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**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 19, 2021****SUPREME COURT - CIVIL CASES****ROBERTS V. CITY OF JACKSON****CIVIL - OTHER**

**MUNICIPALITIES - CIVIL SERVICE COMMISSION - REPORTING REQUIREMENTS** - Miss. Code Ann. § 21-31-23 requires the Civil Service Commission to report its investigative findings in writing; the Commission is under a duty to set forth with sufficient clarity and specificity the reasoning behind its investigative findings

**CIVIL SERVICE COMMISSION - DUTY TO REPORT - ELEMENTS** - The Civil Service Commission may satisfy its duty to report investigative findings with clarity and specificity by (1) specifying which civil-service rules were violated and (2) discussing which witness testimony the Commission relied upon

**FACTS**

Justin Roberts worked for the Jackson Police Department for two years until his termination in February 2017. Roberts timely appealed his termination to the Civil Service Commission for the City of Jackson (“Commission”). The Commission affirmed Roberts’s termination with an order stating that the termination was made in good faith and for cause. Roberts appealed to the Hinds County Circuit Court. The circuit court affirmed the termination. Roberts then appealed to the Supreme Court, and the case was assigned to the Court of Appeals. The Court of Appeals found the Commission did not satisfy the statutory requirement to put its findings in writing and ordered the Commission to submit its written findings with clarity and specificity. The Commission responded. The Court of Appeals then found that the Commission had complied with the statutory requirements of stating its findings with sufficient clarity and specificity. Roberts petitioned for writ of certiorari.

**ISSUE**

Whether the Commission certified its findings with sufficient clarity and specificity when it affirmed the Jackson Police Department’s termination of Roberts.

**HOLDING**

Because the Commission failed to provide the reasoning behind its decision, the Commission did not report its findings with sufficient clarity and specificity. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County Circuit Court.

**Reversed & Remanded - 2019-CT-00405-SCT (Aug. 19, 2021)**

En Banc Opinion by Justice Griffis

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

Francis S. Springer for Appellant - Carrie Johnson for Appellee

Briefed by [Christian Eaves](#)

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**SUPREME COURT - CRIMINAL CASES**

## MUJAHID V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - POST-TRIAL PROCEEDINGS - LINDSEY BRIEF** - *Lindsey* requires a defendant's appellate counsel to file a brief certifying that there are no arguable issues supporting the client's appeal, and he or she has reached this conclusion after scouring the record thoroughly, specifically examining: (a) the reason for the arrest and the circumstances surrounding arrest; (b) any possible violations of the client's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing

**CRIMINAL PROCEDURE - QUALIFYING CONVICTIONS - HABITUAL OFFENDER** - Pursuant to Miss. Code Ann. § 99-19-81, every person in this state of a felony who shall have been convicted twice previously of any felony is eligible to be charged and sentenced as a habitual offender

### FACTS

In July 2016, a confidential informant ("CI") working with the Jones County Sheriff's Department set up a drug transaction with Talib Mujahid. When the CI met with Mujahid, the CI purchased methamphetamine and recorded the encounter using audio and video surveillance equipment. Mujahid was charged as a habitual offender due to prior armed-robbery and receiving-stolen-property convictions. Michael Mitchell represented Mujahid at trial. Two weeks before trial began, Mujahid was in a car accident and requested a continuance. Because Mitchell felt the wreck was a weak excuse for a continuance, Mitchell suggested that Mujahid make the request himself. The trial court found no cause for continuance, and the jury found Mujahid guilty at trial. Mujahid was sentenced to eight years due to his habitual-offender status. Mujahid's appellate counsel filed a *Lindsey* brief, asserting that he found no arguable issues to appeal. Mujahid appealed.

### ISSUES

Whether (1) the trial judge should have recused himself; (2) the trial judge should have excluded one of the State's witnesses; (3) Mujahid's previous convictions were too remote to qualify him as a habitual offender; and (4) Mujahid's counsel was ineffective.

