

**MISSISSIPPI SUPREME COURT DECISIONS – JULY 20, 2017****SUPREME COURT - CIVIL CASES****LANE V. LAMPKIN****CIVIL - OTHER**

**CIVIL - DAMAGES - LOST PROFITS** - Lost profits may be recovered in Mississippi as long as such profits are proved with reasonable certainty, though there are no guidelines set in stone specifying the degree of certainty

**CIVIL - DAMAGES - LOST PROFITS** - The entire loss suffered by the corporation should be measured under the loss of the bargain rule; the damages due to a corporation are measured by the difference between the value of what the corporation would have received if the false and misleading representations as to the value of the stock were true and the value of what the corporation actually received

**CIVIL - DAMAGES - LEGAL INTEREST** - Prejudgment interest may be allowed in cases where the amount due is liquidated when the claim is originally made or when the denial of a claim is frivolous or in bad faith

**CIVIL - DAMAGES - ATTORNEY'S FEES** - In the absence of contractual provisions or statutory authority, attorney's fees may not be awarded as damages in a case unless punitive damages are also proper

**FACTS**

James Smith, Jr. (Smith) and Ronald Lampkin (Lampkin) jointly owned and operated Limestone Products, Inc. (Limestone) with a line of credit personally guaranteed by each of them. Smith died and his estate refused to guarantee the line of credit. Lampkin formed Delta Stone, a new corporation that operated on the same property, used the same facilities, and sold rock to the same clients as Limestone. The Warren County Chancery Court found that Lampkin breached his fiduciary duties to Limestone by usurping a corporate opportunity. In the damages stage of the trial, the chancellor considered expert testimony, awarded damages, and denied the executors' request for attorney's fees, expert-witness fees, and punitive damages. On appeal, the Court of Appeals affirmed, but the Supreme Court reversed the Court of Appeals and remanded for the chancellor to re-evaluate damages. On remand, the chancellor reassessed the damages due to Limestone as a result of Lampkin's breach. The executors of the estate appealed. Lampkin cross-appealed the chancellor's calculation of damages under the lease.

**ISSUES**

Whether the chancellor erred in (1) his lost-assets calculation; (2) his calculation of the lost profits due to Limestone, (3) his valuation of the unreported rock; (4) his calculation of damages under the lease; and (5) not awarding the estate attorney's fees.

**HOLDING**

(1) Because Lampkin agreed that \$55,104 was incorrectly deducted from the asset calculation, one-half, \$27,552, should be added back to the amount due to the estate. (2) Because the chancellor has great discretion in the admission or exclusion of expert testimony and his award accords with the loss of the bargain rule, the chancellor's calculation in lost profits was not an abuse of discretion. (3) Because of the chancellor's wide discretion in admission of expert testimony and the lack of evidence presented by the estate, it was not an abuse of the chancellor's discretion to value the unreported rock at \$36,000. (4) Because the estate gave no citation to legal authority, the estate's claim under the lease was procedurally barred. Notwithstanding the procedural bar, because Lampkin usurped the entire lease agreement from Limestone when he breached his fiduciary duty, the calculation of damages under the lease was not an abuse of the chancellor's discretion. (5) Because attorney's fees were first argued on appeal and this case did not warrant punitive damages, it was not an abuse of the chancellor's discretion to not award the estate attorney's fees. Therefore, on direct

appeal, the Supreme Court affirmed in part and reversed and rendered in part, and on cross-appeal affirmed the judgment of the Warren County Chancery Court.

**On Direct Appeal: Affirmed in Part; Reversed & Rendered in Part - On Cross-Appeal: Affirmed - 2016-CA-00941-SCT (July 20, 2017)**

Opinion by Justice Chamberlain

Hon. George Ward (Warren County Chancery Court)

Harris H. Barnes III & James Williams Janoush for Appellants - David W. Mockbee & D. Wesley Mockbee for Appellee

Briefed by [Luke Kelly](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 18, 2017

### COURT OF APPEALS - CIVIL CASES

#### DUNCAN V. MATTHEWS

#### CIVIL - OTHER

**CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE** - Pursuant to Miss. R. Civ. P. 4(h), a plaintiff has 120 days to serve a summons upon a defendant, and if service is not perfected within the 120 day period the party upon whose behalf service was required must show good cause why such service was not made within that period

