents; (8) the home, school and community record of the child; (9) the preference of the child at the age sufficient to express a

preference by law; (10) stability of home environment and employment of each parent and other factors relevant to the parent-child relationship

## FACTS

Victoria Wilbourn and Richard Wilbourn were married and had two daughters, S.W. and D.W. S.W. was no longer a minor, and D.W. was twenty years old at the time of the appellate decision. Richard was self-employed and Victoria had a flexible work schedule. In October 2006, Victoria filed a Complaint for Separate Maintenance and For Protection from Domestic Abuse to separate from her husband, Richard. In November 2006, the chancellor entered an Agreed Order Granting Temporary relief, which prevented either party from spanking their minor children. In January 2007, an appointed Guardian Ad Litem ("GAL") submitted his report, which found that the minor children loved both parents and that there was no evidence of physical abuse. During their April 2007 divorce proceedings, the chancellor entered a second order granting temporary relief which temporarily awarded Victoria and Richard joint legal and physical custody of the children and ordered both parents to undergo independent medical evaluation. Richard was found to have anger issues. In October 2007, a third order granting temporary relief was entered which ordered Victoria to vacate the marital home, keeping the provisions of the previous orders in effect. Prior to the 2014 custody hearing, the third temporary order was subsequently challenged in 2008, 2009, and 2012. Richard and Victoria lived in the same area and were involved with their children's education. In August 2014, the chancellor resolved any potential issues of abuse and limited the hearings to testimony and evidence not before presented to the court. Victoria had an affair the children were unaware of, and S.W. had accidentally seen lewd videos on Richard's phone. D.W. testified that she wanted to live with Victoria but that she still loved and wanted to see Richard. On June 14, 2018, the chancellor entered a final judgment awarding both parents joint legal custody. Victoria was awarded physical custody of the minor children during the school year, and Richard was awarded physical custody during the summer months. Victoria appealed.

## ISSUES

Whether the chancery court erred by (1) denying Victoria's motion to declare the temporary order a permanent order; (2) limiting the testimony to the previous three years; and (3) misapplying the *Albright* analysis awarding Victoria and Richard joint custody of D.W.

## HOLDING

(1) Because the third temporary order was contested in 2008, 2009, and 2012, it could not be considered permanent, and because the third temporary order lost its effect once the final custody decree was entered in 2018, the issue was moot. (2) Because litigation was ongoing since 2006, because the chancery court had access to all the relevant documents, and because the chancery court considered all testimony and evidence, the chancery court did not err in limiting the hearings to information not known to the court or not heard by the court. (3) Because D.W. was not of tender age, the chancery court harmlessly erred in favoring Victoria on the health and sex of child factor, because the chancery court, relying on the GAL's report, determined the best parenting skills factor neutral, because the temporary order had been in place for over ten years, because both parties were willing and capable to take care of the child, because both parents could take off work when necessary, because the physical and mental health and age of parents factor favored neither party, because D.W. had strong emotional ties to both parents, because D.W. was unaware of Victoria's affair and Richard's lewd video watching, because both parents lived nearby D.W.'s school and were actively involved in D.W.'s education, because D.W. expressed a preference for living with Victoria during the school week, because each parent had a home for D.W. to reside in with stable employment, because Victoria antagonized Richard regarding D.W., and because Richard had anger issues, the chancery court did not err in awarding Victoria and Richard joint legal and physical custody over D.W. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

## DISSENT

Presiding Judge Wilson argued that a judgment on the merits for physical custody of a twenty-year-old woman, turning twenty-one later this year, will have no real practical effect. Therefore, this case was moot with respect to D.W.

**Affirmed - 2018-CA-01653-COA (Feb. 27, 2024)**
Opinion by Judge Westbrooks - Dissent by Presiding Judge Wilson
Hon. Larry Buffington (Madison County Chancery Court)

Matthew Thompson & William Terrell Stubbs for Appellant - Cecil Maison Heidelberg, Cynthia H. Speetjens, & John Robert White for Appellee
Briefed by Youssef Kishk
Edited by Nivory Gordon & Mason Scioneaux

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## ARNOLD V. STATE

**CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR -** A trial court does not err in giving jury instructions which, taken as a whole, fairly - although not perfectly - announce the applicable primary rules of law
**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE -** A trial court's verdict will only be reversed where with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty
**CRIMINAL PROCEDURE - INDICTMENTS - SEVERANCE OF MULTIPLE COUNT INDICTMENTS -** Two or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if the offenses are based on the same act or transaction, or the offenses are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan

### FACTS

Following the end of a romantic relationship between John Arnold Jr. and Natalie Morgan, Arnold attempted to kidnap Morgan's six-year-old son, N.L., from his school. Arnold was arrested for attempted kidnapping, and bonded out on the condition that he would not contact Morgan, N.L., or any of their relatives. The next day, Arnold violated the conditions of his bond by contacting Morgan's father and was subsequently arrested after his bond was revoked. Two days later, Arnold was again released under the same no-contact condition and was also required to wear an ankle monitor. The next day, Arnold appeared at another school looking for N.L. and was again turned away. Arnold removed his ankle monitor and was charged with violating the bond agreement and a second charge of attempted kidnapping. Four days later, Arnold attacked a corrections officer at the Oktibbeha County Jail and attempted to force the officer to open the gate. Arnold was charged with attempted escape and simple assault of a law enforcement officer. After the charges were initially filed, a mental health evaluation was performed and Arnold was deemed incompetent to stand trial and committed to the state hospital for treatment. Following his restoration at the state hospital, Arnold was deemed competent to stand trial and filed a motion to sever the two charges of attempted kidnapping from the charges of attempted escape and simple assault of a law enforcement officer. The trial court denied the motion to sever. At trial, the State presented its jury instructions for attempted kidnapping, to which Arnold did not object. The jury found Arnold guilty of all four counts. The trial court denied Arnold's motion for judgment notwithstanding the verdict ("JNOV"). Arnold appealed.

### ISSUES

Whether the trial court erred in (1) administering the jury instructions; (2) denying Arnold's JNOV motion based on the sufficiency of the evidence supporting his convictions; and (3) denying Arnold's motion to sever the charges of attempted kidnapping from those of attempted escape and assault in his multi-count indictment.

### HOLDING

(1) Because Arnold did not object to the jury instructions given at trial, and because the jury instructions properly identified the crime, the trial court did not commit plain error in administering the jury instructions. (2) Because a reasonable juror could infer that Arnold intended to remove N.L. from school without permission, the trial court did

not err in denying Arnold's JNOV based on the sufficiency of the evidence supporting his convictions. (3) Because only a short time elapsed between each offense in the indictment, because the witnesses and evidence proving each count would be admissible to prove each of the other counts, and because the four crimes were sufficiently interwoven by Arnold's self-expressed desire to take custody of N.L., the trial court's denial of Arnold's motion to sever was not a reversible error. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2021-KA-01426-COA (Feb. 27, 2024)**
Opinion by Judge Smith
Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)
Justin Taylor Cook (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee
Briefed by Thomas Andersen
Edited by Kayla Tran & Ashley House

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## CAMPBELL V. STATE

### CRIMINAL - FELONY

**EVIDENCE - WEIGHT OF EVIDENCE - JUDGMENT NOTWITHSTANDING THE VERDICT -** An appellate court should not disturb a jury verdict upon review unless that verdict is against the overwhelming weight of the evidence
**EVIDENCE - WEIGHT OF EVIDENCE - FACTUAL DISPUTE -** The jury's role at trial is to resolve factual disputes; appellate courts should generally not engage in such an exercise unless the verdict is against the overwhelming weight of the evidence

### FACTS

A grand jury indicted Jeraldine Campbell for the armed robbery and attempted murder of Bobby Hibbler. At trial, Hibbler testified he went to his cousin's house where people were gathering. Hibbler described how everyone at the gathering simply hung out that night, drinking, gambling, and shooting dice. Hibbler also stated that he did not speak to Campbell at the party. After Hibbler left, he went home and went to bed. Hibbler stated that around 5:30 a.m. on the following morning, Campbell called him to ask for help with her car, but when Hibbler went to help Campbell, he realized she had nothing wrong with her car as she kept asking him for money. Despite his numerous refusals, Campbell kept insisting, and, when Hibbler turned around, Campbell shot him in the neck and went through his clothes. After the altercation, Hibbler found help, and an ambulance took him to the hospital. Campbell, on the other hand, testified that Hibbler approached her at the party to discuss her interest in some land he had for sale. Before Campbell left the gathering in the early hours of July 14, she called Hibbler to let him know that she wanted to go look at the land in question. After a back-and-forth conversation on when she could go see the land, Campbell stated that Hibbler called her around 5:00 a.m., telling her to meet at the property. Campbell then stated that once she arrived at the location, she walked further onto the land with her back to Hibbler. Campbell testified that when she turned around, Hibbler had dropped his pants and walked toward her. Campbell stated she thought he was going to rape her and described a scuffle that ultimately ended when she grabbed Hibbler's gun off the seat of his vehicle and shot him. Campbell did not contact law enforcement after the incident, and she changed her story a couple of times. Campbell was convicted of the attempted murder of Hibbler and acquitted of armed robbery. Campbell filed a motion for judgment notwithstanding the verdict ("JNOV"). The circuit court denied the motion. Campbell appealed.

