

MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 26, 2024**COURT OF APPEALS - CIVIL CASES****BRIGGS V. WEARY****CIVIL - DOMESTIC RELATIONS**

FAMILY LAW - CHILD CUSTODY - MODIFICATION - A modification of custody is warranted when the moving parent successfully shows that (1) a material change of circumstances has occurred in the custodial home since the most recent custody decree, (2) the change adversely affects the child, and (3) modification is in the best interest of the child

FAMILY LAW - CHILD CUSTODY - BURDEN OF PROOF - The burden of proof is on the parent requesting a change in custody to prove a material, adverse change of circumstances by a preponderance of the evidence

FAMILY LAW - CHILD SUPPORT - CALCULATION - According to Miss. Code Ann. § 43-19-101, when considering the amount of child support to order, the court shall request updated financial information from the parties and make detailed findings concerning its calculation of the amount; the court must take into account child support obligations to other children

FACTS

Israel Briggs and Rosetta Weary had a child, M.C.B., together in 2008. In 2009, a judgment was entered for joint physical and legal custody of M.C.B., requiring neither party to pay child support and setting out a weekly schedule for exchanges of M.C.B. The 2009 order established that Briggs would have M.C.B. for three consecutive nights, followed by Rosetta having M.C.B. for eight consecutive nights, and so on. The parties would switch periods every four weeks, allowing each parent to have physical custody of the child for about half of each month. The 2009 order also prohibited either party from hosting overnight guests of the opposite sex, unless related by blood or marriage, while exercising physical custody of the child. Between 2009 and 2018, Briggs began dating and fathered two other children. Meanwhile, Briggs and Weary continuously litigated custody and visitation rights. In November 2019, Briggs filed to hold Weary in contempt, claiming that she denied Briggs his custodial time with M.C.B. A temporary order was entered which replaced the custodial provisions of the 2009 judgment, but Briggs eventually voluntarily dismissed the petition with prejudice, and the 2009 judgment again took effect. In November 2020, Weary filed a petition for sole custody, alleging that Briggs's romantic relationships and living arrangement were a material change in circumstances and negatively affected M.C.B. In January 2021, Briggs filed a motion to dismiss Weary's petition, arguing that no material change of circumstances and that there was no evidence to support Weary's claims. While the petition was pending, a guardian ad litem ("GAL") was appointed for the child. At that time, M.C.B. began being treated and medicated for anxiety. After a trip to Hawaii where M.C.B. was not taking her medication, Briggs and Weary discovered that M.C.B. was self-harming, and the child was admitted to a behavioral health center for treatment where she was diagnosed with a severe depressive disorder. The GAL then recommended a modified custody schedule that limited Briggs's time with M.C.B. with the understanding that the custodial periods would gradually increase. The GAL reported that she did not find a substantial, material change in circumstances in Briggs's household such that custody modification would have been in M.C.B.'s best interest but recommended that it be simplified because it was too complex. During a 2022 hearing, the trial court ordered Briggs to submit a financial statement to determine child support. After the hearing, the trial court entered a final judgment ordering a temporary visitation schedule through the end of the school year, then Briggs would have physical custody for part of the week. The judgment also ordered both parties to provide financial statements so that the trial court could issue a separate order addressing child support. In May 2022, the trial court ordered Briggs to pay child support every month to Weary based on his monthly income and other child support payments. In April 2022,

Weary filed a motion to alter or amend the judgment or for a new hearing to readdress custody and child support, causing Briggs to submit revised financial statements. Later in May, Briggs filed a motion for a new trial and to stay the execution of the judgment on child support, arguing that the child support order was unsupported by evidence. In August 2022, Briggs filed another motion to hold Weary in contempt, claiming that she refused to allow Briggs to speak to the child and denied Briggs his summer visitation. In May 2023, the trial court held a hearing to address the motions where Briggs's updated financial statements were presented. In August 2023, the trial court entered a final judgment on the outstanding motions. The trial court found that the best interests of the child warranted an upward modification of child support, ruled that Weary had withheld two days of visitation from Briggs, and found Weary in contempt, ordering Weary to pay Briggs attorney's fees. Briggs appealed.

ISSUES

Whether the trial court erred in (1) modifying the agreed 2009 judgment without finding a material change in circumstances that was detrimental to the child; and (2) increasing Briggs's child support obligations.

HOLDING

(1) Because the trial court's change of custodial time periods constituted a modification of the prior custody order, the trial court was required to find that a material change in circumstances existed that adversely affected the child and to use the *Albright* factors to modify custody. (2) Because the trial court did not detail how it arrived at the calculated child support amount, the trial court erred in increasing Briggs's child support obligations. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Chancery Court.