**CIVIL PROCEDURE - IN FORMA PAUPERIS - DELIVERY METHOD** - Pursuant to Miss. R. Civ. P. 4(a)(1)(B), the clerk shall deliver the summons to the sheriff of the county in which the defendant resides for service at the written election of the plaintiff

#### FACTS

Wendell Duncan, while incarcerated, filed a pro se complaint against Raniece Matthews, Latresia Stewart, Richard Pennington, the Mississippi Department of Corrections, and the State of Mississippi. Duncan requested to proceed in forma pauperis, and the Rankin County Circuit Court granted his request. Duncan sent the circuit clerk a copy of the summons to be issued to the sheriff, to serve the defendants. The circuit clerk never delivered the summons to the sheriff, requiring Duncan to file a motion for a writ of mandamus with the Rankin County Circuit Court and the Mississippi Supreme Court. The Rankin County Circuit Court denied the motion sua sponte, leading the Mississippi Supreme Court to dismiss Duncan's motion as moot. When Duncan moved for reconsideration, the Rankin County Circuit Court issued a judgment of dismissal, finding that Duncan did not show good cause within thirty days as to why service of a summons was not made on any of the defendants within 120 days of filing the complaint. Duncan appealed.

#### ISSUE

Whether the circuit court erred in dismissing the case for failure to show good cause of why service of summons was not made within 120 days of filing the complaint.

#### HOLDING

Because Miss. R. Civ. P. 4(a)(1)(B) requires that the clerk deliver the summons to the sheriff for service at the written election of the plaintiff, the circuit court erred in dismissing the case for failure to show good cause of why service of the summons was not made on any of the defendants. Therefore, the Court of Appeals reversed and remanded the judgment of the Rankin County Circuit Court.

#### DISSENT

Judge Carlton argued that Duncan failed to serve the appellees within 120 days of the filing of the complaint, and Duncan failed to file a motion to seek an extension of time pursuant to Miss. R. Civ. P. (6)(b)(2). Thus, she would affirm the trial court's dismissal of Duncan's complaint without prejudice.

**Reversed & Remanded - 2016-CP-00366-COA (July 18, 2017)**

En Banc Opinion by Judge Greenlee - Dissent by Judge Carlton

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

*Pro se* for Appellant - James M. Norris, Darrell Clayton Baughn, & Anthony Louis Schmidt Jr. (Att'y Gen. Office) for Appellees

Briefed by [Zachary Harper](#)

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## FOREMAN V. FOREMAN

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - DIVORCE - DISTRIBUTION OF MARITAL ESTATE** - The court must clearly classify the property as marital or non-marital and equitably divide the marital property based on the *Ferguson* factors

**FAMILY LAW - DIVORCE - ALIMONY** - The court must consider alimony based on the *Armstrong* factors

**FAMILY LAW - DIVORCE - CHILD-SUPPORT** - The court must make an express finding of a party's current income when awarding child-support

### FACTS

John and Kristy Foreman married in 1996 and had one child. During the marriage, Kristy assumed the role of domestic provider and John assumed the role of financial provider. While John was working in China, John had an extramarital affair and fathered a child. John and Kristy separated in 2012, and John subsequently filed for divorce based on irreconcilable differences. Kristy counterclaimed for divorce, alleging habitual cruel and inhumane treatment, uncondoned adultery, and desertion. Kristy additionally filed for separate maintenance in 2013. In 2016, the chancellor entered a final judgment for divorce based on uncondoned adultery, awarded physical custody of the child to Kristy, and divided the marital property. Kristy was granted full use and possession of the marital residence. John was ordered to pay \$700 per month in child-support in addition to \$3,300 in alimony, \$3,500 of Kristy's attorney's fees, twenty-four consecutive months of health insurance for Kristy, and the child's dance and choir expenses. John appealed.

### ISSUES

Whether the chancellor erred in determining (1) the division of the marital estate, (2) the grant of periodic alimony, and (3) the child-support award.

