

**MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 17, 2020****SUPREME COURT - CRIMINAL CASES****CASEY V. STATE****CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - ARREST - PROBABLE CAUSE** - In order to arrest an individual suspected of a felony, either with or without a warrant, a police officer must have (1) probable cause to believe that a felony has been committed and (2) probable cause to believe that the person proposed to be arrested is the one who committed it

**CRIMINAL PROCEDURE - SEARCHES & SEIZURES - TERRYSTOPS** - To justify a pat-down for weapons under *Terry*, officers at traffic stops “need not be absolutely certain that the individual is armed” but rather determine “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger”

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

**CONSTITUTIONAL LAW - RIGHT TO SPEEDY TRIAL - MISSISSIPPI STATUTORY AUTHORITY** - Mississippi provides the right to a speedy trial statutorily under Miss. Code Ann. § 99-17-1, which states that “[u]nless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned”

**FACTS**

On September 8, 2012, Deputy John Putnam pulled a vehicle over for speeding. The driver, Nicholas Durr, who had prior weapons charges and felony-drug-trafficking charges, and the passenger, Robert Casey, were both shaking, avoiding eye contact, and could barely speak. After observing their behavior and listening to their contradicting stories, Putnam became suspicious and concerned for his own safety. Putnam asked Casey to exit the vehicle and called for reinforcements. During Putnam’s attempt to pat Casey down for weapons, Casey attempted to put his hands down his pants. Putnam felt a hard object that he believed to be a weapon near Casey’s inner thigh. Though Casey resisted, Putnam retrieved a “vacuum-sealed, real hard” green leafy substance and a “compressed white powdery substance.” Two days after his arrest, Casey was released on bail and was required to report to the Jones County Adult Detention Facility every two months, but he never returned to Mississippi. On May 9, 2013, a grand jury returned a one-count indictment against Casey for possession of a controlled substance with intent to distribute. The same day, a capias was issued but was not executed until March 2018. On May 13, 2014, Casey filed a motion to suppress the cocaine found on his person, but the defense counsel cancelled the hearing due to a personal conflict. There was no activity in the case until March 2018, when Casey was arrested for an unrelated crime in Harrison County and ordered to be transported to Jones County. Casey was served his indictment and arraigned, with trial beginning on September 6, 2018. Two days before trial, the State requested that the trial be continued because its expert witness from the crime lab would be unable to timely testify. Casey objected to a continuance, but the circuit court noted that all issues in Casey’s motion to suppress had not been resolved and that the State established good cause based on the unavailability of its expert witness. The trial date was set for January 30, 2019. One week before trial began, Casey filed a motion to dismiss for lack of a speedy trial. At trial, Deputy Putnam testified, a video of the traffic stop was played to the jury, and GPS information verified that Casey’s vehicle had been speeding. The Jones County evidence clerk testified regarding the chain of custody of the cocaine and that the cocaine had been destroyed in 2016. Additionally, the crime lab forensics expert confirmed in court

that the substance was cocaine. Casey was found guilty of possession of cocaine and sentenced to twenty years in the custody of the Mississippi Department of Corrections. Casey appealed.

### ISSUES

Whether (1) the trial court erred by denying Casey's motion to suppress the cocaine found on his person and (2) the State violated Casey's constitutional and statutory rights to a speedy trial.

### HOLDING

(1) Because of Casey's resistance and Deputy Putnam's reasonable belief that the object may have been a weapon, Deputy Putnam's search and seizure was justified. (2) Because the Supreme Court found the *Barker* factors to weigh against Casey, and because the time between Casey's arraignment and trial were within the statutory guidelines, Casey's constitutional and statutory rights to a speedy trial were not violated. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

**Affirmed - 2019-KA-00603-SCT (Sept. 17, 2020)**

Opinion by Justice Chamberlin

Hon. Dal Williamson (Jones County Circuit Court)

Mollie M. McMillin & George T. Holmes (Pub. Def. Office) for Appellant - Ashley Sulser & Anthony J. Buckley (Att'y Gen. Office) for Appellee

Briefed by [Rod Bridges](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 15, 2020

### COURT OF APPEALS - CIVIL CASES

#### HUGHES V. SHIPP

#### CIVIL - CONTRACT

**CONTRACTS - ELEMENTS - VALIDITY** - A valid contract must have (1) two or more contracting parties; (2) consideration; (3) an agreement that is sufficiently definite; (4) parties with legal capacity to make a contract; (5) mutual assent; and (6) no legal prohibition precluding contract formation

**CONTRACTS - BREACH - ELEMENTS** - In a breach of contract claim, the plaintiff must prove (1) the existence of a valid and binding contract; (2) the defendant has breached the contract; and (3) the defendant has been damaged monetarily

**CONTRACTS - STATUTE OF FRAUDS - LAND** - Pursuant to Miss. Code. Ann. §15-3-1(b), a contract for the sale of land must be in writing

**CONTRACTS - ESTOPPEL - DETRIMENTAL RELIANCE** - In order to prove a claim for estoppel, the plaintiff must prove (1) a representation that later proves to be untrue; (2) an action by the person seeking to invoke the doctrine, such action being undertaken on justifiable reliance of the representation; and (3) a resulting detriment to that person arising from his action

**CONTRACTS - UNJUST ENRICHMENT - POSSESSION ELEMENT** - To collect under an unjust enrichment or quasi-contract theory, the claimant must show there is no legal contract but the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another

**CONTRACTS - STATUTE OF LIMITATIONS - ACCRUAL** - In a contractual claim, a cause of action accrues on the date of actual injury, the date on which the facts occurred enabling the plaintiffs to bring a cause of action; having knowledge, regardless of whether that knowledge was actual or constructive, of the terms of the agreement begins the statute of limitations