Reversed & Remanded - 2023-CA-00923-COA (Nov. 26, 2024)

Opinion by Judge McDonald

Hon. Mark Anthony Maples (Jackson County Chancery Court)

Samuel Christopher Farris for Appellant - *Pro se* for Appellee

Briefed by [Margo Mabury](#)

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

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HARRIS V. PATTEN

CIVIL - OTHER

CRIMINAL PROCEDURE - PETITIONS - WRIT OF HABEAS CORPUS - A writ of habeas corpus shall extend to all cases of illegal confinement or detention by which a person is deprived of his liberty

CRIMINAL PROCEDURE - HABEAS CORPUS HEARING - PROBABLE CAUSE - No person may be held without an indictment unless the State establishes probable cause that the person committed the alleged crime

CRIMINAL PROCEDURE - PRIOR TO INDICTMENT - HABEAS CORPUS HEARING - Prior to a grand jury indictment, courts hearing a petition on a writ of habeas corpus may discharge the defendant for lack of probable cause

FACTS

In June 2023, Cameron Harris was arrested for attempted murder. After a preliminary hearing was held, a justice court judge entered a Bind Over Order on the charge of possession of a weapon by a convicted felon, without mentioning an attempted murder charge. Several days later, Harris filed a writ of habeas corpus in the Adams County Circuit Court, alleging his arrest and detention was unlawful since there was no evidence that connected him to the attempted murder. The circuit court held a hearing on the petition where Investigator Priester Byrne of the Adams County Sheriff's Office testified to the execution of an affidavit alleging Harris had committed attempted murder based off information collected from a confidential informant. Byrne acknowledged that the informant did not actually observe the crime, but that he did see Harris running down the street near the crime scene after gunshots were heard. The circuit judge ruled

that the testimony of Byrne was sufficient to hold Harris, and “the next check [was] the grand jury.” Harris’s habeas corpus petition was denied based on a sufficient establishment of probable cause. Harris appealed.

ISSUE

Whether the trial court erred in denying Harris’s habeas corpus petition.

HOLDING

Because the trial court did not make an independent probable-cause determination, and because mere evidence that Harris was seen in the vicinity of a crime was insufficient to establish probable cause that Harris committed the crime, the trial court improperly denied Harris’s petition. Therefore, the Court of Appeals reversed and remanded the judgment of the Adams County Circuit Court.

DISSENT

Judge Smith argued that the scope of habeas corpus in Mississippi narrowly focused on determining the legality of detention before conviction, not broader issues like the validity of an arrest warrant. Judge Smith concluded that the circuit court acted within its discretion to limit Harris’s cross-examination, as the questioning sought information irrelevant to the habeas corpus proceeding and attempted to bypass discovery rules.

Reversed & Remanded - 2023-CA-00950-COA (Nov. 26, 2024)

En Banc Opinion by Presiding Judge Wilson - Dissent by Judge Smith

Hon. Carmen Brooks Drake (Adams County Circuit Court)

Everett T. Sanders & Aisha Arlene Sanders for Appellant - Matthew Paul Kidder for Appellee

Briefed by [Lexi Killebrew](#)

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

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HERD V. STOKES

CIVIL - WILLS, TRUSTS, & ESTATES

EVIDENCE - ADMISSIBILITY - AUTHENTICATION - To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is; an item of evidence can be authenticated by the testimony of a witness with knowledge that the item is what it is claimed to be

WILLS & ESTATES - ADMISSIBILITY - ATTESTING WITNESSES - There are four requirements to be an attesting witness: the testator must request them to attest the will; they must see the testator sign the will; they must know that the documents is the last will and testament; they must satisfy themselves that the testator is of sound and disposing mind and capable of making a will

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - To examine the reliability of an expert’s opinions and methods, courts must examine factors including: whether the theory or technique can be and has been tested; whether it has been subjected to peer review and publication; whether, in respect to a particular technique, there is a high known or potential rate of error; whether there are standards controlling the technique’s operation; and whether the theory or technique enjoys general acceptance within a relevant scientific community

FACTS

Michael Edward Roberts died, leaving behind a minor child that he shared with Teresa Herd. Teresa filed a petition to the chancery court to open an estate and appoint her as administratrix stating that Michael died intestate. Keith Stokes and Gloria Johnson, Michael’s siblings, then filed a petition to probate Michael’s will which was dated January 11, 2016. They also requested that Teresa be removed as administratrix. Teresa requested a trial to contest the 2016 will. At trial, the trial court heard testimony from Teresa, Keith, two subscribing witnesses, and an expert witness. One subscribing witness testified that she saw Michael sign the will and was satisfied that Michael was of sound mind. The expert witness concluded that the 2016 will was not signed by the same person who signed the other documents that were submitted

for comparison. The expert witness also stated that different handwriting experts could reach different conclusions. The trial court found that the 2016 will was Michael's last will and testament. Teresa appealed.

