

MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 20, 2024***COURT OF APPEALS - CIVIL CASES*****ALDRIDGE V. S. TIPPAAH CNTY. SCH. DIST.****CIVIL - PERSONAL INJURY**

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

TORTS - NEGLIGENCE - PROXIMATE CAUSE - A defendant's negligence is the cause in fact of a plaintiff's damage when the act or omission was a substantial factor in bringing about the injury, and without it the harm would not have occurred

CIVIL PROCEDURE - SUMMARY JUDGMENT - PROOF - Although the issue of proximate cause is generally an issue for the jury to decide, in order 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

FACTS

Matthew Brown was a minor at the time of this incident and the natural son of Olivia Aldridge. Brown was a member of Blue Mountain High School's basketball team within the South Tippah County School District ("the School District"). Brown, David Peterson, John Dickerson, and four other members of the team rode a bus from a vocational school campus to the High School's gym every day for practice. On a typical day, all fifteen basketball team members arrived at the same time, and Coach Joseph Roberts stayed in the locker room with the boys while they changed. On the relevant date, the bus transporting Brown and the others ran behind. The members of the team that were at practice on time were let in and Roberts proceeded as usual. When the bus arrived later, Brown and the other members were let in the gym. Roberts did not appear in the locker room with the late group of boys but did remain inside the gym. Brown and the others proceeded to the locker room, however, Peterson first stopped at Roberts's office. Brown stated he was in the locker room when the door slammed, and the lights shut off. Brown further explained that when the door opened, he jumped down off the locker and saw a figure lunging to attack him. When the lights came on, Brown realized Peterson had stabbed him. No one was aware Peterson had a knife in the gym that day. Roberts reported he was the only faculty member in the gym at the time. Roberts met the boys as Dickerson helped Brown exit the gym. An ambulance arrived, and Brown was later airlifted to a hospital. Brown underwent several surgeries to assess and repair the extensive injuries to his body. Brown recovered from his injuries, and Aldridge provided proper notice of claim to the School District. Following discovery, the School District moved for summary judgment claiming there was no evidence that the School District's alleged breach proximately caused Brown's injuries. The trial court granted this motion. Aldridge appealed.

ISSUES

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

HOLDING

(1) Because the School District had no notice that Peterson had a knife on the day of the incident, and because the School District was unaware of any disagreement or brewing animosity between the boys, the trial court did not err in granting summary judgment. (2) Because Aldridge failed to present proof that Roberts had a duty to be present in the

locker room, there was no proof that his breach, if any, proximately caused Brown's injuries. Therefore, the Court of Appeals affirmed the judgment of the Tippah County Circuit Court.

DISSENT

Presiding Judge Carlton argued that Aldridge provided a genuine issue of material fact as to whether Roberts breached his duty to adequately supervise the students. Presiding Judge Carlton also argued that there was a reasonably foreseeable risk concerning horseplay in an unsupervised locker room. Therefore, the circuit court's grant of summary judgment should be reversed, and the matter should be remanded for further proceedings consistent with her separate opinion.

Affirmed - 2023-CA-00418-COA (Aug. 20, 2024)

Opinion by Judge Emfinger - Dissent by Presiding Judge Carlton

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

Philip Carey Hearn & Charles Cassidy Cole for Appellant - Daniel Judson Griffith, Mary McKay Griffith, Arnulfo Ursua Luciano, & McKenzie W. Price for Appellee

Briefed by [Lexi Killebrew](#)

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

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RICHARDSON V. EST. OF RICHARDSON

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - The Mississippi Supreme Court adheres to the elementary rule that its appellate affirmance ratifies, confirms, and declares that the trial court judgment was correct as if there had been no appeal; a disposition of reversal and remand does not create a final order

PROPERTY - LIENS - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 15-1-47, a judgment or decree rendered in any court held in this state shall not be a lien on the property of the defendant therein for a longer period than seven years from the rendition thereof, unless an action be brought therein before the expiration of such time

PROPERTY - LIENS - BASIS - Pursuant to Miss. Code Ann. § 11-7-197, a judgment shall not be a lien upon or bind the property of the defendant within the county in which such judgments or decrees may be rendered, until an abstract thereof shall be filed in the office of the clerk of the circuit court of the county and enrolled on the judgment roll

FACTS

When Sharon Richardson and her husband Thomas Richardson divorced in 2004, the chancery court granted her nineteen head of cattle. The Court of Appeals' 2005 ruling on appeal reduced the number of cattle, reversing the judgment in part and remanding with instructions to determine a concrete price for each head of cattle and award Sharon one-third of the herd's value. In December 2021, sixteen years after the Court of Appeals' mandate issued, Sharon filed notices of liens on two parcels of Thomas's property, alleging that the divorce settlement entitled her to the money. Thomas died shortly after Sharon filed, prompting her to seek legal title of the parcels of land. Thomas's estate argued that Sharon's liens on his property had no legal basis and that her petition was frivolous. The estate filed a motion for summary judgment. Sharon filed a response and her own motion for summary judgment. The chancery court ruled in favor of the estate, finding that Sharon had not established a basis for the liens. Sharon filed a motion to reconsider, arguing that the Court of Appeals' 2005 ruling established a debtor-creditor relationship between herself and Thomas, creating a lien. The chancery court denied the motion to reconsider, dismissed Sharon's petition to confirm title, and expunged the notices of liens. Sharon appealed.

ISSUES

Whether the chancery court failed to (1) consider the Court of Appeals' 2005 ruling as a final judgment and (2) conduct an evidentiary hearing to properly consider the legality of Sharon's liens.

HOLDING

(1) Because nothing in the record indicated any further proceedings happened after the Court of Appeals' 2005 ruling regarding the value of the herd, and because no final order was created by the 2005 reversal and remand, the trial court correctly considered the 2005 ruling a non-final judgment. (2) Because there was no evidence of a monetary judgment that provided the basis for liens on Thomas's property, and because Sharon's cited authority was inapplicable to chancery court practice and procedure, the trial court did not err in not conducting an evidentiary hearing. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2023-CA-00650-COA (Aug. 20, 2024)

Opinion by Chief Judge Barnes

Hon. J. Dewayne Thomas (Hinds County Chancery Court, Second Judicial Dist.)

Kenya Reese Martin for Appellant - Mel J. Breeden Jr. for Appellees

Briefed by [Alexis Cobbs](#)

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

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WIGGS V. BOYKIN

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - MOTION FOR MORE DEFINITE STATEMENT - WAIVER - If appellant fails to file a Miss. R. Civ. P. 12(e) motion for a more definite statement in response to the appellee's amended complaint, the challenge to the appellee's alleged failure to provide sufficient deraignment is waived

PROPERTY - PARTITION - DERAIGNMENT OF TITLE - Pursuant to Miss. Code Ann. § 11-17-35, in bills to conform title to real estate, and to cancel and remove clouds therefrom, the complainant must set forth in plain and concise language the deraignment of his title; a mere statement therein that complainant is real owner of the land shall be insufficient, unless good and valid reason be given why he does not deraign his title

EVIDENCE - WITNESS TESTIMONY - WITNESS CREDIBILITY - If there is conflicting testimony, the chancery court is the judge of the credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation; where a party fails to provide information, the chancery court is entitled to proceed on the best information available

CIVIL PROCEDURE - NEW TRIAL - REQUIREMENTS - To obtain relief on a Miss. R. Civ. P. 59 motion, there must be (1) an intervening change in controlling law, (2) availability of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent manifest injustice

FACTS

The two separate tracts of real property in Carroll County involved in this partition action were: (1) ninety-four acres owned by William M. Boykin Jr. and Tony Wiggs as tenants in common ("Boykin-Wiggs Tract") and (2) 154 acres owned by Boykin, Wiggs, and Phillip Morlino as tenants in common ("Boykin-Wiggs-Morlino Tract"). In May 2021, Boykin and Morlino filed a complaint for partition of both tracts of land into equal-valued tracts of land. Wiggs filed a motion for a more definite statement pursuant to Miss. R. Civ. P. 12(e) stating that Boykin and Morlino failed to deraign the title to the properties pursuant to Miss. Code Ann. § 11-17-35. Boykin and Morlino then filed an amended complaint for the partition of real property which included a deraignment of title for both tracts. Wiggs then filed an answer and alleged that the deraignments were insufficient because they failed to show that title had passed from the United States. In December 2021, the parties hired Ken McDougal to appraise the land and Chris Green to appraise the timber. At trial in November 2022, Wiggs, Boykin, and Morlino agreed to partition both tracts of land by exchanging Wiggs's one-third interest in the Boykin-Wiggs-Morlino Tract for Boykin's one-half interest in the Boykin-Wiggs Tract. This would give Wiggs full ownership of the Boykin-Wiggs Tract, but Wiggs also argued that he was entitled to owelty as an equitable adjustment for the difference in the value of the tracts. McDougal testified that there had been no appreciable change in the valuations of land from the date of the appraisal. Green testified that the Boykin-Wiggs-Morlino Tract had a twenty-three-acre streamside management zone ("SMZ"), and the Boykin-Wiggs Tract had a forty-acre SMZ, which

