

**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 12, 2021****SUPREME COURT - CIVIL CASES****OSBY V. JANES****CIVIL - REAL PROPERTY**

**PROPERTY - SALE OF PROPERTY - STANDARD OF REVIEW** - A reviewing court will overturn a chancellor's order confirming a sale of property only upon evidence that the chancellor abused his/her discretion or committed error

**PROPERTY - PARTITION BY SALE - ABUSE OF DISCRETION** - A party's failure to object to the date of sale in a partition by sale is strong evidence that the chancellor did not abuse his/her discretion in confirming the results of the sale

**FACTS**

John W. Osby and several tenants in common owned a piece of land in DeSoto County. After maintaining the land for some years, including paying taxes on it since 1997, Osby negotiated a sale and contracted to sell the property to Brad and Rebecca Janes for \$162,660. However, not all of the tenants in common agreed to the sale. Subsequently, Osby petitioned the chancery court to partition the land and to order a sale. The chancellor issued a sale order on February 5, 2020, setting the sale date as April 9, 2020. On April 1, 2020, Governor Tate Reeves entered a shelter-in-place order due to the COVID-19 pandemic; the order did not bar sales of land. Neither Osby nor any other tenants in common petitioned the court to delay the sale. The sale was conducted as planned, and Janes's bid of \$70,000 was declared the highest bid received. Four days later, the commissioner of the sale filed a report with the court attesting that all conditions of the sale were met. Subsequently, Osby and other tenants in common filed petitions to reject the sale. After receiving arguments and hearing testimony, the chancellor issued an order confirming the sale and dismissing the motions to reject the sale. Osby and other tenants in common appealed.

**ISSUE**

Whether the chancellor's order confirming the sale resulted in an abuse of discretion.

**HOLDING**

Because Osby and other tenants in common failed to identify an abuse of discretion in the chancellor's decision, and because Osby and other tenants in common never petitioned the chancery court to delay the partition sale date in light of the pandemic, the chancellor's order confirming the sale was not an abuse of discretion. Therefore, the Supreme Court affirmed the judgment of the DeSoto County Chancery Court.

**Affirmed - 2020-CA-00641-SCT (Aug. 12, 2021)**

Opinion by Chief Justice Randolph

Hon. Percy L. Lynchard Jr. (DeSoto County Chancery Court)

James Kizer Jones & *Pro se* for Appellants - James Anthony Bradley & Derek D. Hopson for Appellee

Briefed by [Garner Vance](#)

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**PROGRESSIVE GULF INS. CO. V. KAUR**

## CIVIL - INSURANCE

**CIVIL PROCEDURE - STATUTE OF LIMITATIONS - GOOD CAUSE** - Miss. R. Civ. P. 4(h) mandates that a complaint be dismissed if service of process is not effected within 120 days of the filing of the complaint and good cause cannot be shown for failure to do so; to establish good cause, a plaintiff must show at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice

**CIVIL PROCEDURE - SERVICE OF PROCESS - EXTENSIONS** - Pursuant to Miss. R. Civ. P. 6(b), a request for an extension of time before the expiration of time permitted may be made “for cause shown;” a party need only articulate a legitimate reason, made in good faith, as to why the enlargement of time should be granted

### FACTS

Jaswinder Kaur, Harvinder Singh, Karanveer Kamboj, and Gurdev Kamboj (“Plaintiffs”) were occupants of a vehicle involved in a collision with a vehicle operated by Mary Orebo and owned by Cassandra Mann. The Plaintiffs’ vehicle had uninsured-motorist coverage provided by Progressive Gulf Insurance Company (“Progressive”). In March 2019, the Plaintiffs each filed a separate suit against Progressive, Orebo, and Mann. In July 2019, each filed a motion for extension, asserting that Orebo and Mann had given them false addresses, and that time was needed to properly serve them. The trial court granted the motions for extensions on July 29, August 8, and August 12; Progressive was served in all four cases on December 9, 2019. Progressive filed four separate motions to dismiss. Progressive argued that Kaur, Singh, and Karanveer had served process outside the 120-day extensions and could not show “good cause” for their failure to timely serve and, therefore, their complaints should have been dismissed under Miss. R. Civ. P. 4(h). As to Gurdev, Progressive conceded that he did serve process within 120 days but that his complaint should still be dismissed for failure to establish “cause” for the extension. The trial court consolidated the suits and denied all four motions to dismiss. Progressive appealed.

