

**MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 26, 2019****SUPREME COURT - CIVIL CASES****FERGUSON V. MISS. DEPT. OF PUB. SAFETY****CIVIL - OTHER**

**EXPUNGEMENT - SEX OFFENSES - MISS. CODE ANN. § 43-33-55** - Miss. Code Ann. § 43-33-55 exempts sex offenses from being expunged to the extent that such information is authorized for dissemination. Because of this, defendants that are convicted of sexual offenses are required to register as sex offenders despite their conviction being expunged

**FACTS**

Chelsey Ferguson pled guilty to a misdemeanor offense of disseminating sexually oriented material to a minor. Due to the conviction, Ferguson had to register as a sex offender. Five years following her conviction, Ferguson filed a successful expungement petition that allowed her to no longer be required to register as a sex offender. However, the Mississippi Department of Public Safety (“MPDS”) refused to relieve Ferguson of her duty to register as a sex offender. Ferguson filed a complaint against MPDS seeking to be relieved from being required to register as a sex offender. The circuit court denied her request. The Court of Appeals reversed the circuit court’s decision and held that the circuit court erred by holding that Ferguson still had to register as a sex offender despite her expungement. MPDS appealed.

**ISSUE**

Whether the Court of Appeals erred by holding that Ferguson no longer had to register as a sex offender despite her expungement.

**HOLDING**

Because Ferguson was convicted of a sexual offense, and because Miss. Code Ann. § 45-33-55 exempts sex offenses from orders of expungement to the extent that such information is authorized for dissemination, the Court of Appeals erred by holding that Ferguson no longer had to register as a sex offender despite her expungement.

**DISSENT**

Presiding Justice Kitchens argued that Ferguson should not have to register as a sex offender. He argued that once Ferguson’s conviction was expunged, she returned to pre-conviction status and should be relieved of her duty to register.

**The judgment of the Court of Appeals is reversed, and the judgment of the Warren County Circuit Court is reinstated & affirmed - 2017-CT-00912-SCT (Sept. 26, 2019)**

Opinion by Justice Chamberlin - Dissent by Justice Kitchens

Hon. Isadore W. Patrick, Jr. (Warren County Circuit Court)

Paul E. Rogers for Appellant - Lora E. Hunter & Anthony L. Schmidt for Appellee

Briefed by [Matthew Russ](#)

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**JONES V. CITY OF CANTON**

## CIVIL - STATE BOARDS & AGENCIES

**MUNICIPAL CORPORATIONS - PUBLIC EMPLOYMENT - REMOVAL** - Miss. Const. art. VI, § 175 provides that “all public officers, for willful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and, upon conviction, shall be removed from office, and otherwise punished as may be prescribed by law”

**MUNICIPAL CORPORATIONS - APPEAL - STANDARD OF REVIEW** - A decision will be overturned only if the decision (1) was beyond its scope or power; (2) violated the constitutional or statutory rights of the aggrieved party; (3) was not supported by substantial evidence; or (4) was arbitrary or capricious

### FACTS

Walter Jones served as a trustee of the Canton Public School District (“CPSD”) before William Truly, the mayor of the City of Canton (“the City”), and the Board of Alderman (“the Board”) removed him from the position. The Board appointed Jones as the trustee under Miss. Code Ann. § 37-7-203, which gave him a five-year term. During a meeting of the governing bodies, Mayor Truly and the Board discussed the state of CPSD and determined that Jones should be removed as a trustee for unwillingness to serve and unwillingness to keep the City abreast of what was going on in the school system. The majority of the Board voted in favor of Jones’s removal, and the mayor so ordered. The authority used to make this decision was not recorded in the minutes for the meeting, but Canton, Miss., Code § 2-55 states that the Board shall remove “[e]very officer or employee who shall refuse or willfully neglect to perform the duties imposed upon him by law, this Code or ordinance . . . or for any satisfactory cause.” Jones filed a bill of exceptions in the Madison County Circuit Court where they upheld the Board’s decision to remove Jones. Jones appealed.

### ISSUES

Whether (1) the Board had the legal authority to remove Jones and (2) the circuit court committed reversible error by affirming.

### HOLDING

(1) Because Canton, Miss., Code § 2-55, the ordinance on which the Board based their authority to remove Jones, violated Miss. Const. art. 6, § 175, and there was little evidence that Jones was given due process, the Board did not possess the authority to remove Jones. (2) Because the decision of the governing authority of the municipality was beyond its scope or power, the decision can be overturned despite the limited review given to these decisions. Therefore, the Supreme Court reversed the judgment of the Madison County Circuit Court.

