

**MISSISSIPPI SUPREME COURT DECISIONS – JUNE 22, 2023*****SUPREME COURT - CIVIL CASES*****DOLGENCORP, LLC V. PAYTON****CIVIL - PERSONAL INJURY**

**TORTS - NEGLIGENCE - PREMISES LIABILITY** - To show that a premises owner breached its duty of care, the plaintiff must prove one of three things: (1) that the business owner, through the negligent acts of its employees, created the dangerous condition that allegedly caused the fall, (2) that the business owner, while not creating the condition, did have actual knowledge of it, or (3) that the dangerous condition existed for a sufficient amount of time to establish constructive knowledge

**CIVIL PROCEDURE - SUMMARY JUDGMENT - BURDEN OF PROOF** - While defendants, as movants for summary judgment, carry the initial burden of persuading the trial court that no issue of material facts exists and that they are entitled to summary judgment based upon the established facts, the plaintiff carries the burden of producing sufficient evidence of the essential elements of her claim at the summary judgment stage, as she would carry the burden of production at trial

**TORTS - PREMISES LIABILITY - CONSTRUCTIVE KNOWLEDGE** - Presuming an object has been on the floor for a certain length of time is not sufficient to sustain a recovery on the theory that the object had been placed there and remained there for a sufficient length of time so that the defendant by the exercise of reasonable care should have known of the dangerous condition and removed the object from the floor

**FACTS**

In November 2016, Patsy Payton slipped and fell in the Bay Springs Dollar General, which was owned by Dolgencorp, LLC (“Dolgencorp”). Payton did not see what she slipped on, nor did she know how it got on the floor or how long it had been there. Payton then sued Dolgencorp for negligence. Following the discovery period, Dolgencorp moved for summary judgment. Dolgencorp argued that it was not liable because Payton had no evidence regarding whether a store employee caused the substance she slipped on to be on the floor, whether a store employee knew it was on the floor, or whether it was on the floor long enough that store employees should have known about it. Payton argued that the substance had to have been on the floor before she entered the store and that the manager should have known about it because there were no other customers there to have created the spill, and the cash register the manager was at was near where Payton fell. However, Payton admitted she had only been in the store less than a minute before she fell. The trial court found that a genuine issue of material fact existed and denied Dolgencorp’s summary judgment motion. Dolgencorp petitioned for interlocutory appeal.

**ISSUE**

Whether the trial court erred in denying Dolgencorp’s summary judgment motion.

**HOLDING**

Because Payton presented no evidence that a Dolgencorp employee spilled the substance on the floor or had actual knowledge that the substance was on the floor, and because Payton’s assertion that the substance had to have been on the floor long enough for a Dolgencorp employee to have constructive knowledge of it was purely speculative, there was no genuine issue of material fact, and the trial court erred in denying Dolgencorp’s summary judgment motion. Therefore, the Supreme Court reversed and rendered the judgment of the Jasper County Circuit Court.

**Reversed & Rendered - 2022-IA-01054-SCT (June 22, 2023)**

Opinion by Justice Maxwell  
Hon. Matthew Gordon Sullivan (Jasper County Circuit Court)  
Nicholas Kane Thompson, Matthew D. Miller, & Andrea Boyles Pacific for Appellant - Eric Nicholas Cerra for Appellee  
Briefed by [Conner Linkowski](#)  
Edited by [Kara Edwards](#) & [Ashley House](#)

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## MISS. BAR V. WILLIAMSON

### CIVIL - BAR MATTERS

#### MISSISSIPPI STATE BAR - DISCIPLINARY ACTION - SANCTIONS IN ANOTHER JURISDICTION -

Under Rule 13 of the Rules of Discipline for the Mississippi State Bar, when another jurisdiction imposes sanctions against an attorney, it is grounds for disciplinary action in this state

**MISSISSIPPI STATE BAR - SANCTIONS - ANOTHER JURISDICTION** - A sanction order from another jurisdiction serves as conclusive evidence of the guilt of the offense or unprofessional conduct on which said sanction was ordered

**SANCTIONS - ANOTHER JURISDICTION - FACT-FINDING** - Mississippi courts will not engage in further fact-finding when a sanction is imposed by another jurisdiction

