

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 15, 2016

SUPREME COURT - CIVIL CASES

CRAWFORD V. FISHER

CIVIL - OTHER

APPELLATE PROCEDURE - JURISDICTION - FACTUAL BASIS - When considering jurisdictional issues, Mississippi appellate courts sit in the same position as the trial court, with all the facts as set out in the pleadings or exhibits, and may reverse regardless of whether the error is manifest

42 U.S.C. § 1983 - GROUNDS - METHOD OF EXECUTION - An inmate's constitutional challenge seeking to enjoin a particular means of effectuating a death sentence may be brought under 42 U.S.C. § 1983

42 U.S.C. § 1983 - STATE COURTS - JURISDICTION - Mississippi state courts possess concurrent jurisdiction to hear and adjudge suits brought pursuant to 42 U.S.C. § 1983

FACTS

Charles Ray Crawford, a Mississippi death row inmate, filed a lawsuit in the Hinds County Chancery Court against the Mississippi Department of Corrections (MDOC) pursuant to 42 U.S.C. § 1983, alleging various federal constitutional claims relating to the anesthetic to be used in his execution, which was not approved by the U.S. Food and Drug Administration. Although Crawford sought “equitable and injunctive relief” in the complaint, the chancery court, following a hearing, found that the constitutional claims were legal in substance, and thus transferred the case to the Hinds County Circuit Court. The circuit court granted the MDOC's motion to dismiss, holding that the § 1983 claims were the same or similar to issues pending at the time in a separate petition Crawford filed with the Mississippi Supreme Court. Crawford appealed.

ISSUE

Whether the trial court erred in granting the MDOC's motion to dismiss.

HOLDING

Because Crawford did not raise the method-of-execution argument in his previous petition for post-conviction relief, there was no factual basis for the circuit court to find that the same or similar issues were pending before the Supreme Court. Additionally, because Crawford's suit challenged the means of effectuating his sentence, and not its validity, the claim was properly brought in state court under 42 U.S.C. § 1983, and was not barred by the Mississippi Uniform Post-Conviction Collateral Relief Act. Therefore, the Supreme Court reversed the decision of the Hinds County Circuit Court, and remanded for consideration of the sufficiency of the complaint.

DISSENTS

Chief Justice Waller argued that Crawford's method-of-execution claim was in fact a collateral attack on his death sentence, and thus was subject to the procedural requirements of the Mississippi Uniform Post-Conviction Collateral Relief Act. Therefore, Chief Justice Waller would have found that the trial court reached the correct result in dismissing Crawford's complaint.

Justice Maxwell argued that Crawford's complaint did not plead a cognizable § 1983 method-of-execution claim because it failed to allege a known and available alternative execution procedure. Because there was no reason to remand a fatally-defective complaint, Justice Maxwell would have affirmed the result.

Reversed and Remanded - 2014-CA-01606-SCT (Dec. 15, 2016)

En Banc Opinion by Justice Kitchens – Dissents by Chief Justice Waller & Justice Maxwell

Hon. Tomie T. Green (Hinds County Circuit Court)

James W. Craig & Vanessa Judith Carroll for Appellant – Wilson Douglas Minor, Harold Edward Pizzetta, III, Jason L. Davis & James M. Norris (Att’y Gen. Office) for Appellees

Briefed by [James Kelly](#)

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MITCHELL V. RIDGEWOOD EAST APARTMENTS, LLC

CIVIL - PERSONAL INJURY

TORTS - PREMISES LIABILITY - THIRD PARTY ASSAULTS - Where the alleged dangerous condition is the threat of an assault, the requisite cause to anticipate the assault may arise from (1) actual or constructive knowledge of the assailant’s violent nature, or (2) actual or constructive knowledge that an atmosphere of violence exists on the premises

TORTS - PREMISES LIABILITY - CONSTRUCTIVE KNOWLEDGE - Constructive knowledge is information or knowledge of a fact imputed by law to a person, because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it

PREMISES LIABILITY - CONSTRUCTIVE KNOWLEDGE - DANGEROUS CONDITION - Constructive knowledge is present where, based on the length of time that the dangerous condition existed, the operator exercising reasonable care should have known of its presence

PREMISES LIABILITY - ASSUMED DUTY - HEIGHTENED DUTY OF CARE - A heightened duty of care cannot be assumed through a written contract in the context of a premises-liability claim because the premises owner already owes a duty of reasonable care to prevent foreseeable harm

FACTS

Sixteen-year-old, Devin Mitchell, was shot and killed by Tavaris Collins while visiting his aunt at Ridgewood East Apartments. His parents alleged that Ridgewood East had actual or constructive knowledge of the prior violent criminal conduct of Collins and that an atmosphere of violence existed at Ridgewood East at the time of the shooting. After determining that no genuine issue of material fact existed with regard to foreseeability, the trial court granted summary judgment to Ridgewood East. The Mitchells appealed.

ISSUES

Whether (1) Ridgewood East had constructive knowledge of Tavaris Collins’s violent nature and (2) Ridgewood East’s property rules and policies rendered third-party criminal acts foreseeable by imposing a duty on Ridgewood East to prevent rule and policy violations.

HOLDING

(1) Because Ridgewood East had no duty, either at law or assumed based on its policies, to conduct criminal background checks and because there was no evidence that it should have known of the violent tendencies of Collins, Ridgewood East had no constructive knowledge of Collins’s violent nature. (2) Because incorporating policies and rules into the lease agreement is not an assumed contractual duty to tenants and guests to prevent any and all violations of the rules, Ridgewood East’s policies and rules did not render third-party criminal acts foreseeable by imposing a duty to prevent any violations.

Affirmed - 2015-CA-01484-SCT (Dec. 15, 2016)

Opinion by Justice Kitchens

Hon. James T. Kitchens, Jr. (Clay County Circuit Court)

David Randall Wade, Dennis C. Sweet, III & Jeffrey Gray Baker Houston for Appellants - Walter William Dukes & Drury Sumner Holland for Appellees

Briefed by [Kaylee Beauchamp](#)

SUPREME COURT - CRIMINAL CASES

JOHNSON V. STATE

CRIMINAL -FELONY

APPELLATE PROCEDURE - STANDARD OF REVIEW - SUFFICIENCY OF THE EVIDENCE -If reasonable and fair minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense, the evidence will be deemed to have been sufficient

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CIRCUMSTANTIAL EVIDENCE - Where all the evidence tending to prove guilt of the defendant is circumstantial, the trial court must grant a jury instruction that every reasonable hypothesis other than guilt must be excluded in order to convict

CRIMINAL PROCEDURE - MOTION FOR NEW TRIAL - STANDARD OF REVIEW - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

FACTS

On November 1, 2012, Gregory Johnson (Greg) was shot and killed in his vehicle at the J.Y. Trice Apartments in Rosedale, Mississippi. Video evidence placed Greg with Ceasar Johnson (Ceasar) in Greg's vehicle at the Double Quick immediately before the shooting. Ceasar sold drugs for Greg, and the video showed substantial movement between the two in the vehicle. At the 10:18 p.m. mark on the video, Greg with Ceasar in his passenger seat drove away. At about that time, Larita Love's boyfriend Jonathon Smith was visiting her at the J.Y. Trice Apartments, which are about one mile from the Double Quick. Love looked out of her window and saw Greg sitting alone in his car in the parking lot. Then, she heard wheels spinning, two or three gunshots, and a crash. Love and Smith went outside to investigate, finding Greg slumped over the wheel. At 10:26 p.m. police responded to the call. The pathologist who performed the autopsy testified that Greg was shot twice in the head from the passenger side and from a distance of less than three feet. Ceasar was indicted for Greg's murder in August 2013. At trial in April 2015, Ceasar's friends and relatives testified that Greg had dropped him off at the Rosewood Apartments the night of the killing at 10:00 or 10:18 p.m. His sister testified that their family including Ceasar headed toward Greenville to go to a casino. But once they heard about Greg, they decided to go eat somewhere instead. A jury convicted Ceasar of murdering Greg and being a felon in possession of a firearm. The trial court sentenced him to life in prison for the murder charge and ten years for the felon-in-possession charge, with the sentences to run consecutively. Ceasar filed a motion for a new trial, and the trial court denied the motion. Ceasar appealed.

ISSUES

Whether (1) there was sufficient evidence to support the verdict and (2) the trial court erred in denying appellant's motion for a new trial.