### Reversed & Rendered - 2018-CC-00932-SCT (Sept. 26, 2019)

Opinion by Justice Griffis

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

John W. Christopher for Appellant - Pieter Teeuwissen & Kimberly Banks for Appellees

Briefed by [Liza Linginfelter](#)

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## JOURDAN RIVER ESTATES, LLC. v. FAVRE

### CIVIL - REAL PROPERTY

**EVIDENCE - ADMISSIBILITY - JUDICIAL NOTICE** - The Miss. Rules of Evidence permit a court, at any stage of the proceeding, to take judicial notice of a fact that is not subject to reasonable dispute, when the fact is generally known within the trial court’s territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned

**CIVIL PROCEDURE - JURISDICTION - STANDING** - To satisfy standing, there must be a valid, present, and complete cause of action in existence along with a right to relief upon institution of the suit. A foreign limited liability company with an administratively revoked registration may not maintain a suit until registration is reinstated

**CIVIL PROCEDURE - JUDICIAL ESTOPPEL - REQUIREMENTS** - A party is judicially estopped from taking an inconsistent position in different judicial proceedings, if the following three elements are met: (1) its position is clearly inconsistent with the previous one; (2) the court accepted the previous position and (3) the non-disclosure was not inadvertent

## **FACTS**

Jourdan River Estates (“JRE”) is a Louisiana limited liability company that owns the Yacht Club property. Jourdan River Resort and Yacht Club, LLC (“Yacht Club”), a Louisiana limited liability company, currently owns the Yacht Club property. Cindy and Scott Favre reside on the tract of land immediately west of the Yacht Club property, while Jefferson Parker owns and lives on the land immediately east of the Yacht Club property. This dispute arose between JRE and the Yacht Club, against the Favres and Jefferson, over a portion of a public road that leads from Highway 603 to the Yacht Club property called Nicola Road. JRE needed full access to Nicola Road in order to reach their private easement so they could build a condominium complex, but the road was obstructed by the existence of two gates and the actions of Scott Favre. In September 2008, JRE filed suit for declaratory judgment regarding what parts of Nicola Road are public, for identification of easement rights of property owners adjoining the road and for injunctive relief against the Favres and Jefferson to require the removal of all gates leading up to the Yacht Club property. The chancery court ruled in JRE’s favor, holding that Nicola Road is a public right of way, both gates needed to be removed, that no gates could be erected in the future, and that the Favres and Parker were prohibited from harassing or intimidating JRE or its invitees and licensees. The Favres and Parker appealed, and the trial court affirmed the chancery court’s holding. While these lawsuits were pending, JRE filed for bankruptcy. In the bankruptcy schedules, JRE listed various suits and potential claims under the pending litigation section, but it failed to list a potential damages lawsuit as an asset. In February 2011, JRE came out of bankruptcy and transferred the property to the Yacht Club. JRE and the Yacht Club then filed a lawsuit in circuit court against the Favres and Parker, demanding millions of dollars in damages based on fifteen causes of action. The Favres and Parker filed a motion to dismiss for failure to state a claim. The circuit court granted partial summary judgment in favor of the Favres and Jefferson on almost all of the claims citing either the statute of limitations had run on all claims by JRE against Cindy Favre and Jefferson Parker, and that JRE lacked standing to bring the claims alleged. The Favres and Jefferson had argued in their motion for summary judgment that all the claims by JRE should have been dismissed due to judicial estoppel since JRE had not listed the potential damages lawsuit in its bankruptcy schedules. The court denied this part of the summary judgment motion because at that time the current lawsuit had not yet been filed. The circuit court dismissed all claims by the Yacht Club. JRE and the Yacht Club appealed and the Favres and Jefferson cross-appealed on whether judicial estoppel bars the remaining claims by JRE against them. While this appeal was in progress, the Mississippi Secretary of State revoked/administratively dissolved JRE’s status as a foreign LLC in good standing, and JRE was not in good standing when it filed its complaint. However, JRE was reinstated as a foreign limited liability company in good standing by the Mississippi Secretary of State in December 2018.

## **ISSUES**

Whether (1) the Supreme Court may take judicial notice that JRE was administratively dissolved and/or had its foreign LLC registration revoked under Mississippi law; (2) JRE’s administrative dissolution and/or revocation of its foreign LLC registration affected its standing to pursue its claims; (3) the circuit court erred by granting partial summary judgment in favor of the defendants; and (4) judicial estoppel bars the remaining claims because JRE omitted this suit in its bankruptcy filings.