#### FACTS

Candace L. Williamson is an attorney licensed to practice law in the states of Mississippi and Tennessee. The Tennessee Supreme Court found that Williamson had committed professional misconduct in five separate instances. In three of those instances, Williamson was found to have neglected clients. In the remaining two, Williamson was found to have practiced law in Tennessee while being temporarily suspended from the practice of law. As a result of that misconduct, the Board of Professional Responsibility of the Tennessee Supreme Court sanctioned Williamson by suspending her license to practice law in the State of Tennessee for two years, one year of which was suspended on probation. Williamson also received a public censure in Tennessee. Williamson has been temporarily suspended in Mississippi since November 2021 because she failed to inform the Mississippi Bar of the Tennessee disciplinary orders. The Mississippi Bar asked the Mississippi Supreme Court to discipline Williamson appropriately pursuant to Rule 13 of the Rules of Discipline for the Mississippi State Bar. The Bar contended that the Tennessee sanctions were in line with past punishments for similar misconduct, and it recommended that Williamson be suspended from practicing law in Mississippi “prospectively” for “up to two years.” Williamson conceded that reciprocal discipline was warranted, and she agreed with the sanction recommended by the Mississippi Bar.

#### ISSUE

Whether extraordinary circumstances existed that compelled or justified a different sanction from the two-year suspension imposed by Tennessee.

#### HOLDING

Because Williamson’s exceptional personal difficulties preceded her misconduct, no “extraordinary circumstances” existed that compelled or justified a different sanction from that imposed by Tennessee. Therefore, the Supreme Court found that the Tennessee Supreme Court’s punishments were appropriate and publicly reprimanded Williams, suspended her for two years, with one year suspended on probation, and assessed her the Bar’s expenses in bringing this proceeding.

#### **Suspended from Practice of Law for Two Years - 2020-BD-01354-SCT (June 22, 2023)**

En Banc Opinion by Justice Ishee  
Adam Bradley Kilgore & Melissa Selman Scott for Complainant - Graham Patrick Carner for Respondent  
Briefed by [Jack Surber](#)  
Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

## 4-WAY ELECTRIC SERVS., LLC V. HUNTCOLE, LLC

### CIVIL - CONTRACT

**TORTS - CONVERSION - OWNERSHIP** - To maintain an action for conversion, there must be, on the part of the defendant, some unlawful assumption of dominion over the personal property involved, in defiance or exclusion of the plaintiff's rights, or else a withholding of the possession under a claim of right or title inconsistent with that of the plaintiff

**CONTRACTS - ENFORCEABILITY - STANDARD OF REVIEW** - If a contract is unambiguous, then it must be enforced as written, and when construing a contract, it must be read as a whole, so as to give effect to all of its clauses

**PROPERTY - COMMERCIAL - TRADE FIXTURES** - Generally, pieces of personal property affixed to realty become part of it, but trade fixtures are exempted from the general rule

**CONTRACTS - BREACH - ELEMENTS** - A breach of contract claim has two elements: (1) the existence of a valid and binding contract, and (2) a showing that the defendant has broken, or breached it

**CIVIL PROCEDURE - DAMAGES - PUNITIVE** - Punitive damages under Mississippi law are not to be awarded to a party for compensation of an injury, and instead, are to be awarded as punishment for the defendant's wrongdoings so that others may be deterred from similar offenses

### FACTS

In 2014, Huntcole, LLC ("Huntcole"), an electric transformer refurbishing company, and 4-Way Electric Services, LLC ("4-Way") entered into an Asset Purchase Agreement ("Agreement") by which 4-Way would buy all the property necessary to conduct the refurbishment business. The Agreement included commercial equipment designated as Personal Property, and listed several Excluded Assets which would not be sold to 4-Way through the Agreement. One of the Excluded Assets Huntcole retained was the building where business was conducted in Leflore County. Huntcole separately leased the building to 4-Way through a Lease. The Lease required 4-Way to maintain the building and improvements and surrender the building in the maintained condition. Through a Lease provision, Huntcole and 4-Way agreed to waive and release any rights to claims they may have for punitive, consequential and/or exemplary damages. In 2017, 4-Way decided to move its operations to Lexington and began removing all commercial equipment from Huntcole's Leflore building. Huntcole sought a declaratory judgment that the commercial equipment was building improvements and fixtures excluded from the Agreement. 4-Way counterclaimed and argued that Huntcole had breached its agreement to transfer the equipment needed to conduct the refurbishment business. Both parties cross motioned for summary judgment. Huntcole argued that 4-Way had no right to remove the commercial equipment because it was retained as an Excluded Asset. 4-Way argued that the Agreement categorized the commercial equipment as Personal Property to be transferred to 4-Way. The trial court granted Huntcole's motion and denied 4-Way's, setting the case for trial. Before trial, 4-Way filed a motion in limine and partial summary judgment arguing that any claims for punitive damages should be barred pursuant to the Lease. The court rejected 4-Way's motion. After a bench trial, Huntcole was awarded \$1,013,310 in damages, for conversion and breach of the Lease, representing the cost of replacing the commercial equipment and returning the building to the condition in which 4-Way had leased it. The court also awarded Huntcole \$1 million in punitive damages and \$124,065.56 in attorneys' fees. 4-Way appealed.

