

MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 21, 2024***SUPREME COURT - CIVIL CASES*****J.B. v. M.M.****CIVIL - CUSTODY**

FAMILY LAW - ADOPTION - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 93-17-15, no action shall be brought to set aside any final decree of adoption, whether granted upon consent or personal process or on process by publication, except within six (6) months of the entry thereof

FAMILY LAW - ADOPTION - CONTEST - Pursuant to Miss. Code Ann. § 93-17-17, no adoption proceedings shall be permitted to be set aside except for jurisdictional defects and for failure to file and prosecute the same

FAMILY LAW - ADOPTION - NECESSARY PARTIES - Pursuant to Miss. Code Ann. § 93-17-5(1), parties who shall receive notice of an adoption include the natural parents of the child, two adult kin if the parents are deceased, the guardian ad litem of an abandoned child, persons having physical custody of the child, or any person to whom custody could have been awarded; natural parents are necessary parties to an adoption proceeding but natural grandparents or other relatives are not

FAMILY LAW - POST-ADOPTION - GRANDPARENT VISITATION - Under Miss. Code Ann. § 93-16-7, when a child is adopted, natural grandparents lose visitation unless one of the legal parents after adoption is a natural parent or was related to the child by blood or marriage prior to the adoption

FACTS

Within months of his birth, J.J.W.B., was removed from the custody of his natural mother, L.B., who had a history of habitual drug addiction which resulted in ongoing neglect and harm to the minor child. The natural father, J.K.B., was not involved in the minor child's life. Thus, temporary custody was awarded to the maternal grandfather, J.B., Sr. and step-grandmother, P.B. Visitation was granted to the minor child's maternal grandmother, M.M. Although the minor child was later briefly returned to L.B., L.B. relapsed into drug addiction and custody of the minor child was returned to J.B., Sr. and P.B. with continued visitation granted to M.M. In October 2020, J.B., Sr. and P.B. filed a petition for voluntary termination of parental rights and for adoption of the minor child. Both natural parents consented to the adoption and the termination of their parental rights. M.M. did not receive notice of the adoption proceedings, and an adoption order was subsequently entered in December 2020. One month later, M.M. filed a petition for contempt against J.B., Sr. and P.B. for withholding her visitation with the minor child. J.B., Sr. and P.B. moved to dismiss on the grounds the adoption had extinguished M.M.'s visitation rights. More than a year later, M.M. also moved to set aside the adoption of J.J.W.B., arguing she was a necessary party to the adoption proceedings and alleging J.B., Sr. and P.B. had willfully conspired with L.B. to conceal the adoption proceeding from her. J.B., Sr. and P.B. moved to dismiss contending M.M. was not a necessary party entitled to notice of the adoption proceedings and that her motion was time-barred. The chancery court denied both motions to dismiss. J.B., Sr. and P.B. moved for interlocutory appeal which the Supreme Court granted by separate order and consolidated sua sponte.

ISSUES

Whether (1) M.M.'s motion to set aside the adoption was proper; and (2) the adoption extinguished M.M.'s prior visitation order.

HOLDING

(1) Because M.M. was not a necessary party to the adoption proceedings where the natural parents had voluntarily consented, because her motion to set aside was untimely, and because no jurisdictional defects with the adoption could

be shown, the motion to set aside the adoption was improper, and the trial court erred in denying the motion to dismiss. (2) Because the minor child was adopted by J.B., Sr., a blood relative, and P.B., a relative by marriage prior to adoption, M.M.'s visitation rights were not automatically extinguished by the adoption, and the trial court did not err in granting the motion to dismiss. Therefore, the Supreme Court reversed and rendered in part and affirmed and remanded in part the judgment of the Smith County Chancery Court.

CONCURRENCE

Presiding Justice King concurred in part and result but argued the polestar consideration in granting any adoption is the best interest of the child and that, accordingly, the maternal grandmother, M.M., was encompassed by the statutory language and was, therefore, entitled to notice of the adoption proceedings.

