

**MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 9, 2023*****SUPREME COURT - CIVIL CASES*****HERITAGE HUNTER KNOLL, LLC V. LAMAR CNTY.****CIVIL - STATE BOARDS & AGENCIES**

**ADMINISTRATIVE LAW - MUNICIPAL AUTHORITIES - APPEALS** - When an appeal of a decision rendered by municipal authorities is not perfected within the statutory time constraint of ten days pursuant to Miss. Code Ann. § 11-51-75, no jurisdiction is conferred upon the circuit court

**CIVIL PROCEDURE - CLAIM-SPLITTING - PROHIBITION** - Claim-splitting has long been prohibited and occurs when a plaintiff attempts to bring a duplicative action involving claims arising from a single body of operative facts against the same defendants; the test for claim-splitting is whether the first suit, assuming it were final, would preclude the second suit

**FACTS**

In July 2018, the Lamar County Board of Supervisors (“Board”) amended the waste ordinance to discontinue the county’s garbage collection service to multi-family residences, duplex developments, apartment complexes, and commercial properties. The amendment advised anyone who was affected by the ordinance to apply to the Board for a variance to the terms of the ordinance. Heritage Hunter Knoll, LLC (“Heritage”) owned three properties and received notice of the Board’s amendment to the waste ordinance by letter in late July 2018. Then in August 2018, Heritage requested a variance for its three properties. The Board approved Heritage’s variance request for one of its properties but denied the variance requests for its other two properties. Heritage did not appeal the Board’s amendment to the waste ordinance or the Board’s denial of its variance requests. In January 2019, the county implemented the amended waste ordinance. Heritage filed suit in federal court claiming that the Board’s amendment to the waste ordinance was unlawful and that it violated Heritage’s constitutional rights. A settlement was reached between the parties where Heritage agreed to dismiss its federal suit without prejudice and would resubmit its variance requests for the two remaining properties to the Board. In 2020, Heritage resubmitted its two variance requests, but the Board again denied the requests. Heritage filed a notice of appeal in the circuit court challenging the Board’s authority to amend the waste ordinance and the decision to deny the variances. Heritage also refiled its original lawsuit in federal court. The circuit court found that Heritage’s appeal was untimely and dismissed the appeal for a lack of jurisdiction. The circuit court also found that Heritage had engaged in claim-splitting and dismissed the action to allow the federal court to resolve the dispute. Heritage appealed.

**ISSUES**

Whether (1) the circuit court erred by dismissing the appeal for a lack of jurisdiction; (2) the Board’s decision to amend the waste ordinance was arbitrary and capricious, beyond the Board’s authority, and in violation of Heritage’s statutory and constitutional rights; (3) the circuit court erred by failing to find that the Board’s denial of Heritage’s 2020 variance requests was arbitrary and capricious; (4) the circuit court erred by allowing the Board to hold a special session to retroactively concoct reasons for its denial of Heritage’s 2020 variance requests; and (5) the circuit court erred by holding Heritage engaged in claim-splitting.

**HOLDING**

(1) Because Heritage failed to file any challenge to the Board’s amendment to the waste ordinance within ten days as prescribed by Miss. Code Ann. § 11-51-75, the circuit court did not err by dismissing the appeal for lack of jurisdiction on the waste ordinance issue; however, because Heritage timely appealed the Board’s denial of its 2020 variance requests,

the circuit court erred by failing to address the issue. (2) Because Heritage failed to timely appeal the Board's decision to amend the waste ordinance, the circuit court lacked jurisdiction to address the issue. (3) Because Heritage timely filed its notice of appeal regarding the Board's denial of its 2020 variance requests, the circuit court erred by failing to consider the issue. (4) Because Heritage timely filed its notice of appeal regarding the Board's denial of its 2020 variance requests, the circuit court erred by failing to consider the issue. (5) Because Heritage filed a notice of appeal from the Board's decision, and because Heritage further asserted that the Board's denial of its variance requests was arbitrary and capricious, Heritage was not precluded from asserting independent claims arising from the Board's decision while pursuing its notice of appeal and the circuit court erred by finding that Heritage engaged in claim-splitting and by dismissing the appeal on that basis. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Lamar County Circuit Court.

**Affirmed in Part; Reversed & Remanded in Part - 2021-CA-01325-SCT (Feb. 9, 2023)**

Opinion by Justice Griffis

Hon. Anthony Alan Mazingo (Lamar County Circuit Court)

Joseph G. Baladi, Corey D. Hinshaw, & Katie B. Lyons for Appellant - William R. Allen & Katelyn A. Riley for Appellee

Briefed by [Madison McLean](#)

[Click here to view the full opinion](#)

---

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

### **WALLACE V. STATE**

#### **EN BANC ORDER**

#### **ORDER**

Carl M. Wallace filed an Application for Leave to File Motion for Post-Conviction Collateral Relief, his second post-conviction application. The Supreme Court found Wallace's claims to be successive-writ barred and waived, his investigatory-stop and search-and-seizure claims to be barred by res judicata, and his claims insufficient to merit relief from the statutory bars. Further, the Supreme Court also determined the filing to be frivolous. Accordingly, the Supreme Court warned Wallace that future filings deemed frivolous could result in monetary sanctions or restrictions on his ability to file applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Wallace's Application for Leave to File Motion for Post-Conviction Collateral Relief.