were self-imposed guidelines to protect water stream quality. Green testified that there was no need to discount the timber even though some of it was located in the SMZ, and he also testified that variances in timber prices had occurred since the appraisal. Wiggs stated that he did not agree with Green's timber valuation and that the forty-acre SMZ dramatically decreased the value of the timber on the land he was going to receive. The chancery court found that Green had thoroughly and adequately considered the timber value, and no adjustments needed to be considered other than Green updating the timber prices on the existing appraisal. The chancery court entered an order granting the partition of swapping Wiggs's interests along with making equitable adjustments for any difference in value. In December 2022, after receiving Green's updated the timber prices, the chancery court ordered Boykin to pay Wiggs owelty of \$2,160.80 as an equitable adjustment for partition of the two tracts. Wiggs filed a motion for a new trial and argued that the chancery court erred in the amount of equitable adjustment. The chancery court stated that Wiggs relied upon resources that he had failed to present for consideration at trial, and that the newly cited resources were not able to be considered. The chancery court also found no merit in Wiggs's contention that the failure to consider the timber values in the SMZs was contrary to public policy. Wiggs appealed.

ISSUES

Whether the chancery court erred in (1) partitioning the properties at issue based on an insufficient deraignment of title; (2) the determination of the amount of owelty owed to Wiggs as an equitable adjustment; and (3) denying Wiggs's motion for a new trial.

HOLDING

(1) Because Wiggs failed to file a Miss. R. Civ. P. 12(e) motion in response to Boykin and Morlino's first amended complaint, the chancery court did not err in partitioning the properties at issue based on an insufficient deraignment of title. (2) Because of the chancery court's finding that Green's expert witness testimony was more credible than other witness testimony, and because the chancery court set forth the valuations and calculations utilized in determining the equitable adjustment, the chancery court did not err in the determination of owelty owed to Wiggs as an equitable adjustment. (3) Because Wiggs failed to cite any caselaw in support of his assertions that he was entitled to relief, and because Wiggs failed to submit the additional online resources at trial, the chancery court did not err in denying Wiggs's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Chancery Court.

Affirmed - 2023-CA-00496-COA (Aug. 20, 2024)

Opinion by Presiding Judge Carlton

Hon. Joseph Kilgore (Carroll County Chancery Court, First Judicial Dist.)

Kelsey Leigh Dismukes & J. Lane Greenlee for Appellant - P. Scott Phillips for Appellees

Briefed by [Katie Lowe](#)

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

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COURT OF APPEALS - CRIMINAL CASES

ALLEN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - ARGUABLE ISSUES - LINDSEY BRIEF - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record and convey its decision on the appeal

FACTS

In May 2020, Markevius Dear was shot multiple times, robbed, and kidnapped before being taken to the hospital by Jason Allen in Allen's car. The testimony provided by Dear and Allen was only uncontested as to the fact that Allen drove Dear to the hospital in Allen's car, but the testimonies leading up to such event diverged drastically. Dear testified that he met Allen and two others to purchase marijuana near Dear's father's home. Upon arrival, Dear exited his car and was subsequently shot seven times. Dear testified that Allen approached Dear after the initial shooting with an assault weapon in hand, while the men took his car keys and moved Dear's truck to another location. The men then forced Dear to get into Allen's car at gunpoint, and Allen helped Dear as he was unable to stand due to the injuries. The men then drove to Allen's home, where Dear was forced onto the front porch. While at Allen's home, Dear was beaten by Allen and the two other men, and Allen took Dear's wallet and its contents. Allen continually threatened Dear to not tell who harmed him before ultimately taking Dear to the local hospital. Allen and one of the men dropped Dear off and told a nurse that they had found Dear shot in the road. When Dear was interviewed, he did not tell investigators about Allen's participation at first out of fear. Dear's father also testified that Allen rang his doorbell and told him that Dear had been shot, but Allen denied involvement. When Dear's father went to the site of Dear's car to identify the vehicle for investigators, Allen also showed up and asked questions about who had done this to Dear. Allen provided contradicting testimony denying any involvement in the assault and kidnapping and stated again that he saw Dear in the street already shot. After a search warrant was obtained for Allen's residence, officers found blood on the front porch, that belonged to Dear, that had recently been painted over. Allen was convicted and sentenced for armed robbery, kidnapping, and aggravated assault with a firearm enhancement. Allen appealed.

