

MISSISSIPPI SUPREME COURT DECISIONS – MAY 30, 2024***SUPREME COURT - CIVIL CASES*****BRENT V. MISS. DEP'T OF HUM. SERVS.****CIVIL - WORKERS' COMPENSATION**

WORKERS' COMPENSATION - EMPLOYER REQUIREMENTS - PAYMENTS - Under Miss. Code Ann. § 71-3-1, employers are required to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work-related injury or occupational disease arising out of and in the course of his employment, to pay reasonable and necessary medical expenses resulting from the work-related injury or occupational disease, and to encourage the return to work of the worker

WORKERS' COMPENSATION - DISABILITY OR MEDICAL TREATMENT - PHYSICIAN EXAMINATION - Per Miss. Code. Ann. § 71-3-15(1), if the employer desires, he may have the employee examined by a physician other than of the employee's choosing for the purpose of evaluating temporary or permanent disability or medical treatment being rendered under such reasonable terms and conditions as may be prescribed by the commission

FACTS

In 2009, Laverne Brent, an employee of the Mississippi Department of Human Services ("DHS"), was injured in a building owned by Madated, LLC. DHS's insurer, the Mississippi State Agencies Workers' Compensation Trust ("Trust"), covered her reasonable and necessary medical expenses. In 2012, Brent and her husband sued the building owner and settled for \$750,000. DHS and the Trust intervened, claiming approximately half of the settlement in expenses. Brent contested the amount, arguing some expenses were not legally recoverable. The court ordered the Trust to produce detailed invoices and checks. Despite this, Brent struggled to verify the expenses and filed a motion for contempt, leading to further scrutiny and a reduction of the claim. The trial court validated the lien, granting immediate reimbursement of the final adjusted amount to the Trust, with \$3,137.50 remaining in dispute. Brent argued that Employer Medical Evaluation ("EME") expenses should not be reimbursed, citing a Mississippi Workers' Compensation Commission opinion that EMEs were not medical expenses. However, the court ruled that EME expenses were reimbursable under state law. The Court of Appeals affirmed. Brent petitioned for writ of certiorari.

ISSUE

Whether the trial court erred in requiring Brent to pay the expenses for an Employer Medical Evaluation conducted by a consulting psychologist through an adjustment company.

HOLDING

Because the consulting psychologist was retained by the intervenors for an evaluation of Brent and did not provide such medical treatment, the trial court erred by requiring Brent to pay the expenses for an Employer Medical Evaluation conducted by a consulting psychologist through an adjustment company. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2022-CT-00529-SCT (May 30, 2024)

En Banc Opinion by Chief Justice Randolph

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court)

John H. Stevens for Appellants - Michael E. D'Antonio Jr., Alan M. Purdie, & Dion Shanley for Appellees

Briefed by [Forrest Carman](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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MISS. DEP'T OF CORR. V. MCCLURE

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - JURISDICTION - COUNTY COURT - County courts have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity

CIVIL PROCEDURE - JURISDICTION - BREACH OF CONTRACT - Circuit courts have original jurisdiction over all breach of contract cases

ADMINISTRATIVE LAW - RELIEF - EXHAUSTION DOCTRINE - Where an administrative agency regulates certain activity, an aggrieved party must first seek relief from the administrative agency before seeking relief from the trial courts; where no adequate administrative remedy is provided, the exhaustion doctrine is not applicable

CIVIL PROCEDURE - INTERLOCUTORY APPEALS - JURISDICTION - Jurisdiction of interlocutory appeal largely deals with aspects of a case that can be decided without further trial court development

FACTS

Tiffany McClure, a probation officer, alleged that the Mississippi Department of Corrections (“MDOC”) never paid her promised overtime wages she earned when responding to a prison riot. McClure later left her job and started a new job at in a public-school system. She sought her unused hours of medical leave to be transferred to her new job. The county court determined in the first hearing that it had jurisdiction over McClure’s case, but the court did not address the medical leave claim. McClure filed a motion to compel discovery and for sanctions, and MDOC filed a motion to dismiss. The court denied the parties’ motions and stayed discovery pending the resolution of the subject matter jurisdiction issue either through the appellate process or interlocutory appeal on the second hearing. MDOC appealed.

