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Court of Appeals – Civil

Adams & Assocs. Realty LLC v. Wise - Property – Contract Dispute – Motion to Dismiss – Failure to Prosecute – In September 2010, Mark and Patricia Wise entered into a listing agreement with Adams and Associates Realty LLC (“Adams”) for a piece of property in Oxford, Mississippi (“the property”) that the Wises and fourteen additional family members owned. The Wises and all fourteen co-owners executed the listing agreement, which entitled Adams to six-percent commission if the property was sold through its efforts. The listing period ended on November 30, 2010. In November 2011, two co-owners of the property signed an addendum to extend the listing agreement (“the extension”). The remaining co-owners, including the Wises, did not sign the extension. In early 2012, the Wises and the other co-owners found a buyer for the property, and Adams demanded payment for the six-percent commission pursuant to the terms of the extension. In March 2012, the Wises filed a complaint against Adams and Associates Realty LLC, Tanja Adams, George M. Adams, and John Does 1-10 (“Adams”), requesting a determination that there was no binding and enforceable contract between the owners of the property and Adams. The Wises also requested compensatory and punitive damages. In April 2012, Adams filed its answer to the Wises’ complaint and a counterclaim against the Wises, alleging anticipatory breach of contract and requesting a quantum meruit payment for its six-percent commission and punitive damages. In May 2012, the Wises filed their answer to Adams’s counterclaim. Because Patricia Wise is a sitting chancery judge, there was a string of recusals throughout the case, and both sides were represented by multiple attorneys. In August 2017, Adams filed a motion to dismiss the Wises’ complaint for failure to prosecute pursuant to Miss. R. Civ. P. 41(b). In March 2019, the Wises filed a motion to dismiss Adams’s counterclaim. The circuit court entered an order granting both motions to dismiss. Adams appealed.

Adams argued that the circuit court abused its discretion by granting the Wises’ motion to dismiss its counterclaim. Adams claimed that the circuit court failed to consider lesser sanctions, that there was no delay or contumacious conduct on its part, and that there was no showing of aggravating factors. Because Adams failed to make these arguments in its filed response to the Wises’ motion or through argument at the motion hearing, these arguments could not be considered on appeal. Even if the issues were preserved for consideration on appeal, because Adams did not advance litigation of the counterclaim for over seven years, because the record showed that the circuit court considered a less severe alternative, and because even though aggravating factors are not required, the seven-year delay in litigation constituted an aggravating factor, the circuit court did not abuse its discretion by dismissing Adams’s counterclaim. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Caroline Heavey](#)

Davis v. Guido - Administrative Law – Appellate Review – Agency Conclusions – Mootness – In July 2018, George Guido, on behalf of KFG Petroleum Corporation (“KFG”), filed an application for a permit to drill a well in Adams County. The application Guido submitted contained two errors, which one of the Oil and Gas Board’s (“the Board”) supervisors noted. Guido provided the correct information and consented to the Board’s staff making the needed informational changes. Once the corrections were made, the Board issued a permit administratively. In August 2018, Michael Davis filed an emergency petition requesting that KFG’s permit be revoked because Guido had not completed the application. Davis also alleged that KFG’s clearing of timber and leveling of property constituted “waste.” The Board set the petition for a hearing and limited the hearing to the permit’s validity. The Board determined that the permit was properly issued because of the Board’s unwritten policy that allowed for information changes after the submission of forms. Although the hearing had been limited to the permit’s validity, the Board further held that the clearing of timber and leveling of the property were normal actions and Davis’s “waste” allegations were without merit. Davis appealed, and the chancery court amended and affirmed the Board’s order, finding that the permit was valid but that the Board had gone beyond the purpose of the hearing by addressing the “waste” claims. On appeal, Davis claimed that the permit did not comply with the Board’s rules and regulations or statutory law and that the Board’s unwritten policy contradicted the Board’s written rules and Mississippi statutes. Guido and KFG filed a cross-appeal, claiming that the Board had jurisdiction to rule on the waste claims since Davis invoked the Board’s jurisdiction in filing a petition alleging “waste” and that the permit issue was moot.

Because the action regarding the drilling permit was the equivalent of a re-submission of the application, and because upon re-submission the application was in compliance with the Board’s rules and regulations, the permit was valid and the issue was without merit. Further, because the hearing was limited to determining the permit’s validity, the Board erred in making findings regarding Davis’s “waste” claim and the chancellor’s ruling was affirmed. Finally, because the mootness issue was not raised before the chancery court prior to being raised before the Court of Appeals, the issue was not properly before the court and was thus barred on appeal and without merit. Therefore, the Court of Appeals affirmed the judgment of the Adams County Chancery Court.