### HOLDING

(1) Because the chancellor did not clearly classify property as marital or non-marital and did not clearly specify each party's contribution to the marital property pursuant to the *Ferguson* factors, the chancellor erred by awarding Kristy exclusive use and possession of the marital residence. (2) Because the chancellor did not specifically determine either party's specific income pursuant to the *Armstrong* factors, the chancellor erred by awarding Kristy \$3,300 in alimony in addition to two years of health insurance and child-support. (3) Because the chancellor did not err in determining that child-support was warranted, the general award of child-support was affirmed. However, because the chancellor did not make an express finding of John's actual income, the chancellor erred by awarding Kristy child-support in the amount of \$700 in addition to the child's dance and choir expenses. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Hinds County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2016-CA-00210-COA (July 18, 2017)**

Opinion by Presiding Judge Griffis

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

Steven Alfred Kohnke & Timothy Kevin Byrne for Appellant - Sharon Patterson Thibodeaux for Appellee

Briefed by [Emily Warwick](#)

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## FOX V. FOX

### CIVIL DOMESTIC RELATIONS

**APPEALS APPELLATE BRIEFS - FAILURE TO FILE** Failure of an appellee to file a brief is tantamount to a confession of error except where the reviewing court can say with confidence, after considering the record and brief of the appealing party, that there was no error

**APPEALS APPELLATE BRIEFS FAILURE TO CITE AUTHORITY** Failure to cite to relevant authority results in a waiver of the issue on appeal

**CRIMINAL CONTEMPT CONSTRUCTIVE PROCEDURAL SAFEGUARDS** In a case of constructive criminal contempt, a defendant must be provided with procedural due process safeguards, including a specification of charges, notice, and a hearing; failure to provide required procedural safeguards in a case of criminal contempt is a sufficient basis to vacate judgement

### FACTS

Following the divorce of William and Tasha Fox, William was granted unsupervised visitation of his and Tasha's nine-year-old son. Tasha filed a motion under Fed. R. Civ. P. 60(b) to have the ordered visitation set aside. The motion was denied, and Tasha was charged with criminal and civil contempt for refusing to allow William visitation. Tasha appealed.

### ISSUES

Whether the chancery court erred in (1) denying Tasha's motion under Fed. R. Civ. P. 60(b), and (2) finding Tasha in criminal contempt for violating the visitation order.

### HOLDING

(1) Because Tasha failed to show how she was entitled to relief under Fed. R. Civ. P 60(b) and failed to cite to relevant authority to support her claim, the chancery court properly denied her motion. (2) Because Tasha was not afforded the various procedural due process safeguards required to support a finding of criminal contempt, the charge could not be upheld. Therefore, the Court of Appeals affirmed in part the judgement of the Lowndes County Chancery Court, but vacated the judgement finding Tasha in criminal contempt.

**Affirmed in Part & Vacated in Part 2016-CA-00977-COA (July 18, 2017)**

Opinion by Judge Fair

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

Carrie A. Jourdan for Appellant No Attorney for Appellee

Briefed by [Hale Neilson](#)

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## IN RE V.M.H.

### CIVIL - CUSTODY

**FAMILY LAW - JURISDICTION - ABUSE CLAIMS** - A chancery court's jurisdiction over abuse claims arising after its assumption of jurisdiction over custody is not exclusive, but conditioned on the chancery court's election to assume jurisdiction

**FAMILY LAW - CHILD ABUSE - STATUTORY DEFINITION** - Pursuant to Miss. Code Ann. § 43-21-105(m), an abused child is one whose parent has caused or allowed to be caused, upon the child, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment

**FAMILY LAW - ABUSE CLAIMS – STANDARD OF PROOF** - Pursuant to Miss. Code Ann. § 43-21-561(3), preponderance of the evidence is needed to prove abuse

**FAMILY LAW - ABUSE CLAIMS - REASONABLE PHYSICAL DISCIPLINE** - Physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse pursuant to Miss. Code Ann. §43-21-561(3)

### FACTS

The mother did not have the means to support her four children with Vonrio Hawkins. Consequently, the mother voluntarily surrendered those four children to Hawkins. An order was entered by the DeSoto Chancery Court to Hawkins granting him custody of children and visitation rights to the mother. During a subsequent visitation, the children reported abuse to the mother. The DeSoto County Youth Court adjudicated Hawkins's four children as abused and subsequently placed them in the custody of the Mississippi Department of Human Services. Hawkins appealed.

### ISSUES

Whether the youth court (1) lacked jurisdiction over custody of the children, for the chancery court retained exclusive jurisdiction, and (2) lacked sufficient evidence determining child abuse occurred.