### ISSUES

Whether the trial court erred by (1) holding that 4-Way converted property; and (2) not enforcing the Lease's punitive damages waiver.

### HOLDING

(1) Because the Agreement was clear and unambiguous and specifically listed the equipment at issue as excluded personal property and because classifying the equipment as building improvements would defeat the purpose of the Agreement, the contract must be enforced as written, and the equipment belonged to 4-Way as personal property. Furthermore, because trade fixtures were personal property and because the pieces of equipment were trade fixtures, 4-Way could

remove the equipment it had clearly purchased from Huntcole. Moreover, because Huntcole could only lease what it had retained in the Agreement and because the Agreement clearly conveyed the affixed equipment to 4-Way, the Lease could not be used to prove that Huntcole retained ownership of the equipment. Likewise, because there must have been, on the part of 4-Way, some unlawful assumption of dominion over the personal property involved in defiance or exclusion of Huntcole's rights, or else a withholding of the possession under a claim of right or title inconsistent with that of Huntcole and because 4-Way purchased the subject equipment through the Agreement in 2014, Huntcole failed to meet its burden to prove conversion, and the trial court erred in holding that 4-Way converted the equipment. Additionally, because the Lease constituted a contract, because 4-Way owned the equipment, and because the Lease permitted 4-Way to make alterations to the building without Huntcole's consent, the removal of the equipment did not breach the Lease, and Huntcole was not entitled to \$1,013,310 in compensatory damages because of such breach. But, because the removal process caused damage to the building, because the Lease required 4-Way to leave the building in a condition that was "in accordance with commercially reasonable standards," and because the damage to the building from the removal process did not meet such standards, Huntcole was entitled to damages for 4-Way's breach of the Lease, and the Supreme Court remanded to the trial court to determine the appropriate amount of damages, exclusive of the cost to replace and restore any of the disputed pieces of equipment. Finally, because Huntcole was entitled to attorneys' fees, because the attorneys' fees were based on the breach of the Lease arising from the equipment removal, and because the equipment removal was not a breach of the Lease, the trial court erred in awarding \$124,065.56 in attorneys' fees, and the Supreme Court remanded to the trial court to determine the appropriate amount of attorneys' fees. (2) Because Huntcole's right to recover compensatory damages did not conflict with the contractual punitive damages waiver, because the trial court also based its punitive damages award on the conversion theory, and because Huntcole failed to prove conversion, the \$1 million in punitive damages should have been precluded by the Lease, and the trial court erred by not enforcing the punitive damages waiver. Therefore, the Supreme Court affirmed in part, reversed and rendered in part, and reversed and remanded in part the judgment of the Leflore County Circuit Court.

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

Justice Maxwell agreed with the majority in finding that Huntcole's conversion claim failed but argued that compensatory damages for 4-Ways's failure to surrender the property according to commercially reasonable standards had already been proven at the trial level. Further, he argued that, on remand, the trial court should simply separate the costs of repairs and lost rent from the erroneously awarded amount, which included the cost to replace the commercial equipment.

#### **Affirmed in Part; Reversed & Rendered in Part; Reversed & Remanded in Part - 2021-CA-00778-SCT (June 22, 2023)**

En Banc Opinion by Chief Justice Randolph - Concurrence in Part & Dissent in Part by Justice Maxwell

Hon. Richard A. Smith (Leflore County Circuit Court)

Michael O. Gwin, Steven Cavitt Cookston, Harris Frederick Powers III, & Corey Donald Hinshaw for Appellant - Charles J. Swayze Jr. & Charles J. Swayze III for Appellees

Briefed by [Naomi Migoya](#)

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

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

### ***IN RE: RULES OF CIV. PROC. [MISS. R. CIV. P. 45]***

#### **EN BANC ORDER**

#### **ORDER**

This En Banc Order by the Supreme Court, on the Court's own motion, amended Rule 45 of the Mississippi Rules of Civil Procedure to correct a typographical error. The amended rule strikes "and shall" from subsection (a)(1)(C). The

Court also ordered that the Advisory Committee on Rules's form subpoenas be posted on the Mississippi Judicial College's website. The Court neither adopted nor approved of the form subpoenas. The amendment became effective upon entry of the Order.

[Exhibit A](#), referenced and attached to the Order, shows the amendments to Rule 45. Exhibits B, C, and D are copies of the form subpoenas.

