

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 17, 2024***SUPREME COURT - CIVIL CASES*****SCARBOROUGH V. LOGAN****CIVIL - PERSONAL INJURY**

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Pursuant to Miss. R. Evid. 702, a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue

EVIDENCE - ADMISSIBILITY - EXPERT OPINION TESTIMONY - Before providing expert opinion testimony, a witness must be qualified, tendered, and accepted as an expert witness under Miss. R. Evid. 702

CIVIL PROCEDURE - JURY INSTRUCTIONS - PRESUMPTION - It is presumed that jurors follow the instructions of the court, and to presume otherwise would be to render the jury system inoperable

FACTS

Jason Scarborough, an officer with the Pearl Police Department, sustained injuries from an on-duty car accident with Wanda Logan in 2016. Scarborough was responding to an active burglary and home invasion call when the accident occurred. Scarborough was driving at increased speeds through a residential area with his lights on but the sirens off. Prior to the accident, he saw Logan's car sitting at an intersection before pulling out in front of the patrol car at a slow rate of speed. Scarborough attempted to avoid the collision but was unsuccessful. In 2017, Scarborough brought suit against Logan requesting damages of just over three million dollars. At trial, Scarborough sought to introduce the deposition of Shane Remy as an expert witness in accident reconstruction. In the deposition, Remy explained the ways in which Logan could have avoided the accident. At no point in his deposition did Remy offer any testimony about his credentials, knowledge, skill, training or educational background that would indicate his expertise in the field of accident reconstruction, nor was he ever asked to give such information. Remy's deposition was the only evidence regarding Logan's fault in the accident, other than Scarborough's testimony, that was presented at trial. Despite Logan's objection that Remy had not been qualified or tendered as an expert witness in the deposition, the trial court allowed it to be read to the jury. The jury then returned a verdict finding Scarborough 60 percent at fault and Logan 40 percent at fault, awarding Scarborough \$1.2 million, almost exactly 40 percent of the total damages he requested. The award was reduced by the trial court to \$480,000 to reflect the percentage of Scarborough's fault. Scarborough then filed a motion to alter or amend the judgment arguing that the trial court erred by reducing the jury's award because the jury had already reduced the award based on his apportioned percentage of fault. The motion was denied. Scarborough appealed, and Logan cross appealed.

ISSUES

Whether the trial court (1) erred by allowing the deposition testimony of Remy and (2) abused its discretion by reducing the jury award.

HOLDING

(1) Because there was not an affidavit from Remy or a CV listing his qualifications in the record, and because his deposition testimony did not contain any discussion of his qualifications as an expert witness, the trial court abused its discretion by allowing the deposition testimony of Remy. (2) Because of the clear language directing the jury to reduce the award, and because the jury's award was almost exactly 40 percent of the requested amount of damages, the trial

court abused its discretion by further reducing the award in the final judgment. Therefore, the Supreme Court reversed and remanded the judgment of the Rankin County Circuit Court.

On Direct Appeal: Dismissed as Moot. On Cross-Appeal: Reversed & Remanded - 2022-CA-00965-SCT (Oct. 17, 2024)

Opinion by Justice Chamberlin

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Keith D. Obert, Willie T. Abston, William F. Brown, & Joseph W. McDowell for Appellants - R. Douglas Vaughn, Phillip M. Lemere, & Peyton M. Pope for Appellee

Consolidated with:

On Direct Appeal: Dismissed as Moot. On Cross-Appeal: Reversed & Remanded - 2023-CA-00720-SCT (Oct. 17, 2024)

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Keith D. Obert, Willie T. Abston, & William F. Brown for Appellant - R. Douglas Vaughn, Phillip M. Lemere, & Peyton M. Pope for Appellee

Briefed by [Aubrey Cagle](#)

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

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SLAUGHTER V. CITY OF CANTON

CIVIL - OTHER

CIVIL PROCEDURE - APPEALS - MANDATES - A mandate is the official notice of action of the appellate court, directed to the court below, advising that court of the action taken by the appellate court, and directing the lower court to have the appellate court's judgment duly recognized, obeyed, and executed

CIVIL PROCEDURE - APPEALS - JURISDICTION - When an appellate court renders judgment on a case, the lower court no longer has jurisdiction to hear additional issues on the matter

