

**MISSISSIPPI SUPREME COURT DECISIONS – MAY 11, 2023*****SUPREME COURT - CIVIL CASES*****GUNASEKARA V. BARTON****CIVIL - ELECTION CONTEST**

**CIVIL - HOMESTEAD PROTECTION - EXEMPTION** - A valid homestead exemption on a property persists unless the resident takes affirmative action to cancel or alter it

**ELECTIONS - DOMICILE - BURDEN OF PROOF** - Party seeking to show that he has established a new domicile has the burden of producing evidence that the party has chosen and acquired a new domicile, and further, the burden of persuading the trier of fact that the evidence preponderates to that effect

**STATUTE - CONSTITUTIONALITY - NOTICE** - When the constitutionality of a statute is challenged, the Attorney General of the State of Mississippi must be notified within such time as to allow him to intervene and argue the question of constitutionality; courts may decline to address constitutional questions raised by a party when the Attorney General has not had the opportunity to intervene, pursuant to Miss. R. Civ. P. § 24(d)

**FACTS**

Amanda Gunasekara sought to run against Matthew Barton in the 2023 Republican primary election for the Public Service Commissioner, District 3. Previously, Gunasekara was a Mississippi resident from 1998 until 2010. After graduating from the University of Mississippi School of Law, she moved to Washington, D.C. In 2014, she and her husband purchased a home in D.C. and stayed there until 2021. She possessed a D.C. driver's license and paid D.C. taxes. During this time, they qualified for the homestead deduction that renewed itself yearly from 2018 until 2021. She only challenged the homestead deduction in 2023. She was also registered to vote in D.C. and voted there in the November 2018 election. In 2019, she resigned from her full-time position at the Environmental Protection Agency ("EPA") in D.C. The family rented out their D.C. home from June 2019 until March 2020. In March 2020, she was appointed Chief of Staff to the EPA, which required her to be in D.C. She and her husband stayed on the D.C. property during this time. However, in 2018, her parents agreed to purchase a house for Gunasekara and her husband and deeded it to them in 2019. In 2018, the couple started to renovate the property. In 2019, Gunasekara established and incorporated her nonprofit in Jackson and made several payments as home renovations continued. In June 2019, the renovations were completed. When Gunasekara accepted the EPA Chief of Staff position in D.C., her children continued to attend school in Mississippi, and she continued to pay taxes in Mississippi. After her job, she returned to Mississippi in January 2021 and sold the D.C. home. In November 2022, she announced her intention to run for Public Service Commissioner, District 3, and filed documents to qualify in January 2023. On February 9, 2023, Barton filed a contest of Gunasekara's qualifications with the Executive Committee of the Mississippi Republican Party, but it denied Barton's contest and certified her candidacy. Barton then petitioned for judicial review of the committee's decision in the Hinds County Circuit Court. The trial court entered an order that disqualified Gunasekara's candidacy because she did not meet the requirement of being a resident for five years before the November 2023 general election. Gunasekara appealed.

**ISSUES**

Whether (1) the trial court erred in applying the legal standard for citizenship by determining that Gunasekara did not meet the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner and (2) applying the citizenship requirement violates the Fourteenth Amendment of the United States Constitution.

**HOLDING**

(1) Because Gunasekara established residency and citizenship in D.C. prior to November 7, 2018, because she exercised her right to vote in D.C.'s 2018 election the day before she was required to have been a Mississippi citizen, because there was no significant change in her residency immediately after the November 2018 election to show that she was domiciled elsewhere, because she paid D.C. taxes, had a full time job in D.C., obtained a D.C. driver's license, registered her car tag in D.C., was registered to vote in D.C., and received a homestead deduction on her D.C. home from 2018-2021, and because the plethora of evidence supported that she was domiciled in D.C. within five years prior to the Public Service Commissioner election, the trial court did not err in determining that she did not meet the durational-citizenship requirement. (2) Because the attorney general did not have an opportunity to argue the question of constitutionality, because Gunasekara's arguments attacked the five-year residency requirement as a whole, and because resolution of this issue is of broad public importance, the Court declined to address whether the trial court's application of the citizenship requirement violated the Fourteenth Amendment of the United States Constitution. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2023-EC-00377-SCT (May 11, 2023)**

En Banc Opinion by Presiding Justice King

Hon. Lamar Pickard (Hinds County Circuit Court)

Spencer Mark Ritchie for Appellant - B. Sean Akins, Michael B. Wallace, & Charles Edward Cowan for Appellees

Briefed by [Mariah Rhodes](#)

Edited by [Kayla Tran](#) & [Mason Scioneaux](#)

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## JONES V. YATES

### CIVIL - ELECTION CONTEST

**ELECTIONS - QUALIFICATIONS - RESIDENCY REQUIREMENTS** - Under Miss. Const. art. IV, § 41, state representatives must have been a resident citizen of the state for four years, and within the district such person seeks to serve for two years, immediately preceding the election

**ELECTIONS - QUALIFICATIONS - TIME FOR DETERMINING QUALIFICATION** - Under Miss. Code Ann. § 23-15-299(7)(a), a determination as to a candidate's qualification must be made at the time of filing to seek office and not at the time of the election

**ELECTIONS - RESIDENCY REQUIREMENTS - PREVIOUS PERIOD OF RESIDENCY** - Where a candidate has been redistricted out of his/her old district and moves back into an area or location within the new configuration of his/her former district, the previous period of residency cannot be utilized for the purpose of satisfying residency requirements

### FACTS

Kia Monique Jones filed a letter of intent with the Mississippi Democratic Party to seek nomination for a seat in the Mississippi House of Representatives for District 64. Shanda M. Yates then filed a challenge with the Executive Committee of the Mississippi Democratic Party, arguing that Jones did not satisfy the two-year residency requirement set forth in Miss. Const. art. IV, § 41. The Executive Committee of the Democratic Party denied Yates's challenge and certified Jones as a candidate. Yates appealed the decision to Hinds County Circuit Court. While Jones had only lived at her current address in District 64 for three months at the time of her filing to seek the Democratic nomination, her previous address was also within District 64 until it was redistricted out in the latest changes to legislative district maps. The trial court allowed Jones to combine the duration of her previous period of residency with her current period of residency to meet the two-year residency requirement, but concluded that Jones was not a qualified elector in District 64, even though Jones would satisfy the two-year residency requirement by the time of the 2023 election. Jones appealed, and Yates cross-appealed.

### ISSUE

Whether the trial court erred by finding that Jones met the two-year residency requirement but was not a qualified elector.