ISSUES

Whether the trial court (1) erred by admitting the purported 2016 will into evidence; (2) erred in finding that the subscribing witness met the requirements of an attesting witness; and (3) failed to give appropriate weight to the testimony of the expert witness.

HOLDING

(1) Because the trial court found the subscribing witness met the requirements of an attesting witness, the trial court did not err in entering the 2016 will into evidence. (2) Because the subscribing witness's testimony confirmed that she saw Michael signing the will and satisfied herself that Michael was of sound mind, the subscribing witness met the requirements of an attesting witness. (3) Because the trial court is the judge of the credibility of the witnesses and the weight of their testimony, and because the evidence did not show manifest error, the trial court did not err in giving more weight to the subscribing witness testimony than the expert witness testimony. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Chancery Court.

Affirmed - 2023-CA-00713-COA (Nov. 26, 2024)

Opinion by Presiding Judge Carlton

Hon. Kiley Catledge Kirk (Carroll County Chancery Court, Second Judicial Dist.)

Vallrie Lanette Dorsey & Sabrina D. Howell for Appellants - James H. Powell III for Appellees

Briefed by [Christina Burse](#)

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

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S.Z.O. v. HARRISON CNTY. DEP'T OF CHILD PROT. SERVS.

CIVIL - CUSTODY

FAMILY LAW - PARENTAL RIGHT - TERMINATION - To terminate the parental rights of natural parents, a petitioner must establish by clear and convincing evidence (1) that the parent has deserted the child or is mentally, morally, or otherwise unfit to raise the child and (2) the termination is in the best interest of the child

FAMILY LAW - PARENTAL RIGHT - INVOLUNTARY TERMINATION - A court can terminate a parent's parental rights where clear and convincing evidence shows that the parent has failed to exercise reasonable visitation or communication with the child or the parent's neglectful conduct has caused, at least in part, some substantial erosion of the relationship between the parent and the child

FAMILY LAW - CUSTODY - BEST INTEREST OF CHILD - The polestar consideration in a child custody case is the best interest of the child

FACTS

M.A.B., a child of S.Z.O. and E.K.B., was born in August 2020. At four months old, M.A.B. became unresponsive after E.K.B. gave her a bottle. A.D., S.Z.O.'s mother, was babysitting the infant at the time and called 911. She informed authorities that two pieces of crack cocaine were missing and believed that E.K.B. put the crack rocks in the baby formula. M.A.B. was transported to the hospital where her bloodwork came back positive for cocaine. Hospital staff called the Harrison County Department of Child Protection Services ("CPS"), and M.A.B. was discharged to go home with S.Z.O. A CPS social worker followed the two home to conduct a home inspection, where E.K.B. admitted that he would test positive for marijuana. The youth court entered an emergency custody order placing M.A.B. in CPS custody. The next day, S.Z.O. tested positive for cocaine after submitting a hair follicle test. The youth court held a shelter hearing the same day and entered a shelter order, finding that it was in M.A.B.'s best interest to remain in CPS's custody. The court further ordered CPS to make reasonable efforts for reunification. On the same day, CPS also filed a petition to have M.A.B. adjudicated a neglected child. S.Z.O. and E.K.B. pled "no contest," and M.A.B. was adjudicated a

neglected child. The court also established a permanency plan of reunification, with a concurrent plan for custody with a relative, and ordered S.Z.O. to enter into a service plan with CPS. The service plan required S.Z.O. to obtain stable housing, stable employment, reliable transportation, participate in In-Circle and the Family Intervention Program, and complete random drug tests. S.Z.O. failed to maintain housing, employment, or transportation. S.Z.O. repeatedly failed drug tests, and she failed to attend narcotics-anonymous or alcoholics-anonymous meetings. The youth court found her in noncompliance, and S.Z.O. was dismissed from the Family Intervention Program. The youth court also directed S.Z.O. to participate in the In-Circle program. The record contained a certificate showing that S.Z.O. completed an “active parenting curriculum” as part of the program, but there is no indication in the record that S.Z.O. successfully participated in and completed the program in full. The youth court held a permanency hearing and found that S.Z.O. was noncompliant with the service agreement and that CPS had made reasonable efforts to assist S.Z.O. and E.K.B. with reunification and in complying with the service plan. The court further found that reunification was not in M.A.B.’s best interest. The youth court ordered CPS to change the permanency plan of reunification to a permanency plan of adoption. The court further ordered the concurrent plan of custody with a relative changed to a concurrent plan of durable legal custody or guardianship. CPS filed a petition to terminate S.Z.O.’s and E.K.B.’s parental rights. The next day, the youth court appointed M.A.B. a guardian ad litem (“GAL”). The youth court held an evidentiary hearing on CPS’s petition to terminate S.Z.O.’s parental rights. The youth court heard testimony and evidence about S.Z.O.’s living conditions, employment, S.Z.O.’s family-intervention-program participation, her drug screens, and the relationship between S.Z.O. and M.A.B. A drug test taken just two weeks before the TPR hearing in March 2023, showed a positive result for cocaine, raising concerns. However, S.Z.O. later paid for her own instant drug test, which was negative, and the result was submitted into evidence. S.Z.O. eventually ceased visitation with M.A.B., and S.Z.O.’s lack of contact with M.A.B. affected her relationship with the child. A report made by the GAL was admitted into evidence at the TPR hearing, which stated that she believed the termination of parental rights was in the best interest of M.A.B. to create a stable future and the potential for adoption eligibility. Furthermore, M.A.B. lived with her foster parents since she was four months old and was thriving in their care. The youth court issued its judgment terminating S.Z.O. and E.K.B.’s parental rights, finding S.Z.O. “unfit” to raise M.A.B. and that reunification of M.A.B. and S.Z.O. was not in M.A.B.’s best interest. S.Z.O. appealed.

