

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 15, 2024***SUPREME COURT - CIVIL CASES*****B.N. v. K.P.****CIVIL - ADOPTION**

FAMILY LAW - ADOPTION - LIMITATIONS PERIOD - According to Miss. Code Ann. § 93-17-15, no action shall be brought to set aside any final decree of adoption except within six (6) months of the entries thereof

FAMILY LAW - JUDGMENT - FRAUD - There is no limitations period for relief from a judgment based on fraud, but relief is reserved only for the most egregious misconduct

CIVIL PROCEDURE - DISMISSAL - FAILURE TO STATE A CLAIM - The complaint's failure to state a claim upon which relief can be granted "tests the legal sufficiency of the complaint" and is reviewed under a de novo standard

FACTS

D.A.P. was born to her mother, B.M.N., and to her father, K.J.F. D.A.P.'s twin was adopted by their paternal aunt and uncle, K.S.P. and J.E.P., respectively. In April 2017, K.S.P., J.E.P., and B.M.N. each signed a petition stating that "[a]ll parties agree that the paternal rights of the natural mother...should be terminated..." The notary lines stated the foregoing petition was an open adoption. In June 2017, the petition was amended and signed. The body of the amendment did not say that the adoption was open, but contained the same notary lines. In July 2017, the Chancery Court of Neshoba County filed the final decree for adoption. Four years later in July 2021, B.M.N. filed a petition for obtaining access to adoption records alleging that although K.S.P. and J.E.P. had promised her that the adoption would be open, B.M.N. had been denied contact with D.A.P. B.M.N. claimed that the adoption had been obtained by fraud, coercion, and misrepresentation. B.M.N. also filed a temporary restraining order to return D.A.P. to her custody. The chancery court found that B.M.N. was not entitled to any claim of relief. B.M.N. appealed.

ISSUE

Whether the chancery court erred in dismissing B.M.N.'s petition in which she alleged that that the consent to the adoption was obtained through fraudulent promise of visitation.

HOLDING

Because there was no fraud perpetrated upon the court, because B.M.N.'s petition was filed past the statute of limitations, and because B.M.N. failed to provide any good cause for her delay, the chancery court did not err in rejecting her petition. Therefore, the Supreme Court affirmed the judgment of the Neshoba County Chancery Court.

Affirmed - 2023-CA-00381-SCT (Aug. 15, 2024)

Opinion by Presiding Justice King

Hon. Joseph Kilgore (Neshoba County Chancery Court)

Jane E. Tucker for Appellant

Briefed by [Christina Burse](#)

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

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PUB. SERV. COMM'N OF YAZOO CITY V. WRIGHT

CIVIL - STATE BOARDS & AGENCIES

EMPLOYMENT LAW - EMPLOYMENT AT-WILL - TERMINATION - When there is no written employment contract, the employment relationship is at-will, which means that ‘an employee may be discharged at the employer’s will for good reason, bad reason, or no reason at all, excepting only reasons independently declared legally impermissible

EMPLOYMENT LAW - EMPLOYMENT AT-WILL - MCARN EXCEPTIONS - The two limited public policy exceptions to Mississippi’s employment at-will doctrine that *McArn* provides are: (1) an employee who refuses to participate in an illegal act shall not be barred by the common law rule of employment at will from bringing an action in tort for damages against his employer; (2) an employee who is discharged for reporting illegal acts of his employer to the employer or anyone else is not barred by the employment at will doctrine from bringing action in tort for damages against his employer

FACTS

The Public Service Commission of Yazoo City (“PSC”) fired Patricia Wright in November 2018 for falsifying documentation regarding reconnecting a customer for non-pay. After appealing her termination to the PSC Board, it upheld her termination in January 2019. In November 2020, Wright filed suit and alleged unlawful termination for refusing to participate in illegal activities. She requested lost wages and benefits, costs, and compensatory and punitive damages. Attached to Wright’s complaint was a bill charged to Lawanda Streeter with a past due amount of more than four thousand dollars with a handwritten note stating a cut off and cut on date request per Wright’s supervisor, Mike Wilson. Wright stated that in November 2018, Streeter came to the PSC office to see Wilson, stating that Wilson told her to bring in whatever she could on the first day of the month and her services would not be interrupted. Streeter gave \$100 to Wright, who accepted the money. Wright then did the “paid put back” for Streeter. Brenda Haralson called Wright later that day and said that the notice said the “paid put back” was done per Wilson, and Haralson was concerned because Wilson had not been in the office that day. Wright said that she may have entered the wrong customer’s account number and that she would delete the notice. Haralson told her not to, but Wright had already done it. The PSC filed a motion for summary judgment and argued that Wright was an at-will employee and that her termination did not violate the public policy exception to the employment at-will doctrine. Also, an affidavit from the PSC’s general manager denied that Wright was terminated because of refusal to participate in any illegal activity and that the employee handbook was not a contract of employment, which Wright did not have with the PSC. The trial court denied the PSC’s motion and determined a genuine issue of material fact existed. The PSC appealed.