Briefed by [Schyler Burney](#)

Jones v. Jones - Civil Procedure – Appeals – Record – Two tenants, Lakotah Jones and Rebecca Jones, appealed an order of eviction from the Grenada County Circuit Court. On appeal, the tenants claimed that the landowner lacked standing to obtain an eviction and that they were denied due process pending the disposition of their case. Because the record did not include meaningful support for the tenants’ arguments on appeal, the tenants did not meet their burden of showing the trial court’s ruling was in error. Also, because the majority of the contents of the tenants’ record excerpts were not contained in the certified record, the Court of Appeals did not consider the record excerpts. Finally, because the tenants did not demonstrate the trial court’s ruling was in error, the trial court’s judgment was presumptively correct. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Briefed by [MaryScott Polk](#)

Keasler v. Fowler - Family Law – Visitation – Grandparent Visitation – Haley Fowler and Zeke Roberson had one child, A.F., during their marriage. Roberson’s mother, Nora Keasler, and step-father, Steve Keasler, were

actively involved in A.F.'s early life. Fowler and Roberson divorced and, pursuant to a revised custody agreement, Fowler was granted sole physical custody of A.F. Roberson retained joint legal custody and was allowed to see A.F. every other weekend, on alternating holidays, and during alternating weeks in the summer. Nora and Steve claimed that this custody agreement compromised the time they were able to spend with A.F. because it only allowed them to see A.F. a few hours each month. Nora and Steve sued Fowler and Roberson for visitation rights in the Union County Chancery Court. During a bench trial, Nora testified that her son was unwilling to give up any of the limited time he was allowed with A.F., but admitted that she lived basically next door to Roberson and that he was not completely denying her visitation. The chancery court excluded Steve's claim from its analysis, stating that he lacked standing to request visitation as a step-grandparent. In considering Nora's claim, the chancery court found she failed to prove that visitation rights would be in the best interest of A.F. and that she was unreasonably denied visitation. Consequently, Fowler's motion to dismiss was granted. Nora appealed.

The Court of Appeals considered the dispositive issue to be whether the trial court erred in declining to fully assess A.F.'s best interests. Grandparents seeking visitation must first establish that a viable relationship exists between them and the child before a court is required to address the best interest of the child. Because Nora did not provide evidence that this viable relationship existed pursuant to Miss. Code Ann. § 93-16-3, or that her visitation would be in the best interest of the child, the trial court did not err in granting the involuntary dismissal. Therefore, the Court of Appeals affirmed the judgment of the Union County Chancery Court.

Briefed by [Brie Mansoor](#)

London & Stetelman Inc. v. Tackett - Property – Easements – Prescription – Nelson Tackett and L & D, LLC (“L & D”) leased adjacent lots of 16th section land on Broadway Drive in Hattiesburg under valid ninety-nine-year leases. Tackett obtained the lease on one lot in 1987 and has operated a Subway sandwich shop there since then. Prior to being conveyed to L & D in 2014, Atlas Realty leased the other lot and subleased it to restaurants such as PR's Bar and Grill (“PR's”). In 2002, PR's owners threatened to prevent Subway customers from parking on their property. Tackett's lawyer responded with a letter claiming that Tackett had acquired an easement by way of prescription to use the disputed parking spaced as a common parking area. PR's closed, the building was later demolished, and the lot is now vacant. Since PR's closed, Subway has used the asphalt portion of the vacant lot for various purposes, such as customer and employee parking, and has maintained the disputed portion of the vacant lot. In June 2014, Tackett filed a complaint against L & D to confirm title to the disputed area by adverse possession. The chancery court found that Tackett did not prove that he “possessed” the disputed property so as to support a claim of adverse possession, but granted Tackett a prescriptive easement over the disputed property. L & D then filed a “Motion to Correct, Reconsider and for Clarification,” asking the chancellor to order Tackett to maintain liability insurance and pay a portion of the property taxes and maintenance costs related to the area burdened by the prescriptive easement. The parties agreed that the judgment should be amended to reflect that L & D owned the lease on the vacant lot, and the chancellor directed the parties to develop the record or confer regarding the remaining issues. L & D sent the chancellor a proposed order that amended the judgment to require Tackett to maintain liability insurance covering the prescriptive easement and required Tackett to pay fifty-one percent of the property taxes and maintenance costs related to the area burdened by the easement. Tackett objected to L & D's proposed order and submitted an alternative proposed order that corrected the judgment to reflect that L & D owned the lease on the vacant lot but otherwise denied all relief requested by L & D's pending motion. The chancellor signed and entered L

& D's proposed order amending the judgment, but later that same day signed Tackett's proposed order and entered it as the "Final Judgment" in the case. L & D appealed.