Reversed & Rendered - 2023-IA-00457-SCT (Nov. 21, 2024)

En Banc Opinion by Justice Beam - Concurrence by Presiding Justice King
Hon. David Shoemake (Smith County Chancery Court)
Michael Chad Moore for Appellants - L. Wesley Broadhead for Appellee

Consolidated with:

Affirmed & Remanded - 2023-IA-00458-SCT (Nov. 21, 2024)

Hon. David Shoemake (Smith County Chancery Court)
Michael Chad Moore for Appellants - L. Wesley Broadhead for Appellee
Briefed by [Amber Meeks](#)
Edited by [Summie Carlay](#) & [Emily Phillips](#)

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JOHNSON V. MILLER

CIVIL - FEDERALLY CERTIFIED QUESTION

APPELLATE PROCEDURE - UNDECIDED QUESTIONS - CERTIFYING QUESTIONS - If the federal courts encounter a question about Mississippi law in a case that is crucial to deciding the outcome and there are no clear controlling precedents, the federal court may request the Mississippi Supreme Court to provide a written opinion explaining how Mississippi law applies to those questions

CIVIL PROCEDURE - WHISTLEBLOWING - REMEDIES - The Mississippi Whistleblower Protection Act's remedies are supplemental and do not exhaust or diminish administrative remedies provided under other laws or the employing governmental entity's appeal processes

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - ACCRUAL - All actions for which no other period of limitation is prescribed shall be commenced within three years after the cause of action accrued, not after

TORTS - MISS. TORT CLAIMS ACT - MUNICIPAL CORPORATIONS - The Mississippi Tort Claims Act is the exclusive remedy for tort claims against governmental entities and employees acting within the course and scope of their employment

FACTS

Mark Johnson worked as a general manager for Clarksdale Public Utilities Authority. Johnson asserted that he was fired from his position in 2018 after reporting inefficiency and incompetence to the Mississippi state auditor. Johnson filed an initial claim in federal district court on September 22, 2021, asserting retaliation under the Mississippi Whistleblower Protection Act ("MWPA"). Johnson later amended the complaint to include claims for First Amendment retaliation and breach of contract. The district court concluded that Johnson had failed to comply with the Mississippi Tort Claims Act's ("MTCA") notice requirements and that his MWPA claim was barred by the MCTA's one-year statute of limitations. The district court also held that the First Amendment retaliation and breach of contract claims were time-barred because of the three-year statute of limitations, which expired on September 25, 2021, after the first complaint was filed, without the amendments. Johnson appealed. On appeal, the defendants argued that the MTCA applied to the

MWPA, citing the MTCA's broad immunity provisions and its exclusivity in providing remedies against government entities and employees. On the other hand, Johnson argued that the MWPA was an additional right to relief and that a plaintiff need not abide by the MTCA's procedural requirements to pursue a claim against a government entity and its employees. However, no Mississippi appellate court had yet addressed the applicability of the MTCA to the MWPA. As a result, the Fifth Circuit Court of Appeals certified a question to the Mississippi Supreme Court to resolve the matter.

ISSUE

Whether the MTCA's statute of limitations and notice requirements applied to the MWPA, given the fact that the MWPA was silent to both.

HOLDING

Because the MWPA was a remedial statute separate from the MTCA, and because the MWPA did not incorporate the MTCA's statute of limitations and notice requirements, the MTCA did not apply to the MWPA. Therefore, the Supreme Court answered the certified question from the Fifth Circuit Court of Appeals.

Certified Question Answered - 2024-FC-00419-SCT (Nov. 21, 2024)

Opinion by Justice Beam

Joe Frank Dillard for Appellant - Latoya Cheree Merritt & Loden Philips for Appellees

Briefed by [Natori Weathersby](#)

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

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S.D.P. v. HARRISON CNTY. DEP'T OF CHILD PROT. SERVS.