#### **OBJECTION IN PART**

Presiding Justice King disagreed that the application and its arguments were frivolous and warranted a warning for sanctions or restrictions from further applications for post-conviction collateral relief in forma pauperis. Although he agreed that Wallace's application should have been dismissed, he argued the application should have been found to lack merit. Additionally, he claimed that imposing monetary sanctions on an indigent defendant and restricting access to the courts further punishes that defendant and ultimately violates his constitutional rights.

**Denied with Sanctions Warning - 2020-M-00979 (Feb. 3, 2023)**

Order by Justice Maxwell - Objection In Part by Presiding Justice King

Briefed by [Mason Scioneaux](#)

[Click here to view the full opinion](#)

**MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 7, 2023**  
**COURT OF APPEALS - CIVIL CASES**

**CLARK V. TIPPAAH CNTY. DEP'T OF CHILD PROT. SERVS.**

**CIVIL - CUSTODY**

**FAMILY LAW - YOUTH COURT - SUMMONS** - Miss. Code Ann. § 43-21-501(1) provides that when a petition has been filed and the date of hearing has been set by the youth court, the judge or his designee shall order the clerk of the youth court to issue a summons to the parent of the child at issue to appear personally at such hearing

**APPELLATE PROCEDURE - APPELLANT'S DUTY - WAIVER** - Appellate courts will decline to address an issue that has not been briefed on appeal

**FACTS**

Clark and W.R. had a son, L.A.R. Tippah County Department of Child Protection Services (“CPS”) received a call from law enforcement regarding a domestic violence disturbance. As a result, L.A.R. was placed in CPS custody. CPS developed a service plan for the reunification of Clark, W.R., and L.A.R. However, Clark’s relationship with CPS deteriorated quickly after Clark threatened a CPS supervisor, a social worker, and the youth court judge. Ultimately, Clark was unwilling to work with CPS and failed to complete her service plan. The youth court held an adjudication hearing and disposition hearing, which Clark did not attend. The youth court entered an order adjudicating L.A.R. to be neglected and stated that CPS was no longer required to work with Clark due to her non-compliance and untreated mental health issues. Clark continued to make threats of violence against CPS. After a hearing, the chancery court entered a permanent injunction against Clark to prevent her from contacting CPS. During the hearing, Clark cursed at the judge and stormed out, and as a result, the judge held her in contempt of court. Clark was ordered to serve thirty days in jail but resisted arrest. Despite the restraining order, Clark continued to make violent threats against CPS and the youth court judge. The youth court changed L.A.R.’s permanency plan from reunification to adoption, and CPS then filed a petition seeking to terminate Clark’s parental rights. The chancery court held a hearing on CPS’s petition to terminate Clark’s parental rights. Testimony at the trial revealed that Clark was incarcerated with no income, housing, or opportunities lined up upon her release. The CPS supervisor testified that Clark was mentally, morally, and otherwise unfit to parent. Additionally, the guardian ad litem’s report reflected that Clark was mentally, morally, and otherwise unfit to parent and that her parental rights should have been terminated. Clark testified, denying that she made any threats and stating that she had taken anger management classes online. The chancery court granted CPS’s petition to terminate Clark’s parental rights. Clark appealed.

**ISSUES**

Whether (1) the youth court adjudication hearing and disposition hearing were held without providing Clark proper notice in violation of her due process rights and (2) the chancery court erred in terminating Clark’s parental rights.

**HOLDING**

(1) Because Clark failed to challenge the validity of the disposition and adjudication orders at the termination-of-parental-rights-hearing or object to the orders being entered into evidence, Clark waived her right to challenge the validity of the adjudication order on appeal; notwithstanding the waiver, because Clark waived her right to challenge the validity of the adjudicatory order for lack of proper process or the chancery court’s reliance on that order after she appeared in the proceedings, Clark’s due process rights were not violated. (2) Because Clark failed to raise any issues or assignments of error attacking the judgment terminating her parental rights, the issue was waived. Therefore, the Court of Appeals affirmed the judgment of the Tippah County Chancery Court.

**Affirmed - 2021-CP-01209-COA (Feb. 7, 2023)**

Opinion by Presiding Judge Carlton

Hon. Robert Q. Whitwell (Tippah County Chancery Court)

Jennifer Louise Morgan (Pub. Def. Office) & *Pro se* for Appellant - Patricia Joyce Richardson (Att’y Gen. Office) for Appellee

Briefed by [Kaehla Outlaw](#)

[Click here to view the full opinion](#)

## HARRISON V. HOWARD

### CIVIL - DOMESTIC RELATIONS

**CIVIL PROCEDURE - PERSONAL JURISDICTION - WAIVER** - A party may waive the issue of improper service by appearing before the court at the designated time and failing to object

**CIVIL PROCEDURE - FINAL JUDGMENTS - VOID JUDGMENTS** - Under Miss. R. Civ. P. 60(b)(4), the court may relieve a party of his legal representative from a final judgment, order, or proceeding if the judgment is void

**CONTRACTS - FINAL JUDGMENTS - VOIDABLE JUDGMENTS** - A final judgment considered voidable are those set aside due to some external factor; voidable final judgments cannot be attacked collaterally