### **HOLDING**

Because Jones had only lived at her current residence in District 64 for three months at the time of her filing to seek office, because Jones’s previous address was not within the newly redrawn District 64, and because the Mississippi Legislature’s redrawing of the district map made prior districting null and void, the trial court erred in allowing Jones to combine the duration of her previous period of residency with her current period of residency and in finding that Jones met the two-year residency requirement, but the trial court did not err in reaching its overall result of disqualifying Jones from the election as an unqualified elector. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

#### **Affirmed - 2023-EC-00395-SCT (May 11, 2023)**

En Banc Opinion by Justice Coleman

Hon. Forrest A. Johnson Jr. (Hinds County Circuit Court)

Danny E. Cupit for Appellant - Samuel L. Begley for Appellee

Briefed by [Conner Linkowski](#)

Edited by [Kara Edwards](#) & [Mason Scioneaux](#)

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## **MISS. BAPTIST HEALTH SYS., INC. V. JOHNSON**

### **CIVIL - PERSONAL INJURY**

**EVIDENCE - DISCOVERY - PRIVILEGED DOCUMENTS** - Under Miss. R. Civ. P. 26(b)(6)(A), when a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, electronically stored information, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim

**EVIDENCE - DISCOVERY - PRIVILEGED DOCUMENTS** - In order to determine whether privileges asserted apply or if they are subject to discovery, trial courts should conduct an in camera review of the documents prior to ruling on whether they should be produced

**EVIDENCE - PRIVILEGED DOCUMENTS - PRIVILEGE LOGS** - Providing detailed privilege logs of privileged materials is limited to cases in what a party asserts privileges in a general, sweeping manner and the amount of material the party claims to be privileged is excessively voluminous

### **FACTS**

In July 2017, Mary Johnson alleged that she slipped and fell and suffered bodily injuries while a patient at Mississippi Baptist Medical Center, Inc. (“MBMC”) in Jackson. In 2020, Johnson filed a complaint against Mississippi Baptist Health Systems, Inc. (“MBHS”) as the sole member of MBMC, claiming that MBHS’s negligence caused her injuries and she sought damages. In its answer to the complaint, MBHS asserted that the claims were barred by the applicable statute of limitations and moved for summary judgment. Johnson responded with a Miss. R. Civ. P. 56(f) motion for continuance and a motion to compel discovery. The trial court denied summary judgment, granted Johnson’s motion to compel discovery, and ordered MBHS to submit its discovery responses within thirty days. MBHS then sought permission to file an interlocutory appeal of the trial court’s order denying summary judgment and granting the motion to compel discovery which the trial court denied. In MBHS’s responses to the second set of interrogatories and requests for production of documents, MBHS identified an incident report which MBHS claimed was created in anticipation of litigation and constituted a quality assurance material. Therefore, MBHS claimed the incident report was privileged and not subject to discovery. Johnson then filed a motion to set the case for trial, to strike defenses, and to request sanctions and attorneys’ fees. In February 2022, the trial court heard this motion. At the hearing, MBHS revealed that it had discovered another incident report that had been created at the time the alleged incident occurred. MBHS claimed the

newly discovered incident report was also privileged as quality assurance material. After hearing arguments, the trial court found that both incident reports should be produced. The trial court found that it was only reasonable that Johnson should have been able to find what MBHS found and what MBHS reported in the incident reports. An order to this effect was entered by the trial court. The order also granted Johnson's motion to set the case for trial but denied all other requested relief. The trial court did not undertake an in camera review of the documents, despite a request in the alternative by Johnson and MBHS's agreement to produce the reports for an in camera review. MBHS petitioned for interlocutory appeal.

### **ISSUES**

Whether (1) MBHS waived its privilege claims and (2) the incident reports were protected from disclosure by the privileges asserted by MBHS.

### **HOLDING**

(1) Because MBHS identified the only two documents at issue and asserted specific privileges, MBHS complied with Miss. R. Civ. P. 26(b)(6)(A) and did not waive its privilege claims. (2) Because the trial court did not conduct an in camera review of the incident reports to determine whether MBHS's asserted privileges applied, the Supreme Court held that it would not conduct a de novo review of the incident reports under seal nor would it conduct an in camera inspection of the incident reports to determine whether work product doctrine or other privileges asserted by MBHS did or did not apply until the trial court had done so for itself. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County County Court.

#### **Reversed & Remanded - 2022-IA-00158-SCT (May 11, 2023)**

Opinion by Justice Chamberlin

Hon. Larita M. Cooper-Stokes (Hinds County County Court)

Eugene R. Naylor, Mallory M. Street, & Rebecca Hawkins for Appellant - Yancy B. Burns for Appellee

Briefed by [Tyler White](#)

Edited by [Kennedy Gerard](#) & [Ashley House](#)

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## ***SUPREME COURT - CRIMINAL CASES***

### **NORWOOD V. STATE**

#### **CRIMINAL - FELONY**

#### **CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF -**

Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different; allegations must be made with specificity and detail, and are assessed by the totality of the circumstances

#### **CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DEFENSE STRATEGY -**

Counsel's choice of whether or not to file certain motions, call witnesses, ask certain questions, or make certain objections fall within the ambit of trial strategy and cannot give rise to an ineffective assistance of counsel claim

### **FACTS**

In June 2019, Elmer Norwood was waiting outside his girlfriend Amy's door when Amy arrived home. Amy did not want to let Norwood inside, but Norwood removed the air conditioning unit and entered the residence. After entering, Norwood violently abused Amy. Amy testified she thought Norwood was going to kill her. Norwood told Amy to clean her face, so Amy went to the bathroom. Amy saw that her face was turning purple so she believed her jaw was broken. After Amy exited the bathroom, Norwood took Amy's phone to ensure she did not call the police. Norwood and Amy

subsequently went to a nearby convenience store to get food. Amy testified that she wanted to ask the convenience store workers for help, but could not do so because Norwood accompanied her. Amy and Norwood returned to the apartment, and Amy fell asleep on the couch. When Amy awoke, she noticed Norwood outside the apartment and her phone laid beside her. Amy contacted her family and told them about the incident. The family arrived at the apartment and found Norwood still there. Amy's family took her to the hospital, and a CT scan revealed at least ten fractures to Amy's face. The Starkville hospital transported Amy to the University of Mississippi Medical Center in Jackson for surgery. Amy had not fully recovered from the physical injuries incurred during the attack. The State indicted Norwood for aggravated domestic assault. Before trial, the State moved in limine to exclude evidence of Amy's prior drug use. Norwood's counsel opposed the motion, and the trial court agreed in part that it was relevant since Amy had tested positive for methamphetamine at the hospital the day of the incident. The trial court permitted Norwood to ask whether Amy had been using drugs the day of the attack because it could have affected her recollection of what happened, but defense counsel elected to not question Amy about her prior drug use. During voir dire, a juror ultimately selected as the twelfth member of the jury stated that they would give less credibility to the testimony of a victim who used drugs the day before she was assaulted. The juror further clarified they would still be capable of making a determination on the guilt of the accused based on the evidence and law presented. Amy's son testified that there was blood all over Amy's bed and that he noticed Amy's face was severely swollen. Amy's mother testified that Norwood smirked in the doorway when Amy alleged Norwood had beaten her. The State submitted evidence concerning Norwood's GPS monitoring device on his ankle. The GPS report reflected that Norwood had been at Amy's residence and the GPS report matched Amy's testimony about Norwood's location and movements. The State further submitted recorded phone conversations between Norwood and Amy while Norwood was in jail after his arrest for the assault. During the phone calls, Norwood asked Amy to not appear for trial so the case would be dismissed. Norwood also apologized for the incident. Amy further testified that an unknown man arrived at her apartment and urged her not to appear for trial because Norwood potentially faced a twenty-year sentence. After trial, the jury found Norwood guilty of aggravated domestic assault. Norwood appealed.