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - PARENTAL RIGHTS - TERMINATION - Pursuant to Miss. Code Ann. § 93-15-119(1)(a), a court may terminate the parental rights of a parent when after conducting an evidentiary hearing, the court finds by clear and convincing evidence: (a)(i) that the parent is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past and present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and (ii) that termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome

FAMILY LAW - NEGLECTED CHILD - DEFINITION - Miss. Code Ann. § 43-21-105(j) defines a neglected child as one: (i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support . . . or (ii) Who is otherwise without proper care, custody, supervision or support; or (iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or (iv) Who, for any reason, lacks the care necessary for his health, morals, or well-being

APPELLATE PROCEDURE - ISSUE - WAIVER - Before an issue may be assigned and argued in appellate court, it must first be presented to the trial court

FACTS

S.D.P. and I.T.A. were the parents of I.T.A. Jr.. I.T.A. Jr.'s grandmother told S.D.P. that I.T.A. Jr. fell at her house. I.T.A. Jr. proceeded to vomit three times before S.D.P. transported him to a Gulfport hospital the following day. Doctors informed S.D.P. that I.T.A. Jr.'s vomiting was caused by a brain bleed from the fall, leading to numerous other medical conditions. The doctors determined that the two possible explanations S.D.P. gave as to how I.T.A. Jr. fell were inconsistent with his injuries. No criminal charges were pursued, but an emergency custody order removed I.T.A. Jr. from S.D.P.'s care and placed him in the custody of the Mississippi Department of Child Protection Services ("MDCPS"). The next day, at a shelter hearing, the youth court found that I.T.A. Jr.'s injuries resulted from a nonaccidental injury. MDCPS made reasonable efforts to prevent I.T.A. Jr.'s removal, but I.T.A. Jr. was ultimately placed in a foster home with a paramedic and a pulmonary nurse practitioner who had cared for medically fragile

children. The youth court ordered MDCPS to make reasonable efforts to reunify I.T.A. Jr. with his parents and granted them visitation. The youth court adjudicated I.T.A. Jr. an abused and neglected child and ordered the parents to enter service agreements to regain custody of I.T.A. Jr. At a permanency hearing, the youth court found that MDCPS had made reasonable efforts to reunify, but the parents failed to comply with the service agreement and its requirement to attend appointments to learn how to care for I.T.A. Jr.'s medical needs. After two and half years of visitation, both parents admitted they were not ready to assume care of I.T.A. Jr. The youth court further found that adoption, instead of reunification, was in I.T.A. Jr.'s best interest. A guardian ad litem was appointed and MDCPS was ordered to file a petition for termination of parental rights. At a second and third permanency hearing, the court found that it was still in I.T.A. Jr.'s best interest for adoption to remain. Finding that the parents failed to comply with court ordered service agreements and were unfit to raise I.T.A. Jr., the youth court entered a judgment terminating the parents' parental rights. S.D.P. and I.T.A. appealed.

ISSUES

Whether (1) the youth court's decision to terminate both parents' custodial rights was supported by clear and convincing evidence; and (2) the guardian ad litem's investigation and report were insufficient.

HOLDING

(1) Because both parents were given sufficient opportunity to learn how to care for I.T.A. Jr.'s medical needs properly, and because neither parent felt that I.T.A. Jr. could safely return to their care at the time of trial, the youth court found by clear and convincing evidence that S.D.P. and I.T.A. were not mentally, morally, or otherwise fit to raise I.T.A. Jr., and the reunification was not desirable toward obtaining a permanency outcome. (2) Because the parents did not raise any arguments as to the sufficiency of the guardian ad litem's investigation or report in youth court, S.D.P. and I.T.A. waived the argument on appeal. Therefore, the Supreme Court affirmed the judgment of the Harrison County Youth Court.