ISSUES

Whether the trial court erred in (1) requiring proof of an illegal act by an employer to defeat summary judgment; (2) finding that Wright was terminated because of her refusal to commit the named unlawful act for the employer; and (3) finding that Wright’s remaining deposition testimony created a genuine issue of material fact.

HOLDING

(1) Because Wright failed to support her *McArn* argument with evidence showing how her supervisor’s conduct violated a criminal statute, the trial court erred by requiring proof of an illegal act by an employer to defeat summary judgment. (2) Because Wright failed to produce sufficient evidence of the essential elements in support of her claim that she was fired for refusing to participate in the illegal activities, the trial court erred in finding that Wright was terminated because of her refusal to commit the unlawful act for the employer. (3) Because no drawer discrepancy was referenced in Wright’s complaint, because Wright’s testimony did not clearly accuse any coworker of theft, and because Wright failed to specify the illegal activity that she refused to participate in, the trial court erred in finding that Wright’s remaining deposition testimony created a genuine issue of material fact. Therefore, the Supreme Court reversed and rendered the judgment of the Yazoo County Circuit Court.

Reversed & Rendered - 2023-IA-00020-SCT (Aug. 15, 2024)

Opinion by Presiding Justice King

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)
Lisa Williams McKay for Appellants - Alton Earl Peterson for Appellee
Briefed by [Taylor Dorenkott](#)
Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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SUPREME COURT – POST-CONVICTION RELIEF

LOVE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PETITION - MERIT - When the trial court reviews a petition for post-conviction relief, the trial court has an obligation to review the original motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack to determine whether the defendant has proven the merit of the allegations by a preponderance of the evidence

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-83 provides that every person convicted in Mississippi of a felony who shall have been convicted twice previously of any felony . . . upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution . . . and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS - If sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea; a defendant’s admission alone may establish a factual basis for the guilty plea so long as the trial court can say with confidence the prosecution could prove the accused guilty

FACTS

In January 2018, Soweto Ronnell Love was indicted on six counts, and due to his seven prior felony convictions, the State amended the indictment to charge him as a habitual offender and recidivist. In September 2018, the circuit court granted the amendment, and a year later, Love, with counsel present, pled guilty to two of the six counts related to obtaining controlled substances by forged prescription. Love acknowledged by signature several items in his plea petition, including the sentencing guidelines and additional language outlining changes to sentencing if he was convicted as a habitual offender. However, at the September 2019 plea colloquy, the circuit court failed to clearly acknowledge Love’s habitual offender status and did not inform Love of the correct minimum penalty associated with habitual offenders. More than a year after the plea colloquy, Love was sentenced as a habitual offender, receiving two consecutive five-year sentences, including fines for each separate count. Love filed a pro se Motion for Post-Conviction Collateral Relief (“PCR”) challenging his guilty plea’s voluntariness, but the circuit court dismissed it without a hearing. Love appealed the circuit court’s dismissal of his PCR motion, raising four issues. The Court of Appeals addressed whether there was a factual basis for his plea, whether his plea was voluntary, whether the circuit court erred by not allowing him to withdraw his plea, and whether he received ineffective assistance of counsel. The court upheld the circuit court’s findings on the first two issues, ruling that a factual basis existed for the plea and that Love failed to prove his plea was involuntary. However, Judge Emfinger dissented, arguing that an evidentiary hearing was needed to determine whether Love voluntarily pled as a habitual offender. The Court of Appeals declined to address the third and fourth issues, citing procedural grounds, and in November 2023, upheld the decision denying Love’s motion for rehearing. Love petitioned for writ of certiorari.

ISSUES

Whether the circuit court erred in finding that (1) Love’s plea was voluntary; (2) a factual basis existed for Love’s guilty plea; (3) Love was not allowed to withdraw his plea and that he received ineffective assistance of counsel.