### **ISSUE**

Whether Norwood's trial counsel was constitutionally ineffective for not cross-examining Amy about her purported drug use.

### **HOLDING**

Because Norwood's trial counsel's decision to not cross-examine Amy concerning her purported prior drug use fell within the ambit of trial strategy and did not give rise to an ineffective assistance of counsel claim, and because even if Norwood's trial counsel's decision to not ask Amy about her purported prior drug use was deficient of Norwood's trial counsel, Norwood did not meet his burden to prove that his trial counsel was ineffective for not cross-examining Amy about her purported drug use under *Strickland's* two-prong test since Norwood failed to demonstrate that the result of the proceedings would have been different but for trial counsel's error, and Norwood's ineffective assistance of counsel claim was without merit. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

### **Affirmed - 2021-KA-00903-SCT (May 11, 2023)**

Opinion by Justice Beam

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

George T. Holmes & Zakia B. Chamberlain (Pub. Def. Office) for Appellant - Alexandra Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Anna Palmer](#)

Edited by [Thomas Simpson](#) & [Ashley House](#)

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**MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 9, 2023**  
**COURT OF APPEALS - CIVIL CASES**

**ADAMS V. CITY OF JACKSON**

**CIVIL - STATE BOARDS & AGENCIES**

**ADMINISTRATIVE ACTIONS - FINDINGS, CONCLUSIONS, AND DECISIONS - WRITTEN FINDINGS REQUIREMENT** - Miss. Code Ann. § 21-31-23 provides that the findings of the Civil Service Commission regarding a suspension shall be certified in writing to the appointing power and shall be forthwith enforced by such officer

**ADMINISTRATIVE ACTIONS - REVIEW BY ADMINISTRATIVE AGENCIES - COMMISSION INVESTIGATIONS** - Miss. Code Ann. § 21-31-23 defines the role and task of the Civil Service Commission's investigations, providing that the Commission's review of a city's decision to remove, suspend, demote, or discharge a civil-service employee is limited to determining whether the disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause

**ADMINISTRATIVE ACTIONS - FINDINGS, CONCLUSIONS, AND DECISIONS - SUBSTANTIAL EVIDENCE REQUIREMENT** - When a commission's decision is supported by substantial evidence, the commission's actions are not arbitrary or capricious, but if the commission entirely fails to consider an important aspect of the problem, or offers an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, the commission's action is arbitrary or capricious

**FACTS**

Rakasha Adams, a Jackson Police Department officer, attempted to conduct a traffic stop, when a red Pontiac owned by Crystalline Barnes caused a Nissan to run off of the road. After assuring the safety of the passengers in the Nissan, Adams turned on her blue lights and followed the Pontiac, but the car did not immediately pull over. While following, the Pontiac ran head-on into another patrol vehicle, driven by Corporal Albert Taylor. When the driver attempted to strike the officers upon their exit from the patrol vehicles following the crash, both officers fired their weapons at the car which killed the driver. The Jackson Police Department suspended both officers for ninety days without pay for engaging in a "pursuit" while Jackson had a "no-pursuit policy." Despite the suspension of the officers, the City of Jackson was unable to articulate why Adams's actions were not considered as only a traffic stop nor at what point the traffic stop escalated to the point of being considered a pursuit. Adams appealed her suspension to the Civil Service Commission ("Commission"). During the Commission hearing, Adams, Taylor, Chief Mark Dunston, and Sergeant Geraldine Green all provided testimony. Adams testified that she followed the Pontiac at a speed of fifteen to twenty miles per hour and she thought that someone in the car was intoxicated or sick. Adams also testified that she did not mean to apprehend the person and could have given the driver a talk or written a ticket. Adams said that the Pontiac's behavior was not evasive and that she only followed the vehicle for four minutes. Finally, Adams cited two other pursuit violations that occurred to show that she suspension was excessive compared to those. Taylor testified that he did not believe that Adams's actions constituted a pursuit because they were traveling at low speeds, only blue lights were used and not sirens, and the behavior of the driver was careless and not evasive. Dunston, who had been in law enforcement for thirty-five years and worked as a law enforcement instructor and director, also testified that the actions did not constitute a pursuit and only would have if the Pontiac head fled after hitting the patrol car. The city's witness, Green, was the supervising officer the day of the incident and testified that after running the tag of the Pontiac for Adams, she did not know that either officer was still following the Pontiac. She testified that Adams should have terminated the stop immediately after flashing her blue lights and the Pontiac refused to stop, since officers can only pursue those suspected of committing a crime of violence. The Commission upheld the suspension, which the circuit court affirmed. Adams appealed and alleged that the Commission's decision was made without substantial evidence and was arbitrary and capricious.

**ISSUES**

Whether (1) the Commission’s amended order satisfied the statutory requirement imposed by § 21-31-23 to certify its findings in writing and (2) substantial evidence supported the Commission’s finding that Adams engaged in a pursuit.

### **HOLDING**

(1) Because the Commission amended its order and included specific findings regarding Adams’s violation, because the order included pertinent language of the policy, and because the order identified the evidence it considered as the basis for affirming Adams’s suspension, the Commission’s amended order satisfied the statutory requirement imposed by § 21-31-23. (2) Because the City of Jackson could not articulate an explanation as to why Adams’s actions were not merely a traffic stop or at what moment the traffic stop escalated to a pursuit, because conditions of the encounter such as vehicle speed, duration of event, and lack of evasive behavior did not indicate a pursuit took place, and because testimony from Adams, the assisting officer, and an expert provided that the encounter did not rise to the level of being classified as a pursuit, substantial evidence did not support the Commission’s finding that Adams engaged in a pursuit, and the trial court erred in finding a violation of the no-pursuit policy that was used to suspend Adams. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

### **Reversed & Remanded - 2021-CC-00454-COA (May 9, 2023)**

Opinion by Judge Lawrence

Hon. Isadore W. Patrick Jr. (Hinds County Circuit Court, First Judicial Dist.)

Michael Verdier Cory Jr. for Appellant - Carrie Johnson for Appellee

Briefed by [Mason Borneman](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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## **DAVIS V. DAVIS**

### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - DIVORCE - PROPERTY DIVISION** - When employing the procedures for property division of marital property, chancellors must (1) classify the parties’ assets and liabilities as marital or separate pursuant to *Hemsley*, (2) determine the value of the property, and then (3) divide the marital property equitably, employing the *Ferguson* factors as guidelines in light of each parties’ separate property

**FAMILY LAW - PROPERTY DIVISION - CLASSIFICATION ERRORS** - An error in classification requires the case be reversed and remanded for division based on proper classification; failure to provide adequate proof upon which a chancellor could accurately classify assets and liabilities constitutes such error requiring reversal and remand

**FAMILY LAW - PROPERTY DIVISION - RETIREMENT ACCOUNT CLASSIFICATION** - Retirement accounts are marital to the extent value of the plans were accumulated during the marriage

**FAMILY LAW - PROPERTY DIVISION - VALUATION** - A chancery court’s findings on valuation may be accomplished by adopting the values cited in the parties’ Rule 8.05 financial statements, in the testimony, or in other evidence; when the record lacks any evidence of valuation of property, the chancery court has no basis to move forward with any equitable distribution of it

**FAMILY LAW - PROPERTY DIVISION - VALUATION ERRORS** - Appellate courts cannot proceed with appellate review of property division awards if there exists an error in valuation of the marital property

**FAMILY LAW - DIVORCE - ALIMONY** - Alimony is considered only after the marital property has been equitably divided and the chancellor determines one spouse has suffered a deficit; but when a case is remanded for further consideration of the division of the marital assets, appellate courts must also remand on the issue of alimony as the proper distribution of the parties’ assets and debts may affect the amount of alimony ultimately awarded

### **FACTS**

Eugene and Tonika Davis married in September 1994 and had three children. During the marriage, Eugene had an extramarital affair and a child with another woman. The couple separated and reconciled after approximately six to eight months. After reconciliation, Tonika discovered Eugene had engaged in another affair with a different woman. Eugene

left the marital home in May 2020 and filed for divorce in June 2020. In October 2021, the chancery court granted the divorce on the ground of adultery. The chancery court divided the couple's assets into marital and separate property. The chancery court classified the following assets as marital property: (1) the marital home and lot, (2) the several automobiles, (3) the trailer, (4) the four-wheeler, (5) the storage shed with tools and equipment, (6) the furniture and household contents, and (7) the parties' separate public retirement accounts. Eugene testified he served in the military for four years, including two years before the marriage, and transferred some money earned during military service to his retirement account. There were further inconsistencies on Eugene's and Tonika's Rule 8.05 financial statements. Moreover, there were assets listed on Eugene's Rule 8.05 financial statement not addressed by the parties or the court in its final judgment. Further testimony elicited from Eugene and Tonika failed to clear up any discrepancies on the Rule 8.05 financial statements. These discrepancies included additional credit card accounts, personal loans, and mortgages. The court granted Tonika ownership of the family's marital home and 60% of the equity interest in the home, the storage shed without the contents inside, furniture appliances, other household contents, all personal property in her possession, and four vehicles. The court stated that Eugene was entitled to a 40% equity interest in the marital home, all personal property in his possession, the tools and equipment in the storage shed, two vehicles, the four-wheeler, and a TV located in the marital home. The court did not assign value to any of the property awarded to Tonika and Eugene. The court held that Tonika had no vested right in Eugene's retirement account, and likewise Eugene had no vested right to Tonika's retirement account. The court awarded Tonika alimony in the amount of \$1,500 monthly. The court noted Tonika testified without contradiction that Eugene provided her with \$1,500 monthly in spousal support since May 2020 and that Eugene had more favorable total assets and liabilities per the Rule 8.05 financial statements compared to Tonika. Eugene did not challenge the chancery court's decision to grant a divorce in favor of Tonika on the ground of adultery. However, Eugene appealed the chancery court's ruling arguing that the court erred in determining the classification of marital property, in dividing the parties' marital property and debts, and by awarding Tonika permanent periodic alimony.

## **ISSUES**

Whether the trial court erred in (1) the classification of the retirement accounts or liabilities described in court testimony and Rule 8.05 financial statements; (2) its valuation of certain property; (3) determining the equitable distribution of the marital property; and (4) awarding Tonika alimony.

## **HOLDING**

(1) Because the chancery court was charged with classifying Eugene's and Tonika's assets and liabilities as marital or separate property, because any errors in classification required the case be reversed and remanded, because Eugene testified to the fact that he acquired value to his public retirement account during military service prior to the marriage, and because the parties failed to provide adequate proof upon which the chancery court could classify their retirement accounts or the liabilities described in the parties' testimony and financial statements, the court erred in classifying the parties' assets and liabilities. (2) Because the chancery court was required to properly value the assets of both parties based on Rule 8.05 financial statements, testimony, or other evidence, because there were inconsistencies on Eugene's and Tonika's Rule 8.05 financial statements on valuation of assets, and because the chancery court failed to resolve any discrepancies in valuation testified to and presented in the parties' financial statements, the chancery court failed to settle the valuation discrepancies between the parties and erred in its valuation of the parties' assets. (3) Because the court did not provide any values for the property awarded to each party, the Court of Appeals was unable to determine whether the chancery court abused its discretion in determining the equitable distribution of the marital property. (4) Because Eugene paid Tonika \$1,500 monthly in spousal support, and because the valuation of the parties' assets was questioned, the court must on remand afford the parties the opportunity to provide accurate Rule 8.05 financial statements and evidence establishing an accurate alimony payment. Therefore, the Court of Appeals affirmed in part as to the grant of the divorce, and reversed and remanded in part the judgment of the Leflore County Chancery Court as to the equitable distribution of marital property.

**Affirmed in Part; Reversed & Remanded in Part - 2021-CA-01246-COA (May 9, 2023)**

Opinion by Judge McDonald

Hon. Willie James Perkins Sr. (Leflore County Chancery Court)

A. E. (Rusty) Harlow Jr., Kathi Chrestman Wilson, & Morgan Kay Jackson for Appellant - Valerie Lanette Dorsey for Appellee

Briefed by [Madison McLean](#)



Edited by [Thomas Simpson](#) & [Mason Scioneaux](#)

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## GREGORY CONSTR. SERVS., INC. V. MISS. DEP'T OF FIN. & ADMIN.