Affirmed - 2023-CA-00838-SCT (Nov. 21, 2024)

Opinion by Justice Beam

Hon. Michael Bryan Dickinson (Harrison County Youth Court)

Jennifer Louise Morgan (Pub. Def. Office) for Appellants - Kristi Duncan Kennedy & Kimberly Michelle Henry (Att'y Gen. Office) for Appellees

Briefed by [Khytavia Fleming](#)

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

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SUPREME COURT - CRIMINAL CASES

BELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - LINDSEY REQUIREMENTS - When appellate counsel finds no arguable issues for an appeal, counsel must file a brief with the court certifying that there are no arguable issues for appeal, send a copy of the brief to the defendant, and advise the defendant to file his own pro se supplemental brief

CRIMINAL PROCEDURE - APPEALS - SUPPLEMENTAL BRIEF - If the defendant cannot raise any arguable issue for appeal in his supplemental brief, and the appellate court cannot find any arguable issue in its review of the record, the judgment must be affirmed

FACTS

In 2018, Planereo Bell shot Michael Smith and Viola Smith in Meridian. Michael, Viola, Michael's sister Valerie, and Raine, a neighbor, all testified at trial that Bell shot both Michael and Viola. Valerie testified that Bell had been following

her brother around that night and had seen him with a gun. Bell did not testify, but at the time of the incident, he told Michael's mother Viola that shooting Michael was an accident, then stated he could not leave, shot Viola after she ran to Michael's aid, and fled. A stipulation was entered into evidence that Bell had a prior felony conviction. Bell was convicted of two counts of aggravated assault and one count of possession of a firearm by a convicted felon. The trial court sentenced Bell as a violent habitual offender to serve life without parole for each count. Bell appealed.

ISSUES

Whether Bell had any arguable issues for an appeal.

HOLDING

Because Bell's counsel complied with the standards from *Lindsey v. State*, and because the Court found no arguable issues in either the record or Bell's supplemental brief, Bell had no arguable issues for an appeal. Therefore, the Supreme Court affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2023-KA-00801-SCT (Nov. 21, 2024)

Opinion by Justice Beam

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Connor Dixon](#)

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

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MYERS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INDICTMENT - CONSTRUCTIVE AMENDMENT - A constructive amendment of the indictment occurs when the proof and instructions broaden the grounds upon which the defendant may be found guilty of the offense charged so that the defendant may be convicted without proof of the elements alleged by the grand jury in its indictment

CRIMINAL PROCEDURE - INDICTMENT - PERMISSIBLE AMENDMENT - As long as the change does not materially alter facts which are the essence of the offense on the fact of the indictment as it originally stood or materially alter a defense to the indictment as it originally stood in a way that would prejudice the defendant's case, the amendment is permissible

FACTS

After a physical altercation between Abasi Bolden and Diamante Myers, Myers traveled back to Bolden's residence and began firing gunshots. A bullet shattered the window of Addie May Bullock's home, who lived immediately behind Bolden's residence. Myers was indicted and tried for shooting into a dwelling and for aggravated assault with a deadly weapon. After the prosecution rested its case-in-chief, Myers moved for a directed verdict. The trial court denied his motion. In jury instruction S-3, the phrase "into a dwelling house" appeared while "into the dwelling house...that is the home of Addie Bullock" was the language used in the indictment. Myers did not object to jury instruction S-3. The jury found Myers guilty on both charges. Myers appealed.

ISSUE

Whether the decision to grant jury instruction S-3 constituted plain error.

HOLDING

Because the language used in instruction S-3 neither materially altered the essential elements of the offense nor did it alter any defense that Myers possessed, it did not constitute an impermissible constructive amendment to his indictment and was not plain error. Therefore, the Supreme Court affirmed the judgment of the Pearl River County Circuit Court.