HOLDING

(1) The testimony of witnesses, though circumstantial evidence, supplied sufficient evidence to support the jury verdict.
(2) Because the evidence does not weigh heavily against the jury's decision to convict Ceasar, a new trial was properly denied. Therefore, the Supreme Court affirmed the judgment of the Bolivar County Circuit Court.

DISSENT

Justice King argued that the State proved only the possibility of Ceasar's guilt by circumstantial evidence and failed to exclude all reasonable hypotheses consistent with his innocence. Therefore, Ceasar's conviction should be overturned.

Affirmed - 2015-KA-00853-SCT (Dec. 15, 2016)

En Banc Opinion by Chief Justice Waller - Dissent by Justice King

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

Justin T. Cook (Indigent Appeals Office) for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Brittany Barbee](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 13, 2016

COURT OF APPEALS - CIVIL CASES

DEARMAN V. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CIVIL - STATE BOARDS AND AGENCIES

STATE BOARDS AND AGENCIES - PERS DISABILITY - REQUIREMENTS TO PROVE DISABILITY

- Any active member in state service who has at least four (4) years of membership service credit may be retired by the board of trustees provided the medical board, after an evaluation of medical evidence certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired

STATE BOARDS AND AGENCIES - PERS DISABILITY - DEFINITION - The inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System that is actually offered and is within the same general territorial work area, without material reduction in compensation

APPELLATE PROCEDURE - STATE BOARDS AND AGENCIES - STANDARD OF REVIEW - The standard of review on appeal from an administrative decision of the Board is limited to a determination of whether the Board's decision: (1) was supported by substantial evidence; (2) was arbitrary or capricious; (3) was beyond the authority of the Board to make; or (4) violated a statutory or constitutional right of the claimant

APPELLATE PROCEDURE - STATE BOARDS AND AGENCIES - BURDEN OF PROOF - A rebuttable presumption exists in favor of PERS's decision, and the appellant is left with the burden of proving the contrary

STATE BOARDS AND AGENCIES - AUTHORITY TO DEFER A DECISION - ADDITIONAL EVALUATION AND RECORDS - In case of disability appeals, the hearing officer shall have the authority to defer a decision in order to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant

FACTS

Ms. Dearman worked in the special-needs department for ten years and then as a guidance counselor for Stone County Schools. She had eleven years of service credit before the nonrenewal of her contract on July 30, 2013. On the date of the non-renewal, Ms. Dearman suffered from a number of physical and psychological maladies including two torn rotator cuffs, carpal tunnel, rheumatoid arthritis and moderate depression and anxiety. Believing that the combination of these maladies left her permanently disabled, she applied for Public Employees' Retirement System (PERS) non-duty related disability benefits. The PERS Disability Appeals Committee (Committee) held a hearing and reviewed medical records produced by Ms. Dearman; the Committee recommended denying Ms. Dearman's claim. After review, the PERS Board of Trustees (Board) agreed with the Committee's recommendation. Ms. Dearman appealed to the Hinds County Circuit Court, which affirmed the Board. Ms. Dearman appealed.

ISSUES

Whether (1) the Board's decision was supported by substantial evidence and (2) the Committee erred in failing to request additional medical records before denying her claim.

HOLDING

(1) Since the medical records produced by Ms. Dearman failed to show evidence that she suffered a permanent disability, the Board's decision was supported by substantial evidence and was not arbitrary and capricious. (2) Because the evidence presented by Ms. Dearman did not objectively suggest the presence of a permanent physical or psychological disability, the Committee did not err by not requesting additional medical records.

Affirmed - 2016-SA-00037-COA (Dec. 13, 2016)

Opinion by Judge Fair

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial District)

George S. Luter for Appellant - Jane L. Mapp for Appellee

Briefed by [Joseph Rychlak](#)

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FRANKLIN COLLECTION SERVICE, INC. v. COLLINS

CIVIL - SUMMARY JUDGMENT

APPELLATE PROCEDURE - SUMMARY JUDGMENT - MOOTNESS - A motion for summary judgment is interlocutory in nature and is rendered moot by a trial on the merits

APPELLATE PROCEDURE - MOOTNESS - EXCEPTIONS - Federal courts of appeals will review purely legal issues decided on summary judgment even after a jury trial and verdict

CIVIL PROCEDURE - MOTION PRACTICE - TEN DAYS BEFORE TRIAL - All dispositive motions shall be deemed abandoned unless heard at least ten days prior to trial

FACTS

Gwenlyn Collins was admitted to the emergency room in 2012, where she received treatment and incurred \$1,030.00 worth of medical bills. After failing to pay, the balance of her account was turned over to Franklin Collection Agency, who subsequently filed a complaint in the Smith County Justice Court seeking recovery of the amount due. Collins argued that some of the services billed to her were not administered by the hospital, and after the Smith County Justice Court found for Collins, Franklin appealed to the Smith County Circuit Court. Franklin moved for Summary Judgment three days before the start of trial, and the judge denied the request. Thus, the case proceeded to trial where the jury returned a verdict for Franklin in the amount of \$233.00, the approximate amount of charges for services that Collins declared were actually rendered. Final judgment was entered on the verdict, and Franklin appealed.

ISSUE

Whether the trial court erred in denying Franklin's motion for summary judgment.

HOLDING

Because the pretrial motion for summary judgment was rendered moot by the trial on the merits, the motion for summary judgment was properly denied. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

DISSENT

Judge James argued that because Franklin demonstrated there was no genuine issue as to any material fact and because the issues addressed legal as opposed to factual issues, Franklin's motion for summary judgment should have been granted.

Affirmed - 2015-CA-01154-COA (Dec. 13, 2016)

En Banc Opinion by Judge Wilson - Dissent by Judge James

Hon. Eddie H. Brown (Smith County Circuit Court)

Martha Bost Stegall for Appellant - Eugene Coursey Tullos for Appellee

Briefed by [Bethany Poppelreiter](#)

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HUEY V. STRONG

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - LIS PENDENS - NOTICE - When a person begins a suit in any court to enforce a lien upon, right to, or interest in, any real estate, unless the claim be founded upon an instrument which is recorded, or upon a judgment duly enrolled, in the county in which the real estate is situated, such a person shall file a notice containing the names of all the parties to the suit, a description of the real estate, and a brief statement of the nature of lien, right, or interest sought to be enforced with the clerk of the chancery court

CIVIL PROCEDURE - LITIGATION ACCOUNTABILITY ACT - ATTORNEY'S FEES - The Litigation Accountability Act allows attorney's fees to be awarded as a sanction if the court finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interposed for delay or harassment

CIVIL PROCEDURE - LIS PENDENS - LITIGATION ACCOUNTABILITY ACT - While the filing of the lis pendens notice itself does not constitute an action subject to the Litigation Accountability Act, a defense to an action to remove a lis pendens, filed without substantial justification, may form the basis of an award under the act

FACTS

Acey Huey deeded property to Fillisa Huey. After that transaction had been completed Acey signed a rental agreement with Tommie Huey. Fillisa was unaware of the agreement. In a deed dated July 25, 2012, Fillisa conveyed the property to LeMorris Strong, and that deed was filed on August 14, 2012. On July 27, 2012, the rental agreement was filed in the lis pendens records attached to a Notice of Subordination, Attornment and Non-Disturbance Agreement. Strong made a written demand for Tommie to cancel those documents. He also filed an eviction claim against Tommie, but it was dismissed after her attorney stated that she had vacated the premises. Strong later filed a complaint to remove clouds and quiet title of the lot in himself, while Tommie counterclaimed for wrongful eviction. The trial court dismissed Tommie's counterclaim as frivolous, quieted title in Strong, and awarded attorney's fees and damages to Strong. Tommie appealed.

ISSUES

Whether the trial court erred in (1) finding the counterclaim for wrongful eviction was frivolous and without merit and (2) concluding that the lis pendens notice was without justification and awarding attorney's fees.

HOLDING

(1) Because the rental agreement was void as to Fillisa and Strong, Tommie never paid any rent under the agreement, and she voluntarily removed herself from the property, the chancellor acted within her discretion and relied on substantial evidence to find the counterclaim frivolous and without merit. (2) Because Tommie never had a valid rental agreement and filing that agreement as a Notice of Subordination, Attornment, and Non-Disturbance Agreement was not notice of a suit, she deliberately and without merit placed a cloud on the title of Strong to the property and attorney's fees and costs could be awarded under the Litigation Accountability Act. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Chancery Court.