HOLDING

(1) Because Love was never informed or aware that his guilty plea was as a habitual offender, because the circuit court misinformed Love of the minimum penalty that he faced under the law, and because it was an injustice that Love entered his guilty plea without knowing that it was as a habitual offender, the circuit court erred in finding that Love's plea was voluntary. (2) Because the State failed to mention any of Love's previous felony convictions, the circuit court erred in finding that a factual basis existed for Love's guilty plea as a habitual offender. (3) Because Love raised these issues for the first time on appeal, they were procedurally barred. Therefore, the Supreme Court reversed and remanded the judgment of the Tate County Circuit Court.

Reversed & Remanded - 2021-CT-01101-SCT (Aug. 15, 2024)

En Banc Opinion by Justice Ishee

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

Pro se Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Dixon Stone](#)

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

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SUPREME COURT - CRIMINAL CASES

BRADFORD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEF - If appellate counsel believes that there is no arguable issue for appeal, they must adhere to the following procedure established by *Lindsey*: (1) counsel must submit a brief pursuant to Miss R. App. P. 28(a)(1)-(5), (8)]; (2) as a part of the brief filed in compliance with Rule 28, counsel must certify that there are no arguable issues supporting the client's appeal, and he or she has reached this conclusion after scouring the record thoroughly; (3) counsel must then send a copy of the appellate brief to the defendant, inform the client that counsel could find no arguable issues in the record, and advise the client of his or her right to file a pro se brief; (4) should the defendant then raise any arguable issues or should the appellate court discover any arguable issue in its review of the record, the court must, if circumstances warrant, require appellate counsel to submit supplemental briefing on the issue, regardless of the probability of the defendant's success on appeal; (5) once briefing is complete, the appellate court must consider the case on the merits and render a decision

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEF - Under *Lindsey*, to show there are no arguable issues, counsel must specifically examine the following: (a) the reason for the arrest and the circumstances surrounding the arrest; (b) any possible violations of the client's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing

FACTS

A jury convicted Noah Bradford of armed robbery. On appeal, Bradford's attorney submitted a *Lindsey* brief, stating that, after a thorough and diligent examination of the record, no arguable issues for review were found. Bradford declined to submit a pro se brief.

ISSUE

Whether there were any arguable issues for appeal.

HOLDING

Because Bradford's counsel submitted a brief stating that no arguable issues for review were found after a thorough examination of the record, Bradford received a copy of the brief and was properly notified of his ability to file a separate

pro se brief, and Bradford declined to file a pro se brief, the trial court made no discernable errors. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2023-KA-00595-SCT (Aug. 15, 2024)

Opinion by Justice Coleman

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

George T. Holmes & Zakia Butler (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Aubrey Cagle](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 13, 2024

COURT OF APPEALS - CIVIL CASES

ALEXANDER V. ESPINOZA

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - An appeal may be taken only from a final judgment, which is one that adjudicates the merits of the controversy and settles all issues between the parties

CIVIL PROCEDURE - INTERLOCUTORY APPEALS - CERTIFICATION - An interlocutory order may only be appealed if the trial court expressly states that there is no just reason for delay and directs the entry of a final judgment as required by Miss. R. Civ. P. 54(b)

APPELLATE PROCEDURE - INTERLOCUTORY ORDERS - PERMISSION OF SUPREME COURT - The avenue to appeal from an interlocutory order is for a party to seek permission from the Mississippi Supreme Court pursuant to Miss. R. App. P. 5(a).

FACTS

Effort Alexander and Charlys Espinoza entered into a contract under which Espinoza, through his single member LLC, would perform framing work on a home Alexander was building in Southaven. The parties agreed to a contract price to be paid upon completion of the work. Sixteen days later, Alexander terminated the contract alleging that Espinoza was responsible for theft of building materials delivered to the jobsite. Espinoza filed a mechanic's lien on the property alleging an outstanding balance of \$6,200. Espinoza also submitted a letter to Alexander's bank detailing Alexander's failure to pay Espinoza and enclosed a copy of the mechanic's lien. In January 2023, Alexander sued Espinoza in Desoto County Chancery Court, alleging that Espinoza had filed a fraudulent mechanic's lien and seeking damages for lost bank funding for his construction project that he claimed resulted from Espinoza's letter to Alexander's bank. Espinoza filed a motion to dismiss and a counterclaim for breach of the parties' agreement seeking damages and attorney's fees. After a hearing on the motion to dismiss, the trial court dismissed Alexander's claim without prejudice and did not rule on Espinoza's counterclaim. In June 2023, Alexander filed a second lawsuit seeking virtually identical relief and further moved for both declaratory judgment and summary judgment. After a hearing in October 2023, the trial court issued an order denying Alexander's motion for declaratory judgment as "frivolous and groundless in fact and law" and awarded Espinoza attorney's fees and costs. Alexander appealed.

