

**MISSISSIPPI SUPREME COURT DECISIONS – JUNE 29, 2017****SUPREME COURT - CIVIL CASES****BUILDERS & CONTRACTORS ASS'N OF MISS. V. LASER LINE CONSTR. CO.****CIVIL - WORKERS' COMPENSATION****EMPLOYMENT LAW - WORKERS' COMPENSATION - MISS. WORKERS' COMPENSATION ACT -**

Pursuant to Miss. Code Ann. § 71-3-7, general contractors must secure workers' compensation coverage for the employees of its uninsured subcontractors; employers who employ fewer than five employees are exempt

**EMPLOYMENT LAW - WORKERS' COMPENSATION - MISS. WORKERS' COMPENSATION ACT -**

Under Miss. Code Ann. § 71-3-7, the employees of a subcontractor who does not carry insurance for the protection of its own employees are considered employees of the principal or general contractor within the meaning of the Workers' Compensation Act

**EMPLOYMENT LAW - WORKERS' COMPENSATION - CONTRACTOR LIABILITY-**

Under Miss. Code Ann. § 71-3-7, the number of employees of a subcontractor is not a factor in determining contractor liability under the Workers' Compensation Act

**FACTS**

Laser Line Construction Company, LLC, ("Laser Line") purchased statutory workers' compensation insurance coverage from the Builders and Contractors Association of Mississippi ("BCAM"). Because Laser Line was a general contractor, BCAM sought premium payments for all employees of Laser Line's subcontractors who did not independently secure workers' compensation coverage. Laser Line refused to pay the premium for employees of subcontractors who had fewer than five employees, claiming they were exempt from the coverage requirement under the Mississippi Workers Compensation Act. As a result, BCAM cancelled Laser Line's coverage. Laser Line then filed suit for breach of contract. BCAM filed a counterclaim for damages. The trial court denied BCAM's motion for summary judgement and granted Laser Line partial summary judgement on the grounds that BCAM had no contractual basis to demand additional premiums for Laser Line's exempt subcontractors or to cancel Laser Line's coverage. BCAM appealed.

**ISSUE**

Whether Miss. Code Ann. § 71-3-7 requires general contractors to secure workers' compensation coverage for employees of its subcontractors who are exempt from the Workers' Compensation Act.

**HOLDING**

Because the employees of Laser Line's subcontractors were considered the employees of Laser Line for the purposes of Miss. Code Ann. § 71-3-7, thereby making the number of employees employed by the subcontractor irrelevant, and requiring Laser Line to have secured workers' compensation coverage for those employees, the trial court erred in denying BCAM's motion for summary judgement and granting Laser Line partial summary judgement. Therefore, the Supreme Court reversed the judgment of the Hinds County Circuit Court.

**Reversed & Remanded - 2016-IA-00397 (June 29, 2017)**

Opinion by Presiding Justice Randolph

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

H. Wesley Williams III for Appellants - Mitchell Harry Tyner & Steve C. Thornton for Appellee

Briefed by [Marilyn Higdon](#)

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## EDMONDS V. STATE

### CIVIL - OTHER

**CIVIL PROCEDURE - STATUTORY INTERPRETATION - LEGISLATIVE INTENT** - The primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein  
**WRONGFUL CONVICTION & IMPRISONMENT STATUTE - STATUTORY INTERPRETATION - FABRICATED EVIDENCE** - Miss. Code Ann. § 11-44-7 provides that in order for a plaintiff to recover under the Compensation to Victims of Wrongful Conviction and Imprisonment Act, he must show that he did not fabricate evidence with the intent to bring about his conviction

**CIVIL PROCEDURE - TRIAL BY JURY - STATUTORY SILENCE** - Historically and customarily, where a statute is silent regarding a right to trial by jury, the right has been afforded

### FACTS

In 2003, Tyler Edmonds confessed to the murder of his half-sister's husband. Several days later, Edmonds's recanted his confession and placed the blame wholly on his half-sister. At the criminal trial that followed, Edmonds was found guilty of murder. Three years later, his conviction was reversed by the Mississippi Supreme Court. A new criminal trial was held for Edmonds where a jury found him not guilty of murder. Edmonds then initiated this civil suit seeking compensation for the years he spent in wrongful custody under Miss. Code Ann. § 11-48-7(1)(c). Edmonds was given a bench trial that resulted in the circuit court determining that he could not recover because his confession at the first criminal trial constituted "fabricated evidence." Edmonds appealed.

### ISSUES

Whether the circuit court (1) erred in concluding that Edmonds fabricated evidence, (2) failed to give Edmonds a fair trial at his first criminal trial resulting in a superseding cause of his conviction, such that the false confession was not the legal cause of his conviction, and (3) should have granted Edmonds's request to have a jury trial.

### HOLDING

(1) Because the compensation statute provides for an element of intent to bring about one's conviction when defining "fabricated evidence," and the Supreme Court found that the confession was not given with the intention to bring about his incarceration, the trial court erroneously deemed the confession "fabricated evidence." (2) Because the confession did not constitute "fabricated evidence," no superseding cause was needed for purposes of this appeal. (3) Because silence in a statute has historically afforded the right to a jury trial and the statutory claim that Edmonds brought is silent, the trial court erroneously denied Edmonds's right to a jury trial. Therefore, the Supreme Court reversed the judgment of the Oktibbeha County Circuit Court.

### CONCURRENCE

Justice Maxwell argued that the plain language of Miss. Code Ann. § 11-44-7 foreclosed Edmonds's ability to recover for the wrongful incarceration. Justice Maxwell agreed that Edmonds is entitled to a jury trial on remand but disagreed that the result would be any different because the interpretation of Miss. Code Ann. § 11-44-7 should require the judge to rule against Edmonds even if the jury grants his request for compensation.

### DISSENTS

Presiding Justice Randolph argued that the majority's interpretation of the statute would lead to an absurd result because no reasonable person would ever give a false confession with the intent of being imprisoned. Therefore, where the statute can be interpreted to avoid the absurd result, he argued that the court should do so. Lastly, he asserted that Edmonds must also prove his actual innocence by a preponderance of the evidence—which was not established in the case.

Justice Beam argued that Miss. Code Ann. § 11-44-7 provides for an element of intent as it relates to the fabrication of evidence, but it does not require the intent to bring about the conviction. Additionally, Justice Beam argued that the lower court correctly denied the jury trial because there was no issue of fact remaining; there was only an interpretation of the law needed. Lastly, she argued that even if there was a jury trial, the outcome would be the same because the judge would have granted the State's inevitable motion for a directed verdict.

Justice Chamberlin argued that a confession that is not induced or coerced by law enforcement or a state actor prevents recovery under Miss. Code Ann. § 11-44-7. Justice Chamberlin further argued that the majority gives no meaning to the phrase "fabricate evidence to bring about his conviction" because there is always an ulterior motive other than being convicted.

**Reversed & Remanded - 2015-CA-01788-SCT (June 29, 2017)**

En Banc Opinion by Justice Coleman - Concurrence by Justice Maxwell - Dissents by Presiding Justice Randolph, Justice Beam, & Justice Chamberlin

Hon. Lee Sorrels Coleman (Oktibbeha County Circuit Court)

Jim Waide & Victor Israel Fleitas for Appellant - Wilson Douglas Minor (Att'y Gen. Office) for Appellee

Briefed by [Addison K. Watson](#)

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## T.L. WALLACE CONSTR., INC. v. MCARTHUR, THAMES, SLAY, & DEWS, PLLC

### CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

**EVIDENCE - EXPERT TESTIMONY - ADMISSIBILITY** - A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact in understanding the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case

**TORTS - STATUTE OF LIMITATIONS - DISCOVERY EXCEPTION** - While the period of limitation for causes of action prescribed by Miss. Code Ann. § 15-1-49 is three years, the discovery exception may be applied when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act

**CIVIL PROCEDURE - DISCOVERY - DENIAL** - In the discovery arena, it is preferable for the trial court to impose partial limitations on discovery rather than an outright denial; any record which indicates a failure to give adequate consideration to these concepts is subject to the attack of abuse of discretion

### FACTS

On January 10, 2013, Wallace Construction filed a complaint against McArthur Thames for auditor negligence, negligence in preparation of income tax returns, breach of fiduciary duty, breach of contract, fraud, and conspiracy to defraud Wallace Construction. Wallace Construction alleged that McArthur Thames provided negligent auditing services from December 31, 2008 through 2011, by failing to discover that corporate assets of the company had been misappropriated and to audit personal expenditures from company credit cards. Thomas L. Wallace, founder of the construction company, ran his and his wife's personal expenses through the company, and the expenses were booked under various job costs. With only a fifth-grade education, Wallace claimed that he did not know how the bookkeeping department handled personal expenses, and he argued that he believed he was paying taxes on his personal expenses. Wallace retired in 2006 and left his company to be run by the five other members on the Board of Directors. After his retirement, Wallace claimed that Wallace Construction employees began to charge unauthorized personal expenses to the company, which would be added into the accounting system and shifted among the various jobs in order to cover them up. As a result, more revenue and gross profits were reported than otherwise existed. Certain employees and other members of Wallace's family used company credit cards. Wallace claimed that he trusted these people, so he never asked to review any credit card bills. Some of these expenditures included the construction of employees' homes and

driveways. Wallace claimed he had no issue with financing the projects, but he did not know how expensive they would be. Wallace argued that McArthur Thames should have found these personal expenses, which could have enabled him to come out of retirement and work to save his company. Ultimately, Wallace sold his million-dollar company for \$1,000. Wallace Construction used three expert witnesses to explain the auditing standard of care, causation, and damages. However, the trial court excluded the expert testimony on causation because the witnesses failed to meet the *Daubert* standard for expert opinions. McArthur Thames filed a motion for summary judgment for lack of evidence of causation, which the trial court granted. Wallace Construction appealed, asserting issues (1)-(3). Because the Supreme Court found the grant of summary judgment improper, McArthur Thames cross-appealed, asserting issues (4)-(6).

## **ISSUES**

Whether (1) expert testimony on causation is required in auditing malpractice cases; (2) expert testimony on causation was required in this case; (3) the trial court erred in excluding Summerford's causation opinion; (4) the trial court erred in denying summary judgment based on the statute of limitations; (5) the trial court abused its discretion in limiting discovery of company financial information to before June 30, 2012; and (6) the trial court erred in refusing discovery of Wallace's personal accounts.

## **HOLDING**

(1) Because both Wallace Construction and McArthur Thames agreed that expert testimony is not required to establish causation in every auditing malpractice case, the Supreme Court addressed only whether expert testimony would be required in this specific case. (2) Because a jury could have reasonably concluded based on Wallace's lay testimony that McArthur Thames's inaccurate financial audits were the cause of the damages suffered by Wallace Construction, expert testimony was not required in this case. (3) Because the trial court inquired about Summerford's methodological basis and thoroughly considered the proffered expert testimony before determining it was unreliable, the trial court did not abuse its discretion in excluding Summerford's causation opinion. (4) Because Wallace did not actually discover the negligent auditing until 2012 and there was a genuine dispute as to when Wallace should have perceived the negligence and/or injury, the trial court did not err in denying summary judgment based on the statute of limitations. (5) Because the post-sale financial data was relevant to the issues raised by Wallace Construction's claims and reasonable access would allow McArthur Thames to defend against Wallace Construction's claimed lost business value damages, the trial court abused its discretion in limiting discovery to pre-sale financial records. (6) Because the Wallaces made assertions that brought their personal accounts into issue, the trial court abused its discretion in denying discovery of the Wallaces' personal accounts. Therefore, the Supreme Court affirmed in part, reversed in part, and remanded the judgment of the Marion County Circuit Court.

### **Affirmed in Part, Reversed in Part & Remanded - 2015-CA-01596-SCT (June 29, 2017)**

Opinion by Justice King

Hon. Anthony Alan Mozingo (Marion County Circuit Court)

J. Stephen Kennedy, Amy Lewis Champagne, Samuel Deucalion Gregory, & Joe Sam Owen for Appellants - David M. Ott, William A. Whitehead Jr., Donald C. Dornan Jr., Kristopher Alan Powell, & Lauren Ruth Hillery for Appellee

Briefed by [Katherine Farese](#)

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## **VIVIANS V. BAPTIST HEALTHPLEX**

### **CIVIL - PERSONAL INJURY**

**PREMISES LIABILITY - EVIDENCE - MATERIAL FACT** - Reports of subsequent accidents caused by substantially similar circumstances at a certain location may be admissible as evidence and create a genuine issue of material fact

**NEGLIGENCE - STANDARD OF CARE - BREACH** - The duties to (1) keep the premises reasonably safe and (2) warn of hidden dangers are separate duties; the breach of either duty supports a claim of negligence, and each must be separately analyzed

### **FACTS**

Timothy Vivians, a member of the Baptist Healthplex (“Baptist”) in Clinton, Mississippi, slipped, fell, and sustained injuries when stepping into the Healthplex therapy pool. He sued, alleging, inter alia, that Baptist failed to maintain its premises in a reasonably safe condition. The Hinds County Circuit Court granted summary judgment in favor of Baptist because it did not find that one prior fall on the steps was sufficient to establish a dangerous condition at the location, and the Mississippi Court of Appeals affirmed. Vivians petitioned for writ of certiorari.

### **ISSUES**

Whether (1) a genuine issue of material fact existed regarding whether the steps into the therapy pool at Baptist Healthplex constituted an unreasonably dangerous condition, and (2) Baptist was negligent for failure to maintain its premises in a reasonably safe condition.

### **HOLDING**

(1) Because Vivians adduced ample evidence that his slip and fall was substantially similar to subsequent slip and fall occurrences on the therapy pool steps, a genuine issue of material fact existed with regard to whether the therapy pool steps constituted an unreasonably dangerous condition. (2) Because the slip and fall at issue was one of many similar slip and fall occurrences on the steps of the therapy pool, Baptist was negligent in failing to maintain its premises in a reasonably safe condition. Therefore, the Supreme Court reversed and remanded the judgments of the Mississippi Court of Appeals and Hinds County Circuit Court.

### **CONCURRENCE**

In his special concurrence, Presiding Justice Dickinson emphasized the frequency of the falls on the therapy pool steps. He argued that the duty to maintain the premises in a reasonably safe condition rests on what a reasonably prudent property owner would do; therefore, the number of subsequent accidents fell squarely within the zone that requires a jury to decide if the premises were in a reasonably safe condition.

### **DISSENTS**

Justice Coleman argued that there was no genuine issue of material fact that a dangerous condition existed on the premises. He maintained that the prior and subsequent accidents, presented by Vivians as evidence, failed to show a dangerous condition and failed to show that Baptist had actual or constructive knowledge of the dangerous condition or created the dangerous condition.

Justice Maxwell argued that the majority’s analysis of the subsequent slip and fall accidents did not provide adequate proof that Baptist knew or should have known the therapy pool steps posed an unreasonable danger on the day of Vivians’s fall. Additionally, he stressed his concern that the majority’s opinion expanded the scope of premises liability and imposed an almost strict-liability standard on property owners.

### **Reversed & Remanded - 2014-CT-01828-SCT (June 29, 2017)**

En Banc Opinion by Justice Kitchens - Concurrence by Presiding Justice Dickinson - Dissents by Justice Coleman & Justice Maxwell

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

Howard Brown & Merrida Coxwell for Appellant - Mallory Miller Street, Wade G. Manor, and James Leroy Banks IV for Appellees

Briefed by [Mary-Katherine Black](#)

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## SCOTT V. STATE

### CRIMINAL - FELONY

**CRIMINAL - FELONY - MURDER** - Under Miss. Code Ann. § 97-3-19, the killing of a human being without authority of law when done with deliberate design to effect the death of the person killed, or any human being, shall be first-degree murder

**CRIMINAL - FELONY - AGGRAVATED ASSAULT** - Under Miss. Code Ann. § 97-3-7, a person is guilty of aggravated assault if he attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm

**GUILTY VERDICT - JUDICIAL REVIEW - SUFFICIENCY OF THE EVIDENCE** - The evidence will be deemed sufficient if having in mind the beyond a reasonable doubt burden of proof standard, reasonable fair-minded men in the exercising of impartial judgment might reach different conclusions on every element of the offense; the court considers the evidence in the light most favorable to the state

**GUILTY VERDICT - JUDICIAL REVIEW - WEIGHT OF THE EVIDENCE** - A reviewing 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 unconscionable injustice

### FACTS

Kale Scott attended a high school graduation party at the Lowndes County fairgrounds in Columbus, Mississippi on the evening of May 22, 2014. Scott proceeded to get into a fight with Devin Montgomery, which was broken up by the security guard on duty, Jomoco Harriston. Harriston was escorting Scott outside the building when a second fight broke out involving Montgomery. Harriston let Scott go in order to break up the second fight. As Harriston was escorting Montgomery to the exit, they passed Scott. Harriston testified that he then heard one gunshot and that Montgomery began to run for the exit. Two eyewitnesses, Deisha Walker and Fredrick Smith, testified that they saw Scott pull out a gun and fire several shots following the second fight. Walker also testified that at the time of the shooting, Montgomery was not a threat to Walker. Montgomery was shot five times and died from his injuries. Smith, Montgomery's cousin, was shot once in the thigh but did not die. Scott turned himself into the police two days later. Scott did not have any injuries at the time, nor did he complain of any injuries. Scott testified on his own behalf at trial that during the fight, Montgomery pulled Scott's shirt over his head and started to hit him in the head. Scott stated he then became very upset and started firing shots into the crowd. Scott testified that he did not remember being removed from the fight by Harriston or that there was a subsequent fight involving Montgomery. Scott was convicted by a jury on one count of murder and one count of aggravated assault. Scott appealed.