### HOLDING

(1) Because both the chancery court and the youth court have jurisdiction over abuse allegations that arise after an adjudication of custody in chancery court and because the chancery court did not assume jurisdiction over this matter, the youth court had proper jurisdiction. (2) Because the manner of discipline was not performed reasonably, the evidence was sufficient to find abuse even if the resulting injury was no more severe than bruising. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Youth Court.

**Affirmed - 2016-CA-00622-COA (July 18, 2017)**

Opinion by Judge Fair

Hon. Celeste Embrey Wilson (DeSoto County Youth Court)

Jerry Wesley Hisaw & Benjamin David Murphy for Appellant - Elizabeth Paige Williams for Appellee

Briefed by [Charlotte Cooper](#)

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## PLUMMER V. PLUMMER

### CIVIL - DOMESTIC RELATIONS

**DIVORCE - ALIMONY - MODIFICATION** - The chancellor should consider the *Armstrong* factors in deciding whether to modify periodic alimony, comparing the relative positions of the parties at the time of the request for modification in relation to their positions at the time of the divorce decree

**DIVORCE - CHILD-SUPPORT - CALCULATION** - Pursuant to Miss. Code Ann. § 43-19-101(1), noncustodial parents with two children and an adjusted yearly gross income between \$10,000 and \$100,000 should pay child-support equal to twenty percent of their adjusted gross income

**DIVORCE - CHILD-SUPPORT - REDUCTION** - Pursuant to Miss. Code Ann. § 43-19-103, a court may deviate from the presumptively correct amount of child-support based on certain statutory factors, such as extraordinary medical expenses or the refusal of a noncustodial parent to become involved in the activities of the child

### FACTS

At the time of James and Amy Plummer's divorce, Amy earned approximately \$33,000 per year. In the divorce decree, the chancellor ordered James to pay Amy \$100 per month in alimony and \$850 per month in child-support, which exceeded the statutory guidelines because one of their children was a child of special needs. Nine years later, Amy requested an increase in child-support. James filed a counterclaim requesting a decrease in child-support and requesting termination of alimony. The chancellor noted that Amy now made approximately \$51,000 per year, which was sufficient to pay her mortgage, finance a new car, buy a jacuzzi, and buy a vehicle for one of their children. The chancellor found that this was a substantial, material change in circumstances warranting termination of James's alimony payments.

James's income was calculated by averaging his base pay of \$51,437 per year and his adjusted gross income of \$65,765, which included pay for work performed while deployed to natural-disaster areas; this additional income was not guaranteed every year. Using this figure, the chancellor arrived at \$700 per month in child-support. The chancellor increased this amount by \$100 per month because one of their children has special needs, and the child has no visitation with James, but for every month James exercises visitation with his children, his next month's payment would not include the additional \$100. Amy appealed.

### ISSUES

Whether the chancellor erred in (1) terminating James's alimony obligation, (2) calculating James's child-support payments, and (3) reducing James's child-support payments in the event he exercised visitation with his children.

### HOLDING

(1) Because Amy's increase in income was a material change in circumstances, and the chancellor considered the *Armstrong* factors, even if he did not label them as such, the chancellor did not err in terminating James's alimony obligation. (2) Because the chancellor averaged James's base income with his adjusted income and used statutory guidelines to calculate James's child-support payments, the chancellor did not err in calculating James's child-support payments. (3) Because statutory factors permit an increase in child-support payments for extraordinary medical expenses and for a noncustodial parent's refusal to exercise visitation, the chancellor did not err in reducing James's child-support obligation, contingent on his visitation with his children. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Chancery Court.

**Affirmed - 2016-CA-00409-COA (July 18, 2017)**

Opinion by Judge Ishee

Hon. Mitchell M. Lundy Jr. (Grenada County Chancery Court)

A.E. (Rusty) Harlow Jr. & Kathi Crestman Wilson for Appellant - Luther Putnam Crull Jr. for Appellee

Briefed by [Nathan Simpson](#)

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## SMITH V. PETTIGREW

### CIVIL - REAL PROPERTY

**PROPERTY LAW - DEEDS - CONFIRMING TITLE** - To have title confirmed, the claimant must either possess the property or the property must be unoccupied

**PROPERTY LAW - DEEDS - DERAIGNING TITLE** - The plaintiff carries the burden of deraigning title, unless the title comes from a common source