## **HOLDING**

(1) Because the Supreme Court had previously held that judicial notice can be taken of documents in the office of the Secretary of State, the court judicially noticed that the Mississippi Secretary of State administratively revoked JRE’s status as a foreign limited liability company in good standing, prior to when JRE filed its complaint, and that JRE was reinstated as a foreign limited liability company in good standing by the Mississippi Secretary of State. (2) Because both parties agreed that the right to bring suit in this case involved capacity, rather than standing, and because all parties accommodated reregistration pending this appeal, and consented to supplement the record regarding the LLC’s continued existence, the issue of capacity has been waived. (3) Because appellant’s claims were barred by a lack of standing, the statute of limitations and the *Noerr-Pennington* doctrine, the circuit court did not err by granting partial summary judgment. (4) Because the plaintiffs presented evidence that JRE may not have acted inadvertently, and because a trial court lacks appellate jurisdiction to certify a denial of summary judgment as final under Miss. R. Civ. P.

54(b), the court lacked appellate jurisdiction over the remaining claims pending in the trial court. Therefore, on direct appeal, the Supreme Court affirmed the judgment of the Hancock County Circuit Court but on cross-appeal, dismissed and remanded the judgment of the Hancock County Circuit Court.

**Affirmed on Direct Appeal; Dismissed & Remanded on Cross-Appeal - 2017-CA-01386-SCT (Sept. 26, 2019)**

Opinion by Presiding Justice Kitchens

Hon. Lawrence Paul Bourgeois, Jr. (Hancock County Circuit Court)

George W. Healy IV for Appellants - Robert B. Wiygul for Appellees

Briefed by [Jennifer Lee](#)

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## LAGB, LLC v. TOTAL MERCH. SERVS., INC.

### CIVIL - CONTRACT

**CONTRACTS - REQUISITES & VALIDITY - ASSENT** - Once a contract is signed, there is a presumption of agreement to wholly ascertainable and definite terms

**ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - AGREEMENTS TO ARBITRATE** - The scope of an arbitration clause includes all disputes anticipated and provided for by the clause

**ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - ENFORCEMENT** - A party will not be required to submit to arbitration to any dispute to which it has not agreed to submit

### FACTS

Mama Kio's Grill, Inc. contracted with commercial landlord LAGB, LLC for the lease of a space to house a Mexican restaurant. Within two months of operation, an error in the code of Mama Kio's credit-card processing services caused customers to be charged multiple times for their orders. Subsequently, Mama Kio's shut down due to lack of customers. LAGB brought suit against Mama Kio's and several of the credit card processing companies in the Hinds County Circuit Court alleging that their negligence caused Mama Kio's to breach its lease agreement. Mama Kio's then filed a cross-claim against the processing companies, alleging misrepresentation and tortious interference with its business. The processing companies filed motions to compel LAGB and Mama Kio's to arbitrate pursuant to the merchant agreement between themselves and Mama Kio's. The circuit court granted the motions. LAGB and Mama Kio's appealed.

### ISSUES

Whether (1) there is a valid arbitration agreement; (2) the dispute falls within the scope of the agreement; (3) any legal constraints external to the agreement would prevent arbitration; and (4) LAGB is bound by the arbitration clause contained in the contract entered into by Mama Kio's and the credit-card processing companies.

### HOLDING

(1) Because the Merchant Agreement laid out wholly ascertainable and definite terms requiring arbitration, there is a valid arbitration agreement. (2) Because Mama Kio's cross-claims were the precise types of disputes anticipated by the agreement, the dispute falls within the scope of the agreement. (3) Because a valid arbitration agreement exists, any disputes alleged by Mama Kio's fall within the arbitration agreement. (4) Because LAGB has not made a contract claim against the credit-card processing companies, it is not bound by the arbitration agreement. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Hinds County Circuit Court.

**Affirmed in Part; Reversed & Remanded in Part - 2018-CA-00723-SCT (Sept. 26, 2019)**

Opinion by Chief Justice Randolph

Hon. Winston L. Kidd (Hinds County Circuit Court)

James L. Kelly & H. Keith Keeton for Appellants - Charles H. Russell III, James E. Graves III, John T. Rouse, & Walter H. Boone for Appellees

Briefed by [Cristofor Taylor](#)

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## ROBINSON V. HOLMES CNTY.