ISSUES

Whether the youth court erred when it found that (1) clear and convincing evidence supported termination of S.Z.O.’s parental rights pursuant to Miss. Code Ann. § 93-15-115; (2) clear and convincing evidence supported termination of S.Z.O.’s parental rights pursuant to Miss. Code Ann. § 93-15-119; (3) clear and convincing evidence supported termination of S.Z.O.’s parental rights pursuant to Miss. Code Ann. § 93-15-121; and (4) termination was in M.A.B.’s best interest.

HOLDING

(1) Because it was uncontroverted that the youth court adjudicated M.A.B. a neglected child, that M.A.B. had been in CPS custody for more than six months, and that S.Z.O. had not appealed the youth court’s prior permanency order, and because the youth court found clear and convincing evidence to terminate S.Z.O.’s parental rights pursuant to Miss. Code Ann. § 93-15-119, the youth court did not err in its application of Miss. Code Ann. § 93-15-115. (2) Because the record contained credible proof that S.Z.O. was unfit to raise M.A.B. and that reunification would not lead to a satisfactory permanency outcome, the youth court did not err in its application of Miss. Code Ann. § 93-15-119. (3) Because the record contained credible proof that S.Z.O. failed to exercise reasonable visitation or communication with M.A.B. and that S.Z.O.’s neglectful conduct caused a substantial erosion in the relationship between S.Z.O. and M.A.B., the youth court did not err in its finding of grounds for termination under Miss. Code Ann. § 93-15-121. (4) Because S.Z.O.’s behavior led to the erosion of her relationship with M.A.B., and because M.A.B. thrived after living with her foster parents, the youth court did not err in determining that the termination of S.Z.O.’s parental rights was in the best interest of M.A.B. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Youth Court.

Affirmed - 2023-CA-00549-COA (Nov. 26, 2024)

Opinion by Presiding Judge Carlton

Hon. Michael Bryan Dickinson (Harrison County Youth Court)

James L. Farrior III for Appellant - Kristi Duncan Kennedy, Victoria Ann Lowery, Kimberly Michelle Henry, Wendy Moore Shelton, & Chelye P. Amis for Appellees

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

CASTILLO-VALENCIA V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - THREE-YEAR TIME-BAR - Miss. Code Ann. § 99-39-5(2) provides that post-conviction relief motions must be filed within three years of the judgment of conviction; exceptions to the time-bar apply only if expressly outlined in the statute, such as newly discovered evidence or retroactive case law

POST-CONVICTION RELIEF - STATUTORY INTERPRETATION - NO JUDICIALLY CREATED EXCEPTIONS - Under *Howell v. State*, the Miss. Supreme Court eliminated the judicially created fundamental rights exception, holding that only statutory exceptions to the post-conviction relief time-bar are permissible

POST-CONVICTION RELIEF - PROCEDURAL SUFFICIENCY - EVIDENTIARY REQUIREMENTS - A post-conviction relief motion must include evidence beyond the defendant's own assertions, such as affidavits or corroborating documentation; unsupported claims, including those alleging ineffective assistance of counsel or involuntary pleas, will be dismissed

APPELLATE PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - AFFIDAVIT - When the defendant fails to attach any supporting affidavits and relies solely on his own sworn motion, the ineffective-assistance claim must fail

FACTS

In June 2020, Alex Castillo-Valencia pled guilty to four counts of burglary of a dwelling and one count of attempted burglary of a dwelling. Castillo-Valencia was sentenced to twenty-five years in the custody of the Mississippi Department of Corrections, with fifteen years to serve and five years of post-release supervision. In August 2023, Castillo-Valencia filed a post-conviction relief motion, claiming that his guilty plea was involuntary and that he received ineffective assistance of counsel. He argued that he pled guilty based on erroneous advice of counsel. The trial court denied his claim and dismissed the motion as time-barred because it was filed after the three-year statutory time-bar, and no valid exception was raised. Castillo-Valencia appealed.