### FACTS

Dr. James Hughes filed a breach of contract claim against Sandra Shipp, David Shipp (both individually and doing business as Rose Lake LLC), and Rose Lake LLC (collectively, “Defendants”). Dr. Hughes alleged the parties entered into a contract regarding the proposed development of a gated community, called “Rose Lake,” near Bentonia in Yazoo County, Mississippi. Thomas Shipp (“Tom”), the husband of Sandra’s husband and David’s father, owned the property. Dr. Hughes alleged that after meeting with Tom, a written agreement was entered into in July 2004. This agreement was on Tom’s letterhead and described the property as: “two (2) lots of approximately four (4) acres each on a lake to be constructed on what is locally known as Rose Hill Plantation, Bentonia, Mississippi.” Dr. Hughes delivered a check for \$100,000 that same day based on Tom’s written representation that he was going to develop Rose Lake. However, Tom died three months later and Sandra received all of Tom’s properties. Dr. Hughes alleged that he did not know Tom died until one to two years later. Meanwhile, Dr. Hughes never filed a claim against Tom’s estate to return the \$100,000 or to enforce the written agreement. In May 2008, Dr. Hughes wrote a check for \$33,000 upon David’s request, which was allegedly to be used for further development of lots on the north end of Rose Lake, and a third lot would be assigned to Dr. Hughes. Dr. Hughes testified that he met with David and Sandra every six to eight months after he wrote the check. However, Dr. Hughes admitted that David never mentioned he would acquire ownership and he never asserted the idea of ownership until a meeting on March 4, 2015, at the Islander Oyster House. Dr. Hughes testified that his intention was to finalize the original agreement he made with Tom. He also testified that Sandra and David orally ratified the original written agreement at the Oyster House, became parties, and assumed Tom’s obligations. Dr. Hughes alleged that after the Oyster House meeting, David and Sandra avoided him and did not take steps to perform the original contract. As a result, the contract was breached, justifying rescission. Dr. Hughes filed a complaint for a substantial and material breach of contract on September 13, 2017, seeking \$133,000 in unjust enrichment, consequential damages, punitive damages, prejudgment interest, post-judgment interest, and attorney’s fees. David and Sandra filed a motion to dismiss pursuant to Miss. R. Civ. P. 12(b)(6), alleging Dr. Hughes’s contract did not comply with the statute of frauds. Dr. Hughes responded, arguing that when consideration is paid to convey property, the payor can pursue an action regarding unjust enrichment, even if the contract was not within the statute of frauds. After a hearing, the chancellor denied the motion to dismiss. David and Sandra then filed a motion for partial summary judgement, arguing that Dr. Hughes’s claim to recover \$100,000 was time-barred because pursuant to Miss. Code Ann. § 91-7-151, Dr. Hughes failed to probate his claim against Tom’s estate within ninety days. Additionally, pursuant to Miss. Code Ann. § 91-7-91, David and Sandra argued that Dr. Hughes was required to file a notice of his claim within three years and ninety days of Tom’s death, even if no estate proceeding occurred. At the hearing, Dr. Hughes argued that because the written agreement was unenforceable under the statute of frauds, it became an oral agreement. At trial, Dr. Hughes again testified that the original agreement was ratified at the Oyster House meeting. However, David testified that there was no ratification, and the checks were simply payments into an investment and not a contract for the sale of land. David also testified that Rose Lake’s completion and sale of lots was unsuccessful due to water line issues; thus, Dr. Hughes would not benefit from his investment by receiving ownership of a lot. Subsequently, David and Sandra motioned for a Miss. R. Civ. P. 41(b) involuntary dismissal on grounds that Dr. Hughes failed to provide notice of the \$100,000 claim against Tom’s estate within the statute of limitations; and that Dr. Hughes’s \$33,000 claim failed under the statute of limitations as well as the statute of frauds because no written agreement for the sale of land existed due to the absence of material terms that were sufficiently definite. David and Sandra acknowledged the existence of detrimental reliance and unjust enrichment, but argued that no action was taken in reliance upon any agreement after the Oyster House meeting. Dr. Hughes responded, alleging that his text messages with David promising him that he was in the process of having engineers plat out more lots, constituted ratification of the original written agreement for which he detrimentally relied, making David and Sandra liable for the \$133,000. Additionally, Dr. Hughes argued that he filed his complaint within three years of the 2015 Oyster House meeting. The chancellor granted the Miss. R. Civ. P. 41(b) motion for involuntary dismissal due to no meeting of the minds, and the passing of the statute of limitations, and denied Dr. Hughes’s motion to alter or amend the judgment by way of reconsideration. Dr. Hughes appealed.

## ISSUES

Whether (1) the original written agreement constituted a valid, binding contract and is enforceable under the statute of frauds, thus resulting in a breach; (2) the Defendants ratified the contract; and (3) Dr. Hughes was entitled to recover damages.

## HOLDING

(1) Because the written agreement failed to set forth a sufficient description of the land that would locate the property with certainty, because the written agreement was not sufficiently definite by failing to provide a definition as to what constituted completion of the development, a time frame for the performance, and a provision regarding what would happen if the development was not completed, because there was no mutual assent or meeting of the minds to finalize the written agreement, and because all contracts under the statute of frauds for the sale of land must be in writing, the original written agreement failed to constitute a valid, binding contract and was not enforceable under the statute of frauds and there was no breach of contract claim. (2) Because the agreement did not constitute a valid contract under the statute of frauds, and because even if it were a valid contract, the testimony and evidence presented at trial failed to show any ratification of the written agreement, no subsequent ratification could occur. (3) Because no valid contract existed, because Dr. Hughes waited too long to pursue a claim against Tom's estate for the money he gave towards development, because Dr. Hughes failed to prove that the \$33,000 was not an investment, but Defendants' promise to convey him a third lot in development in exchange for the money, and because Dr. Hughes failed to meet his burden of proving by a preponderance of the evidence that the Defendants acted maliciously or in reckless disregard of his rights in failing to complete the development, Dr. Hughes was not entitled to damages based on rescission, detrimental reliance, or unjust enrichment, nor was he entitled to punitive damages. Therefore, the Court of Appeals affirmed the judgment of the Yazoo County Chancery Court.

### **CONCURRENCE IN PART & DISSENT IN PART**

Judge McCarty agreed that the contract was not valid because the statute of frauds does not enforce contracts for the sale of land that are not in writing. He also agreed that Dr. Hughes waiting too long to pursue a refund for the money he put into the development. However, he disagreed that the Defendants were not unjustly enriched as the result of Dr. Hughes \$133,000 contribution. Thus, he argued that Dr. Hughes's claim should not be barred by the statute of limitations because the cause of action began to accrue at the 2015 Oyster House meeting, not the 2004 or 2008 payment dates. Additionally, he argued that equity could have provided a route of relief for Dr. Hughes, despite the statute of frauds.