### ISSUE

Whether Campbell's conviction was against the overwhelming weight of the evidence.

### HOLDING

Because the jury heard Campbell and Hibbler's testimony, because the jury considered and weighed all evidence resolving any conflicts, and because the jury found Campbell guilty of attempted murder, the verdict at trial was

supported by substantial evidence, and Campbell's conviction was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Noxubee County Circuit Court.

**Affirmed - 2022-KA-01056-COA (Feb. 27, 2024)**
Opinion by Judge Emfinger
Hon. Lee J. Howard (Noxubee County Circuit Court)
Justin Taylor Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee
Briefed by Matt Hennington
Edited by Emilee Crocker & Ashley House

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## FOLLETT V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - CHILD EXPLOITATION - CONTENT -** Under Miss. Code Ann. § 97-5-33(5), a defendant will be found guilty if they are found to have either knowingly possessed or knowingly accessed with intent to view a depiction of a child engaging in sexually explicit conduct
**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE -** A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

### FACTS

The State began an investigation into Stanley Follett after following a cyber tip from Google. Google had identified child exploitation material on accounts that presumably belonged to Follett. The name of the account, email address, and recovery email were all connected to Follet. Additionally, the IP address and phone number were also connected to Follett. The police obtained a warrant and went to Follett's residence, where he lived with his parents and his adult daughter. The police retrieved data on a phone and on a laptop that connected Follett to the child exploitation material. Follett admitted that the laptop belonged to him. Follett stated that he was the only person who accessed the laptop. Follett also told investigators about an older phone that was stolen and that he had been unable to access his Google account since the theft. Text messages on the phone corroborated his story. When the State presented all of the evidence, the jury found Follett guilty of two counts of child exploitation. After the trial court sentenced Follett, he moved for a judgment notwithstanding the verdict ("JNOV") or a new trial. The trial court denied the motion. Follett appealed.

### ISSUES

Whether the (1) trial court erred by finding that a rational juror could find that the State proved each element of the crime and (2) verdict was so contrary to the evidence that it sanctioned an unconscionable injustice.

### HOLDING

(1) Because Follett admitted that he was the only user of the laptop, and because there were so many factors connecting Follett to the Google account that contained the explicit material, there was sufficient evidence presented by the State that a reasonable juror could find that Follett possessed or knowingly accessed the explicit material on the laptop and the Google account. (2) Because Follett was found to be the only user of the laptop, and because the jury found that there was sufficient evidence to connect Follett to the Google account on his phone, the verdict was not so contrary to the evidence that it sanctioned an unconscionable injustice. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

**Affirmed - 2023-KA-00078-COA (Feb. 27, 2024)**
Opinion by Presiding Judge Carlton

Hon. Lisa P. Dodson (Harrison County Circuit Court, Second Judicial Dist.)
George T. Holmes (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee
Briefed by Zylan Coleman
Edited by Kayla Tran & Ashley House

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# JONES V. STATE

## CRIMINAL - FELONY

**CRIMINAL LAW - DRUG POSSSESSION - TRAFFICKING CONTROLLED SUBSTANCES -** Miss. Code Ann. § 41-29-139(f) states that trafficking controlled substances encompasses both possession with the intent to sell or transfer and simple possession of thirty or more grams of a Schedule I or II controlled substance
**CRIMINAL LAW - DRUG POSSESSION - AGGRAVATED TRAFFICKING -** Proof of either possession with the intent to sell or transfer and simple possession with the statutory threshold quantity supports a conviction for aggravated trafficking
**CRIMINAL LAW - DRUG CONVICTION - CONSTRUCTIVE POSSESSION -** One in possession of premises upon which contraband is found is presumed to be in constructive possession of the articles, but this presumption is rebuttable and applicable to an owner and occupying tenant alike
**CRIMINAL LAW - CIRCUMSTANTIAL EVIDENCE - POSSESSION OF A STOLEN FIREARM -** Evidence supporting possession of a stolen firearm may be circumstantial, but it must establish beyond a reasonable doubt that the defendant knew the firearm was stolen because mere suspicion of the firearm being stolen is insufficient