### ISSUES

Whether the trial court (1) erred in denying Progressive’s three unopposed motions to dismiss the complaints of Kaur, Singh, and Karanveer and (2) abused its discretion in granting an extension of time for Gurdev to serve process on Progressive.

### HOLDING

(1) Because Kaur, Singh, and Karanveer did not serve process within the 120 days, and because the three conceded in their brief on appeal that Progressive was correct, the trial court erred by not dismissing their complaints. (2) Because granting an extension of time is a question that is entrusted to the sound discretion of the trial judge, the trial court did not abuse its discretion in granting an extension of time. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Madison County Circuit Court.

### CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis argued he would reverse and render judgment in favor of Progressive because Gurdev’s motion identified a legitimate reason for an extension to Orebo and Mann but not to Progressive. He reasoned that any difficulty locating Orebo or Mann did not preclude or affect timely service on Progressive. However, he concurred with the majority that the trial court erred by not dismissing Kaur, Singh, and Karanveer’s complaints.

#### **Affirmed in Part; Reversed & Remanded in Part - 2020-IA-00443-SCT (Aug. 12, 2021)**

Opinion by Justice Ishee - Concurrence in Part and Dissent in Part by Justice Griffis

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Cecil Maison Heidelberg for Appellant - Patrick S. Wooten for Appellees

Briefed by [Anna Tucker](#)

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## CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - DIVORCE - GROUNDS** - Under *Wangler*, a divorce on the ground of habitual cruel and inhuman treatment requires the following to be shown by a preponderance of the evidence: conduct that either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance

**FAMILY LAW - DIVORCE - CRUEL & INHUMANE TREATMENT** - Divorces based upon habitual cruel and inhuman treatment are necessarily fact-intensive and require a case-by-case analysis

### FACTS

In December 2017, after approximately ten years of marriage, Kemily Rankin filed a complaint for divorce on the ground of habitual cruel and inhuman treatment against Kelvin Rankin. Kemily testified that marital issues began as early as the couple's honeymoon and recounted numerous instances related to her complaint for divorce. Kemily testified that she experienced intense migraines during the last five years of their marriage, which had not been an issue for her since she separated from Kelvin in November 2017. Additionally, Kemily's blood pressure was elevated, although she was not diagnosed with the condition. Kemily testified Kelvin also caused her emotional, mental, and spiritual harm. Thus, she argued that reconciliation with Kelvin was not in her best interests. Kelvin disagreed. He believed that reconciliation was in everyone's best interest. He acknowledged the couple's marital issues but denied instances of hitting Kemily. Kelvin moved to dismiss the complaint and argued that the evidence "wholly, completely, [and] totally fail[ed] to make out a case for habitual cruel and inhuman treatment." The chancellor denied Kemily's complaint for divorce on the ground of habitual cruel and inhuman treatment, finding that the evidence presented was insufficient to grant Kemily a divorce on the ground. Kemily appealed. On appeal, the Court of Appeals found sufficient evidence to support granting the divorce on the ground of habitual cruel and inhumane treatment and reversed the chancellor's judgment, remanding the case for further findings in accordance with its opinion. Kelvin petitioned for writ of certiorari.

### ISSUE

Whether the Court of Appeals' decision conflicted with a prior published decision of the Court.

### HOLDING

Because the Court of Appeals' decision conflicted with both a recently published decision of the Court, *Wangler*, and well-established principles of appellate review, the Court of Appeals' decision was unfounded. Therefore, the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed the judgment of the Warren County Chancery Court.

### DISSENT

Presiding Justice Kitchens argued that Kelvin's recurrent verbal and emotional abuse amounted to abundantly more than unkindness, rudeness, incompatibility, or want of affection. Thus, the pattern of Kelvin's behavior satisfied Miss. Code Ann. § 93-5-1's spousal domestic abuse provision. He argued that the 2017 amendment of § 93-5-1 applied to the seventh ground for divorce: habitual cruel and inhuman treatment. Further, the amendment intended to ease the possibility of obtaining a divorce under this ground. Because the trial court failed to consider how Kelvin's conduct affected Kemily, it failed to recognize that the spousal ill-will she recounted was sufficient to establish habitual cruel and inhuman treatment. Therefore, Kemily's divorce should have been rendered.