FACTS

L.C. Slaughter and Isiac Jackson were once commissioners of the Canton Municipal Utilities Commission ("CMUC"). The City of Canton Board of Aldermen ("Board") removed Slaughter and Jackson from their positions. Slaughter and Jackson appealed the removal to the Madison County Circuit Court, asserting that the removal was illegal and a violation of their due process rights. The trial court ruled that the removal of Slaughter and Jackson was void as a matter of law and reinstated Slaughter and Jackson as commissioners. The Board appealed to the Mississippi Supreme Court. The Supreme Court affirmed the reinstatement, stating that the Board's removal was improper due to an absence of notice and lack of opportunity for Slaughter and Jackson to be heard prior to removal. Slaughter and Jackson then filed a petition in the trial court under the same cause number for back pay that the Board illegally withheld from them. In response, the Board argued that motion should have been denied because the City did not exercise control over the pay of CMUC commissioners, and back pay was not asserted by Slaughter and Jackson in the original filing nor was it awarded. The trial court ruled that Slaughter and Jackson were not entitled to back pay and denied the petition for the reasons put forth by the Board. Slaughter and Jackson appealed.

ISSUE

Whether the trial court had jurisdiction to consider Slaughter and Jackson's petition for back pay.

HOLDING

Because the Supreme Court did not remand any issues to the trial court and affirmed the trial court's reinstatement, the trial court never regained jurisdiction to consider Slaughter and Jackson's petition for back pay. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2023-CA-01102-SCT (Oct. 17, 2024)

Opinion by Justice Griffis

Hon. M. Bradley Mills (Madison County Circuit Court)

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STRIBLING EQUIP., LLC V. EASON PROPANE, LLC

CIVIL - CONTRACT

CIVIL PROCEDURE - AWARDS - REMITTITUR - The question of whether a jury award is excessive must be addressed on a case-by-case basis; in reviewing a jury's award of damages, after the trial court has refused to grant a new trial on the question of damages, the question then becomes whether the verdict was either so excessive or inadequate as to shock the conscience

CIVIL PROCEDURE - AWARDS - DAMAGES - Generally, if there is any remaining value to the damaged property in question, the measure of damages is the difference in the value immediately before the casualty or loss and the value immediately after the damage or injury to the property

CIVIL PROCEDURE - JURY VERDICT - DAMAGES - A damage award may be altered or amended only when it is so excessive that it evinces passion, bias, and prejudice on the part of the jury so as to shock the conscience

FACTS

Eason Propane, LLC ("Eason") purchased a brand new 2016 Freightliner S2G propane-powered delivery truck for \$145,650.57 in 2016. In December 2016, the Freightliner signaled an issue with the coolant system, and Eason took the truck to an authorized dealer, Empire Truck Sales ("Empire"). Empire, in turn, contacted the manufacturer for repair instructions. Although the repairs were estimated to take only a few days, Empire kept the Freightliner for several weeks. During the repair process, Empire admittedly skipped a step, and a fire occurred when the truck was turned on, which caused damage to both the truck's wire harness and electrical system. Empire did not immediately notify Eason of the fire, and Eason's proprietor first learned about the damage after visiting Empire in January 2017. Empire continuously made promises to repair the Freightliner. Eason expressed exasperation with Empire for either having to continually tow the 2016 Freightliner to Empire or having to try to repair the truck itself. As a result, Eason was limited to servicing a forty-mile radius, as opposed to the typical seventy-mile radius before the damage to the truck occurred, which led to lost business. While Eason had other trucks, none were equipped like the 2016 Freightliner to service the expanded area. Eason also had to turn away requests for propane due to delays in completing service calls within the limited forty-mile area. Eason eventually purchased two new trucks, each creating \$20,000 in profit per year. Eason also bought a 1999 model propane truck with 500,000 miles on it to supplant the 2016 Freightliner temporarily. In May 2018, Eason Propane sued Empire. In April 2020, Empire informed Eason it would no longer work on the truck, prompting Eason to amend its complaint in September 2020 to raise multiple causes of action. By the time of trial, the 2016 Freightliner had 129,000 miles on it. It had logged 90,000 miles for Eason, rather than the average 40,000-60,000 miles per year, and had delivered 1.8 million gallons of propane as opposed to the expected 5 million gallons. More than a year before trial, Eason stopped using the 2016 Freightliner altogether. It transferred the propane tank and propane-pumping equipment onto a new 2022 Freightliner. At trial, Eason's experts testified that the fire had caused heat damage to the wire harness system, which had never been replaced, attributing the truck's extensive recurring problems to the burned electrical system. They also testified that the chassis had zero remaining value after the fire. Eason's tax returns further supported the claim that a fully functioning new propane-powered truck would have increased net profits by \$20,000 per year. The tax returns showed a decline in profits from 2016 to 2017 after the fire, flatlining from 2017 to 2019, and then increasing by \$20,000 per year from 2019 to 2021 when Eason added new trucks. The jury found Empire liable and awarded Eason \$263,443.39, including \$112,689.46 for the diminution in value of the truck and \$120,000 for lost profits. Empire moved for a new trial on damages only, or alternatively, a remittitur in the amount of damages awarded, arguing that the damages awarded were excessive. The trial court denied the motion. Empire appealed.

