

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 13, 2018**SUPREME COURT - CIVIL CASES****CROWLEY V. GERMANY****CIVIL - OTHER**

CONTRACTS - SETTLEMENTS - ENFORCEMENT - Settlement agreements are contracts, made by the parties, which will be enforced by the law

CONTRACTS - SETTLEMENTS - MEETING OF THE MINDS - In order for there to be a settlement, there must be a meeting of the minds

JUDGMENT - PARTIES TO AN ACTION - ENFORCEMENT - A judgment may not be enforced against persons who are not parties to an action

FACTS

Delie Shepard and Ashley Stowers filed a legal malpractice action against Robert Germany and his law firm. Shepard and Stowers were represented by Michael Crowley and Edward Blackmon, who, as attorneys, never became parties to the action. After several years of litigation and mediation, the parties reached a settlement and agreed to its essential terms. The parties agreed to execute a release, but the proposed release required signatures from Crowley and Blackmon, who refused to sign because of the concern that signing could be interpreted to mean they were parties to the agreement, resulting in personal liability and a potential obligation to indemnify. Germany filed a motion to enforce the settlement agreement with the signing requirement. The Hinds County Circuit Court entered an order enforcing the settlement agreement and denied a subsequent motion by Shepard and Stowers for findings of fact and conclusions of law. Crowley and Blackmon filed an emergency petition for writ of prohibition in regard to the settlement agreement and also appealed in the underlying case on behalf of Shepard and Stowers. The Supreme Court consolidated the cases.

ISSUE

Whether the trial court erred in enforcing the settlement agreement using the specific release language requiring Crowley's and Blackmon's signatures.

HOLDING

Because the language of the release could have been interpreted to make Crowley and Blackmon releasors and therefore parties to the suit, the trial court erred in enforcing the settlement agreement. Therefore, the Supreme Court reversed and remanded the judgment of the Rankin County Circuit Court.

Reversed & Remanded - 2017-CP-01452-SCT (Dec. 13, 2018)

Opinion by Justice Ishee

Hon. Stephen B. Simpson (Hinds County Circuit Court)

Pro se for Appellants - Daniel J. Mulholland & Fred Krutz III for Appellees

Consolidated With:**Reversed & Remanded - 2017-CA-01635-SCT (Dec. 13, 2018)**

Hon. Stephen B. Simpson (Hinds County Circuit Court)

Michael Todd Crowley & Edward Blackmon Jr. for Appellants - Daniel J. Mulholland & Fred Krutz III for Appellees

Briefed by [Luke Phillips](#)

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EDNEY V. WILLIAMS

CIVIL - PERSONAL INJURY

SERVICE OF PROCESS - SUMMONS - AGENT AUTHORITY - Service is made by delivering a copy of the summons and complaint to the party personally or to an agent authorized by appointment or by law to receive service of process

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - ACCRUAL - Under Miss. Code Ann. § 15-1-49, a party must file his lawsuit within three years after the cause of action accrued

CIVIL PROCEDURE - SERVICE OF PROCESS - DISMISSAL - Under Miss. R. Civ. P. 4(h), if service is not made in a 120-day period, the action shall be dismissed without prejudice unless good cause can be shown as to why service was not made within that period

FACTS

On February 8, 2008, Officer Joe Edney of the Greenville Police Department was involved in the arrest of Carlos Williams. Williams alleged that Officer Edney attempted to stop a car in which Williams was a passenger. Williams ran from Edney and later surrendered. Williams stated after he surrendered, Edney screamed threats and sprayed Williams with mace before kicking and stomping Williams. Williams filed a complaint against Edney in both his official and individual capacity on March 11, 2010. Corporal Jackson was to serve process on Edney. Williams filed for entry of default on July 16, 2010, stating Edney had failed to respond. The circuit court docketed the default judgment. The case remained stagnant for four and a half years. On April 30, 2015, the circuit court entered an order dropping Williams's claim against Edney in his official capacity and awarding damages to Williams against Edney in his individual capacity. Edney later filed a motion to dismiss, arguing that the three-year statute of limitations under Miss. Code Ann. § 15-1-49 had expired. The records clerk submitted an affidavit stating that Netterville, a clerk of the criminal investigations division of the Greenville Police Department, signed the proof of service and that the docket book indicated that Corporal Jackson had served Netterville, not Edney. Williams contended he should be allowed to begin the lawsuit anew because he had demonstrated a good-faith effort to serve Officer Edney. The trial court found in favor of Williams, holding that Williams had established good cause by showing he had a reasonable belief that service had been made properly within the statutory period. Edney appealed.

ISSUE

Whether the trial court erred in holding that Williams established good cause for his failure to serve process within the statutory time period.

HOLDING

Because Edney submitted sufficient evidence showing that Corporal Jackson served Netterville, a coworker without authority to accept service on Edney's behalf, instead of Edney, the trial court abused its discretion in failing to consider Williams's length of delay in pursuing the action in its analysis of good cause. Therefore, the Supreme Court reversed and remanded the judgment of the Washington County Circuit Court.

Reversed & Remanded - 2017-IA-00485 (Dec. 13, 2018)

Opinion by Justice King

Hon. Margaret Carey-McCray (Washington County Circuit Court)

Andrew N. Alexander III for Appellant - Carlos Eugene Moore for Appellee

Briefed by [Katelin Davis](#)

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GERTY V. GERTY

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - STATUTES - CHALLENGES TO CONSTITUTIONALITY - A statute's constitutionality will not be considered unless it is specifically pleaded

APPELLATE PROCEDURE - FINDINGS - MANIFEST WRONGNESS - When a chancellor's decision is manifestly wrong, it may be overturned by an appellate court

DIVORCE - ADULTERY - CONDONATION - An affirmative defense of condonation is not permitted when the offending spouse continues the adulterous activity after the condonation

FACTS

In September 2013, Michael and Joesie Gerty filed for an irreconcilable-differences divorce. During the two years the case was litigated, the couple abided by the Property Settlement Agreement ("PSA"), which required that Michael Gerty get custody of their minor child. At the same time, Joesie moved to the Mississippi coast. Specifically, she moved into the house of her paramour's mother. Unknown to her husband, Joesie carried on an affair with Kyle from 2011 to 2015, although testimony somewhat varied on the specific dates. In January 2015, Michael told Joesie he considered reconciliation impossible, and Joesie, on advice of her counsel, told Michael she was ready to complete the divorce. Joesie picked up their son for the agreed upon visitation, brought him back to Mississippi, then withdrew her consent to the divorce. Both parties subsequently filed for divorce on the grounds of adultery, or, in the alternative, irreconcilable differences. The chancellor granted temporary custody to Joesie, then decreed that a no-fault divorce should be granted. The chancellor found that Joesie had failed to prove adultery while Michael had proven it, but that Joesie had proven Michael condoned the adultery. The chancellor then declared the statutory scheme under Miss. Code Ann. § 93-5-2 unconstitutional without either party raising that issue, granted an irreconcilable-differences divorce, and gave Joesie custody of the child. Both parties, and the State, asked the chancellor to reconsider her judgment. A hearing was held purely about the constitutionality and all parties admitted the chancellor committed error in granting an irreconcilable-differences divorce. The chancellor significantly amended her earlier final judgment, lowering the noncustodial parent's visitation rights from three months to one month, and increasing Joesie's award to include some of Michael's military-retirement benefit. Both the Gertys and the State appealed.

ISSUES

Whether the chancellor committed error in (1) declaring Miss. Code Ann. § 93-5-2 unconstitutional; (2) failing to award Michael a divorce on the grounds of adultery; (3) reducing Michael's summer visitation; (4) awarding Joesie a portion of Michael's retirement benefits; and (5) awarding custody to Joesie.

HOLDING

(1) Because neither party raised the issue of the statute's constitutionality, the chancellor's ruling exceeded her authority in declaring the statute unconstitutional. (2) Because the record only reflected that Michael knew of a portion of Joesie's affair and not its entirety, the chancellor's findings of condonation were manifestly wrong. (3) Because the chancellor changed the visitation schedule from what was agreed upon without a prayer for modification and with no reasoning given, it was not supported by substantial evidence in the record. (4) Because the Court previously ordered the chancellor to reconsider alimony, the alimony amount must be reconsidered. (5) Because the chancellor conducted an *Albright* analysis to find the best interests of the child, the award of custody to Joesie was proper. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Harrison County Chancery Court.

Affirmed in Part, Reversed & Remanded in Part - 2017-CP-00828-SCT (Dec. 13, 2018)

Opinion by Presiding Justice Randolph

Hon. Jennifer T. Schloegel (Harrison County Chancery Court)

Pro se & Justin L. Matheny (Att'y Gen. Office) for Appellants - M. Channing Powell for Appellee

Briefed by [James Adamoli](#)

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SLEDGE V. GRENFELL, SLEDGE & STEVENS, PLLC

CIVIL - CONTRACTS

CIVIL PROCEDURE - COMPLAINT - AMENDED - An amended complaint supersedes an original complaint and renders it to have no legal effect unless the amended complaint specifically adopts or incorporates the earlier pleading

LIMITED LIABILITY COMPANIES - OPERATING AGREEMENTS - WITHDRAWAL - The revised Mississippi Limited Liability Company Act states that a member of an LLC who leaves or is expelled ceases to have governance rights unless otherwise provided in written operating agreement.