ISSUES

Whether (1) the trial court order was a final, appealable judgment, and (2) the Court of Appeals otherwise had jurisdiction to adjudicate the issues on appeal.

HOLDING

(1) Because the trial court's order neither adjudicated all the claims between the parties nor contained a Miss. R. Civ. P. 54(b) certification, the trial court order was not a final, appealable judgment. (2) Because Alexander did not seek

permission from the Mississippi Supreme Court to file an interlocutory appeal, the Court of Appeals lacked jurisdiction to adjudicate the issues raised on appeal. Therefore, the Court of Appeals dismissed the appeal for lack of jurisdiction.

Appeal Dismissed - 2023-CP-01139-COA (Aug. 13, 2024)

Opinion by Judge McDonald

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

Pro se for Appellant - Joseph M. Sparkman Jr. for Appellee

Briefed by [Amber Meeks](#)

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

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MANNERS V. EST. OF JOHNSON

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - PRESENT CONVEYANCE - TESTAMENTARY CHARACTER - An instrument that conveys a future interest effective upon delivery is a present conveyance, while one that vests only at the grantor's death is testamentary and must comply with the statute of wills

REAL PROPERTY - CONVEYANCE OF FUTURE INTEREST - LEGAL EFFECT - A present conveyance of a future interest, even if the right to possession is postponed, is enforceable as a deed and not subject to the statute of wills

FACTS

Shirley Flor and Richard Flor were married and had four children, including Gary Wayne Johnson and Zoa Ann Manners. Both parents drafted wills leaving all of their property to each other or equally between their four children, if the other spouse was to predecease them. Richard died in 1996, and Shirley executed a warranty deed to her son, Gary, before she died five weeks later. In 2002, Gary signed an Article of Agreement with the apparent intent to convey an interest in the specifically described real property to his three sisters. The document contained language that the property "shall be shared [with his sisters]" upon Gary's death. Gary signed the document in the presence of a notary public. Gary died intestate in October 2021. In August 2022, Zoa Ann filed a petition to open his estate and alleged that Gary was contractually obligated to transfer two lots to his three sisters. Gary's three sons were served with process, and one of Gary's sons, Richard Johnson, was appointed as the estate administrator. The chancery court entered an order stating that Gary's widow and three sons were the sole heirs at law. In September 2022, Richard filed a complaint identifying these four individuals, Gary's three sons and widow, as plaintiffs stating that the three lots at issue vested indefeasibly in them upon Gary's death. A few days later, he amended it to only identify himself and his two brothers as the heirs. In July 2023, the chancery court held a hearing in which Zoa Ann testified that Gary brought the warranty deed to Shirley on her death bed to sign, which she did sign. Zoa Ann said that Gary did this to protect the land, which is why he made the Article of Agreement with Zoa Ann and her sisters. She testified that Gary's children knew that Gary wanted his sisters to have their part of the inheritance and that Gary's estate should have one-quarter interest in the property lots in question. The chancery court denied Zoa Ann's claim and found that the Article of Agreement was ambiguous and did not convey a present interest in the land. Zoa Ann appealed.

ISSUE

Whether the chancery court erred in determining that the Article of Agreement did not convey a vested interest in the property to Zoa Ann and her sisters.

HOLDING

Because the Article of Agreement expressed Gary's clear intent to convey a vested future interest in the property to his sisters and did not express that the conveyance could be later revoked, the chancery court erred in determining that the Article of Agreement did not convey a vested interest in the property to Zoa Ann and her sisters. Therefore, the Court of Appeals reversed and remanded the judgment of the Marshall County Chancery Court.