### ISSUES

Whether (1) the evidence presented at trial was insufficient to support the guilty verdicts because the State failed to establish Scott was not acting in self-defense, and (2) allowing Scott's conviction to stand would sanction unconscionable injustice because the evidence shows that he did not have the intent required for murder.

### HOLDING

(1) Because testimony from several witnesses evinced that Montgomery was trying to run away from Scott and posed no threat when he was shot from behind and Scott's testimony was not sufficient to convince the jury that he was acting in self-defense, the evidence was not insufficient to support the guilty verdicts. (2) Because witness testimony evinced that Montgomery was unarmed and on his way to the exit, Montgomery's injuries prove that he was shot in the back, and no witnesses could corroborate Scott's testimony that he was acting in self-defense, a guilty verdict was supported by the overwhelming weight of the evidence. Therefore, the Supreme Court affirmed the judgment of the Lowndes County Circuit Court.

**Affirmed - 2015-KA-01623-SCT (June 29, 2017)**

Opinion by Presiding Justice Randolph

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Rodney A. Ray for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Jay Michael Patterson](#)

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## SHINSTOCK V. STATE

### CRIMINAL - FELONY

**APPELLATE PROCEDURE - INSUFFICIENT RECORD - FOURTH AMENDMENT** - If the defendant fails to raise an issue at trial and no record is developed, the court is left without evidence for appellate review; the rule that failure to object at trial bars an issue on appeal also applies to Fourth Amendment claims

**CRIMINAL PROCEDURE - SEARCH & SEIZURE - WARRANTLESS SEARCH** - A warrantless search or seizure in a person's home is presumptively unreasonable; to overcome this presumption, the State has the burden to demonstrate exigent circumstances necessitated the warrantless search or seizure

**CONSTITUTIONAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL** - The failure to file a suppression motion does not constitute per se ineffective assistance of counsel

### FACTS

William Valentine was found in possession of methamphetamine by Rankin County sheriff's deputies. He was offered the option to work off his charges by participating in a controlled buy from his supplier, Ronald Shinstock. Valentine was outfitted with a hidden camera and \$260 in cash to purchase an "eight ball" of methamphetamine. After the deal, Valentine turned over the drugs (later confirmed to be 2.8 grams of methamphetamine) to Deputy Tyson. Tyson, accompanied by Investigator Brett McAlpin, entered Shinstock's house to arrest him. The two officers recovered the \$260 in bills matching the serial numbers of the buy money given to Valentine and a set of digital scales. At trial, the evidence was introduced without objection. The trial court found Shinstock guilty of selling more than two but less than ten grams of methamphetamine near a church. Shinstock appealed.

### ISSUES

Whether (1) Shinstock's Fourth Amendment right was violated when police officers entered his home without a warrant to arrest him and confiscate evidence, and (2) his trial counsel was constitutionally ineffective in failing to file a motion to suppress the evidence gathered during illegal arrest.

### HOLDING

(1) Because Shinstock never challenged the search during trial, the record was not developed, and the Supreme Court was without evidence to carry out a fact-intensive inquiry of whether the search was legal. (2) Because the mere failure to file a motion to suppress is not sufficient to support an ineffective counsel claim, relief was denied. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2016-KA-00963-SCT (June 29, 2017)**

Opinion by Justice Maxwell

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

Mollie Marie McMillin & George T. Holmes (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Maggie Vinzant](#)

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## WASHINGTON V. STATE

## CRIMINAL - FELONY

**CRIMINAL PROCEDURE - MOTION FOR A NEW TRIAL - STANDARD OF REVIEW** - A motion for a new trial should be granted only if the verdict is so contrary to the overwhelming weight of evidence that to allow it to stand would sanction an unconscionable injustice

**CRIMINAL LAW - FELONY - INTENT** - The intent to commit a crime or to do an act by a free agent can be determined only by the act itself, surrounding circumstances, and expressions made by the actor with reference to his intent

**CRIMINAL LAW - FELONY - WITNESS INTIMIDATION** -Pursuant to Miss. Code Ann. § 97-9-55, if any person, by threat, force, or abuse, attempts to intimidate after the performance of such duties, he or she shall upon conviction be punished by imprisonment not less than two (2) years in the state penitentiary or by a fine not exceeding five hundred dollars (\$500.00), or both such fine and imprisonment

### FACTS

Cortia Washington was found guilty of intimidating a witness in violation of Miss. Code Ann. § 97-9-55. In order to deter the type of activity that occurred, the trial judge did not accept a plea recommendation from the State. The Hinds County Circuit Court sentenced Washington to serve two years in the custody of the Mississippi Department of Corrections. Washington filed a motion for a new trial, which was denied by the trial court. Washington appealed.

### ISSUE

Whether the trial court erred in failing to grant the motion for a new trial.

### HOLDING

Because the jury's verdict was not against the overwhelming weight of the evidence, the trial judge did not abuse his discretion in denying the motion for a new trial. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2015-KA-01702-SCT (June 29, 2017)**

Opinion by Justice Coleman

Hon. Jeff Weill Sr. (Hinds County Circuit Court)

Mollie Marie McMillin, Michele Purvis Harris, & George T. Holmes (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Jacob Swatley](#)

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## *SUPREME COURT - ORDERS*

## IN RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

### COURT ORDER

#### ORDER

This en banc Order by the Mississippi Supreme Court, made in consideration of the court's own motion, amends Rule 2 of the Mississippi Rules of Appellate Procedure to allow the Mississippi Supreme Court and Court of Appeals to suspend the rules and extend the time for taking an appeal in criminal and post-conviction cases. The Order also amends the Comments to Rules 2 and 4 to reflect and clarify these changes. These amendments became effective upon entry of this Order on June 23, 2017.

[Exhibit A](#), referenced in and attached to the Order, shows edits to both Rule 2 and the Comments to Rules 2 and 4 by tracking changes to the previous language. Rule 2(c) now provides that either court may extend the time for taking an



appeal under Rules 4 and 5 in criminal and post-conviction cases, but not in civil cases. The Comment to Rule 2 clarifies that Rule 2(a)(1) provides that either court must dismiss any appeal not taken within the time specified in Rules 4 and 5, but Rule 2(c) provides for suspension of this rule for criminal and post-conviction cases. The Comment also notes that, in civil cases, neither court may extend the time for taking an appeal, except by motion as provided in Rule 4(g) or (h). Finally, the Comment to Rule 4 notes that post-conviction relief proceedings are governed by the same rules as criminal appeals, such that the court may suspend Rule 4 to permit out of time appeals in either category of cases, but not in civil cases.

**Granted -89-R-99027-SCT (June 23, 2017)**

En Banc Order by Justice Coleman

Briefed by [Daniel Tankersley](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 27, 2017

### COURT OF APPEALS - CIVIL CASES

#### CITY OF JACKSON V. BROWN

#### CIVIL - WORKERS' COMPENSATION

**CIVIL - WORKERS' COMPENSATION - DENIAL** - Pursuant to Miss. Code Ann. § 71-3-7(4), a trier of fact must find substantial evidence of willful intent to injure or kill himself or another to deny compensation

**CIVIL - WORKERS' COMPENSATION - WILLFUL INTENTION** - Mississippi has not held that willful intent may be inferred solely from one's actions without evidence supporting the conclusion

**CIVIL - PUBLIC POLICY - JUDICIAL PURVIEW** - It is the prerogative of the Mississippi Legislature to set the public policy of the state

#### FACTS

On July 21, 2012, Officer Kearney Brown, a patrol officer for the City of Jackson (“the City”), was involved in a single car accident while responding to a call for backup. Crash data determined that Brown had increased his speed from fifty-three miles per hour to ninety-one miles per hour over a twelve second period prior to the accident. Brown was not wearing a seatbelt and was ejected from his car. Brown sought to have his injuries paid for by the City. The City refused, and Brown filed a petition to controvert. The City denied compensability, arguing that Brown exhibited a willful intent to injure himself, which precludes payment according to Miss. Code Ann. § 71-3-7(4). Brown and the City presented arguments at a hearing before an Administrative Judge who ultimately found for Brown because the City failed to present credible evidence that Brown willfully intended to injure himself. The City filed a petition for review, and the Commission affirmed the Administrative Judge's ruling. The City appealed.

#### ISSUES

Whether the administrative judge erred in (1) ruling that Brown did not intend to injure himself, (2) ruling that a willful intent to injure may not be inferred from the facts of this case, and (3) failing to deny benefits as a matter of public policy even if willful intent to injure could not be inferred from the facts.