On appeal, L & D argued that the chancellor erred by (1) granting Tackett a prescriptive easement; (2) granting a preliminary injunction without requiring Tackett to post a bond; and (3) entering Tackett's proposed order as the final judgment. Because a claim to a prescriptive easement to use property requires proof of use, and because Tackett produced evidence, and the chancellor found as fact, that Subway employees used the property for a continuous and uninterrupted period of more than ten years and in a manner sufficient to satisfy all elements of a prescriptive easement, the chancellor did not err in finding that Tackett had acquired a prescriptive easement. Further, because L & D failed to pursue the issue in the trial court, and because the Court of Appeals affirmed the chancellor's final judgment awarding the easement, L & D was not "wrongfully enjoined or restrained" and the issue of bond was waived and moot. Additionally, because the chancellor's first order significantly amended the original judgment and started a new ten-day period for motions to alter or amend the judgment, the chancellor did not lose jurisdiction when he entered the first December 5 order. Also, because the chancellor sua sponte amended the judgment a second time by entering Tackett's proposed order as the final judgment, the chancellor did not err in entering the second order. Finally, the Court of Appeals found that the prescriptive easement will terminate when the lease on the vacant lot expires. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Chancery Court.

Briefed by [Mckenzie Williamson](#)

St. Dominic-Jackson Mem'l Hosp. v. Miss. Div. of Medicaid - Administrative Law – Statute Interpretation – Medicaid – St. Dominic-Jackson Memorial Hospital ("St. Dominic"), a licensed hospital, and Regency Hospital of Jackson ("Regency"), a long-term acute care hospital, entered into a lease agreement. Under the agreement, St. Dominic leased thirty-six acute-care beds and related space to Regency for the establishment and operation of a separately licensed hospital. The Mississippi State Department of Health issued Regency a Certificate of Need for the establishment of the long-term acute-care hospital within St. Dominic. A year later, Regency closed the hospital within St. Dominic and the lease agreement terminated the next month. St. Dominic filed a Notice of Intent to Change Ownership with the Mississippi State Department of Health, enclosing a copy of Regency's Certificate of Need and indicating that the Notice of Intent to Change Ownership was being submitted pursuant to an Expiration of Lease Agreement. Subsequently, the Mississippi Division of Medicaid ("DOM") sent all non-exempt Mississippi hospitals its preliminary calculations for the fiscal year 2017 Hospital Assessment, including a portion of Regency's non-Medicare hospital inpatient days to those of St. Dominic. St. Dominic requested the DOM remove Regency's non-Medicare hospital inpatient days and recalculate the assessment. The DOM stated that the transaction between St. Dominic and Regency constituted a merger under Miss. Code Ann. § 43-13-145(4)(e) and declined to reassess the prior calculation. St. Dominic requested an administrative hearing regarding the decision, which was denied. St. Dominic then filed an appeal with the Hinds County Chancery Court, and the chancery court ruled in favor of the DOM. St. Dominic appealed, arguing that (1) the DOM's calculation of the Hospital assessment should be overturned; (2) the termination of the lease did not constitute a merger; and (3) that St. Dominic should not be responsible for the disputed Hospital Assessment pursuant to the terms of the Participation Agreement.

On appeal, the Court of Appeals held that the DOM failed to comply with Miss. Code Ann. § 43-13-121-(1)(a)(i), which specifically articulates a method for the DOM to calculate the Hospital Assessment and gives instruction on how to assess hospitals that close mid-fiscal year. The DOM's action in implementing a

new rule regarding the Hospital Assessment was beyond the power of the agency and could not stand, and this issue was dispositive of the dispute between the parties. Also, because Miss. Code Ann. § 43-13-145(4)(e) does not include a definition of the term “merger” in the current version of the statute, and because neither party offered any statute or caselaw in support of its argument regarding merger, it was unnecessary to define “merger” to resolve the issue. Additionally, the DOM’s interpretation of its own administrative regulation to mean that a lease termination constitutes a change in ownership was not arbitrary, capricious, or an abuse of discretion. Although the Participation Agreement provided that the new owner was to assume liability for all amounts due to the Medicaid program, this did not address the question of whether Regency or St. Dominic owed any additional assessment for Fiscal Year 2017. Therefore, the Court of Appeals reversed and rendered the judgment of the Hinds County Chancery Court.