**The Judgment of the Court of Appeals is Reversed. The Judgment of the Warren County Chancery Court is Reinstated & Affirmed - 2019-CT-00238-SCT (Aug. 12, 2021)**

Opinion by Justice Griffis - Dissent by Presiding Justice Kitchens

Hon. Vicki R. Barnes (Warren County Chancery Court)

Kimberly Walker Nailor & Jami L. Crews for Appellant - David M. Sessums for Appellee

Briefed by [Le'Ronda Gates](#)

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## WOODARD V. MILLER

### CIVIL - PERSONAL INJURY

**CONSTITUTIONAL LAW - FIRST AMENDMENT - RELIGION** - Pursuant to the First Amendment of the United States Constitution, a plaintiff is prevented from filing suit based on the failure to perform religious or ecclesiastical duties

**TORTS - FIDUCIARY RELATIONSHIP - ESTABLISHMENT** - A fiduciary duty is established whenever there is a relation between two people in which one person is in a position to exercise a dominant influence upon the former, arising either from weakness of mind or body or through trust; a priest's position alone is insufficient to establish a fiduciary relationship

**TORTS - AFFIRMATIVE DEFENSE - TIMELINESS** - A defendant's failure to timely and reasonably raise and pursue the enforcement of any affirmative defense or other affirmative matter of right which would serve to terminate or stay the litigation, coupled with active participation in the litigation process, will ordinarily serve as a waiver

### FACTS

Kim Miller and Andrew Johnson married in 1991 when Johnson was in seminary and on track to become a minister for the Mississippi Annual Conference of the United Methodist Church ("MUMC"). During their marriage, Johnson engaged in extramarital affairs with other men and contracted HIV. Johnson discovered he had HIV through a self-test and informed Miller the next day; she also tested positive. Miller filed for divorce, and the couple entered into a divorce-settlement agreement which included language that each would fully release the other from any claims or causes of action in the matter. After Johnson confessed to Miller, the couple called Johnson's colleague, Susan Woodard, to provide in-person crisis support. To help with Johnson's sex addiction, Woodard encouraged him to remove any pornography from his computer and shut down any email accounts he had used to secretly contact men to meet for sex. Miller sued MUMC, Johnson, and Woodard. Miller's claims against Johnson were aimed at his risky extramarital affairs which led to Miller contracting HIV. As to MUMC, Miller alleged that the conference was vicariously liable for Johnson's actions and that, had it properly exercised discipline over Johnson, the conference would have warned Miller and/or remedied Johnson's dangerous conduct. Miller asserted a fiduciary-duty-based claim against Woodard, alleging Woodard failed to follow MUMC's policies by not reporting Johnson's homosexual behavior to superiors within the church conference. After two years of discovery, Woodard moved for summary judgment, asserting Miller's attempt to place a duty upon Woodard via the canons of the church violated the First Amendment. After this, MUMC also moved for summary judgment, also relying on the First Amendment. Johnson then filed a joinder to MUMC's motion for summary judgment, asserting that Miller had released any and all claims through the divorce settlement. The trial court granted Woodard's motion in part but denied summary judgment on Miller's remaining claims based on issues of material fact. The trial court denied MUMC's motion for summary judgment, citing the existence of genuine issues of material fact. As to Johnson's joinder in MUMC's motion for summary judgment, the trial court ruled that Johnson waived his defense by failing to assert the defense and actively participating in discovery. Woodard, MUMC, and Johnson appealed.

### ISSUES

Whether (1) MUMC owed Miller a legal duty that it breached; (2) Woodard owed Miller a fiduciary duty and breached the duty by not warning of Johnson's behavior; and (3) Johnson waived the defense of release and waiver by failing to assert the defense and actively participating in discovery.

### HOLDING

(1) Because the religious nature of a spouse's employer cannot be the basis for recognizing a legal duty, because the First Amendment prevented Miller from filing suit based on the failure to perform religious or ecclesiastical duties, and because Miller presented no evidence that Johnson's sexual acts were performed in the course and scope of his church duties over which MUMC had power and control, Miller's claims against MUMC failed as a matter of law, and MUMC was entitled to summary judgment. (2) Because Miller presented no evidence to establish a fiduciary relationship with Woodard beyond Woodard's ministerial position and knowledge of her MUMC responsibilities, because Miller did not

present evidence that she was dependent on Woodard, and because church policies cannot be used to impose a higher legal burden owed by ministers to church members, Miller’s claims against Woodard failed, and Woodard was entitled to summary judgment. (3) Because Johnson waited more than two and a half years to pursue his claim that Miller released her claim in the divorce settlement, Johnson waived the defenses of release of waiver. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