Reversed & Remanded - 2023-CA-00823-COA (Aug. 13, 2024)

Opinion by Presiding Judge Wilson

Hon. Lawrence Lee Little (Marshall County Chancery Court)

Jerry Wesley Hisaw for Appellant - William F. Schneller Jr. for Appellees

Briefed by [Andrew Moyer](#)

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

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OSING V. OSING

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - IRRECONCILABLE-DIFFERENCES - If the parties are unable to agree upon adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between them, they may consent to a divorce on the ground of irreconcilable differences and permit the court to decide the issues upon which they cannot agree; such consent must be in writing, signed by both parties personally, must state that the parties voluntarily consent to permit the court to decide such issues, which shall be specifically set forth in such consent, and that the parties understand that the decision of the court shall be a binding and lawful judgment; such consent may not be withdrawn by a party without leave of the court after the court has commenced any proceeding, including the hearing of any motion or other matter pertaining thereto

FAMILY LAW - DIVORCE - EQUITABLE DISTRIBUTION - When determining whether certain property is marital, it must be determined whether any income or appreciation resulted from either spouse's active efforts during marriage, and if so, that income or appreciation becomes part of the marital estate; the party claiming that the asset is separate, nonmarital property has the burden of proof and must overcome the presumption that the asset is marital property

FAMILY LAW - DIVORCE - FINANCIAL AWARDS - All support for minor children shall include reasonable medical support; in any case in which the support of any child is involved, the court shall make findings either on the record or in the judgment as to the availability to all parties of health insurance coverage for the children and the cost of health insurance to all parties

FACTS

Fred Osing and Alison Osing separated in June 2020. They had two children. Alison filed for an irreconcilable-differences divorce, but she later amended the complaint, seeking a divorce for habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. Fred answered the amended complaint and denied all allegations. After a hearing, the chancery court entered a temporary order granting joint legal custody to both parties and physical custody of their minor son to Alison. The court also entered an order to equally divide any proceeds from the sale of the marital home and an order for Fred to pay \$1,400 a month in child support, along with expenses for their daughter such as automobiles, insurance, cellphones, and college. In January 2021, both parties consented to an irreconcilable-differences divorce and agreed to submit for the chancery court's determination the remaining issues of alimony, child support, visitation, division of assets and debts to include retirement/pension, attorney's fees, and back child support. The parties' filing also acknowledged that their consent to the divorce could not be withdrawn without leave of the court after proceedings had commenced. In January 2021, the chancery court entered a temporary order maintaining the custody determinations, awarding visitation to Fred, and reducing the child support payments and eliminating Fred's duty to pay Alison's automobile loan. An amended temporary order was issued in February 2021 that directed Fred to pay \$2,000 a month in alimony. In April 2021, Fred filed a motion to withdraw his consent to the irreconcilable-differences divorce because no fault grounds existed for the parties, which was later denied. In May 2022, the chancery court issued a final judgment of divorce. Alison was awarded physical custody of their minor son, but both parties were awarded joint legal custody. Fred was awarded visitation and ordered to pay \$1,167 a month in child support and \$1,500 a month in alimony, which would increase to \$2,500 in two years when their minor son became emancipated. The chancery court concluded that Alison's inheritance from her parents was her separate property and did not address the retirement account to which she contributed. The chancery court stated that Fred's retirement account funds be equally

divided as of the divorce date. Both parties filed Miss. R. Civ. P. 59 motions to alter or amend the final judgment. The chancery court entered a final judgment on the various motions and directed Fred to produce the amount that was present in his retirement account in May 2022 for division and denied all other relief in the motions. Fred appealed, and Alison cross-appealed.

ISSUES

Whether the chancery court erred (1) by denying Fred's motion to withdraw his consent to an irreconcilable-differences divorce; (2) in the equitable distribution of the marital estate; and (3) by awarding alimony to Alison and by failing to assign college expenses and health insurance of the minor son to Fred.

HOLDING

(1) Because Fred was required by statute to seek the court's leave to withdraw his consent to the irreconcilable-differences divorce which the chancery court denied and because the court did not find any abuse of discretion or clear error in the chancery court's decision, the chancery court did not err by denying Fred's motion to withdraw his consent to an irreconcilable-differences divorce. (2) Because the chancery court did not consider the classification and valuation of Alison's retirement account and did not address the parties' debts, the chancery court did err in the equitable distribution of the marital estate. (3) Because reversal of the equitable division of the marital estate was necessary, the chancery court erred by awarding alimony to Alison and by failing to assign college expenses and health insurance of the minor son to Fred. Therefore, on direct appeal, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Jackson County Chancery Court. On cross-appeal, the Court of Appeals reversed and remanded the judgment of the Jackson County Chancery Court.