Briefed by [Rachel Fewell](#)

[Sturkin v. Miss. Ass’n of Supervisors, Inc.](#) - Contracts - Insurance - Breach - In June 2016, Donna Sturkin filed suit against Vicky Patrick, Marcus Ellis, Leake County, Newton County, Scott County, and Neshoba County. Sturkin alleged that Patrick, her Drug Court probation officer, violated her Fourth and Fifth Amendment rights by demanding that Patrick be allowed to steal goods from the store at which Sturkin worked and providing Patrick, as well as her friends and family, with free nights in the hotel where Sturkin was employed. If Sturkin did not comply with Patrick’s demands, Patrick either threatened to report that she had failed her drug and alcohol test, or sent in false reports stating that Sturkin had failed her test that week. As a result, Sturkin was wrongfully incarcerated after Patrick filed a false report that she tested positive for alcohol consumption. Patrick was eventually fired for unrelated misconduct, and Ellis, Patrick’s supervisor, found that Sturkin’s allegations against Patrick were true and that Sturkin had not failed any of her alcohol tests. Patrick was insured by a general liability policy that her employer purchased from the Mississippi Association of Supervisors, Inc. (“MAS”). MAS initially notified Patrick that it would defend her in the federal lawsuit, but in January 2018, notified her attorney that it was denying all payments for her defense or any indemnity based on the fact that the allegations against Patrick asserted intentional wrongdoing on Patrick’s part. MAS filed a declaratory judgment against Patrick in the Scott County Circuit Court and moved for summary judgment, arguing that it owed no duty to indemnify or defend Patrick because her acts were intentional and undertaken outside the scope of her employment. Prior to any ruling in the declaratory judgment action, Sturkin’s case was tried and a jury returned a verdict in favor of Sturkin awarding her \$350,000 in damages as well as attorney’s fees and court costs. In September 2019, the circuit court granted MAS’s motion for summary judgment, holding that Patrick was not entitled to any defense or indemnification by MAS for any loss or damages in connection with Sturkin. Both Sturkin and Patrick appealed.

On appeal, the following issues were raised: (1) whether Sturkin’s claim was covered by Patrick’s MAS policy; (2) whether Sturkin’s claim was excluded under the MAS policy; and (3) whether MAS owed Patrick a duty to defend. Because nothing in the MAS policy barred Sturkin’s claims, and because no genuine issue of material fact existed concerning whether Patrick was acting in the scope of her employment when she violated Sturkin’s civil rights, Sturkin’s claim was not barred by the policy and the circuit court erred in granting summary judgment. Also, because Patrick was a drug court probation officer that was engaged in a law enforcement operation, her actions were excepted from any exclusion policy and Sturkin’s claim was not excluded from coverage under any policy exclusion. Finally, because the allegations of potential civil rights violations were pleaded in Sturkin’s federal complaint, and because such claims were arguably covered under the policy, MAS

breached its duty to defend Patrick and Patrick was entitled to reimbursement for attorney's fees she was required to pay after MAS's withdrawal. Therefore, the Court of Appeals reversed and remanded in part, and reversed and rendered in part the judgment of the Scott County Circuit Court.

Presiding Judge Wilson dissented, arguing that the conduct Patrick was sued for was not within the scope of her employment or authorized by her employer. He argued that because Patrick abused her power, her conduct was not within the scope of her employment and MAS had no duty to defend or indemnify her.