#### HOLDING

(1) Because Brown testified that he was driving fast in order to quickly reach a fellow officer who was in need of assistance, there was no credible evidence to suggest that Brown willfully acted with the intent to injure himself. (2) Because the facts of the case and the evidence presented did not show willful intent, and Mississippi does not assume willful intent based solely on facts presented, this assignment was erroneous. (3) Because the Mississippi Legislature sets public policy and has laid out the standard for denial of compensation in Miss Code Ann. § 71-3-7(4), this issue of

denying benefits based on public policy was without merit. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

**Affirmed - 2016-WC-01164-COA (June 27, 2017)**

En Banc Opinion by Presiding Judge Irving

Mississippi Workers' Compensation Commission

Carrie Johnson & Monica Davis Joiner for Appellant - Andre Francis Ducote for Appellee

Briefed by [D. Hunter V. Robertson](#)

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## ESTATE OF MINOR V. UNITED SERVS. AUTO. ASS'N

### CIVIL - INSURANCE

**CIVIL PROCEDURE - SUMMARY JUDGMENT - DISPUTE OF MATERIAL FACTS** - A motion for summary judgment lies only where there is no genuine dispute of material fact

**CIVIL PROCEDURE - JURY INSTRUCTIONS** - Jury instructions are within the discretion of the trial court; on review, the instructions are to be read as a whole and analyzed to determine whether the jury instruction correctly stated the law and was supported by evidence

**CIVIL PROCEDURE - ISSUES ON APPEAL – PROCEDURAL BAR** - Issues raised for the first time on appeal are procedurally barred from review, because they have not been reviewed by the trial court

### FACTS

Paul and Sylvia Minor's home was destroyed by Hurricane Katrina on August 29, 2005. The Minors had a homeowner's insurance policy with United Services Automobile Association (USAA) that covered damage caused by wind but not damage from storm surge or flood. The policy provided the following coverage limits: house - \$1,028,000; boathouse and shed - \$102,800; guest cottage - \$108,000; detached carport - \$41,000; personal property - \$771,000; and jewelry, watches, furs, and silverware - \$4,000. The policy also contained a two percent named storm deductible. The Minors reported their loss to USAA in January 2006, and USAA assigned adjusters and an engineering firm to inspect the home. USAA then issued payments for the wind damage but not for flood or storm surge damage. The Minors claimed they suffered a total loss caused by the wind. On August 14, 2008, the Minors filed a complaint in the Jackson County Circuit Court and asked for all losses incurred, as well as punitive and extracontractual damages, due to USAA's bad-faith refusal to pay their claim. On August 9, 2013, the trial court granted USAA a partial summary judgment for the claims of punitive and extracontractual damages. The case went to trial on the other claims, and the jury returned a verdict on September 20, 2013 for \$1,547,293.37. The Minors' post-trial motions were denied. The Minors appealed.

### ISSUES

Whether the circuit court erred in (1) granting the motion for partial summary judgment on the issue of punitive and extracontractual damages, (2) giving Jury Instruction D-29b, and (3) failing to correct the judgment to award policy limits.

### HOLDING

(1) Because the circuit court found there was credible material proof that USAA did not have a reasonable or arguable reason to make its claims decisions, and because there was a dispute as to whether damage was caused by storm surge or wind, a genuine issue of material fact existed. The Court of Appeals did not find that the Minors were entitled to present their claims for punitive or extracontractual damages to the jury, but found that USAA was not entitled to a judgment as a matter of law. (2) Because the Minors' insurance policy clearly and unambiguously included a two-percent deductible and required actual cash value unless repair or replacement was completed, even though the jury instruction limited the amount of damages the jury could award, the limitations were consistent with the policy language and were supported by facts. (3) Because an additur is only appropriate when the trial judge finds damages awarded by a jury were

inadequate, and the Minors only filed a motion for JNOV and failed to raise the issue of additur before the trial court, the request for an additur was procedurally barred. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Jackson County Circuit Court.

## **DISSENT**

Judge Carlton dissented on the majority's findings that the circuit court committed reversible error in granting USAA's motion for partial summary judgment. She argued that USAA acted with an arguable basis and without malice, reckless disregard, or gross negligence. Further, she argued the Minors failed to provide USAA any information disputing the engineering report until they presented expert reports as part of their lawsuit, and for three years the Minors failed to provide any information about their personal property losses. Judge Carlton would affirm the judgment of the circuit court.

### **Affirmed in Part; Reversed & Remanded in Part - 2014-CA-00372-COA (June 27, 2017)**

En Banc Opinion by Presiding Judge Griffis - Dissent by Judge Carlton

Hon. Richard Todd Bennett (Jackson County Circuit Court)

F. Gerald Maples, W. Corban Gunn, Chuck R. McRae, & Seth C. Little for Appellants - Charles G. Copeland, Walker Reece Gibson, Rebecca Suzanne Blunden, & Timothy John Sterling for Appellees

Briefed by [Sarah Raben](#)

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## **GRINER V. GRINER**

### **CIVIL - DOMESTIC RELATIONS**

**CIVIL - MARITAL ASSETS - VALUE** - A court must also consider encumbrances on properties in determining the value of marital assets

**CIVIL - ALIMONY - LIFE-INSURANCE** - While life-insurance policies can satisfy alimony obligations, the amount imposed must not be unreasonable and excessive

### **FACTS**

Charles H. "Chip" and Melanie Griner were married on August 11, 1990 and separated on September 30, 2010. On August 14, 2015, by filing a written consent, the parties agreed to divorce on the ground of irreconcilable differences. They also asked the chancellor to decide (1) child support and related school issues and costs; (2) alimony; (3) equitable distribution of the marital assets; and (4) equitable distribution of the parties' debts and liabilities. After a one-day trial, the court entered final judgment whereby Chip was to pay Melanie \$1,500 in child support per month for their son Charlie and to provide health care for Charlie until he was emancipated. Chip and Melanie were to split Charlie's non-covered medical expenses equally. Chip was to pay Melanie \$3,000 per month in alimony until Melanie's death or remarriage, an additional \$4,000 per month for ten years, or a lump sum of \$480,000, and Melanie's health insurance benefits for the next eighteen years. The court also awarded Melanie 70 percent of the marital assets, a Chevrolet Tahoe, all household furnishings and personal property, including interest in a condominium. Chip was awarded exclusive use and possession of the marital home until he bought Melanie's interest. Chip and Melanie kept their separate checking accounts. The court also took into account Chip's non-marital assets, which left him in a better position than Melanie. The court entered a modified order after Chip and Melanie filed motions for a new trial or for reconsideration of the court's final judgment. This order denied Chip's request to reduce the child support amount, to reduce the alimony lump sum amount, and the provision requiring Melanie's health insurance for the next eighteen years. The order also clarified some of the marital assets that were awarded as well as non-marital assets including stocks, a house, and land. The court further required Chip to pay for Charlie's maintenance, upkeep, tags, and insurance of his car until he turned twenty-one, and a \$1,000,000 life insurance policy with Melanie as the beneficiary. Chip was also responsible for all of the debts of the marriage, and the debt of the home and surrounding acreage. Melanie was ordered to pay the interest on a credit card with a balance of \$23,000, and her time to secure a new home was extended. Chip appealed.

## ISSUES

Whether the chancellor erred in (1) the division of the marital estate; (2) the assignment of responsibilities for the marital debts; (3) the award of lump-sum alimony to Melanie; and (4) other awards which exceed the scope of the issues that Chip and Melanie requested the court to address.

## HOLDING

(1) Because the chancellor included incorrect figures in his calculations for awarding Melanie 70 percent of the marital assets, the Court of Appeals reversed and remanded for the chancery court to reconsider dividing the marital estate based on proper figures. (2) Because the chancery court specifically addressed the marital debts and their status, the issue of assigning responsibilities for the marital debts was without merit. (3) Because alimony cannot be determined until after the marital estate has been properly valued and equitably divided, the Court of Appeals found that the alimony amount awarded must be examined again by the chancery court on remand. (4) Because medical insurance is an award in the nature of alimony, a life-insurance policy may be required to satisfy alimony obligations, and state law requires a vehicle to have a tag and liability insurance to be driven, these awards fell under liability issues which the parties submitted to the chancellor for resolution. Yet, the final judgment and modified order conflict about the period of time for Chip to pay for Melanie's health insurance, so this issue was remanded for clarification. Further, the life insurance policy amount to be paid by Chip was unreasonable and excessive, so the Court of Appeals found that this issue must also be looked at on remand. Therefore, the Court of Appeals reversed and remanded the judgment of the Marion County Chancery Court.

### **Reversed & Remanded - 2015-CA-01903-COA (June 27, 2017)**

Opinion by Presiding Judge Irving

Hon. Johnny Lee Williams (Marion County Chancery Court)

Richard Anthony Filce for Appellant - Erik M. Lowrey for Appellee

Briefed by [Michael Farese](#)

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## **HOLMES V. GRISBY**

### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE** - In determining whether to dismiss a case under Fed. R. Civ. P. 41(b), the court analyzes whether there is a record of dilatory or contumacious conduct by the plaintiff, and if lesser sanctions other than dismissal would better serve the interests of justice

**DISMISSAL - FAILURE TO PROSECUTE - TIMEFRAME** - Dismissal for failure to prosecute may be appropriate where the case has remained stale for more than a year unless there is a justifiable basis for the delay

**DISMISSAL - FAILURE TO PROSECUTE - JUSTIFIABLE DELAY** - A party's failure to remove ineffective counsel when there has been adequate time to do so renders a delay unjustifiable

**DISMISSAL - FAILURE TO PROSECUTE - SANCTION ASSESSMENT** - Mere failure to acknowledge lesser sanctions does not alone constitute an abuse of discretion requiring reversal

## FACTS

A claim arose out of a car wreck in which Teresa Grisby allegedly rear-ended Elnora Holmes and Irma Venson. Holmes and Venson missed their discovery deadlines, didn't appear at depositions, and took more than a year-long hiatus from the case after a trial date was set. Grisby filed a motion to dismiss for want of prosecution. The trial court granted the motion to dismiss the action pursuant to Fed. R. Civ. P. 41(b). Holmes and Venson appealed.

## ISSUES

Whether the trial court abused its discretion in (1) dismissing the claim pursuant to Fed. R. Civ. P. 41(b), and (2) dismissing the claim where there was no express finding whether lesser sanctions may have better served the interests of justice.

### **HOLDING**

(1) Because Holmes and Venson caused continuous and unjustifiable delays in setting the matter for trial, their actions were dilatory and contumacious and warranted dismissal. (2) Because the Mississippi Supreme Court has previously held a lack of express findings regarding lesser sanctions to be insufficient on its own to require reversal, the trial court did not abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

#### **Affirmed - 2015-CA-01771-COA (June 27, 2017)**

Opinion by Judge Westbrook

Hon. Johnnie E. Walls Jr. (Tunica County Circuit Court)

Charles M. Merkel Jr. & Corrie Schuler for Appellants - Goodloe Tankersley Lewis, Amanda Povall Tailyour, & Hal Scot

Spragins Jr. for Appellee

Briefed by [Hale Neilson](#)

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## **IN RE ESTATE OF JARVIS V. JARVIS**

### **CIVIL - WILLS, TRUSTS, & ESTATES**

**WILLS & ESTATES - TRUSTS - CONSTRUCTIVE TRUSTS** - Constructive trusts are created for the purpose of preventing unjust enrichment, and it is the confidential relationship plus the abuse of the confidence imposed that authorizes a court of equity to construct a trust for the benefit of the party whose confidence has been abused

**WILLS & ESTATES - EXECUTRIX - ATTORNEY-IN-FACT** - Mississippi case law and Miss. Code Ann. § 87-3-7(2) provide that (1) the express terms of the power of attorney prohibit an attorney-in-fact from recognizing any personal gain on any transaction executed under authority of the power of attorney, and (2) gifts must be made in accordance with the principal's history of making or joining in the making of lifetime gifts

**PROPERTY - JOINT OWNERSHIP - RIGHT OF SURVIVORSHIP** - Joint ownership of a deposit account is created when it appears that the clear intention of the original owner is to divest himself of exclusive ownership of the funds at issue and vests ownership jointly in himself and another with rights of survivorship

### **FACTS**

Houston T. Jarvis Sr. ("Jarvis") died on October 16, 2011 and was survived by his three children Shelby J. Kilpatrick ("Kilpatrick"), Houston T. Jarvis Jr. ("Houston"), and William C. Jarvis ("William"). Jarvis named Kilpatrick his attorney-in-fact in 1989 and executed his Last Will and Testament in 2001 to leave his estate to his three children in equal shares. Jarvis had a joint checking account with rights of survivorship, which Kilpatrick was added to in 2004. In 2005, Jarvis moved in with Kilpatrick and remained in her care until his death. On April 21, 2008, Kilpatrick opened a liquid certificate-of-deposit account and signed as Jarvis's attorney-in-fact. Beginning in 2008, Kilpatrick closed and endorsed various certificates of deposit owned by Jarvis including some that belonged to Houston and William. Kilpatrick sought to probate the will, and Houston and William filed a complaint for accounting and other equitable relief, seeking a constructive trust. The chancellor imposed a constructive trust, and Kilpatrick appealed. Houston and William cross-appealed agreeing with the imposition of the trust but arguing it should include additional sums of money.

### **ISSUES**

Whether (1) there was an abuse of confidential relationship between Jarvis and Kilpatrick, which authorized the chancellor to impose a constructive trust, and (2) the chancellor erred in denying the imposition of a constructive trust on additional sums of money.

### **HOLDING**

(1) Because the parties agreed there existed a confidential relationship between Jarvis and Kilpatrick and Kilpatrick acted improperly as the attorney-in-fact, there was an abuse of confidential relationship that permitted the chancellor to impose a constructive trust. (2) Because the constructive trust was properly imposed but should have included Kilpatrick's certificate-of-deposit proceeds of \$83,452.19, the chancellor erred in denying the additional sums of money sought by William and Houston. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Kemper County Chancery Court.

**Affirmed in Part; Reversed & Rendered in Part - 2015-CA-00739-COA (June 27, 2017)**

Opinion by Presiding Judge Griffis

Hon. Joseph Kilgore (Kemper County Chancery Court)

George H. Spinks for Appellant - Mark A. Scarborough for Appellees

Briefed by [Luke Kelly](#)

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## KALMON V. KALMON

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - CUSTODY - PARENTING SKILLS** - Under the *Albright* factors, the parenting skills of both parties are considered and the court determines who is favored by analysis

**FAMILY LAW - CUSTODY - WELL-BEING** - Under the *Albright* factors, the court examines the physical and mental well-being of both parents as well as their relative ages

**FAMILY LAW - CUSTODY - MORAL FITNESS** - Under the *Albright* factors, the court considers any extramarital affairs in evaluating moral fitness

### FACTS

Tabatha and Brent Kalmon married in 2010 and had a son in 2011. Tabatha admitted to an extramarital affair in 2012. The couple, however, remained married. In 2013, the couple decided to separate. After their separation, Tabatha took an overdose of medication and was hospitalized. She received mental-health counseling for several months and was prescribed medication for depression. Brent filed for divorce in 2014, and the chancery court awarded the couple temporary joint physical and legal custody of their son. In 2014, Brent filed an emergency motion for a change of custody after discovering that Tabatha had failed to require their son to use a child-safety seat. The motion was denied. In its custody determination, the chancery court specifically focused on three factors under *Albright*: parenting skills, physical and mental health and age of the parents, and moral fitness. The chancery court considered Tabatha's depression and suicide attempt, as well as an incident in which Tabatha neglected to place the child in the child-safety seat. In 2015, the chancery court granted the divorce and awarded physical custody to Brent after weighing the *Albright* factors. Tabatha appealed.

### ISSUES

Whether the chancellor erred by awarding Brent physical custody of the minor child based on the three *Albright* factors of (1) parenting skills (2) physical and mental health and age of the parents, and (3) moral fitness.

### HOLDING

(1) Because the chancellor properly weighed video evidence of Tabatha neglecting to use the child-safety seat, the chancellor did not err by finding for Brent on the parenting skills factor. (2) Because the chancellor properly weighed the evidence of Tabatha's suicide attempt and mental health issues, the chancellor did not err by finding for Brent on the physical and mental health and age of the parents factor. (3) Because the chancellor properly weighed the evidence of Tabatha's extramarital affair and her suicide attempt, the chancellor did not err by finding for Brent on the moral fitness factor. Consequently, the chancellor's awarding custody to Brent was proper. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

**Affirmed – 2015-CA-01902-COA (June 27, 2017)**

Opinion by Judge Barnes

Hon. Dorothy Winston Colom (Lowndes County Chancery Court)

John Patrick Robbins for Appellant - William Paul Starks II for Appellee

Briefed by [Emily Warwick](#)

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## MISS. DEP'T OF HUMAN SERVS. V. PORTER

### CIVIL - DOMESTIC RELATIONS

**CIVIL PROCEDURE - JURISDICTION - SUBJECT-MATTER** - Miss. Code Ann. § 93-25-102(14) allows the responding tribunal to hear child support issues even when there is no issuing tribunal

**FAMILY LAW - DOMESTIC RELATIONS - CHILD SUPPORT** - Miss. Code Ann. § 93-25-303 requires courts to determine child support issues pursuant to Mississippi law

#### **FACTS**

The Mississippi Department of Human Services demanded that Ben Porter, a Mississippi resident, pay child support payments for his biological child, who lived in Chicago, until the child reached the age of majority. The Jefferson County Chancery Court held that Porter was not required to make child support payments because the child had reached the age of majority, defined as nineteen under Illinois law. The Mississippi Department of Human Services appealed.

#### **ISSUES**

Whether the chancery court erred in (1) not dismissing the case for lack of subject-matter jurisdiction, and (2) applying the Mississippi age of majority law instead of the Illinois age of majority law.

#### **HOLDING**

(1) Because the Uniform Interstate Family Support Act controls when parties to a child-support action reside in different states and allows for the responding tribunal to issue a support order, the chancery court had subject-matter jurisdiction. Additionally, the Mississippi Department of Human Services was not required to have provided the child with assistance to have an interest in the matter. (2) Because of the Uniform Interstate Family Support Act's choice of law provisions and Miss. Code. Ann. § 93-25-303, a responding tribunal is required to determine child support pursuant to Mississippi law. Thus, the chancery court erred when it did not require Porter to make child support payments. Therefore, the Court of Appeals reversed and remanded the judgment of the Jefferson County Chancery Court.