ISSUES

Whether (1) the county court had subject matter jurisdiction to hear McClure’s claims against her employer for breach of contract; and (2) McClure’s unused medical leave claim was properly before the court on interlocutory appeal.

HOLDING

(1) Because Mississippi law vest original jurisdiction with the trial court, and because there was no adequate remedy for McClure’s breach of employment contract claim, the trial court had jurisdiction to hear her claims against her employer for breach of contract. (2) Because the trial court neither addressed the medical leave issue at the hearing nor in its order, because the trial court stayed discovery pending the present appeal, because MDOC did not argue the issue in its petition for interlocutory appeal, and because McClure did not defend her position on the issue except to assert that it was not properly before the Supreme Court on interlocutory appeal, McClure’s unused medical leave claim was not properly before the Supreme Court on interlocutory appeal. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Circuit Court.

Affirmed & Remanded - 2022-IA-01201-SCT (May 30, 2024)

Opinion by Justice Coleman

Hon. Larita M. Cooper-Stokes (Hinds County Circuit Court)

Wilson Douglas Minor (Att’y Gen. Office) for Appellant - Carson Holt Thurman, Jeffery P. Reynolds, & Jason Matthew Kirschberg for Appellee

Briefed by [Caroline Byrd](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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ST. DOMINIC-JACKSON MEM’L HOSP. V. MARTIN

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - RELIEF - JUDGMENT NOTWITHSTANDING THE VERDICT - In order to rule on a motion for judgment notwithstanding the verdict, the trial court must consider the evidence in the light most favorable to the non-moving party, giving that party the benefit of all favorable inferences that reasonably may be drawn therefrom

CIVIL - PREMISES LIABILITY - UNREASONABLY DANGEROUS CONDITIONS - Mississippi has long recognized that normally encountered dangers such as curves, sidewalks, and steps are not hazardous conditions; such pathways often contain cracks and changes in elevation, and, as such, they do not become hazardous conditions simply because they contain minor imperfections or defects

CIVIL - PREMISES LIABILITY - UNREASONABLY DANGEROUS CONDITIONS - Inadequate lighting and visually similar materials can create unreasonably dangerous materials

CIVIL PROCEDURE - NEW TRIAL - JURY INSTRUCTION - A new trial may be granted when the jury has been confused by a faulty jury instruction

FACTS

Merilyn Martin fell in the St. Dominic-Jackson Memorial Hospital (“St. Dominic”) parking lot. She filed suit under the theories of negligence and premises liability. Martin left the hospital in the twilight hours of the evening in a wheelchair pushed by Elizabeth Smith and fell attempting to get into a car. Smith testified that Martin’s feet had fallen into a pothole. On cross-examination, Smith was asked in detail about the lighting in the parking lot. Smith testified that although the lights looked bright on camera, the parking lot did not look like that at the time. A St. Dominic security guard, who was on duty at the time of the fall, stated that it was still daylight but beginning to turn dark. The security guard also testified that all the lights in the parking lot were working. Martin testified that, as she attempted to step around the door, her heel went into a pothole containing broken concrete, which threw her backward. Martin testified that she saw the broken concrete but did not perceive the pothole due to the poor lighting in the parking lot. On cross-examination, Martin testified that despite the lights on the surveillance footage, the parking lot was dark. The driver of the car testified that the parking lot lights were on, but the lot was dark. Martin’s expert witness testified that St. Dominic failed to maintain its parking lot and created a dangerous condition that caused Martin to fall and be injured. St. Dominic’s expert witness testified that the area of the parking lot where Martin fell was not a pothole and merely displayed normal wear and tear. At the close of the trial, Martin requested and was granted a jury instruction for negligence per se predicated on the theory that St. Dominic’s maintenance of its parking lot violated a city ordinance that required that all walkways and similar areas be maintained free of hazardous conditions. The jury returned a verdict for Martin. St. Dominic filed a motion for judgment notwithstanding the verdict, which was denied. St. Dominic appealed.