On Direct Appeal: Affirmed in Part; Reversed & Remanded in Part. On Cross-Appeal: Reversed & Remanded - 2022-CA-00755-COA (Aug. 13, 2024)

Opinion by Judge Smith

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Henry Bernard Zuber III for Appellant - Mark V. Knighten for Appellee

Briefed by [Natori Weathersby](#)

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

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COURT OF APPEALS - CRIMINAL CASES

CAMPBELL V. STATE

CIVIL - FELONY

CRIMINAL PROCEDURE - APPELLATE REVIEW - WEIGHT OF EVIDENCE - An appellate court disturbs the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice; it is the jury who has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity

CRIMINAL PROCEDURE - APPELLATE REVIEW - SUFFICIENCY OF EVIDENCE - In reviewing the sufficiency of evidence on appeal, the court must view the evidence in the light most favorable to the State and decide if rational jurors could have found the State proved each element of the crime

CRIMINAL PROCEDURE - JURY SELECTION - INDICTMENT - It is the duty of the trial court to see that the jury is informed of the precise charge against the accused and to do so may read the indictment to the jury

EVIDENCE - DISCOVERY VIOLATIONS - BRADY VIOLATION - To establish a *Brady* violation, the evidence in question must (1) possess an exculpatory value that was apparent before the evidence was destroyed, and (2) be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means

CRIMINAL PROCEDURE - JURY SELECTION - BATSON CHALLENGE - When addressing a *Batson* challenge, a trial court employs a three-step procedure: (1) the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose; (2) once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the racial exclusion by offering permissible, race-neutral justifications for the strikes; and (3) if a race-neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful racial discrimination

CRIMINAL PROCEDURE - JURY SELECTION - WAIVER - Constitutional challenges to the use of preemptory challenges shall be made at the time each panel is tendered; a party who fails to object to the jury's composition before it is empaneled waives any right to complain thereafter

FACTS

While outside, a man observed Travis Campbell smash through the back door of his neighbor's house and run down the street with a television. After a lengthy foot chase, law enforcement arrested Campbell and found a television remote in his pocket. He was charged with burglary of a dwelling. During pretrial motions, Campbell argued a motion to dismiss based on an alleged *Brady* violation, claiming the Meridian Police Department made fingerprint evidence unavailable and that the evidence was potentially exonerative. Prior to voir dire, the trial court informed the jury venire of the indictment. It emphasized that a grand jury proceeding presents only one side of the case from the perspective of the State, and it noted that an indictment does not mean the accused is guilty. Following jury selection, Campbell made a *Batson* challenge, contending that every person of color was struck from the jury. After the State provided a race-neutral reason for striking each juror, the trial court overruled the *Batson* objection. At trial, there was conflicting testimony about the witnesses' description of Campbell to the police and whether the television remote was found in Campbell's pocket. The jury found him guilty of burglary of a dwelling, and the trial court sentenced him as a violent habitual offender to life imprisonment. Campbell appealed.

ISSUES

Whether (1) the verdict was against the overwhelming weight of the evidence or insufficient; (2) the trial court erred by referencing the grand jury proceedings; (3) there was a *Brady* violation regarding the lost fingerprints; and (4) the trial court erred in overruling the *Batson* challenge.

HOLDING

(1) Because the jury resolved the conflicting testimony regarding the witness description and the remote at trial, because allowing the verdict to stand would not sanction an unconscionable injustice, and because a reasonable juror could rationally find that Campbell committed the requisite elements of burglary, the overwhelming weight of the evidence was not against the verdict, nor was the evidence insufficient. (2) Because precedent allows the trial court to read the indictment to the venire, and because the trial court informed the venire of the presumption of innocence and that an indictment was only one side of the story, the trial court did not err by referencing the grand jury proceedings. (3) Because Campbell failed to establish that the fingerprints possessed any exculpatory value, there was no *Brady* violation. (4) Because Campbell did not raise his *Batson* challenge in a timely manner, and because he failed to rebut the State's race-neutral reasons for striking the jurors, this argument was waived on appeal, and the trial court did not err in overruling the *Batson* challenge. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2022-KA-01055-COA (Aug. 13, 2024)

Opinion by Judge McCarty

Hon. Robert Thomas Bailey (Lauderdale County Circuit Court)

James Howard Murphy for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Anne Marie Lundy](#)