#### **Affirmed - 2018-CA-01654-COA (Sept. 15, 2020)**

En Banc Opinion by Presiding Judge Carlton - Concurrence in Part & Dissent in Part by Judge McCarty  
Hon. James Christopher Walker (Yazoo County Chancery Court)

Dennis L. Horn, Shirley Payne, & Leigh Kathryn Payne Horn for Appellant - John Prince Martin & Donald A. McGraw Jr. for Appellees

Briefed by [Madison Reightler](#)

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## **PHILLIPS V. PHILLIPS**

### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - CUSTODY - ALBRIGHT FACTORS** - It is necessary for the chancellor to make specific findings of fact under each applicable *Albright* factor, but it is not necessary for the chancellor to state which party prevails under each factor

**FAMILY LAW - CUSTODY - MODIFICATION** - At trial, the parent seeking custody modification must show: (1) a material change in circumstances occurred since the issuance of the decree sought to be modified; (2) that the material change adversely affected the minor child; and (3) that it would be in the child's best interest for custody to change

**FAMILY LAW - MODIFICATION - CLEARLY ERRONEOUS** - The Court of Appeals will not disturb the findings of a chancellor unless the chancellor was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied

### **FACTS**

Meagan and Richard Phillips divorced, and they shared physical and legal custody of their two minor children, K.P., and T.P. Meagan and Richard agreed to send their children to a film academy in New York City. The chancellor signed off

on a mutually agreed upon order of modification that allowed Richard to take the children to New York for one year. . The order of modification also allowed Meagan to visit the children anytime she desired and stated that either child was free to change his mind about living in New York and return to Mississippi. At the end of one year, the parties would re-evaluate the children’s living arrangement. Shortly after the end of the one-year agreement, Meagan filed a motion for the chancery court to determine visitation. The chancellor entered an order concerning visitation. The order functioned as a permanent modification of custody and gave Richard primary physical custody of the two children. Meagan appealed.

### **ISSUE**

Whether the chancellor erred in modifying custody.

### **HOLDING**

Because the chancellor permanently modified custody by granting Richard physical custody without first finding any material change in circumstances that adversely affected the minor children, the chancellor erred in modifying custody. Therefore, the Court of Appeals reversed and rendered the judgment of the Jones County Chancery Court.

### **Reversed & Rendered - 2019-CA-00394 (Sept. 15, 2020)**

Opinion by Judge Westbrook

Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court, Second Judicial Dist.)

Terry L. Caves & Joseph Mason Wood for Appellant - Barron Cruz Gray & Thomas T. Buchanan for Appellee

Briefed by [Joshua L. Holmes](#)

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## **S. PANOLA SCH. DIST. V. RONE**

### **CIVIL - STATE BOARDS & AGENCIES**

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

**ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS** - An agency's or board's conclusions must remain undisturbed unless the order (1) is not supported by substantial evidence; (2) is arbitrary or capricious; (3) is beyond the scope or power granted to the agency; or (4) violates one's constitutional rights

### **FACTS**

The principal at Batesville Intermediate School confronted Cammie Rone, a second-grade teacher, for posting two racially inflammatory comments on Facebook. Rone denied posting the comments, although the screenshots of the comments bore Rone’s name and profile picture. Rone claimed that her cellphone was not password protected, and she did not need a password to access her Facebook account on her phone. The Superintendent of the school district, Tim Wilder, told Rone she would need to prove that her Facebook account was hacked but, despite contacting Facebook administrators, Rone was unable to do so. As a result, Wilder terminated Rone’s employment. Following the termination, Rone requested an administrative hearing before the South Panola School Board (“the Board”) where both Rone and the school district presented witnesses. Following the hearing, the Board found that there was substantial evidence to uphold Wilder’s decision to terminate Rone’s employment, finding there was substantial evidence that Rone posted the comments and Rone failed to produce evidence to show that her social media accounts had been tampered with or altered. Rone appealed to the Panola County Chancery Court. The chancery court reversed the Board’s decision to terminate Rone, finding the Board’s decision lacked substantial evidence on both grounds. The school district appealed.

### **ISSUES**



Whether the chancery court erred in (1) finding that there was no substantial evidence that Rone authored the alleged posts; (2) finding that there was no substantial evidence that Rone exercised poor judgment in failing to adequately protect her Facebook account; and (3) applying the incorrect standard.

### **HOLDING**

(1) Because the record reflected an ample amount of uncertainty surrounding the posts, and because the witnesses presented directly conflicting testimony, there was no substantial evidence that Rone authored the posts. (2) Because Rone’s actions did not violate the school district’s employee-conduct policy, there was no substantial evidence that Rone exercised poor judgment. (3) Because the chancery court’s ruling did not heighten the substantial-evidence standard, the chancery court applied the correct standard. Therefore, the Court of Appeals affirmed the judgment of the Panola County Chancery Court.

### **DISSENT**

Judge Westbrook argued that the Rules of Evidence are relaxed during an administrative agency hearing, and that both Rone and the school district “benefited” from this relaxed standard. She also argued that even if the Rules of Evidence had applied in this case, which would have required the Facebook posts to be authenticated and a witness to be qualified as an expert, Rone would have lost due to testimony from witnesses who saw the posts. Further, she argued that the Board acted within its authority to terminate Rone, and that there was substantial evidence to support this decision.

