

MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 9, 2024***COURT OF APPEALS - CRIMINAL CASES*****DANIELS V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - INDICTMENT - APPEALS - An indictment's failure to charge a necessary element of a crime is a jurisdictional issue that may be raised for the first time on appeal

CRIMINAL PROCEDURE - INDICTMENT - NOTICE - So long as a fair reading of the indictment, taken as a whole, clearly describes the nature and cause of the charge against the accused, the indictment is legally sufficient

CRIMINAL PROCEDURE - INDICTMENT - SUFFICIENCY - An indictment is legally insufficient if it fails to provide the defendant with a plain, concise, and definite written statement of the essential facts and elements constituting the offense charged

FACTS

Darry Daniels played video games with Telvin Washington, Jonshun Yarbor, and Oriento Thompson at the home of Mona Chapman. At some point, Daniels and Washington began playing a video game together and betting money on the outcome. Washington discovered that Daniels cheated. Washington took the money the pair had gambled and attempted to return what Daniels gambled to him. Daniels refused because he wanted all of the money. Daniels left the house after Washington pulled out a gun. Daniels then began a Facebook Live video wherein he threatened to return to Chapman's residence and shoot up the house. Aware of the livestream, Washington and the other men went outside the house. As the men saw Daniels approaching, Washington fired, and the three men ran back into the house. Daniels then returned fire into the house. One bullet struck Washington in the chest, and Washington died as a result. Another bullet struck Yarbor's arm. Daniels was later indicted. Count I of Daniels's indictment charged him with murder. It stated that Daniels "did unlawfully, feloniously, and willfully with deliberate design to effect the death of [Washington] without the authority of law in violation of Section 97-3-19 of the Mississippi Code of 1972." Counts III, IV, and V of the indictment charged Daniels with aggravated assault. Each count stated that Daniels "did willfully, feloniously and unlawfully attempt to cause serious bodily injury to [victim] recklessly under circumstances manifesting extreme indifference to the value of human life by shooting at him with a deadly weapon in violation of Mississippi Code 97-3-7(2)(a)(i)(1972)." A jury convicted Daniels of one count of manslaughter as a lesser-included offense of murder, three counts of aggravated assault, and one count of shooting into an occupied dwelling. Daniels appealed.

ISSUES

Whether Daniels's indictment was legally sufficient to charge (1) murder and (2) aggravated assault.

HOLDING

(1) Because the State provided timely notice to Daniels of the charge against him sufficient to allow a fair opportunity to prepare a defense to the charge, the fact that Count I failed specifically to allege that the killing of a human being occurred constituted a harmless error, and Daniels's indictment was legally sufficient to charge murder. (2) Because Counts III, IV, and V failed to provide Daniels with a plain statement of the offense and instead alleged two conflicting intent elements for aggravated assault, the error amounted to a due process violation that required reversal, and Daniels's indictment was legally insufficient to charge aggravated assault. Therefore, the Court of Appeals affirmed in part and reversed & remanded in part the judgment of the Humphreys County Circuit Court.

SPECIAL CONCURRENCE

Judge Westbrook wrote to accentuate the inconsistencies in previous rulings regarding insufficiency of indictments. She agreed that Count I provided sufficient notice to Daniels on a charge for murder. Judge Westbrook further advocated for a clear guidance set for courts as to what specifically renders an indictment insufficient and fatally defective.

CONCURRENCE IN PART & DISSENT IN PART

Judge Emfinger argued that the failure of Count I to include an essential element of murder, that the defendant killed the victim, rendered that charge legally insufficient. He would have reversed and rendered Daniels's conviction for manslaughter as a lesser-included offense of murder. Judge Emfinger concurred with the decision to reverse and remand the aggravated assault convictions as to Counts III, IV, and V.

Affirmed in Part; Reversed & Remanded in Part - 2022-KA-00705-COA (May 9, 2024)

En Banc Opinion by Judge Smith - Special Concurrence by Judge Westbrook - Concurrence in Part & Dissent in Part by Judge Emfinger

Hon. Barry W. Ford (Humphreys County Circuit Court)

James H. Powell III for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [William Davis](#)

Edited by [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 14, 2024

COURT OF APPEALS - CIVIL CASES

HASLEY V. HASLEY

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - SEPARATE MAINTENANCE - Separate maintenance is a court-created equitable relief based upon the marriage relationship and is a judicial command to the husband to resume cohabitation with his wife, or in default thereof, to provide suitable maintenance of her until such time as they may be reconciled to each other; its awarding is within the discretion of the chancellor and will not be overturned unless the decision was against the overwhelming weight of the evidence