ISSUE

Whether there were any arguable issues on appeal to overturn Allen's armed robbery, kidnapping, and aggravated assault with a firearm enhancement convictions.

HOLDING

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Allen never filed the granted supplemental pro se brief, there were no arguable issues on appeal to overturn Allen's armed robbery, kidnapping, and aggravated assault with a firearm enhancement convictions. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2023-KA-00264-COA (Aug. 20, 2024)

Opinion by Judge Emfinger

Hon. Linda F. Coleman (Coahoma County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Eleanor Kast](#)

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

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BROWN V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - JUDICIAL REVIEW - CONSTITUTIONALITY - A defendant's constitutional claims are barred from review on appeal if the defendant did not raise such claims in the circuit court

CRIMINAL LAW - FELON-IN-POSSESSION STATUTE - CONSTITUTIONALITY - Miss. Code Ann. § 97-37-5 is constitutional as a reasonable exercise of police power, which is the right of government to promote public health, safety, morals, general welfare, peace, order, and public comfort and convenience

FACTS

Myron Brown pled guilty to possessing ten units of methamphetamine and was sentenced to eight years with the Mississippi Department of Corrections ("MDOC"), with three years of house arrest and the remaining time suspended.

Brown violated the terms of his house arrest. Police apprehended him and found a firearm in his pocket. Brown was charged with possession of a firearm as a felon under Miss. Code Ann. § 97-37-5 and possession of a stolen weapon. In February 2023, Brown’s jury trial was held. During the trial, Brown did not argue that Miss. Code Ann. § 97-37-5 was unconstitutional. The jury convicted Brown on the felon-in-possession count but acquitted him of the possession-of-a-stolen-weapon count. The trial court sentenced Brown to nine years in MDOC custody, with six and a half years to serve and the remainder suspended, contingent on two and a half years of post-release supervision. Brown filed a motion for judgment notwithstanding the verdict or a new trial, but did not challenge the constitutionality of Miss. Code Ann. § 97-37-5. The trial court denied the motion. Brown appealed.

ISSUE

Whether Miss. Code Ann. § 97-37-5 was unconstitutional as applied to Brown.

HOLDING

Because Brown did not raise his constitutional claims in the trial court, and because the Supreme Court has held that Miss. Code Ann. § 97-37 was constitutional as a reasonable exercise of police power, Brown’s assertion that Miss. Code Ann. § 97-37-5 was unconstitutional as applied to him was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2023-KA-00299-COA (Aug. 20, 2024)

Opinion by Presiding Judge Carlton

Hon. Dal Williamson (Jones County Circuit Court, Second Judicial Dist.)

Zakia Butler Chamberlain & Farris Lee Francis (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Olivia Knight](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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CONNER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - JURY FUNCTION - EVIDENCE - It is the function of the jury to pass upon the weight and worth of the evidence and to determine the credibility and veracity of the witnesses

CRIMINAL LAW - WITNESSES - WITNESS CREDIBILITY - When the evidence is conflicting, the jury will be the sole judge of the credibility of witnesses and the weight and worth of their testimony