#### **Affirmed - 2019-CC-00579-COA (Sept. 15, 2020)**

En Banc Opinion by Judge Greenlee - Dissent by Judge Westbrook  
Hon. Vicki B. Daniels (Panola County Chancery Court)  
Robert Ryan Revere for Appellant - Preston Davis Rideout Jr. for Appellee  
Briefed by [Blake Tims](#)

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## **STURDIVANT V. COAHOMA CTY.**

### **CIVIL - OTHER**

**TORTS - NEGLIGENCE - INVERSE CONDEMNATION** - An inverse condemnation claim involves a property owner seeking compensation for a private property taken for public use without proper condemnation proceedings, and is appropriate only when private property is taken or damaged in respect to public use or use for the public benefit

**TORTS - DAMAGES - LATENT INJURY** - A latent injury is an injury where the plaintiff is precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question or when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act

**TORTS - PROPERTY DAMAGE - STATUTE OF LIMITATIONS** - Miss. Code Ann. § 15-1-49 provides a three-year statute of limitations claims for when no other period is specifically set

### **FACTS**

In 2012, Peggy Sturdivant brought an inverse condemnation claim after Coahoma County destroyed water lines to, but not on, Sturdivant’s property during a road repair that occurred in 2007. Sturdivant alleged \$70,000 in damages for loss of value of property, lost profits, and lost business opportunities that resulted from the damaged water lines. In 2015, the circuit court denied Coahoma County’s motion to dismiss, finding that a jury should determine whether the statute of limitations period had run. The case then proceeded through pre-trial discovery, and Coahoma County filed a motion for summary judgment. Coahoma’s motion was granted after a finding that Sturdivant’s property management choices prevented her from reasonably discovering that the water lines to her property were damaged within the three-year statutory limitations period from the date of the damage in 2007. The circuit court also found that Sturdivant’s injury was not a latent injury, which meant that the discovery rule, which would have exceeded the limitations period, was inapplicable. As a result, Sturdivant’s claim was barred by the statute of limitations. Sturdivant appealed.

### **ISSUE**

Whether the trial court erred in finding that the three-year statute of limitations barred Sturdivant's inverse condemnation claim.

### **HOLDING**

Because Sturdivant failed to establish a "taking" of any property for public use, and because her injury was not latent due to her poor property management choices of only checking on the property once between 2006 and 2009, her claim filed in 2012 was time-barred by the three-year statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2019-CA-00741-COA (Sept. 15, 2020)**

Opinion by Judge McDonald

Hon. Linda F. Coleman (Coahoma County Circuit Court)

John Kevin Cavender for Appellant - Roy Jefferson Allen for Appellee

Briefed by [Muriel Collins](#)

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## **WASHINGTON CTY. BD. OF SUPERVISORS V. SMITH**

### **CIVIL - WORKERS' COMPENSATION**

**WORKERS' COMPENSATION - PERMANENT PARTIAL DISABILITY - REBUTTABLE PRESUMPTION** - Where a permanent partial disability renders a worker unable to continue in the position held at the time of injury, such an inability creates a rebuttable presumption of total occupational loss of the member, subject to other proof of the claimant's ability to earn the same wages which the claimant was receiving at the time of injury; an employer can rebut this presumption by showing all the evidence concerning wage-earning capacity

**WORKERS' COMPENSATION - TOTAL OCCUPATIONAL LOSS - DETERMINATION** - A presumption of total occupational loss arises when the claimant establishes that he has made a reasonable effort but has been unable to find work in his usual employment, or presents other proof of his inability to perform the substantial acts of his usual employment

**WORKERS' COMPENSATION - COMPENSABLE MENTAL INJURY - BURDEN OF PROOF** - When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury

**WORKERS' COMPENSATION - CONFLICTING MEDICAL TESTIMONY - CREDITABILITY** - Where there is conflicting medical testimony, the Commission has the responsibility to apply its expertise and determine which evidence is more credible

### **FACTS**

In March 2016, John Smith, a correctional officer employed by the Washington County Board of Supervisors ("the Employer"), was injured while trying to detain an inmate. Smith was initially diagnosed with a right-knee strain. After an MRI, it was later discovered that he suffered a complete tear of his patellar tendon. After undergoing surgery to repair the tendon, Smith still complained of lower extremity pain as well as back pain. In April 2017, Smith filed a petition to controvert, claiming that he had suffered work-related injuries to his patellar tendon, lower extremity, and back. The Employer, as well as the Mississippi Public Entity Workers' Compensation Trust ("Carrier"), admitted that Smith sustained an injury, but disputed the claim and denied that Smith had injured those stated parts of the body. In July 2016, a few months after Smith's surgery, Dr. Jason Craft stated that Smith could return to sedentary work. Smith continued to complain of pain, so Dr. Craft took him off work in September 2016, and referred him to Dr. Michael Winkelmann. In November 2016, Dr. Winkelmann noted that Smith's tendon seemed to have a small recurrent tear and that Smith continued to have pain in his lower extremity and back. He believed that there may have been a complex regional pain syndrome ("CRPS") component and ordered an MRI of the spine and physical therapy. Dr. Winkelmann stated that he believed that the back pain was due to the work-related injury, and that his treatment recommendations were directed at treating that injury. He also stated that Smith had reached maximum medical improvement. In August