ISSUES

Whether the trial court abused its discretion by denying a new damages trial and/or remittitur after the jury awarded Eason (1) a \$112,689.46 diminution in value award for the truck; and (2) a \$120,000 lost-profits award.

HOLDING

(1) Because the jury's decision that the chassis had zero trade-in value immediately after the fire was neither against the overwhelming weight of the evidence nor demonstrated bias or passion on the jury's part, the trial court did not err in allowing the jury's award on the truck's diminution in value to stand. (2) Because witness testimony provided a reasonable basis for the jury's award, the trial court did not err in allowing the jury's award of all lost profits claimed to stand. Therefore, the Supreme Court affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2023-CA-00862-SCT (Oct. 17, 2024)

Opinion by Justice Maxwell

Hon. Brad Ashley Touchstone (Lamar County Circuit Court)

Edward C. Taylor & Katie Ryan Van Camp for Appellants - Seth Magill Hunter for Appellee

Briefed by [Taylor Dorenkott](#)

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

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SUPREME COURT - CRIMINAL CASES

VIVIAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEAL - 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

The Carthage Police Department responded to a complaint from a local pizza restaurant. Once there, the officers approached the vehicle described in the complaint and smelled marijuana. Benjamin Vivian and another person were in the vehicle. After arresting and searching Vivian, the officers found 0.325 grams of marijuana and 2.246 grams of methamphetamine in Vivian's socks. Although Vivian testified that the drugs were placed on him by the police, the jury convicted Vivian on both possession counts. The trial court denied Vivian's post-trial motions. Vivian appealed.

ISSUE

Whether Vivian's convictions presented any arguable issues for appeal.

HOLDING

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Vivian never filed the granted supplemental pro se brief, there was legally sufficient evidence to uphold Vivian's possession convictions. Therefore, the Supreme Court affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2023-KA-00338-SCT (Oct. 17, 2024)

Opinion by Presiding Justice Kitchens

Hon. Mark Sheldon Duncan (Leake County Circuit Court)

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

MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 15, 2024
COURT OF APPEALS - CIVIL CASES

CHAPMAN V. CHAPMAN

CIVIL - DOMESTIC RELATIONS

DIVORCE - EQUITABLE DISTRIBUTION - CHILD SUPPORT - Under Miss. Code Ann. § 43-19-101, the non-custodial parent's monthly gross income must be determined to evaluate the proper amount that can be awarded for child support, taking into account present circumstances and historical earnings

DIVORCE - CHILD SUPPORT - PROCEEDINGS - Because the chancery court has special knowledge of the actual circumstances surrounding parties in a child support proceeding, a departure from child support guidelines is permissible when the chancery court makes a written finding on the record that the application of the guidelines would be unjust or inappropriate

DIVORCE - EQUITABLE DISTRIBUTION - MARITAL PROPERTY - When dividing marital property in a divorce action, chancery courts are directed to (1) classify the parties' assets as marital or nonmarital, (2) determine the value of those assets, (3) divide the marital estate equitably based on the *Ferguson* factors, and (4) consider the appropriateness of alimony if either party is left with a deficiency

DIVORCE - EQUITABLE DISTRIBUTION - MARITAL PROPERTY - Property that is clearly obtained by one spouse through gift or inheritance is nonmarital property not subject to equitable distribution