FAMILY LAW - SEPARATE MAINTENANCE - ELEMENTS - In order for the chancery court to grant a request for separate maintenance, the court must find that (1) the separation was without fault on the part of the petitioner spouse, and (2) the offending spouse's willful abandonment of [the] petitioner spouse with refusal to provide support to him or her

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - Dismissals with prejudice for failure to prosecute require a showing of a clear record of delay or contumacious conduct by the plaintiff, and where lesser sanctions would not serve the best interests of justice

FACTS

Paul and Karen Hasley married in 1991 and separated in 2015. In April 2016, Karen filed a complaint for separate maintenance and temporary relief, alleging Paul abandoned the marriage. The chancery court ordered Paul to pay Karen \$700 a week in temporary separate maintenance. Karen was awarded temporary use and possession of the home and ordered to pay associated costs. Paul filed an answer and affirmative defenses, denying his abandonment and accusing Karen of unclean hands. The chancery court entered an amended temporary order, reducing Paul's weekly maintenance. In September 2017, the court issued a notice of dismissal for failure to prosecute under Miss. R. Civ. P. 41(d), stating that no action had been taken in twelve months and that if no action were taken in thirty days, the case would be dismissed without prejudice. Karen filed a motion to remand the matter to the chancery court's docket, which the court granted. In September 2018, Karen filed a complaint for contempt against Paul, asserting he owed her \$2,869.50 in

arrears. Paul moved for leave to file an amended answer to Karen’s complaint and to include a counterclaim for divorce. The chancery court entered a judgment of contempt against Paul, finding him in arrears by \$13,659.50 and that he willfully failed to comply with the amended temporary orders. The chancery court sentenced Paul to sixty days in a detention center but stayed the sentence until the court reviewed whether Paul had complied with the prior court orders. The chancery court awarded Karen a monetary judgment of \$13,589.50 plus interest against Paul and \$2,500 in attorney’s fees. The chancery court ordered Paul to pay \$600 in temporary maintenance plus \$100 per week towards his debt. The chancery court agreed to allow Paul to amend his answer and counterclaim for divorce. As part of the review hearing, Paul submitted a plan to pay off his debt by selling his boat and submitting his final bankruptcy decree. Paul was ordered to transfer ownership of the boat, motor, and trailer and was credited toward his total arrearage. The court attempted to set a hearing on the matter three times before entering a Rule 41(d) notice to dismiss for lack of prosecution due to another twelve months of inaction on the matter. Karen filed a motion to continue for final disposition, and Paul moved to dismiss. In August 2022, the chancery court entered a final judgment, noting that six years had passed since the first entry in this matter and attributing much of the delay to Paul’s failure to comply and to his bankruptcy filing. The chancery court concluded that the prior temporary support orders were now final and could not be dismissed. Paul appealed.

ISSUES

Whether the chancery court (1) abused its discretion by failing to grant Paul’s motion to dismiss the complaint for failure to prosecute, or (2) erroneously converted the temporary orders into a final order without holding a hearing on the merits of the parties’ claims.

HOLDING

(1) Because the chancery court entered several orders pertaining to separate maintenance, and because Karen filed a complaint when Paul fell behind on his payments and obligations, resulting in multiple hearings, continuances, a contempt judgment, and a temporary order, there was no abuse of discretion in not granting Paul’s motion to dismiss the complaint. (2) Because the chancery court never held an evidentiary hearing on the parties’ arguments regarding separate maintenance, and because there was no indication that the parties intended for their temporary support orders to become permanent without a full hearing on the merits, the chancery court erred by converting the temporary orders of spousal support to a final order. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Jackson County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2022-CA-00908-COA (May 14, 2024)

Opinion by Judge Smith

Hon. Mark Anthony Maples (Jackson County Chancery Court)

Michael B. Holleman for Appellant - G. Charles Bordis IV for Appellee

Briefed by [Stephanie Iken](#)

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

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MACK V. MERIMAC APARTMENTS

CIVIL - TORTS OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

SUMMARY JUDGMENT - PROXIMATE CAUSE - PROOF - While the issue of proximate cause is generally an issue for the jury to decide, this fact does not change the requirement that, to withstand a motion for summary judgment, the non-moving party must present evidence that would allow a jury to find that the breach proximately caused the injury at issue

TORTS - PREMISES LIABILITY - FORESEEABILITY - Even if there is evidence supporting the conclusion that the property owner knew of, and allowed, an atmosphere of violence to exist, the owner is not liable if the plaintiff created and caused the harmful event in question

EVIDENCE - HEARSAY EXCEPTIONS - TRUSTWORTHINESS OF POLICE REPORTS - Pursuant to Miss. R. Evid. 803(8), there are four factors used to determine the trustworthiness of police reports: (1) the timeliness of the investigation; (2) the investigator's skill or experience; (3) whether a hearing was held; and (4) possible bias when reports are prepared with a view to possible litigation