FACTS

Betty Reed and her son, Travis Conner, lived together. Police responded to a shooting that occurred at Reed’s home. When police arrived, Reed was performing CPR on Donnikia Clark and told the responding police officer that her son “did it.” Clark suffered a single gunshot wound to the head and died due to his injuries. The detective who arrived on the scene found a 9mm shell casing near Clark’s body. Lionel Craig, Reed’s good friend, was helping Reed clean her house that day. Reed and Craig both testified during trial that they heard Conner and Clark arguing in the front yard just moments before hearing the gunshot. Craig testified that he witnessed Conner pull out a gun and shoot Clark in the head. Craig’s credibility as a witness was repeatedly attacked during cross-examination and in closing arguments. However, Craig’s testimony aligned with the criminal investigator’s findings, who, after searching Conner’s bedroom, found a 9mm magazine used in a 9mm handgun and another 9mm shell casing. Both shell casings, the one near Clark’s body and the second in Conner’s bedroom, were sent to Mississippi Forensics Laboratory for comparison testing. The State called the associate state medical examiner who testified that Clark died from a gunshot wound to the head. The State’s final witness was a forensic scientist and an expert in firearms examination. The expert testified that after reviewing both 9mm shell cases, both were fired in the same gun. The defense offered no witnesses and did not object

to the State's expert. Following deliberations, the jury returned a guilty verdict, and Conner was convicted of first-degree murder. Conner appealed.

ISSUE

Whether Craig's testimony was so unreliable that the jury's verdict was against the overwhelming weight of the evidence.

HOLDING

Because Reed confirmed Craig's testimony about hearing Conner and Clark arguing before the gunshot, because the medical examiner testified that Clark died from a single gunshot wound to the head, and because the forensic scientist testified that the 9mm shell casing in Conner's bedroom and the 9mm shell casing found near Clark's body were fired from the same gun, there was ample evidence for a jury to find Craig's testimony credible and to find Conner guilty of first-degree murder. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2022-KA-01288-COA (Aug. 20, 2024)

Opinion by Judge Lawrence

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

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

Briefed by [Kellis Adams](#)

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

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GALANG V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - SEXUAL OFFENSES - Miss. R. Evid. 412 provides that evidence of a victim's past sexual behavior is inadmissible in criminal cases involving an alleged sexual offense unless the defendant offers such evidence to prove consent with the defendant, which the court may admit only after conducting a hearing regarding the evidence's admissibility and finding the probative value outweighs the prejudicial effect

EVIDENCE - ADMISSIBILITY - RELEVANCE - Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence

EVIDENCE - ADMISSIBILITY - EXCLUSION OF TESTIMONY - When the court excludes testimony from the record the offering party must proffer the potential testimony to preserve the issue for appellate review

EVIDENCE - HEARSAY - STATE OF MIND EXCEPTION - Statements made showing evidence of the declarant's state of mind at the time the statement was made form an exception to the hearsay rule

FACTS

Galang and D.L. dated from 2016 to 2020, and they had a son together. In July 2021, D.L. and Galang had dinner together to gain closure from the relationship, and D.L. told Galang that she felt the relationship was over. After dinner, Galang drove D.L. home. He followed her to her door, despite her telling him it was not a good idea for him to come inside. Galang insisted to come inside, then Galang and D.L. entered the apartment. There, Galang sexually assaulted D.L. At trial, the defense offered videos of prior sexual encounters between Galang and D.L. into evidence, which the court excluded. The court found that the videos depicted sexual activity that was consensual and that did not make it more likely that D.L. consented on the night in question. Additionally, the defense called D.L.'s sister, S.L., to testify at trial regarding D.L.'s potential motive to falsely accuse Galang of sexual assault to gain full custody of their son. The State objected to S.L.'s testimony as hearsay when she started to testify about what D.L. said after meeting with her attorney. The court sustained the State's objection. After jury deliberation, Galang was convicted of one count of sexual battery. Galang appealed.

ISSUES

Whether the trial court abused its discretion in excluding (1) video evidence of Galang and D.L.’s sexual history and (2) S.L.’s testimony as hearsay.

HOLDING

(1) Because the video evidence depicted consensual sexual activity of a different nature than the incident in July, 2021, the videos failed to satisfy the relevancy requirement, and the court did not abuse its discretion in excluding them. (2) Because the defense failed to proffer S.L.’s expected testimony after the trial court sustained the State’s hearsay objection, the issue on appeal was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2023-KA-00006-COA (Aug. 20, 2024)

Opinion by Judge Smith

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Christopher A. Collins for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Victoria Warren](#)

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

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HOWELL V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - APPELLATE REVIEW - LEGAL SUFFICIENCY - If a court finds that a reasonable trier of fact could find the essential elements of a crime to be proven beyond a reasonable doubt, the court will uphold the conviction