### FACTS

Detective Richard Browning, officer for the Prentiss Police Department, received information that drugs were being sold at a residence where Eric Jones was residing. Browning confirmed that this was Jones's residence by contacting the local water department where they confirmed that Jones had current water service for the residence. After obtaining a warrant, Browning and other officers went to Jones's residence and found various controlled substances, scales, and a book with transactions in the front room. The officers found crystalized substances, multi-colored pills, green leafy substances, a loaded handgun, and cash inside the residence. Browning testified that based on his experience working on drug-related cases that this was a narcotics distribution business that is operated out of this residence. A chemist from the Federal Drug Enforcement Agency tested the controlled substances found within the residence and identified them as marijuana and methamphetamine. Thereafter, Jones was charged with aggravated trafficking in methamphetamine, possession with the intent to distribute marijuana, possession of a firearm by a felon, and possession of a stolen firearm. Before trial, the State moved to amend the indictment as to the aggravated trafficking charge, which the trial court granted. At trial Jones was found guilty by a grand jury on all four counts. Jones appealed.

### ISSUES

Whether (1) the trial court erred in granting the State's motion to amend the indictment; (2) sufficient evidence was presented at trial to support the two drug charges; and (3) the State presented sufficient evidence to support the stolen firearm charge against Jones.

### HOLDING

(1) Because proof of either possession with intent to distribute or simple possession supported a conviction for aggravated trafficking, it was proper for the trial court to allow the State to amend their indictment with the lesser-included offense. (2) Because the State produced evidence of drugs, scales, and a ledger in plain view, and because Jones was the tenant at the residence, there was sufficient evidence that a rational juror could find Jones guilty of constructive possession. (3) Because the State failed to present direct or circumstantial evidence that Jones knew the firearm had been stolen or any evidence as to when or how the firearm was stolen, Jones's conviction for possession of a stolen firearm was reversed and rendered. Therefore, Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Jefferson Davis County Circuit Court.

**Affirmed in Part; Reversed & Rendered in Part - 2022-KA-00235-COA (Feb. 27, 2024)**
Opinion by Presiding Judge Wilson
Hon. Prentiss Greene Harrell (Jefferson Davis County Circuit Court)
Zakia B. Chamberlain (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee
Briefed by Allie Zaring
Edited by Kara Edwards & Mason Scioneaux

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## MINOR V. STATE

### CRIMINAL - FELONY

**CONSTITUTIONAL LAW - CONFRONTATION CLAUSE - GENERAL HEARSAY OBJECTION -** A general hearsay objection, without a ruling from the trial court, is insufficient to preserve an alleged Confrontation Clause violation for appellate review
**CRIMINAL PROCEDURE - HARMLESS ERROR - STANDARD -** The standard for harmless error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained
**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - IMPROPER COMMENTS -** The standard of review that appellate courts must apply to lawyer misconduct during opening statements or closing arguments is whether the natural and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created; any allegedly improper prosecutorial comment must be considered in context, considering the circumstances of the case, when deciding on their propriety
**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - WAIVER -** Generally, the failure to object contemporaneously waives appellate review of a claim of prosecutorial misconduct unless the prosecutor's statement was so inflammatory that the trial judge should have objected on his own motion
**CRIMINAL PROCEDURE - INADMISSIBLE EVIDENCE - DUTY TO REQUEST LIMITING INSTRUCTION -** If a trial court sustains an objection to inadmissible evidence, the moving party has a duty to request a limiting instruction, and failure to request the instruction waives the issue