Affirmed - 2023-KA-01083-SCT (Nov. 21, 2024)

Opinion by Chief Justice Randolph

Hon. Prentiss Greene Harrell (Pearl River County Circuit Court)

Mollie M. McMillin & George T. Holmes (Pub. Def. Office) for Appellant - Ashley L. Sulser (Att’y Gen. Office) for Appellee

Briefed by [Anne Marie Lundy](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 19, 2024

COURT OF APPEALS - CRIMINAL CASES

ELLZEY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INDICTMENTS - BROAD DATE RANGE - According to URCCC 7.06(5) and Miss. Code Ann. § 99-7-5, a broad date range does not render an indictment insufficient unless the date is of the essence of the offense or the date range fails to fully and fairly inform the defendant of the charges against him

CRIMINAL PROCEDURE - JURORS - ABILITY TO TESTIFY - According to Miss. R. Evid. 606(b)(2), jurors may testify about whether (A) extraneous prejudicial information was improperly brought to the jury’s attention or (B) an outside influence was improperly brought to bear on any juror

EVIDENCE - WITNESS TESTIMONY - PERSONAL KNOWLEDGE - According to Miss. R. Evid. 602, a witness may testify only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter which can be proven based on the witness’s own testimony

EVIDENCE - WITNESS TESTIMONY - STANDARD OF REVIEW - The trial court’s admission of testimony is reviewed for an abuse of discretion and may only be reversed if the admission or exclusion of evidence results in prejudice or adversely affects a substantial right of a party

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - RECORD - If the record on direct appeal is insufficient to address the defendant’s ineffective assistance claims, the court will dismiss the claims without prejudice, preserving the defendant’s right to raise the claims later in a motion for post-conviction relief

FACTS

Lindin Ellzey molested his stepdaughter Mary on numerous occasions from the ages of eight until about twelve. Mary did not tell anyone for years because she claimed Ellzey manipulated her and kept her quiet. The abuse ended in 2013 when Ellzey and Mary’s mom divorced. Ellzey then exercised visitation with Mary’s younger half-sister, Meredith, once a week. After Mary expressed concerns that Meredith was not safe with Ellzey, the Mississippi Department of Human Services (“DHS”) conducted an investigation and concluded that there was no evidence of abuse. In October 2016, Ellzey filed a petition to get custody of Meredith. This upset Mary, and she told her father, Henry, that she wanted to talk about what Ellzey did to her. Tonya Madison, an investigator with the Jones County Sheriff’s Department, learned that Mary had made allegations of sexual abuse. Mary and her mom went to Madison’s office and gave statements to her secretary. Madison reviewed the statements and scheduled a forensic interview for Mary. Daniel Dooley, an interviewer for the South Mississippi Child Advocacy Center, engaged in a forensic interview with Mary in December 2016 which would later be admitted at trial without objection. Investigators arrested Ellzey in January 2017, and the video of his post-arrest interview was played at trial. In June 2017, he was indicted for three counts of fondling. In April 2018, Ellzey’s first trial resulted in a mistrial. His second trial was in June 2022. His main theory at trial was that Mary’s mom caused her to make false allegations to prevent him from getting custody of Meredith. Evidence was introduced that in June 2018, Mary saw Nina McGinnis West for counseling. Ellzey wanted to exclude West as an expert witness, but the trial court held that she could testify properly under the hearsay exception regarding statements made for the purpose of medical diagnosis or treatment. West’s records were admitted into evidence without an objection by Ellzey.

At trial, Henry testified that he did not know if he had mentioned the hunting trip with Mary during the first trial. The trial court found that was a sufficient answer, and Ellzey simply moved on without trying to refresh Henry's memory. Henry also testified that he first learned there may have been issues back in 2014 from Mary's mother which Ellzey objected to for hearsay. The trial court allowed it for the purpose of telling Mary's story about reporting and not for the truth of the matter asserted. Further, Henry testified both on direct and cross examination that Mary must have been scared to death when DHS pulled her out of class. Ellzey objected both times. The trial court sustained the objection on direct but overruled the objection on cross. Henry testified that he did not have any reason to believe Mary would be fabricating allegations or going along with a scheme against Ellzey. Ellzey objected "to that comment" regarding if Mary would go along with a scheme "like defense counsel [was] trying to get the jury to believe[.]" At trial, Madison testified that she had no reason to believe Mary was being forced by her mother to report the allegations. During closing arguments, the State commented on Ellzey's reaction and responses to questions during his post-arrest interview. Defense counsel did not object. The jury found Ellzey guilty on all three counts. Ellzey alleged juror misconduct. A non-juror stated that a juror, Billy Walters, had told her the entire jury wondered why Ellzey did not testify, and that one female juror mentioned she believed that DHS always drops the ball. Ellzey filed a motion for judgment notwithstanding the verdict or a new trial, which was denied. Ellzey appealed.