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

Justice Griffis agreed with the decision to reverse and render summary judgment in favor of MUMC and Woodard. However, he disagreed with the majority as to partially denying Johnson’s motion for summary judgment. He noted that the majority relied on one sentence from *Horton*, an arbitration case, to conclude that the principle applied to affirmative defenses as well, and that the holding in *Horton* was without legal basis and should be overruled. Even under the *Horton* analysis, he did not believe Johnson waived his right to assert affirmative defenses. Additionally, he believed Johnson timely and reasonably raised and pursued his defense of release, given the state of discovery in the case. If *Horton* is Mississippi law, the Mississippi Rules of Civil Procedure should reflect when affirmative defenses must be asserted to ensure there is no waiver by a party.

#### **Reversed & Rendered - 2020-IA-00031-SCT (Aug. 12, 2021)**

En Banc Opinion by Justice Maxwell - Concurrence In Part & Dissent In Part by Justice Griffis

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

Robert A. Biggs III & Charles Stephen Stack Jr. for Appellant - John Leonard Walker Jr., Christopher Collins Van Cleave, & Kristopher W. Carter for Appellee

**Consolidated with:**

#### **Reversed & Rendered - 2020-IA-00056-SCT (Aug. 12, 2021)**

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

James G. Wyly III, Adam Blake Harris, & Heather Edward Murphy for Appellant - John Leonard Walker Jr., Christopher Collins Van Cleave, & Kristopher W. Carter for Appellee

**Consolidated with:**

#### **Affirmed & Remanded - 2020-IA-00238-SCT (Aug. 12, 2021)**

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

Eric Joseph Dillon for Appellant - John Leonard Walker Jr., Christopher Collins Van Cleave, & Kristopher W. Carter for Appellee  
Briefed by [Dallas Martin](#)

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## ***SUPREME COURT - ORDERS***

### **McRAE V. MITCHELL**

#### **ORDER**

#### **ORDER**

After due consideration, the Supreme Court denied the Motion for Consideration of Order Denying Motion to Dismiss Appeal filed by Don A. Mitchell.

#### **OBJECTION**

Justice Coleman disagreed with the Court’s order because it converted an improper direct appeal to an interlocutory one. He argued that if Mitchell had not filed a motion to dismiss the direct appeal, the Court would have had to review the case and decide whether it could be heard jurisdictionally according to prior law and Miss. R. Civ. P. 54(b). Further, he argued that the Court stepped outside its proper role by advocating on behalf of Charles R. McRae who attempted a direct appeal of an interlocutory order which would have been examined jurisdictionally and dismissed had Mitchell

not filed a motion to dismiss for lack of an appealable judgment. He argued that, as a result of the Court's intervention, Mitchell would have to defend an appeal that should have been dismissed as interlocutory.

**Denied - 2021-IA-00101-SCT (Aug. 9, 2021)**

En Banc Order by Presiding Justice King - Objection by Justice Coleman

Briefed by [Meagan Guyse](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 10, 2021

### COURT OF APPEALS - POST-CONVICTION RELIEF

#### JACKSON V. STATE

##### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE** - Pursuant to Miss. Code Ann. § 99-39-5(2), unless an exception applies, post-conviction relief motions must be filed within three years of a conviction, otherwise it is barred by the statute of limitations

**POST-CONVICTION RELIEF - STANDING - SUCCESSIVE MOTIONS** - Pursuant to Miss. Code Ann. § 99-39-23(6), any order that dismisses a petitioner's motion or denies relief is a final judgment; therefore, second or successive motions are barred

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS** - Errors that affect fundamental rights are excepted from procedural bars, which may include ineffective assistance of counsel in exceptional or extraordinary circumstances