ISSUE

Whether the trial court erred in the dismissal of Castillo-Valencia's post-conviction relief motion.

HOLDING

Because Castillo-Valencia's post-conviction relief motion was filed outside the three-year statute of limitations under Miss. Code Ann. § 99-39-5(2), and because Castillo-Valencia did not support his motion with an affidavit or other evidence of an exception, the trial court did not err in the dismissal of Castillo-Valencia's post-conviction relief motion. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2023-CP-01292-COA (Nov. 26, 2024)

Opinion by Judge Lawrence

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

Pro se for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Andrew Moyer](#)

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

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MILLER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROBATION REVOCATION - CONDITIONS - Probation may be revoked and suspended sentencing imposed upon a showing that the defendant more likely than not violated the clear terms and conditions of the suspended sentence

POST-CONVICTION RELIEF - POST-RELIEF SUPERVISION - IMPOSITION OF SENTENCE - Under Miss. Code Ann. § 47-7-37.1, if a court finds by a preponderance of the evidence that a probationer or a person under post-release supervision has committed a felony or absconded, then the court may revoke the probationer's probation and impose any or all of the sentence

CRIMINAL LAW - PLEAS - ALFORD PLEA - An *Alford* plea is offered when the defendant acknowledges that the prosecution has enough evidence to convict him if the matter goes to trial, but he maintains his innocence

FACTS

A grand jury indicted Garrick Miller for possession of a controlled substance. The court accepted an *Alford* plea offered by Miller and sentenced him as a habitual offender. He was sentenced to eight years in the custody of the Mississippi Department of Corrections, with all eight years suspended. Miller's suspended sentence was conditioned upon his good behavior and strict compliance with all of the conditions imposed by the court. The trial court also placed Miller on five years of supervised probation with the condition that he "[c]ommit no offense against the laws of this state or any other state of the United States. . ." The transcripts from the plea hearing showed that the court asked Miller if he understood that he would have certain terms and conditions to meet while on supervised probation. Miller answered affirmatively and acknowledged that he knew selling cocaine was illegal. Miller also signed his sentencing order which reflected his sentence and conditions. While on supervised probation, Miller sold methamphetamine to undercover officers with the North Mississippi Narcotics Task Force and was also arrested for possessing and selling cocaine, all felony offenses. Because of this, an affidavit was filed in the trial court alleging that Miller violated the conditions of his supervised probation by committing three new felonies. A petition to revoke Miller's supervised probation based on these violations and impose his suspended sentence was subsequently filed. The trial court ultimately found that Miller more likely than not violated the terms of his suspended sentence by "[f]ailing to live at liberty without violating any laws" and entered an order revoking his supervised probation and imposing his previously suspended eight-year sentence. Miller filed a motion for post-conviction relief seeking to set aside the revocation and vacate his reinstated sentence, claiming that the trial court did not explicitly state the terms and conditions of his probation at the time the court suspended his sentence and placed him on probation, and that the trial court did not have jurisdiction to revoke his suspended sentence. The trial court denied his motion for post-conviction relief. Miller appealed.

ISSUES

Whether the trial court (1) failed to explicitly state the terms and conditions of Miller's probation at the time the court suspended his sentence and placed him on probation and (2) lacked jurisdiction to revoke his suspended sentence.

HOLDING

(1) Because Miller stated at his plea hearing that he understood there were terms and conditions while on supervised probation, and because he signed the sentencing order reflecting those terms and conditions, the trial court did not fail to explicitly state the terms and conditions of his probation. (2) Because the trial court was enforcing the sentence originally given and not altering or amending Miller's sentence, the trial court possessed the authority to revoke his suspended sentence. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

Affirmed - 2023-CP-00322-COA (Nov. 26, 2024)

Opinion by Presiding Judge Carlton

Hon. Grady Franklin Tollison III (Chickasaw County Circuit Court, Second Judicial Dist.)