Affirmed - 2015-CA-00006-COA (Dec. 13, 2016)

Opinion by Judge Fair

Hon. Jane R. Weathersby (Sunflower County Chancery Court)

Alsoe McDaniel for Appellant - Helen E. Morris for Appellee

Briefed by [Alison Guider](#)

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ILLINOIS CENT. R.R. v. OAKES

CIVIL - PERSONAL INJURY

TORTS - LABOR & EMPLOYMENT - FEDERAL EMPLOYERS' LIABILITY ACT -The Federal Employers' Liability Act (FELA) creates a tort remedy for railroad workers injured on the job and serves as the exclusive remedy for a railroad employee injured due to his or her employer's negligence

DAMAGES - COLLATERAL SOURCE RULE - PAYMENT FROM OTHERS -A wrongdoer is not entitled to have the damages to which he is liable reduced by proving that the plaintiff has received or will receive compensation or indemnity for the loss from a collateral source, wholly independent of him

FACTS

Clara Hagan, the daughter and representative of decedent Bennie Oakes, filed suit against Illinois Central under the Federal Employers' Liability Act (FELA) seeking damages for Oakes's lung cancer and death due to his exposure to asbestos while working for Illinois Central. Prior to and during the pendency of the complaint, Oakes's representatives sought recovery from others, including several asbestos trusts. At trial, Hagan obtained a jury verdict against Illinois Central, reduced by Oakes's comparative negligence, in the net amount of \$50,000. Illinois Central moved for entry of the judgment and setoff of the award based on the trust payments that Oakes and Hagan received. The Circuit Court denied Illinois Central's motion for setoff. Illinois Central appealed.

ISSUE

Whether setoff against a jury verdict is required in FELA cases where the claimant has already settled with separate tortfeasors.

HOLDING

Because the complaint was filed under the Federal Employers' Liability Act (FELA) and that act seeks to fully compensate the employee for tortious conduct, the setoff should be denied. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

DISSENT

Judge Wilson argued that the plaintiff had already been compensated for the injury by the asbestos manufacturers, and there was no reason that the plaintiff's recovery against Illinois Central should not be reduced to account for those payments. Therefore, the setoff should be granted.

Affirmed - 2015-CA-00644-COA (Dec. 13, 2016)

Opinion by Judge Greenlee - Dissent by Judge Wilson

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

Glenn F. Beckham & Harris Frederick Powers III for Appellant - Henry Dean Andrews Jr., Timothy W. Porter & John Timothy Givens for Appellee

Briefed by [Catherine Norton](#)

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IN RE TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS BY SAUCIER

CIVIL - OTHER

CIVIL PROCEDURE - PLEA FOR RELIEF - SUFFICIENCY - For a pleading to be sufficient, it must have a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for judgment for the relief to which he deems himself entitled

CIVIL PROCEDURE - LEAVE TO AMEND - STANDARD - Leave to amend should be freely given by the court in the absence of any apparent or declared reason such as futility of the amendment

FACTS

Previously, RSL argued that the parties' agreement required that their dispute be resolved in arbitration. The chancery court found that the agreement, which contained the arbitration agreement, was not effective. Later, Bennie Ray Saucier filed a motion to certify the chancery court's order that denied arbitration. Saucier filed a motion to dismiss, claiming that RSL failed to timely assert its claim for damages. The chancery court found in Saucier's favor, holding that Saucier's motion to dismiss was moot since RSL never pled damages and the annuity payments, which were the subject of the litigation, were due and payable to Saucier. RSL filed a motion for leave to amend to file a complaint for damages and a motion for a new trial to amend the judgment. Both motions were denied. RSL appealed.

ISSUES

Whether the chancery court erred in (1) entering final judgment for Saucier, (2) denying RSL's motion for leave to amend.

HOLDING

(1) Because RSL did not demand judgment for relief, the chancery court could not give RSL relief (2) Because it was agreed that there was a three-year statute of limitations, leave to amend was properly denied since it was barred by the statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

DISSENT

Judge Griffis argued that several pleadings indicated that the parties were aware that there was a claim for an award of damages to RSL. Since, the parties were aware of the claim it should be treated as if it had been raised in the pleadings.

Affirmed - 2015-CA-00847-COA (Dec. 13, 2016)

En Banc Opinion by Judge James

Hon. Carter O. Bise (Harrison County Chancery Court)

Kenneth S. Womack & E. John Gorman for Appellant - Tamekia Rochelle Goliday & Shantrell Henderson Nicks for Appellee

Briefed by [Morgan L. Stringer](#)

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LANGLEY V. WADDLE TRUCKING, LLC

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - COMMISSION DECISIONS - STANDARD OF REVIEW - The Court will only reverse the Commission's rulings where findings of fact are unsupported by substantial evidence, matters of law are clearly erroneous, or the decision was arbitrary and capricious, and the Court is the fact-finder and the judge of the credibility of witnesses

WORKERS' COMPENSATION - BURDEN OF PROOF - HEART ATTACKS - It is well established that medical proof is necessary to show a causal connection between the employee's work and his injury, and in heart attack cases, proof of causal connection between the attack and the work activity, as well as evidence that physical exertion or stress exceeded the ordinary wear and tear of life, is required

WORKERS' COMPENSATION - PRESUMPTIONS - CAUSAL CONNECTION - In order to overcome the presumption of causal connection not only must the cause of death be explained, but the work activities of the decedent must also be fully developed to show that such activities did not cause or contribute to the heart attack

FACTS

Joe Langley died of a heart attack while driving an eighteen-wheeler for his employer, Waddle Trucking, LLC. The medical examiner concluded the cause of death was from “hypertensive and atherosclerotic cardiovascular disease.” Langley’s wife filed a petition to controvert with the Mississippi Workers’ Compensation Commission, alleging Langley’s cause of death was due to his working conditions. The Administrative Judge found that Langley was overweight, and the working conditions, combined with his pre-existing disease, did not produce a compensable injury. The Commission affirmed. Langley’s wife appealed.

ISSUE

Whether the Commission committed reversible error by concluding there was no compensable injury as a result of Langley’s death.

HOLDING

Because the evidence included medical records indicating that Langley suffered from pre-existing hypertensive and atherosclerotic cardiovascular disease, had prior coronary artery bypass graft surgery, had severe stenosis of two of the three bypass grafts, and had severe constriction of the right coronary artery, and there was deposition testimony of a witness suggesting Langley was driving normally before the accident, the Commission’s decision was supported by substantial evidence. Therefore, the Court of Appeals affirmed the judgment the Mississippi Workers’ Compensation Commission.

Affirmed - 2016-WC-00143-COA (Dec. 13, 2016)

Opinion by Judge Fair

Mississippi Workers’ Compensation Commission

John P. Fox & Elizabeth Fox Ausbern for Appellants - Leland S. Smith III for Appellees

Briefed by [Patrick Huston](#)

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MAGERS V. DIAMONDHEAD RESORT, LLC

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - JURY INSTRUCTION - STANDARD OF REVIEW - On appeal, the appellate court gives considerable deference to the trial judge and analyzes whether a jury instruction correctly stated the law, repeated theories of law already addressed, and was supported by the evidence

EVIDENTIARY RULINGS - EXCLUSION - PROBATIVE VALUE TEST - Pursuant to M.R.E. 403, a court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

EVIDENTIARY RULINGS - EXCLUSION - NON-PARTY PRIOR-CONVICTION - Pursuant to M.R.E. 609, a testifying witness may be impeached by evidence of a prior criminal conviction punishable by death or by imprisonment for more than one year, but evidence of the conviction must be admitted subject to M.R.E. 403 when the witness is not a party to the litigation

FACTS

Alfredo Mongoy Cruz, an undocumented alien, was convicted of raping Margaret Magers in Diamondhead Resort’s hotel-lobby bathroom. Magers brought a premises-liability suit against Diamondhead Resort, but the jury returned a verdict in favor of Diamondhead Resort. At trial, Magers was prevented from cross-examining Diamondhead Resort’s security guard about his previous felonious-convictions and from referencing Cruz as an “illegal immigrant.” Magers moved for a new trial, but the trial court denied her motion. Magers appealed.

ISSUES

Whether the trial court erred in (1) charging the jury, (2) limiting and excluding Wright's prior criminal convictions, or (3) prohibiting mention of Cruz's status as an illegal immigrant.