### FACTS

In July 2019, Agent Jerry Stewart with the Mississippi Bureau of Narcotics ("MBN") received an alert from the United States Postal Service ("USPS") that there was a suspicious package from California going to an address in Natchez, but the recipient was not listed at that address. MBN agents began conducting surveillance at the property. After the postal worker dropped off the suspicious package, the agents observed Zachary Minor and Mario Hartwell drive up in a vehicle. Hartwell exited and retrieved the package. At this time, the agents confronted the men, and Hartwell dropped the package and fled. The package contained 334.58 grams of marijuana and THC edibles. Hartwell and Minor were both arrested and indicted on two counts of conspiracy, one count of possession of marijuana with intent to distribute, and one count of trafficking THC (200 grams or more). In October 2021, Minor's jury trial began. During opening statements, the prosecution commented on Minor's right to remain silent when Minor refused to talk with MBN agents; however, Minor's attorney did not object to the statement. Afterward, Stewart testified that when MBN agents confronted Minor, he observed that Minor's cell phone was displaying a USPS tracking number, which was the same tracking number provided by the alert from USPS. Furthermore, Stewart also testified that the package was addressed to Minor. On cross-examination, defense counsel asked if there was any additional evidence tying Minor to the case. Stewart replied, "His co-defendant," and the defense immediately rested. On re-direct examination, the prosecution asked Stewart how Hartwell "tied Minor to the case." Defense counsel objected to "any hearsay," but the prosecution argued that the defense had opened the door. The trial court agreed with the prosecution, so Stewart responded, "The co-defendant indicated this was not the first time that he and Mr. Minor had done this in the same means and manner." The defense again objected "as to hearsay." At this time, the prosecution said it would "move on"; however, the prosecution then asked, "Now, in addition, the co-defendant said this wasn't the first time; is that correct?" Stewart responded, "Yes, sir." Before Stewart finished testifying, the prosecution questioned him about the edibles' design and

their resemblance to candy. In his response, Stewart stated that edibles are often marketed to children, and he claimed he had witnessed children become hospitalized from eating them. The defense counsel objected to this testimony based on relevance, and the court sustained the objection; however, the defense counsel did not request a mistrial or limiting instruction. Moreover, MBN Agent Martez Simpson testified that he was able to obtain a photograph of a text message on Minor's phone indicating that he was involved in the drug trade. During the prosecution's closing statement, the prosecution commented that Hartwell had been convicted of the same crimes; however, the defense did not object. After the prosecution rested, Minor's attorney moved for a mistrial because the prosecutor had asked the question about Hartwell's out-of-court statement after representing to the court that he would move on from that line of questioning. The trial court denied the motion for a mistrial, ruling that the out-of-court statement did "not result in substantial irreparable prejudice to the defendant's case." The defense then moved for a directed verdict, which the circuit court granted as to the two counts of conspiracy but denied as to the remaining counts. The jury convicted Minor of possession of marijuana with intent to distribute and trafficking THC. Minor filed a motion for a new trial, alleging that the trial court made erroneous rulings regarding the admission of hearsay testimony allowed over the defense's objection. The court denied the motion. Minor appealed.

## ISSUES

Whether (1) the evidence was sufficient to support the convictions; (2) there was a reversible error with regard to any questioning or testimony referencing Hartwell's out-of-court statement to MBN agents; and (3) Minor's claims of prosecutorial misconduct constituted reversible error.

## HOLDING

(1) Because the prosecution provided several incriminating facts that were relevant evidence that Minor was aware of the package's content, the evidence was sufficient to support the convictions. (2) Because the defense failed to make a contemporaneous objection to the alleged hearsay, because the defense waited until the State had rested its case-in-chief to move for a mistrial on the basis of allegedly inadmissible hearsay, because the defense did not contemporaneously raise the argument that the testimony violated the Confrontation Clause until the subsequent motion for a mistrial, because the defense only asserted a general hearsay objection, because the State's questioning combined with Agent Stewart's reply constituted inadmissible hearsay but was harmless error in light of the evidence of Minor's guilt, and because the defense did not request a limiting instruction be given to the jury to not consider the statement as evidence, there was no reversible error with regard to any questioning or testimony referencing Hartwell's out-of-court statement to MBN agents. (3) Because the defense did not object to the prosecution's statements, because the natural and probable effect of the prosecution's improper remark did not create unjust prejudice due to the evidence of Minor's guilt, because the prosecutor's statement was not so inflammatory so as to require the court's intervention, and because the defense did not request a limiting instruction after the trial court sustained the defense's objection to inadmissible evidence, Minor's claims of prosecutorial misconduct did not constitute reversible error. Therefore, the Court of Appeals affirmed the judgment of the Adams County Circuit Court.