ISSUES

Whether (1) Martin failed to present sufficient evidence at trial that her fall was caused by an unreasonably dangerous condition; and (2) the trial court erred by granting Martin’s negligence per se jury instruction.

HOLDING

(1) Because whether the presence of the pothole coupled with the inadequate lighting created an unreasonably dangerous condition was a question of fact for the jury to decide, and because a reasonable jury could find that the pothole caused Martin’s injuries, Martin presented sufficient evidence to survive the motion for JNOV. (2) Because the negligence per se instruction allowed the jury to find for Martin based on the condition of the asphalt alone, the instruction was improper and confusing. Therefore, the Supreme Court reversed the judgment of the Hinds County Circuit Court and remanded the proceeding for a new trial.

Reversed & Remanded - 2023-CA-00285-SCT (May 30, 2024)

Opinion by Justice Chamberlin

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

John E. Wade, M. Patrick McDowell, & Alston F. Ludwig for Appellant - Yancy B. Burns for Appellee

Briefed by [Andrew "Blake" Huffman](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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VT HALTER MARINE, INC. V. CERTAIN UNDERWRITERS OF LLOYD'S OF LONDON SUBSCRIBING TO POL'Y No. B0507M17PH04660

CIVIL - INSURANCE

INSURANCE - INTERPRETATION - POLICY TERMS - When an insurance policy's terms are plain and unambiguous, the court uses their plain and ordinary meaning and applies the terms as written; ambiguous or unclear language is resolved in favor of the insured, and provisions that exclude coverage are construed liberally in favor of the insured

INSURANCE - INTERPRETATION - EMPLOYEE OPINION - The interpretation of an insurance policy is a legal question, therefore, an employee's opinion as to coverage is not relevant to the resolution of the issue

INSURANCE - POLICY EXCEPTION - COVERAGE - "All risk" policies are not intended to cover the cost of repairing the insured's own mistakes

FACTS

Certain Underwriters of Lloyd's of London ("Underwriters") issued an all-risk insurance policy to VT Halter Marine ("VTHM") that covered two vessels while under construction. Among the materials incorporated into the vessels were half-inch steel flange plates, which cracked during installation because VTHM's press brake operator incorrectly bent them. VTHM submitted a claim to Underwriters for the cracked flange plates. Underwriters denied VTHM's claim, concluding that the flanges cracked due to faulty workmanship and that coverage was excluded under Addendum Two of the policy. Addendum Two's relevant language stated, "Underwriters shall not pay for any loss, damage or expense caused by or arising in consequence of... faulty workmanship, or the instillation or use of improper or defective materials, unless resulting in... cracking of the Vessel..." VTHM contested the denial, and Underwriters confirmed its denial. VTHM filed a complaint against Underwriters for breach of contract, which Underwriters answered, denying that it was liable for the event in question. Both parties filed motions for summary judgment, and the trial court granted Underwriter's motion. VTHM appealed.

ISSUE

Whether insurance coverage was provided because the flanges were part of the vessel since coverage for faulty workmanship existed if it resulted in the vessel cracking.

HOLDING

Because the faulty workmanship directly resulted in improper or defective materials being installed, and because the policy exclusions were clear and unambiguous, the cost of replacing and repairing improper or defective materials themselves was unambiguously excluded from coverage. Therefore, the Supreme Court affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2023-CA-00019-SCT (May 30, 2024)

Opinion by Presiding Justice King

Hon. Kathy King Jackson (Jackson County Circuit Court)

John Patrick Kavanagh Jr., John Martin Lassiter, & Michael David Strasavich for Appellant - Kyle Stuart Moran, David Michael Hurst Jr., & Heather Edwards Murphy for Appellees