### FACTS

Michael Harrison and Heather Howard were married in 1998 and fraternal twins were born of the marriage in 2001. In 2009, Harrison filed a complaint for divorce on the ground of uncondoned adultery. In 2012, the chancery court entered the final judgment of divorce, granting Harrison sole physical custody of the twins, with Howard having visitation rights, and ordering Howard to pay child support. Harrison and Howard submitted a Property Settlement Agreement to amend the final judgment of divorce to add payments that Harrison owed to Howard, which the chancery court granted. In 2016, Howard filed a combined complaint for contempt and petition for modification of the Property Settlement Agreement against Harrison. In 2017, Harrison filed an answer to Howard's complaint and also counterclaimed against Howard for her failure to pay child support in accordance with the Property Settlement Agreement. Both Harrison and Howard were present for the hearing in which a memorandum of an agreement between both parties modifying the Property Settlement agreement was submitted to the chancery court. Harrison and Howard stated at the hearing that all the issues were resolved, and both signed the memorandum and dated their signatures, understanding the memorandum would be entered by the chancery court as an agreed order. Later, Harrison emailed Howard that he wanted to reconcile the expenses. Howard's counsel sent the children's expenses to Harrison. Harrison emailed Howard's counsel to make sure the math was correct, stating that he would be happy to sign the custody modification parts of the agreement separately until they could come to an agreement on the money. Harrison emailed Howard's counsel a week later that he came up with a different total than the proposed agreed order. Howard's counsel sent Harrison the proposed Agreed Order Modifying Child Custody and Support and informed him of a scheduled hearing to have him sign off on it. Harrison replied that he did not have problems with the agreement in substance, but he had questions regarding the math used to arrive at the total owed. In 2018, the chancery court entered an Agreed Order duplicating the memorandum with a provision that stated the final order would contain the financial expenses to be exchanged. Howard signed the Agreed Order, but Harrison did not sign it and neither had Howard's attorney nor any attorney on behalf of Harrison. Harrison did not object to or challenge the validity of the Agreed Order once the chancery court entered it, and Harrison began making payments in accordance with the Agreed Order. In 2019, Howard filed a petition for contempt against Harrison. Harrison responded to the petition and in the same pleading counterclaimed for citation of contempt against Howard. The chancery court held a hearing to determine whether the Agreed Order was valid based on the fact Harrison raised the issue for the first time in his responsive pleading to Howard's petition for contempt. Harrison argued he conveyed to Howard through email that he objected to a financial portion of the agreement and that he felt the chancery court ignored his objections when they entered the Agreed Order without his consent and that the agreement was not valid. The chancery court examined the email exchange and determined the parties were to look at finances and come up with an exact amount within ten days of the order. The chancery court determined Harrison disagreed with Howard over some expenses, and set aside the validity of the complaint because of the difference in amounts. In 2021, the chancery court ordered that Harrison be held in contempt for his failure to abide by the modified agreed order because he admitted that he stopped making payments in 2018. Harrison appealed.

### ISSUES

Whether (1) the chancery court had personal jurisdiction over Harrison; (2) the Agreed Order was void; and (3) the chancery court erred in retroactively terminating Howard’s child support obligations.

### **HOLDING**

(1) Because Harrison waived the issue of improper service of process by appearing before the chancery court at the designated time and manifesting an intent to defend the suit, because Harrison stated his issues had all been resolved, and because Harrison failed to object to a lack of notice during each hearing, the chancery court had personal jurisdiction over Harrison and he waived any issue with service of process. (2) Because Harrison failed to timely appeal the lack of signature or disagreement with the terms of the Agreed Order, he waived his right to appeal the voidable Agreed Order and was procedurally barred from raising the issue on appeal; notwithstanding the procedural bar, because Harrison submitted the terms that were codified into the Agreed Order, because Harrison’s appearance at the hearing exemplified his intent to be bound by the chancery court’s ruling, and because Harrison did not alert the chancery court to any concerns with the Agreed Order, the issue of the Agreed Order being void was moot as Harrison conceded there were no other issues. (3) Because Harrison failed to raise the issue that the chancery court erred by retroactively terminating Howard’s child support, the issue was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

**Affirmed - 2021-CA-00697-COA (Feb. 7, 2023)**

Opinion by Judge Westbrook

Hon. Robert George Clark III (Madison County Chancery Court)

Matthew Thompson & Chad Kenneth King for Appellant - Jeffrey Birl Rimes for Appellee

Briefed by [Ashley House](#)

[Click here to view the full opinion](#)

## **LOFTON V. LOFTON**

### **CIVIL - REAL PROPERTY**

**PROPERTY - TRANSFERS - UNIFORM FRAUDULENT TRANSFER ACT** - The UFTA provides that a transfer made by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made, if the debtor made the transfer with actual intent to hinder, delay or defraud any creditor or debtor

**PROPERTY - UNIFORM FRAUDULENT TRANSFER ACT - INTENT FACTORS** - The UFTA sets forth a non-exhaustive list of factors that a court may use to determine whether a transfer was made with actual intent to hinder, delay or defraud, including (a) the transfer was to an insider; (b) the debtor retained possession or control of the property transferred after the transfer; (c) the transfer was disclosed or concealed; (d) before the transfer was made, the debtor had been sued or threatened with suit; (e) the transfer was of substantially all the debtor’s assets; (f) the debtor absconded; (g) the debtor removed or concealed assets; (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred; (i) the debtor was insolvent or became insolvent shortly after the transfer was made; (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (m) a transfer made by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer

### **FACTS**

Renae and Dean Lofton were married and declared a homestead exemption on their marital home in Smithdale. In 2018, Renae filed for divorce against Dean, and on that same day, also filed a lis pendens notice in the Chancery Clerk’s office, listing numerous properties located and attaching copies of deeds relating to the affected properties. Then, in 2019, Renae initiated a fraudulent-transfer lawsuit against Dean and their son, Curtis, seeking to set aside a quitclaim deed conveying the homestead property from Dean to Curtis, as well as ten other quitclaim deeds from Dean to Curtis. Renae also sought to set aside a Transfer of Ownership document that transferred ownership of personal property from Dean to Curtis. In the complaint, Renae described payments and insurance proceeds that had been collected by Dean

or Curtis relating to the transfers between the two and sought reasonable attorney's fees and costs. Renae sought to consolidate the cases, but Dean objected. At trial on the fraudulent transfer case, Renae testified that she knew about the quitclaim deed conveying the marital property to Curtis but not about the other ten quitclaim deeds or the Transfer of Ownership document. She further stated she did not find out about them until after she had filed for divorce and that the documents were recorded after she filed the complaint for divorce. A friend of Renae's testified that Dean told him that he was going to give the property to their kids so that Renae could not have it. Curtis then testified that he did not pay or give anything in exchange for the property, that Dean still paid the insurance on the property, and that Dean lived on the property given to Curtis. Dean then moved to dismiss the lawsuit, which was denied. Dean testified that Renae knew about the documents and that he did not know Renae was going to file for divorce when he had the documents prepared. Dean confirmed that he was listed on the insurance for the property and that he paid the premiums. The notary public who notarized the documents confirmed that she notarized the documents, but admitted that she had no recollection of when they were signed, that the dates could have been blank when she signed them, and that the documents provided they were executed in a different county than where they were actually executed. The chancery court ultimately found that the deed transfers and transfer of personal property were intended to defraud Renae and that the evidence established a strong presumption of fraudulent intent on the part of both Dean and Curtis. As such, the chancery court set aside the ten quitclaim deeds and Transfer of Ownership document and declared that they were null and void. Curtis was then divested of his ownership interests in the real and personal property and Dean's ownership interests were held in trust until the divorce matter was settled. Finally, attorney's fees were awarded to Renae. Dean filed a motion for a new trial or amendment of judgment, which was denied. Dean appealed.

### **ISSUES**

Whether the chancery court erred in (1) determining that the Uniform Fraudulent Transfer Act ("UFTA") supported a finding of fraud and (2) granting Renae's request for attorney's fees without determining her ability to pay or whether the fees were reasonable and necessary.

### **HOLDING**

(1) Because the chancery court found that Dean transferred his ownership interests in real and personal property to Curtis, an insider, because the chancery court found that Dean retained possession and control of the property, because the chancery court found that the transactions were concealed by Dean and Curtis, because Renae filed a lawsuit for divorce from Dean approximately four days prior to the recording of the documents, because the chancery court found that the transfer of the assets was a large part of the marital estate and of Dean's personal estate, because the chancery court found that the transfer and conveyances of ownership of the assets was a blatant attempt to remove them from the consideration of the divorce court, because the chancery court found that Curtis did not give consideration to Dean or Renae for the assets he acquired, because the chancery court found that Dean's assets and net worth had greatly diminished as a result of the transfers, because the chancery court found there was not clear and convincing evidence to establish Renae's knowledge and consent to the transactions, and because the chancery court found there was a strong presumption of fraudulent intent on the part of Dean and Curtis that was not rebutted, there was substantial evidence to support the chancery court's determination that Dean and Curtis intended to defraud Renae of any interest she might have had in the properties. (2) Because consideration of Renae's ability to pay was not required in divorce actions where fraudulent conveyances were involved, and because the chancery court did consider the reasonableness and necessity of the attorney's fees, Dean's assignment of error regarding attorney's fees was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Chancery Court.

### **Affirmed - 2021-CA-00035-COA (Feb. 7, 2023)**

Opinion by Presiding Judge Carlton

Hon. Jaye A. Bradley (Lincoln County Chancery Court)

Robert S. Addison & Matthew Thompson for Appellant - W. Brady Kellems & Beth Windsor Burton for Appellees

Briefed by [Mason Borneman](#)

[Click here to view the full opinion](#)

## MACK V. STATE

### CIVIL - OTHER

**CIVIL PROCEDURE - EXPUNGEMENT - REQUIREMENTS** - Pursuant to Miss Code Ann. § 99-19-71(2)(a), a person convicted of a felony is generally allowed to petition the court for an order to expunge one conviction from all public records five years after the successful completion of all terms and conditions of the sentence for the conviction  
**CIVIL PROCEDURE - EXPUNGEMENT - OFFICIAL DUTIES** - Pursuant to Miss Code Ann. § 99-19-71(5), no public official is eligible for expunction for any conviction related to official duties

### FACTS

Charles Mack was employed as a police officer full-time by the Oakland Police Department and part-time by the Tutwiler Police Department in 1999. While in uniform, Mack went to the back of the Sumner jail and offered Kendrick Scott, an incarcerated sixteen-year-old, forty dollars for a sexual favor. In 2000, a grand jury indicted Mack for furnishing contraband to an inmate and attempted unnatural intercourse. Mack pled guilty to furnishing contraband and the attempted unnatural intercourse was remanded to the file. Mack was sentenced by the trial court to five years, but his sentence was suspended and Mack was placed on three years of supervised probation. Mack violated his probation by possessing a firearm and the trial court revoked one year of the suspended sentence and ordered Mack to serve one year in the custody of the Mississippi Department of Corrections. In 2004, Mack was convicted of impersonating a police officer. Seven years later, Mack applied for a certificate of rehabilitation that was subsequently denied by the trial court because he had not proven he had led a productive and law-abiding life. In 2020, Mack filed an amended petition to expunge his 2000 conviction for furnishing contraband to an inmate. The State argued Mack was not eligible for expungement because he was a police officer and acting within the color of duty at the time of the offense. Mack argued that he was not acting in his official duties at the time of the offense because sexual favors were not related to his official duties and because the crime occurred in a different jurisdiction from where he was employed. After hearing arguments by both parties, the trial court granted Mack's petition for expungement. After a motion to reconsider filed by the State, the trial court vacated its prior order of expungement. Mack appealed.