**Reversed & Remanded - 2016-CA-00383-COA (June 27, 2017)**

Opinion by Judge Barnes

Hon. George Ward (Jefferson County Chancery Court)

Lewis Clark Hunter & Deanna Lynne Graves for Appellant - Paul Anderson Koerber for Appellee

Briefed by [Zachary Harper](#)

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## NORRIS V. J.B. HUNT TRANSP., INC.

### CIVIL - PERSONAL INJURY

**CIVIL PROCEDURE - APPEALS - TIMELY FILING** - Generally, notices of appeal to review a final judgment must be filed with the clerk of the circuit court within thirty days of entry of the judgment

**POST-TRIAL MOTIONS - APPEALS - TOLLING** - Motions made under Miss. R. Civ. P. 59, as well as those made under Rule 60 within ten days of entry of the final judgment, toll the thirty-day period to file a notice of appeal to review the final judgment until the circuit court enters orders disposing of the last of such motions outstanding

**CIVIL PROCEDURE - FINAL JUDGMENT - POST-TRIAL MOTIONS** - Post-trial motions made over ten days after entry of a final judgment fall under Miss. R. Civ. P. 60(b) and must show new facts to justify reconsideration of the case, but do not toll the thirty-day period to file notices of appeal of the final judgment

**POST-TRIAL MOTIONS - APPEALS - REVIEW** - Appeals made after entry of an order denying a motion for reconsideration under Miss. R. Civ. P. 60(b) are limited to review of whether the motion was properly denied, and a higher court does not have jurisdiction to review the underlying final judgment for the motion for reconsideration

### **FACTS**

Curtis Norris and Jo Hannah Hall filed suit for personal injury against J.B. Hunt Transport, Inc., from which the jury entered a favorable verdict for J.B. Hunt. After the circuit court entered its final judgment in the case, Norris and Hall both filed timely post-trial motions seeking a judgment notwithstanding the verdict, and in the alternative, a new trial. The court denied Hall's motion on April 17, and Hall subsequently filed a motion for reconsideration of her first post-trial motion eleven days later. On April 30, the court denied Norris's motion, and Norris, the following day, joined Hall's motion for reconsideration. The court denied Norris and Hall's motions for reconsideration on September 15. Norris and Hall appealed.

### **ISSUE**

Whether the Court of Appeals had jurisdiction to review the circuit court's final judgment and order denying the motions for judgment notwithstanding the verdict.

### **HOLDING**

Because Miss. R. Civ. P. 60(b) limits appellate review to whether the motion for reconsideration was properly denied and because Norris and Hall's right to appeal the final judgment extinguished thirty days after disposition of their post-trial motions, the Court of Appeals was without jurisdiction. Therefore, the Court of Appeals dismissed the appeal for lack of jurisdiction.

#### **Dismissed for Lack of Jurisdiction - 2015-CA-01438-COA (June 27, 2017)**

En Banc Opinion by Presiding Judge Irving

Hon. Lamar Pickard (Copolah County Circuit Court)

Jeffrey A. Varas, Kathryn Lindsey White, James D. Shannon, & Bennett Landon Wilson for Appellants - David C. Dunbar &

Morton Ward Smith for Appellee

Briefed by [D. Kirkwood Palmer](#)

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## **STROH V. STROH**

### **CIVIL - DOMESTIC RELATIONS**

**DIVORCE - EQUITABLE DISTRIBUTION - CONTRIBUTIONS DURING MARRIAGE** - The relationship between a wage-earning spouse and a homemaking spouse is symbiotic; the efforts of each make the contributions of the other possible

**DIVORCE - EQUITABLE DISTRIBUTION - VALUATION OF REAL PROPERTY** - If a chancellor is faced with proof from both parties as to the value of real property that is less than ideal, the chancellor must make valuation judgments that find some evidentiary support in the record

**DIVORCE - ALIMONY - LUMP-SUM ALIMONY** - The *Cheatham* factors do not preclude an award of lump-sum alimony that is intended to serve a function similar to periodic alimony; rather, the *Cheatham* factors provide guidelines for awarding equitable distribution of marital assets, under appropriate circumstances



## **FACTS**

Following Jeff and Nancy Stroh's marriage, Jeff moved into Nancy's home (the marital residence). Jeff performed maintenance and repair work on the residence. During the marriage, Jeff and Nancy substantially paid down the mortgage on the marital residence. Prior to and during marriage, Jeff owned a business, Eldorado Storage LLC. Jeff used funds from Eldorado Storage to purchase land, referred to as "the Hill," adjacent to Eldorado Storage. The Hill was conveyed to Jeff and Nancy as joint tenants with rights of survivorship. Nancy was found to be disabled and received Social Security disability payments, but she did some clerical work for Eldorado Storage and advised Jeff regarding business decisions. She also managed the couple's finances and performed household tasks so Jeff could come and go to work. Also during the marriage, Jeff and Nancy purchased a sailboat. The source of funds used to pay for the sailboat was unclear. Jeff and Nancy later filed for divorce and submitted several issues to the chancellor to be resolved in trial. The chancellor found that Nancy's residence was marital property, but it was not subject to equitable division due to a prior agreement between the parties. Further, he found that the Hill was marital property, it should be valued at \$106,000, and it should be equally divided. The chancellor, citing the *Cheatham* factors, found lump-sum alimony to be inappropriate given the facts of the case, so he awarded Nancy permanent, periodic alimony of \$750 per month. Jeff appealed.

## **ISSUES**

Whether the chancellor erred in (1) not including Nancy's residence in the equitable distribution of the marital estate, despite finding that the home was marital property; (2) equally dividing the value of the Hill; (3) valuing the Hill at \$106,000; (4) not accounting for a \$7,000 debt incurred by Jeff in connection with the parties' purchase of a sailboat; and (5) awarding Nancy \$750 per month in periodic alimony.

## **HOLDING**

(1) Because the prior agreement did not preclude equitable distribution of the home, and Jeff contributed to paying down the mortgage on Nancy's residence, he was entitled to part of its value in the equitable distribution of the marital assets. Consequently, the chancellor erred in excluding Nancy's residence from equitable distribution entirely. (2) Because Nancy contributed efforts to acquire the Hill, and Jeff's funds were available to pay for the Hill only because of Nancy's contributions to the marital funds, the Hill was properly equally divided. (3) Because the chancellor made a reasonable estimate in light of limited evidence in the record, the valuation of the Hill was proper. (4) Because Jeff failed to show evidence of the nature or amount of the debt incurred in connection with the purchase of a sailboat, the chancellor did not err in refusing to account for this debt. (5) Because the *Cheatham* factors do not preclude an award of lump-sum alimony, the chancellor erred in refusing to consider awarding lump-sum alimony. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Rankin County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2015-CA-01719-COA (June 27, 2017)**

Opinion by Judge Wilson

Hon. John S. Grant III (Rankin County Chancery Court)

Michael J. Malouf & Robert E. Jones II for Appellant - T. Jackson Lyons for Appellee

Briefed by [Nathan Simpson](#)

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## ***COURT OF APPEALS - POST-CONVICTION RELIEF***

**COBBERT V. STATE**

**CIVIL - POST-CONVICTION RELIEF**

**POST-CONVICTION RELIEF - SUPERVISION VIOLATIONS - TECHNICAL VIOLATION** - Miss. Code Ann. § 47-7-2(q) states a technical violation is an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer

**POST-RELEASE SUPERVISION - VIOLATIONS - REVOCATION** - Pursuant to Miss. Code Ann. § 47-7-37(5), a technical violation is each separate violation of a condition of probation, not each revocation hearing and order

### FACTS

Karanja Cobbert pled guilty to the charge of commercial burglary in 2008 and was sentenced to serve seven years in the custody of the Mississippi Department of Corrections (“MDOC”), with six years suspended and five years of post-release supervision (“PRS”). In 2014, a revocation hearing was conducted and Cobbert’s PRS was revoked because he had violated three conditions of his PRS: (1) he failed to report to his probation officer; (2) he failed to pay required supervision fees to MDOC; and (3) he failed to pay court costs. The circuit court imposed a period of imprisonment of ninety days to be served at a technical violation center (“TVC”). After he was released from the TVC, a second revocation hearing was held to establish Cobbert failed to report to his probation officer, which violated a fourth condition of his PRS. Based on the plain language of Miss. Code Ann. § 47-7-37(5)(a), the circuit court judge determined that each separate violation of a condition of probation was a technical violation. The circuit judge revoked the PRS and ordered Cobbert to serve the full remainder of the suspended portion of his sentence due to the four technical violations. Cobbert filed a post-conviction relief motion. The circuit court denied Cobbert’s post-conviction relief motion. Cobbert appealed.

### ISSUE

Whether the circuit court erred in denying Cobbert’s post-conviction relief motion.