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

Briefed by [Aubrey Cagle](#)

RAMSEY V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - A guilty plea is valid if it is voluntary and intelligently entered before the trial court, which means a defendant must be advised of his rights, the nature of the crime charged against him, and the consequences of the guilty plea; the defendant bears the burden of proving by a preponderance of the evidence that the guilty plea was involuntary

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claimant of ineffective assistance of counsel bears the burden of proof to show that (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different; when a movant fails to attach any supporting affidavits and relies solely on his own sworn motion, his ineffective-assistance claim must fail

POST-CONVICTION RELIEF - ADDITIONAL ISSUES - PROCEDURAL BAR - Issues not raised before the trial court are procedurally barred and not subject to further review

FACTS

Jeffrey Ramsey was pulled over by law enforcement for speeding and driving erratically. The officer observed slurred speech, a bottle of alcohol in the vehicle's center console, the smell of alcohol on Ramsey's breath, and Ramsey being unsteady on his feet. After Ramsey refused an Intoxilyzer breath test at the police station, a search warrant was issued for a blood test. His blood test showed that his blood-alcohol level was .241 percent, which was well over the legal limit. At the hospital while getting the blood test, Ramsey tried to flee and was taken to the local jail. In June 2020, Ramsey was indicted on two counts of felony driving under the influence ("DUI") as a nonviolent habitual offender. Count I was for driving under the influence of intoxicating liquor as a fourth or subsequent offense, and Count II was for driving with a blood-alcohol content of .08% or more as a fourth or subsequent offense. In January 2021, Ramsey pled guilty to Count II as a habitual offender, while Count I was passed to the file. The trial court sentenced Ramsey to serve ten years in the custody of the Mississippi Department of Corrections. Ramsey filed a post-conviction relief motion in October 2021, which the trial court denied. Ramsey appealed.

ISSUES

Whether the trial court erred in denying Ramsey's post-conviction relief motion due to (1) his guilty plea being involuntary; (2) his right to effective assistance of counsel being violated; and (3) his brief addendum being tampered which infringed on his constitutional rights.

HOLDING

(1) Because Ramsey's guilty plea was voluntarily and intelligently made, because the factual basis for his guilty plea was properly established, because the trial court advised Ramsey of his rights and the charges and consequences against him, and because Ramsey stated that he understood, the trial court did not err in denying Ramsey's post-conviction relief motion due to his guilty plea being involuntary. (2) Because Ramsey attached no affidavits to support his contentions for ineffective assistance of counsel, and because Ramsey confirmed his satisfaction with his plea counsel, the trial court did not err in denying Ramsey's post-conviction relief motion due to his right of effective assistance of counsel being violated. (3) Because the brief addendum was not raised in Ramsey's post-conviction relief motion, the trial court did not err in denying Ramsey's post-conviction relief motion due to his brief addendum being tampered which infringed on his constitutional rights. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2023-CP-00440-COA (Nov. 26, 2024)

Opinion by Chief Judge Barnes

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, Second Judicial Dist.)
Pro se for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee
Briefed by [Eleanor Kast](#)
Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

ARMISTAD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - THEORY OF CASE - A defendant is entitled to jury instructions that present his theory of the case; however, the court may properly refuse an instruction if it inaccurately states the law, is sufficiently addressed by other instructions, or lacks evidentiary support.

CRIMINAL PROCEDURE - MISTRIAL - MISCONDUCT - At the request of any party, the court can declare a mistrial if misconduct occurs during the trial—whether in or outside the courtroom—by a party, his attorney, or someone acting on his behalf, and that misconduct causes significant and irreversible harm to the requesting party’s case

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; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

CRIMINAL PROCEDURE - EVIDENTIARY SUPPORT - CIRCUMSTANTIAL EVIDENCE - Courts recognize that circumstantial evidence in a criminal case is entitled to as much weight as any other kind of evidence, and, in many cases, a conviction may be had on circumstantial evidence alone

FACTS

In December 2020, officers from the Columbus Police Department responded to a shooting at a residence in Columbus. Frank Edwards was found deceased at the scene, and Raekwon Sherrod was discovered with gunshot wounds to the legs. Witnesses reported a dark-colored Mazda arrived shortly before gunfire erupted, but they could not identify the shooter. Investigators later identified Kenny Wayne Armistad as a suspect based on text messages, cell phone location data, and a rifle and ammunition magazine recovered along the route of a high-speed chase involving Armistad. The rifle was linked to shell casings found at the crime scene. A grand jury indicted Armistad on four counts: first-degree murder of Edwards, aggravated assault of Raekwon Sherrod, aggravated assault of Elijah Sherrod, and possession of a firearm by a felon. At trial, testimony was provided by police officers, forensic experts, and witnesses, including Raekwon and Elijah, identifying Armistad at the scene and noting his behavior before and after his arrest. The prosecution introduced physical evidence, such as ballistics, cell phone data, and text messages allegedly sent by Armistad in the days leading up to and after the shooting. During closing arguments, the prosecutor highlighted the forensic connections between the shell casings, the rifle, and the recovered cell phone to reinforce Armistad’s culpability. Evidence from the high-speed chase—including items thrown from the car and Armistad’s behavior upon arrest—was also presented. Armistad did not testify but called a family member to provide an alibi and a police officer to suggest alternative suspects. During voir dire, the prosecutor explained the distinction between direct and circumstantial evidence and asked potential jurors if they required direct evidence to convict, receiving no affirmative responses. During the trial, Bailiff Ken Custard inadvertently engaged in small talk with juror Douglas during a lunch break, but both confirmed their conversation did not involve the case. The trial court denied Armistad’s motion for a mistrial and replaced Douglas with an alternate juror. In closing arguments, the prosecutor reminded the jury of their earlier acknowledgment that circumstantial evidence could suffice, distinguishing that approach from improper attempts to elicit commitments to a specific verdict. During the trial, the State submitted a jury instruction defining self-defense but