### ISSUES

Whether (1) Mack was entitled to expungement of his felony conviction for furnishing contraband; (2) the State's offer of proof at Mack's plea hearing lacked any allegation that Mack was acting as a public official at the time of the offense; and (3) the crime was committed in a different jurisdiction from Mack's place of employment.

### HOLDING

(1) Because Mack was employed as a police officer and dressed in uniform when he entered an area of the jail not accessible to the public, because Mack did not dispute that a police officer was a public official, and because Mack's opportunity to commit his crime was because of his position as a police officer, Mack's crime was related to his official duties and could not have been expunged under Miss. Code Ann. § 99-19-71(5). (2) Because whether Mack was a public official when he furnished contraband to Scott was not an essential element of the crime he pled guilty to, because whether Mack's crime related to his official duties did not become relevant until he sought to expunge the crime, the State appropriately presented the evidence and the assertion was without merit. (3) Because Mack was a police officer dressed in uniform at the time of the offense, because his employment afforded him access to a secure location in the jail, and because his status as a uniformed officer carried the same significance to Scott, Mack's jurisdictional argument was unpersuasive. Therefore, the Court of Appeals affirmed the judgment of the Tallahatchie County Circuit Court.

### **Affirmed - 2021-CA-01060-COA (Feb. 7, 2023)**

Opinion by Presiding Judge Carlton

Hon. Gerald W. Chatham Sr. (Tallahatchie County Circuit Court, Second Judicial Dist.)

Tommy Wayne Defer for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Micah McGaha](#)

[Click here to view the full opinion](#)

## WEST JASPER CONSOL. SCH. DIST. V. ROGERS

### CIVIL - CONTRACT

**ADMINISTRATIVE LAW - SCHOOL BOARD - SIXTEENTH SECTION LAND** - The Board of Trustees has a responsibility to ensure that adequate compensation is received for all usage of sixteenth section school lands; Miss. Code Ann. § 29-3-63(2) states that for farm-residential land, fair market rental will apply to those lands as determined by appraisal, comparative analysis, or comparison with the private sector

**ADMINISTRATIVE LAW - SIXTEENTH SECTION LAND - VALUATION** - A Board of Trustees may choose its own method of valuation of land as long as the evaluation results in the fair market rental value of the land

**CONTRACTS - PROVISIONS - ATTORNEY'S FEES** - Parties may by contract provide that in the event a dispute arises, the losing party must pay the prevailing party reasonable attorney's fees

### FACTS

Charles and Michael Rogers signed a forty-year sixteenth-section lease with West Jasper Consolidated School District ("West Jasper") in 1988. At the same time, the Rogerses' parents did the same with a connected piece of real property. In 1998, West Jasper increased the annual rental payment with no objection by the Rogerses. In 2004, the West Jasper Board of Trustees ("Board") passed a policy that the lease payments would be seven percent of the property's fair market value. The Rogerses again did not object to the rental adjustment. In 2006, Charles and Michael assigned their lease to their parents, who also assigned their lease to their children. In 2017, the Board appointed an appraiser who valued the properties and sent notices to the Rogerses that the lease payment would be seven percent of the appraised value. Again, the Rogerses did not object before the Board. In 2018, the Board voted to raise the rental payments again. In response, the Rogerses contacted an attorney and hired an appraiser. The Rogerses' appraiser appraised the fair market value of their respective parcels at far below the West Jasper appraisal figures. The Rogerses subsequently filed suit against West Jasper, seeking injunctive and declaratory relief. The chancery court granted the Rogerses' request for a preliminary injunction to prevent West Jasper from terminating the lease. West Jasper filed a motion in limine to limit evidence of the fair market rental value to appraisal and of comparison of the appraisal with the private sector, which was ultimately denied. During a hearing, an appraiser testified that the West Jasper appraisal rate was excessive and did not reflect a fair market rental value. Further, the sixteenth-section land manager testified that an appraisal of fair market rental value was not done. After a trial, the chancery court ruled that West Jasper violated the lease by failing to follow the rental adjustment laws. The chancery court further found that the lawsuit was an original action for breach of contract and not an administrative appeal. The chancery court denied West Jasper's posttrial motion to amend the judgment. West Jasper appealed.

### ISSUES

Whether (1) the chancery court erred in determining jurisdiction was proper; (2) the chancery court applied an erroneous standard of review; (3) the chancery court erred in finding the Rogerses did not materially breach the leases' terms; (4) the chancery court erred in overturning the Board's valuation of the properties; and (5) West Jasper was entitled to attorney's fees.

### HOLDING

(1) Because reasonable annual rent was being readjusted in accordance with the lease terms, because the action was not an appeal from an administrative agency but an original action for breach of contract, and because the meeting of the minds for the lease took place in 1988, the jurisdictional argument was without merit. (2) Because the chancery court's interpretation and application of the law was reviewed under a de novo standard, and because the questions of construction and interpretation of the lease contracts were correctly seen as questions of law, the chancery court employed the appropriate standard of review. (3) Because Charles admitted that the leases were not recorded, and because the assignments were a nullity, the argument that the Rogerses materially breached the leases' terms was without merit. (4) Because fair market rental value applied to sixteenth section lands, because there was no testimony that the re-appraisal used by the Board reflected the land's fair market rental value, and because the Board's appraiser testified that he made no recommendation as to the fair market rental value, the chancery court did not err in overturning the



Board's valuations. (5) Because West Jasper was not the prevailing party, West Jasper was not entitled to attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Jasper County Chancery Court.