### HOLDING

Because Miss. Code Ann. § 47-7-2 defines a “technical violation” as “an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer,” the circuit court had authority under the plain language of Miss. Code Ann. 47-7-37(5) to impose the full remainder of the suspended portion of Cobbert’s sentence based on the fourth technical violation of his PRS. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

### DISSENT

Judge Westbrook argued that technical violations are measured according to revocation hearings and orders and that the majority’s holding contravenes the spirit of the statute, which was intended to impose graduated sanctions as an alternative to revocation for offenders who committed technical violations. She would find that the circuit court exceeded its authority by imposing the full remainder of the suspended portion of Cobbert’s sentence.

#### **Affirmed - 2016-CP-00446-COA (June 27, 2017)**

En Banc Opinion by Judge Wilson - Dissent by Judge Westbrook

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

*Pro se* for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Caroline Loveless](#)

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## **DAVIS V. STATE**

### **CIVIL - POST-CONVICTION RELIEF**

**CRIMINAL LAW - SENTENCING - LIFE WITHOUT PAROLE** - A Mississippi trial court may sentence a juvenile to life without the opportunity for parole so long as it undergoes an examination of the *Miller* factors

**CRIMINAL LAW - SENTENCING - MILLER FACTORS** - *Miller* requires a sentencing authority to take into account a child's upbringing and "the characteristics of youth" before sentencing him/her to life without the possibility for parole

### **FACTS**

In 2002, Shawn Davis and two friends planned to rob Dorian Johnson. Davis was sixteen years old at the time. During the planning stages, Davis suggested that the group kill Johnson as well. On the night of the murder, Davis called Johnson to ask if he would take the friend group to a park to smoke marijuana. When they arrived, Davis, along with his friends, dragged Johnson from his car at knifepoint, beating and kicking him. They planned to dispose of his body in an alligator pit but instead stashed his body under a fence while Davis repeatedly slashed Johnson's face, neck, and head. Johnson died from blood loss and brain swelling. He had over thirty stab wounds. Davis pled guilty to simple murder and was sentenced to life without the possibility of parole. In 2012, the United States Supreme Court held in *Miller v. Alabama* that mandatory life sentences for juveniles violated the Eight Amendment. After Davis was granted a new sentencing hearing, the trial court again sentenced Davis to life without parole. Davis appealed.

### **ISSUE**

Whether the trial court abused its discretion in sentencing Davis to life without the possibility of parole.

### **HOLDING**

Because the trial court took into account the factors required by *Miller* in resentencing hearings for individuals serving life without parole, the trial court did not abuse its discretion in sentencing Davis again to life without the possibility of parole. Specifically, the trial court considered a lack of peer pressure evinced by Davis's premeditation and repeated stabbings. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

**Affirmed - 2016-CA-00638-COA (June 27, 2017)**

Opinion by Judge Greenlee

Hon. Dale Harkey (Jackson County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Kathy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Andrew P. Cicero, III](#)

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## **GOUL V. STATE**

### **CIVIL - POST-CONVICTION RELIEF**

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS** - Miss. Code Ann. § 99-39-5(2) states that a motion for PCCR must be filed within three years after the judgment of conviction is entered

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - EXEMPTIONS** - The following errors affecting fundamental constitutional rights are exempted from the three-year statute of limitations: (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

**CRIMINAL LAW - GUILTY PLEA - VOLUNTARINESS** - A guilty plea is voluntarily and intelligently made if the circuit court advised the defendant of his rights and the nature of the charges against him, as well as the consequences of the plea

### **FACTS**

Allen Goul entered a plea of guilty to the charge of murder and was sentenced to life in prison in 1993. In 2016, Goul filed a pro se motion for post-conviction collateral relief (PCCR) on the basis that his guilty plea was involuntarily entered and he received ineffective assistance of counsel. The circuit court denied Goul's motion for PCCR as time-barred. Goul appealed.

### **ISSUE**

Whether the three-year statute of limitations time-barred Goul's motion for PCCR, claiming an involuntarily entered guilty plea and ineffective assistance of counsel.

### **HOLDING**

Because Goul waited approximately twenty-three years to file his motion, and because the exemptions for the statute of limitations do not include involuntary guilty pleas or ineffective assistance of counsel, Goul's motion for PCCR was statutorily time-barred. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

#### **Affirmed - 2016-CP-01003-COA (June 27, 2017)**

Opinion by Presiding Judge Griffis

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, First Judicial Dist.)

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

Briefed by [Nikki Breeland](#)

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## **HICKENBOTTOM V. STATE**

### **CIVIL - POST-CONVICTION RELIEF**

**CIVIL PROCEDURE - MENTAL COMPETENCE - STANDARD OF REVIEW** - On review, the pertinent question is whether the trial judge received information, which objectively considered, should reasonably have raised doubts about the defendant's competence to understand the proceedings, their significance, or the ability to aid his attorney in his defense

**GUILTY PLEA - MENTAL COMPETENCE - REQUIREMENTS** - To determine whether the plea is voluntarily and intelligently given, the trial court must advise the defendant of his rights, the nature of the charge, as well as the consequences of the plea

**POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - PRIMA FACIE CASE** - A defendant must show by a preponderance of the evidence that (1) counsel's performance was deficient, and (2) but for the deficiencies, the trial court outcome would have been different

### **FACTS**

In April 2013, Marquez Hickenbottom was indicted on one count of armed robbery. After Hickenbottom's trial counsel alerted the court of his client's possible mental deficiencies, Dr. Mark Webb, a psychiatrist with the State, performed a psychological evaluation on Hickenbottom. Dr. Webb concluded that Hickenbottom was competent to stand trial and assist his attorney or plead guilty. At the competency hearing, the trial court adopted Dr. Webb's findings, and Hickenbottom entered his plea of guilty of strong-arm robbery. The trial court asked Hickenbottom if he understood the plea and its consequences, and he indicated to the court that he did. Accordingly, the trial court sentenced him to fifteen years in the custody of the Mississippi Department of Corrections, with five years of probation, and a fine of \$1,500. In 2015, Hickenbottom filed a post-conviction relief motion. He alleged he was not competent to plead guilty due to depression, and that he received ineffective assistance of counsel because his trial counsel failed to assert an insanity defense or present past medical history. The trial court entered an order denying and dismissing Hickenbottom's PCR motion. Hickenbottom appealed.

### **ISSUES**

Whether the trial court erred in denying and dismissing Hickenbottom's post-conviction relief motion alleging that (1) he was not competent to plead guilty and (2) he received ineffective assistance from counsel.

### **HOLDING**

(1) Because Hickenbottom represented to the trial court that he understood his sentence and because Dr. Webb found Hickenbottom competent to assist his attorney in his defense, the trial court did not abuse its discretion by finding no evidence to support Hickenbottom's assertion of incompetency. (2) Because Hickenbottom's trial counsel made the

court aware of his past history of mental issues, Hickenbottom failed to establish a prima facie case for an ineffective-assistance-of-counsel claim. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

**Affirmed - 2016-CP-00033-COA (June 27, 2017)**

Opinion by Judge Westbrook

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

*Pro se* for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Katie Berry](#)

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## SHIELDS V. STATE

### CIVIL - POST-CONVICTION RELIEF

**CRIMINAL - SENTENCING - PAROLE ELIGIBILITY** - Miss. Code Ann. § 47-7-3(1)(g)(iii) provides that any offender who has not committed a crime of violence under Miss. Code Ann. § 97-3-2 and has served twenty-five percent or more of his sentence may be paroled by the parole board if the sentencing judge authorizes the offender to be eligible for parole consideration; however, an assertion that completion of twenty-five percent of his sentence automatically entitles him to an eligibility hearing is in error

**CRIMINAL - SENTENCING - PAROLE ELIGIBILITY** - While eligibility determination does rest with the parole board, the parole board may only consider an offender for parole after a circuit judge has authorized him to attend an eligibility hearing before the parole board

**CRIMINAL - SENTENCING - PAROLE ELIGIBILITY** - Miss. Code Ann. § 47-7-3 unambiguously provides that (1) a circuit court judge has discretion to issue a positive or negative recommendation for parole eligibility, and (2) a denial of a recommendation to the parole board for an early release and/or parole fails to implicate an appealable judgment

**POST-CONVICTION RELIEF - PROCEDURAL BAR - TIME** - Under Miss. Code Ann. § 99-39-5(2), a movant has three years to file a post-conviction collateral relief motion, and failure to file within the three years is a procedural bar

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS** - An assertion that a sentencing order is ambiguous does not fall within the exceptions set forth in Miss. Code Ann. § 99-39-5(2)

### FACTS

On June 24, 2010, Clonelle Shields pled guilty to three counts of business burglary, two counts of simple assault on a law enforcement officer, and possession of cocaine. On April 7, 2016, Shields filed a request for a parole-eligibility hearing and a petition for post-conviction collateral relief (PCCR) with the Madison County Circuit Court. Upon review, the trial court declined to recommend Shields to the Mississippi Parole Board for an eligibility hearing, pursuant to Miss. Code Ann. § 47-7-3(1)(g)(iii). In addition, the trial court dismissed Shields's PCCR because it was time-barred and did not fall within the exceptions provided by Miss. Code Ann. § 99-39-11(2) of the Uniform Post-Conviction Collateral Relief Act. Shields appealed.