### HOLDING

(1) Because Mujahid did not overcome the presumption of the trial judge's impartiality, and because the record did not show any bias or necessity for disqualification, the trial judge did not need to recuse himself. (2) Because the jury was responsible for determining witness credibility, and because the judge properly instructed the jury regarding witness credibility, there was no need for the witness's dismissal. (3) Because Miss. Code Ann. § 99-19-81 places no time limit on qualifying convictions, Mujahid was a habitual offender. (4) Because Mujahid failed to show that his counsel was deficient and said deficiency deprived him of a fair trial, Mujahid's counsel was not ineffective. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

**Affirmed - 2020-KA-00013-SCT (Aug. 19, 2021)**

Opinion by Justice Maxwell

Hon. Dal Williamson (Jones County Circuit Court)

George T. Holmes & Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Allyson Avant](#)

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## NEVELS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CIRCUMSTANTIAL EVIDENCE** - In cases relying on circumstantial evidence, there is no heightened burden of proof; proposed circumstantial evidence instructions that attempt to raise this burden must be rejected

**CRIMINAL PROCEDURE - TRIAL IN ABSENTIA - WAIVER** - Pursuant to Miss. R. Crim. P. 10.1(b)(1)(B), a defendant's right to be present at trial is waived if the defendant's absence is voluntary and constitutes a knowing and intelligent waiver of the right

**CRIMINAL PROCEDURE - SENTENCING - WAIVER** - Pursuant to Miss. R. Crim. P. 10.1(b)(2)(A), the right to be present at a felony sentencing hearing cannot be waived

## **FACTS**

Johnny Nevels failed to complete a drug urinalysis test and was taken into custody. Subsequently, the officers found a car key in Nevels's pocket, which matched the only non-departmental vehicle in the parking lot. The vehicle contained illicit drugs. The grand jury indicted Nevels on three counts for possession of amphetamine, possession of oxycodone, and possession of methamphetamine. Nevels was released on bail and appeared for two pretrial hearings. However, he failed to appear for his trial, so the trial court tried Nevels in absentia. The jury found Nevels guilty on all three counts. Nevels was also absent at his sentencing hearing, so his counsel moved for a continuance. The trial court denied this motion and sentenced Nevels to eight years for possession of amphetamine, eight years for possession of oxycodone, and twenty years with five years suspended for possession of methamphetamine. Nevels appealed.

## **ISSUES**

Whether the trial court erred in (1) refusing Nevels's proposed circumstantial evidence instruction; (2) trying Nevels in absentia; and (3) denying Nevels's counsel's motion for a continuance of the sentencing hearing.

## **HOLDING**

(1) Because circumstantial evidence does not create a heightened burden of proof, because the law should not create a distinction between direct and circumstantial evidence, and because the Supreme Court overruled *Moore*, the trial court did not err in denying Nevels's proposed circumstantial evidence instruction. (2) Because Nevels's absence was voluntary, because the trial court made a proper inquiry into his absence before trial, because the trial court is not required to send an officer to bring an absent defendant to court, and because Nevels failed to sufficiently excuse his absence, the trial court did not err in trying Nevels in absentia. (3) Because a defendant's right to be present at a felony sentencing hearing cannot be waived, the trial court erred in denying the motion to continue the sentencing hearing. Therefore, the Supreme Court affirmed in part and vacated and remanded in part the judgment of the Warren County Circuit Court.

## **DISSENT**

Presiding Justice Kitchens argued that circumstantial evidence instructions have longstanding importance in Mississippi law and should be allowed because they are necessary to protect defendants in cases with little evidence. He disagreed with the majority's overruling of *Moore* based on the fundamentals of stare decisis. Lastly, he disagreed with the majority's interpretation of the purpose of these instructions, contending that they do not increase the burden of proof or give improper weight to direct or circumstantial evidence.

**Affirmed in Part; Vacated & Remanded in Part - 2020-KA-00335-SCT (Aug. 19, 2021)**

En Banc Opinion by Justice Maxwell - Dissent by Presiding Justice Kitchens

Hon. M. James Chaney Jr. (Warren County Circuit Court)

George T. Holmes & W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Mary Anna Brand](#)

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**MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 17, 2021**

***COURT OF APPEALS - CIVIL CASES***

## EPIC MED. LLC V. ADVANCED RESPIRATORY SOLS. INC.

### CIVIL - OTHER

**CIVIL PROCEDURE - SERVICE OF PROCESS - TIMELINESS** - Pursuant to Miss. R. Civ. P. 4(h), if a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion

**CIVIL PROCEDURE - SERVICE OF PROCESS - DELAY** - A trial court's finding of fact on the existence of good cause for the delay in service of process has been deemed a discretionary ruling and entitled to deferential review

### FACTS

In 2013, Epic Medical and Advanced Respiratory Solutions Inc. ("Advanced Respiratory") entered into a contract for medical supplies, and, through monthly payments, Advanced Respiratory leased ventilators from Epic Medical. Donald King and Dusty Kyle each signed a personal guaranty on behalf of Advanced Respiratory. In March 2017, Epic Medical filed a complaint against Advanced Respiratory, King, and Kyle, stating that Advanced Respiratory failed to make the monthly payments. On June 26, 2017, Epic Medical filed affidavits as proof of service of process on King and Kyle, stating that each was served on June 5, 2017, at their respective addresses in Corinth. On July 18, 2017, the circuit court clerk entered an entry of default against King. In September 2017, King filed a motion to set aside the clerk's entry of default and for leave to file a responsive pleading. In his motion, King attached an affidavit stating that he was never served with process and had not resided at the address identified in the proof-of-service affidavit since October 2014. King maintained that he was never served with process, and, on November 18, 2017, the circuit court entered an order striking the enrolled judgment as to King. In September 2018, the circuit court similarly entered an order setting aside the judgment and striking the enrolled judgment as to Kyle. The circuit court found that both King and Kyle were not served in accordance with Miss. R. Civ. P. 4. On March 7, 2019, Epic Medical filed a motion for extension of time for service of process for both King and Kyle claiming that it should be allowed to serve both King and Kyle outside of the 120-day requirement in Miss. R. Civ. P. 4 because it had shown good cause. In April 2020, the circuit court denied Epic Medical's motion. Epic Medical appealed.

### ISSUE

Whether the trial court abused its discretion by denying Epic Medical's motion for extension of time for service of process.

### HOLDING

Because Epic Medical was made aware of its defective service of process when King filed his motion to set aside the clerk's entry of default on September 26, 2017, because Epic Medical made no effort to effect service on either King or Kyle between September 26, 2017 and March 4, 2019, and because Epic Medical did not show any good cause for the delay, the circuit court did not abuse its discretion in denying Epic Medical's motion for an extension of time to serve process. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

### **Affirmed - 2020-CA-00493-COA (Aug. 17, 2021)**

Opinion by Judge Lawrence

Hon. Paul S. Funderburk (Alcorn County Circuit Court)

Hitenkumar Hasmukhlal Patel for Appellant - Mark Nolan Halbert, Brandi Elizabeth Soper, Cynthia Tranell Lee, & *Pro Se* for Appellees

Briefed by [Chatham M. DeProspo](#)

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## FRIDAY V. MISS. DEP'T OF HUM. SERVS.

### CIVIL - STATE BOARDS & AGENCIES

**FAMILY LAW - SUBJECT MATTER JURISDICTION - PATERNITY** - Miss. Code Ann. § 93-9-9(1) provides that the chancery courts have jurisdiction over a paternity action if the proceedings are initiated before the child turns twenty-one or is emancipated; the chancery courts maintain jurisdiction even if the child turns twenty-one or is emancipated before the final judgment

**FAMILY LAW - EMANCIPATION - BURDEN OF PROOF** - The burden of proving that a minor child is emancipated falls upon the person asserting emancipation

**CIVIL PROCEDURE - ATTORNEY'S FEES - DISCRETION** - The decision whether to award attorney's fees will only be modified if it is manifestly wrong

**FAMILY LAW - PATERNITY - ATTORNEY'S FEES** - Under Miss. Code Ann. § 93-9-45, when the court determines paternity belongs to the defendant, the defendant is responsible for the petitioner's legal fees

### FACTS

In August 2019, the Mississippi Department of Human Services ("MDHS") filed a complaint against Andrew Friday, alleging that he was the father of Sam Foster, who was twenty at the time. Friday filed motions to dismiss and for reimbursement of costs, fees, and expenses, including attorney's fees. Both motions were denied by the special master over the petition. Friday appealed dismissal of both motions to the trial court. The appeal was dismissed, and a hearing was set. Friday argued a paternity suit was time-barred because Foster turned twenty-one just before the hearing. The trial court disagreed and set a second hearing. During the second hearing, Friday renewed his motion to dismiss, which the trial court denied and entered judgment against Friday, declaring him Foster's father. Friday appealed.

### ISSUES

Whether the trial court (1) had subject matter jurisdiction at the time of judgment and (2) abused its discretion by failing to make a finding on Friday's request for attorney's fees.

### HOLDING

(1) Because Foster was twenty when the complaint was filed, and because Friday failed to meet the burden of proving Foster was emancipated at that time, the trial court maintained subject matter jurisdiction even after Foster turned twenty-one. (2) Because Friday was the defendant in the paternity action, and because the defendant is taxed with the petitioner's legal fees in such an action, the trial court did not abuse its discretion in denying Friday's motion for reimbursement. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

**Affirmed - 2020-SA-00669-COA (Aug. 17, 2021)**

Opinion by Chief Judge Barnes

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

Kenya Reese Martin for Appellant - Allyson Lewis Brock & Jennifer Ann Coleman for Appellee

Briefed by [Samuel Taylor Rayburn](#)

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## ROBEY V. KELLY

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

**CIVIL PROCEDURE - PERSONAL JURISDICTION - LONG-ARM STATUTE** - The first part of the personal jurisdiction inquiry is to determine whether Mississippi's long-arm statute confers personal jurisdiction over the nonresident defendant, and, if so, the second part of the inquiry is to determine whether personal jurisdiction comports with constitutional due process

**CIVIL PROCEDURE - PERSONAL JURISDICTION - LOCATION OF INJURY** - There is no requirement that the part of the tort which causes the injury be committed in Mississippi to determine the tort prong of the long-arm statute

**CIVIL PROCEDURE - PERSONAL JURISDICTION - CONSEQUENCES OF INJURY** - Consequences stemming from an actual tort injury do not confer personal jurisdiction at the site or sites where such consequences happen to occur; Mississippi does not permit damages to serve in the place of an injury for the personal jurisdiction calculation

### **FACTS**

In the early twentieth century, G. Denton, an ancestor of the Gatlin parties, divided portions of his Texas property into separate parcels. Denton sold some of his divided sections to R.P. Ingrum to develop a subdivision. After Ingrum developed the subdivision, he transferred the remaining unsold portions of the property back to Denton. Following the reconveyance to Denton, a gap in the title occurred. Tract 1629 was transferred from F.M. Hayes to H. Richard Smith, then to J.M. White. White was the grandfather of Dale White Robey and Donna White Merkel. Robey and Merkel's father inherited Tract 1629 and sold its surface rights to W.H. George, but he retained a seventy-five percent mineral interest. George sold the surface interest of the land to Joe R. Brown, but he held a twenty-five percent mineral interest. Robey and Merkel inherited the seventy-five percent mineral interest from their father. In 2010, Robey and Merkel entered into a lease agreement with the oil company Anadarko. In exchange for monthly royalty payments to Robey and Merkel, Anadarko received the exploration and production rights of the property. A few years after Robey and Merkel's lease agreement with Anadarko, oil was discovered on the property. Soon after the oil discovery, the Gatlins filed suit against Robey and Merkel in a Texas court to quiet title to the land. Anadarko became aware of this litigation over ownership of the property and adhered to its lease agreement with Robey and Merkel by placing their royalty payments in escrow at the First National Bank of Clarksdale until the resolution of the dispute. The Gatlins filed a request for non-suit under Tex. R. Civ. P. 162. The Texas court entered an order of voluntary non-suit, dismissing the case without prejudice. About a month later, Robey and Merkel filed suit against the Gatlins and their attorney in Coahoma County, Mississippi. Robey and Merkel alleged conversion, malicious prosecution, abuse of process, and tortious interference with contract. The Gatlins filed a motion to dismiss for lack of personal jurisdiction, claiming none of the Gatlins ever resided in Mississippi, and the Gatlins only connection to Mississippi was their attorney's service of process for the Texas lawsuit to Merkel who was a Mississippi resident. The trial court granted the motion to dismiss, finding that Robey and Merkel did not suffer an injury that established personal jurisdiction over the Gatlins. Robey and Merkel appealed.