Briefed by [Zachary Perez](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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YAZOO CITY V. HAMPTON

CIVIL - PROPERTY DAMAGE

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - IMMUNITY - A government entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities related to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of another person not engaged in criminal activity at the time of the injury

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in the light most favorable to the non-moving party

FACTS

A fire broke out at Victor Young's property in Yazoo City, which spread to Kenneth Hampton's property. The Yazoo City Fire Department responded to the properties. However, the responders' efforts to stop the fires were hampered by a lack of tank water in the fire department's truck and an inability to connect to a nearby fire hydrant. Both Hampton's and Young's property were significantly damaged because of the fire. Three days after the fire, Hampton suffered a stroke. Hampton and Young brought suit against Yazoo City, alleging that the city, through the department, was negligent when it failed to properly train and supervise its firefighters and maintain its fire hydrant system. Both sought judgment for property damage, lost rent, medical expenses, mental and emotional distress, and lost wages. Yazoo City invoked in its answer the defense that it was immune under the Miss. Tort Claims Act ("MTCA"). Subsequently, Yazoo City filed a motion for summary judgment, arguing that because Hampton and Young did not allege that the city acted with reckless disregard for the safety and well-being of any person, it was thus entitled to immunity under Miss. Code. § 11-46-9(1)(c). The circuit court denied Yazoo City's summary judgment motion. Yazoo City appealed.

ISSUES

Whether (1) Yazoo City was immune from liability under the MTCA for property damage caused by its fire department's failure to fight the fire effectively and (2) any immunity extended to personal injury claims arising from injuries suffered after the fire due to the alleged stress caused by the property damage.

HOLDING

(1) Because Hampton and Young's claim arose directly from an act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to fire protection, and because the claims did not fall into the exception for when the employee acted in reckless disregard of the safety and well-being of any person, Yazoo City was immune. (2) Because ineffectively fighting a fire and damaging a man's property does not amount to reckless disregard of the safety and well-being of any person, Yazoo City was immune from the personal injury claim. Therefore, the Supreme Court reversed and rendered the judgment of the Yazoo County Circuit Court.

Reversed & Rendered - 2022-IA-01284-SCT (May 30, 2024)

Opinion by Justice Ishee

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)

Thomas Ray Julian for Appellant - Ronald Earl Stutzman Jr. for Appellees

Briefed by [Maggie Crain](#)

Edited by [Robert "Duncan" Jones](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 28, 2024

COURT OF APPEALS - CIVIL CASES

HALEY V. BREWER

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates one's constitutional rights

ADMINISTRATIVE LAW - CORRECTIONAL FACILITIES - INMATE RIGHTS - Inmates have no property or liberty interest when it comes to their housing assignment

FACTS

Russell Haley was indicted on two counts of child exploitation. Haley entered a plea of guilty which was accepted by the trial court resulting in a sentence of 40 years in Mississippi Department of Corrections ("MDOC") custody, with ten years to serve and thirty years suspended. Subsequently, Haley was assigned to be housed at Stone County Regional facility. Haley claimed in a civil suit that he was transferred to a different facility in George County after he complained about health and safety conditions in Stone County. Additionally, Haley claimed that the transfer was in retaliation for his speaking out about the conditions he faced in Stone County. The trial court found that Haley had no liberty interest in which facility he was assigned. Haley appealed.

ISSUES

Whether the transfer of Haley from his home correctional facility was unlawful.

HOLDING

Because inmates have no protected liberty interest in housing assignments and such assignments constitute an administrative decision beyond judicial reproach, Haley's transfer was lawful. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

Affirmed - 2023-SA-00571-COA (May 28, 2024)

Opinion by Judge McCarty

Hon. Kathy King Jackson (George County Circuit Court)

Pro se for Appellant - William R. Collins (Att'y Gen. Office) for Appellees

Briefed by [Selena Houston](#)

Edited by [Brandon Peterson](#) & [William Davis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

WILSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE - A motion for post-conviction relief must be filed within three years following the entry of judgment of conviction; failure to file within the three-year period procedurally bars appeal of the dismissal of the motion unless the petitioner can demonstrate that a statutory exception applies

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Pursuant to Miss. Code Ann. § 99-39-5(2), the exceptions to the three-year statute of limitations post-conviction relief motions are: (1) an intervening decision which would have actually adversely affected the outcome of one’s conviction or sentence; (2) evidence, not reasonably discoverable at the time of trial, which would have caused a different result in the conviction or sentence; (3) biological evidence not tested, or subject to additional DNA testing, to show that the petitioner would not have been convicted or would have received a lesser sentence; or (4) a claim that the petitioner’s sentence has expired or his probation, parole or conditional release has been unlawfully revoked

FACTS

In July 2016, Shawn Wilson pled guilty as a second drug offender and as a non-violent habitual offender to the sale of methamphetamine. The trial court sentenced him to sixty years in the custody of the Mississippi Department of Corrections (“MDOC”) but withheld acceptance of his guilty plea and sentence on the condition that he complete five years of supervised probation through the drug-court program. The order placing him in the drug-court program was voluntarily acknowledged and accepted by Wilson’s signing of the order. After finding him in violation of the drug court program, the trial court amended its July 2016 sentencing order in March 2018. Wilson filed a Post-Conviction Relief (“PCR”) motion in November 2022, asserting that the trial court essentially sentenced him twice, but the trial court denied the motion. Wilson appealed.

ISSUE

Whether the trial court erred by denying Wilson’s PCR motion.

HOLDING

Because Wilson filed his PCR motion over four years after the trial court amended the sentencing order, and because he failed to establish that a statutory exception applied to overcome the Mississippi Uniform Post-Conviction Collateral Relief Act’s time bar, the trial court did not err by denying Wilson’s PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2023-CA-00070-COA (May 28, 2024)

Opinion by Judge Smith

Hon. Caleb Elias May (Neshoba County Circuit Court)

Tamarra Akiea Bowie for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Lydia Cates](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

LATHAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY VERDICTS - FORM - Ordinarily, the verdict form is sufficient in form if it expressed the intent of the jury so that the court can understand it, and thus, a jury’s verdict will not be reversed for want of form, so long as the jury’s intent can be understood in a reasonably clear manner

CRIMINAL LAW - SENTENCING - SECOND-DEGREE MURDER - Miss. Code Ann. § 97-3-21 grants a trial court wide discretion in sentencing for a conviction of second-degree murder; “The court shall fix the penalty as not less than twenty (20) nor more than forty (40) years”

CONSTITUTIONAL LAW - EIGHTH AMENDMENT - SENTENCING OF A JUVENILE - If a trial court cannot sentence a juvenile offender to life without the possibility of parole pursuant to the applicable sentencing statute,

a trial court is not required to hear mitigating evidence of juvenile offender's age and related characteristics prior to sentencing because the U.S. Supreme Court's holdings in *Jones v. Mississippi* and *Miller v. Alabama* do not apply

FACTS

After a young woman was killed by a gunshot at a party, Curtis Lathan was apprehended and indicted for the sole charge of second-degree murder. Lathan was 17 at the time of the murder. A jury trial was held, and the jury was given an instruction, S-5, which told them, "If you find the Defendant guilty of second degree murder as charged in count number one, the form of your verdict shall be as follows: We, the jury, find the Defendant guilty as charged." The jury was also informed in the same instruction that if it determined Lathan was not guilty of that crime, then it could consider "all of the elements of the lesser included offense of Culpable Negligence Manslaughter." After their deliberations, the jury wrote "2nd Degree Murder" on a sheet of paper; three lines below it was the underlined word "Guilty." The circuit court announced, "The verdict of the jury is second degree murder, guilty." While the language of the jury's verdict did not conform to the given instruction, Lathan did not object to the form of the verdict at trial. Instead, his counsel asked the circuit court to poll the jury, and the jurors were asked to "say if you agree with the verdict." All twelve members of the jury responded that they agreed. Subsequently, the circuit court sentenced Lathan to serve 40 years in the custody of the Mississippi Department of Corrections. The circuit court denied Lathan's post-trial motion. Lathan appealed.