CONTRACT - INTERPRETATION - PARTY INTENTIONS - When a contract is unambiguous, the parties' intentions are understood from the contractual wording and that parole evidence is not considered

FACTS

T. Mark Sledge filed suit against his former law partners, James Grenfel and John Hunter Stevens, regarding the distribution of legal fees following their partnership agreement and Sledge's subsequent withdrawal from the firm. The partnership agreement said, among other things, that disputes related to the partnership shall be settled by a majority vote of the partners. The Hinds County Chancery Court granted the firm's, Grenfell, Sledge & Stevens, PLLC., motions for summary and declaratory judgment. Sledge appealed.

ISSUES

Whether (1) the trial court erred in dismissing Sledge's original complaint; (2) Sledge was bound by the dispute resolution provision of the partnership agreement, despite leaving the partnership.

HOLDING

(1) Because Sledge filed an amended complaint that superseded the original complaint, the record lacked anything to reinstate and the issue was moot. (2) Because § 79-29-303 of the Revised Mississippi Limited Liability Company Act allows a member to have governing power even after leaving a partnership if the partnership agreement provides for it, and because the partnership agreement unambiguously bound parties to its prescribed dispute resolution processes in situations like this one, Sledge had governing power after leaving the partnership and was therefore bound by the dispute resolution clause. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2017-CA-00978-SCT (Dec. 13, 2018)

Opinion by Justice Coleman

Hon. M. Ronald Doleac (Hinds County Chancery Court)

T. Jackson Lyons & Marc E. Brand for Appellant - Steven H. Funderburg for Appellees

Briefed by [Brandon H. Wilson](#)

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SUPREME COURT - ORDERS

GARDNER V. STATE

COURT ORDER

ORDER

In this *en banc* order, the Supreme Court found that David Gardner's petition was time-barred. Because Gardner filed numerous previous petitions for post-conviction relief, which had been denied or dismissed, the Court found that the

present petition was subject to the successive writ bar. Further, the Supreme Court found that the present petition was without merit and warned Gardner that future filings deemed frivolous could result in monetary sanctions and/or restrictions on Gardner's ability to file applications for post-conviction relief (or pleadings in that nature) *in forma pauperis*.

OBJECTION

Justice King wrote separately disagreeing with the Court's finding that Gardner's present application was frivolous and that the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. He argued that, because Gardner made reasonable arguments in his motion, the petition was not frivolous. He also argued that the Court should simply deny or dismiss motions which lack merit, rather than warning that future filings may result in additional sanctions or restrictions on filing applications.

Dismissed - 2007-M-00311 (Dec. 13, 2018)

En Banc Order by Justice Maxwell - Objection by Justice King
Briefed by [David Wellen](#)

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HARRIS V. STATE

COURT ORDER

ORDER

Joe Nathan Harris filed his fourth Application for Leave to Proceed in Trial Court. In order for procedural bars not to apply to claims, a petitioner must show that new evidence has been discovered, and that it was not reasonably discoverable at trial, and would have caused a different result in conviction or sentence had it been introduced at trial. The Court found Harris failed to meet that standard. Further, in order for a claim of illegal sentence to be excepted from a procedural bar, the claim must have some arguable basis. The Court found Harris's claim did not have an arguable basis. Harris's application was dismissed. The Court also warned Harris that future frivolous filing may result in monetary sanctions and restrictions on his ability to file post-conviction collateral relief.

OBJECTION

Justice King argued that the Court should not warn of future monetary sanctions and restrictions on post-conviction relief filings because these sanctions only serve to punish and preclude defendants from a lawful right to appeal.

Denied - 2016-M-00014 (Dec. 13, 2018)

En Banc Order by Justice Maxwell - Objection by Justice King
Briefed by [Yance Falkner](#)

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LOWE V. STATE

COURT ORDER

ORDER

This en banc order by the Mississippi Supreme Court denied a writ of certiorari filed on behalf of appellant John Bartholomew Lowe.

OBJECTION

Presiding Justice Kitchens argued that certiorari should be granted to resolve an issue of general importance in the administration of justice according to Miss. R. App. P. 5(a)(3). An erroneous jury instruction was given that allowed the jury to determine whether evidence was circumstantial, which is a determination for the court.

Denied - 2016-CT-00214-SCT (Dec. 13, 2018)

En Banc Opinion by Justice Maxwell - Objection by Presiding Justice Kitchens

Briefed by [Zachary Flowers](#)

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PHILLIPS V. STATE

COURT ORDER

ORDER

In this *en banc* order, the Court found that Eddie Earl Phillips's claims did not meet any recognized exception to the time, waiver, and successive-writ bars. Further, even if they did meet an exception, the claims lacked any arguable basis to warrant waiving the procedural bars. The Court also warned Phillips that future filings deemed frivolous could result in monetary sanctions and/or restrictions on Phillips's ability to file applications for post-conviction collateral relief (or pleadings in that nature) *in forma pauperis*. Therefore, the motion was dismissed.

OBJECTION

Justice King wrote separately disagreeing with the Court's warning of future sanctions and restrictions. He argued that the Court should not punish Phillips for filing a motion, thus cutting off access to the courts, but instead, the Court should simply deny or dismiss motions which lack merit. He also argued that the Court must not discourage defendants from exercising their right to appeal.

Dismissed - 2017-M-00796 (Dec. 12, 2018)

En Banc Order by Chief Justice Waller - Objection by Justice King

Briefed by [Catherine Pettis](#)

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SMITH V. STATE

COURT ORDER

ORDER

This en banc order by the Mississippi Supreme Court dismissed a post-conviction relief motion and a quorum motion by Ronnie Smith as procedurally barred. The Court found that Smith's claim was not frivolous but warned that future filings deemed to be frivolous may result in additional monetary sanctions and restrictions on filing applications for post-conviction collateral relief *in forma pauperis*.

OBJECTION

Justice King objected in part, disagreeing with the warning that future frivolous filings could result in monetary sanctions or restrictions for post-conviction collateral relief *in forma pauperis*. Justice King argued that while Smith's application for post-conviction relief and quorum motion did not merit relief, the Supreme Court should not discourage defendants from exercising their right to appeal by warning of future sanctions and restrictions.

Dismissed - 2013-M-00205 (Dec. 13, 2018)

En Banc Opinion by Justice Maxwell - Objection by Justice King

Briefed by [Ryan Overturf](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 11, 2018

COURT OF APPEALS - CIVIL CASES

BOUNDS V. BENSON

CIVIL - REAL PROPERTY

JUDICIARY - QUORUM - SPECIAL JUDGES - Under MCA § 9-1-105(1) the Chief Justice of the Supreme Court may appoint special judges to participate in decisions by the Court of Appeals in order to bring the number of judges on the Court of Appeals to a quorum

JUDGMENTS - EVENLY DIVIDED COURT - APPEALS - An evenly divided court affirms the motion or judgment of the court from which the appeal is taken

FACTS

Six judges from the Court of Appeals recused themselves from the *Bounds v. Benson* case. Because a quorum of six judges is required to reach a decision, the Court of Appeals asked the Chief Justice of the Supreme Court to appoint two special judges to participate in the case. On July 27, 2018, the Chief Justice appointed Senior Status Judge Larry E. Roberts and Senior Status Judge William E. Gowan to serve as special judges for the case, including any motion for rehearing.

ISSUE

Whether to affirm the decision of the trial court by an evenly divided court.

HOLDING

Because an evenly divided court affirms the order or judgment of the court from which the appeal is taken, and because the Court of Appeals, with six recusals and two special judges, was evenly divided over this case, the Court of Appeals affirmed the judgment of the Lafayette County Chancery Court.

Affirmed - 2017-CA-00460-COA (Dec. 11, 2018)

Per Curium Decision

Hon. Robert Q. Whitwell (Lafayette County Chancery Court)

Thomas J. Suszek & Geoffrey F. Calderaro for Appellant - J. Cal Mayo Jr. & Kate M. Embry for Appellee

Briefed by [Jon-Paul Bushnell](#)

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DAILEY V. MISS. DEP'T OF EMP'T SEC.

CIVIL - STATE BOARDS & AGENCIES

CIVIL LAW - UNEMPLOYMENT BENEFITS - DENIAL OF UNEMPLOYMENT BENEFITS - To affirm the Mississippi Department of Employment Security's denial of benefits, its decision must be supported by substantial evidence and not arbitrary or capricious; substantial evidence is that which is relevant and capable of supporting a reasonable conclusion, or is more than a scintilla of evidence

CIVIL LAW - UNEMPLOYMENT BENEFITS - GOOD CAUSE - The Board's finding that an employee has quit work voluntarily without good cause is a question of fact that will be affirmed if supported by substantial evidence

CIVIL LAW - UNEMPLOYMENT BENEFITS - AVAILABILITY OF UNEMPLOYMENT BENEFITS -

Unemployment benefits are available for employees who leave work involuntarily, through no fault of their own

FACTS

Charlotte Dailey applied for unemployment benefits after being terminated from the Grenada Tourism Commission. The Claims Examiner denied her claim, stating it did not show good cause for her resignation which disqualified her from receiving benefits. She appealed to the administrative law judge (“ALJ”) and Board of Review, and both upheld the denial of unemployment benefits. She then appealed to the circuit court which again denied her unemployment benefits and upheld the Board of Review’s decision. Dailey appealed.

ISSUES

Whether (1) the ALJ erred in refusing to admit the Grenada Tourism Commission’s board minutes; (2) the Board of Review based its findings on insubstantial evidence; and (3) the Board of Review applied incorrect law.

HOLDING

(1) Because Dailey testified to ongoing personnel issues which were the reason to bring in the minutes, the ALJ properly denied admitting the minutes. (2) Because Dailey did not contest testimony stating she offered to resign, the Board of Review’s decision was supported by substantial evidence. (3) Because the burden of proof to show good cause for leaving work is on the claimant, and substantial evidence supported the finding, Dailey did not meet the burden of proof and the Board of Review applied the correct law. Therefore, the Court of Appeals affirmed the judgment of the Yalobusha County Circuit Court.

Affirmed - 2017-CC-01473-COA

Opinion by Judge Greenlee

Hon. James McClure III (Yalobusha County Circuit Court, First Judicial Circuit)

William Ledyard Williamson for Appellant - Albert B. White for Appellee

Briefed by [Andie Szabo](#)

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HUMPHRIES V. VIRILIA RD. CONSERVATION GROUP, LLC

CIVIL - PERSONAL INJURY

TORTS - FALSE IMPRISONMENT - ELEMENTS - The elements of a false imprisonment claim are (1) detention of the plaintiff and (2) unlawfulness of that detention

TORTS - NEGLIGENCE - PROXIMATE CAUSE - If the act complained of is only a remote cause, superseded by an independent, efficient intervening cause that leads in unbroken sequence to the injury, the original negligent act is not a proximate, but a remote cause, and not being foreseeable, the original cause is not actionable

FACTS

Virilia Road Conservation Group, LLC (“VRC”) hired Officer Robert Sanders to patrol a hunting area. During his patrol, Officer Sanders noticed a truck stopped in the center of the road. Officer Sanders approached the truck and asked the three men to exit the vehicle. He called Agent Walker of the Department of Wildlife and Fisheries to conduct an investigative stop because the truck was halted in the middle of the road for a significant period of time. A rifle, a loaded pistol and marijuana were found in the truck, and all three men had prior convictions. They were each arrested. Humphries alleged that he hit his head against the roof of the patrol car during his transport to jail due to the officer’s reckless driving. Humphries brought eight claims against VRC. VRC’s motion for summary judgment was granted. Humphries appealed.

ISSUES

Whether the trial court erred in granting VRC's motion for summary judgment on the following claims: (1) false imprisonment; (2) negligence; (3) malicious prosecution; (4) defamation; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; (7) failure to train; and (8) abuse of process.

HOLDING

(1) Because the arrest was objectively reasonable in its nature, purpose, extent, and duration, there was no merit to the false imprisonment claim. (2) Because the appellant did not produce any evidence to support a claim that officer Sanders's decision to detain him was the proximate cause of his injuries, the negligence claim was without merit. (3) Because there was probable cause to make the arrest, the officer did not engage in malicious prosecution. (4) Because, even if Officer Sander's words to Agent Walters were defamatory, Humphries did not produce evidence for the other three elements of defamation, thus the defamation claim was without merit. (5) Because the arrest was objectively reasonable and would not evoke outrage or revulsion, the intentional infliction of emotional distress claim was without merit. (6) Because there was no evidence on the record to support an infliction of emotional distress claim, the issue was without merit. (7) Because Humphries acknowledged that VRC was not responsible for training Officer Sanders, the failure to train claim was without merit. (8) Because Humphries failed to produce evidence that Officer Sanders misused a legal process and had an ulterior motive, the abuse of process claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2018-CA-01508-COA (Dec. 11, 2018)

Opinion by Judge Lee

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

Daniel Dewayne Ware for Appellant - Adam Stone, Jackie Ray Bost II, & Kaytie Michelle Pickett for Appellee

Briefed by [Drey Russell](#)

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KECKLEY V. ESTES EQUIP. CO.

CIVIL - PERSONAL INJURY

PERSONAL INJURY - UNREASONABLY DANGEROUS CONDITIONS - NORMALLY ENCOUNTERED DANGERS - Normally encountered dangers are those that customers must expect to find on the premises of a business such as curves, sidewalks, and steps, however, caution tape that appears to not be attached to anything and simply flaps on the ground is not a normally encountered danger

PERSONAL INJURY - UNREASONABLY DANGEROUS CONDITIONS - SUDDEN CHANGES - Conditions which change suddenly and without warning can be unreasonably dangerous conditions

PERSONAL INJURY - PROXIMATE CAUSE - COMMON & OPEN SPACE - The decision to walk over what appears to be a piece of garbage in a commonly used and open space does not constitute a sole proximate cause of injury

FACTS

Teri Keckley tripped and fell outside of a Flying J convenience store in Pearl, Mississippi, sustaining injuries. Keckley alleged she fell because a sudden gust of wind picked up a piece of caution tape from a construction site as she was walking over it, making it for a "tripwire," and causing her to fall. Keckley then sued Estes and Pilot, the construction company, and Flying J owners, respectively, for failing to maintain the premises in a reasonably safe condition and for failing to warn her of a dangerous condition. In a motion for summary judgment, the trial judge ruled that caution tape is not a dangerous condition as a matter of law and granted summary judgment to Estes and Pilot. Keckley appealed.

ISSUES

Whether (1) the caution tape was an unreasonably dangerous condition; (2) Keckley's decision to attempt to step over the tape was the sole proximate cause of her injury; (3) Pilot had a "duty to warn" of the caution tape, which was in

plain view; (4) Keckley was a licensee or invitee once she stepped over the tape; and (5) there was evidence that Pilot had created or had actual or constructive knowledge of the allegedly dangerous condition.

HOLDING

(1) Because the caution tape allegedly acted like a tripwire, which do not belong to the class of “normally encountered dangers,” and the alleged defective condition changed suddenly and without warning, a reasonable jury could conclude the caution tape created an unreasonable or unusually dangerous condition. (2) Because the manager of the Flying J testified that Keckley fell near a common and open walkway, employees testified the same area was not a work area, and Keckley testified the tape did not appear to demarcate a work area, a jury could find Keckley stepped over what appeared to be a piece of garbage and therefore her decision was not the sole proximate cause of her injuries. (3) Because a landowner owes a duty to an invitee both to warn of hidden dangers and to keep the premises reasonably safe, and the tape may have constituted an unreasonably dangerous condition, this was not a basis for summary judgment. (4) Because Keckley crossed a line of caution tape, and multiple witnesses testified the walkway was open and commonly used, Keckley may have been justified in believing the area was open to customers. Further, there was sufficient evidence such that Keckley’s status was in dispute and was therefore not proper for summary judgment. (5) Because Keckley testified that the manager admitted knowledge of the condition, there was a genuine issue as to material fact and summary judgment on this issue was improper. Therefore, the Court of Appeals reversed and remanded the judgment of the Rankin County Circuit Court.

Reversed & Remanded - 2017-CA-00889-COA (Dec. 11, 2018)

Opinion by Judge Wilson

Hon. William E. Chapman III (Rankin County Circuit Court)

Charles M. Merkel Jr. & Edward P. Connell Jr. for Appellant - John E. Wade Jr., Joseph A. Sclafani, Dan W. Webb & Paul N. Jenkins Jr. for Appellees

Briefed by [James Adamoli](#)

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O’HEA V. GEORGE REG’L HEALTH & REHAB. CTR.

CIVIL - TORTS - OTHER THAN PERSONAL

MISSISSIPPI TORT CLAIMS ACT - IMMUNITY - DEFAMATION - A government entity shall not be liable for any conduct of its employee if the employee’s conduct constitutes defamation

ABUSE-OF-PROCESS - CAUSE OF ACTION - ADMINISTRATIVE PROCEEDING - An abuse-of-process claim is a legal claim regarding something that comes from a court and not any kind of administrative or agency process

FACTS

Kevin O’Hea worked as a physician at George County Hospital until he was terminated on June 3, 2011. On August 17, 2012, O’Hea filed a claim alleging the hospital issued false statements about his termination including that he did not abide by hospital rules, failed a narcotics audit, and falsely reported him to the licensure board for overprescribing narcotics. O’Hea filed suit against the hospital under the Mississippi Torts Claim Act (the “MTCA”), but the George County Circuit Court granted summary judgement in favor of the hospital on all claims. O’Hea appealed.

ISSUES

Whether the circuit court erred in granting summary judgment because (1) O’Hea was not allowed to conduct discovery; (2) there was evidence in the record that O’Hea’s claims were properly brought under the MTCA and not barred by statute of limitations; and (3) O’Hea’s abuse-of-process claim for the hospital’s report to the licensure board was proper.

HOLDING

(1) Because O’Hea did not request additional discovery that would create a genuine issue of fact, his claim failed as a matter of law and there was no abuse of discretion in granting summary judgment. (2) Because the MTCA provides immunity for government entities when employees make alleged defamatory statements and O’Hea’s claim was made

after the one year statute of limitations, his claims were not properly brought under the MTCA and also were barred by the statute of limitations. (3) Because an abuse-of-process claim refers to a legal proceeding and not an administrative agency proceeding, the abuse-of-process claim was improper. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

Affirmed - 2017-CA-01028-COA (Dec. 11, 2018)

Opinion by Presiding Judge Irving

Hon. Kathy King Jackson (George County Circuit Court)

William Mitchell Cunningham Jr. & Troy Thomas Schwant for Appellant - Joseph Lee Adams & Lindsay Thomas Dowdle for Appellees

Briefed by [Karen Lott](#)

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RATLIFF V. RATLIFF

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DOMESTIC RELATIONS - EMANCIPATION - Emancipation under Miss. Code Ann. 93-11-65(8)(a) is not subject to a chancery court's discretion and a chancellor must conduct a sufficient fact analysis in determining the date of emancipation

FAMILY LAW - DOMESTIC RELATIONS - REPAYMENT - A chancellor may order a repayment of child support payments made when the child was already emancipated

FAMILY LAW - DOMESTIC RELATIONS - MODIFICATION - A chancellor has the discretion to make a retroactive modification to child-support payments

FACTS

Tammy Ratliff Hubbard and Dennis Ratliff were granted a divorce in 2009. The court granted Hubbard sole custody of the couple's minor child and ordered Ratliff to pay child support, maintain a life-insurance policy with the child as beneficiary, provide health insurance for the child, and pay half of the child's medical expenses. In March 2016, Hubbard filed for contempt against Ratliff for failing to meet his domestic support obligations. Ratliff counterclaimed alleging that the child had been emancipated, and that child support should be terminated. The record showed that the child had graduated from high school in the spring of 2016. The child took summer courses in the summer of 2016, then joined the United States Air Force in November 2016. The chancery court entered a judgment that the child was emancipated in August 2016, and that Hubbard must repay the child-support sums to Ratliff for the time after emancipation. Hubbard appealed.

ISSUES

Whether the chancellor erred in (1) declaring the child emancipated in August 2016; and (2) ordering retroactive modification of child support payments resulting in repayment of child support paid after emancipation.

HOLDING

(1) Because the chancellor did not make sufficient findings of fact regarding when the child stopped attending school, the chancellor erred in finding emancipation in August 2016. However, pursuant to Miss. Code Ann. 93-11-65(8)(a), the child was emancipated upon joining the Airforce in November 2016. (2) Because chancellors are given discretion for modification of child support, including repayment for payments made after emancipation, the chancellor did not err in requiring Hubbard to repay child support to Ratliff after the child's emancipation. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part as modified the judgment of the Yalobusha County Chancery Court.

Affirmed in Part, Reversed & Rendered in Part as Modified - 2017-CA-00771-COA (Dec. 11, 2018)

Opinion by Judge Tindell

Hon. Vicki B. Daniels (Yalobusha County Chancery Court, Second Judicial Dist.)

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REVETTE V. FERGUSON

CIVIL - REAL PROPERTY

REAL PROPERTY - TITLE DISPUTES - ADVERSE POSSESSION - To establish title by adverse possession, the adversely possessing party must show, by clear and convincing evidence, that their occupancy of the challenged property was (1) under claim of ownership, (2) actual or hostile, (3) open, notorious, and visible, (4) continuous and uninterrupted for a period of ten years, (5) exclusive, (6) peaceful, and (7) lasted for at least ten years

EVIDENCE - PROPERTY - LAND SURVEYS - In order to have a survey properly admitted into evidence, the surveyor needs to be called to explain and be subject to cross-examination

REAL PROPERTY - DAMAGES - TRESPASS - A trespass to land is committed when a person intentionally invades the land of another without a license or other right

FACTS

In 2015, Patrick and Scott Revette brought suit concerning a 1.14-acre parcel of land that they believed they rightfully owned. In 2006 the Revettes had purchased title to the parcel from Jennifer Rabourn Stanley, who had obtained her fifty acres, including the parcel, from the Revettes' predecessors in interest. Robert and Lillian Ferguson asserted, however, that they had adversely possessed the land. The Fergusons purchased their property in 1987 and, despite the record title's failure to encompass the disputed parcel, believed that they owned the disputed tract of land at the time of their purchase. The Fergusons utilized the parcel from 1987 to 2015 as land to graze cattle, as well as to hunt and fish. From 1987-1993, the Fergusons leased the property to a hunting club and erected "no trespassing" signs and hunting stands. The Revettes brought suit to establish title, to allege trespass, and to seek a declaratory judgment. Both parties presented surveys of the land which contained discrepancies relating to the .08 acres of the disputed land. The chancellor of the Wayne County Chancery Court determined that the Fergusons had properly adversely possessed the land, and utilized the Fergusons' survey, without admitting it into evidence, in reaching his decision. Additionally, the chancellor denied the Fergusons' request for recovery on trespass, which sought compensatory and punitive damages along with attorney's fees. The Revettes appealed and the Fergusons cross-appealed.

ISSUES

Whether the chancery court erred in (1) finding that the Fergusons had adversely possessed the land; (2) utilizing the Fergusons' survey of the land; and (3) denying the Fergusons' requests for recovery based on trespass.

HOLDING

(1) Because the Fergusons continuously and uninterruptedly occupied the disputed parcel for over twenty years, and because that occupancy satisfied all of the remaining elements of adverse possession in Mississippi, the chancellor did not err in determining that the Fergusons had properly adversely possessed the land. (2) Because the Revettes did not have an opportunity to cross-examine the maker of the Fergusons' survey, and because that survey had been properly excluded from evidence as hearsay, the chancellor erred in utilizing the Fergusons' survey and not allowing the Revettes to dispute the discrepancies between their survey and the Fergusons' survey. (3) Because the Revettes did not actually invade any property on either the disputed parcel or on the Fergusons' other property, the chancellor did not err in denying the Fergusons' request for recovery based on trespass. Therefore, the Court of Appeals affirmed the Wayne County Chancery Court in part, and reversed and remanded in part.

Affirmed in Part, Reversed & Remanded in Part - 2017-CA-00075-COA (Dec. 11, 2018)

Opinion by Judge Greenlee

Hon. Franklin C. McKenzie Jr. (Wayne County Chancery Court)

Lee Turner & Robert Kasey Wells for Appellants - Terry L. Caves & Risher Grantham Caves for Appellees

SHERIDAN V. CASSIDY

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - CHILD CUSTODY - MODIFICATION - To succeed on a request for custody modification, the non-custodial party must prove (1) that a substantial change in circumstances has transpired since issuance of the custody decree; (2) that this change adversely affects the child's welfare; and (3) that the child's best interests mandate a change of custody

DOMESTIC RELATIONS - CHILD CUSTODY - ALBRIGHT FACTORS - Upon a finding of a material change in circumstances, a court is to apply the *Albright* factors to determine which parent should have primary custody

DOMESTIC RELATIONS - CHILD CUSTODY - PREFERENCE - Miss. Code Ann. § 93-11-65(1)(a) provides that a child's preference may be taken into account in determining child custody, but the chancellor is not bound by the election of a minor child; if a chancellor declines to follow a child's preference, he must place the reasons in the record

FACTS

On May 18, 2016, James Cassidy was granted a divorce from Farra Cassidy Sheridan on the ground of Farra's adultery. Pursuant to a child custody, support, and property settlement agreement ("PSA"), Farra took physical custody of the couple's four minor children, and James agreed to pay rehabilitative alimony and child support. After the parties' divorce, Farra began a relationship with Eric Sheridan, and Farra and the children drove to Arkansas frequently to visit her family and Sheridan, who was married at the time. On July 19, 2016, Farra petitioned the Lafayette County Chancery Court for permission to move the children to Benton, Arkansas. James countered, requesting that he be granted custody of the children. Farra and Sheridan married on February 3, 2017 after Sheridan's divorce. Farra admitted that prior to her marriage to Sheridan, she spent multiple nights with Sheridan while the children were present. A clause in the PSA prohibited either party from exposing the children to overnight visits from adult members of the opposite sex. Farra also admitted to drinking two to four beers per day while prescribed antidepressants, a prescription sleep drug, and a muscle relaxer. Farra conceded that she should not be drinking alcohol while taking these medications. James testified that Farra interfered with his visitation and had refused to discuss matters involving the children. After the hearing, the chancellor granted James's motion for custody modification and ordered Farra to pay child support. Farra appealed.

ISSUES

Whether (1) there was no evidence of a material change in circumstances resulting in an adverse effect on the children; (2) the chancellor misapplied several of the *Albright* factors; (3) the chancellor erred by not allowing their twelve-year-old son to state a preference; and (4) the chancellor erred by refusing to allow two of the children to testify.

HOLDING

(1) Because the chancellor found Farra's involvement with a married man, her numerous violations of the PSA, her decision to abuse alcohol while taking prescription medications, her poor financial decisions, and her refusal to co-parent with James, along with several other examples, amounted to a material change in circumstances, the chancellor's findings were not manifestly wrong or clearly erroneous. (2) Because Farra's decision to combine alcohol with antidepressants reflected poor judgment, and because Farra disregarded the PSA and allowed her boyfriend to spend the night while the children were present, the chancellor found the Physical and Mental Health and Moral Fitness *Albright* factors to favor James. Therefore, there was no abuse of discretion in finding that these factors weighed in James's favor. (3) Because the majority of the *Albright* factors favored James, there was no abuse of discretion in declining to allow the twelve-year-old child to state his preference. (4) Because the chancellor stated that it was not in the children's best interest to testify, and expressed his opinion that the children had been coached, rendering any testimony unhelpful, there was no abuse of discretion. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Chancery Court.

DISSENT

Judge Carlton argued that although under Miss. Code Ann. § 93-11-65 the chancellor does not have to honor the twelve-year-old child's preference, the mother has a right to present the evidence at a custody hearing. Therefore, the chancellor abused his discretion by declining Farra's request to present her twelve-year-old son's testimony on this issue. Judge Carlton maintained that this case must be reversed and remanded due to the chancellor's abuse of discretion in refusing to allow the twelve-year-old son to state his preference on the record.

Affirmed - 2017-CA-00960-COA (Dec. 11, 2018)

En Banc Opinion by Chief Judge Lee - Dissent by Judge Carlton

Hon. Glenn Alderson (Lafayette County Chancery Court)

Richard S. McLaughlin & Nicole H. McLaughlin for Appellant - Mary M. Whitfield & Charles J. Swayze Jr. for Appellee

Briefed by [Natalie McCarty](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BEAL V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - CONCLUSIONS OF LAW - REVERSIBLE ERROR - When the circuit court fails to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented, there is reversible error

FACTS

Dennis Beal was convicted of the sale of a tenth gram of cocaine and was sentenced to serve sixty years without eligibility for parole as a habitual offender and a two million dollar fine. The Supreme Court later reversed a bribery conviction that supported Beal's habitual-offender enhancement. Beal subsequently filed a post-conviction relief motion, which was granted by the circuit court. The circuit court held a resentencing hearing without the habitual-enhancement included. The circuit court sentenced Beal again to serve sixty years with a reduced fine and made no mention of parole. The court failed to address Beal's assertion that he should receive a proportionality review and be eligible for parole. Beal appealed.

ISSUE

Whether the circuit court's failure to address Beal's assertion that he should receive a proportionality review and be eligible for parole constituted reversible error.

HOLDING

Because the court is required to make specific findings of fact and expressly state conclusions of law related to each issue presented, the circuit court's failure to address Beal's claim for parole eligibility constituted reversible error. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Circuit Court.

Reversed & Remanded - 2017-CA-01445-COA (Dec. 11, 2018)

Opinion by Judge Fair

Hon. John Huey Emfinger (Madison County Circuit Court)

John Prince Martin & C. R. Montgomery for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Jack Schultz](#)

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JONES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - MOTION - PRODUCTION OF DOCUMENTS - Pleadings cognizable under the post-conviction relief statutes are treated as motions for PCR regardless of how the plaintiff characterized the pleadings

POST-CONVICTION RELIEF - STANDING - PERMISSION - Petitioners must have permission from the Supreme Court to file PCR motions if their conviction was affirmed by the Supreme Court on direct appeal

FACTS

Andre Jones was convicted of murder and sentenced to life imprisonment. In 2011, the Supreme Court denied Jones leave to file a PCR motion. Nine years after his conviction, Jones filed a “Motion for Production of Biological Evidence.” The circuit court considered the motion to be a PCR motion. Because the Supreme Court affirmed Jones’s conviction on direct appeal, and Jones failed to obtain leave to file a PCR motion, the circuit court found it lacked jurisdiction to consider Jones’s motion. Jones appealed.

ISSUES

Whether the circuit court erred in (1) considering Jones’s motion as a PCR motion; and (2) dismissing Jones’s motion for lack of jurisdiction.

HOLDING

(1) Because Jones filed a motion requesting the production of documents from his court proceeding, the circuit court correctly considered his motion a PCR motion under *May v. State*. (2) Because the Supreme Court previously denied Jones permission to file a PCR motion, Jones was not entitled to file a PCR motion and the circuit court lacked jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2017-CP-01510-COA (Dec. 11, 2018)

Opinion by Judge Tindell

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

Pro se for Appellant - Lisa L. Blount Att’y Gen. Office for Appellee

Briefed by [Nathaniel Snyder](#)

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PORTER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - PROCEDURAL BAR - Miss. Code Ann. § 99-39-23(6) provides that the dismissal of a post-conviction relief motion is a final judgment and acts as a bar to a second, or successive, motion raising the same issue or issues

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - Errors affecting fundamental constitutional rights are excepted from the procedural bars of the Uniform Post-Conviction Collateral Relief Act

POST-CONVICTION RELIEF - PROCEDURAL BAR - FUNDAMENTAL RIGHTS - Only four fundamental-rights exceptions have been expressly found to survive procedural bars: (1) the right against double jeopardy, (2) the right to be free from an illegal sentence, (3) the right to due process at sentencing, and (4) the right not to be subject to ex post facto laws

FACTS

Keith Porter pled guilty to armed robbery and unlawful possession of a firearm by a convicted felon. After his conviction, he filed four motions for post-conviction relief. His fourth motion attacked his guilty plea to possession of a firearm as a convicted felon. Finding the petition barred as a successive writ, the Harrison County Circuit Court dismissed the petition without an evidentiary hearing. Porter appealed.

ISSUE

Whether the trial court erred in dismissing Porter's fourth motion for post-conviction relief.

HOLDING

Because Porter previously filed two post-conviction relief motions attacking his guilty plea to possession of a firearm as a convicted felon, and because his claims did not implicate any fundamental-constitutional-rights violations, the trial court did not abuse its discretion in dismissing Porter's fourth post-conviction relief motion regarding the same issue. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2018-CP-00324-COA (Dec. 11, 2018)

Opinion by Judge Fair

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Katy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Baxter Geddie](#)

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SMITH V. STATE

CRIMINAL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE MOTIONS - Miss. Code Ann. § 99-39-23(6) provides that any order dismissing the petitioner's motion or otherwise denying relief is a final judgement and shall be bar to a second or successive motion

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE MOTIONS - A motion shall not be successive if it takes issue with a new, separate and distinct, plea, conviction, and sentence

FACTS

On March 28, 2008, Donald Smith was indicted for two counts of kidnapping, one count of carjacking while armed with a knife, and one count of felonious evasion of a police officer. Smith subsequently filed a petition to plead guilty to one count of kidnapping, one count of armed carjacking, and one count of felonious evasion. On December 14, 2011, Smith filed his first post-conviction relief motion attacking the armed-carjacking conviction and the 2008 indictment. The circuit court denied his 2011 PCR motion. He filed a second PCR motion on February 22, 2012, which the circuit court denied because it was a successive writ. The Supreme Court reversed this ruling. In June 2015, Smith filed a motion to quash Count III of the 2008 indictment charging him with carjacking. The circuit court denied this motion. Smith entered a new guilty plea to attempted kidnapping, armed carjacking, and fleeing and eluding a police officer. Smith filed a PCR motion in 2017 challenging (1) Count III of the indictment charging him with armed carjacking, (2) the subject-matter jurisdiction of the circuit court to convict him of the armed carjacking, and (3) his sentence which exceeded the statutory authority for attempted kidnapping. The circuit court agreed that Smith was sentenced outside of the statutory limit but dismissed the remaining claims as successive-writ barred. Smith appealed.

ISSUE

Whether the circuit court erred in dismissing Smith's PCR motion as successive-writ barred.

HOLDING

Because Smith's 2017 PCR motion took issue with a new, separate and distinct, plea, conviction, and sentence, and nothing in the record reflected any previous proceeding in which Smith requested relief from a new conviction and

sentence, the 2017 PCR motion was not successive under Miss. Code Ann. § 99-39-23 (5)-(6). Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Circuit Court.

Reversed & Remanded - 2017-CP-0089-COA (Dec. 11, 2018)

Opinion by Judge Tindell

Hon. Robert P. Krebs (Jackson County Circuit Court)

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

Briefed by [Zachary Flowers](#)

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WATTS V. STATE

CIVIL - POST- CONVICTION RELIEF

POST-CONVICTION RELIEF - MOTION FOR MODIFICATION - ELEMENTS - Pursuant to *King v. State*, a defendant must prove intellectual disability while facing the death penalty to be allowed a modification to their sentence

POST-CONVICTION RELIEF - SENTENCING - WAIVER - Pursuant to *Twillie v. State*, a defendant can waive his ex post facto rights and knowingly enter into an agreement to be sentenced to life without parole in order to avoid the death penalty

POST-CONVICTION RELIEF - SENTENCING - AMENDMENT TO STATUTE - Although a crime may have been committed before the 1994 amendment of Miss. Code Ann. § 97-3-21, the amendment is nonetheless effective as long as the conviction and sentencing occurred after the addition of the amendment

FACTS

On April 19, 1994, the grand jury of Marion County indicted James Earnest Watts for killing Vanessa Nicole Lumpkin. Lumpkin was a female child under the age of twelve years old whom was killed by Watts in the commission of a sexual battery. In 1996, a jury convicted Watts of capital murder and decided that he should receive the death penalty. Watts appealed. The Supreme Court affirmed his conviction but reversed his sentence on the basis that the trial court had not properly instructed the jury as to the three sentencing options in capital murder cases. In 1999, Watts appeared before the trial court for resentencing. The State offered not to seek the death penalty if Watts would agree to waive his right to pursue a sentence of life with the possibility of parole before a jury and accept a sentence of life without parole instead. Watts accepted the offer and was sentenced to life without the eligibility for parole. In 2017, Watts filed a motion to modify his sentence to life with the eligibility for parole, arguing that Miss. Code Ann. § 97-3-21 permitted the trial court to impose a sentence of only imprisonment for life, and, thus, its imposition of a sentence of life without parole exceeded the statutory maximum. The trial court denied Watt’s motion. Watts appealed.

ISSUES

Whether the circuit court erred in (1) denying the modification to his sentence; (2) exceeding the statutory maximum in sentencing him to life imprisonment without parole; and (3) allowing an involuntary waiver of being sentenced by a jury.

HOLDING

(1) Because Watts failed to prove intellectual disability and was no longer facing the death penalty, the holdings in *King v. State* and *King v. Epps* were not relevant, and the modification was properly denied. (2) Because Watts was sentenced after the 1994 amendment of Miss. Code Ann. § 97-3-21, the court did not exceed the statutory maximum in sentencing him to life imprisonment without parole. (3) Because the record included a sentencing order from Watts’s resentencing to life without parole, the trial court correctly determined that Watts entered his plea voluntarily and intelligently. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2018-CP-00225-COA (Dec. 11, 2018)

Opinion by Presiding Judge Irving

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COURT OF APPEALS - CRIMINAL CASES

BASS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MIRANDA RIGHTS - WAIVER - Minors can be treated as adults in some circumstances and are allowed to waive their rights and confess to a crime

CRIMINAL PROCEDURE - JURY - OUTSIDE INFLUENCE - Whenever there is a question of outside influencing of a jury, the trial judge himself ought to examine the jury carefully to ensure that the jury’s deliberations are based on the evidence produced at trial and not extraneous matters

EVIDENCE - EXPERT - PROVIDED BY THE COURT - Courts are not required to provide an expert every time an indigent defendant requests one; defendants must establish a substantial need for expert assistance and provide concrete reasons for requiring an expert

FACTS

On March 10, 2014, Cortez Bass engaged in an altercation with Donterrius Jackson and George Anderson that ended with Bass fatally shooting Jackson. According to witnesses, earlier that day Bass attempted to run Jackson over with his car. After being taken into custody, Bass (who was 17 at the time) voluntarily waived his *Miranda* rights and gave a recorded statement to law-enforcement officers. Bass told officers that Jackson shot at him before Bass shot and killed Jackson. The jury found Bass guilty of first-degree murder with a firearm enhancement. Prior to sentencing, Bass filed multiple motions, including a motion for a judgment notwithstanding the verdict (JNOV) or, in the alternative, for a new trial, a motion for sentencing pursuant to *Miller*; and motions seeking expert-assistance funds for a psychologist and a mitigation investigator. The circuit court granted Bass’s request for funds for a psychologist but denied the requested funds for a mitigation investigator. The circuit court also denied Bass’s motion for a JNOV. After considering the evidence presented at Bass’s sentencing hearing, the circuit court sentenced Bass to LWOP for first-degree murder and to a consecutive five-year sentence for the firearm enhancement. Bass appealed.

ISSUES

Whether (1) actions by law enforcement officers violated Bass’s right to be free from self-incrimination; (2) the circuit court erred in failing to grant a mistrial; (3) the State erroneously denied Bass access to Jackson’s criminal history; (4) the State committed prosecutorial misconduct; (5) the verdict was against the weight of the evidence; (6) the circuit court erred in denying Bass’s request for expert-assistance funds for mitigation investigation; (7) the circuit court’s imposition of Bass’s sentence violated his constitutional right to a jury sentencing; and (8) the circuit court erred in sentencing Bass to LWOP.

HOLDING

(1) Because Bass never raised an objection about his waiver of *Miranda* rights before the circuit court, this issue was procedurally barred. Further, the evidence showed that Bass’s argument lacked merit. (2) Because the circuit court’s actions in questioning the jury and reminding them to avoid watching the news sufficiently ensured that Bass received a fair and impartial trial not contaminated by outside influences, the circuit court did not err in denying Bass’s motion for a mistrial. (3) Because Bass never raised the issue that the State denied him access to Jackson’s criminal record, this argument was procedurally barred. Further, Bass offered no evidence to show either a request or suppression of the record. (4) Because Bass’s attorney had an opportunity to thoroughly cross examine each of the State’s witnesses and

never raised an objection, the argument that the State committed prosecutorial misconduct was procedurally barred. (5) Because the jury could conclude that Bass acted with deliberate design to effect Jackson's death and the evidence was viewed in the light most favorable to the verdict, the verdict was not against the weight of the evidence. (6) Because the circuit court's denial of expert funds for a mitigation investigator neither deprived Bass of the opportunity to present his defense during sentencing nor rendered his sentencing hearing fundamentally unfair, the court did not err in denying his request. (7) Because Bass was convicted under Miss. Code Ann. § 97-3-21(1), which explicitly vests sentencing authority with the court, Bass possessed no statutory right to a jury sentencing. (8) Because the circuit court conducted a hearing as required by *Miller* and only sentenced Bass to LWOP after applying every factor outlined in *Miller*, the court did not err in sentencing Bass to LWOP. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2017-KA-01009-COA (Dec. 11, 2018)

Opinion by Judge Tindell

Hon. Charles. E. Webster (Tunica County Circuit Court)

Pro se & Heather Marie Aby for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Catherine Pettis](#)

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DARTEZ V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DRIVING UNDER THE INFLUENCE - NEGLIGENCE - When indicting and proceeding against a defendant on a charge of aggravated DUI, the prosecution is not required to prove beyond a reasonable doubt a specific act of negligence

CRIMINAL PROCEDURE - APPEALS - INSUFFICIENT INDICTMENTS - A challenge to the sufficiency of an indictment must generally be raised at trial and not, for the first time, at the appellate level, unless the indictment suffers from a jurisdictional defect

FACTS

Early in the morning on November 14, 2014, Kaleigh Dartez was found injured, her head bleeding, on the side of the road. Harrison County Deputy Sheriff Brandon Hendry discovered Dartez on his way home from his shift. Dartez was being assisted by a truck driver, who had stopped to help her. While Dartez denied that she had been in a car wreck, Hendry discovered a wrecked Toyota Camry 100 feet up the road from Dartez. The car was severely damaged and flipped on its side. Outside the car lay Zachary Whitfield, dead. Back at Hendry's patrol car, paramedics treated Dartez's wounds, and Dartez told them she had been driving and had drunk six beers that night. Dartez was taken to the hospital for treatment, where a blood test revealed an alcohol concentration of 0.219 three hours after the wreck. Dartez was arrested and charged with two counts of aggravated driving under the influence. At trial, the prosecution presented evidence that when Dartez and Whitfield left the bar, Dartez was in the driver's seat and Whitfield in the passenger's seat. A crash-scene reconstruction expert studied the accident and concluded the driver failed to maintain control of the vehicle in the proper lane. The defense presented evidence of a bruise on Dartez's shoulder that suggested she was in the passenger's seat at the time of the accident. A jury found Dartez guilty on the second count of aggravated DUI, and she was sentenced to twenty-five years. Dartez filed a motion for judgment notwithstanding the verdict, or in the alternative, a new trial. The trial court denied the motion. Dartez appealed.