## DISSENT

Judge Lawrence argued that the prosecution's improper actions did not constitute harmless error. He opined that because the prosecution intentionally asked the investigator to relay information concerning the statement Minor's co-defendant made to law enforcement, implied the co-defendant's guilt was evidence of Minor's guilt, relied on and argued this improper evidence during closing arguments, commented on Minor's choice not to speak with the police at the scene of the crime, and asked questions specifically designed to inflame the jury, the prosecution went beyond acceptable trial tactics and brought legal chaos to Minor's trial by continuously violating principles of law designed to ensure a fundamentally fair trial. Furthermore, he argued that the individual errors committed by the prosecution, which were not reversible in themselves, combined with other errors to make up reversible error, and the cumulative effect of all errors deprived Minor of a fundamentally fair trial.

**Affirmed - 2022-KA-00990-COA (Feb. 27, 2024)**
En Banc Opinion by Chief Judge Barnes - Dissent by Judge Lawrence
Hon. Debra W. Blackwell (Adams County Circuit Court)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee
Briefed by Ramsey Thrasher

Edited by Emilee Crocker & Mason Scioneaux

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## SMITH V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - PROBABLE CAUSE - TRAFFIC STOPS -** When a police officer personally observes a driver commit what they reasonably believe is a traffic violation, they have probable cause to stop the vehicle
**CRIMINAL PROCEDURE - TRAFFIC STOPS - PROLONGING DETENTION -** When an officer develops reasonable suspicion of additional criminal activity during a traffic stop, they may further detain the vehicle's occupants for a reasonable time while appropriately attempting to dispel reasonable suspicion
**CRIMINAL PROCEDURE - PROBABLE CAUSE - DRUG-DETECTING DOGS -** A drug-detecting dog's positive alerts create probable cause to search a vehicle

### FACTS

An officer pulled over Anthony Smith after observing Smith's vehicle veer off the road several times. The officer immediately noticed that Smith seemed argumentative and that his speech seemed slow. After running Smith's license, the Computer Aided Dispatch system identified Smith as a "dangerous person." Another officer arrived on the scene shortly after and asked Smith to step out of the vehicle. Once Smith was out of the vehicle, the officers testified that they could smell the odor of intoxicating beverage on Smith's breath. When asked how much he had drank, Smith stated that he consumed one to two beers and later said he had consumed four beers. The officers called in a DUI unit to perform a field sobriety test. While waiting for the DUI unit, a drug-detecting dog alerted to narcotics on the passenger side. Based on the dog's alerts, the officers believed they had probable cause to search the vehicle. Inside, they found a handgun, a magazine, a handgun drum, a misdemeanor amount of marijuana, marijuana seeds, a marijuana "dugout," and four ecstasy pills. Smith was arrested on charges of possession of a firearm by a felon, DUI, careless driving, possession of drugs and paraphernalia, and failure to provide proof of insurance. Prior to trial, Smith moved to suppress evidence seized during the search, arguing that the officers lacked probable cause to stop and search his vehicle. The trial court denied Smith's motion. Smith was convicted. Smith appealed.

### ISSUES

Whether the trial court erred by holding that officers had (1) probable cause for the traffic stop; (2) reasonable suspicion to prolong the stop; and (3) probable cause to search Smith's vehicle.

### HOLDING

(1) Because Smith crossed or bumped a fog line, the trial court did not err in holding that the officer had probable cause for the traffic stop. (2) Because the officers had reasonable suspicion based on their perceptions during conversations with Smith, the smell of alcohol, and evidence of careless driving, the trial court did not err in holding that officers had reasonable suspicion to prolong the stop. (3) Because the drug-detecting dog alerted for drugs while sniffing Smith's vehicle, the trial court did not err in holding that officers had probable cause to search Smith's vehicle. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Circuit Court.