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

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CARPENTER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - EXPLOITATION - EXPLOITATION OF CHILD - Miss. Code Ann. § 97-5-33(6)-(7) makes it unlawful to knowingly entice a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct or to produce any visual depiction of adult sexual conduct or any sexually explicit conduct; Miss. Code Ann. § 97-5-33 (8) states that it is not a defense that an undercover law enforcement officer posing as a child (rather than an actual child) led to the detection of the offense

CONSTITUTIONAL LAW - CONSTITUTIONALITY OF STATUTE - OVERBROAD - Pursuant to the overbreadth doctrine, a statute is unconstitutionally overbroad if it is not specifically aimed at evils within the permissible area of state control, but sweeps within its reach to other activities protected by the First Amendment; to prove a statute is constitutionally overbroad, it must be determined from fact and the text of the statute that the statute's overbreadth is real, substantial, and cannot be applied constitutionally in a number of instances

CRIMINAL LAW - OPPORTUNITY TO COMMIT AN OFFENSE - ENTRAPMENT - Pursuant to Miss. Code Ann. § 99-1-25(3), where law enforcement officers or their agents merely provided a person with an opportunity to commit an offense, a person does not establish entrapment, and it is not considered entrapment for law enforcement officers or their agents to merely conceal their identity or use an artifice

EVIDENCE - SUFFICIENCY OF EVIDENCE - DATE OF OFFENSE - Proof of any date before the turn of the indictment is sufficient to prove the dates of the offenses charged in the indictment, but it must be determined whether the evidence is sufficient to enable a reasonable juror to conclude that the offense occurred within reasonable limits, or reasonably near, the timeframe set forth in the indictment

FACTS

Detective Michael Hansbro used various dating websites and applications while posing as an underage female child to investigate child exploitation cases. From April 2020 to December 2021, William Carpenter used the application Grinder, three different cell phone numbers, an email address, and the WhatsApp communications application to communicate with Hansbro, who posed as a thirteen-year-old and a fourteen-year-old female. Carpenter was forty-nine years old. Carpenter repeatedly asked Hansbro to send him nude and sexually explicit pictures. Carpenter also sent him pictures of sex toys, proposed marriage, requested to meet in person, and expressed his desire to impregnate the fourteen-year-old female. Hansbro discovered Carpenter's identity and arrested him. The State indicted Carpenter for one count of enticement of a child under the age of eighteen years old to produce any visual depiction of adult sexual conduct or any sexually explicit conduct, in violation of Miss. Code Ann. § 97-5-33(7), and one count of child enticement of a child under the age of eighteen years old to engage in sexually explicit conduct, in violation of Miss. Code Ann. § 97-5-33(6). Jury Instructions S-1 and S-2 set forth that the charged offenses occurred "on or about" October 10, 2021. The State submitted into evidence a binder containing screenshots of the text conversations between Hansbro and Carpenter. Carpenter objected to the binder being admitted into evidence, arguing that the communications in the binder exceeded the date in the indictment. The binder was admitted into evidence. After the State rested its case, Carpenter moved for a directed verdict. Carpenter's counsel attacked the constitutionality of 97-5-33(8), which states that it is not a defense that an undercover law enforcement officer posing as a child led to the detection of the offense. They argued that in drafting subsection (8), the Legislature "usurped" the authority of the judiciary by eliminating a defense. The trial court denied Carpenter's motion after arguments. During the jury instructions conference, Carpenter repeated his argument that in drafting subsection (8), the Legislature had overstepped its boundaries. The trial court overruled Carpenter's objection and gave jury instruction S-5, which mirrors subsection (8), after finding that it was a correct statement of the law. The jury returned a verdict finding Carpenter guilty of both counts of child exploitation. The trial court denied Carpenter's post-trial motions for a new trial and for judgment notwithstanding the verdict ("JNOV"). Carpenter appealed.

ISSUES

Whether (1) Miss. Code Ann. § 97-5-33(8) was unconstitutionally overbroad and encouraged entrapment and (2) the evidence supporting Carpenter's convictions for child exploitation was sufficient.