withdrew it. The State pointed out that Armistad did not argue self-defense but, instead, argued that Armistad was not at the scene—relying on an alibi or a mistaken identity. The jury convicted Armistad on all four counts. The trial court sentenced him to life imprisonment for the murder, consecutive terms for each aggravated assault conviction, and an additional term for the firearm possession. Armistad’s post-trial motion for judgment notwithstanding the verdict or a new trial was denied. Armistad appealed.

ISSUES

Whether (1) Armistad’s convictions were supported by sufficient evidence; (2) the trial court erred by failing to grant a mistrial or by failing to declare a mistrial sua sponte; (3) Armistad’s trial was prejudiced by comments made during the State’s closing arguments; and (4) the trial court erred by refusing to instruct the jury on the definition of self-defense.

HOLDING

(1) Because the evidence presented by eyewitness testimony from Raekwon and Elijah, text messages collected from Armistad’s phone, Armistad’s behavior before and after his arrest, and evidence in relation to the firearm used by Armistad, when viewed in the light most favorable to the State, were sufficient to support Armistad’s convictions, sufficient evidence existed to support Armistad’s conviction. (2) Because the trial court determined Custard and Douglas’s conversation was unrelated to the trial, because Douglas did not remain as a juror, because there was no evidence that other jurors or alternates were aware of the improper contact, and because Armistad’s reliance on other “instances” failed to establish “plain error,” the trial court acted within its discretion in denying Armistad’s motion for a mistrial and in declining to declare a mistrial sua sponte, and therefore did not err in its exercise of discretion. (3) Because, during voir dire, the prosecutor simply explained the difference between direct and circumstantial evidence and asked the venire to tell him if they felt it necessary to have direct evidence to convict someone, and because the prosecutor, during closing, merely reminded the jury to consider the circumstantial evidence, Armistad’s trial was not prejudiced by comments made during the State’s voir dire and closing arguments. (4) Because Armistad’s defense at trial was based on alibi and mistaken identity rather than self-defense, and because the trial court acted within its discretion, the trial court did not err in refusing to instruct the jury on self-defense. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2023-KA-00799-COA (Nov. 26, 2024)

Opinion by Presiding Judge Carlton

Hon. Lee Jackson Howard V (Lowndes County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Dixon Stone](#)

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FOX V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - SEPARATE OFFENSES - Where two statutory violations require proof of a fact of which the other does not, there is no double jeopardy claim merely because one of the counts and another count stemmed from the same act or transaction

CRIMINAL PROCEDURE - PLAIN ERROR - JURY COMPOSITION - To succeed under the plain error standard, the defendant must show an error at the trial level that resulted in a manifest miscarriage of justice; the evidence must show that the defendant was not in fact tried by a fair and impartial jury

EVIDENCE - EXPERT TESTIMONY - ADMISSIBILITY - Evaluating the admissibility of expert testimony under the abuse of discretion standard requires a two-prong inquiry to determine whether the witness is qualified and whether the testimony is relevant and reliable

EVIDENCE - EXPERT TESTIMONY - SCOPE - Under Miss. R. Evid. 702, the scope of permissible expert testimony includes an expert's opinion that the alleged victim's characteristics are consistent with those of children who have been sexually abused

EVIDENCE - HEARSAY EXCEPTIONS - BUSINESS RECORDS - Pursuant to Miss. R. Evid. 803(6), regularly kept business records are an exception to the hearsay rule

CONSTITUTIONAL LAW - PROSECUTORIAL MISCONDUCT - IMPROPER COMMENTS - Determining whether a prosecutor's closing remarks constitute reversible error requires a two-part test to determine whether the remarks are improper and whether the remarks prejudiced the defendant's rights