FACTS

Talitha Mack and Orea Samuel were involved in a heated argument. The two agreed to meet face to face at the Merimac Apartments ("Merimac"). Neither Talitha nor Samuel were residents at Merimac. The two had a brief altercation which led to Samuel shooting and killing Talitha. Talitha's father, Perry Mack, filed a premises liability and alleged negligence individually and on behalf Talitha's wrongful death heirs against Merimac, Shoemaker Property Management LLC ("Shoemaker"), and the apartment complex owner, J.W. McArthur. Shoemaker and McArthur filed a motion for summary judgment alleging that there was no genuine issue of material fact because Talitha was trespassing at the time of the incident and an atmosphere of violence did not exist. Alternatively, Shoemaker and McArthur alleged that even if Talitha was properly classified as an invitee, the pre-existing hostilities between Talitha and Samuel, coupled with their individual actions, constituted a superseding intervening cause which extinguished the defendants' liability. Shoemaker's and McArthur's motion incorporated the apartment's lease, a related probate petition, the Hattiesburg Police Department's investigative file, Mack's deposition, and a case in support of their position. Mack opposed the motion for summary judgment, alleging that Talitha was an invitee on the premises, the attack she suffered was foreseeable, the defendants' negligence was the proximate cause of Talitha's death, and that the question of superseding intervening causes was a question for the jury. Along with his response, Mack submitted McArthur's deposition, incident reports from the area, affidavits and reports from a security expert, and a deposition from an associate broker with Shoemaker. Additionally, Mack filed two motions to strike. The first referred to alleged Facebook messages between Talitha and Samuel. The second referred to the police report prepared by the Hattiesburg Police Department, alleging that the report constituted inadmissible hearsay and could not be considered on a motion for summary judgment. At a hearing on the motions to strike and the motion for summary judgment, Merimac argued that a majority of the statements in the police report were either hearsay exceptions or not hearsay at all. Further, Merimac argued that the report was not being used for the truth of the matter asserted, but rather, to show the girls had a pre-existing relationship and that it was hostile. Merimac addressed the Facebook messages, stating that the officer on the scene read the messages, took screenshots, narrated them into his report, and then attached the screenshots. Subsequently, the trial court granted Merimac's motion for summary judgment and dismissed Mack's complaint with prejudice, concluding that the incident was not foreseeable because Talitha created the dangerous condition herself by alerting Samuel to her location, advising Samuel that she wished to fight, and leaving the apartment to confront Samuel without alerting Merimac to the possibility that Samuel was coming onto the property. Mack appealed.

ISSUES

Whether the trial court erred in (1) failing to submit the issue of proximate cause to the jury and (2) granting Merimac's motion for summary judgment.

HOLDING

(1) Because Mack failed to prove that the owner's actions or inactions were the proximate cause of Samuel shooting and killing Talitha, Mack failed to present sufficient evidence to allow a jury to find that Merimac's alleged breach proximately caused the injury at issue. (2) Because the trial court found the police report trustworthy, because the police report was corroborated by Samuel's confession, and because the Facebook messages were merely considered as corroborative evidence, sufficient evidence existed to support the trial court's grant of summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2022-CA-00897-COA (May 14, 2024)

Opinion by Judge Lawrence

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Jawanza Kobie Watson for Appellant - James Seth McCoy & Adam Anthony Bollaert for Appellees

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

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - APPELLATE REVIEW - PROCEDURAL BAR - New issues not raised in a motion for post-conviction relief are procedurally barred on appeal; new arguments are considered new issues that can be procedurally barred if not presented to the trial court

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - A petitioner's status as a habitual offender can be established at the entry of a guilty plea, making it unnecessary to have a separate bifurcated hearing

CRIMINAL PROCEDURE - HABITUAL OFFENDER - BURDEN OF PROOF - Where the defendant enters a plea of guilty and admits those facts which establish his habitual status, the State has met its burden of proof

FACTS

Forgery Smith was indicted for possession of marijuana with intent to sell and possession of a firearm by a felon. Because of two prior felony convictions, Smith qualified for enhanced punishment under the habitual offender statute. Smith filed a petition to enter a guilty plea, stating that he understood the charges against him and that he was considered a non-violent habitual offender because of his past charges. The court found that Smith had freely, voluntarily, knowingly, and intelligently pled guilty and sentenced Smith to fifteen years, to be released after nine years served without parole eligibility. Smith filed his post-conviction collateral relief motion ("PCR") in Madison County Circuit Court. Smith contended he was not a habitual offender because, in Kansas, he was sentenced to only four years of probation, which he completed. However, Smith provided no documentation, paperwork, or other affidavit to support his allegations. After reviewing the criminal file and plea transcript, the circuit court found that Smith's motion had no merit. The court noted that the non-violent habitual offender statute only required the State to demonstrate that the defendant was sentenced to terms exceeding one year, not that the defendant served terms in prison in excess of one year. Further, the court noted that during his plea hearing, Smith admitted that he had two prior felonies, both of which sentenced him to more than one year in custody. Smith appealed.