HOLDING

(1) Because the jury instructions did not misstate the law or repeat theories of law already addressed, and there was evidence to support such instructions, the jury was properly charged. (2) Because the trial court weighed the evidence of the security guard's past criminal convictions against the prejudicial effect such evidence would have on the proceedings, it properly excluded evidence of the security guard's prior convictions. (3) Because evidence of Cruz's undocumented status was irrelevant to Diamondhead Resort's liability and potentially prejudicial, the trial court properly excluded his status from evidence. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2015-CA-01330-COA (Dec. 13, 2016)

Opinion by Judge Ishee

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

Joe Sam Owen, Ben F. Galloway III, & Ashley Catherine Wright for Appellant - Donna M. Meehan & Michael D. Simmons for Appellee

Briefed by [Jonathan Barnes](#)

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MORTON V. QUINN

CIVIL - REAL PROPERTY

PROPERTY - DISPOSITION OF PROPERTY - JUDICIAL PARTITION BY SALE - Pursuant to Mississippi Code Section 11-21-11, a judicial partition of sale is permitted only where: A sale of the lands, or any part thereof, will better promote the interest of all parties than a partition in kind, or if the court is satisfied that an equal division cannot be made

CIVIL PROCEDURE - JOINDER - NECESSARY PARTY - Mississippi Rules of Civil Procedure 12(h)(2) requires a party to raise the issue of failure to join a necessary and indispensable party in their pleadings under Rule 7(a) or by motion for judgment on the pleadings or at the trial on the merits

PROPERTY - DISPOSITION OF PROPERTY - NOTIFICATION - Parties whose rights are to be affected are entitled to be heard and they must be notified in a manner and at a time that is meaningful

FACTS

Walter and Ressie Quinn jointly inherited an equal share of property from Walter's mother. The majority of Walter's siblings quitclaimed their interest in the land to Walter, but one sibling quitclaimed her interest to Jessie and Arma Morton. The Morton's resided in a dilapidated home on the subject property. The Quinn's filed a petition to partition the property against Arma individually. Arma filed her answer and counterclaim, alleging she obtained title to a portion of the subject real property through adverse possession. The trial court entered an order appointing the chancery clerk as the master of the judicial sale. The Quinn's submitted the highest bid, and the property was sold to them. A hearing was set to confirm the sale of the property; however, the proceedings were discussed in-chambers. Arma Morton raised the defense of failure to join an indispensable party, her husband Jessie. The Quinn's amended their pleadings to add Jessie as a party. The Quinn's submitted an order and final judgment to the trial court, confirming the master's sale of the subject property, and finding that Jessie failed to establish prejudice. The trial court entered the order. The Morton's appealed.

ISSUE

Whether the trial court erred, when it found the omission of Jessie Morton from the initial complaint did not result in prejudice to the Morton's.

HOLDING

Because the trial court presumed Jessie had knowledge of the actions since he was Arma's wife, he was not afforded the opportunity to respond to the Quinn's request for judicial sale. Because Jessie lived on the property and the sale would directly impact Jessie's right to the subject property, the judicial sale should have been vacated when Jessie was added as a respondent. Therefore, the Court of Appeals reversed and remanded the judgment of the Clay County Chancery Court.

Reversed and Remanded - 2015-CA-01003-COA (Dec. 13, 2016)

Opinion by Judge James

Hon. Kenneth M. Burns (Clay County Chancery Court)

Joseph N. Studdard for Appellants - Wilbur Gordon Hamlin Jr. for Appellees

Briefed by [Lora Wuerdeman](#)

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RAY V. LOWNDES COUNTY SCHOOL DISTRICT

CIVIL - STATE BOARDS AND AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY ACTIONS - Appellate courts must apply the same standard of review to a decision of a chancery court concerning an agency action that the lower courts are bound to follow

ADMINISTRATIVE LAW - SCHOOL BOARD DECISIONS - STANDARD OF REVIEW - Under Mississippi Code Section 37-9-113(3), the scope of review of the chancery court shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was: (1) not supported by any substantial evidence, (2) arbitrary or capricious, or (3) in violation of some statutory or constitutional right of the employee

ADMINISTRATIVE LAW - SCHOOL BOARDS - DISMISSAL - The findings of a school board in dismissing an employee must be supported by substantial evidence, that is, evidence affording substantial basis of fact from which the fact in issue can be reasonably inferred, more than a "mere scintilla" of evidence, and does not rise to the level of a preponderance of the evidence

FACTS

Nancy Ray taught at West Lowndes High School from 2012-2014. At the end of the 2012-2013 school year, Ray's classroom performance was evaluated. Based on this evaluation and numerous complaints received concerning Ray's teaching, it was recommended that Ray's contract not be renewed for the next year. Instead of nonrenewal, Ray was given two chances to improve her performance. Ray failed to satisfactorily complete both of the improvement plans that Lowndes County School District ("LCSD") offered her. In April 2014, LCSD voted unanimously not to renew Ray's contract. At Ray's request, a hearing was held on the decision, and the Lowndes County School Board affirmed the decision of LCSD. Ray appealed the Board's decision to the Lowndes County Chancery Court, which affirmed the Board's decision. Ray appealed.

ISSUE

Whether the trial court erred in affirming the Board's decision.

HOLDING

Because Ray was initially recommended for nonrenewal based on her performance reviews before she entered any improvement plans and because she failed to satisfactorily complete both of the improvement plans offered to her, LCSD's decision not to renew Ray's contract was supported by substantial evidence and was not arbitrary or capricious. Also, because Ray failed to demonstrate that her membership in the MEA played any role in LCSD's decision, Ray's

statutory and constitutional rights were not violated. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

Affirmed - 2015-CA-01027-COA (Dec. 13, 2016)

Opinion by Judge James

Hon. H.J. Davidson Jr. (Lowndes County Chancery Court)

Robert M. Logan Jr. for Appellant - Jeffrey Carter Smith & Courtney Bradford Smith for Appellee

Briefed by [Mallory Bland](#)

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ROGERS V. GULFSIDE CASINO PARTNERSHIP

CIVIL - PERSONAL INJURY

APPELLATE PROCEDURE - STANDARD OF REVIEW - JUDICIAL ESTOPPEL - A trial court's imposition of judicial estoppel is subject to review under an abuse of discretion standard

CIVIL PROCEDURE - JUDICIAL ESTOPPEL - REQUIREMENTS - A party is judicially stooped only if: (1) its position is clearly inconsistent with the previous one; (2) the court must have accepted the previous position; and (3) the non-disclosure must not have been inadvertent

BANKRUPTCY - CODE AND RULES - DUTY TO DISCLOSE POTENTIAL CLAIM - The Bankruptcy Code and Rules impose upon bankruptcy debtors an express, affirmative duty to disclose all assets, including contingent and unliquidated claims; The obligation to disclose pending and unliquidated claims is an ongoing one and pertains to potential causes of action as well

FACTS

Shannon Rogers slipped and fell near the buffet at the Island View Casino in Gulfport. The Island View Casino is owned by Gulfside Casino Partnership (Gulfside). Almost three years later, Rogers filed suit against Gulfside, alleging that she was injured due to Gulfside's negligence and entitled to damages of "no less than \$750,000." The circuit court concluded that Rogers's lawsuit was barred by the doctrine of judicial estoppel because she failed to disclose her claim in her bankruptcy proceeding, which was still pending when the claim accrued. The circuit court granted Gulfside's motion for summary judgment and dismissed Rogers's complaint with prejudice. Rogers appealed.

ISSUES

Whether (1) Rogers had an obligation to disclose her claim in her bankruptcy case; and (2) the circuit court abused its discretion by dismissing Rogers's complaint with prejudice based on judicial estoppel.

HOLDING

(1) Because the Bankruptcy Code and Rules impose upon bankruptcy debtors an express, affirmative duty to disclose all assets, including potential legal claims, Rogers had a duty to disclose the lawsuit to the bankruptcy court. (2) Because the circuit court found that all three requirements of judicial estoppel were satisfied, it did not abuse its discretion by dismissing Roger's complaint with prejudice. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge Ishee argued that the case should be reversed and remanded so that the bankruptcy court could determine whether Rogers had a duty to disclose her claim against Gulfside.