ISSUES

Whether (1) the indictment was defective because it failed to allege a specific act of negligence; (2) the jury instructions were erroneous because they did not identify a specific act of negligence; (3) the jury instructions on negligence were erroneous or confusing; (4) the jury's guilty verdict was against the overwhelming weight of the evidence; and (5) Dartez was entitled to acquittal because the indictment referenced the wrong subsection of the DUI statute.

HOLDING

(1) Because Dartez's challenge to the indictment was raised for the first time on appeal, it was procedurally barred. Further, the prosecution was not required to prove a specific act of negligence under the aggravated DUI statute. (2) Because Dartez's challenge to the jury instruction was raised for the first time on appeal, and because the prosecution did not need to prove a specific act of negligence, the jury's instructions were not erroneous. (3) Because Dartez's objection to the negligence instruction was procedurally barred and because the jury instruction that a driver should maintain reasonable and easy control of the vehicle was permitted to be read together with the negligence jury instruction as a whole, the jury instructions on negligence were not erroneous or confusing. (4) Because there was no evidence that the wreck occurred because of other circumstances, like mechanical problems, the jury verdict was not against the overwhelming weight of the evidence. (5) Because Dartez had clear notice of the charge against her, the incorrect citation to the subsection of the DUI statute did not prejudice Dartez, and she was not entitled to acquittal because of the mistake in the indictment. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-01519-COA (Dec. 11, 2018)

Opinion by Judge Wilson

Hon. Lisa P. Dodson (Harrison County Circuit Court, First Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Michael Lambert](#)

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DENNIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - REVERSAL - WEIGHT OF THE EVIDENCE - When reviewing a challenge to the sufficiency of the evidence, a court will reverse and render only if the facts and inferences point in favor of the defendant on any elements of the offense with sufficient force that a reasonable person could not have found beyond a reasonable doubt that the defendant was guilty

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF THE EVIDENCE - When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, a court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

CRIMINAL LAW - VIDEO EVIDENCE - JURY INSTRUCTIONS - Videotape evidence submitted to the jury of an accused's unlawful acts constitutes direct evidence that does not entitle a defendant to a circumstantial evidence or two-theory jury instruction, unless the case is based purely or wholly on circumstantial evidence

FACTS

Stephen Tapper reported several items, including a laptop, missing from his truck parked at his house. After he posted a surveillance video on Facebook showing a man entering the truck and removing items, several users identified the person as John Dennis. The D'Iberville Police Department retrieved the video for evidence and sent out a press release with two photographs of the suspect that Tapper had received. The response to the press release further indicated Dennis was the suspect, and he was arrested the same day. The police were unable to lift fingerprints off of the vehicle, and the fingerprints on the laptop recovered at a carwash were not his. No other stolen items were recovered, and there was no physical evidence linking Dennis to the crime. At trial, Tapper and three police officers testified to Dennis's identity based on the video and the press release photos. Dennis was convicted of burglary of an automobile and sentenced to seven years as a habitual offender without parole. Dennis appealed.

ISSUES

Whether the trial court erred in (1) denying Dennis's motion for a judgment notwithstanding the verdict; (2) denying Dennis's motion for a new trial because the jury's verdict was against the overwhelming weight of the evidence; (3)

allowing the State's witnesses to identify Dennis in the surveillance video; and (4) refusing Dennis's request for a circumstantial evidence jury instruction.

HOLDING

(1) Because the State receives the benefit of all favorable inferences that may reasonably be drawn from the evidence, and because several witnesses testified that Dennis was the person committing the crime in the video which the jury viewed, the claim was without merit. (2) Because the State is only required to present proof that the defendant committed the crime, and because the jury was able to assess witness credibility, weigh evidence, and resolve conflicts in the evidence, the verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. (3) Because lay opinion testimony must be rationally based on the witness's perception, and because Officer Joiner's identification of Dennis as the suspect in the video was not, allowing the in-court identification of Dennis was error. However, the error was harmless because the jury viewed the video and two other witnesses testified to the identity of Dennis. (4) Because videotape evidence submitted to the jury of an accused's unlawful acts constitutes direct evidence, the court properly denied a circumstantial evidence and two-theory jury instruction. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge Wilson argued the evidence was insufficient for a rational juror to find the State proved its case beyond a reasonable doubt. He stated that the video, which was the only evidence, did not definitively identify Dennis as the man committing the crime. Further, the opinions by Tapper and three police officers stating that Dennis was the man in the video were not based on personal familiarity with the defendant and created a substantial risk that the jury reached its verdict only because of this testimony.

Affirmed - 2017-KA-00584-COA (Dec. 11, 2018)

Opinion by Judge Fair - Dissent by Judge Wilson

Hon. Roger T. Clark (Harrison County Circuit Court, Second Judicial Dist.)

Phillip Broadhead (Pub. Def. Office) for Appellant - Katy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Tucker Hood](#)

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FOSTER V. STATE

CRIMINAL - MISDEMEANOR

LEGISLATURE - CRIMINAL OFFENSES - POWER TO DEFINE & PUNISH - Under *Wilber v. State*, the state legislature is vested with the power to create and define criminal offenses within the State and has the power to define and punish any act as criminal unless limited by constitutional provisions

MISDEMEANOR - RULES OF THE ROAD - SPEED LIMITS - Miss. Code Ann. § 63-3-501 states that no person shall operate a vehicle on the highways of the State at a speed greater than sixty-five miles per hour, and a violation of this section constitutes a misdemeanor

FACTS

Marcus Rommel Foster was stopped by Mississippi Highway Safety Patrol Officer Matthew Eller after his radar indicated that Foster was traveling in excess of the sixty-five miles-per-hour speed limit at eighty-two miles per hour. Officer Eller gave Foster a speeding citation, and he later testified at trial that he received appropriate training to use his radar detector, properly calibrated it on the day he stopped Foster, and stopped Foster in Chickasaw County. Foster was convicted of speeding and appealed to the Chickasaw County Circuit Court, which found Foster guilty of speeding and fined him \$200 plus court costs. Foster appealed.

ISSUES

Whether (1) the State failed to prove that Foster committed the crime of speeding; and (2) the laws of the State applied to Foster.

HOLDING

(1) Because Officer Eller's testimony was sufficient to prove Foster violated the state law by driving in excess of the speed limit, the State proved that Foster committed the crime of speeding. (2) Because the trial court properly took judicial notice that Foster was stopped in Chickasaw County based on Officer Eller's testimony, the laws of the State applied to Foster. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

Affirmed - 2017-KM-01533-COA (Dec. 11, 2018)

Opinion by Judge Greenlee

Hon. John Andrew Gregory (Chickasaw County Circuit Court, Second Judicial Dist.)

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

Briefed by [Lauren Rogers](#)

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MAY V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DOUBLE JEOPARDY - UNIT OF PROSECUTION STANDARD - As articulated by the United States Supreme Court in *Sanabria*, conviction is precluded by double jeopardy when a defendant is charged more than once under the same statute for the same event or occurrence

CRIMINAL PROCEDURE - MIRANDA RIGHTS - INVOCATION - To receive the protections afforded by the Fifth Amendment as interpreted in *Miranda*, a defendant must affirmatively and explicitly invoke those protections in the present tense

EVIDENCE - SUFFICIENCY - SEXUAL ASSAULT - Evidence of a sexual assault is sufficient if medical experts testify in support of an inferred conclusion, even if there is no first-hand testimony

FACTS

Cameron May feigned interest in renting an apartment in Ocean Springs to gain entry to Barbara Jananivich's office. Upon doing so, he closed the door, blocked her exit, and then beat and strangled her until she passed out. She awoke to find her shoes and undergarments removed, immediately calling for help. She told law enforcement she believed she was raped and an examination was performed by nurses who documented the trauma. May fled to Florida where he was arrested and questioned in connection with Jananivich's assault. He admitted to battering and strangling her but denied sexual intercourse. He later invoked his right to counsel and law enforcement stopped the interview. He was charged, tried, and convicted of two counts of assault, one count of sexual battery, and one count of kidnapping. May filed a motion for judgment notwithstanding the verdict, or in the alternative a new trial. The court denied the motion. May appealed.

ISSUES

Whether the trial court erred in (1) holding that double jeopardy did not bar May's two aggravated-assault convictions; (2) holding that evidence was sufficient to sustain May's sexual battery conviction; (3) holding that evidence was sufficient to sustain May's kidnapping conviction; and (4) denying the May's motion to suppress his statement to the police.