CRIMINAL LAW - EVIDENCE - EXPERT TESTIMONY - The trial court is responsible for making preliminary assessments of whether the reasoning or methodology underlying the testimony is scientifically valid and whether it can properly be applied to the facts in issue

CRIMINAL PROCEDURE - EXPERT TESTIMONY - ADMISSIBILITY - Expert testimony admitted at trial must be based on scientific methods and procedures, not on unsupported speculation or subjective belief

FACTS

A Mississippi Highway Patrol (“MHP”) officer charged Benjamin Howell with speeding and driving without a tag. After the justice court found Howell guilty of both charges, Howell appealed to the Monroe County Circuit Court, where a new trial was held. The State presented the MPH officer’s testimony and video evidence, showing that Howell was speeding and driving without a tag. Howell presented a novel argument that “proximity to a tower could interfere with the radar technology” and sought to prove this with expert testimony. Lawrence Howell, Howell’s expert witness and father, failed to present any evidence to support his expert qualifications, his testimony’s relevance, or the testimony’s scientific methodology. The trial court found the expert testimony neither relevant nor reliable and found Howell guilty on both charges. Howell appealed.

ISSUES

Whether the trial court erred in not (1) dismissing Howell’s speeding ticket and tag violation charge and (2) allowing Lawrence to testify as an expert witness.

HOLDING

(1) Because Howell did not present sufficient evidence to support his argument of radar interference or to refute the officer’s testimony, the evidence was sufficient to uphold Howell’s speeding ticket and tag violation charge. (2) Because Lawrence could not prove his expert qualifications, his testimony’s relevance, or his testimony’s scientific methodology, the trial court appropriately determined that the testimony was inadmissible as expert testimony. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Circuit Court.

Affirmed - 2023-KM-00265-COA (Aug. 20, 2024)

Opinion by Judge Lawrence

Hon. Michael Paul Mills Jr. (Monroe County Circuit Court)

Pro se for Appellant - Candace Cooper Blalock for Appellee

Consolidated with:

Affirmed - 2023-KM-00270-COA (Aug. 20, 2024)

Hon. Michael Paul Mills Jr. (Monroe County Circuit Court)

Pro se for Appellant - Candace Cooper Blalock for Appellee

Briefed by [Drayton Purvis](#)

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

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TREVINO V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - APPEALS - CONFESSION OF ERROR - Notwithstanding a confession of error, the Court has an obligation to examine the record to determine whether the conviction should stand or be reversed

CRIMINAL LAW - LARCENY - VALUE OF STOLEN PROPERTY - When a statute establishes levels of sentencing based on the value of the property stolen, value becomes an element of the offense

CRIMINAL LAW - BURDEN OF PROOF - STANDARD - The State has the evidentiary burden in a criminal prosecution to prove every essential element of the crime charged beyond a reasonable doubt

FACTS

Leon Trevino got his girlfriend's truck stuck at the bottom of an embankment. Trevino's girlfriend then called her ex-boyfriend, Christopher Ingram, to help free the truck. After Ingram's arrival, he and Trevino got into an argument that ended with Trevino hitting Ingram with a glass bottle, stabbing Ingram multiple times with a knife, and stealing Ingram's truck. Trevino was indicted for aggravated assault, possession of a weapon by a felon, and motor vehicle theft. At trial, the State relied on a Sheriff's Department investigator to establish the truck's value. The investigator testified that the truck was a "2006 Dodge dually," but he did not testify as to a specific value of the truck. Trevino moved for a directed verdict, arguing that the State's evidence was insufficient to establish an essential element of motor vehicle theft, the value of the stolen truck. The trial court denied Trevino's motion, and he was convicted for aggravated assault, possession of a weapon by a felon, and theft of a motor vehicle valued between \$5,000 and \$25,000. Trevino appealed.

ISSUE

Whether the State failed to prove beyond a reasonable doubt that Trevino stole a vehicle valued between \$5,000 and \$25,000.

HOLDING

Because the State's only source of evidence regarding the stolen truck's value was the investigator's testimony, and because the investigator never testified as to a specific or estimated value of the truck, the State did not present sufficient evidence from which a reasonable jury could find the truck was valued between \$5,000 and \$25,000. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Forrest County Circuit Court.

Affirmed in Part; Reversed & Rendered in Part - 2022-KA-01292-COA (Aug. 20, 2024)

Opinion by Presiding Judge Wilson

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Payne Phillips](#)

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

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