**Affirmed - 2022-KA-00942-COA (Feb. 27, 2024)**
Opinion by Presiding Judge Wilson
Hon. Grady Franklin Tollison III (Lafayette County Circuit Court)
Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee
Briefed by Joshua Arias
Edited by Doug Reynolds & Ashley House

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# TUGGLE V. STATE

**CRIMINAL - FELONY**

**CRIMINAL LAW - PROOF OF CAUSE OF DEATH - LAY TESTIMONY -** Proof of the cause of death in homicide cases may be by lay testimony not tendered or qualified as expert testimony

**CRIMINAL LAW - PROOF OF CAUSE OF DEATH - EXPERT TESTIMONY -** An expert does not need to be infallible or possess the highest degree of skill, rather it is sufficient that the expert possesses peculiar knowledge of information regarding the subject matter which is not likely to be possessed by laymen

**EVIDENCE - ADMISSION OF EVIDENCE - CHARACTER EVIDENCE -** Miss. R. Evid. 404 prohibits the admission of character evidence to prove propensity and action in conformity with that character, but it may be admitted for other purposes such as proof of motive, intent, or absence of mistake, provided that the evidence's probative value outweighs its prejudicial effect to the defendant

**EVIDENCE - APPELLATE REVIEW - SUFFICIENCY OF THE EVIDENCE -** While an appellate court must view the evidence and all the reasonable inferences that can be drawn from it in the light most favorable to the prosecution, the court must also disregard all evidence favorable to the defendant

## FACTS

JaTryan Tuggle drove Christopher Tyce, Eric Williams, and Stephon Hart from Jackson to Hattiesburg, stopping at Steelman Grocery ("the store"). Tuggle's passengers entered the store carrying guns and wearing face coverings while Tuggle remained in the vehicle outside. In the store, Tyce shot and killed the store's co-owner, Lisa Nguyen, and Williams stole the cash register while Hart served as the lookout. After the robbery, the three men reentered Tuggle's car, and he drove them back to Jackson. Tuggle was charged with capital murder and conspiracy to commit armed robbery. At trial, the Forrest County Deputy Coroner Lisa Klem testified as to the cause and manner of Nguyen's death, although Klem was not a pathologist and did not perform an autopsy. However, Klem completed specialized training in death investigations and was a licensed practical nurse with experience in death investigations involving gunshot wounds. At trial, Exhibits S-106 and S-107 were admitted after the trial court considered the evidence relevant to prove Tuggle's intent to participate in the robbery, finding such evidence to be admissible after balancing probative value against prejudicial effect. The exhibits contained information retrieved from Tuggle's cell phone, including text messages between Tuggle and Williams about the day of the robbery and browser history, which showed internet searches for bank robbery movies ten days prior to the robbery. A detective testified that Tuggle admitted to him that he drove himself and the others to the store, where they argued for about thirty-five minutes about who would go into the store. Tuggle's jail mate testified that Tuggle had told him about how they had planned to rob the store. Tuggle was found guilty after a three-day trial. Tuggle filed a motion for judgment notwithstanding the verdict ("JNOV") or a new trial and other relief. The trial court denied Tuggle's motion. Tuggle appealed.

## ISSUES

Whether the trial court erred by (1) permitting the Forrest County Deputy Coroner to testify as to Nguyen's manner and cause of death; (2) admitting Exhibits S-106 and S-107 at trial; and (3) denying Tuggle's motion because the evidence presented at trial was insufficient to convict him of capital murder and conspiracy to commit armed robbery.

## HOLDING

(1) Because Tuggle did not object to Klem's testimony as to the cause and manner of death at trial, and because Klem completed specialized training in death investigations and was a licensed practical nurse with experience in death investigations involving gunshot wounds, the issue was not properly preserved for appeal, but the trial court did not err by permitting Klem to testify. (2) Because the trial court considered the evidence relevant to prove Tuggle's intent to participate in the robbery, and because the trial court found such evidence to be admissible after balancing probative value against prejudicial effect, the trial court did not abuse its discretion in admitting the two exhibits. (3) Because Tuggle possessed an interest in bank robberies and communicated with the primary conspirators about the day of the robbery, because Tuggle and the others argued in their car outside of the store for thirty-five minutes prior to the robbery about who would go inside, and because Tuggle admitted to his jail mate that he and his friends planned to rob the store, the trial court did not err in finding the evidence was legally sufficient to find that Tuggle conspired to commit

armed robbery. Therefore, the Court of Appeals affirmed in part and remanded in part the judgment of the Forrest County Circuit Court.

**Affirmed in Part; Remanded in Part - 2022-KA-00118-COA (Feb. 27, 2024)**
Opinion by Judge Emfinger
Hon. Robert B. Helfrich (Forrest County Circuit Court)
Brandon Isaac Dorsey for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee
Briefed by Jonathan Gandara
Edited by Kennedy Gerard & Ashley House

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