Affirmed - 2015-CA-00959-COA (Dec. 13, 2016)

En Banc Opinion by Judge Wilson - Dissent by Judge Ishee

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial District)

Michael W. Crosby for Appellant - David W. Stewart & Brian Christopher Whitman for Appellee

Briefed by [Davis Vaughn](#)

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SCOTT V. SCOTT

CIVIL - DOMESTIC RELATIONS

DIVORCE - PROPERTY DISPOSITION - TRIAL COURT DISCRETION - In the case of a claimed inadequacy or outright denial of alimony, the Court will interfere with the Chancellor's distribution of property only where the decision is so oppressive, unjust, or grossly inadequate as to evidence an abuse of discretion

DIVORCE - PROPERTY DISPOSITION - EQUITABLE DISTRIBUTION - Emotional attachment to property and that property's proximity to relatives is a significant circumstance to consider in equitable distribution

DIVORCE - PROPERTY DISPOSITION - GROSS SUM AWARD - Disparity of the parties' separate estates is the single most important factor in determining whether lump-sum alimony is appropriate

FACTS

In 2015, Lillie and Herman Scott agreed to an irreconcilable-differences divorce and submitted the issues of distribution of the marital assets and alimony to the Hinds County Chancery Court. At the time of the divorce proceedings, Lillie worked as a nurse making approximately \$111,000 a year. Herman had a tenth-grade education and worked as a facilities manager making approximately \$32,400 a year. During the marriage, the couple built a marital home on a lot deeded to them by Herman's father for \$1,500. The couple had significant debt, primarily incurred by Lillie, who filed for bankruptcy in 2012. The chancery court ordered Lillie to pay approximately \$70,000 of the parties' debt, and Herman was required to pay an outstanding IRS debt of \$3,357.39. Lillie was awarded one hundred percent of the marital home, which included approximately \$50,000 in equity, with approximately \$155,000 remaining on the mortgage. Herman was awarded the majority of the unencumbered marital property, including all of his \$58,000 PERS retirement account, his checking and savings accounts, his truck, and various guns, tools, equipment, and jewelry. Herman appealed the chancellor's distribution of the marital property, namely, the award of the family home to Lillie and the failure to award him periodic alimony, or, in the alternative, to award him a greater amount of lump-sum alimony.

ISSUES

Whether the chancery court erred in (1) determining that equitable economic distribution of the property required awarding the marital home to Lillie, or (2) his award of lump-sum alimony to Herman.

HOLDING

The chancery court did not err in (1) failing to award the marital home to Herman, or (2) the type or amount of alimony awarded to Herman. The chancellor appropriately determined that any emotional value of the land to Herman was overcome by other economic considerations, given that Herman would likely be unable to afford the mortgage on the house, the mortgage was part of Lillie's bankruptcy plans, and that granting the house to Lillie freed the unencumbered marital property to be equitably awarded to Herman. Further, the chancery court detailed its reasons for awarding Herman "modest" lump-sum alimony, which was reflected in the equitable distribution of the marital property. After consideration of his needs, current obligations, and standard of living, Herman was awarded the majority of the unencumbered marital property, and almost none of the debt. Therefore, finding no error, the judgment of the Hinds County Chancery Court was affirmed.

CONCURRENCE

Judge Lee concurred with the majority's decision to affirm, but found that the chancellor's decision to categorize a portion of the equitable division of the marital assets as lump-sum alimony was incorrect. Rather than designate a specific amount of lump-sum alimony, the chancellor divided the marital assets, giving Herman the majority of the unencumbered assets. From this, Judge Lee argued that nature of the award was, in reality, an equitable distribution.

Affirmed - 2015-CA-00689-COA (Dec. 13, 2016)

Opinion by Judge Greenlee - Concurrence by Judge Lee
Hon. William H. Singletary (Hinds County Chancery Court)
John R. Reeves & John Justin King for Appellant – John Robert White Jr. & Pamela Guren Bach for Appellee
Briefed by [Amber Kipfmiller](#)

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WHITE V. WHITE

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - HABITUAL CRUEL AND INHUMAN TREATMENT - BURDEN OF PROOF - Although the cruel and inhuman treatment usually must be shown to have been systematic and continuous, a single incident may provide grounds for divorce

DOMESTIC RELATIONS - HABITUAL CRUEL AND INHUMAN TREATMENT - EVIDENCE - Corroborating evidence need not be sufficient in itself to establish habitual cruelty, but rather need only provide enough supporting facts for a court to conclude the plaintiff's testimony is true

DOMESTIC RELATIONS - DIVISION OF PROPERTY - PRESUMPTION - The court assumes for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic, or otherwise, are of equal value

FACTS

Anderson White and Barbara White were married in July 2004. The marriage was less than amicable. Barbara was routinely displaced from the marital home, law-enforcement officers were repeatedly summoned, and Anderson discarded Barbara's personal belongings outside the home on more than one occasion. Barbara testified that in 2005, Anderson choked and struck her, resulting in a black eye. Barbara testified that in 2009 Anderson, after a heated argument, ran upstairs, cocked his gun, and later threatened that something bad would happen if Barbara did not leave. Barbara was granted a divorce from Anderson on the ground of habitual cruel and inhuman treatment. Anderson appealed.

ISSUES

Whether the trial court erred in (1) finding that Barbara met the burden of proof required to obtain a divorce on the ground of habitual cruel and inhuman treatment and (2) the equitable division of the parties' property.

HOLDING

(1) The corroborating testimony provided by Barbara's witnesses and the nonchalant testimony of Anderson himself provided sufficient evidence to support the trial court's grant of divorce based upon cruel and inhuman treatment. (2) Because Barbara prepared meals, cleaned the marital home, and took Anderson's child shopping, Barbara satisfied the role of homemaker and the trial court's equitable division of the parties' property was without error. Therefore, the Court of Appeals affirmed the judgment of the Warren County Chancery Court.

Affirmed - 2015-CA-00840-COA (Dec. 13, 2016)

Opinion by Judge Ishee
Hon. Marie Wilson (Warren County Chancery Court)
B. Blake Teller & Lauren Roberts Cappaert for Appellant - Vatteria McQuitter Martin & Deshun Terrell Martin for Appellee
Briefed by [Zachary Roberson](#)

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COURT OF APPEALS – POST-CONVICTION RELIEF

CANE V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - JURISDICTION – TIMELY FILING - Regardless of whether the parties raise jurisdiction, the court is required to note its own lack of jurisdiction, and if the notice of appeal is not timely filed, the appellate court simply does not have jurisdiction

APPELLATE PROCEDURE - NOTICE OF APPEAL - TIME FOR FILING - M.R.A.P. 4(a) requires that a notice of appeal be filed with the trial court within thirty days of the entry of judgment from which the appeal stems

MOTION PRACTICE - MOTION FOR RECONSIDERATION - TOLLING - A motion for reconsideration—although technically not recognized by the Mississippi Rules of Civil Procedure—may toll the time for filing a notice of appeal if it is filed within ten days from the entry of the judgment sought to be amended

OUT-OF-TIME APPEALS - COURT OF APPEALS - DISCRETION - The Court of Appeals may suspend the requirements of the appellate rules to allow an out-of-time appeal in post-conviction-relief proceedings where doing so would be in the interest of justice

FACTS

On March 23, 2009, Nina Cane contacted the Oktibbeha County Sheriff's Department and alleged that her husband had nude photographs of the Canes' minor niece on his cell phone. The Canes were the minor's guardians of the 17-year-old. Cane was arrested, indicted, and plead guilty to one count of sexual battery and one count of exploitation of a child. On August 11, 2011, Cane, acting pro se, filed his first petition for post-conviction relief (PCR), which was denied. On April 24, 2013, Cane, acting pro se, filed a Writ of Error Coram Nobis alleging that the child could be considered an adult due to her emancipation and that he was not in a position of trust over the minor. Cane's petition was dismissed, but he did not receive notice of the dismissal until June 19, 2014—sixteen days after the order was entered. Cane then filed a motion for reconsideration on June 26, 2014, which was received by the circuit clerk on June 30, 2014. Cane's motion for reconsideration was dismissed on August 7, 2014. On August 25, 2014, Cane appealed his dismissed Writ of Error Coram Nobis.

ISSUE

Whether the appeal of Cane's dismissed Writ of Error Coram Nobis was timely.

HOLDING

Because Cane did not file a notice of appeal within thirty days of the date he received notice that an order had been entered denying his PCR motion and because there were no extraordinary circumstances, it was not in the interest of justice to suspend the thirty-day requirement in this case. Therefore, the Court of Appeals dismissed the appeal as untimely.