2017, Smith had a Functional Capacity Evaluation (“FCE”). The examiner noted that Smith had deficits in his right lower extremity, and noted walking, forward bending, kneeling, and crouching as protentional barriers for Smith returning to work. After the FCE, Dr. Winkelmann noted that Smith could perform work at a medium-to-heavy level, and he imposed a restriction of lifting no more than thirty pounds. He indicated that Smith could return to work under those conditions. At this time, Smith was considering the placement of a temporary spinal cord stimulator. Dr. Winkelmann stated that the spinal cord stimulator would be for his CRPS and lower-extremity pain. In September 2018, Dr. Winkelmann noted that Smith may be a candidate for a stimulator placement and that he would make a referral to Dr. Laseter and Dr. Koestler for evaluation. In April 2017, Dr. David Collipp performed an Independent Medical Examination (“IME”) for the Public Employees’ Retirement System of Mississippi (“PERS”). Dr. Collipp noted that Smith had been diagnosed with CRPS and a spine injury. He limited Smith to medium activity with a maximum lift of sixty pounds, and opined that there was no present evidence of CRPS or a spine injury. In December 2017, Dr. Katz performed an IME and stated that Smith did not have the abnormalities required to diagnose CRPS and did not recommend a spinal cord stimulator. According to Dr. Katz, Smith reached maximum medical improvement in June 2017. He noted that Smith was capable of medium level work, and that Smith could kneel rarely, occasionally stand/walk, and exert approximately forty pounds of force occasionally or twenty-five frequently. In March 2018, Dr. Phillip Blount opined that the medical record review and examination did not meet the criteria for CRPS, and he did not recommend the placement of a spinal cord stimulator. He agreed with Dr. Winkelmann’s work restrictions and maximum medical improvement date. In October 2017, Smith began counseling sessions. He reported that he had sustained a work-related injury and that he had experienced sleep issues, depression, anxiety, and had thoughts about hurting himself and others. He also reported issues with his girlfriend, family conflicts, and other interpersonal problems. Smith was diagnosed with major depressive disorder and post-traumatic stress disorder. In November 2017, Smith’s employment was terminated. Smith’s employer indicated that he was notified that Smith had been released to work, but had not heard from Smith, so they considered the position abandoned. Lieutenant Addison, Smith’s former supervisor, indicated that Smith had been offered light-duty work without a deduction in pay. Major Andrew Kaho agreed, but he admitted that no permanent light-duty position was available. Smith stated that the light-duty work position was offered when he was still under total work restrictions. After his FCE, he stated that he informed the Employer of his restrictions, and asked for his job back. He also tried to reapply for his job. Lieutenant Addison stated that correctional officers were occasionally required to sit, stand, bend at the waist, and lift less than thirty-five pounds. Major Kaho agreed and believed that the job was medium level, but admitted that it required physical force. According to Smith, he was not capable of returning to his employment because he could not defend himself against an inmate. In 2018, Smith began working with Kathy Smith, a vocational rehabilitation counsel, in an attempt to find another job. Kathy reported that he had applied for approximately 200 jobs, including his former job, and that he was a cooperative client. After a hearing, the Administrative Judge (“AJ”) found that Smith had sustained a 100% loss of industrial use of his right lower extremity. The Employer/Carrier filed a petition for review with the Mississippi Workers’ Compensation Commission (“the Commission”). The Commission affirmed the AJ’s ruling and found that Smith had established a compensable mental injury, though the injury did not result in any temporary or permanent disability. The Commission ordered the Employer/Carrier to pay Smith permanent partial disability benefits, and to pay for and provide any medical treatment that was reasonable, necessary, and related to Smith’s compensable mental injury. The Commission also affirmed the AJ’s special order compelling the Employer/Carrier to provide evaluations to determine whether the placement of a spinal cord stimulator was reasonable, necessary, and related to Smith’s work injury. The Employer/Carrier appealed.

## **ISSUES**

Whether (1) substantial evidence supported the Commission’s finding that Smith sustained a 100% loss of industrial use to his right lower extremity; (2) substantial evidence supported the Commission’s finding that Smith sustained a compensable mental injury; (3) the Commission erred by affirming the AJ’s order compelling it to pay for and provide evaluations to determine whether the placement of a spinal cord stimulator was reasonable, necessary, and related to Smith’s injury; and (4) the Commission erred by failing to consider the Employer/Carrier’s request for apportionment or set-off credit.

## **HOLDING**

(1) Because the Employer/Carrier did not rebut the presumption of total loss, substantial evidence supported the Commission’s finding that Smith sustained a 100% loss of industrial use of his right lower extremity. (2) Because many



of Smith's issues were related to other life stressors, and because there was not a causal connection established between his mental injury and the work injury, substantial evidence did not support the Commission's finding that Smith sustained a compensable mental injury. (3) Because Dr. Winkelmann recommended the stimulator, because evaluation is necessary to determine the diagnoses of CRPS, and because the grant for evaluation does not shift the burden of proof from Smith to the Employer/Carrier, the Commission did not err in affirming the AJ's order and authorization/payments of the evaluations should be granted. (4) Because the AJ and the Commission failed to address this issue of apportionment or set off credit, the issue was remanded for further proceedings. Therefore, the Court of Appeals affirmed in part, reversed and rendered in part, and remanded in part the judgment of the Mississippi Workers' Compensation Commission.

### **CONCURRENCE IN PART & DISSENT IN PART**

Judge Greenlee dissented from the majority's decision to affirm the Commission's order compelling the Employer/Carrier to provide evaluations to determine whether the placement of a spinal cord stimulator was reasonable, necessary and related to Smith's work injury. He argued that while Dr. Winkelmann recommended the placement of the stimulator, Dr. Blount and Dr. Katz did not. As a result, he argued that substantial evidence did not support the finding that evaluations for the placement of the stimulator were reasonable, necessary, or related to Smith's work injury, and he would reverse on this issue.

#### **Affirmed in Part; Reversed & Rendered in Part; Remanded in Part - 2019-WC-01193-COA (Sept. 15, 2020)**

En Banc Opinion by Chief Judge Barnes - Concurrence in Part & Dissent in Part by Judge Greenlee

R. Brittain Virden for Appellants - Yancy B. Burns for Appellee

Briefed by [Claire Scott](#)

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## **WILLIAMS V. WILLIAMS**

### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - DIVORCE - ADULTERY** - One seeking a divorce on the grounds of adulterous activity must show by clear and convincing evidence both an adulterous inclination and a reasonable opportunity to satisfy that inclination

**FAMILY LAW - DIVORCE - CONDONATION** - Condonation, the express or implied forgiveness of a marital wrong on the part of the wronged party, is a defense to adultery

**FAMILY LAW - DIVORCE - LINE OF DEMARCATION** - The date on which assets cease to be marital and become separate assets can be either the date of separation (at the earliest) or the date of divorce (at the latest); ultimately, however, the chancellor has the discretion to draw the line of demarcation

**FAMILY LAW - DIVORCE - EQUITABLE DIVISION** - The foundational step to make an equitable distribution of marital assets is to determine the value of those assets based on competent proof; the applicable *Ferguson* factors must be considered on the record in every case involving the distribution of marital assets

**FAMILY LAW - DIVORCE - ALIMONY** - When a case is remanded for further consideration of the division of the marital assets, the appellate court must also remand on the issue of alimony as the proper distribution of the parties' assets and debts may affect the amount of alimony ultimately awarded

### **FACTS**

Although the couple had been separated since 1988, Magnolia Williams filed a complaint for divorce from her husband, W.B. Williams, on the ground of adultery in 2018. At trial, both Magnolia and W.B. testified that she had never forgiven him for his adultery. The Rule 8.05 financial statements that Magnolia and W.B. filed contained conflicting valuations of the marital assets. Following trial, the Coahoma County Chancery Court granted Magnolia a divorce on the ground of adultery, divided the marital assets, and ordered W.B. to pay alimony to Magnolia. Upon W.B.'s motion for reconsideration, the chancery court issued an amended final judgment, clarifying the line of demarcation and modifying the division of the marital assets and Magnolia's award of alimony. W.B. appealed.