### CIVIL - PERSONAL INJURY

**MISS. TORT CLAIMS ACT - SOVEREIGN IMMUNITY - NEGLIGENCE** - To consider the application of a sovereign immunity analysis regarding a negligence claim, the claim must first establish a *prima facie* case of negligence  
**MISS. TORT CLAIMS ACT - UNINSURED MOTORIST - DAMAGES** - The uninsured motorist statute requires the plaintiff to prove he is legally entitled to recover damages for bodily injury from the operator of an uninsured motor vehicle to collect uninsured motorist benefits

#### FACTS

Benjamin Robinson drove his employer's vehicle into the rear end of a stopped Holmes County garbage truck. The garbage truck was stopped picking up garbage on the side of the highway in dense fog. Robinson sued Holmes County and his uninsured motorist carrier, Brierfield Insurance Company ("Brierfield"). Robinson asserted that Holmes County was negligent in its operation of the garbage truck. Robinson also asserted a breach of contract claim, stating that Brierfield breached the insurance contract by denying him uninsured motorist benefits. The Holmes County Circuit Court granted summary judgment and found not only that Holmes County was not negligent but also that it was immune under the Mississippi Tort Claims Act. Since Holmes County was not negligent, Brierfield also was not liable as the uninsured motorist insurance provider. Robinson appealed.

#### ISSUES

Whether (1) the trial court erred in finding that Robinson failed to establish a *prima facie* case of negligence and (2) to recover against Briarfield, the uninsured motorist laws of Mississippi require that Robinson prove Holmes County's negligence.

#### HOLDING

(1) Because the conduct of the Holmes County employees was not a proximate contributing cause of the accident, the trial court properly found Robinson failed to establish a *prima facie* case of negligence (2) Because the uninsured motorist statute, Miss. Code Ann. § 83-11-101, requires Robinson to prove he is legally entitled to recover damages for bodily injury from the operator of an uninsured motor vehicle and he was unable to establish a *prima facie* case of negligence, the trial court properly found that Robinson was not entitled to collect uninsured motorist benefits. Therefore, the Supreme Court affirmed the judgment of the Holmes County Circuit Court.

#### CONCURRENCE

Justice Maxwell argued that Holmes County was immune based on Miss. Code Ann. § 11-46-9(1)(q), which immunizes against claims arising out of injuries caused solely by the effect of weather on road conditions, and Miss. Code Ann. § 11-46-9(1)(d), which immunizes against claims based on the exercise of a discretionary function.

#### DISSENT

Presiding Justice Kitchens argued that because Robinson pled sufficient facts to allow this matter to proceed to a jury to determine whether the fog was the sole proximate cause of this accident, the plurality erred in affirming the findings of the trial court.

#### **Affirmed - 2017-CA-01715-SCT (Sept. 26, 2019)**

En Banc Opinion by Justice Coleman - Concurrence by Justice Maxwell - Dissent by Presiding Justice Kitchens

Hon. Jannie M. Lewis-Blackmon (Holmes County Circuit Court)

Michael T. Jaques for Appellants - Roy A. Smith Jr., Steven J. Griffin, Richard T. Lawrence, & Michael O. Gwin for Appellees

Briefed by [Frank Wood](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 24, 2019

### COURT OF APPEALS - CIVIL CASES

#### ANDERSON V. SALAAM

#### CIVIL - PERSONAL INJURY

**CIVIL PROCEDURE - AWARDS - ADDITUR** - An additur may be awarded: (1) if the jury was influenced by bias, prejudice, or passion or (2) if the damages awarded were contrary to the overwhelming weight of credible evidence

**CIVIL PROCEDURE - APPEALS - MOTION FOR NEW TRIAL** - When reviewing the denial of a motion for a new trial, appellate courts will disturb the verdict only when it is against the overwhelming weight of the evidence

#### FACTS

Daniel Anderson and Jerome Salaam were involved in an automobile accident on Highway 32 outside of Okolona, Mississippi. At the time of the accident, Salaam was acting as an agent or employee of Tri-State Expediting Services, Inc. (“Tri-State”). Anderson and his passenger worked for Orkin and drove an Orkin-owned pickup truck. Anderson had missed his turn and was looking for a place to turn around. Salaam was behind Anderson, and when Anderson attempted a left turn, the vehicles collided. Anderson sued Salaam and Tri-State, alleging Salaam negligently caused the accident and claimed damages in the form of medical expenses, lost wages, and pain and suffering. Salaam and Tri-State conversely alleged that Anderson’s negligence proximately caused the accident. At trial, Anderson claimed Salaam attempted to pass Anderson in a no-passing zone, but Salaam contended that he only moved into the no-passing zone to avoid hitting Anderson. An accident reconstruction expert for Anderson testified that Salaam was not trying to pass Anderson; rather, the accident occurred because Salaam was following Anderson too closely. Salaam testified that Anderson negligently caused the accident when he slowed down and signaled to make a right turn, but instead abruptly turned left. Salaam and Anderson’s passenger testified that Anderson was on his cellphone at the time of the accident looking for directions. Anderson left the scene without any apparent injuries, but later received treatment for muscle spasm and cervical strain. He was temporarily disabled for a little over three months but suffered no permanent physical impairment. The jury determined, based on expert testimony, that Anderson suffered \$9,000 in total damages. However, the jury unanimously found that both Anderson and Salaam’s negligence proximately caused the accident and allocated 25 percent fault to Salaam and Tri-State and 75 percent fault to Anderson. The Chickasaw County Circuit Court ordered Salaam and Tri-State to pay Anderson \$2,250 based on the jury’s finding of fault. Anderson’s post-trial motion for an additur or, in the alternative, for a new trial was denied. Anderson appealed.

#### ISSUE

Whether the trial court abused its discretion in denying Anderson’s motion for an additur or, in the alternative, for a new trial.

#### HOLDING

Because the evidence at trial supports the jury’s apportionment of fault such that the verdict was not against the overwhelming weight of the evidence, and because the verdict was not so inadequate as to shock the conscience and to indicate bias, passion, or prejudice on behalf of the jury, the trial court did not abuse its discretion in its decision to deny Anderson’s motion for additur or, in the alternative, for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

**Affirmed - 2018-CA-00934-COA (Sept. 24, 2019)**

Opinion by Judge C. Wilson

Hon. John Kelly Luther (Chickasaw County Circuit Court, Second Judicial Dist.)

Mark T. Fowler for Appellant - Lewis W. Bell & Robert H. Pedersen for Appellees

Briefed by [Allison Middleton](#)

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## EDWARDS V. STATE

### CIVIL - POST-CONVICTION RELIEF

**CRIMINAL LAW - POST-CONVICTION RELIEF - STANDARD OF REVIEW** - Court will not disturb a decision granting or denying post-conviction relief absent a finding that the trial court's decision was clearly erroneous  
**CRIMINAL PROCEDURE - AMENDMENT OF INDICTMENT - HABITUAL OFFENDER** - The right to be indicted as a habitual offender is a right that can be waived, along with many others, by a knowing and voluntary plea

**CIVIL PROCEDURE - APPEALS - INEFFECTIVE COUNSEL** - To prove ineffective assistance of counsel, an accused must prove that his counsel's performance was deficient, and that his counsel's deficiency prejudiced his defense

### FACTS

On December 17, 2015, Jonathan Edwards was indicted for six counts of burglary of a dwelling and one count of attempted burglary. The State amended the indictment, citing seven separate prior convictions, to charge Edwards as a habitual offender pursuant to Miss. Code Ann. § 99-19-81. Edwards pled guilty to two of the seven charges, and the remaining five charges were dismissed. Edwards was sentenced as a habitual offender and was ordered to serve two consecutive terms of twenty-five years. Edwards filed two motions for post-conviction collateral ("PCR") relief with the circuit court. The circuit court denied the PCR motions. Edwards appealed.

### ISSUES

Whether (1) the guilty plea was intelligent, knowing, and voluntary; (2) the amendment of the indictment, adding the habitual offender enhancement to the burglary indictments, was improper; (3) Edward's counsel provided ineffective assistance; and (4) Edward's due process and equal protection rights were violated.

### HOLDING

(1) Because the court thoroughly explained the possible sentences associated with Edward's plea, the guilty plea was intelligent, knowing, and voluntary. (2) Because Edward entered a valid guilty plea, his right to contest indictment deficiencies was waived. (3) Because Edward did not produce any evidence to support his claim of ineffective assistance of counsel, the claim was dismissed. (4) Because the record clearly indicates that Edwards was repeatedly advised of the charges against him and the consequences that could flow from his plea, the guilty plea was valid, and the false arrest and false imprisonment claims are without merit. Thus, there is no support for the claim that Edwards was denied due process or equal protection rights. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

**Affirmed - 2018-CP-01034-COA (Sept. 24, 2019)**

Opinion by Judge Westbrooks

Hon. Prentiss Greene Harrell (Marion County Circuit Court)

*Pro se* for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Winston Hudson](#)

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## TOBIAS V. UNIV. OF MISS. MED. CTR.

### CIVIL - MEDICAL MALPRACTICE

**NEGLIGENCE - MEDICAL MALPRACTICE - ELEMENTS** - A medical malpractice claim requires proof of (1) the applicable standard of care; (2) a breach of the required standard; and (3) an injury proximately caused by the breach

**MEDICAL MALPRACTICE - EXPERT TESTIMONY - COMMON KNOWLEDGE EXCEPTION -** A medical expert is not necessary when a layperson can observe and understand the negligence as a matter of common sense and practical experience

**MEDICAL MALPRACTICE – COMMON KNOWLEDGE EXCEPTION - APPLICABILITY -** The layperson exception to the expert testimony requirement of a malpractice claim can be used to prove negligence, but cannot be used to prove medical causation

### **FACTS**

James Tobias was injured at work when a two-ton forklift fell on his head and face. Tobias was taken to the University of Mississippi Medical Center (“UMMC”) and was admitted to the surgical intensive care unit for trauma surgery services. Tobias sustained severe injuries, including multiple fractures, a large epidural hematoma, and permanent blindness from optic nerve damage. Several days later, while under the care of UMMC, Tobias stood up from his hospital bed and fell, hitting his head. UMMC performed a check for new or worsening bleeding and determined no new injuries were sustained as a result of the fall. Tobias sued UMMC for medical malpractice, alleging the nursing staff negligently failed to monitor him closely. Tobias also alleged that his fall caused or contributed to his injuries, but Tobias did not designate an expert to testify as to medical causation. As a result of Tobias’s failure to present evidence that he sustained any injury as a result of his fall, the circuit court granted UMMC’s motion for summary judgment. Tobias appealed.

### **ISSUES**

Whether (1) Tobias’s medical records provided evidence of medical causation; and (2) Tobias’s case fell within the “laymen’s exception” to the medical malpractice rule requiring expert testimony to prove causation.

### **HOLDING**

(1) Because nothing in Tobias’s medical records established that his fall caused any new injury, the records could not be used as evidence to prove medical causation. (2) Because the “layman exception” to the rule requiring expert testimony in a malpractice action does not apply to medical causation—only negligence, Tobias’s case did not fall within the exception. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2018-CA-00502-COA (Sept. 24, 2019)**

Opinion by Presiding Judge J. Wilson

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

Robert G. Germany for Appellants - Walter T. Johnson & Susan Latham Steffey for Appellee

Briefed by [Joshua Crownover](#)

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## ***COURT OF APPEALS - CRIMINAL CASES***

### **BROWN V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL -** Ordinarily, the court does not consider an ineffective-assistance-of-counsel claim when the claim is made on direct appeal because there is usually insufficient evidence within the record to evaluate the claim

**EVIDENCE - ADMISSIBILITY OF TRANSCRIPTS - CAUTIONARY INSTRUCTION -** If trial counsel does not request a limiting instruction be given to the jury, a court is not compelled to give such an instruction sua sponte

### **FACTS**



Police arrested Christopher Brown and Christopher Livingston for an armed carjacking and attempted murder. Investigators conducted interviews with Brown while in police custody that were recorded and transcribed. At trial, Brown's counsel made a concession of guilt regarding the armed carjacking charge. The jury reviewed properly redacted transcripts of the interviews for their use while the recordings played. No cautionary instruction regarding the use of the transcripts was given or requested. After trial, the jury found Brown guilty of the armed carjacking and attempted murder. Brown appealed.

### **ISSUES**

Whether (1) the court may address Brown's ineffective-assistance-of-counsel claim on direct appeal and (2) Brown is entitled to a new trial because a cautionary instruction was not given to the jury regarding their use of interview transcripts at trial.

### **HOLDING**

(1) Because Brown's ineffective-assistance-of-counsel claim was based on facts not fully apparent from the record, including facts related to his counsel's trial strategy and tactics, the court dismissed the claim without prejudice, preserving Brown's right to raise the claim later in a motion for post-conviction relief. (2) Because a trial court is not held in error for failing to issue a cautionary instruction where no such instruction is requested, Brown was not entitled to a new trial because a cautionary instruction was not given to the jury. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

**Affirmed - 2018-KA-00765-COA (Sept. 24, 2019)**

Opinion by Presiding Judge Carlton

Hon. M. James Chaney Jr. (Warren County Circuit Court)

W. Daniel Hinchcliff & George T. Holmes (Pub. Def. Office) for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Philip Lott](#)

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