HOLDING

(1) Because May had two convictions under one statute arising out of the same occurrence, his conviction on Count II was precluded by double jeopardy and was properly vacated. (2) Because there was sufficient testimony from the victim and from medical experts to support the inference that May sexually assaulted the victim, the jury's conclusion that sexual assault occurred was reasonable. (3) Because May testified that he locked the door to prevent entry or exit to the

room and the victim testified that she felt as though she could not leave, the jury's conclusion that kidnapping occurred was reasonable. (4) Because May did not make an unequivocal statement of his present desire to invoke his rights, the trial court properly concluded that the entire confession should not be excluded from evidence. Therefore, the Court of Appeals affirmed in part, and reversed and rendered in part the judgment of the Jackson County Circuit Court.

PARTIAL CONCURRENCE/DISSENT

Judge Carlton argued that the *Blockburger* same-elements test should be maintained when evaluating double jeopardy claims. Under that test, proof of a different element or proof of a different fact are enough to satisfy the test even though there may be substantial overlap of the facts and elements. Because Judge Carlton would have used the *Blockburger* test, she would have affirmed the conviction completely instead of vacating the judgment for Count II.

Affirmed in Part; Reversed & Rendered in Part - 2017-KA-00884-COA (Dec. 11, 2018)

Opinion by Judge Greenlee - Partial Concurrence/Dissent by Judge Carlton

Hon. Dale Harkey (Jackson County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Joseph Scott Hemleben (Att'y Gen. Office) for Appellee

Briefed by [David Wellen](#)

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WALDON V. STATE

CRIMINAL - FELONY

EVIDENCE - DIRECT EXAMINATION - LEADING QUESTIONS - Miss. R. Evid. 611(c) disallows the use of leading questions during direct examination except as may be necessary to develop the witness's testimony such as when the witness is a child

EVIDENCE - WITNESSES - CREDIBILITY - It is within the province of the jury to determine the credibility of witnesses; the jury may believe or disbelieve, accept or reject the utterances of any witness

CIVIL PROCEDURE - PLEADINGS - PRO SE LITIGANTS - Pleadings filed by *pro se* litigants are to be held to less stringent standards than formal pleadings drafted by lawyers; deference will be given to *pro se* litigants so as to prevent the loss of a meritorious claim due to inartful drafting

FACTS

On November 23, 2015, Geoffrey McGowan drove his 2011 Chevy Tahoe to a friend's house. He left the vehicle running in front of the house while he went inside, and it was missing when he came out. McGowan called 9-1-1, and an officer arrived where he was located. The officer and McGowan called OnStar, and the service quickly located the vehicle. OnStar was able to control the speed of the vehicle and prevent it from going faster than five miles per hour. A slow chase by officers ensued, the vehicle was stopped, and the driver of the car, Larry Waldon, was arrested. In a 2017 trial, a jury returned a guilty verdict, and Waldon was sentenced to ten years of incarceration without eligibility for parole or early release. Waldon appealed.

ISSUES

Whether (1) the evidence was sufficient to support a conviction; (2) the trial court erred in allowing the State to call a witness who was not previously disclosed; (3) Waldon was denied a fair trial because the trial court allowed the State to use a leading question; and (4) the record was sufficient to support a claim of ineffective assistance of counsel.

HOLDING

(1) Because evaluating the credibility of witnesses and determining whose testimony should be believed is charged to the jury alone, the evidence was sufficient to support a conviction. (2) Because Walden was not the victim of unfair surprise, did not suffer prejudice, did not pursue a continuance to interview the witness, and was able to cross examine the witness at trial, the trial court did not err in allowing the State to call a witness who was not previously disclosed. (3) Because the leading question was used in order to develop preliminary matters, Waldon was not denied a fair trial. (4)

Because Waldon did not raise the issue and meaningfully support his assignments of error, the record was insufficient to support a claim of ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-KA-00814-COA (Dec. 11, 2018)

Opinion by Judge Fair

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

Hunter Nolan Aikens, Benjamin A. Suber, & George T. Holmes (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Katie Humphries](#)

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WILSON V. STATE

CRIMINAL - FELONY

EVIDENCE - OBJECTIONS - WAIVER - A party must seek a ruling on an objection or motion to preserve the issue for appeal and the failure to bring a motion to the attention of the trial court and request a hearing waives the issue on appeal

CRIMINAL PROCEDURE - APPEAL - PLAIN ERROR - The plain-error doctrine is implicated when an error occurs at trial which affects substantial rights and results in a manifest miscarriage of justice and has been construed to include anything that seriously affects fairness, integrity, or public reputation of judicial proceedings

CONSTITUTIONAL LAW - RIGHT TO A SPEEDY TRIAL - BALANCING TEST - The Supreme Court in *Barker v. Wingo* set forth a balancing test to analyze whether or not the state has violated the right of an accused to a speedy trial; that balancing test requires consideration of the following factors: (1) the length of the delay, (2) the reasons for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the defendant was prejudiced by the delay; these factors are closely related and must be considered together

FACTS

On June 2, 2016, Adrian Wilson was indicted on four counts of burglary of a building in violation of Miss. Code Ann. § 97-17-33. The indictment charged that Wilson broke into and entered four separate camp houses of the Coleman Hill Hunting Club on May 25, 2015 with the intent to feloniously take, steal, and carry away goods and chattels of value and that, in addition, Wilson qualified for enhanced sentencing as a nonviolent habitual offender. Wilson was tried before a jury in Copiah County, where three of the four club members whose houses were broken into testified at trial. The State also presented pictures obtained from a trail camera that had been pointed at the door of one of the houses, photographs of the inside of the burglarized homes taken in 2017, biological evidence obtained from a cigar tip that was taken from one of the previously empty trash cans at the hunting club and tested by the Mississippi Crime Lab, and photographs from Wilson’s booking. In addition, Janet Burchfield, qualified and accepted as an expert witness in forensic biology specializing in DNA and serology, testified that she compared a known DNA sample from Wilson to DNA recovered from the plastic cigar tip and opined that the DNA recovered from the cigar tip matched DNA from Wilson’s known sample. At the close of the State’s case, Wilson moved for a directed verdict on all counts and the trial court granted a directed verdict on one of the counts due to one of the house owners not testifying at trial. Wilson did not testify, and the defense called no witnesses. At the close of evidence, defense counsel unsuccessfully renewed the motion for a directed verdict. The jury returned guilty verdicts on two of the remaining burglary counts and sentenced Wilson to serve seven years for each of the two counts, to be served consecutively. Wilson appealed.

ISSUES

Whether (1) the trial court erred in denying Wilson’s motion to dismiss Count I; (2) the trial court erred in admitting photographs of the crime scene that were taken in 2017; (3) the trial court violated Wilson’s rights to a speedy trial; (4) the trial court erred when it denied Wilson’s motion in limine to exclude inmate intake photos of him; (5) the trial court erred when it denied Wilson’s motion for a new trial; (6) the trial court erred when it denied Wilson’s motion for a

JNOV; (7) Wilson's trial counsel, the prosecutor, and the trial judge conspired to deprive him of his due process rights; and (8) the State struck potential jurors based on their race.

HOLDING

(1) Because there was nothing in the record that indicated that the trial court entered an order on Wilson's motion to dismiss Count I, Wilson waived this issue for appeal. Further, a trial judge has no discretion to dismiss an indictment, nor any of its counts, prior to trial, where the defendant's sole claim is lack of evidentiary support. (2) Because the photographs that were taken in 2017 were admitted into evidence at trial were either made without objection from Wilson's counsel or the objections that were made were not made on the same grounds that were raised by Wilson on appeal, and because there was no plain error, Wilson's assignment of error as to the 2017 photographs was waived. (3) Because there was good cause for a continuance, Wilson filed a motion to dismiss due to a speedy-trial violation rather than demanding a speedy trial, and because there was no plain error, there was no statutory speedy trial violation. (4) Because the record contained no order or any other indication that the trial court made a ruling on Wilson's motion in limine seeking to exclude Wilson's intake photographs, and because there was no plain error, Wilson was procedurally barred from raising this issue on appeal. (5) Because there was ample evidence identifying Wilson as the perpetrator, there was no evidence that the DNA sample was contaminated, and because Wilson's intent to burglarize may be inferred from proof of breaking and entering, the trial court did not abuse its discretion in denying Wilson's motion for a new trial. (6) Because the State presented sufficient evidence at trial for a competent jury to find that Wilson burglarized the camp houses, the trial court did not err in denying Wilson's JNOV. (7) Because the court will not consider or act upon unsupported representations of fact, the trial court did not deprive Wilson of his due process rights. (8) Because Wilson's counsel made no challenge to any of the State's use of preemptory challenges, and because there was no evidence of the racial composition of the venire panel, Wilson's *Batson* challenge was procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Covich County Circuit Court.

Affirmed - 2017-KA-01197-COA (Dec. 11, 2018)

Opinion by Judge Carlton

Hon. Lamar Pickard (Covich County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) & *Pro Se* for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Carson Phillips](#)

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