## ISSUES

Whether the trial court erred in (1) granting Magnolia a divorce on the ground of adultery; (2) drawing the line of demarcation at Magnolia's complaint for divorce; (3) dividing the marital assets; and (4) awarding Magnolia alimony.

## HOLDING

(1) Because there was substantial evidence in the record to support the chancery court's grant of divorce based on adultery, and because Magnolia did not condone W.B.'s adultery, the trial court did not err in granting Magnolia a divorce on the ground of adultery. (2) Because the chancellor has broad discretion in drawing the line of demarcation, the trial court did not err in drawing the line of demarcation at Magnolia's complaint for divorce. (3) Because the trial court failed to value the marital assets before dividing them between W.B. and Magnolia, and because there were no specific findings in the record to show that the trial court considered the *Ferguson* factors and applied those factors to the evidence, the trial court erred in dividing the marital assets. (4) Because the case was remanded for further consideration on the issue of the division of marital assets, the case was also remanded on the issue of Magnolia's award of alimony. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Coahoma County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2019-CA-00776-COA (Sept. 15, 2020)**

Opinion by Judge Lawrence

Hon. Catherine Farris-Carter (Coahoma County Chancery Court)

Derek D. Hopson Sr. & DeWayne Hopson Jr. for Appellant - William O. Luckett Jr. for Appellee

Briefed by [Cody Austin](#)

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

### **WATERS V. STATE**

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

**POST-CONVICTION RELIEF - GUILTY PLEA - *TURNER* RULE** - "A factual basis for a guilty plea may be established in a number of ways, including by a statement of the prosecutor"

**POST-CONVICTION RELIEF - NEWLY DISCOVERED EVIDENCE - *ORMUND* RULE** - In order to obtain Post-Conviction Relief based on newly discovered evidence, the party must show that the newly discovered evidence could not have been discovered before the plea by the exercise of due diligence

**POST-CONVICTION RELIEF - FOURTH AMENDMENT CHALLENGE - *WAIVER*** - A defendant waives the right to assert Fourth Amendment challenges by pleading guilty

## FACTS

In 2016, Kendrick Waters was charged with first-degree murder, accessory to murder, and possession of a firearm as a felon. Waters entered a plea deal and pled guilty to second-degree murder, and the Jasper County Circuit Court sentenced him to thirty years, with ten years suspended and twenty to serve. Two years later, Waters filed a post-conviction relief ("PCR") motion, and the circuit court denied the motion. Waters appealed.

## ISSUES

Whether (1) there was a factual basis for Waters's plea; (2) Waters's plea was deficient because it addressed the elements of first-degree murder rather than second-degree murder; (3) Waters's attorney coerced him into entering the plea deal; (4) the trial judge complied with Unif. Cir. & County Ct. R. 8.04(A) when he accepted Water's plea; (5) the trial judge imposed an illegal sentence when he stated that Waters should not expect early release based on the then existing Mississippi Department of Corrections ("MDOC") policies; (6) Water's plea and conviction should be set aside based on newly discovered evidence; and (7) there was a Fourth Amendment violation in connection with his arrest and the search of his vehicle.

## **HOLDING**

(1) Because the prosecutor stated the evidence he would have presented to support the indictment if the case would have gone to trial, there was a sufficient factual basis for Waters's plea. (2) Because Waters admitted that he killed the victim with deliberate design, Waters admitted that he was guilty of second-degree murder and his plea was not defective. (3) Because Waters contradicted his claim that he was coerced into entering the plea deal when testifying in his plea hearing, this claim was without merit. (4) Because the record contradicted the claim that the trial judge did not adhere to Unif. Cir. & County Ct. R. 8.04(A), this claim was without merit. (5) Because the sentencing order only advised Waters of the unlikelihood of early release and did not order MDOC not to allow for early release, the sentencing order was legal. (6) Because Waters was in possession of the evidence before he plead guilty, Waters claim that the evidence should be set aside on newly discovered evidence failed as a matter of law. (7) Because Waters waived his right to assert a Fourth Amendment violation when he pled guilty, this claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jasper County Circuit Court.

**Affirmed - 2019-CP-00423-COA (Sept. 15, 2020)**

En Banc Opinion by Presiding Judge Wilson

Hon. Eddie H. Bowen (Jasper County Circuit Court, First Judicial Dist.)

*Pro se* for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [John Michael Sweatt](#)

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

### **ASHMORE V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - SUFFICIENCY OF EVIDENCE** - With respect to each element of the offense charged, if the evidence so considered is such that fair-minded jurors could only find the accused not guilty, a judgment notwithstanding the verdict may be warranted

**CRIMINAL LAW - FIRST-DEGREE MURDER - ELEMENTS** - Miss. Code Ann. § 97-3-19(1)(a) defines the elements of first-degree murder as the killing of a human being without authority of law, by any means or in any manner, when done with the deliberate design to effect the death of the person killed

**CRIMINAL LAW - SELF-DEFENSE - FINDER OF FACT** - Where there is evidence that directly contradicts a claim of self-defense, creating a dispute of fact, it is for the jury to resolve

**CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF EVIDENCE** - A new trial may be granted if the conviction is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

#### **FACTS**

At a social gathering, Robert Ashmore accused Mason Howard of “trying talk to his wife.” Soon after, a friend drove Ashmore home and Howard went to Ashmore’s house to try to talk with him. When Howard arrived, Ashmore came out of the house holding a shotgun, albeit not in a threatening manner. Howard was unarmed. Ashmore turned and walked back into his house, and Howard followed Ashmore into the house. Ashmore told Howard not to come near him or he would shoot. According to a witness, Howard started going toward Ashmore, but another witness testified that Howard did not move. At that point, Ashmore shot Howard in the head. Ashmore was indicted for first-degree murder. Ashmore claimed he acted in self-defense, stating that Howard had called him on the way to his house and threatened him and that Howard kicked in his front door. At trial, evidence was presented to show that Howard did not call Ashmore and there was no damage to Ashmore’s front door. No other person present testified that Howard forcibly entered the house or threatened Ashmore. The jury was instructed on murder, manslaughter, and Ashmore’s self-defense theory. The jury returned a guilty verdict on the first-degree murder charge. Ashmore filed a motion for

judgment notwithstanding the verdict and a motion for a new trial. The circuit court denied the motions. Ashmore appealed.