FACTS

Julie and Billy Chapman had been married since 2005 and had two children. During their marriage, Billy worked as a pipe fitter and a combo welder. Billy held a series of short-term jobs and did not maintain steady employment. The two separated in 2021, after which Julie filed a complaint for divorce, and Billy responded with an answer and countercomplaint. In December 2022, the two filed a consent to divorce on the basis of irreconcilable differences and stipulations of issues to be decided by the court. Before trial, Billy submitted his Rule 8.05 financial statement, which showed his "net monthly pay" of \$6,939.73 for a single month. The case proceeded to trial for the chancery court to decide the amount of child support and the equitable distribution of the marital property. During the trial, Billy testified that his hourly rate differed across a span of seven different jobs that he held in 2022, resulting in fluctuations in income and periods of unemployment. He explained that his financial statement did not fully reflect his typical earning pattern. The record reflected that Billy's gross income for 2022 was approximately \$58,875.45, while his adjusted gross income was about \$44,303.51. Furthermore, both parties testified about a ski boat in their possession. The parties acknowledged that Billy's parents bought the boat and that Billy and Julie were supposed to make payments when they could but failed to do so. There was also no testimony that the boat was a gift. The chancery court entered a final judgment granting the divorce and deciding the remaining issues. While acknowledging Billy's extensive employment history varied in pay and duration, the chancery court did not explicitly calculate Billy's annual earnings for these jobs, nor did it use his gross or adjusted gross income for the final child support determinations. Based solely on Billy's Rule 8.05 financial statement, the chancery court found that, according to the statutory guidelines for two children, twenty percent of the monthly gross income of \$6,939.73 would amount to \$1,388 per month. The court ordered that Billy pay \$1,350 in child support plus \$400 for the children to remain in private school, including half of any other school fees, since the parties had previously agreed for the children to stay at their current school. The calculation also accounted for a per diem of \$1,827 that Billy received while working as a welder for one industry. Furthermore, the chancery court listed all the parties' personal property assets and found that Billy's interest was \$15,775 greater than Julie's interest, so it ordered Billy to pay Julie \$438.19 per month for thirty-six months to make the division of assets equal. Aggrieved, Billy filed a motion

to reconsider, alter, or amend the final judgment. In May 2023, the court heard Billy’s motion and made a few adjustments to the order, including readjusting the parties’ equitable interests and finding that Julie actually had \$20,601.64 more in assets than Billy. However, the chancery court did not require Julie to pay Billy half of the equity because the court believed Billy’s earning potential was greater than what he had made. Finally, the chancery court classified the ski boat as marital property, subject to equitable distribution. Billy appealed.

ISSUES

Whether (1) the chancery court erred as to the amount of child support that Billy was ordered to pay Julie; (2) the chancery court erred in equitably dividing marital property.

HOLDING

(1) Because the chancery court calculated Billy’s adjusted gross income by relying on a single month of net pay, failed to consider income fluctuations or use income averaging, included per diem payments in the income calculation, and did not provide written justification for deviating from statutory child support guidelines, the chancery court erred as to the amount of child support that Billy was ordered to pay Julie. (2) Because the court considered the boat marital property without considering associated debt or treating the boat as a potential gift, the chancery court erred in equitably dividing the marital property. Therefore, the Court of Appeals reversed and remanded the judgment of the Amite County Chancery Court.

Reversed & Remanded - 2023-CA-00615-COA (Oct. 15, 2024)

Opinion by Judge Emfinger

Hon. Wayne Smith (Amite County Chancery Court)

William E. Goodwin for Appellant - Tyler Bo Shandy for Appellee

Briefed by [Natori Weathersby](#)

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

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EASON V. SOUTH CENT. REG’L MED. CTR.