HOLDING

(1) Because Miss. Code Ann. § 97-5-33(6)-(7) did not implicate any constitutionally protected rights or speech, because it did not criminalize protected speech, because any overbreadth would be cured by case-by-case fact analysis, because the detectives did not entrap Carpenter by providing Carpenter the opportunity to commit the offense, and because the detective complied with the statute when he posed as a minor, the trial court did not err, and the statute was constitutional. (2) Because Hansbro’s testimony regarding the nature of his communications with Carpenter on or about October 10, 2021 was sufficient to prove the date of the offense listed in the indictment and in the jury instructions, the evidence supporting Carpenter’s conviction was sufficient. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2024-KA-00580-COA (Aug. 13, 2024)

Opinion by Presiding Judge Carlton

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

William Andy Sumrall for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Lauren Bowlin](#)

Edited by [Robert “Duncan” Jones](#) & [Emily Phillips](#)

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HOLT V. STATE

CRIMINAL - MISDEMEANOR

APPELLATE PROCEDURE - DISMISSAL OF APPEAL - NOTICE OF DEFICIENCY - Miss. R. App. P. 2(a)(2) provides that a court must give a written notice to a party in default informing the party of its deficiency and that the party then has fourteen days to correct the deficiency, or the appeal will be dismissed

APPELLATE PROCEDURE - JURISDICTION - COST BOND - The cost bond required by Miss. Code Ann. § 11-51-79 is a jurisdictional requirement, and the Mississippi Rules of Criminal Procedure cannot supersede the statutory requirements for perfecting an appeal to the circuit court

APPELLATE PROCEDURE - JURISDICTION - COURT AUTHORITY - The Mississippi Supreme Court has no authority to establish the circuit courts’ appellate jurisdiction through rules of procedure

APPELLATE PROCEDURE - APPEALS FROM COUNTY COURT - APPLICATION TO CRIMINAL CASES - While Miss. Code Ann. § 11-51-79 appears under the title “Civil Practice and Procedure,” the Code section governing appeals from county court applies in both civil and criminal cases

APPELLATE PROCEDURE - COST BOND - DISMISSAL - A party seeking to appeal a county court judgment to a circuit court must file a notice of appeal and post a bond to the circuit court within thirty days of the entry of the judgment; if the party fails to do so, the circuit court shall dismiss the case for lack of appellate jurisdiction

FACTS

Eddie Gray Holt was convicted of simple domestic assault in municipal court, where he was sentenced to ten days in jail and ordered to pay a fine. Holt appealed this conviction to county court. The county court again convicted Holt via bench trial de novo and sentenced him to ten days in jail and ordered him to pay a fine and court costs. On the same day, Holt filed a notice of appeal to the circuit court along with a certificate of compliance, certifying the estimated cost of preparing the transcript on appeal and that Holt’s counsel had deposited that amount with the court reporter on or before that day. The certificate also contained a signed notation about additional court costs but did not expressly certify that Holt paid those costs. Roughly three months later, the court reporter filed the transcript of the county court trial. About two months after the transcript was filed, the circuit clerk filed a motion for a time extension to prepare the record on appeal which was granted by the county court, as it found that Holt timely filed his Notice of Appeal and Certificate of Compliance on October 6, 2021. The county court also stated that bond payment and advanced appeal costs were received by the circuit clerk’s office on November 16, 2021 and that the court reporter submitted the transcript on January 12, 2022, failing to timely file the appeal with the circuit court. For eight months, Holt failed to

take action on the appeal. Holt eventually obtained new counsel, causing him to realize that the forty-day allowance to file a brief in the circuit court had ended. In November 2022, Holt filed a motion for additional time to file the brief, arguing that dismissal would not be proper as the clerk did not issue a deficiency notice which is required by Miss. R. App. P. 2(a)(2). The circuit court dismissed Holt's appeal citing Miss. R. App. P. 2(a)(2) and 31(b) along with Holt's inaction for eight months. Holt appealed.

ISSUES

Whether (1) the circuit court erred in dismissing Holt's appeal for failure to file a brief and (2) the record was sufficient to determine whether the circuit court had appellate jurisdiction.

HOLDING

(1) Because the circuit court failed to provide Holt with an official written notice of the deficiency of his appeal and an opportunity to cure said deficiency, the circuit court erred in dismissing Holt's appeal on such grounds. (2) Because the record was contradictory as to whether Holt timely prepaid the costs of his appeal to the circuit court as required by Miss. Code Ann. § 11-51-79, the record was insufficient to determine whether the circuit court had appellate jurisdiction. Therefore, the Court of Appeals vacated and remanded the judgment of the Lauderdale County Circuit Court.

Vacated & Remanded - 2023-KM-00121-COA (Aug. 13, 2024)

En Banc Opinion by Presiding Judge Wilson

Hon. Robert Thomas Bailey (Lauderdale County Circuit Court)

James A. Williams for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Margo Mabury](#)

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

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