ISSUES

Whether (1) Ellzey's indictment was defective due to a broad range of dates; (2) the trial court erred by not investigating alleged juror misconduct; (3) the trial court erred by limiting Ellzey's cross-examination and impeachment of the victim's father; (4) the trial court erred by admitting the victim's counseling records; (5) the trial court erred by allowing a forensic interviewer to vouch for the victim's credibility; (6) the trial court erred by admitting a law enforcement officer's "speculative testimony;" (7) the trial court erred by admitting hearsay; (8) the trial court erred by admitting the victim's father's "speculative testimony;" (9) the trial court erred by allowing the victim's father to vouch for her credibility; (10) the State made an improper closing argument; (11) Ellzey's trial counsel provided ineffective assistance; and (12) cumulative errors denied Ellzey a fair trial.

HOLDING

(1) Because the date was not of the essence of the offense, and because the indictment fairly informed Ellzey of the charges against him, Ellzey's indictment was not defective. (2) Because, if Walters had testified that the jury wondered why Ellzey didn't testify, the testimony would not have concerned any extraneous prejudicial information nor been an outside influence on any juror, and because the unnamed juror's statement about DHS's competence did not involve extraneous prejudicial information, the trial court did not err by not further investigating alleged juror misconduct. (3) Because the trial court did not prevent Ellzey from attempting to refresh Henry's recollection or from seeking to impeach Henry with his prior testimony, and because Ellzey made no attempt to introduce the prior testimony, the trial court did not err regarding Ellzey's cross-examination and impeachment of the victim's father. (4) Because Ellzey waived any hearsay objection to West's records by not making a contemporaneous objection, the trial court did not err by admitting the victim's counseling records. (5) Because Ellzey failed to object to Daniel Dooley's testimony at trial, the issue was waived. (6) Because Madison had sufficient personal knowledge to answer the question posed to her, the trial court did not err by admitting her testimony. (7) Because Henry's testimony was not offered for the truth of the matter asserted but rather to offer the complete story of Mary reporting, the trial court did not err by admitting his testimony. (8) Because Ellzey was not prejudiced by Henry's assumption that his daughter was "scared to death," the trial court did not err by admitting his testimony. (9) Because Ellzey failed to object to the first question or Henry's answer, because Ellzey made a non-specific objection without objecting to the rephrased question, and because Henry testified as a fact witness regarding lack of evidence to support Ellzey's allegation that Mary and her mom colluded against him, the trial court did not err by allowing him to vouch for her credibility. (10) Because Ellzey did not object to alleged improper statements, and because the State commented on post-arrest responses and not the constitutional right to not testify, the State did not make an improper closing argument. (11) Because the record was insufficient to address all of Ellzey's ineffective assistance claims, the claims were dismissed without prejudice. (12) Because Ellzey identified at most one harmless error, the cumulative-error doctrine was inapplicable. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

SPECIAL CONCURRENCE

Judge McCarty agreed that Ellzey's convictions and sentences should be affirmed but argued that precedent repeatedly stressed the importance of being specific about indictments and the date ranges within them. He disagreed with the majority's focus on criminal procedure rules and instead argued that analyzing the sufficiency of an indictment should look at whether the indictment prejudices the defendant. He further disagreed with the majority's statement that Ellzey failed to show the State could have reasonably narrowed the alleged date range because precedent showed that was the State's job, not Ellzey's job.