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - Dismissals with prejudice for failure to prosecute require a showing of a clear record of delay or contumacious conduct by the plaintiff, where lesser sanctions would not serve the best interests of justice

CIVIL PROCEDURE - DISCOVERY - MOTION PRACTICE - It is the movant’s burden to ensure that a motion to compel discovery is heard and ruled upon by the trial court; filing the motion is insufficient on its own

CIVIL PROCEDURE - JUDICIAL DISCRETION - DISMISSAL - Pursuant to Miss. R. Civ. P. 41(b), for failure of the plaintiff to prosecute, a defendant may move for dismissal of an action or of any claim against him

FACTS

In February 2019, John Thomas Eason filed a medical negligence and wrongful death complaint against South Central Regional Medical Center (“South Central”). Eason alleged that negligent care was provided to his father at South Central’s nursing facility when they transferred him to Comfort Care Nursing Center (“Comfort Care”), which was operated by South Central, where his condition declined. After his father was transferred back to South Central, he died that same day in September 2017. Eason alleged that his father’s death was caused by the alleged failure of the staff at Comfort Care to provide his father with minimally adequate care. In June 2019, Eason served South Central with the summons and complaint. In July 2019, South Central responded and later served Eason with discovery requests in August 2019, but Eason failed to respond. In March 2020, a national emergency was declared due to the outbreak of COVID-19, and the Supreme Court issued an order that provided that all state courts will remain open for business to fulfill their constitutional and statutory duties. In April 2020, counsel for South Central sent a good-faith letter to Eason’s counsel stating that they had not received responses to the discovery request and asked for the responses by May 2020.

South Central's counsel stated that if Eason's counsel needed more time, they would work with him. In August 2020, Eason's original attorney withdrew from representation, citing health risks related to the pandemic. Eason secured new counsel in October 2020. Again, in March 2021, South Central's counsel sent a good-faith letter to Eason's new counsel asking for the discovery responses. In August 2021, South Central filed a motion to dismiss for failure to prosecute, citing more than two years of inactivity, unanswered discovery, and a failure to move the case forward. Ten days after South Central's motion, Eason filed a notice of service of discovery and a response to the dismissal motion, stating that it was not proper for several reasons, including the withdrawal of his original attorney, the COVID-19 pandemic, and a lack of recollection of the March 2021 letter. In January 2022, the trial court held a hearing on South Central's motion, and their motion was granted. The trial court had another hearing in January 2023 on Eason's motion to alter the judgment, and Eason's motion was denied. Eason appealed.

ISSUES

Whether the trial court erred in its (1) analysis of South Central's Motion to Dismiss for Failure to Prosecute pursuant to Miss. R. Civ. P. 41(b) and (2) dismissal of Eason's lawsuit pursuant to Miss. R. Civ. P. 41(b) based on a clear record of delay, lesser sanctions, actual prejudice, and aggravating factors.

HOLDING

(1) Because the trial court dismissed Eason's lawsuits based upon its consideration of the entire record, the arguments of the parties, and Miss. R. Civ. P. 41(b) case precedent, the trial court did not err in its analysis of South Central's Motion to Dismiss for Failure to Prosecute pursuant to Miss. R. Civ. P. 41(b). (2) Because Eason failed to prosecute the case for more than two years, because the trial court found that the delays were not sufficiently justified by the explanations provided, and because the trial court carefully considered the "lesser sanctions" factor to determine it did not suffice, the trial court did not err in its dismissal of Eason's lawsuit pursuant to Miss. R. Civ. P. 41(b) based on a clear record of delay, lesser sanctions, actual prejudice, and aggravating factors. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

DISSENT

Judge Lawrence argued that the trial court should have applied Miss. R. Civ. P. 37, which addressed discovery sanctions, rather than Miss. R. Civ. P. 41(b) for failure to prosecute. He reasoned that the central issue was Eason's failure to respond to discovery requests, and before dismissing the case, the court should have first considered imposing lesser sanctions as permitted under Miss. R. Civ. P. 37. Judge Lawrence further contended that dismissal was too harsh a remedy in light of the explanations provided by Eason, including the impact of the COVID-19 pandemic and the withdrawal of his original counsel. Therefore, he would have reversed and remanded for further proceedings.