### ISSUES

Whether the trial court erred in (1) denying Shield's request to proceed with a parole-eligibility hearing, and (2) dismissing Shield's petition for review and correction of sentencing order.

### HOLDING

(1) Because Miss. Code Ann. § 47-7-3 provides a circuit court judge with discretion to issue a positive or negative recommendation for parole eligibility, the trial court had authority to deny the parole-eligibility hearing. Further, because a denial of a recommendation to the parole board for an early release and/or parole fails to implicate an appealable judgment, the trial court's order denying Shield's request was not an appealable order. (2) Because Shields's claim

challenging his sentence was procedurally time-barred, and because it was not a recognized exception to the time-bar, the trial court's dismissal was proper. Therefore, the Court of Appeals affirmed the decision of the Madison County Circuit Court.

**Affirmed - 2016-CA-00923-COA (June 27, 2017)**

Opinion by Presiding Justice Griffis

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

Erich Gregg Jerscheid for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [William L. Moorer](#)

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

### **COLLINS V. STATE**

#### **CRIMINAL - MISDEMEANOR**

**CONSTITUTIONAL LAW - FIRST AMENDMENT - FREEDOM OF SPEECH** - Profane words alone, when unaccompanied by any evidence of violent arousal, are not fighting words, and they constitute protected speech under the U. S. Constitution

**CRIMINAL MISDEMEANOR - DISTURBING THE PEACE - FIGHTING WORDS** - While lewd and profane or libelous words tend to incite an immediate breach of the peace, the freedom of individuals to verbally oppose or challenge police action without risking arrest is a characteristic of a free nation

#### **FACTS**

Kim Collins was arrested on multiple counts, including speeding, disturbing the peace, resisting arrest, public profanity, and disorderly conduct. Her arrest occurred following a profane, verbal exchange with Trooper Matthew Hood after she received a speeding citation during a traffic stop where she was recorded driving eighty miles-per-hour in a sixty-five mile-per-hour zone. Evidence produced by Trooper Hood's dashcam revealed that, following Collins's profanity, Trooper Hood instructed her to place the car in park and step out of the vehicle. When she refused to do so, Trooper Hood opened the vehicle's door and removed her from the car, forcing her to the ground and into handcuffs after Collins resisted arrest. She was found guilty on all counts by the Monroe County Circuit Court. Collins appealed.

#### **ISSUE**

Whether the trial court erred in finding that Collins's profane language constituted disruptive conduct such that it gave Trooper Hood probable cause to detain Collins after the initial traffic stop was over.

#### **HOLDING**

Because profane words must be accompanied by evidence of violent arousal before being constitutionally punishable, the circuit court erred in finding that Trooper Hood had probable cause to detain Collins for resisting arrest, disorderly conduct, public profanity, and disturbing the peace. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Monroe County Circuit Court.

**Affirmed in Part; Reversed & Remanded in Part - 2015-KM-01598-COA (June 27, 2017)**

Opinion by Presiding Judge Irving

Hon. Thomas J. Gardner III (Monroe County Circuit Court)

Brian Lee Starling for Appellant - Joseph Scott Hemleben (Att'y Gen. Office) for Appellee

Briefed by [Kelsey Dismukes](#)

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## CRUMP V. STATE

### CRIMINAL - FELONY

**EVIDENCE - HEARSAY - APPELLATE REVIEW** - When testimony is not allowed at trial, a record of the proffered testimony must be made in order to preserve the point for appeal

**EVIDENCE - LAY OPINION - ADMISSIBILITY** - A non-expert witness may not call upon experience or expertise beyond that of an average, randomly selected adult

**CRIMINAL - INVOLUNTARY CONFESSION - APPELLATE REVIEW** - A claim of involuntary confession cannot be reviewed on appeal unless it is raised and given to the circuit judge to rule on

**CRIMINAL - INEFFECTIVE ASSISTANCE OF COUNSEL - APPELLATE REVIEW** - The appellate court will only review the merits of an ineffective-assistance claim if (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

### FACTS

Jermaine Crump was a joint owner of a three-bedroom house. Crystal, Crump's sister-in-law, was temporarily living at the house and had many disputes with Crump while living there. In 2012, Crump shot Crystal several times in the back of the head, then several more times after she collapsed. Crump claimed that the shooting was in response to overhearing a phone call between Crystal and another unidentified individual which made him feel like his life was in danger. Crump was convicted of deliberate-design murder. Crump appealed.

### ISSUES

Whether (1) the trial court erred in finding that Crump's testimony about the phone call was hearsay; (2) the trial court erred in finding that Deputy Ferguson's testimony about evidence of assault was not a lay opinion; (3) the verdict of murder contradicted the overwhelming evidence that it was heat-of-passion manslaughter; (4) Crump's confession was involuntary; (5) Crump received ineffective assistance of counsel; and (6) the prosecution engaged in prosecutorial misconduct.

### HOLDING

(1) Because there was no proffer of Crump's testimony to preserve the point for appeal, the issue of hearsay was procedurally barred. Even if it were not barred, it was harmless error because Crump was still able to inform the jury that he thought the victim was the initial aggressor. (2) Because Deputy Ferguson called upon his expertise beyond that of an average adult when he said that Crystal was not assaulting Crump, the trial court erred in allowing the lay-opinion testimony of the officer. However, because there was a significant amount of other evidence that Crump did not act in self-defense, it was harmless error. (3) Because there was no evidence that Crystal had threatened Crump, and because Crystal fled from Crump, the overwhelming evidence did not support a claim of manslaughter. (4) Because Crump did not give a circuit judge the opportunity to rule on whether his confession was voluntary, it was procedurally barred on appeal. (5) Because there was no affirmative evidence of ineffective assistance of counsel, and because the record was inadequate to allow the appellate court to make the findings of fact without consideration of the findings of fact of the trial judge, the Court of Appeals did not find a reason to review the issue but noted that Crump may raise this issue upon post-conviction relief. (6) Because Crump's claims of prosecutorial misconduct were based upon several incorrect assumptions about the legal system and the role of a prosecutor, the issue was meritless. Therefore, the Court of Appeals affirmed the judgment of the Yalobusha County Circuit Court.

**Affirmed - 2015-KA-01828-COA (June 27, 2017)**

Opinion by Judge Barnes

Hon. Smith Murphey (Yalobusha County Circuit Court, First Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Tyler Alcorn](#)

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## WATTS V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - WARRANTLESS ARREST - LEGALITY** - A warrantless arrest is lawful if a felony has occurred and the arresting officer has reasonable grounds to suspect, at the time of the arrest, that the person arrested committed a felony offense, or if the person making the arrest does so on a charge that the person to be arrested committed a felony, and the charge was made upon reasonable cause

**CRIMINAL LAW - ARREST - FAILURE TO ADVISE** - The failure of an officer to advise a person of the circumstance for the arrest does not invalidate the arrest, but such an omission shifts the burden of proving probable cause to the State

**CONSTITUTIONAL LAW - MIRANDA - EXCLUSIONARY RULE** - Exclusionary prohibition against the fruit of the poisonous tree applies to violations of the Fifth Amendment privilege against self-incrimination

### FACTS

Larry Watts was detained by the use of a misdemeanor warrant from another jurisdiction after a pediatric specialist determined his child's injuries were consistent with signs of child abuse. At Watts's residence, law-enforcement informed him of his rights and then subsequently detained Watts. Watts made several oral statements to officers while at the residence. At the sheriff's department, Watts made written recitations of the non-inculpatory oral statements he made while detained at his residence. Law enforcement read Watts his rights again, and Watts signed a waiver-and-acknowledgment form indicating he was advised of his rights. Watts was also told he was in the sheriff's department to discuss possible injury to a child. Watts made another written statement, which included his admission to injuring the child. The sheriff's office then arrested Watts for felony child abuse. Watts was tried and convicted of child abuse and sentenced to forty years in the Mississippi Department of Corrections. Watts appealed.

### ISSUE

Whether the trial court erred by admitting Watt's statements into evidence because Watt's voluntary statements to law-enforcement, arising from a warrantless arrest, are fruit of the poisonous tree.

### HOLDING

Because Watts received at least six notifications of his Miranda rights, and because there was a warrant out on Watts, the statements were not fruit of the poisonous tree and the trial court did not err by admitting them at trial. Therefore, the Court of Appeals affirmed the judgment of the Walthall County Circuit Court.

**Affirmed - 2014-KA-00586-COA (June 27, 2017)**

Opinion by Judge Westbrook

Hon. Michael M. Taylor (Walthall County Circuit Court)

Wayne Dowdy & Dunbar Dowdy Watt for Appellant - Scott Stuart & Jason L. Davis (Att'y Gen. Office) for Appellee

Briefed by [Charlotte Cooper](#)

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