FACTS

Reginald Fox took his niece, D.S., to the bedroom of his mobile home and sucked her breasts and inserted his fingers into her vagina. Later that day, Fox took D.S. to the America's Best Inn Hotel where D.S. woke up at midnight to Fox inserting his fingers into her vagina. D.S.'s mother contacted Master Sergeant Damien Gatlin with the Lincoln County Sheriff's Department after D.S. informed her of the incident. Gatlin investigated further by having D.S. interviewed by the Children's Advocacy Center ("CAC"), interviewing D.S.'s friends and securing information from the hotel personnel. Fox was indicted on two counts of sexual battery and one count of touching a child for lustful purposes. At trial, Gatlin testified that he spoke to the hotel's owner and obtained a copy of a room receipt in Fox's name with the dates of his stay. The State showed Gatlin the hotel bill with an attached sworn statement from the hotel's owner, Nayankumer Patel. Patel affirmed that the guest record was made during the regularly conducted business of the hotel. The State offered the hotel receipt and the affidavit as evidence, and they were entered with no objection from the defense. Gatlin also testified that he spoke to the clerk on duty on the date of Fox's check-in to the hotel who confirmed that Fox and D.S. were both there that day. Ann Houston Craig, a mental health therapist and licensed clinical social worker, was designated by the State as an expert in the field of mental health. Fox objected to Craig's acceptance as an expert and questioned her outside the presence of the jury about her credentials at the time of her assessment and treatment of D.S. After D.S. testified and the State rested, Fox moved for a directed verdict, arguing that the State failed to meet its burden of proof because no one testified to any date certain of the incidents. The court denied the motion for a directed verdict since the State established the dates. After the defense rested, the jury deliberated and returned a guilty verdict on all three counts. In May 2021, Fox filed a motion for a new trial, challenging Craig's expert testimony and the alleged inconsistent testimony of D.S. The trial court sentenced Fox in accordance with his convictions. In October 2022, Fox filed a motion for ruling on previous motions he filed, and in January 2023, he filed a pro se supplemental motion for a new trial. In his motion, Fox challenged the admission of certain evidence such as the certificate of authenticity attached to the hotel receipt, a map of various locations prepared by Gatlin. He also listed what he believed to be inappropriate comments made by the State during closing arguments. In his pro se brief, Fox argued that he was denied a fair and impartial jury because he claimed that Juror 28 lied and said she did not know him when they had an encounter years before. The trial court heard Fox's pre-trial motions and entered an order denying them. Fox appealed.

ISSUES

Whether (1) Fox's indictment erroneously charged molestation, a lesser-included offense of sexual battery, which violated his right to be free of double jeopardy; (2) Juror 28 lied about knowing Fox and deprived him of the right to an impartial jury; (3) the trial court erroneously allowed the State's expert Ann Houston Craig to offer a medical opinion outside her area of expertise; (4) the trial court erroneously admitted a certificate of authenticity and hotel receipt into evidence; (5) the trial court erred in denying Fox's motion for a directed verdict at the conclusion of the State's case; (6) the State's closing arguments violated Fox's constitutional rights; (7) the trial court erred in denying Fox's motion for a judgment notwithstanding the verdict or, in the alternative, a new trial; and (8) errors of Fox's trial counsel gave rise to a claim of ineffective assistance of counsel.

HOLDING

(1) Because the sexual battery statute did not contain the element of gratification of lust, and because the molestation statute did not require the element of penetration, the State properly charged molestation as a separate crime and the indictment did not constitute double jeopardy. (2) Because there was no evidence that Juror 28 lied about not knowing Fox or harbored an animus against him, there was no plain error in Juror 28's selection as a juror. (3) Because Craig, a licensed master social worker, was qualified to make psychological diagnoses, and because her testimony consisted of

her opinion that the victim's characteristics were consistent with those of children who have been sexually abused, the trial court did not erroneously allow her testimony. (4) Because the custodian authenticated the hotel receipt, and because witnesses testified as to its accuracy, the receipt and its certificate of authenticity were not admitted in error. (5) Because Fox last challenged the sufficiency of the evidence in his post-trial motion for judgment notwithstanding the verdict, the Court analyzed the issue in Part VII of the opinion. (6) Because the State's closing comments about Gatlin's maps and the October 14, 2016 acts were not improper, because the State's comments about the other evidence did not prejudicially affect Fox's substantive rights or constitute plain error, and because D.S. herself testified to the alleged threats before the State referenced them in the closing argument and was therefore not prejudicial, the State's closing arguments did not violate Fox's constitutional rights. (7) Because none of the alleged deficiencies Fox pointed to undermined the fact that the State presented testimony that established each element of the crimes charged, the trial court properly denied Fox's motion for a directed verdict and motion for judgment notwithstanding the verdict or a new trial. (8) Because the record was insufficient for the Court to make a ruling, the Court declined to address the issue and preserved for Fox the right to raise such claims in a post-conviction collateral proceeding. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2023-KA-00596-COA (Nov. 26, 2024)

Opinion by Judge McDonald

Hon. Michael M. Taylor (Lincoln County Circuit Court)

Warren Martin Jr. & *Pro se* for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Lauren Bowlin](#)

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