### **ISSUES**

Whether the trial court erred in (1) denying Ashmore’s motion for judgment notwithstanding the verdict and (2) denying Ashmore’s motion for a new trial.

### **HOLDING**

(1) Because the State provided sufficient evidence to prove the elements of first degree murder, because reasonable jurors could find that each element of the crime of murder was proved, because there was sufficient evidence to disprove Ashmore’s claim of self-defense, because Ashmore failed to propose the “Castle Doctrine” jury instruction to the trial court and instead submitted a “Stand your Ground” instruction, and because Ashmore failed to preserve this error at trial or in his post-trial motions, he was barred from arguing it on appeal, and the trial court did not err in denying Ashmore’s motion for judgment notwithstanding the verdict. (2) Because the little evidence presented in favor of Ashmore’s self-defense theory was acceptably outweighed by the evidence that Ashmore may have intended to lure Howard into his home and then shoot him, the jury’s verdict was not so contrary to the weight of the evidence that to allow it to stand would sanction an unconscionable injustice, and the trial court did not err in denying Ashmore’s motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2019-KA-01382-COA (Sept. 15, 2020)**

En Banc Opinion by Judge McDonald

Hon. Albert B. Smith III (Coahoma County Circuit Court)

Boty McDonald for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Glory Crocco](#)

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## **ELLIS V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - ADMISSIBILITY - CHARACTER EVIDENCE** - Miss. R. Evid. 404(b) states that evidence of a person’s character or a trait of his character is not admissible for the purpose of proving he acted in conformity therewith on a particular occasion; however, such evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident

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

**EVIDENCE - ADMISSIBILITY - COURT’S DISCRETION** - Relevancy and admissibility of evidence are largely within the trial court’s discretion and reversal may be had only where that discretion has been abused

**CRIMINAL PROCEDURE - CONVICTION - REVERSAL** - To warrant reversal, two elements must be shown: error and injury to the party appealing; therefore, a conviction will not be reversed based on a harmless error

### **FACTS**

Alicia Ellis (“Alicia”) and Tracy Ellis (“Ellis”) began dating in 2009. In 2010, Alicia and her three daughters, AX, AY, and AB, moved in with Ellis. In 2010, Ellis began paying AX, then eleven years old, and AY, then ten years old, to give him back and shoulder massages. Initially, AX and AY massaged Ellis in the living room, but later the massages occurred in Ellis’s locked bedroom, where the girls massaged his back, shoulders, legs, and buttocks. Alicia knew that AX and AY were giving Ellis massages. In 2013, Alicia and Ellis married. In January 2018, after an argument Ellis and Alicia had related to their discussions about divorce, AY disclosed to Alicia that she and AX had been “massaging [Ellis’s] penis” for some time. AX also confirmed that the abuse occurred. Alicia and AY then went to the Ridgeland Police Department

to report the abuse. Ellis was indicted for two counts of fondling for molesting his stepdaughters. During the trial, AX and AY testified that Ellis would pay them twenty dollars or more to “rub his penis.” AX testified that she had been abused from the time she was eleven years old until she left home at age eighteen. AY testified that she had been abused since she was ten years old until she refused at age fifteen. Both AX and AY testified that they were scared to stop performing the sexual acts because Ellis intimidated them. Further, AX testified that after AY stopped performing the sexual acts, Ellis treated AY differently. Leslie Owens, an investigator with the Ridgeland Police Department, testified that she met with Alicia, AX, and AY to discuss their allegations against Ellis. AY showed Owens messages on her cell phone that Ellis allegedly sent her, including both standard text messages and messages on the Google Hangouts application. Owens did not, however, examine the phone to attempt to verify the number or identity of the sender. At trial, Ellis admitted that his stepdaughters gave him back massages in exchange for money but denied that his stepdaughters had ever touched or rubbed his penis. In addition, he denied sending the text messages and Google hangouts messages that were admitted into evidence. The jury found Ellis guilty on both counts of the indictment. The trial court sentenced Ellis to two consecutive terms of fifteen years in the custody of the Mississippi Department of Corrections (“MDOC”). Ellis filed a motion for judgment notwithstanding the verdict or a new trial, which was denied. Ellis appealed.

### **ISSUES**

Whether the trial judge abused his discretion by (1) admitting evidence under Miss. R. Evid. 404(b) that Ellis had molested AX and AY for several years prior to the acts charged in the indictment; (2) denying Ellis’s motion for a new trial; (3) excluding family photos and a letter that AX sent to Alicia and Ellis; and (4) admitting evidence of text messages and Google Hangouts messages that Ellis sent to AY.

### **HOLDING**

(1) Because the testimony regarding Ellis’s history of sexual abuse against AX and AY was admissible under Miss. R. Evid. 404(b) to prove Ellis’s pedophilic and sexual motive, which was identified in the State’s notice of intent, the trial judge did not abuse his discretion by admitting the evidence of prior sexual abuse. (2) Because the jury found that AX and AY were credible witnesses and that Ellis was not, and because Ellis presenting nothing to contradict the evidence against him, the trial judge did not abuse his discretion by denying Ellis’s motion for a new trial. (3) Because the family photos depicting AX and AY smiling with Ellis and Alicia did not contradict the testimony that the girls were only afraid of Ellis in certain situations, and because the fact that AX had written a letter to both her mother and stepfather was not relevant to any material fact in the case, the trial judge did not abuse his discretion in excluding the family photos and the letter as irrelevant. (4) Because Alicia and AY’s testimony was sufficient for the jury to find that Ellis sent the text messages, and because the error of admitting the Google Hangouts messages was harmless in light of Ellis’s own testimony and the weight of the evidence against him, the trial judge did not abuse his discretion by admitting the text messages and Google Hangouts messages. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2019-KA-00750-COA (Sept. 15, 2020)**

En Banc Opinion by Presiding Judge J. Wilson

Hon. Dewey Key Arthur (Madison County Circuit Court)

Merrida Coxwell & Charles Richard Mullins for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Cecelia Hurt](#)

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## **GOVERO V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL LAW - INVESTIGATORY STOP - REASONABLE SUSPICION** - Reasonable suspicion is the standard for a stop or search based on suspicious activity that does not yet amount to criminal activity, but which compels an officer to believe that criminal activity has happened, is happening, or is about to happen