ISSUES

Whether the trial court erred (1) by accepting the verdict form and (2) in sentencing Lathan.

HOLDING

(1) Because the jury unambiguously found Lathan guilty of second-degree murder by writing "2nd Degree Murder" and then "Guilty" below it, and because all twelve jurors orally acknowledged that they agreed with the verdict of "second degree murder, guilty[.]" the trial court did not err by accepting the verdict form. (2) Because Lathan was not sentenced to serve life in prison, and because the statute under which Lathan was sentenced did not even permit the trial court to sentence him to life without parole, the trial court did not err in sentencing Lathan. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2022-KA-00927-COA (May 28, 2024)

Opinion by Judge McCarty

Hon. Lee Sorrels Coleman (Lowndes County Circuit Court)

Rodney A. Ray for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Joseph Muldrew](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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McDONALD V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONSTRUCTIVE POSSESSION - INCRIMINATING CIRCUMSTANCES - The presence of ammunition fitting the firearm in close proximity to the defendant is an additional incriminating circumstance supporting a finding of constructive possession

APPELLATE PROCEDURE - WEIGHT OF THE EVIDENCE - DEFERENCE TO JURY - The appellate court does not reweigh evidence, assess witness credibility, or resolve conflicts in evidence; the court will only overturn a jury's verdict if it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

Detective Joseph Peters obtained a "no-knock" search warrant for an apartment in Meridian after informants advised him that Alfonzo McDonald and Willie Starks were involved in an armed robbery and were considered armed and

dangerous. Officer Dylan Peden assisted in executing the search warrant. When Peden entered the apartment through the unlocked door, he saw McDonald sitting on a couch with Katrina Stennis, the apartment's tenant. McDonald immediately stood and raised his right hand. Peden handcuffed McDonald for officer safety. Peden observed marijuana on a glass table to McDonald's right and a coffee table in front of him. He also saw .22-caliber bullets on the glass table within McDonald's reach. While handcuffing McDonald, Peden saw a firearm lying at McDonald's feet. Peden removed McDonald from the apartment and turned him over to another officer. Peden went back inside, unloaded the .22-caliber revolver, and handed it to Detective Rochester Anderson. Anderson placed the weapon in his car trunk and returned to the apartment, at which point Stennis claimed the marijuana was hers. Stennis never said anything about the gun. Anderson left to process the weapon before the search pursuant to the warrant had begun. When asked about the gun on direct examination, Stennis testified that the firearm belonged to her, but her recollection did not align with the details of the type of firearm or where it was found. McDonald testified that he had no knowledge that Stennis possessed a firearm, and he argued that he could not be in constructive possession of a gun he did not know was in the apartment. The jury found McDonald guilty of possession of a firearm by a convicted felon, and the trial court sentenced McDonald as a violent habitual offender to life imprisonment in the custody of the Mississippi Department of Corrections. McDonald appealed.

ISSUE

Whether the verdict was against the overwhelming weight of the evidence.

HOLDING

Because the burden was on the jury to determine the credibility of the witnesses and the value of their testimony, and because the jury was not bound to accept McDonald's arguments, the verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2022-KA-01073-COA (May 28, 2024)

Opinion by Judge Emfinger

Hon. Charles W. Wright Jr. (Lauderdale County Circuit Court)

Zakia B. Chamberlain (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Madeline Crane](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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SPRALLS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPELLATE COUNSEL - LINDSEY BRIEF - Appellate counsel may file a *Lindsey* brief when appellate counsel represents an indigent criminal defendant and does not believe his or her client's case presents any arguable issues on appeal

EVIDENCE - WITNESSES - WITNESS CREDIBILITY - The jury determines the factual issues in dispute, and judges determine the credibility of the witnesses

FACTS

Dhane Burton discovered two men in his truck with a smashed window and his belongings scattered outside. The men fled the scene, and the police set up a perimeter to conduct a search of the area. Police found Brandon Spralls a short distance from the crime scene. During questioning, Spralls admitted to being present when Kentavious Nolan broke into the truck but denied being in the vehicle. Burton testified that a week after the incident, he was cutting grass in the area where Spralls had been found when Burton discovered more of his personal items. Spralls was convicted of one count of burglary of an automobile. He filed a motion for judgment notwithstanding the verdict, which the trial court denied. Spralls appealed.