Appeal Dismissed - 2015-CP-01610-COA (Dec. 13, 2016)

Opinion by Judge Irving

Hon. Lee J. Howard (Oktibbeha County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att'y Gen Office) for Appellee.

Briefed by [J. Marc McMillian](#)

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HARRIS V. STATE

CIVIL - POSTCONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUBSEQUENT MOTIONS - Under Mississippi Code Section 99-39-5(2), a petition for postconviction relief must be filed within three years of the conviction in the trial court

APPELLATE PROCEDURE - BARS TO APPEALS - ISSUES RAISED ON APPEAL - Issues that are raised for the first time on appeal are procedurally barred, and the petitioner bears the burden of proving that no procedural bar exists

FACTS

Marcus Harris was indicted for capital murder and aggravated assault on March 2, 2010, and he pled guilty to murder and aggravated assault in exchange for a reduction from a capital murder charge to murder. Harris received a life sentence in the custody of the MDOC for his murder conviction and a twenty-year sentence for his aggravated assault conviction. He also was ordered to pay a \$5,000 fine for each conviction, as well as court fees. In July 2014, Harris filed a petition in the circuit court to clarify his sentence, because he believed his sentence had been reduced further based on the circuit clerk's docket summary. The circuit clerk's docket summary showed his sentence as possession of a controlled substance and with a sentence of twenty years. In reality, the circuit clerk's docketing software malfunctioned and caused Harris's file to be inadvertently merged with another criminal file. The circuit court held that Harris's sentence was unambiguous and denied his petition for relief. Harris appealed.

ISSUE

Whether (1) the circuit court abused its discretion in denying Harris postconviction relief and (2) Harris's sentence was ambiguous.

HOLDING

(1) Because Harris filed his motion for post-conviction relief more than three years after his conviction, his petition was time-barred. (2) Because Harris pled guilty to murder and aggravated assault and the erroneous docket summary was the result of inadvertent electronic merging of files, the sentence was not ambiguous. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2015-CP-01244-COA (Dec. 13, 2016)

Opinion by Judge Ishee

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

Pro se for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Tony Sax](#)

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JAMES V. STATE

CIVIL - POSTCONVICTION RELIEF

POST-CONVICTION RELIEF - MOTION FOR NEW TRIAL - RECANTED TESTIMONY - When a defendant moves for a new trial based on recanted testimony, the defendant has the burden of proving: (1) perjury existed by showing the recantation was material; and (2) the result of a new trial would be different than the one reached

POST-CONVICTION RELIEF - BURDEN OF PROOF - BURDEN ON PETITIONER - At an evidentiary hearing on postconviction relief, the burden of proof is on the petitioner to prove by a preponderance of the evidence that they're entitled to relief

APPELLATE PROCEDURE - POST-CONVICTION RELIEF - STANDARD OF REVIEW - A trial court's denial of a PCR motion will not be reversed absent a finding that the trial court's decision was clearly erroneous

FACTS

Justin James was convicted of one count of armed robbery, one count of manslaughter, two counts of aggravated assault, and one count of conspiracy to commit armed robbery. Predicated upon an affidavit from Barry Love, a key state witness at James's trial, stating that Love had perjured himself at trial, James filed a motion for post-conviction relief. After an evidentiary hearing on the motion, the trial court denied James's PCR motion.

ISSUE

Whether (1) Love's recanted testimony proved that perjury existed at James's trial, and (2) whether perjury was the material reason James was implicated in the crime.

HOLDING

The trial court's decision to deny the PCR motion was not clearly erroneous because the State could cite at least twelve instances where Love's testimony corroborated other witness' statements. Thus, there was insufficient evidence to support that Love perjured himself at trial and as a result, James failed to prove beyond a preponderance of the evidence that the recantation entitled him to a new trial. Therefore, the court affirmed the trial court's denial.

Affirmed - 2015-CA-01822-COA (Dec. 13, 2016)

Opinion by Judge James

Hon. C.E. Morgan III (Attala County Circuit Court)

Imhotep Alkebu-Lan for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Blake Brookshire](#)

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COURT OF APPEALS - CRIMINAL CASES

HAMP V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SEARCH AND SEIZURE - REASONABLE SUSPICION - Before conducting an investigatory stop, officers are required to have reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in a felony or some objective manifestation that the person stopped is or is about to be engaged in criminal activity

CRIMINAL PROCEDURE - BASIS OF REASONABLE SUSPICION - INFORMANTS - Reasonable suspicion can arise from an officer's personal observations, a tip by a trusted police informant, or by anonymous tip where the anonymous tip has some indication that it is reliable

CRIMINAL PROCEDURE - REASONABLE SUSPICION - TIPS - When an anonymous tip is suitably corroborated, it may exhibit sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop

CRIMINAL PROCEDURE - REASONABLE SUSPICION - RELIABILITY - Reasonable suspicion is dependent upon the content of the information possessed by the detaining officer as well as its degree of reliability; quantity and quality are considered in the totality of the circumstances

FACTS

On July 29, 2010, a liquor store worker was killed during a robbery of the store. The police chief received a call from an anonymous caller stating that Jerry Carr and some other person were expected to "hit" the liquor store worker. An investigator also received a call from an anonymous caller stating that the suspects were Hamp and Carr, who could be found in a black Chevrolet heading toward Clarksdale. After spotting the vehicle and engaging in a high-speed chase, the police finally pulled the vehicle over. The police noticed blood on Hamp's shoe so his shoes and clothes were seized for evidence. The blood was later confirmed to match the DNA of the murdered liquor store worker. Hamp filed a pretrial motion to exclude the physical evidence that was obtained as a result of said stop. Defense counsel argued that

the investigatory stop was based on information from anonymous informants, that the tips bore no indicia of reliability, and that the officers did not investigate the veracity of the information. After a hearing, the trial court found that the circumstances surrounding the stop did not warrant suppression of the evidence. Hamp was subsequently convicted of murder by the trial court and he appealed for a new trial or, in the alternative, a judgment notwithstanding the verdict.

ISSUE

Whether the trial court erred in denying Hamp's motion to suppress evidence.

HOLDING

Because courts determine whether reasonable suspicion existed on a totality of the circumstances test, there was sufficient basis of knowledge and veracity of the informant's tip to produce reasonable suspicion. Therefore, the Court of Appeals affirmed the decision of the Coahoma County Circuit Court.

Affirmed - 2014-KA-00539-COA (Dec. 13, 2016)

Opinion by Judge Lee

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

R. Stewart Smith, Jr. for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Spencer H. Newman](#)

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HAYNES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - TRIAL - IN ABSENTIA - Pursuant to Miss. Code Ann. § 99-17-9, in criminal cases the presence of the prisoner may be waived (a) if the defendant is in custody and consenting thereto, or (b) is on recognizance or bail, has been arrested and escaped, or has been notified in writing by the proper officer of the pendency of the indictment against him, and resisted or fled, or refused to be taken, or is in any way in default for nonappearance, the trial may progress at the discretion of the court, and judgment made final and sentence awarded as though such defendant were personally present in court

CRIMINAL PROCEDURE - SIXTH AMENDMENT - WAIVER - A defendant who has committed willful, voluntary, and deliberate actions to avoid trial has waived the right to be present at trial and may be tried *in absentia*. This waiver, though, is balanced against a defendant's constitutional right to be present at trial

FACTS

Derrick Haynes was indicted as a habitual offender on one count of possession of a cell phone in a private correctional facility. Haynes was not present when the case was called. Chris Collins, Haynes's attorney, represented to the judge that Haynes had contacted him the morning before saying that his car had broken down en route from Meridian, Mississippi to the courthouse, and he was trying to arrange a ride to the courthouse. The judge recessed, but after the recess Haynes had not arrived. The sheriff told the judge he had not been able to locate Haynes, and Collins informed the court that Haynes had been present at the court earlier in the week but had transportation difficulties. The judge decided to try Haynes *in absentia*. Collins objected and moved for a continuance which was overruled. Collins renewed his objection and motion for continuance at the start of trial. Haynes was convicted by the jury. Haynes appeared at the sentencing hearing on September 19, 2014 and explained that he was not at his trial because his car broke down the day before and he did not have money to pay someone to bring him to court because he was indigent. Haynes was sentenced to fifteen years as a habitual offender. Haynes appealed.

ISSUE

Whether it was an abuse of discretion for the trial court to try Haynes *in absentia*.