ISSUE

Whether the issues of a bifurcated hearing and the sufficiency of proof of habitual offender status are procedurally barred.

HOLDING

Because Smith did not present his arguments to the circuit court, and because he did not raise the adequacy of the State's proof of his convictions or his entitlement to a bifurcated hearing before the trial court in his PCR motion, these issues were procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2023-CP-00538-COA (May 14, 2024)

Opinion by Judge McDonald

Hon. M. Bradley Mills (Madison County Circuit Court)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Zachary Perez](#)

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

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WHITE V. STATE

CIVIL - POST-CONVICTION RELIEF

JUDICIAL CONDUCT - DISQUALIFICATION & RECUSAL - PRIOR INVOLVEMENT - Where an individual actively engages in any way in the prosecution and conviction of one accused of a crime, that individual is disqualified from sitting as a judge in any matter that involves that conviction

JUDICIAL CONDUCT - DISQUALIFICATION & RECUSAL - POST CONVICTION RELIEF - The rule requiring judges to recuse themselves from cases where they served as prosecutors extends to subsequent post-conviction relief matters

FACTS

Terry White was indicted and pled guilty in Amite County on charges of possession of cocaine, methamphetamine, and marijuana with intent to sell. A few months later, Debra Blackwell, the assistant district attorney who prosecuted White, was elected as a circuit court judge. White then allegedly violated his post-release supervision. Judge Blackwell presided over White's revocation hearing. The trial court revoked White's suspended sentence. White petitioned for post-conviction relief, arguing that the court should have recused due to the prior involvement in the underlying conviction and prosecution. Judge Blackwell also presided over White's post-conviction relief matter. The trial court denied White's request on the basis that the previous failure to recuse was a harmless error due to the clear evidence of White's violation. White appealed.

ISSUE

Whether the trial court committed reversible error by failing to recuse when reviewing White's post-conviction relief petition.

HOLDING

Because active participation in prosecution disqualifies a prosecutor as a matter of law from later presiding over the same defendant's case, the trial court erred in failing to recuse from White's revocation hearing and post-conviction relief matter. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Amite County Circuit Court.

Reversed, Rendered, & Remanded - 2023-CP-00200-COA (May 14, 2024)

Opinion by Judge McCarty

Hon. Debra W. Blackwell (Amite County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att'y Gen. Off.) for Appellee

Briefed by [Maggie Crain](#)

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

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COURT OF APPEALS - CRIMINAL CASES

GALARZA V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - CHARACTER EVIDENCE - Pursuant to Miss. R. Evid. 404(b), evidence of a crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character; this evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

EVIDENCE - CHARACTER EVIDENCE - BALANCING TEST - Character evidence may only be excluded if the prejudicial effect of the evidence substantially outweighs its probative value, even if it is being offered for a permissible purpose

FACTS

A grand jury indicted Galarza for first-degree murder and possession of a weapon by a felon. The indictment clarified that Galarza would be prosecuted as a habitual offender. Galarza filed eight separate motions in limine to exclude two previous manslaughter convictions and the witnesses who would testify about them. The trial court denied these motions. At trial, evidence of Galarza’s prior manslaughter convictions was admitted to prove that Galarza had a “common scheme” or “plan” of disposing bodies on his own property. Galarza was convicted of first-degree murder and possession of a weapon by a felon, where he was sentenced as a habitual offender for the first-degree murder conviction. Galarza appealed.

ISSUES

Whether the trial court erred by admitting evidence of Galarza’s prior manslaughter convictions.

HOLDING

Because the prior convictions were probative, relevant, and offered for noncharacter purposes admissible pursuant to Miss. R. Evid. 404(b), because the prior convictions did not have a danger of prejudice that substantially outweighed their probative value, and because the prior convictions were accompanied by a clear limiting instruction to the jury, the trial court did not err by admitting evidence of Galarza’s prior manslaughter convictions. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2022-KA-01066-COA (May 14, 2024)

Opinion by Judge Lawrence

Hon. David H. Strong Jr. (Lincoln County Circuit Court)

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

Briefed by [Caroline Byrd](#)

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

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