Briefed by [Jacob D. Hamm](#)

Wallace v. Wallace - Family Law – Divorce – Property Division – David and Earline Wallace filed for an irreconcilable differences divorce, and stipulated that the chancellor would divide the marital estate and decide Earline's request for alimony. Prior to the marriage, David owned a one-half interest in his business and a building on Stateline Road. David also owned the marital home prior to the marriage. Earline claimed she was disabled due to a neck or back injury and could not work. However, she provided no medical proof to support her alleged disability and the chancellor concluded that she "chooses not to work." The chancellor found that David's interests in the business and the real property on Stateline Road were his separate property, but that the business had increased in value by \$40,000 during the marriage. Accordingly, the chancellor awarded Earline \$10,000 for her share in the increased equity of the business. Earline was also awarded \$20,000 for her interest in the marital home, and she received possession of two marital vehicles. Earline was awarded marital assets totaling \$70,040, while David received assets totaling \$61,000. Earline was denied alimony and was ordered to sign a quitclaim deed granting her interest in the marital home to David. David filed a motion for contempt after Earline failed to do so, asking the chancery court to order her to sign and for an award of attorney's fees. Earline filed several documents opposing David's motion, including a motion to stay the judgment. She also filed a counterclaim against David for contempt. Prior to a hearing for David's contempt motion, Earline signed the quitclaim deed and presented it at the hearing. Nevertheless, the chancellor found Earline in contempt for initially refusing to sign the quitclaim deed and awarded attorney's fees to David. On appeal, Earline argued the chancellor erred by (1) failing to account for an increase in David's equity in the Stateline Road building in the division of the marital estate; (2) declining to award alimony; (3) finding her in contempt; and (4) permitting David's attorney to ask leading questions during the contempt hearing.

Because Earline clearly established that David used income earned during the marriage to increase his equity in the Stateline Road building, the chancellor erred by finding that there was no increase in the value of this property to be equitably divided with Earline. Also, because when an appellate court reverses a trial court's decision on the division of property, it must also reverse its decision on alimony even in the absence of error since the two are interconnected and must be considered together, the Court of Appeals reversed the chancellor's decision to decline to award alimony. Further, because Earline was already in contempt prior to her belated filing of the motion to stay the judgment, and because she failed to sign the quitclaim deed on time as was ordered by the divorce decree, the trial court did not err in finding her in contempt and the award of \$4,200 in attorney's fees was reasonable. Additionally, Earline waived her objection to the lack of a Rule 81 summons, which was required to commence a proceeding for contempt, because she appeared at the hearing, defended against the charge of contempt on the merits, and "never made an objection pertaining to defective service from the beginning to the end of the hearing." Finally, because counsel is not generally allowed to ask leading questions to cross-examine a friendly witness, the chancellor abused her discretion by not sustaining

Earline's objection, but this abuse of discretion merely amounted to harmless error. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the DeSoto County Chancery Court.

Briefed by [Cameron Johnson](#)

Court of Appeals – Post-Conviction Relief

Bynum v. State - Post-Conviction Relief – Mental Capacity – Plea Agreement – Ineffective Assistance of Counsel – In 2008, James Bynum was indicted for six counts of sexual battery and six counts of gratification of lust. Bynum's counsel had a mental examination conducted on Bynum, which concluded that Bynum was of average IQ and had a good understanding of the plea process. Bynum accepted a plea agreement and pled guilty to two counts of sexual battery, against counsel's advice. The circuit court sentenced Bynum to two concurrent sentences of twenty years in the custody of the Mississippi Department of Corrections. Bynum filed a post-conviction relief motion, claiming ineffective assistance of counsel and constitutional violations. The Rankin County Circuit Court denied Bynum's motion, finding his claims were without merit. Bynum appealed. On appeal, Bynum argued that his counsel was ineffective and that the circuit court erred by not conducting a competency hearing. Because the circuit court held that Bynum's trial counsel investigated Bynum's mental health, Bynum failed to prove that his defense counsel rendered ineffective assistance of counsel. Also, because the trial court had no obligation to conduct a competency hearing, and because Bynum freely, voluntarily, and knowingly made his guilty plea, this issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Briefed by [Jack Hall](#)

Figueroa v. State - Post Conviction Relief – Statute of Limitations – Procedural Bar – Exceptions – In 2003, Frank Figueroa pleaded guilty to exploitation of a child for sending explicit images of a person under eighteen. Figueroa was in Georgia when he sent the images, and the images were received and viewed in Biloxi. In 2004, Figueroa filed a motion to withdraw his guilty plea, which the trial court denied. In 2005, Figueroa filed his first motion for post-conviction relief ("PCR"), which the trial court denied and, on appeal, the Mississippi Supreme Court dismissed because Figueroa was no longer in custody. In 2018, Figueroa filed a second PCR motion asserting his guilty plea was involuntary due to ineffective assistance of counsel, his lifetime registration as a sex offender violated the Constitutions of both the United States and the State of Mississippi, and that the trial court in Mississippi lacked jurisdiction over his charge. The trial court dismissed his motion as time-barred and successive-writ barred but addressed the merits of Figueroa's claims, determining that they lacked merit.