HOLDING

Because Haynes did not willfully, voluntarily, and deliberately absent himself from the trial, the judge abused his discretion by proceeding with the trial *in absentia* without first granting a continuance.

Reversed and Remanded for a New Trial - 2015-KA-00683-COA (Dec. 13, 2016)

Opinion by Judge James

Hon. Marcus D. Gordon (Leake County Circuit Court)

Edmund J. Phillips Jr. & Christopher A. Collins for Appellant - Abbie Eason Koonce & Jason L. Davis (Att'y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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MAGGETT V. STATE

CRIMINAL - FELONY

EVIDENCE - PRIOR BAD ACTS – AFTER TEN YEARS – M.R.E. 609(a)(1)(B) states that evidence of the conviction is admissible after 10 years only if: (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use

CRIMINAL PROCEDURE - SEVERANCE - RETROACTIVE MISJOINDER - The doctrine of retroactive misjoinder can only apply when one of the counts has been vacated or otherwise found to be invalid, and the appealing defendant is prejudiced by being tried on the supported and unsupported allegations together

CRIMINAL PROCEDURE - INDICTMENTS - LEGAL SUFFICIENCY - Non-jurisdictional defects in the indictment may not be attacked for the first time on appeal absent a showing of cause and actual prejudice

EVIDENCE - HEARSAY – PRIOR STATEMENTS - Witnesses that are not "party opponents" do not fall within the hearsay exception in Rule 801(d)(2)(A)

CRIMINAL PROCEDURE – STANDARD OF REVIEW - SUFFICIENCY OF THE EVIDENCE - In evaluating the sufficiency of the evidence, the Court must decide whether it allows a jury to find beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - IMPROPER STATEMENTS - Prosecutorial misconduct will only be found when the natural and probable effect of the improper argument of the prosecuting attorney is to create an unjust prejudice against the accused as to result in a decision influenced by the prejudice so created

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - CROSS-EXAMINATION - Insinuations on cross-examination can be reversible error, but to rise to the level of reversible error, they must be unfairly prejudicial and result in the denial of a fair trial to the accused

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ON DIRECT APPEAL - Ineffective assistance of counsel claims are allowed on direct appeal only if such issues are based on facts fully apparent from the record

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - SUPPRESSION OF EVIDENCE - Evidence that is discoverable is not necessarily admissible at trial, and a party does not commit a discovery violation by objecting to the admissibility of something it has previously disclosed in discovery

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - FALSE TESTIMONY – In order to show prosecutorial misconduct in the prosecutor's production of false evidence, the defendant must show that the testimony was false and that prosecutors offered it knowing that it was false

FACTS

Jerry Stewart, Laddell Maggett, and Kelvin Taylor were convicted of capital murder. Each was also convicted of possession of a firearm after a felony conviction. Stewart, Maggett and Taylor appealed. The cases were consolidated in the Court of Appeal's opinion.

ISSUES

Whether the trial court erred in (1) denying Maggett's motion to impeach Anderson with his prior convictions which were more than ten years old and (2) denying Maggett's motion to sever the trial based on retroactive misjoinder. Whether (3) Maggett's indictment for capital murder and kidnapping were fatally defective; (4) the trial court properly denied Maggett's motion in limine to exclude out-of-court statements; (5) the evidence was sufficient for a conviction; (6) the conviction was against the overwhelming weight of the evidence; (7) the trial court properly refused to admit into evidence cell phone records from phones allegedly belonging to or used by various individuals involved in the case; (8) there was prosecutorial misconduct during cross-examination; (9) there was ineffective assistance of counsel and judicial misconduct; (10) the affidavits supporting the arrest warrants were proper; and (11) there was prosecutorial misconduct in suppression of evidence, false testimony, and cumulative effect.

HOLDING

(1) Because the trial court properly considered admitting Anderson's prior convictions under Rule 609(b), no abuse of discretion was shown. (2) The doctrine of retroactive misjoinder can only apply when one of the counts has been vacated or otherwise found to be invalid and the appealing defendant is prejudiced by being tried on the supported and unsupported allegations together. Since this did not happen here, Maggett's motion to sever the trial was properly denied. (3) Because non-jurisdictional defects in the indictment may not be attacked for the first time on appeal absent a showing of cause and actual prejudice and there was not such a showing here, the indictments for capital murder and kidnapping were not fatally defective. (4) Because the witnesses for the State were not "party opponents," the trial court properly denied the admissibility of the statements into evidence. (5) Because the convictions were supported by sufficient evidence, Maggett's claim of insufficiency of evidence fails. (6) Because the verdict was not against the overwhelming weight of the evidence, Maggett's claim on this count fails. (7) Because the cell phone records were not self-authenticating, they were properly excluded from evidence. (8) Because the statements and actions of the prosecutor did not deny the defendants a fair trial, there was no prosecutorial misconduct. (9) Because the claims for ineffective assistance of counsel and judicial misconduct were based on facts outside the record, those claims were without merit. (10) Because the claim regarding the affidavit was raised for the first time on appeal, it was procedurally barred. (11) Because a party does not commit a discovery violation by objecting to the admissibility of something it has previously disclosed in discovery, and there is no showing that the State knowingly used false evidence to obtain convictions, and defendants were not denied a fair trial, there was no prosecutorial misconduct. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed- 2015-KA-00215-COA (Dec. 13, 2016)

Opinion by Judge Fair

Hon. Albert B. Smith III (Bolivar County Circuit Court, Second Judicial District)

Pro se & George T. Holmes (Pub. Def. Office) for Appellants - Ladonna C. Holland (Att'y Gen. Office) for Appellee

Briefed by [Kyle Hansen](#)

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MAY V. STATE

CRIMINAL- FELONY

CONSTITUTIONAL LAW - CRIMINAL PROCEDURE - ILLEGAL SEARCH AND SEIZURE - The Fourth amendment of the US constitution and article 3, section 23 of the Mississippi Constitution guarantee a person's right to be free from unreasonable search and seizure.

CRIMINAL PROCEDURE - SEARCH AND SEIZURE - SCOPE OF CONSENT- The scope of consent under the Fourth Amendment is examined for objective reasonableness

CRIMINAL PROCEDURE - SEARCH AND SEIZURE - REASONABLENESS - A search is reasonable when it was reasonably related in scope to the circumstances which justified the interference in the first place

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - INARTFUL DRAFTING- When a person is proceeding *pro se*, a court will not find a meritorious complaint lost because it is inartfully drafted

FACTS

David Lee May was involved in a traffic stop in a vehicle driven by his companion. After the officer searched and discovered narcotics on May's companion, the officer instructed Mays to exit the vehicle and sit on the curb while attending to the arrest. Because May did not possess a valid driver's license and could not operate the vehicle, the officer prepared to have the vehicle towed and inventoried. As May sat on the curb, the officer noticed a nervous and fidgeting May place close attention to his own shoe. When asked to remove his shoe, May did so, to reveal a Zippo lighter. The officer pulled apart the Zippo, and discovered two small bags containing crack-cocaine and marijuana, respectively. May was subsequently arrested and charged with possession of a controlled substance. May filed a motion, pro-se, to suppress the alleged illegally obtained controlled substances. The motion was denied and May was convicted and subsequently sentenced to life in prison under Mississippi's habitual offender statute. May appealed.

ISSUES

Whether the trial court erred in denying May's motion to suppress evidence for a violation of his 4th amendment rights.

HOLDING

Because the crack cocaine seized by the officer was an evidentiary matter that was not properly reviewed by the trial court, May's Fourth Amendment rights were violated. While the State argued that May consented to the search of his shoe and therefore the lighter in his shoe, the Court of Appeals reasoned that under an objective reasonableness standard, it cannot be found that a typical reasonable person would have understood a request to remove a person's shoes as a request to search the contents of an object in said shoes. The consent to the search of the shoe applied only to the contents of the shoe that were plainly viewable as either incriminating or dangerous. As a result, May maintained a reasonable expectation of privacy of his Zippo lighter and its search was illegal. May also argued that his search was not subject to a probable cause determination. The court agreed with May, explaining that the scope of the officer's search was not reasonably related to the commission of illegal activity. Such probable cause was not present and the officer did not possess the requisite information that would reasonably lead the officer to believe that contraband or evidence material a criminal investigation were to be found in the Zippo lighter. With no exception to the warrant requirement available, the officer violated May's 4th amendment rights. Finally, the Court dismissed the State's argument that a failure of Mays to raise lack of consent and improper custodial interrogation claims procedurally barred the issues for not being sufficiently raised in May's motion to suppress. Because May motion was written *pro se*, the standard by which such efforts are judged is not as stringent as those for lawyers filing formal pleadings. Even if inartfully drafted, the Court of Appeals held that such a motion sufficiently preserved such issues. In the event that such a motion was insufficient, the trial court's plain error allows for waived issues to be raised. Therefore, the trial court's judgment was reversed and remanded.