### FACTS

Merle Smith Jr. (Merle Jr.) took out a bank loan to purchase property and a mobile home, allegedly for his father, Merle Smith Sr. (Merle Sr.). The deed designated the grantee as "Merle George Smith." Later, Merle Sr. became ill and deeded the property to his live-in companion, Carla Pettigrew (Pettigrew). Merle Sr. subsequently died. Pettigrew continued living in the mobile home, paying taxes and utilities after Merle Sr.'s death. Merle Jr. brought an action against Pettigrew, seeking cancellation of the deed as void and confirmation of title in him. Gerald Young, the former owner of the property, testified that he did not sell the land to Merle Jr., who was sitting in the courtroom. Lawrence, the attorney who drafted the deed, testified that the grantee's address in his records was Merle Jr.'s. Merle Jr. contended that the deed was in his name, and he repeatedly paid taxes on the property. However, the land-roll detail showed the owner of the property to be Pettigrew. She testified that she paid taxes for the previous four years, Merle Sr.'s will appointed her as executor, and the will deeded her "the trailer and lot." The chancellor found in favor of Pettigrew. Merle Jr. appealed.

### ISSUES



Whether the chancellor erred in (1) finding that Merle Jr. was precluded from suing Pettigrew to confirm title because she, not he, possessed the property; (2) finding that Merle Jr. failed to deraign title; and (3) finding it was Merle Sr., not Merle Jr., to whom the Youngs conveyed the property.

### **HOLDING**

(1) Because Miss. Code Ann. § 11-17-29 requires a claimant to either possess the property or the property be unoccupied, and Merle Jr. did not satisfy either, he was precluded from bringing suit to confirm title. (2) Because it was Merle Jr.'s duty to deraign title, and the title did not share a common source, he failed to properly deraign and remove clouds from title. (3) Because Young's intent was to convey the property to Merle Sr., and Merle Jr., despite his testimony, never paid any property taxes or for maintenance, he could not argue the property was conveyed to him. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

**Affirmed - 2016-CA-00358-COA (July 18, 2017)**

Opinion by Judge Ishee

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

John Hinton Downey for Appellant - H. Byron Carter III for Appellee

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

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

### **SPRAGGINS V. STATE**

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

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS** - Pursuant to Miss. Code Ann. § 99-39-5(2), a post-conviction relief motion is time-barred unless filed within three years after an entry of a judgment of conviction

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - RIGHT TO APPEAL** - Pursuant to Miss. Code Ann. § 99-35-101, where a defendant enters a plea of guilty and is sentenced, no appeal from the circuit court to the Supreme Court shall be allowed

### **FACTS**

In April 2009, Latrai Spraggins was indicted for the statutory rape of a child. In August 2012, he pled guilty and the circuit court sentenced him to twenty years in the custody of the Mississippi Department of Corrections, with ten years suspended, and five years of post-release supervision. In December 2015—more than three years after he pled guilty—Spraggins filed a post-conviction relief (PCR) motion. In that motion, Spraggins alleged that he was not made aware of his right to appeal his guilty plea or sentence. The circuit court entered an order denying Spraggins's PCR motion. Spraggins appealed.

### **ISSUE**

Whether the trial court erred in denying Spraggins's post-conviction relief motion alleging that he was not made aware of his right to appeal his guilty plea or sentence.

### **HOLDING**

Because Spraggins's PCR motion was time barred and, alternatively, Miss. Code Ann. § 99-35-101 mandates that Spraggins had no right to a direct appeal of his sentence following a guilty plea, the trial court did not err in denying his PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

**Affirmed - 2016-CP-00357-COA (July 18, 2017)**

Opinion by Judge Ishee  
Hon. Henry L. Lackey (Clay County Circuit Court)  
*Pro se* for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee  
Briefed by [Katie Berry](#)

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

### **BROWN V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - SENTENCING - FELONY THRESHOLD** - Sentencing is not affected when the elements constituting a crime are amended after the crime has occurred

**CRIMINAL LAW - INDICTMENT - MULTIPLE COUNTS** - Two or more offenses properly charged in separate counts of a single indictment may be tried in a single proceeding where the offenses are based on the same act or transaction or where the offenses are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan

**EVIDENCE - ADMISSIBILITY - CONFESSIONS** - A confession is involuntary and thus inadmissible if given as a result of inducement, threat, or promise