#### FACTS

In 1987, David Jackson pled guilty to burglary of an inhabited dwelling at night while armed with a deadly weapon and was sentenced to eight years in the Mississippi Department of Corrections ("MDOC"). Following his release, in 1998, Jackson was convicted of possession of cocaine with the intent to distribute. Due to his prior conviction in 1987, Jackson was deemed a habitual offender and sentenced to thirty years in the MDOC. While Jackson filed various post-conviction relief ("PCR") motions regarding his 1998 conviction, he failed to file a PCR motion for his 1987 conviction until August 2018 which was more than thirty years after his guilty plea. Jackson made five claims in his 2018 PCR motion: (1) he was denied his right to counsel; (2) his guilty plea was involuntary; (3) there was no factual basis for his guilty plea; (4) he had ineffective assistance of counsel; and (5) the indictment was insufficient. Jackson argued these claims affected his fundamental constitutional rights, and therefore the PCR motion was excepted from being time-barred. After review, the circuit court denied Jackson's PCR motion, finding that Jackson's claims were time-barred, barred as a successive motion, and lacked merit. Jackson appealed.

#### ISSUES

Whether the circuit court erred in determining that Jackson's PCR motion was (1) time-barred; (2) successive; (3) not excepted from the time-bar; and (4) without merit.

#### HOLDING

(1) Because Jackson's motion was filed after expiration of the three-year statute of limitations, the circuit court did not err in determining that the PCR motion was time-barred. (2) Because Jackson's PCR motion took issue with a new, separate, and distinct conviction, the circuit court incorrectly characterized Jackson's PCR motion as a successive motion. (3) Because Jackson's first four claims did not implicate an exception to the statute of limitations, and because he failed to identify any exceptional or extraordinary circumstances for excepting his claim of ineffective counsel, the circuit court did not err in determining the PCR motion was not excepted from the time-bar. (4) Because the circuit

court's findings were supported by the record, the circuit court did not err in finding that Jackson's motion was without merit. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2020-CP-00714-COA (Aug. 10, 2021)**

Opinion by Presiding Judge Carlton

Hon. Dewey Key Arthur (Madison County Circuit Court)

*Pro se* for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Mariel Soehner](#)

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

### **GARCIA-LEBRON V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - RULES ON STANDARDS FOR COURT INTERPRETERS - NON-CREDENTIALLED INTERPRETER** - According to Rule 4(B)(1) of the Rules on Standards for Court Interpreters, before a court can appoint a non-credentialed interpreter, the court must find that the proposed interpreter (a) has adequate language skills, knowledge of interpreting techniques, and familiarity with interpreting in a court setting; and (b) has read, understands, and agrees to abide by the Mississippi Code of Ethics for Court Interpreters and the Mississippi Rules on Standards for Court Interpreters

**EVIDENCE - HEARSAY - EXCITED UTTERANCE** - An excited utterance, an exception to the general prohibition against hearsay testimony, is a statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused; there is no rule regarding the time that passes between an event and an utterance before the comment is classified as outside the exception to the hearsay rule, and the question can be left to the trial court's discretion

#### **FACTS**

In January 2019, Anna Lopez rang Miguel Mendoza's doorbell in the early morning and was "very hysterical" as she explained the physical abuse she and her son endured at the hands of her fiancé, Luis Garcia-Lebron. Mendoza noted that Lopez's eyes were black and swollen, and her face was bruised. Mendoza also observed that the son's face was bleeding, his eyes were black, and his nose and mouth were in "very, very bad shape." Mendoza called the police and helped translate so that Lopez could communicate. Lopez and her son were admitted to the hospital, and Garcia-Lebron was indicted for felony child abuse and aggravated domestic violence. During Garcia-Lebron's jury trial, Lopez testified, through interpreter Cynthia Baertich, about the physical abuse she and her son received from Garcia-Lebron. At trial, witness testimony and photo evidence corroborated that Lopez was punched in the face, choked, hit in the head with a can opener, stabbed with a fork, and had her eyes gouged by Garcia-Lebron. It was also established that Garcia-Lebron abused Lopez's son by using pliers to twist and cut his upper lip, punching him in the stomach and thighs, picking him up by his hair and shaking him, and more. In January 2020, a jury found Garcia-Lebron guilty of felony child abuse and aggravated domestic violence, and he was sentenced to life imprisonment and a consecutive twenty-year sentence in the custody of the Mississippi Department of Corrections. Garcia-Lebron appealed.

#### **ISSUES**

Whether the circuit court erred when it allowed (1) Baertich to act as Lopez's interpreter and (2) Mendoza to testify as to statements Lopez told him on the night of the incident that Garcia-Lebron had injured Lopez and her son.