**CRIMINAL PROCEDURE - JURY SELECTION - VOIR DIRE** - Voir dire is presumed sufficient to ensure a fair and impartial jury; to overcome this presumption, a party must present evidence indicating that the jury was not fair and impartial and show that prejudice resulted from the circuit court's handling of the voir dire

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** – A claimant of ineffective assistance of counsel bears the burden of proof to show that (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense

### **FACTS**

During his patrol, Officer Clopton observed David Govero in the driver's seat of his car, which was stopped in the middle of the road. Govero's vehicle was blocking both lanes and obstructing traffic. As Officer Clopton approached, Govero exited his vehicle, grabbed an air compressor, and started pumping air in a back tire. He told Officer Clopton that his tire was low, among other issues, but Officer Clopton testified that the tire did not appear low. Officer Clopton then asked Govero if he had a driver's license and insurance, and Govero responded that he did not. Officer Clopton then asked Govero if he had any weapons, and he answered that he had a knife. Officer Clopton patted-down Govero, and he "immediately" felt metallic knuckles in Govero's back-right pant pocket. Govero then informed Officer Clopton that he was a felon. Officer Clopton arrested Govero for unlawfully possessing the metallic knuckles as a felon. A grand jury indicted Govero as a habitual offender. During trial, the State presented two witnesses: Officer Clopton and Kris Hines. Hines, the criminal investigator at the time Govero was arrested, testified that he interviewed Govero after his arrest. Hines also testified that Govero admitted to knowing that he should not have possessed the metallic knuckles as a felon. Following the State's case, Govero moved for a directed verdict. Govero's motion was denied. Govero presented no witnesses and he did not testify on his own behalf. After deliberating, the jury found Govero guilty of unlawful possession of a firearm or weapon by a felon. Govero moved for judgment notwithstanding the verdict or a new trial, which was denied. Govero appealed.

### **ISSUES**

Whether (1) there was reasonable suspicion for an investigatory stop; (2) the jury was impartial; and (3) Govero received ineffective assistance of counsel.

### **HOLDING**

(1) Because Officer Clopton executed a temporary, investigative stop that was reasonable under the circumstances, and because the seizure of the metallic knuckles was the result of a valid investigatory stop, Govero's constitutional rights were not violated. (2) Because Govero failed to make an objection to the selection of the juror despite the juror's connection to law enforcement, and because Govero failed to object to any members of the venire on the basis of their connection to law enforcement, there is no evidence that Govero was tried by an unfair or impartial jury. (3) Because there was no obvious deficiency in Govero's counsel's representation on the record, and because the State did not explicitly stipulate that the record is adequate to address Govero's claims, Govero's ineffective assistance of counsel claim was dismissed without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

**Affirmed - 2019-KA-00884-COA (Sept. 15, 2020)**

En Banc Opinion by Judge Greenlee

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

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Fatelia Avery](#)

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**HINTON V. STATE**

**CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - POST-CONVICTION RELIEF** - Because appellate courts are limited to the trial record on direct appeal, ineffective-assistance-of-counsel claims are generally more appropriately brought during post-conviction proceedings

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL** - An ineffective-assistance-of-counsel claim can be addressed on direct appeal when (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 considering the trial judge's findings of fact

### **FACTS**

Shannon Hinton and Natalie Lett were indicted in separate cases for sex crimes against Hinton's niece. Lett was charged with sexual battery of the minor, and Hinton was charged as accessory before the fact and for permitting the continuing sexual abuse of the minor child. The Forrest County Public Defender's Office represented both Hinton and Lett. Prior to trial, Lett entered into a plea agreement in exchange for her testimony against Hinton. Hinton was tried, convicted, and sentenced to thirty years with fifteen suspended and fifteen to serve. Hinton filed a motion for JNOV or, in the alternative, a new trial. The Forrest County Circuit Court denied the motion. Hinton appealed.

### **ISSUE**

Whether Hinton was denied her Sixth Amendment right to counsel when public defenders from the same office represented both her and Lett.

### **HOLDING**

Because ineffective assistance of counsel claims are more appropriately brought during post-conviction proceedings, because the record does not affirmatively show ineffectiveness of constitutional dimensions, and because the parties did not stipulate that the record was adequate to allow the appellate court to make a finding on Hinton's claim, the Court of Appeals declined to address the issue. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2019-KA-01052-COA (Sept. 15, 2020)**

En Banc Opinion by Judge McDonald

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [William "Jack" Simpson](#)

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## **RUDD V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - PROBATION - REVOCATION** - It is not necessary that a defendant be convicted of crimes charged to suffer revocation of his probation; probation may be revoked upon a showing that a defendant "more likely than not" violated the terms of probation

**CRIMINAL PROCEDURE - PROBATION - APPEALS** - An order revoking probation is not appealable, and the denial of a motion for reconsideration on that order is also not appealable

### **FACTS**

In 2018, Charles Rudd was arrested and charged with being a felon in possession of a firearm, among other marijuana related charges. This arrest violated Rudd's probation. As a result, the Mississippi Department of Corrections ("MDOC") initiated proceedings to revoke Rudd's probation. At trial, Rudd sought to introduce an affidavit into evidence to show that the firearms found in his vehicle belonged to the passenger. The Madison County Circuit Court did not allow the affidavit to be placed into evidence because it had not been properly authenticated. As a result, the trial court found that Rudd was in violation of the terms of his probation for being in constructive possession of a .40-

caliber weapon that was in the console of his vehicle. The trial court then entered an order revoking Rudd's probation. Rudd filed a motion for reconsideration, which the circuit court denied. Rudd appealed.

### ISSUE

Whether the trial court erred by denying Rudd's motion for reconsideration.

### HOLDING

Because Rudd's order revoking probation was not appealable, the denial of Rudd's motion for reconsideration of that order was also not appealable. Therefore, the Court of Appeals dismissed the appeal without prejudice.

#### **Dismissed - 2019-KA-00833-COA (Sept. 15, 2020)**

En Banc Opinion by Presiding Judge Carlton

Hon. John Huey Emfinger (Madison County Circuit Court)

Cynthia Ann Stewart for Appellant - Matthew Wyatt Walton & Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Allison Payne](#)

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