#### **FACTS**

Henry Brown was indicted on four counts in the same indictment: one count of burglary, two counts of grand larceny (for the theft of two four-wheelers), and one count of felony malicious mischief (for damage to the four wheelers). Following his arrest, Brown was interviewed several times and sent multiple letters to investigators in which he asserted an accomplice’s participation in the crimes and expressed his interest in receiving a bond setting. During the fourth interview, after waiving his *Miranda* rights, Brown provided a note in which he claimed that he never entered the victim’s property and only helped his accomplices with the storage and selling of the stolen items. Both of the accomplices entered into plea agreements and testified against Brown, asserting that he was on the property at the time of the crime and played an active role in its commission. Brown moved to suppress his inculpatory written and oral statements, arguing that the interrogating officers promised that he would receive a bond setting if he confessed. During the suppression hearing, the officers testified that they never offered Brown a promise of bond in return for a statement. They further testified that Brown was properly *Mirandized* and that they refused to look at his written statement prior to his *Miranda* Waiver. One of the officers testified that during a later interview, Brown admitted to the crimes when presented with the discrepancies between his written statements and other evidence the police had collected. Brown was convicted on all four counts and sentenced as a habitual offender without the possibility of parole. Brown appealed.

#### **ISSUES**

Whether (1) Brown’s indictment was impermissibly multiplicitous, (2) the trial court erred in overruling Brown’s motion to suppress his pretrial handwritten confession and oral statements, (3) the trial court committed reversible error related to the parties’ hearsay objections, and (4) the trial court erred in sentencing Brown as a felon on the charge of malicious mischief.

#### **HOLDING**

(1) Because Brown did not request severance of his charges, the burglary, larceny, and malicious-mischief charges satisfied the statutory requirement of the same transaction or common scheme or plan. (2) Because Brown requested to speak with investigating officers, and they refused to accept any statement from Brown until he voluntarily waived his *Miranda* rights, the trial court did not err in overruling Brown’s motion to suppress his pretrial written confessions. (3) Because Brown failed to demonstrate how he was prejudiced by the statements in question, the trial court did not commit reversible error. (4) Because at the time the crime was committed, the felony threshold for malicious mischief



was \$500, and evidence showed the cost of the damaged property exceeded that amount, the trial court did not err in sentencing Brown as a felon on the charge of malicious mischief. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

**Affirmed - 2015-KA-00790-COA (July 18, 2017)**

Opinion by Judge Greenlee

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

Edmund J. Phillips Jr. & Christopher A. Collins for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Sean Grady](#)

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## LOVE V. STATE

### CRIMINAL - FELONY

**JURY SELECTION - PEREMPTORY STRIKES - *BATSON*** - After a race-neutral explanation has been offered by the proponent of the strike, the trial court must determine whether the objecting party has met its burden to prove that there has been purposeful discrimination in the exercise of the peremptory strike

**TESTIMONY - HEARSAY - APPELLATE REVIEW** - Failure to raise a contemporaneous objection to a witness’s testimony bars a party from raising the issue on appeal

#### FACTS

Gerry Love was convicted of the first-degree murder of Glandra Williams. During jury selection, the defense attempted to use peremptory strikes on four of the six potential white jurors. One was struck because she was the principal of the school that the defendant’s child attended, but the rest were struck because their occupations made them more security-conscious. The trial court did not accept the security-conscious rationale and found the strikes to be racially motivated in violation of *Batson*. During trial, the State’s witness, Tommie Richardson, was questioned about a conversation he had with Williams. After an objection of hearsay by the defense was sustained, the question was changed and the testimony continued without objection. Love appealed.

#### ISSUES

Whether the trial court erred in (1) finding the use of peremptory strikes by the defense violated *Batson*, and (2) allowing Richardson’s testimony.

#### HOLDING

(1) Because the defense failed to explain why the occupations that the white jurors held would make them more security-conscious than those occupations that some of the potential black jurors had, the trial judge did not abuse his discretion in finding the defense in violation of *Batson*. (2) Because the defense only objected to a small portion of Richardson’s testimony as hearsay, the rest of the testimony could not be reviewed in an appellate court for hearsay. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

**Affirmed - 2016-KA-00257-COA (July 18, 2017)**

Opinion by Judge Barnes

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

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

Briefed by [Tyler Alcorn](#)

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