DISSENT

Justice Carlton argued that the controlling law in the present case is derived from the State Supreme Court's decision in *Gales v. State* which held that a defendant whom voluntarily revealed incriminating evidence to police officers lacked a reasonable expectation of privacy. As May voluntarily revealed the contents of his shoe to the investigating police officer, Carlton argued, the substantial evidence suggested that May consented to the officer searching the lighter. As a result, given the lack of a reasonable expectation of privacy, the arresting officer did not violate May's 4th amendment rights and the court subsequently did not err in denying May's motion to suppress evidence.

Reversed and Rendered - 2014-KA-00681-COA (Dec. 13, 2016)

En Banc Opinion by Judge Irving - Dissent by Judge Carlton

Hon. Lawrence Paul Bourgeois Jr.

George T. Holmes (Pub. Def. Office) for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Horacio Hernandez](#)

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SHAHEED V. STATE

CRIMINAL - FELONY

EVIDENCE - PLAIN ERROR DOCTRINE - HEARSAY - A criminal defendant who affirmatively introduces or elicits hearsay testimony may not complain on appeal concerning that evidence; there is no plain error when said evidence is admitted because there is no legal rule requiring a trial judge to strike or exclude hearsay *sua sponte*

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CASTLE DOCTRINE - A trial judge has discretion to refuse a castle doctrine instruction when the criminal defendant was not in the immediate premises of a dwelling when he or she committed the crime

FIRST-DEGREE MURDER - LIFE IMPRISONMENT - SUSPENSION OF SENTENCE - Pursuant to Mississippi Code Section § 47-7-33(1), a trial court has the authority to suspend the imposition or execution of a criminal sentence except in a case where life imprisonment is the maximum penalty which may be imposed

FACTS

Hamin Shaheed was convicted of first-degree murder after shooting and killing Trinton Truss. Truss came to the apartment of Lanisha Gardner where Shaheed was staying. After seeing Truss cock his gun through the window, Gardner went outside and walked with Truss down the stairs to the sidewalk around the side of the apartment building. After Truss and Gardner began yelling, Shaheed left the apartment and approached the two with his gun. When Truss reached for his gun, Shaheed and Truss struggled, and Shaheed then shot Truss three times in the head before fleeing. At trial, the circuit judge denied Shaheed's stand your ground and castle doctrine jury instructions. Two investigators testified that an eyewitness said she saw Truss backing away when he was shot, and the trial court permitted the introduction of this hearsay evidence. The jury convicted Shaheed of first-degree murder and sentenced him to life in the custody of M.D.O.C. with all but twenty years suspended. Shaheed appealed, and the State cross-appealed.

ISSUES

Whether the trial court (1) abused its discretion by ruling that the verdict was not contrary to the overwhelming weight of the evidence, (2) abused its discretion by denying Shaheed's stand your ground and castle doctrine jury instructions, and (3) had the authority to suspend part of the life sentence.

HOLDING

(1) Because trial judges are not expected to strike or exclude hearsay *sua sponte* and because Shaheed elicited the same hearsay on cross-examination, the evidence was sufficient to sustain a conviction of first-degree murder. (2) Because Shaheed's own testimony showed that he had no time or opportunity to retreat and because the other instructions adequately covered the rules of law for self-defense, the trial court did not abuse its discretion by refusing a stand your ground jury instruction. Because Shaheed was not in the immediate premises of a dwelling when he shot Truss, the trial court did not abuse its discretion by refusing a castle doctrine jury instruction. (3) Because a life sentence is the applicable penalty for first-degree murder, the trial court had no authority to suspend any part of Shaheed's life sentence. Therefore, the Court of Appeals affirmed the conviction of Shaheed for first-degree murder, vacated the sentence, and remanded the case to the Hinds County Circuit Court to impose a life sentence with no part suspended.

DISSENT

Judge James dissented from the majority's finding that the uncorroborated hearsay was sufficient evidence to the support the murder conviction. Judge James would reverse the murder conviction, find Shaheed guilty of the lesser-included offense of manslaughter, and remand the case for resentencing.

Affirmed in Part, Vacated & Remanded in Part - 2015-KA-00743-COA (Dec. 13, 2016)

En Banc Opinion by Judge Wilson

Dissenting Opinion by Judge James

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial District)

Brandon Isaac Dorsey for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Allison Bruff](#)

WATSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MOTION FOR NEW TRIAL - SUFFICIENCY OF THE EVIDENCE - A new trial based on the weight of the evidence should be granted only in exceptional cases in which the evidence preponderates heavily against the verdict; the evidence must be viewed in the light most favorable to the verdict.

CRIMINAL PROCEDURE - MOTION FOR NEW TRIAL - SUFFICIENCY OF THE EVIDENCE - Reversal is warranted only if the trial court abused its discretion in denying the motion for a new trial

CRIMINAL PROCEDURE - CONFLICTING TESTIMONY - OVERWHELMING EVIDENCE - Conflicting testimony does not evince overwhelming evidence; Where the verdict turns on the credibility of conflicting testimony and the credibility of the witnesses, it is the jury's duty to resolve the conflict

FACTS

Andrew Watson broke into Lisa Netters apartment, choked her, and attempted to sexually assault her. The sexual assault was unsuccessful because Watson was unable to overcome her resistance. Shortly after the attack, Netters gave the police a detailed account of the attack and identified Watson, her friend's son whom she had known for years, as the attacker. Watson was convicted of burglary. Watson appealed.

ISSUE

Whether Watson's burglary conviction was against the overwhelming weight of the evidence.

HOLDING

Because Netter described the encounter that lasted approximately 5 minutes and involving significant contact and dialogue, followed later by an apology and apparent admission of guilt by Watson, her testimony was not unreasonable or self-contradictory. Because Watson's denials and his mother's corroboration of his account constitute conflicting evidence, such evidence was insufficient to evince overwhelming evidence. Therefore, Watson's conviction is not against the overwhelming weight of the evidence, and the trial court's judgment was affirmed.

Affirmed - 2015-KA-01080-COA (Dec. 13, 2016)

Opinion by Judge Fair -

Hon. W. Ashley Hines (Washington County Circuit Court)

Benjamin Allen Suber for Appellant - Alicia Marie Ainsworth for Appellee

Briefed by [Desire'e Martinelli](#)

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WILLIAMS V. STATE

Criminal – Felony

CRIMINAL PROCEDURE - APPELLATE REVIEW - STANDARD OF REVIEW - When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we 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 PROCEDURE - BURDEN OF PROOF - CIRCUMSTANTIAL EVIDENCE - The State may meet the burden of proof for a crime solely by circumstantial evidence

CRIMINAL PROCEDURE - APPELLATE REVIEW - EVIDENCE - Evidence should be weighed in the light most favorable to the verdict. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict. Rather, as the thirteenth juror, the court simply disagrees with the jury's resolution of the conflicting testimony

FACTS

Eddie Williams was indicted on five counts of burglary of a dwelling (counts A-E) and one count of attempted burglary of a dwelling. The State initially tried Williams on the attempted-burglary-of-a-dwelling charge, and the jury found him not guilty of that charge. The State then tried Williams on the remaining five counts of burglary of a dwelling in one proceeding. The jury found him guilty of each count.

ISSUE

Whether Eddie Williams is entitled to a new trial.

HOLDING

Because the Mississippi Supreme Court has held that the court should 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, the Court of Appeals affirmed the decision of the trial court denying Williams' motion for a new trial.

CONCURRENCE

Judge Griffis wrote a separate concurring opinion only because he believed that the Mississippi Supreme Court should omit the reference to the "thirteenth juror" in the standard of review addressed in *Bush v. State*.

Affirmed - 2015-KA-00517-COA- (Dec. 13, 2016)

Opinion by Judge Irving - Concurrence by Judge Griffis

Appealed from the Lowndes County Circuit Court

George T. Holmes Benjamin Allen Suber (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Daniel E. Smith IV](#)

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