Although his motion was procedurally barred, the Court of Appeals addressed Figueroa's claims. Because Figueroa swore that he understood the conditions of his appeal and at no point was there evidence that his counsel misled him, because Figueroa had no standing to challenge Mississippi's sex-offender statute since he never registered as a sex-offender in Mississippi, and because the images Figueroa sent were received in Harrison County even though he sent them from Georgia, the trial court had jurisdiction over his case and his claims were without merit. Further, because Figueroa failed to prove any extraordinary circumstances to overcome the statute of limitations or the successive writ bar, his claims were properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Kathleen Workman](#)

Court of Appeals – Criminal

Franklin v. State - Criminal Procedure – Jury Determination – Duress Defense – In September 2016, Elton Franklin and Antonio Brown robbed a Dollar General in East Cleveland, Mississippi. Brown demanded that the employees open the store’s safe. When they were unable to do so, they told Brown and Franklin they could have the money in the register. Brown told Franklin to get the money, and Franklin retrieved \$184 from the register. The store’s assistant manager, Lekeisha Ross, testified that Franklin came into the store before the robbery, and that Brown had a gun but Franklin did not. Ross also testified that although Franklin was taking orders from Brown, they appeared to be working together. As they exited the store, Franklin got into the driver’s seat, Brown got into a vehicle with Franklin, and Franklin drove away. Frank Michael witnessed Brown and Franklin run out of the store and remove their masks, and was able to get the car’s tag number. When Cleveland Police Officer Michael Pointer arrived, Michael gave him a description of the get-away car, the tag number, and the direction the robbers had headed. The Ruleville Police Department was alerted, and soon afterwards Officer White spotted the vehicle and pursued the men. Franklin lost control of the car and crashed into a ditch, and the two men were arrested. Officer White testified initially that Franklin gave him a false name, and that he appeared to be shaken and scared. Franklin admitted to Cleveland Police Investigator Graham that he was with Brown during the robbery, but that after Brown told him to go see who was in the store, Brown threatened him at gun point to participate in the robbery. Franklin testified that he had known Brown for only two weeks, and on the day of the robbery, he did not know that Brown intended to rob the Dollar General. He also testified that he wanted to run, but there was nowhere to go, and that Brown put a gun “in his ribs” and threatened to shoot him if he stopped the car. A Bolivar County Circuit Court jury was given instructions on elements of armed robbery, as well as the elements the State needed to overcome Franklin’s defense of duress. The jury convicted Franklin of armed robbery and sentenced him to fifteen years in the custody of the Mississippi Department of Corrections. On appeal, Franklin argued that the overwhelming weight of the evidence proved he participated in the robbery under duress.

The Court of Appeals confirmed Franklin’s conviction and sentence because the jury was presented with the testimonies of Ross, Michael, Officer White, Investigators Graham and Smith, as well as Franklin. In addition to testimony, the jury was permitted to watch the store surveillance video of the incident. The conflicting evidence on the issue of Franklin’s claim of duress created a question for the jury, and the jury subsequently rejected Franklin’s duress claim and rendered its verdict, which was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Briefed by [Mackinlee Rogers](#)

Wilkerson v. State - Criminal Law – *Brady* Violation – Newly Discovered Evidence – In July 2005, eight-week-old Tristan Chinn became unresponsive and subsequently died while under Amy Wilkerson’s care. At the hospital, the treating physicians determined that Tristan showed signs of “shaken-baby syndrome” (“SBS”). The following day, Wilkerson went to the police station for questioning, was read her *Miranda* rights, and was