### CIVIL - STATE BOARDS & AGENCIES

**ADMINISTRATIVE LAW - STATE AGENCIES - DUE PROCESS** - A two-step analysis is required when analyzing procedural due process claims: (1) determine whether the plaintiff has a property interest entitled to procedural due process protection; and (2) if yes, determine what process is due

**ADMINISTRATIVE LAW - STATE AGENCIES - DECISIONS** - An agency action is arbitrary or capricious if it entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise

#### **FACTS**

The Bureau of Building, Grounds and Real Property Management (“BOB”), an arm of the Mississippi Department of Finance and Administration (“DFA”), and the Mississippi State Veterans Affairs Board (“MSVAB”) solicited bids for the construction of the North Mississippi Veterans Memorial Cemetery. The BOB held a pre-bid conference to explain to the bidders the instructions for the bids, and separate from the standard bid requirements, the bidders were expressly told that the Federal Veterans Affairs (“Federal VA”) required a special Debarment Form for the bid to be considered complete. The BOB received five bids for the cemetery project. While Gregory Construction Services, Inc.’s (“Gregory”) bid was the lowest, it did not include the Debarment Form as required by the Federal VA. Only one company, Malouf Construction, LLC (“Malouf”), included the form, and Malouf was selected as the best, responsive bidder. Gregory alleges that there was no indication by those present at the bid opening that Gregory’s bid was non-responsive, while employees of the DFA and MSVAB were aware the debarment form was not included. Gregory sent a written protest to the BOB and included the signed Debarment Form. The BOB rejected Gregory’s protest as untimely because it fell outside of the twenty-four-hour protest period. The BOB found the protest was without merit since the Debarment Form was a required component of the bid, which Gregory argued was arbitrary and capricious. Gregory requested a hearing before the Mississippi Public Procurement Review Board (“PPRB”). The PPRB found that the BOB’s decision to reject Gregory’s bid was not arbitrary or capricious. Gregory appealed to the Hinds County Circuit Court, which affirmed the PPRB’s decision. Gregory appealed.

#### **ISSUES**

Whether the circuit court erred (1) by finding no violation of Gregory’s right to due process and (2) by finding that the BOB’s decision was not arbitrary and capricious.

#### **HOLDING**

(1) Because Gregory was not awarded the contract and no property interest vested, the circuit court did not err by finding no violation of Gregory’s right to due process. (2) Because the BOB had substantial evidence and reasoning to support its decision to award the contract to Malouf over Gregory, the circuit court did not err by finding that the BOB’s decision was not arbitrary and capricious. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2021-SA-00765-COA (May 9, 2023)**

Opinion by Judge Greenlee

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

Graham Patrick Carner for Appellant - Wilson Douglas Minor for Appellees

Briefed by [Hannah Elliott](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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## HOLLOWAY V. NAT'L FIRE & MARINE INS. CO.

### CIVIL - INSURANCE

**CIVIL PROCEDURE - MOTIONS - SUMMARY JUDGMENT** - Under Miss. R. Civ. P. 56, a movant is entitled to summary judgment if the evidence shows that there is no genuine issue of material fact, which entitles the movant to a judgment as a matter of law; the non-movant response must set forth specific facts showing a genuine issue for trial by affidavits or as otherwise provided in Rule 56

**INSURANCE - DENIAL OF COVERAGE - BAD FAITH** - In order to pursue a claim for bad faith denial of coverage in Mississippi, the insured bears the burden to prove that its issuer lacked an arguable or legitimate basis to deny such coverage and that the insurer committed a willful or malicious wrong, or acted with gross and reckless disregard for the insured's rights

**TORTS - INTENTIONAL TORTS - INTENTIONAL INFLICTION OF EMOTION DISTRESS** - In order to pursue a claim for intentional infliction of emotional distress in Mississippi, a defendant's conduct must be wanton and willful and such that it would evoke outrage or revulsion; the plaintiff has the burden to show that the defendant's conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community

**CIVIL PROCEDURE - MOTIONS - WAIVER** - Under Miss. R. Civ. P. 56(f), the movant has the responsibility to obtain a ruling from the court on motions filed, and failure to do so constitutes a waiver of the same

### FACTS

In May 2016, Jerome Holloway and his then-girlfriend, Jacqueline Ward, ventured on a personal trip from Mobile, Alabama to Jackson, Mississippi, in a pickup truck owned by his employer, Port City Connection LLC ("Port City"). Holloway stated he received permission to use the vehicle from Sidney Thomas, the owner of Port City. On the trip, Holloway collided with an eighteen-wheeler owned and operated by Retif Oil & Fuel LLC ("Retif Oil"). Ward was injured in the wreck. In 2019, Ward filed a personal injury suit for negligence in the Jackson County Circuit Court against Holloway. Holloway argued the claims were covered under an insurance policy National Fire and Marine Insurance Company ("National Fire") issued to Cassius Williams, for whom Port City was an independent contractor. The policy covered Port City and its employees while the pickup truck was being used exclusively for Williams's business and also covered those using the truck with Williams's permission. Ward later amended her complaint to include Port City, Retif Oil, Williams, and National Fire as defendants. Ward sought a declaratory judgment that the policy provided liability coverage for Holloway in connection with Ward's claims. Subsequently, National Fire sent Holloway a letter stating it agreed to defend Holloway under a full and complete reservation of rights under the policy. National Fire disputed Holloway's coverage, arguing Holloway did not have Williams's permission to drive the pickup truck on his personal trip and was therefore not covered under the policy. National Fire sought a declaratory judgment against Holloway that the policy did not provide coverage for Ward's claims against him. Holloway filed an answer to National Fire's dispute of his coverage, maintaining he was insured under the policy because he had Thomas's permission to use the truck and asserted claims for bad faith and intentional infliction of emotional distress against National Fire. Despite the coverage dispute, National Fire settled Ward's claims, securing a full and complete release of all claims against Holloway, Port City and Williams. National Fire then filed a motion for summary judgment against Holloway's bad faith and IIED claims. Holloway subsequently filed a motion to take the deposition of two additional adjusters involved in his claim but did not request a continuance and the record reflected no transcript of the hearing on Holloway's motion.. The trial court granted National Fire's motion for summary judgment. Holloway appealed.

### ISSUES

Whether the trial court erred by (1) granting National Fire's motion for summary judgment on Holloway's bad faith and intentional infliction of emotional distress claims and (2) not granting Holloway leave to take additional depositions.

### HOLDING

(1) Because the policy’s plain language indicated that permission for purposes of coverage under the Policy had to come from Williams, and not Thomas or Port City, because National Fire never actually denied coverage, and because National Fire had at least an arguable or legitimate basis under the policy for questioning coverage and defending Holloway under a reservation of rights, the trial court properly granted National Fire’s motion for summary judgment. (2) Because Holloway did not specifically request a continuance under Miss. R. Civ. P. 56(f), because the record did not include a transcript of the hearing or any on-the-record ruling on Holloway’s motion, and because additional discovery would not have impacted National Fire’s right to summary judgment, Holloway was not entitled to additional discovery. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

**Affirmed - 2021-CA-01066-COA (May 9, 2023)**

Opinion by Presiding Judge Wilson

Hon. Dale Harkey (Jackson County Circuit Court)

Marshall Jackson Goff & Rogen K. Chhabra for Appellant - Benjamin Lyle Robinson & Amanda Leigh Orr for Appellees

Briefed by [Nivory Gordon](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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

### **HUGHES V. STATE**

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

**CRIMINAL LAW - PROBATION - REVOCATION** - When a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence

**POST-CONVICTION RELIEF - APPEALS - PROCEDURAL BAR** - The Uniform Post-Conviction Collateral Relief Act bars post-conviction relief motions from review by appellant courts if the movant has filed a previous post-conviction relief motion