**Affirmed - 2021-CA-00171-COA (Feb. 7, 2023)**

Opinion by Chief Judge Barnes

Hon. Robert M. Logan Jr. (Jasper County Chancery Court, Second Judicial Dist.)

Rance N. Ulmer, Terry L. Caves, & Risher Grantham Caves for Appellant - Marc E. Brand & T. Jackson Lyons for Appellees

Briefed by [Morgan Rushing](#)

[Click here to view the full opinion](#)

---

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

### **BRANDON V. STATE**

#### **CRIMINAL - FELONY**

**APPELLATE PROCEDURE - APPEALS - LINDSEY BRIEF** - *Lindsey* establishes the procedure to govern cases where appellate counsel represents an indigent criminal defendant and does not believe his or her client's case presents any arguable issues on appeal

**APPELLATE PROCEDURE - APPEALS - LINDSEY BRIEF** - Under *Lindsey*, appellate counsel must (1) file and serve a brief in compliance with Miss. R. App. P. 28; (2) certify in the brief that there are no arguable issues supporting the client's appeal and that the appellate counsel has reached this conclusion after scouring the record thoroughly; and (3) send a copy of the brief to the defendant, inform the defendant that counsel could find no arguable issues in the record, and advise the defendant of his or her right to file a pro se brief

#### **FACTS**

After a police pursuit, Leon Brandon was seen running away from a vehicle and an officer stated that Brandon dropped something on the ground. The officer handcuffed Brandon and found a handgun on the ground next to him. When the officer asked Brandon why he was driving "crazy," Brandon replied that he hadn't been seeing his probation officer and had a gun in the car. Brandon was subsequently indicted as a nonviolent habitual offender for possession of a firearm by a felon and felony fleeing. At trial, Brandon denied the gun belonged to him, denied he was in the vehicle involved in the pursuit, and denied that he confessed to the officer. The jury found Brandon guilty of possession of a firearm by a felon and he was sentenced to serve ten as a nonviolent habitual offender. Brandon's appellate counsel filed a *Lindsey* brief, certifying that there were no arguable issues for appeal. Brandon was given forty days to file a pro se brief, but he did not.

#### **ISSUE**

Whether there were any arguable issues for appeal.

#### **HOLDING**

Because Brandon's appellate counsel certified that he found no arguable issues for appeal, because Brandon did not file a pro se brief, because the State presented sufficient evidence to support Brandon's conviction of possession of a firearm by a felon, and because the Court of Appeals conducted an independent and thorough review of the record and found no appealable issues, there were no arguable issues for appeal. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Circuit Court.

**Affirmed - 2021-KA-01239-COA (Feb. 7, 2023)**

Opinion by Presiding Judge Wilson

Hon. Michael Paul Mills Jr. (Monroe County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Constance Hartline](#)

[Click here to view the full opinion](#)

## EDWARDS V. STATE

### CRIMINAL - MISDEMEANOR

**CRIMINAL LAW - TRAFFIC STOP - PROBABLE CAUSE** - When a police officer personally observes a driver commit what he reasonably believes is a traffic violation, he then has probable cause to stop the vehicle

**CRIMINAL LAW - FIELD SOBRIETY TEST - ADDITIONAL TESTING** - Miss. Code Ann. § 63-11-13 does not place the obligation on officers to inform the accused of the right to an independent and alternative test

#### FACTS

Officer Joshua Parrot initiated a traffic stop after witnessing Kelvin Edwards driving without headlights. After noticing Edwards's bloodshot eyes and slurred speech, Officer Parrot called a DUI officer to the scene. The DUI officer noticed an open bottle in the car and asked Edwards to step out of the vehicle. The officer administered field sobriety tests and determined that Edwards was under the influence. Edwards was then taken to the police station where his blood-alcohol content ("BAC") was .20. Edwards was subsequently cited for operating a motor vehicle with a BAC of .08 percent or more, for driving without headlights, and for having an open container of alcohol. Edwards was found guilty in municipal court and then appealed the DUI conviction to the county court. A de novo trial was held and Edwards was again found guilty. The county court found Officer Parrot was within his rights to make the stop because it was beyond a reasonable doubt that Edwards operated the vehicle without headlights. Edwards then appealed to the circuit court, which affirmed the county court's conviction. The circuit court held that because Edwards's operation of a vehicle at night without headlights on was a violation of the law, Officer Parrot had the necessary probable cause to initiate the traffic stop. Edwards appealed.

#### ISSUES

Whether (1) the State failed to prove the requisite probable cause for the traffic stop and (2) Edwards should have been advised of his right to alternative BAC testing.