Affirmed - 2023-CA-00261-COA (Oct. 15, 2024)

Opinion by Presiding Judge Carlton - Dissent by Judge Lawrence

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

Robert C. Williamson Jr. & Douglas Lamont Tynes Jr. for Appellant - Richard O. Burson & Peeler Grayson Lacey Jr. for Appellee

Briefed by [Andrew Moyer](#)

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

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WORD V. U.S. BANK

CIVIL - REAL PROPERTY

PROPERTY - EASEMENTS - IMPLIED GRANT OF RIGHT-OF-WAY - One who sells a parcel of land to another which is wholly surrounded by the other lands of the seller, impliedly grants a right-of-way to the interior lot so sold over the exterior lands retained; when one sells interior lands surrounded in part by other lands of the seller and in part by the lands of strangers, the implied grant of a way to the interior land exists over the exterior lands of the seller

PROPERTY - EASEMENT BY NECESSITY - ALTERNATIVE ROUTES - Where alternative routes exist, the easement should be granted over the neighboring landowner's property if it is the only reasonable necessary alternative available; if an alternative route exists, the proponent must provide specific evidence of the expenses involved in obtaining access to its parcel by alternative routes

PROPERTY - EASEMENT BY NECESSITY - EVIDENCE OF EXPENSES - If an alternate route exists, the proponent must provide specific evidence of the expenses involved in obtaining access to its parcel by alternative routes; courts should deny a request for an easement where the proponents of the easement failed to present any supporting proof in the record regarding the costs of alternative routes of access to their property

FACTS

William Word and U.S. Bank owned adjoining parcels of land that were once part of the same larger tract of land owned by Zeno Griffin. The parcel Word owned was severed from the larger tract by deed from Griffin in 1996, and the parcel U.S. Bank owned was severed from the larger tract by deed from Griffin in 1997. When U.S. Bank's parcel was severed from the larger tract, it became landlocked with no direct access to the nearby highway. Word purchased his parcel in 2016, and U.S. Bank acquired its parcel in 2019 through foreclosure. The larger land tract from which the parties' parcels were severed still surrounded the two parcels. Word's parcel separated U.S. Bank's parcel from the highway. Prior to both parties' ownership of their respective parcels, an unrecorded right-of-way existed across Word's parcel that provided highway access to U.S. Bank's parcel and was used by previous owners. Before U.S. Bank acquired its parcel, Word barricaded the right-of-way, and the previous owners of U.S. Bank's parcel used another route over the surrounding property. After acquiring this parcel, U.S. Bank filed a complaint seeking that the blocked right-of-way through Word's parcel be established as an easement by necessity. Word argued that U.S. Bank should extend the alternate route to provide access to U.S. Bank's parcel, which would be less intrusive than granting an easement by necessity across Word's land. U.S. Bank objected to this proposed solution due to the additional expenses to make the alternate route usable. However, it did not provide any evidence of specific costs associated with using this route. After an inspection, the chancery court found that the alternate route could potentially damage normal vehicles. The chancery court granted U.S. Bank's request for the easement. Word appealed.

ISSUES

Whether U.S. Bank (1) was entitled to an easement by necessity over Word's parcel and (2) presented sufficient evidence regarding the costs of using an available alternative route to access its property.

HOLDING

(1) Because Griffin had already conveyed Word's predecessor his parcel before granting the parcel to U.S. Bank's predecessor, Word's parcel was not part of the "exterior lands of the seller," and U.S. Bank had no right to an easement by necessity over Word's parcel. (2) Because U.S. Bank failed to provide any specific evidence of the expenses involved in obtaining access to its parcel by alternative routes, it did not present sufficient evidence regarding the costs of using an alternative route. Therefore, the Court of Appeals reversed and rendered the judgment of the Perry County Chancery Court.

Reversed & Rendered - 2023-CA-00160-COA (Oct. 15, 2024)

Opinion by Judge Smith

Hon. Michael Chadwick Smith (Perry County Chancery Court)

Chester Barron McSwain for Appellant - Beth Usry & Steven Price Nixon for Appellee

Briefed by [Anne Marie Lundy](#)

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

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COURT OF APPEALS - CRIMINAL CASES

CAUTHEN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - To be entitled to a lesser-included offense instruction, there must be an evidentiary basis in the record to support the instruction

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - TOTAL INNOCENCE DEFENSE - If a defendant's theory of defense is that he is not guilty of any crime at all, there must be evidence to support a middle ground between his theory of defense and a basis for a lesser-included offense instruction