**POST-CONVICTION RELIEF - APPEALS - PROCEDURAL BAR EXCEPTION** - Miss. Code Ann. § 99-39-23(6) provides an exception to the successive-writ bar for those cases in which the petitioner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked; the exception only allows the filing of a successive writ if the argument presented within the writ falls under one of the exceptions and has not been previously argued and a decision rendered on the merits by the trial court

**POST-CONVICTION RELIEF - PETITION - FINAL JUDGMENT** - An issue that has been addressed in a final judgment with specific findings of facts and conclusions of law may not be raised again by a post-conviction relief movant

#### **FACTS**

Adrian Hughes was convicted twice of burglary and larceny, once in 2011 and once in 2012. For each conviction, Hughes was sentenced to twenty years. Each conviction imposed a suspended sentence and five years of post-release supervision (“PRS”). The sentences were to run concurrently. He was released on PRS in 2017. In 2020, the State filed a motion to revoke Hughes’s suspended sentences based on his failure to report to the Mississippi Department of Corrections (“MDOC”) for over a year. In addition to his failure to report, the circuit court found that Hughes had failed to pay supervision fees and court-ordered assessments and that he failed to remain in a specified area following a home visit where an MDOC agent discovered he was not living at the address he provided for a significant amount of time. Based on its findings, the circuit court revoked Hughes’s PRS and sentenced him to serve ten years of his remaining sentence for the 2011 conviction and to serve eight years of his remaining sentence for the 2012 conviction, with both sentences ordered to run concurrently and be followed again by PRS. In July 2021, Hughes filed a motion to vacate revoked PRS sentences and be properly sanctioned to a technical violation center (“TVC”). Hughes alleged that he was

serving an illegal suspended sentence because he believed he should have received a TVC sanction before the remainder of his suspended sentence could be imposed by the circuit court. The motion cited a case that supported Hughes's argument that the circuit court should have imposed a TVC instead of revoking his PRS. The circuit court treated the motion as a motion for post-conviction collateral relief ("PCR"). In August 2021, the circuit court entered an order denying his motion. The circuit court stated that the revocation was due to Hughes's absconson. In September 2021, Hughes filed a motion to voluntarily dismiss his July motion and filed a second PCR motion that included, in the motion's title, the case name of the same case Hughes had referenced in his original motion to dismiss. The circuit court denied Hughes's September motion to dismiss on mootness grounds because it was filed after the circuit court had already ruled on the July motion which made the same argument. The circuit court denied the second PCR motion on the ground that it was without merit because the holding in the case Hughes kept citing did not apply to the terms of Hughes's revocation. Hughes appealed.

## **ISSUE**

Whether the circuit court erred in denying Hughes's second PCR motion.

## **HOLDING**

Because Hughes asserted a claim in his first PCR motion which the circuit court denied and from which he never appealed, and because Hughes asserted the same claim in his second PCR motion, the circuit court did not err in denying Hughes's second PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

### **Affirmed - 2021-CP-01241-COA (May 9, 2023)**

Opinion by Judge Smith

Hon. John R. White (Lee County Circuit Court)

*Pro se* for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Katherine Hancock](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

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## **WATKINS V. STATE**

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

**POST-CONVICTION RELIEF - FUNDAMENTAL RIGHTS - PROCEDURAL BARS** - When a petitioner seeking post-conviction relief asserts a fundamental right, the courts must address the merits of the petition regardless of procedural bars; issues not presented to the trial court are procedurally barred on appeal

**CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS** - A guilty plea may be factually undergirded by a statement of the prosecutor, the testimony of live witnesses, prior proceedings, an actual admission by the defendant, and, if sufficiently specific, an indictment or information; a defendant's admission alone may establish a factual basis for the guilty plea so long as the trial court can say with confidence the prosecution could prove the accused guilty

**CRIMINAL PROCEDURE - GUILTY PLEA - WAIVER OF RIGHTS** - A guilty plea waives certain Fourth Amendment Violations, including illegal searches

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

## **FACTS**

In February 2019, Illya Watkins was indicted for simple possession of more than ten grams but less than twenty grams of Oxycodone after Hattiesburg police officers pulled him over for not wearing a seatbelt and found him in possession of sixteen pills prescribed to another person. Watkins's indictment was amended twice. The indictment was amended

the first time to apply the mandatory maximum term sentencing requirement for a habitual criminal under Miss. Code Ann. § 99-19-81. The indictment was amended the second time to include the discretionary sentence enhancing statute for a second or subsequent offense under Miss. Code Ann. § 41-29-147. In August 2019, Watkins filed a motion to suppress evidence claiming that he was pulled over without probable cause and that officers conducted an illegal search after exceeding the scope of a pat-down in violation of *Terry*. The trial court denied the motion after it held a hearing on the motion in August 2019. In March 2020, Watkins filed a petition to enter a guilty plea. In doing so, Watkins agreed that he understood the maximum sentence for his charge, that he was entering the plea freely and voluntarily, that it was a waiver of his constitutional guarantees, and that he was satisfied with the advice and help from his attorney. The State's factual basis included Watkins's affirmation that he knowingly possessed more than ten dosage units but less than twenty of Oxycodone, and because he did so after a previous conviction in 2009, he was subject to double the punishment of up to sixteen years or a fine of \$500,000. Watkins affirmed the State's factual basis and openly admitted to committing the crime. As a result, the trial court sentenced Watkins to serve twelve years in prison. In March 2021, Watkins filed a PCR motion alleging the State had no factual basis for his charge or plea, that the charge was the result of an illegal stop and search, and that he received ineffective assistance of counsel. The trial court denied Watkins's PCR motion. Watkins appealed.

### **ISSUES**

Whether (1) the new issues presented to the court on appeal and issues not discussed in Watkins's brief were procedurally barred; (2) there was a factual basis for Watkins's guilty plea; (3) Watkins had a Fourth Amendment violation claim for an illegal stop and illegal search against the officer who stopped Watkins and searched him; and (4) Watkins received ineffective assistance of counsel.

### **HOLDING**

(1) Because issues not presented to the circuit court were procedurally barred, and because Watkins's brief failed to argue or even mention the issues presented to the circuit court in his PCR motion, the new issues presented to the court on appeal and issues not discussed in Watkins's brief were procedurally barred. (2) Because Watkins signed his sworn plea petition under penalty of perjury acknowledging he was pleading guilty with full understanding of all matters in the indictment, and because Watkins stated that he discussed the facts and circumstances of the charge, the nature of the charge, and his possible defenses with his attorney, there was a factual basis for Watkins's guilty plea. (3) Because Watkins pled guilty, he waived certain Fourth Amendment violations, including illegal searches, Watkins did not have a Fourth Amendment violation claim for an illegal stop and illegal search against the officer who stopped Watkins and searched him. (4) Because Watkins waived his right to argue that he received ineffective assistance of counsel when he pled guilty, and because even if Watkins did not waive his right, Watkins failed to show that his attorney's conduct was anything other than reasonable professional assistance, Watkins did not receive ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