#### **HOLDING**

(1) Because there was more than sufficient information to support the findings of Rule 4(B)(1) of the Rules on Standards for Court Interpreters, and because Garcia-Lebron did not demonstrate that any prejudice resulted from Baertich's

translation, it was not reversible error to allow Baertich to act as a court-appointed interpreter. (2) Because Mendoza had already described Lopez as “very hysterical and crying and bleeding,” and because Lopez was still under the influence of the incident, Lopez’s statement was an excited utterance and admissible as such. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2020-KA-00250-COA (Aug. 10, 2021)**

Opinion by Judge Lawrence

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Meta S. Copeland (Att’y Gen. Office) for Appellee

Briefed by [Emily Duck](#)

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## JOHNSON V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - DIRECTED VERDICT - DETERMINATION** - When determining whether a directed verdict should be granted, the evidence should be viewed in the light most favorable to the prosecution

**CRIMINAL LAW - KIDNAPPING - ELEMENTS** - Under Miss. Code Ann. § 97-3-53, it is not necessary that the State prove that the defendant removed the victim from his or her home to establish a kidnapping

**EVIDENCE - ADMISSIBILITY - OROMOND STANDARD** - Under *Oromond*, as long as there is an opportunity for counsel to cross-examine at trial or otherwise confront witnesses, there is no constitutional violation for not having counsel present during non-critical stages such as the scientific analysis of fingerprints, blood samples, or hair and clothing

**CRIMINAL LAW - HABITUAL OFFENDER - SENTENCING STANDARD** - Under Miss. Code Ann. § 99-19-83, there is no requirement that the prior convictions must be less than ten years old to be sentenced as a violent habitual offender

### FACTS

In June 2016, Aldora Williams was sitting on her front porch when a man approached her and asked for some water. When Williams went inside to get the water, the man pushed her inside the house and locked the door. The man then showed her his penis and indicated that he wanted to have sex with her. When Williams refused, the man threatened to stab her in the neck, punched her in the head, and then held her against her will in the house for twelve hours. After being presented with a photo lineup, Williams identified Archie Johnson. In October 2018, Detective Jasmine Haynes obtained a warrant and collected a DNA sample from Johnson, which matched a cigarette butt left in Williams’s living room the day of the crime. After the State rested its case at trial, Johnson moved for a directed verdict, which was denied. Johnson was then convicted of kidnapping and sentenced as a violent habitual offender to life in the custody of the Mississippi Department of Corrections. Subsequently, Johnson’s appellate counsel filed a *Lindsey* brief certifying that the record presented no arguable issue for appeal. Johnson then filed a pro se supplemental brief and brief addendum appealing the verdict.

### ISSUES

Whether the trial court erred in (1) denying Johnson’s motion for a directed verdict; (2) allowing the DNA sample to be admitted into evidence because it was obtained in violation of Johnson’s Sixth Amendment right to counsel; (3) sentencing Johnson as a violent habitual offender; (4) failing to grant Johnson a mistrial; and (5) failing to find that the charging affidavit and indictment were illegal.

### HOLDING

(1) Because the State was not required to prove that Johnson removed Williams from her home to establish a kidnapping, and because a motion for directed verdict is to be viewed in the light most favorable to the prosecution, the trial court did not err in denying Johnson’s motion for a directed verdict. (2) Because Johnson failed to file a motion



to suppress the admission of his DNA sample into evidence, because Johnson did not argue at trial that the sample was obtained in violation of his Sixth Amendment right to counsel, and because the DNA sample was not taken during a critical stage of the proceedings, Johnson did not suffer a Sixth Amendment constitutional violation. (3) Because Johnson was convicted twice previously of separate felony crimes, and because there is no requirement that the prior convictions must be less than ten years old, the trial court did not err in sentencing Johnson as a violent habitual offender. (4) Because Johnson failed to timely request a mistrial, and because the record reflected that Williams adequately identified Johnson at trial, the trial court did not err in not granting a mistrial. (5) Because the charging affidavit was sufficient to prove probable cause under the Mississippi Rules of Civil Procedure, and because Johnson's indictment was endorsed "a true bill" and signed by the grand jury foreman, the charging affidavit and indictment were legal. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2019-KA-01801-COA (Aug. 10, 2021)**

Opinion by Judge Greenlee

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

Mollie Marie McMillin (Pub. Def. Office) & *Pro se* for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Macy Walters](#)

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