Affirmed - 2022-KA-00797-COA (Nov. 19, 2024)

Opinion by Presiding Judge Wilson - Special Concurrence by Judge McCarty

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

Graham Patrick Carner for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Natalie Xan](#)

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

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SMITH V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

EVIDENCE - WITNESSES - CREDIBILITY - It is within the province of the jury to evaluate the credibility and veracity of witnesses in which they may believe or disbelieve, accept or reject the utterances of any witness; when evidence or testimony conflicts, the jury is the sole judge of the weight and worth of evidence and witness credibility

FACTS

Cynthia Doss alerted the police that her ex-boyfriend, Leroy Smith Jr., had broken into her home. Doss and her then-boyfriend, Horace Simmons, filed signed affidavits against Smith alleging simple assault. Smith pled guilty to the simple assault charges at the preliminary hearing. A grand jury indicted Smith for burglary of a dwelling and possession of a weapon as a felon. The indictment included a firearm enhancement and charged Smith as a habitual offender. At trial, the State first called Deputy Robert Smith as a witness. Smith testified that he responded to the burglary and assault at Doss's house. Upon his arrival, he spoke to Doss and Simmons, who both stated that someone had broken into their home and assaulted them, leaving bruises on Doss's arm and deep lacerations on Simmons's head. During his investigation, Smith noted that it appeared that someone had used something to pry into the kitchen door to gain access and that similar damage was found on the bedroom door. According to Smith, the bedroom itself was very disheveled looking, with articles of clothing strewn about and blood on the floor near the bed. After completing his investigation, Smith alerted other authorities of the possible characteristics of the suspect. At that point, he received another call from dispatch, stating that Doss had found another item in the bedding. Smith returned to the scene in which Doss provided him with a 9mm pistol magazine and bullets. The State then called Doss to the stand. She testified that she and Smith had dated for six months, he had never moved his belongings into her home, and he did not have a key. After breaking up with Smith, Doss stated that he kept coming back to her home and pried the back door open to gain access on one occasion. On the night of the incident, Doss stated that she and Simmons were lying in bed when Smith broke into the home and entered her bedroom. At that point, he jumped on the bed and grabbed Doss before wrestling with Simmons over the gun. Eventually, Smith grew tired and ran out the already-open back door. Doss alerted the authorities and began cleaning the scene, at which point she found the magazine clip. The State also called Simmons, who stated that Smith broke into the bedroom and struck him with an object that he could not see because the lights were off, but knew was a pistol. The State concluded by calling Investigator Dewayne Whetstone to the stand. Whetstone testified that Smith pled guilty to both Doss's and Simmons's simple assault affidavits at the preliminary hearing. After the State rested, the defense began presenting Smith's case by calling Lorenzo Rogers to the stand. Rogers, who had known Smith

for fifteen years, stated that Smith was living with Doss at the time of the incident. Next, the defense called Smith's sister, Nancy Coleman, to the stand. Coleman also testified that Smith had been living with Doss and that she had never seen Smith with a gun. Finally, Smith testified. He stated that he and Doss had been together for a while and that, on the night in question, he "lost it" when he saw Simmons because Doss was his fiancée at the time. Smith said he never had a gun, but he was wearing jewelry that was the cause of the injuries he inflicted. After the defense rested its case, the jury found Smith guilty of both counts. The trial court denied Smith's post-trial motion challenging the weight of the evidence. Smith appealed.

ISSUE

Whether the jury's guilty verdicts for both the burglary of a dwelling charge and possession of a weapon as a felon charge were against the overwhelming weight of the evidence.

HOLDING

Because the jury was entrusted to determine the credibility and veracity of the witnesses and the value of their testimony after hearing two different narratives about Smith's altercation with Doss and Simmons, and because a factual conclusion was not the Court's to reverse when supported by the evidence, the jury's guilty verdicts for both the burglary of a dwelling charge and possession of a weapon as a felon charge were not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Franklin County Circuit Court.

Affirmed - 2023-KA-00703-COA (Nov. 19, 2024)

Opinion by Judge Lawrence

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

George T. Holmes & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

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

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

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