#### HOLDING

(1) Because there were no inconsistencies in either officer's testimony or in the record, because Officer Parrot's observation of Edwards driving without headlights was sufficient to constitute probable cause, and because the trial court found Officer Parrot's testimony to be credible and sufficient to show that probable cause existed for the traffic stop, the trial court's finding was supported by sufficient evidence. (2) Because there was no affirmative duty to inform the accused of their right to have an independent BAC test, the Court of Appeals followed precedent and declined to place an obligation on officers to inform the accused of their right to an independent BAC test under Miss. Code Ann. § 63-11-13. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

**Affirmed - 2021-KM-01348-COA (Feb. 7, 2023)**

Opinion by Judge Lawrence

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

B. Brennan Horan for Appellant - Russell Barton Jordan for Appellee

Briefed by [Baylee Howard](#)

[Click here to view the full opinion](#)

## PACE V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - HOMICIDE - FIRST-DEGREE MURDER** - First-degree murder is defined as the killing of a human being without the authority of law by any means or in any manner when done with deliberate design to effect the death of the person killed, or of any human being

**EVIDENCE - RELEVANCY - EXCLUSION** - Under Miss. R. Evid. 403, the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

**CRIMINAL PROCEDURE - WITNESSES - AVAILABILITY** - The failure of either party to examine a witness equally accessible to both parties is not a proper subject for comment before a jury

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REFUSAL** - A court may refuse a jury instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

### FACTS

Truitt Pace placed a 911 phone call requesting an ambulance come to his home for his wife Marsha in 2018. Initially, Pace stated the ambulance was necessary because he punched Marsha in the face. Later, Pace revealed to the 911 operator that he shot Marsha in the head. Officer Kara Clark arrived on the scene before the ambulance and asked Pace what happened. Pace replied that Marsha “swung” and “pulled on [him].” Clark handcuffed Pace, left him in her patrol unit, and entered the home to investigate. Upon entering a bedroom, Clark found Marsha lying on a bed, covered in blood, and taking grueling and labored breaths with a wound in the back of her head. A handgun, ammunition magazine, an unspent bullet, and pools of blood were found on the floor. Marsha’s brain matter was splattered across the bed. After inspecting the bedroom Marsha was in, Clark found the biological child of Pace, K.P., in another bedroom. Then, an additional officer and two ambulances arrived. The additional officer believed there was evidence of an altercation in the bedroom where Marsha was lying. Marsha was stabilized and taken to the ER, but later died as a result of the gunshot wound to her head. Pace admitted to an investigator that he shot Marsha but stated that the shooting was accidental because he only meant to fire a warning shot. Based upon that statement, Pace was charged with second-degree murder. After further investigation, Pace was indicted for first-degree murder. Prior to trial, Pace’s attorney filed an unsuccessful pre-trial motion to suppress photographs taken in 2016 that depicted Marsha with injuries allegedly caused by Pace. At trial, multiple witnesses testified to turbulence in the Paces’ relationship, statements from Marsha describing physical violence from Pace, Pace’s dreams of shooting Marsha in the head, and observations of bruises that Pace had inflicted on Marsha. The State admitted the 2016 photographs through the testimony of Steve Harbour, Marsha’s ex-husband. Expert witness testimony indicated that Marsha was shot from a distance of at least two or three feet and had blunt facial injuries and black eyes that were not caused by the gunshot wound. After the State rested, Pace rested without testifying or calling witnesses. During closing arguments, the State objected to Pace’s statement highlighting the fact that K.P. was never called as a witness. The trial court sustained the State’s objection and struck the comment. The jury found Pace guilty of first-degree murder, and he was sentenced to life imprisonment. Pace unsuccessfully moved for judgment notwithstanding the verdict or, in the alternative, a new trial. Pace appealed.

### ISSUES

Whether (1) the evidence presented by the State regarding Pace’s intent to kill Marsha was insufficient to support Pace’s conviction; (2) the evidence presented by the State was against the weight of the evidence because the State failed to prove deliberate design; (3) the trial court erred in admitting photographs of Marsha allegedly taken in 2016; (4) the trial court erred in sustaining the State’s objection to Pace’s comment during closing argument and whether it was then improper for the State to comment on Pace’s failure to call a witness; (5) the trial court erred in denying Pace’s self-defense jury instruction; and (6) there was cumulative error.

### HOLDING

(1) Because the jury could have inferred that Pace was no longer defending himself at the time he pulled the trigger due to the distance between them, because of witness testimony that Pace had dreamt of shooting Marsha and that Pace had abused Marsha, and because of Pace’s statement that he punched Marsha in the face, a reasonable jury could have

inferred that Pace intentionally shot Marsha and the evidence was sufficient. (2) Because the evidence established that the Paces' had a tumultuous relationship and that Marsha had been contemplating divorce, because the jury could have rejected Pace's 911 statements that they had an argument and Marsha pulled a gun, because the jury could have accepted expert testimony indicating that Marsha was shot from behind at a distance, and because the jury could have given credibility to witness testimony that Pace did not have any visible injuries or that Marsha's other injuries were distinct from the gunshot wound, the trial court did not abuse its discretion in ruling that the jury verdict was not against the overwhelming weight of the evidence. (3) Because the prosecution did not establish a foundation for the photographs to have been admitted, their probative value was substantially outweighed by the dangers in Miss. R. Evid. 403; nonetheless, because the evidence against Pace was overwhelming, the error was harmless. (4) Because the presumption was that K.P. was equally available to both Pace and the State, and because nothing in the record indicated that Pace attempted to subpoena K.P. or otherwise gain access to her, Pace failed to show that K.P. was inaccessible and the trial court did not abuse its discretion in sustaining the State's objection; further, because Pace did not object to the State's comments during closing arguments, the issue was procedurally barred. (5) Because the trial court covered Pace's self-defense instruction elsewhere in the instructions, the trial court did not abuse its discretion and Pace's issue was without merit. (6) Because the evidence presented a singular, harmless error, the issue of cumulative error was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

**Affirmed - 2022-KA-00046-COA (Feb. 7, 2023)**

Opinion by Judge Westbrook

Hon. Robert Thomas Bailey (Lauderdale County Circuit Court)

Kathrine Collins Curren for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Holdon Guy](#)

[Click here to view the full opinion](#)

## WASHINGTON V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JUDICIAL CONDUCT - CLARIFICATIONS** - Although a trial court may not sum up or comment on testimony, a trial court is allowed to make clarifications to the jury as long as the trial judge is not appearing to be prejudicial and is not commenting on the weight and credibility of testimony

**CRIMINAL PROCEDURE - LOST EVIDENCE - TEST** - When a defendant claims his due process rights were violated because the State lost or destroyed evidence, a three-part test is employed: (1) the evidence in question must possess an exculpatory value that was apparent before the evidence was destroyed; (2) the evidence must be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means; and (3) the prosecution's destruction of the evidence must have been in bad faith

**EVIDENCE - ADMISSIONS - INVITED-ERROR DOCTRINE** - Under the invited-error doctrine, a defendant cannot complain on appeal of alleged errors invited or introduced by himself

### FACTS

In 2018, Aaron Hancock and Kayla Gilmore picked up Gino Washington Jr. to purchase marijuana from Washington. Washington got into the back of Hancock's car and instructed Hancock to drive to a house where he collected the marijuana. Washington then forced both occupants out of the vehicle and instructed them to hand over the car keys, wallets, and cell phones. Washington began to shoot at Hancock and Gilmore, and Hancock died as a result. Washington then drove away in Hancock's car, with their phone and wallets. Corporal Corry Jenkins responded to the scene and took Gilmore's statement. A few days later, Jenkins prepared a photo lineup from which Gilmore circled Washington's photo, identifying him as the assailant. Gilmore also wrote "this man killed Aaron Hancock, tried to kill me, and stole Aaron's car" on the lineup. Subsequently, Washington was arrested for capital murder and armed robbery. At the time of his arrest, Washington had in his possession a 9-millimeter handgun. At trial, investigators testified that the only spent casing found at the scene was that of a .40-caliber handgun which was not located near Hancock's body. Before

the recorded interview between Washington, Jenkins, and two FBI agents was entered into evidence, the parties agreed that any references to Washington's criminal history would be redacted. The trial court did, however, allow reference to the gun Washington was arrested with because of its relevance to the armed robbery charge. The recorded interview was entered into evidence and the defense read into the record all the times in the interview that the trial court ruled would be redacted. After reiterating its objection to the discussion of the gun, the defense made no further objections. After the jury heard the recorded interview, the defense laid a foundation for the 9-millimeter handgun and entered it into evidence. Additionally, a copy of the photo lineup Gilmore viewed during her police interview was entered into evidence. The defense objected, arguing that it should not have been entered because it was not the same as the one shown to Gilmore. The State acknowledged that the copy was not as clear as the original but maintained that the faces were still discernable. The State argued that because the original was lost, a copy was admissible. The trial court allowed the copy into evidence. Jenkins also testified that the video of Gilmore identifying Washington in the lineup could not be located. Later, the State requested that the trial court admonish the jury to inform them that the case was not a death penalty case after one of the FBI agents told Washington that death was a potential penalty for capital murder in the recorded interview. The defense objected, but the trial court ruled that it was important for the jury to understand that the case was not a death penalty case. The defense made a motion for a directed verdict, which was denied. Ultimately, the jury found Washington guilty of capital murder and armed robbery. He was sentenced to life in prison for the murder charge and thirty years for armed robbery. Subsequently, Washington filed a motion for judgment notwithstanding the verdict, or, in the alternative, a new trial. The motion was denied. Washington appealed.

### **ISSUES**

Whether (1) the trial court committed reversible error when it admonished the jury in order to clarify that Washington's case was not a death penalty case; (2) Washington's due process rights were violated when the State lost the original lineup and video of Gilmore picking Washington's picture from the lineup; (3) the trial court erred in admitting evidence of Washington's prior convictions and drug use to be played to the jury; and (4) trial court allowed irrelevant evidence when it admitted the gun into evidence.

### **HOLDING**

(1) Because the statement by the trial court did not display prejudice to Washington, and because the trial court did not comment on the weight or credibility of a witness's testimony, the clarification was not prohibited, and the trial court did not err. (2) Because Washington did not object to the trial court based on due process violations, the issue was procedurally barred; notwithstanding the procedural bar, because the trial court found that the copy of the lineup was acceptable and Washington had comparable evidence of the photo lineup, and because Washington failed to prove that the State acted in bad faith regarding the loss of the video, Washington's due process rights were not violated. (3) Because there was no indication that the inadmissible portions of the recorded interview were actually played for the jury, and because the issue was procedurally barred, there was no error. (4) Because Washington was the party that entered the gun into evidence, there was no error. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **Affirmed - 2021-KA-01041-COA (Feb. 7, 2023)**

Opinion by Judge Westbrook

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

George T. Holmes (Pub. Def. Office) for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Caitlyn Dills](#)

[Click here to view the full opinion](#)

**MISSISSIPPI CASES EDITOR**

**EMILY DUCK**

**ASSOCIATE CASES EDITORS**

**CHASE BAKER**

**KELSEY DAVIS**

**MORGAN ARRINGTON JONES**

**DALLAS MARTIN**

**REGAN MONK**

**J. EVAN THOMAS**

*Thank you for supporting the Mississippi Law Journal.*

*Questions or comments: Emily Duck, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)*

*All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007.*

*Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Emily Duck, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*