### **Affirmed - 2021-CP-01301-COA (May 9, 2023)**

Opinion by Judge Westbrook

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

*Pro se* for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Oliver Samples](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

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## COURT OF APPEALS - CRIMINAL CASES

### DURR V. STATE

#### CRIMINAL - FELONY

**PROFESSIONAL RESPONSIBILITY - CONFLICT OF INTEREST - ACTUAL CONFLICT** - “Actual Conflict” exists when a defense attorney owes duties to a party whose interests are adverse to those of the defendant; the interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client

**PROFESSIONAL RESPONSIBILITY - CONFLICT OF INTEREST - IMPUTED DISQUALIFICATION** - Under Miss. R. Pro. Conduct 1.10, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Miss. R. Pro. Conduct 1.7, 1.8(c), 1.9, or 2.4

**EVIDENCE - JURY INSTRUCTIONS - LIMITING INSTRUCTION** - Miss. R. Evid. 105 states if the court admits evidence that is admissible against a party or for a purpose, but not against another party or for another purpose, the court shall restrict the evidence to its proper scope unless expressly waived or rebutted, and then give a written instruction if requested

**EVIDENCE - JURY INSTRUCTIONS - LIMITING INSTRUCTIONS** - The failure to give a limiting instruction concerning a statement that should have been admitted for impeachment purposes is harmless only when there was other evidence of the matters contained in the statement

**EVIDENCE - BALANCING TEST - FACTORS** - Miss. R. Evid. 403 states that the court may conduct a balancing test to determine whether it should exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

**POST-CONVICTION RELIEF - INEFFECTIVE COUNSEL - STRICKLAND PRONGS** - An ineffective assistance of counsel claim is typically analyzed under the two prongs of *Strickland* which instructs that the test to be applied in cases involving alleged ineffectiveness of counsel is whether counsel’s overall performance was (1) deficient and if so, (2) whether the deficient performance prejudiced the defense

#### FACTS

In November 2018, Marlena Owens and her boyfriend, Tomaka Jones, were living together in Hattiesburg. Owens, Jones, a woman named Konswaylo Durr, and a man named Theo went to buy drugs in Prentiss. When they reached their destination, Jones and Konswaylo exited the car and approached a man outside the home. Jones bought drugs from him, and Konswaylo went with into the residence with a man. Owens, Jones, and Theo waited twenty minutes for Konswaylo, then headed back to Hattiesburg without her. They then noticed that Konswaylo had left her purse in the car, so they dropped it off at her apartment and then Jones dropped everyone off. When Konswaylo discovered they had left, she called her boyfriend, Andre Snell, to take her back to Hattiesburg. Both were upset at the ordeal. Durr and Snell then went to look for her purse at Owens's residence which led to an argument between the parties and Owens. Owens then told Jones to hurry home and stated again that she had left the purse with Konswaylo's mother. After hearing this, Konswaylo and Snell left the residence. Jones then arrived at Owens's residence, listened to what happened, and called Konswaylo and Snell. Konswaylo and Snell returned to the residence, and all four got into a very heated argument. Jones then pulled a knife on Snell, and Snell and Konswaylo left with Snell stating that he would be back. Snell discussed the events with Durr, Konswaylo's son. Durr, Konswaylo, and Snell decided to rob Jones later. Durr then left the apartment and returned with Jordan Woods and Tomaz Hinton and then left again with Snell joining. They dropped Wood off at Eagle Flatt Apartments and headed to the residence of Jones and Owen. They Parked around the corner, raised the hood, and made it seem like they were having car issues. All three then exited the vehicle and approached the residence, with both Durr and Snell holding handguns. Hinton then picked up a cinder block to break the glass sliding door, but failed causing a loud noise and a lady to scream. Hinton then went to the side of the residence and heard a man come to the door and tell a female to get a gun. Durr then started shooting Jones and Jones ran back

into his house. Durr and Snell then followed Jones inside still shooting him. Owens was also shot a few times. Snell then hit Owens upside the head with his gun and then they left. Afterward, Owens called the police. Owens testified at trial, describing the events that day and the attack that she experienced. She could not identify the shooter but could remember that he was wearing Adidas pants. During the trial, it was shown that five gun shell casings were found at the residence, all coming from the same gun. Four bullets were recovered, two in Jones, one in Owens, and one on the bathroom floor. All bullets were from the same weapon. Jones later died from his injuries. After Durr was arrested, a lengthy interview with investigators took place where Durr admitted to wearing Adidas pants but denied knowing of the shooting or being at Owens's residence. However, Durr then gave a written statement that he was at the robbery and shooting but did not fire a weapon. Durr was indicted for the capital murder of Jones, conspiracy to commit armed robbery of Jones, armed robbery of Owens, and aggravated assault of Owens. Durr and all of his co-defendants had been appointed counsel from the Forrest County Public Defender's Office. Durr was appointed to Alex Ignatiev. Due to the complexity of the situation, Ignatiev filed a motion to request additional representation for Durr. The trial court appointed Joshua Stiglet. During trial, the State called Snell, one of Durr's co-defendants to testify against Durr. Snell gave inconsistent testimony with his prior affidavit, so the State sought to impeach Snell by admitting the affidavit into evidence. Durr raised a hearsay objection. The trial court convicted Durr on all counts. Durr appealed.

### **ISSUES**

Whether (1) Durr's Sixth Amendment right was violated when public defenders from the same office represented both him and his co-defendants; (2) the trial court erred in failing to give a limiting instruction as required by Miss. R. Evid. 105; and (3) the trial court erred in failing to follow the process to properly admit the affidavit pursuant to Miss. R. Evid. 613(b).

### **HOLDING**

(1) Because whether Miss. R. Pro. Conduct 1.10 applied to public defender's offices was an issue of first impression, because Durr did not raise the issue of ineffective assistance of counsel for the first time until direct appeal, because the record was not adequate for the Court of Appeals to determine the organization, its structure, and the relationships of the attorneys at the public defender's office, or whether Durr was informed of or waived any conflict of interests associated with the public defender's office representing him and his co-defendants, the record was not adequate enough for the Court of Appeals to determine whether Durr was actually prejudiced by attorneys from the same public defender's office representing Durr and his co-defendants. (2) Because Durr's trial counsel did not request a limiting instruction at the time Snell's affidavit was admitted, during the jury instruction conference, or in the motion for a new trial, because the trial court's failure to sua sponte give a limiting instruction was not plain, clear, or obvious error since Durr's trial counsel may not have wanted to draw more attention to Snell's affidavit, and because the trial court's failure to sua sponte give a limiting instruction appeared to not prejudice the outcome of Durr's trial since there was substantial evidence to support Durr's convictions without Snell's affidavit, the trial court did not err in failing to give a limiting instruction as required by Miss. R. Evid. 105. (3) Because Durr's trial counsel did not object to Snell's affidavit being admitted for impeachment purposes pursuant to Miss. R. Evid. 613(b), because the trial court found the affidavit inconsistent with Snell's testimony before admitting the affidavit as a prior inconsistent statement, and because the trial court did not have the burden to conduct a balancing test sua sponte pursuant to Miss. R. Evid. 403, the trial court did not err in failing to sua sponte perform a balancing test on the record. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

### **DISSENT**

Judge Westbrook argued that the Court of Appeals should have addressed Durr's Sixth Amendment issue of ineffective counsel on direct appeal instead of requiring the case to be decided through post-conviction collateral relief proceedings. She argued, at least at a minimum, the Court of Appeals should have determined whether a public defender's office constitutes a "firm" for purposes of ineffective assistance of counsel. She also argued Durr's Sixth Amendment right to counsel and to protect Durr's fundamental right to a fair trial was violated and an "actual conflict" existed at Durr's trial.

**Affirmed - 2021-KA-01109-COA (May 9, 2023)**

Opinion by Judge Emfinger - Dissent by Judge Westbrooks  
Hon. Jon Mark Weathers (Forrest County Circuit Court)

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## GROVES V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - TRIALS - PREJUDICIAL EFFECT** - A trial judge is in the best position to determine if an alleged objectionable remark has a prejudicial effect and how to address those concerns

**CRIMINAL PROCEDURE - CLOSING ARGUMENTS - PRESERVING OBJECTION** - To preserve an objection to alleged improper remarks by counsel during closing argument, the complaining party must not only make a contemporaneous and specific objection to the remarks, but must also obtain a definitive ruling from the trial court

**CRIMINAL PROCEDURE - CONVICTIONS - SUFFICIENCY OF EVIDENCE** - In challenges to sufficiency of evidence, appellate courts must view the evidence in the light most favorable to the prosecution and ask if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

### FACTS

Terri Neal was exiting a building when she was approached by Christopher Groves brandishing a gun. Groves threatened to shoot Neal if she did not comply with his order to enter his vehicle. Neal entered Groves’s vehicle, then a struggle ensued. A short time later, both Neal and Groves exited the vehicle. Groves then asked Neal for money, and she gave him five dollars. Groves left, and Neal dialed 911. Neal went to a police station to provide her statement of her encounter with Groves. Later, police showed Neal a lineup of potential suspects, and she identified Groves as the man who attacked her. Groves was arrested and placed into custody. In Groves’s first interview with police, he denied taking part in any crime but gave police permission to search his home. At Groves’s home, police found clothing that matched clothing worn by a man seen in a surveillance video where Neal’s assault took place. In Groves’s second police interview, he admitted to forcing Neal into his car and asking for money but denied having a gun. At trial, Groves testified that Neal first approached him asking for methamphetamine, and they both entered the car for an implied sex-for-drugs tradeoff. After the sexual encounter, Groves stated that Neal became upset after not receiving the drugs. Groves then asked Neal for five dollars, which she provided. Groves also testified that a fellow gang member actually committed the assault but Groves was afraid to give up the name of the attacker. Neal testified and denied asking Groves for drugs and having sex with him. In closing argument, the State referenced Groves’s testimony stating that it was not believable and that Neal was credible. The jury deliberated and found Groves guilty of kidnapping and armed robbery. Groves appealed.

### ISSUES

Whether (1) the trial court erred in allowing the use of the word “victim” during voir dire and trial; (2) Groves was unfairly prejudiced by prosecutorial misconduct in closing arguments; and (3) the verdict was against the weight and sufficiency of the evidence.

### HOLDING

(1) Because Groves cited no case where an appellate court overturned a trial court’s decision for allowing the word “victim” to be used during trial, and because the trial court admonished the jury several times on the presumption of innocence, burden of proof, and importance to weigh the evidence from the witness stand, the trial court did not err in allowing the word “victim” to be used during voir dire and trial. (2) Because Groves did not contemporaneously object to the alleged prosecutorial misconduct, because the alleged misconduct was not so inflammatory as to require the trial court’s sua sponte objection, because the State was entitled to argue in favor of their witness’s credibility, and because the evidence against Groves was overwhelming, Groves was not unfairly prejudiced by prosecutorial misconduct in closing arguments. (3) Because it was clear from the evidence that the jury’s verdict was rational and did not constitute an unconscionable injustice, and because the evidence supported the jury’s verdict, the verdict was not against the weight

and sufficiency of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Leake County Circuit Court.

**Affirmed - 2021-KA-755-COA (May 9, 2023)**

Opinion by Judge Greenlee

Hon. Caleb Elias May (Leake County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) & *Pro se* for Appellant - Alexandra Deanna Lebron (Att’y Gen. Office) for Appellee

Briefed by [Spencer Cash](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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## SANDERS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEF** - *Lindsey* establishes the procedure to govern cases in which appellate counsel represents an indigent criminal defendant and does not believe his or her client’s case presents any arguable issues on appeal; if appellate counsel finds no arguable issues in the record, he or she must then advise the defendant of his right to file a pro se brief

**CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEF** - In a *Lindsey* brief, to certify that there are no arguable issues supporting the client’s appeal, appellate counsel must thoroughly review the record and specifically examine: (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

### FACTS

In May 2020, Ernie Sanders registered for the Mississippi Sex Offender Registry with an address located in Hazlehurst. Sanders’s sex offender registration was renewed at the same address shortly thereafter in August 2020. When Sanders’s probation officer conducted a home visit after receiving a notification that Sanders’s ankle monitor had gone offline, he discovered that Sanders no longer lived at the address listed on the registry. Following this discovery, the Mississippi Department of Corrections (“MDOC”) issued a warrant for Sanders’s arrest. The Copiah County Sheriff’s Office contacted Sanders’s wife in an effort to locate Sanders, and she informed the officers that Sanders was living with her. A second warrant was issued for his arrest. Sanders was eventually located at his mother’s home in Crystal Springs, where he admitted he had moved and failed to report his change of address. Sanders was convicted for failing to update his sex offender registration and sentenced to serve five years in MDOC. Sanders’s appellate counsel filed a *Lindsey* brief stating that there were no arguable issues for appeal. Sanders filed a supplemental brief asserting that a charge in an unrelated cause had been dismissed due to insufficient evidence.

### ISSUE

Whether there were any arguable issues on appeal that warranted reversal of Sanders's conviction and sentence.

### HOLDING

Because Sanders’s counsel filed a *Lindsey* brief certifying that the record presented no arguable issues for appeal, and because the Court of Appeals reviewed Sanders’s pro se brief and determined that Sanders did not raise any applicable legal issues in his supplemental brief, there were no issues on appeal that warranted reversal. Therefore, the Court of Appeals affirmed the judgment of the Copiah County Circuit Court.

**Affirmed - 2022-KA-00351-COA (May 9, 2023)**

Opinion by Judge McCarty

Hon. Tomika Harris Irving (Copiah County Circuit Court)

Zakia Helen Annyce Butler (Pub. Def. Office) & *Pro se* for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee  
Briefed by [Merritt Baria](#)  
Edited by [Emilee Crocker](#) & [Ashley House](#)

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