FACTS

In February 2022, Samantha Bowling arrived at her office located on the campus of Jackson Preparatory School ("Prep") and noticed that her desk chair and the safe located underneath her desk were missing. The Flowood Police Department traced the stolen items to Kyle Cauthen. After obtaining a search warrant and an arrest warrant, Investigator Donald McBee went to the home and discovered Cauthen sitting in the car with the license plate that matched one from Prep's surveillance footage the night of the break-in. During the jury instruction conference, Cauthen's attorney requested a lesser-included offense on trespass. The trial court refused the proposed trespass instruction and explained that it found no foundation in the evidence to support that Cauthen was trespassing only. Instead, the trial court found that whoever committed the burglary at Prep acted in a way that could be considered breaking and entering with intent to commit a crime once inside the building. The trial court noted that Cauthen provided no viable alternative of why he would be inside Prep or that he was even inside Prep. The trial court also noted that as it understood Cauthen's defense, Cauthen asserted that he committed no crime at all and that he was misidentified as the person at Prep at the time of the burglary. For those reasons, the trial court concluded that the evidence failed to support a lesser-included offense instruction, and the court refused Cauthen's proposed jury instruction on trespass. The jury found Cauthen guilty of non-residential burglary. The trial court sentenced Cauthen to serve seven years in the custody of the Mississippi Department of Corrections. Cauthen appealed.

ISSUE

Whether the trial court erred in refusing to instruct the jury on the lesser-included offense of trespass.

HOLDING

Because Cauthen presented no evidence of a middle ground between his total innocence defense and a basis to instruct the jury on trespass, and because the support for a trespass instruction was merely speculative rather than based in evidence, the trial court did not err in refusing to instruct the jury on the lesser-included offense of trespass. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2023-KA-00589-COA (Oct. 15, 2024)

En Banc Opinion by Judge Smith

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

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Lauren Bowlin](#)

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

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RANDALL V. STATE

CRIMINAL - FELONY

EVIDENCE - PRESERVATION FOR APPEAL - DEFINITIVE RULING - A party asserting error must obtain a definitive on-the-record ruling in order to preserve the issue for appeal

EVIDENCE - PRESERVATION FOR APPEAL - OFFER OF PROOF - When a party seeks to offer evidence on appeal which has been excluded by the trial court, the party must place the nature and substance of the proffered evidence into the record for consideration

CRIMINAL PROCEDURE - SENTENCING - FIREARM ENHANCEMENT - Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any person who uses or displays a firearm during the commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of imprisonment in the custody of the Department of Corrections of five (5) years; where a jury finds that the defendant used a firearm to commit multiple eligible felonies, the trial court shall add five years to the sentence for each such felony

FACTS

Christopher Randall was charged and tried for aggravated assault for shooting his ex-girlfriend, Larhonda Ware, and first-degree murder for the death of Ware's friend, Christopher White. Prior to trial, the State moved to exclude any evidence of White's postmortem toxicology report which the State acknowledged "showed the presence of recreational drugs" in White's system at the time of his death. The State argued that the report was irrelevant and prejudicial unless Randall asserted a claim of self-defense and alleged that White was the initial aggressor. After hearing arguments at a pretrial hearing, the trial court initially indicated that it would not allow the toxicology report into evidence. However, Randall requested that the trial court defer its ruling on the admissibility of the report until he established a self-defense claim, and the State indicated its agreeability to the request. Just before the trial began, the trial court made a comment in passing that it had "made a ruling" about the toxicology report before moving forward with other matters. Randall never obtained a definitive ruling on the admissibility of the toxicology report and made no attempt to introduce the report at trial. Following a jury trial, Randall was convicted and sentenced to a term of life for the first-degree murder of White, twenty years for the aggravated assault of Ware, and an additional five years under the statutory firearm enhancement. Randall appealed.

ISSUES

Whether the trial court erred by (1) excluding evidence of White's postmortem toxicology results, and (2) applying the firearm enhancement to impose an additional five-year sentence upon Randall.

HOLDING

(1) Because Randall failed to obtain a definitive ruling on the admissibility of the toxicology report and further failed to make an adequate proffer of the report at trial, the issue was procedurally barred on appeal. (2) Because the existence of "a greater minimum sentence" for one felony offense did not preclude the enhancement's application to other offenses committed using a firearm, the trial court properly applied the firearm enhancement to Randall's aggravated assault conviction. Therefore, the Court of Appeals affirmed the judgment of the Adams County Circuit Court.

Affirmed - 2023-KA-00587-COA (Oct. 15, 2024)

Opinion by Presiding Judge Wilson

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

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

Briefed by [Amber Meeks](#)

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

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