ISSUE

Whether the trial court erred in convicting Spralls of one count of burglary of an automobile.

HOLDING

Because Spralls's appointed appellate counsel filed a *Lindsey* brief, because the Court granted Spralls time to file a pro se brief, which he did not file, and because the State presented sufficient evidence to support Spralls's conviction, the trial court did not err in convicting Spralls of one count of burglary of an automobile. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2023-KA-00347-COA (May 28, 2024)

Opinion by Judge Lawrence

Hon. William Hunter Nowell (Coahoma County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd & Brenda Fay Mitchell (Att'y Gen. Office) for Appellee

Briefed by [Reynolds Ward](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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TURNAGE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - WARRANTS - PROBABLE CAUSE - The information necessary to establish probable cause must be information reasonably leading an officer to believe that, then and there, contraband or evidence material to a criminal investigation would be found

CRIMINAL PROCEDURE - PROBABLE CAUSE - PLAIN VIEW - If the police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant

CRIMINAL PROCEDURE - PROBABLE CAUSE - AUTOMOBILE EXCEPTION - Under the automobile exception, if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search it without more; once an officer obtains probable cause to search a vehicle, then probable cause exists to search all compartments of the vehicle and all containers therein where the contraband could be

FACTS

Paramedics discovered Brandy Turnage in critical condition and transported Brandy while her husband, Dan Turnage, followed the ambulance in his truck. A paramedic inside the ambulance observed Turnage driving erratically and attempting to strike the ambulance from behind. The incident was reported to the Lawrence County Sheriff's Department. Sheriff Ryan Everett visited Turnage's residence to discuss the ambulance incident. Sheriff Everett observed Turnage and Barry Tabor hurriedly exiting Turnage's parked truck and noticed drug paraphernalia in plain view inside the truck. Sheriff Everett detained Turnage and Tabor, and law enforcement found a camouflaged bag containing methamphetamine in the truck. Officers arrested Turnage for possession of a controlled substance with intent to distribute. A grand jury indicted Turnage with enhanced penalties due to prior convictions. Turnage filed a motion to suppress evidence from the search, claiming it was illegal, but the court denied the motion, citing the automobile exception to the Fourth Amendment. Turnage failed to appear for his trial, which proceeded in his absence. Witnesses, including law enforcement officers and a paramedic, provided testimonies. The court overruled Turnage's objections to the search evidence. Turnage was convicted of the lesser-included offense of possession of a controlled substance and sentenced to forty years, with twenty years to serve and twenty years suspended, with five years of reporting post-release supervision, applying enhancements under Mississippi's habitual offender statute. Turnage appealed.

ISSUES

Whether the trial court erred by (1) denying Turnage's motion to suppress the seized evidence due to lack of probable cause to search his truck and (2) applying the automobile exception to the warrant requirement to Turnage's truck.

HOLDING

(1) Because there was substantial evidence to support the court's finding of probable cause under the plain view exception, the trial court did not err by denying Turnage's motion to suppress. (2) Because it was clear from the record that Turnage's truck was readily mobile, and because probable cause existed, the trial court did not err in applying the automobile exception to Turnage's truck. Therefore, the Court of Appeals affirmed the judgment of the Lawrence County Circuit Court.

Affirmed - 2023-KA-00432-COA (May. 28, 2024)

Opinion by Judge Lawrence

Hon. Brad Ashley Touchstone (Lawrence County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Stephanie Iken](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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