### **ISSUE**

Whether the trial court erred in determining that Robey and Merkel did not suffer an injury that would establish personal jurisdiction over the Gatlins under the Mississippi long-arm statute.

### **HOLDING**

Because Robey and Merkel alleged an injury in Mississippi that resulted from a lawsuit the Gatlins filed in Texas, and because the Gatlins' only connection to Mississippi was mailing a summons to Merkel for the quiet title lawsuit in Texas, the trial court correctly determined that the Gatlins' actions to Robey and Merkel in Mississippi did not amount to a tort injury that would subject the Gatlins to personal jurisdiction under the Mississippi long-arm statute. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2020-CA-00139-COA (Aug. 17, 2021)**

Opinion by Judge McCarty

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

Charles M. Merkel Jr. for Appellants - J. Collins Wohner Jr. & William O. Luckett Jr. for Appellees

Briefed by [Chase Baker](#)

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

## JENKINS V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE MOTIONS** - The Uniform Post-Conviction Collateral Relief Act (“UPCCRA”) provides that any order denying or dismissing a Post-Conviction Relief (“PCR”) motion bars a second or successive motion, with certain exceptions to this procedural bar

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS** - The fundamental rights expressly found to be excepted from the UPCCRA procedural bar are prohibitions against double jeopardy, an illegal sentence, denial of due process at sentencing, ex-post-facto claims, the right not to stand trial or be convicted while incompetent, and claims of ineffective assistance of counsel in exceptional or extraordinary circumstances

**CRIMINAL PROCEDURE - INDICTMENT - ELEMENTS** - An indictment must contain: (1) the essential elements of the offense charged and track the language of the statute; (2) sufficient facts to fairly inform the defendant of the charge against which he must defend; and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense

#### FACTS

Loranz Jenkins was indicted and pled guilty to two counts of gratification of lust in violation of Miss. Code Ann. § 97-5-23(1) in May 2012. The circuit court sentenced Jenkins to fifteen years for each count, and he filed his first PCR motion in December 2017. Jenkins argued that, because the indictment did not include the word “feloniously” or the phrase “against the peace and dignity of the State of Mississippi,” it was fatally defective and denied him due process. Further, Jenkins argued that the sentence was illegal and made in plain error. The circuit court denied the first PCR motion, and Jenkins appealed. The Court of Appeals affirmed the circuit court’s decision. Jenkins filed a second PCR motion in June 2020, arguing again his indictment was defective because of the exclusion of the word “feloniously” and the phrase “with or without consent.” The circuit court dismissed Jenkins’s motion as successive. Jenkins appealed.

#### ISSUES

Whether the circuit court erred in (1) dismissing Jenkins’s second motion for PCR as successive and (2) rejecting Jenkins’s argument that essential elements of the charge were missing from the indictment, overcoming the procedural bar of successive motions.

#### HOLDING

(1) Because the rights found to be fundamental, and therefore excepted, from the procedural bar under the UPCCRA did not include a defective-indictment claim, Jenkins’s argument failed. (2) Because the indictment tracked the language of the statute and fully notified Jenkins of the nature and cause of the accusation, Jenkins’s argument that essential elements were omitted from the statute was without merit and dismissed. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2020-CP-00686-COA (Aug. 17, 2021)**

Opinion by Chief Judge Barnes

Hon. Dewey Key Arthur (Rankin County Circuit Court)

*Pro se* for Appellant - Brittney S. Eakins (Att’y Gen. Office) for Appellee

Briefed by [Elise Tucker](#)

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