## **OBJECTION**

Justice Griffis objected to the Order to clarify that the En Banc Order was a correction of the Court's previous January 23, 2023, Order and the Corrected En Banc Order dated January 30, 2023. Justice Griffis concurred with the correction of the typographical error but disagreed with the Court's departure from certain language that was in the original Order and Corrected Order. Justice Griffis stated that this Corrected Order was being used by the Court to add additional language, specifically, the Court added the Order that the form subpoenas are the work product of the Advisory Committee. Justice Griffis disagreed with the decision not to post a form based on Rule 45 with all the other forms of the Mississippi Rules of Civil Procedure.

### **Ordered - 89-R-99001-SCT (June 14, 2023)**

En Banc Order by Presiding Justice Kitchens - Objection by Justice Griffis

Briefed by [Arreyah Whitlock](#)

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

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## ***IN RE: RULES OF DISCIPLINE FOR THE MISS. BAR***

### **EN BANC ORDER**

## **ORDER**

This en banc Order by the Supreme Court, made in consideration of the Amended Petition to Amend Certain Rules of Discipline for the Mississippi State Bar, amended certain Rules of Discipline for the Mississippi Bar. The Court granted the petition in part and found that the petition should remain pending before the Court. The amendments become effective on July 1, 2023. The following Rules of Discipline were amended: Rule 1. Jurisdiction; Rule 8. Complaint Tribunal - Powers and Duties; Rule 9. Appeals; Rule 10. Pleas of Nolo Contendere and Admissions; Rule 11. Resignation; Rule 12. Effect of Suspension, Disbarment, Irrevocable Resignation, Incapacity, or Death; Rule 13. Reinstatement; Rule 14. Reciprocal Discipline; Rule 15. Immunity from Civil Suit - Right to Sue; Rule 16. Confidentiality of Matters; Rule 17. Jurisdiction of Non-Resident Attorneys - Notice - Service; Rule 18. Incapacity Defined; Rule 19. Involuntary Commitment or Adjudication of Incompetency; Rule 20. Inability to Properly Defend; Rule 21. Proceedings to Determine Incapacity and Reciprocal Disability Inactive Status; Rule 22. Transfer to Disability Inactive Status a Matter of Public Record; Rule 23. Attorney Transferred to Disability Inactive Status Not Permitted to Practice Law; Rule 24. Reinstatement from Disability Inactive Status; Rule 25. Time - Generally Not Jurisdictional; Rule 26. Costs and Expenses; Rule 27. Preservation of Evidence; and Rule 28. Repealer and Severability.

Exhibit A, referenced and attached to the Order, shows the amended Rules of Discipline for the Mississippi Bar.

### **Ordered - 89-R-99010-SCT (June 13, 2023)**

En banc Order by Justice Beam

Briefed by [Katherine Hancock](#)

Edited by [Emilee Crocker](#) & [Ashley House](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **TURNER V. STATE**

#### **CRIMINAL - FELONY**

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

**CRIMINAL PROCEDURE - TESTIMONY - LAY TESTIMONY** - An officer's lay opinion testimony about the victim's position and the trajectory of the bullet is admissible because no specialized knowledge is required

**EVIDENCE - HEARSAY EXCEPTION - EXCITED UTTERANCE** - An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement that it caused; an excited utterance is an exception to hearsay; a gunshot wound that damaged lungs and other internal organs is classified as a startling event or condition

**CRIMINAL PROCEDURE - PLAIN ERROR - BURDEN OF PROOF** - To determine whether plain error has occurred, the Court must determine (1) if the trial court deviated from a legal rule; (2) whether that error is plain, clear, or obvious; and (3) whether that the error has prejudiced the outcome of the trial

#### **FACTS**

Lucky Turner was convicted of aggravated assault of Jeffery Johnson after he admitted to shooting Johnson in the back following a confrontation outside a convenience store. At trial, Dr. Robert Finley, the treating emergency room physician, testified that Johnson suffered from a serious bullet wound that entered Johnson's back and exited his chest. However, Johnson ultimately recovered. A jury trial was held against Turner after he turned himself in. At trial, Deidra Lowe testified that she was at the convenience store at the time of the shooting. Lowe testified that Johnson did not appear to be armed or threatening, and he was just drunk and yelling at Turner and his nephew. Lowe testified that Johnson's nephew got the gun out of the vehicle and followed Johnson to the side of the store. Lowe testified she heard gunshots, saw Turner run out of the store, and heard more gunshots. Sergeant Lincoln Lampley was the patrol officer who responded to the scene. