

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 8, 2024**SUPREME COURT - CIVIL CASES****CITY OF JACKSON V. JONES****CIVIL - PERSONAL INJURY**

TORT LAW - MISSISSIPPI TORT CLAIMS ACT - NOTICE REQUIREMENT - According to § 11-46-11(2) of the Mississippi Tort Claims Act (“MTCA”), it is mandatory that a claimant serve pre-suit notice on the city clerk before suing a municipality

CIVIL PROCEDURE - APPELLATE REVIEW - DE NOVO - A denial of summary judgment is reviewed under a de novo standard

CIVIL PROCEDURE - APPELLATE REVIEW - ISSUE CONSIDERATION - The Mississippi Supreme Court will not consider issues if they are raised for the first time on appeal instead of being raised first at the trial court level

FACTS

Ricardo Jones sued the City of Jackson (“the City”) for alleged injuries due to a pothole in the City’s streets. Prior to his suit, Jones sent notice of his claim to the City’s mayor along with members of the City council. The City filed a motion to dismiss and asserted that Jones did not give proper notice to the city clerk that the Mississippi Tort Claims Act (“MTCA”) required. In response, Jones attached certified return receipts from his notice letters that were signed by a treasury department employee rather than the mayor or council members. The trial court denied the City’s motion. The City petitioned for interlocutory appeal.

ISSUES

Whether (1) the trial court erred by denying the City’s motion for summary judgment and (2) the City waived or was estopped from asserting its notice-failure argument.

HOLDING

(1) Because Jones failed to adhere to the MTCA’s mandate that the city clerk must be put on notice of a claim such as his, Jones’s claims required dismissal. (2) Because Jones did not assert claims of equitable estoppel and waiver in the trial court, the issue was not properly before the Supreme Court. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2023-IA-00394-SCT (Aug. 8, 2024)

Opinion by Justice Maxwell

Hon. Winston L. Kidd (Hinds County Circuit Court)

Sheridan Ashanti Simone Carr & Drew McLemore Martin for Appellant - Dennis C. Sweet III & Dennis Charles Sweet IV for Appellee

Briefed by [Natalie Xan](#)

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

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SUPREME COURT - ORDERS

CLARK V. STATE

ORDER

ORDER

Tony Terrell Clark filed a Petition for Permission to Appeal Circuit Court's Order Denying Petitioner's Motion for Discovery, and the State of Mississippi responded in opposition to the petition. After due consideration, the Supreme Court found that the petition should be denied. Therefore, the Supreme Court denied Clark's Petition for Permission to Appeal Circuit Court's Order Denying Petitioner's Motion for Discovery.

OBJECTION

Presiding Justice King disagreed with the Court denying Clark's Petition for Permission to Appeal Circuit Court's Order Denying Petitioner's Motion for Discovery. Clark was convicted of murder, sentenced to death, and sought discovery to determine if several of the State's juror strikes only toward black jurors were in violation of protections set forth in *Batson*. Presiding Justice King argued that the Court's review of death penalty cases caused for a heightened scrutiny analysis. Regarding Miss. R. App. P. 5, Presiding Justice King asserted that Clark's appeal contained a substantial basis for differentiating opinions on a question of law as to obtaining discovery in post-conviction relief proceedings. He consequently stated that resolving Clark's appeal would materially advance the litigation, protect Clark from substantial and irreparable injury, and resolve an issue of general importance in the administration of justice. He further contended that the trial court misapplied Miss. R. App. P. 22 by denying Clark's motion for discovery. Therefore, Presiding Justice King argued that Clark's petition qualified for interlocutory review and that the Court should reverse the trial court's order and grant Clark's petition.

Denied - 2024-M-00201-SCT (Aug. 2, 2024)

Order by Justice Beam - Objection by Presiding Justice King

Briefed by [Khytavia Fleming](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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CLARK V. STATE

ORDER

ORDER

This Order by the Supreme Court was made in consideration of Tony Terrell Clark's Motion for Leave to Interview Members of the Venire Who Did Not Serve on the Petit Jury. After due consideration, the Supreme Court denied Clark's motion.

CONCURRENCE

Presiding Justice King agreed with the Order but clarified that the Court denied the motion because leave of the Court was not required to interview non-jurors.

Ordered - 2022-DR-00829-SCT (Aug. 2, 2024)

Order by Justice Beam - Concurrence by Presiding Justice King

Briefed by [Connor Dixon](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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SUPREME COURT - CRIMINAL CASES

WILLIAMS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER OCCURRENCES - A mistrial is reserved for those few instances where the trial court can take no action which would sufficiently correct improper occurrences inside or outside the courtroom

CRIMINAL PROCEDURE - OVERTURNING OF CONVICTION - SUFFICIENCY OF EVIDENCE - When reviewing a challenge to the weight of the evidence, all evidence should be weighed in the light most favorable to the verdict, and the conviction should not be overturned unless it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice; when reviewing the jury verdict, all inferences must be drawn in favor of the State

FACTS

After being instructed on the law of self-defense and imperfect self-defense, hearing testimony from multiple witnesses, and weighing the witnesses' credibility, a jury found Jatavius Williams guilty of the first-degree murder of Tacari Walker, and he was sentenced to life imprisonment. Williams timely filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial, based on two separate instances of trial disruption. The first instance involved an outburst from the victim's mother while body camera footage was being played in open court. Walker's mother began wailing and crying out to Williams, and the jury was excused. No juror answered in the affirmative as to the influence that would have on them deciding the case. The second instance involved a technological error revealing pornographic material to the jury during Dr. David Arboe's testimony that was being conducted via Zoom. The jury was excused and told that no one in the trial had anything to do with that. All of the jurors indicated they would set that aside. In both instances, a request for a mistrial was denied. The circuit court denied the post-trial motion. Williams appealed.

ISSUES

Whether (1) the trial court erred by denying Williams's request for a mistrial and (2) the jury's verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because the trial court was able to mitigate the disruptions, took corrective action, and ensured the proceedings could move forward in a civil and fair manner, the trial court did not err by denying Williams's request for a mistrial. (2) Because the jury was properly instructed on the law of self-defense and imperfect self-defense and rejected those theories, because the jury heard testimony from multiple witnesses, and because the jury properly weighed the witnesses' credibility, the jury's verdict was not against the overwhelming weight of the evidence. Therefore, the Supreme Court affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2022-KA-01017-SCT (Aug. 8, 2024)

Opinion by Justice Griffis

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

George T. Holmes & Hunter N. Aikens (Pub. Def. Office) for Appellant - Abbie E. Koonce (Att'y Gen. Office) for Appellee

Briefed by [Douglas "Trey" Hubner III](#)

Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 6, 2024
COURT OF APPEALS - CIVIL CASES

CORR PROPERTIES, LLC v. PROCTOR

CIVIL - OTHER

CIVIL PROCEDURE - AWARDS - ATTORNEY'S FEES - Attorney's fees are a special remedy available only when expressly provided for in either a statute of contract, or when there is sufficient proof to award punitive damages.

REAL PROPERTY - TRESPASS - DAMAGES - A chancellor may award attorney's fees as punitive damages in a trespass action if the trespass is proven to be willful, wanton, or grossly negligent

FACTS

In August 2020, Corr Properties, LLC (“Corr Properties”) purchased a parcel of real property in Lafayette County. Eva Proctor and Paul Quinn (“the Proctors”) owed a parcel of real property adjoined to Corr Properties’ land. Both homes were in The Grove at Grand Oaks subdivision. The previous owners of both lots had built a wooden fence along the property line along with an underground irrigation pipe. Corr Properties sought to demolish the wooden wall and replace it with a brick wall. In May 2021, Corr Properties applied to the subdivision’s Architectural Review Committee, which was approved after Corr Properties represented that the brick wall would be seven feet tall; the City of Oxford had an eight-foot height limit. In June 2021, Corr Properties requested from the City of Oxford’s planning department a variance from the eight-foot height restriction; however, Corr Properties had yet to obtain its required demolition and construction permits. In July 2021, Corr Properties demolished the wooden fence and placed construction material on the Proctors’ property without any notice of the construction plan. The Proctors informed Corr Properties that it had encroached on their property line and damaged their landscaping. Furthermore, the Proctors advised Corr Properties that a land surveyor would be needed before any additional construction proceeded. The Proctors asked Corr Properties if their building permits had been obtained; in response, Corr Properties specified that the permit committee determined that they did not need any licenses. The head building inspector for the City of Oxford, who had previously investigated the site, reported Corr Properties and issued a work-stop order due to the wall’s height violation. On July 16, 2021, Williams Engineering and Precision Engineering conducted the land survey and confirmed that Corr Properties’ wall encroached on the Proctors’ property, yet Corr Properties continued construction. Corr Properties then received another stop-work order due to non-compliance with height restrictions and continued encroachments. On July 22, 2021, the Proctors’ attorney sent Corr Properties a letter that revoked their property access. In August 2021, Corr Properties received its third stop-work order due to ongoing violations, continued misconduct, and inaccurate survey drawings required to obtain the permits. On August 12, 2021, the Proctors filed a complaint against Corr Properties, stating that Corr Properties should be enjoined from future construction of the wall, which resulted in the court granting in a preliminary injunction that same month. On August 25, 2021, Corr Properties asserted in its counterclaim that the Proctors’ underground irrigation pipe encroached on its property. Corr Properties requested injunctive relief, monetary damages, attorney fees, and costs. On August 27, 2021, the preliminary injunction hearing was held, and the chancery court held that both parties were required to remove the encroachments before September 17, 2021. Additionally, the chancery court held that any request for attorney’s fees were held in abeyance. In July 2022, the Proctors filed a motion to award them attorney fees and expenses. In November 2022, the chancery court granted the Proctor’s motion and awarded them \$18,561.20 in damages. As a result, Corr Properties filed a motion for reconsideration, which was denied. On June 8, 2023, the chancery court entered a final judgment. Corr Properties appealed.

ISSUES

Whether the chancery court abused its discretion in (1) granting the Proctors’ motion for attorney’s fees and (2) denying Corr Properties’ motion for attorney fees and cost.

HOLDING

(1) Because Corr Properties violated the City’s eight-foot height restriction and submitted inaccurate drawings regarding the wall’s position relative to the property line, the chancery court did not abuse its discretion in granting the Proctors’ motion for attorney’s fees. (2) Because there was no evidence that the Proctors had breached any covenants, the chancery court did not err in denying Corr Properties’ motion for attorney’s fees. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Chancery Court.

Affirmed - 2023-CA-00782-COA (Aug. 6, 2024)

Opinion by Judge Westbrook

Hon. Robert Q. Whitwell (Lafayette County Chancery Court)

Hannah Katherine Herrin & Christopher Ryan Toms for Appellant - Walter Alan Davis for Appellees

Briefed by [Joree Rose](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

CARROLL V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - GUILTY PLEA - A post-conviction relief motion seeking the vacation of a trial court’s ruling after the entrance of a guilty plea will only be granted if the trial court’s findings are clearly erroneous because entering a guilty plea waives all technical and non-jurisdictional defects contained in the indictment

CRIMINAL LAW - BURGLARY OF A DWELLING - ELEMENTS - Pursuant to Miss. Code Ann. § 97-17-23(1), burglary of a dwelling is defined as breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein; ownership is not an element of burglary of a dwelling

FACTS

A grand jury indicted Wiley Carroll for burglary of a dwelling. Carroll pled guilty. Carroll filed a post-conviction relief (“PCR”) motion, arguing his conviction and sentence should be vacated and set aside. Carroll claimed the indictment against him was fatally defective for failing to charge all of the essential elements of the offense. Carroll argued the homeowners listed on the indictment were incorrect, claiming the names listed were “squatters” and not the true owners of the home. The trial court denied Carroll’s PCR motion, ruling that ownership is not an element of the crime of burglary of a dwelling. Carroll appealed.

ISSUE

Whether the indictment against Carroll for burglary of a dwelling was fatally defective.

HOLDING

Because Carroll did not argue that the names listed in the indictment against him were not occupying the residence, and because Carroll just maintained the names listed in the indictment against him were not the true owners, the indictment against Carroll was valid and not fatally defective. Therefore, the Court of Appeals affirmed the judgment of the Tippah County Circuit Court.

Affirmed - 2023-CP-00688-COA (Aug. 6, 2024)

Opinion by Chief Judge Barnes

Hon. Grady Franklin Tollison III (Tippah County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee
Briefed by [Abby Church](#)
Edited by [Katie Shaw](#) & [Emily Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

ALEXANDER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - FAILURE TO OBJECT - Although a failure to object contemporaneously generally waives a claim of prosecutorial misconduct during closing argument, the Supreme Court will review such a claim if the prosecutor’s statement was so inflammatory that the trial judge should have objected on his own motion

CRIMINAL PROCEDURE - GOLDEN RULE ARGUMENTS - PROHIBITION OF GOLDEN RULES ARGUMENTS - Golden rule arguments, which ask the jury to put themselves in the place of one of the parties are prohibited; however, when such a statement is sufficiently insignificant in the overall context of the case, the result is harmless error

CRIMINAL PROCEDURE - JURY SELECTION - REVERSIBLE ERROR - No reversible error results when the trial court fails to sustain a challenge for cause, and the juror(s) at issue is ultimately excused with a peremptory challenge

JURY INSTRUCTIONS - LESSER INCLUDED OFFENSE - SIMPLE ASSAULT - A court may grant a lesser-included-offense instruction if there is evidence in the record from which a jury could reasonably find the defendant not guilty of the charged crime while finding them guilty of a lesser-included offense

CRIMINAL PROCEDURE - CUMULATIVE ERRORS - HARMLESS ERROR DOCTRINE - Pursuant to Miss. R. Civ. P. 61, one error, standing alone, may not warrant reversal, but reversal may be required if the errors, taken together, create such an atmosphere of bias, passion, and prejudice that they effectively deny the defendant a fundamentally fair trial

FACTS

A grand jury indicted Michael Alexander for the touching of a child for lustful purposes. During voir dire, a juror admitted she was a victim of a sex crime. The court inquired whether this would affect her ability to be fair and impartial, and she responded that it would not. Alexander challenged this juror for cause, but the trial judge denied the challenge because it was not a recent incident and there was nothing about her answers or demeanor that indicated she could not be fair. Alexander exercised one of his peremptory strikes on this juror. During trial, Alexander moved for a directed verdict. The court denied this motion and advised Alexander of his right to testify, and Alexander chose not to do so. During closing arguments, the prosecutor remarked, “Ladies and gentlemen, if any of you were accused of molesting a child and you didn’t do it, do you know what your response would be, you would be standing at the top of this courthouse yelling at the top of your lungs, I didn’t do it. But what was his response? I did it. It happened.” The prosecutor referenced recorded conversations between Alexander and the victim’s aunt in which Alexander admitted to inappropriate touching. The prosecutor also remarked, “He brought up the fact that . . . [K.S.] did not talk about the sexual intercourse until three years after. Ladies and gentlemen, she’s 18 years old. Do you think she wants to talk about those? It’s uncomfortable for me to stand up here and talk about this, talk about a man rubbing a child’s vagina and her breasts, sticking his penis in her vagina. As an adult it’s uncomfortable for me. This is what I do every day. Can you imagine this little girl? She didn’t want to talk about this.” The defense made no objection when the prosecution made these statements during closing arguments. The jury instructions instructed the jury that they could not draw any conclusions from Alexander’s choosing not to testify. Alexander proposed that the jury received a lesser-

included-offense jury instruction on simple assault, but the court refused to give this instruction. The jury found Alexander guilty of touching a child for lustful purposes. Alexander appealed.

ISSUES

Whether (1) the prosecutor committed reversible error by making golden rule arguments during closing arguments; (2) the trial court committed reversible error by failing to grant Alexander’s for-cause challenge against a juror who was a victim of sexual abuse; (3) the trial court committed reversible error by refusing Alexander’s lesser-included-offense jury instruction on simple assault; and (4) Alexander was denied a fair trial due to cumulative errors.

HOLDING

(1) Because the prosecutor simply highlighted the fact that Alexander admitted to committing the offense on the recording, because the prosecutor’s comments made no reference to Alexander’s decision to not testify, because the court instructed the jury to not draw any conclusions from Alexander’s decision not to testify, and because the evidence against Alexander was extremely incriminating, the prosecutor did not commit reversible error by making gold rule arguments during closing arguments. (2) Because the court did its due diligence by inquiring whether the juror who was a victim of sexual abuse could be impartial, and because the juror was ultimately excused after Alexander chose to exercise one of his peremptory strikes, no reversible error occurred. (3) Because the evidence in the record was insufficient to support the proposed jury instruction on simple assault, the court did not abuse its discretion by refusing the proposed instruction. (4) Because there was one error regarding golden-rule arguments made by the prosecution, and because this error was harmless, Alexander was not denied a fair trial due to cumulative errors. Therefore, the Court of Appeals affirmed the judgment of the Stone County Circuit Court.

Affirmed - 2022-KA-00977-COA (Aug. 06, 2024)

En Banc Opinion by Judge Westbrook

Hon. Lisa P. Dodson (Stone County Circuit Court)

Michael W. Crosby & Tyler Heflin for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellees

Briefed by [Regena Rowe](#)

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

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JOHNSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - FAIR COMMENT - When a defendant fails to object to allegedly improper comments in a closing argument, his claims of prosecutorial misconduct are generally waived and will be reviewed only if the prosecutor’s statement was so inflammatory that it represents an extreme and intolerable abuse of the wide latitude afforded to counsel during closing arguments and the trial court should have objected on its own motion

CRIMINAL PROCEDURE - RIGHT TO A SPEEDY TRIAL - STATUTORY & CONSTITUTIONAL RIGHTS - When a defendant fails to assert his right to a speedy trial at any time prior to the end of the statutory period, the statutory right is waived; however, the constitutional right to a speedy trial attaches at the time of arrest, with alleged violations evaluated on a fact-specific, case-by-case basis under the *Barker* factors, which are (1) the length of the delay, (2) the reasons for the delay, (3) assertion of the right to a speedy trial, and (4) prejudice to the defense

EVIDENCE - ADMISSIBILITY - ABUSE OF DISCRETION - A trial court’s admission or exclusion of evidence is reviewed only for an abuse of discretion in allowing or disallowing evidence so as to prejudice the accused in a criminal case and will not be reversed unless the alleged error adversely affects a substantial right of a party

CRIMINAL PROCEDURE - APPELLATE REVIEW - SUFFICIENCY OF EVIDENCE - When the sufficiency of evidence supporting a guilty verdict is reviewed, it is done so in the light most favorable to the State and will be affirmed so long as a rational juror could find that the State proved its case through each element of the crime

CRIMINAL PROCEDURE - COUNSEL - INEFFECTIVE ASSISTANCE OF COUNSEL - Claims of ineffective assistance of legal counsel will be addressed on appeal when the record affirmatively shows ineffectiveness of constitutional dimensions, or the parties stipulate that the record is adequate and it is determined that the findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed, or the record affirmatively shows the claims are without merit

FACTS

Roderick Johnson was convicted of first-degree murder for his involvement in the killing of James “Fluffy” White in April of 2022. White was an “extremely active” confidential informant who made undercover drug buys for the Mississippi Bureau of Narcotics. According to testimony from Raheem Johnson (“Raheem”), who was also convicted for his role in the murder, Johnson enlisted the help of Raheem and Casey Watkins in an effort to find White, who he wanted to “off” because he “was a snitch.” During Johnson’s trial, a thumb drive containing Facebook records of communications between Johnson and Raheem was admitted conditionally over John’s objection. The records implied their involvement in the murder, which Raheem elaborated on in his testimony. Johnson’s phone records were also admitted, along with testimony from two AT&T employees, without objection. The records were presented as evidence of his general geographical coordinates and private communications during the time of the crime. An expert in geographical information systems also testified and created a map based on Johnson’s phone records to display his general route of travel the evening of White’s murder. This was met with Johnson’s objection, which the trial court overruled. An alibi witness for Johnson stated that Johnson was at her home all evening, contradicting the geographical data provided by the phone records. During closing arguments, the district attorney (“DA”) and assistant district attorney (“ADA”) prosecuting the case made comments pointing to the credibility of Raheem’s testimony. Additionally, the ADA pointed to the police finding .380-caliber shell casings at the home of Jamarcus Ivy, who was also suspected to be White’s killer, and the ADA suggested that the bullets used on White did not match the shell casings at Ivy’s house. Finally, the prosecution argued that the “street code” should not “protect [Johnson] from justice” and emphasized that “you can’t hide behind the code,” which it accused Johnson of trying to “use to get away with murder.” Johnson did not object to any of the aforementioned comments. Six and a half years passed between Johnson’s arrest and trial. Throughout the case, multiple continuances occurred through fifteen requests joined in by Johnson, two successful trial court motions, and external factors in the form of winter weather conditions and COVID-19 pandemic protocols. An April 2020 continuance order related to the COVID-19 pandemic stated that Johnson “wished to proceed to trial.” Johnson was not incarcerated while awaiting his trial and made no substantive demand for a speedy trial. Johnson was convicted, and the trial court denied his motion for a judgment notwithstanding the verdict. Johnson appealed.

ISSUES

Whether (1) the State made improper remarks during closing arguments; (2) Johnson’s right to a speedy trial was violated; (3) the trial court erred by admitting a map showing locations of cell towers used by Johnson’s phone to create a trail representing Johnson’s physical path of travel at and around the time of the murder; (4) the trial court erred by admitting a thumb drive containing messages, posts, photos, and other information from Johnson’s Facebook account; (5) cumulative errors entitled Johnson to a new trial; (6) the evidence was insufficient to find Johnson guilty of first-degree murder; (7) the jury’s verdict was contrary to the overwhelming weight of the evidence; and (8) Johnson’s trial counsel provided ineffective assistance.

HOLDING

(1) Because Johnson did not object to the allegedly improper comments made in the prosecution’s closing argument, because the DA was entitled to comment on Raheem’s testimony in closing arguments, because the jury was presumed to follow the trial court’s instructions to disregard any statements with no basis in the evidence, and because the DA’s urging of the jury to hold Johnson accountable for his own crime did not equate to “sending a message” to the public or to potential criminals, no part of the State’s closing arguments were “so inflammatory” to rise to the level of plain error required for reversal. (2) Because Johnson waived his statutory right by failing to assert his right to a speedy trial prior to the end of the 270-day statutory period, because the trial’s six-and-a-half-year delay was attributed to Johnson’s requested continuances and neutral continuances not weighed against the State, because Johnson did not demand a speedy trial, and because there was no existence of prejudice by means of incarceration, anxiety, or potential impairment of the defense, neither Johnson’s statutory nor constitutional right to a speedy trial was violated. (3) Because the map

contained only “generalized indications” of Johnson’s travel on the night of White’s murder, did not purport to a “specific” path, and did not adversely affect a substantial right, the trial court did not abuse its discretion in admitting it into evidence. (4) Because the thumb drive was relevant to show that Johnson controlled the associated Facebook account, and because Johnson did not suffer any sort of prejudice from its conditional admittance since the contents of the drive were never published to the jury, the trial court did not err by allowing the thumb drive to be introduced. (5) Because Johnson did not identify any error at trial, the cumulative error doctrine was inapplicable. (6) Because Johnson’s phone records and Facebook messages corroborated with Raheem’s testimony supported the jury’s verdict, the evidence was sufficient to find Johnson guilty of first-degree murder. (7) Because the jury found Raheem’s testimony to be credible and weighed the testimony against Johnson’s alibi witness, and because the evidence was not reweighed on appeal as that role belonged solely to the jury, the jury’s verdict was not contrary to the overwhelming weight of the evidence, and the trial court did not err in denying Johnson’s motion for a new trial. (8) Because Johnson’s counsel could have had strategic reasons for not objecting to any portion of the DA’s closing statement and the record did not indicate ineffectiveness of constitutional dimensions, the Court of Appeals declined to address the issue of ineffective assistance of counsel on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Clay County Circuit Court.

Affirmed - 2022-KA-00665-COA (Aug. 6, 2024)

Opinion by Presiding Judge Wilson

Hon. James T. Kitchens Jr. (Clay County Circuit Court)

Jason D. Herring & Michael Spencer Chapman for Appellant - Parker Alan Proctor Jr. (Att’y Gen. Office) for Appellee

Briefed by [Evan Clay](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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PERKINS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONSTRUCTIVE POSSESSION - EVIDENCE - There must be evidence, in addition to physical proximity, showing the defendant consciously exercised control over the contraband, and absent this evidence, a finding of constructive possession cannot be sustained

EVIDENCE - ADMISSIBILITY - OTHER CRIMES - Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith; it may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

EVIDENCE - ADMISSIBILITY - COURT’S DISCRETION - Relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused

FACTS

In May 2022, the Hattiesburg Police Department’s Special Operations Division conducted a safety checkpoint. During the checkpoint, Jarvas Martez Perkins illegally parked his car in a manner that obstructed traffic just short of the checkpoint. The officers conducting the checkpoint noticed Perkins’s car and other illegally parked vehicles attempting to avoid the checkpoint, prompting them to approach these vehicles. Officer Devion White approached Perkins and asked if he was driving. Perkins affirmed and then gestured toward a white Volvo. White informed Perkins that a pat-down would be conducted and asked if he had anything on him, to which Perkins replied he did not. White then asked to search his vehicle and Perkins refused. White shined his flashlight through the driver’s window, and a firearm was clearly visible between the center console and the driver’s seat, along with two female passengers. White asked Perkins if he had ever been to prison, been on probation, or ever had to report to a probation officer. Perkins replied, “no”. At trial, White’s bodycam footage displayed to the jury that Perkins was driving the Volvo and had constructive possession of the firearm. Additionally, a document containing Perkins’s unredacted prior felony conviction was used as evidence.

Perkins's cross-examination of White concerning department policies was limited. Perkins was found guilty of possessing a firearm as a felon, and he was sentenced to ten years in prison, to be served consecutively with a prior sentence. His subsequent motions for judgment notwithstanding the verdict or a new trial were denied. Perkins appealed.

ISSUES

Whether (1) the evidence was legally sufficient for conviction; (2) the verdict was contrary to the weight of the evidence; (3) incompetent character evidence rendered Perkins's trial unfair; and (4) the trial court improperly limited Perkins's cross-examination of Officer White.

HOLDING

(1) Because the bodycam footage allowed a reasonable juror to find beyond a reasonable doubt that Perkins was driving the Volvo and had constructive possession of the firearm, the evidence was legally sufficient. (2) Because the Court of Appeals viewed the evidence in the light most favorable to the verdict, the verdict was not so contrary to the overwhelming weight of evidence that upholding it would result in an unconscionable injustice. (3) Because the probative value of the document containing Perkins's unredacted prior felony conviction was not substantially outweighed by the danger of any unfair prejudice, the trial court did not abuse its discretion by admitting incompetent character evidence. (4) Because the Hattiesburg Police Department's policies concerning conducting checkpoints were deemed irrelevant by the trial court, the trial court did not abuse its discretion in limiting Perkins's cross-examination of White concerning department policies. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-00874-COA (Aug. 6, 2024)

Opinion by Judge Emfinger

Hon. Jon Mark Weathers (Forrest County Circuit Court)

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

Briefed by [Madeline Riddick](#)

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

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SIMMONS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - DIRECTED VERDICT - REASONABLE DOUBT - The relevant question in determining whether a directed verdict should be granted is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

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

EVIDENCE - ADMISSABILITY - AUTOPSY PHOTOS - Introduction of autopsy photos which serve to explain or clarify the testimony of a witness are proper for introduction into evidence

EVIDENCE - ADMISSABILITY - GRUESOME PHOTOGRAPHS - Gruesome photographs are properly admitted if the photographs can be found to (1) aid in describing the circumstances of the killing and the corpus delicti, (2) describe the location of the body and cause of death, and (3) supplement or clarify witness testimony

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REASONABLE DOUBT - Reasonable doubt defines itself; attempting to define reasonable doubt in jury instructions is improper

FACTS

A grand jury indicted Rico Davion Simmons and Wanya A. Harper for the death of Deundray Garth. The indictment charged that Simmons and Harper killed Garth during the course of a burglary of Garth's dwelling. At Simmons's trial, Chrishandra Hatchett, who resided with Garth, testified that she left the house on the day of the killing at 3:40 P.M., closed the door when she left, and that three of her children were at the home when she left, although it was common for the children to leave the house when she was gone. Hatchett further stated that when she returned home at 9:40 P.M., the children were in the living room, and she found Garth dead in the bed. Harper also testified at Simmons's trial that they both needed money, intended to burgle Garth's residence, and that Simmons told Harper he shot Garth. Simmons's grandmother, Ella Smith, also testified at Simmons's trial that Simmons told her he shot and killed someone. Medical Examiner Dr. David Arboe testified at Simmons's trial, where he showed and described photographs from Garth's autopsy. Dr. Arboe testified that the cause of death was a gunshot wound, and the manner of death was a homicide. After the State rested its case, Simmons moved for a directed verdict but did not allege any insufficiency in the evidence of a break in, and the trial court denied the motion. During the jury instruction conference, the trial court refused two of Simmons's proposed jury instructions concerning reasonable doubt. The jury returned a unanimous verdict finding Simmons guilty of capital murder. Simmons appealed.

ISSUES

Whether (1) the evidence was legally insufficient; (2) the jury's verdict was against the overwhelming weight of the evidence; (3) the trial court erred by admitting gruesome autopsy photographs; and (4) the trial court erred by refusing Simmons's proposed jury instructions concerning reasonable doubt.

HOLDING

(1) Because Simmons did not specifically raise the issue at trial of insufficient evidence to prove a breaking in, this issue was procedurally barred from consideration on appeal; nonetheless, the evidence was legally sufficient because it was reasonable for the jury to infer from the evidence that the door to the residence was closed, that Simmons broke into the house to steal, and that Simmons killed Garth in the process. (2) Because the evidence was legally sufficient, and because the verdict would not sanction an unconscionable injustice, the jury's verdict was not contrary to the overwhelming weight of the evidence. (3) Because the photos were not particularly gruesome, and because the photographs were used to supplement witness testimony as to the cause and manner of death, the trial court did not err by admitting the photographs. (4) Because Simmons's proposed jury instructions concerning reasonable doubt were a definition of reasonable doubt, the trial court did not err by refusing Simmons's proposed jury instructions. Therefore, the Court of Appeals affirmed the judgment of the Calhoun County Circuit Court.

DISSENT

Judge Westbrook argued that the State failed to present sufficient evidence to prove the breaking element of burglary, which was necessary to obtain the capital murder conviction. Judge Westbrook also argued that because reasonable doubt existed and because the conviction was based on speculative evidence, the trial court committed plain error when it denied Simmons's motion for a directed verdict.

Affirmed - 2023-KA-00130-COA (Aug. 6, 2024)

En Banc Opinion by Judge Emfinger - Dissent by Judge Westbrook

Hon. Grady Franklin Tollison III (Calhoun County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

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