informed that the discussion was being audiotaped. Initially, Wilkerson stated that Tristan previously had trouble breathing and waking up, but his parents assured her that the behavior was normal. Wilkerson requested an attorney, and the audio recorder was turned off. The detective and Wilkerson continued talking off the record for another thirty-two minutes which, unbeknownst to Wilkerson, was captured on hidden video. During this conversation, Wilkerson stated that she wanted a lawyer two more times, and she confessed that she did shake Tristan to try to get him to wake up. The detective then turned the recorder back on and Wilkerson admitted on record that she shook Tristan. In 2006, a grand jury indicted Wilkerson for capital murder and she entered a plea of “not guilty.” Wilkerson’s defense counsel filed a request for discovery, including a copy of any written or recorded statement of the defendant as well as any exculpatory material. Neither transcript that the State provided contained the thirty-two minutes of conversation captured on video. Wilkerson’s defense counsel hired an expert to review Tristan’s autopsy photographs and medical records, and the expert confirmed that the child’s cause of death was SBS. Accordingly, Wilkerson’s attorneys advised her to plead guilty to the reduced charge of murder. Wilkerson pled guilty and was sentenced to serve life in the custody of the Mississippi Department of Corrections. In May 2010, Wilkerson filed a PCR motion, alleging that her plea was involuntary, and that defense counsel rendered ineffective assistance for failing to secure exculpatory witnesses. The circuit court dismissed the PCR motion. In 2015, Wilkerson filed a second PCR motion and a motion to amend her PCR motion, and the circuit court granted the motion to amend. In her motion, Wilkerson claimed that she should be allowed to withdraw her guilty plea, or she should be granted an evidentiary hearing due to (1) the State committing a *Brady* violation by concealing material and exculpatory evidence; (2) shifts in the scientific community’s opinions regarding SBS constituting “newly-discovered evidence” demonstrating that she was factually innocent; (3) defense counsel rendered ineffective assistance; and (4) she was actually innocent. The State responded, asserting that the motion should be dismissed as time-barred and successive-writ barred. The circuit court denied Wilkerson’s PCR motion without a hearing. Wilkerson appealed.

Because changes in experts’ scientific understanding on issues such as SBS may constitute newly discovered evidence, the Court of Appeals reversed and remanded for the trial court to conduct an evidentiary hearing and allow Wilkerson to provide expert testimony on this issue. Also, because the video evidence containing the alleged *Miranda* violation was not “of a nature that it would be practically conclusive that, if introduced at trial, it would have caused a different result in the conviction or sentence,” there was not an additional exception to the procedural bars based on the discovery of the videotape, but it was relevant to Wilkerson’s claims of a *Brady* violation and ineffective assistance of counsel. Additionally, because Wilkerson waived her claim of a *Brady* violation by entering her guilty plea, a hearing was not required on this issue. Lastly, because competent counsel could have obtained medical history and testimony regarding Tristan’s possible underlying medical condition, Wilkerson did not fail to make a prima facie case of ineffective assistance of counsel, and the Court of Appeals reversed and remanded for the trial court to determine whether Wilkerson’s attorneys received the thirty two minute video, whether the failure to file a motion to suppress constituted deficient performance, and whether the outcome of the case would have been different. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Circuit Court.

Judge Greenlee concurred, stating that the State’s failure to provide the exculpatory video of Wilkerson’s full interview violated her constitutional right to due process. Further, he agreed that by entering a guilty plea, Wilkerson waived her claim of a *Brady* violation and that the change in expert opinion on the child’s cause of death deserved a hearing. Lastly, he emphasized that on remand, the trial court should consider

whether the videotape was produced in discovery only to the extent necessary to discern whether Wilkerson received ineffective assistance of counsel.

Presiding Judge Wilson concurred in part and dissented in part, stating that Wilkerson's claims alleging a *Brady* violation and ineffective assistance of counsel were barred by the statute of limitations and the statutory prohibition on successive PCR motions. As a result, he argued that the circuit court correctly denied relief on both claims. Additionally, he agreed with the majority's affirmance as to Wilkerson's *Brady* claim, but disagreed with its reasoning. He also agreed that Wilkerson's newly discovered evidence claim should be remanded for an evidentiary hearing, but dissented from the majority's decision to reverse and remand on the ineffective assistance claim.

Judge McCarty concurred in part and dissented in part, arguing that there are times when a guilty plea might not be given knowingly, intelligently, or voluntarily if evidence is withheld. He also argued that the issue regarding the *Brady* claim was not that Wilkerson's counsel misjudged the admissibility of Wilkerson's confession, but that Wilkerson's counsel did not know the circumstances leading to her confession, and thus was not able to make a judgment call one way or the other. As a result, he argued that a claim of a *Brady* violation should survive the general waiver of a guilty plea. Further, he agreed that the petitioner is entitled to a hearing due to developments in science and with Judge Greenlee's view that the trial court should consider the issue of the videotape only as it relates to ineffective assistance of counsel, but argued that the better option is to consider alleged *Brady* violations even when there is a guilty plea.

Briefed by [Gabrielle Beech](#)

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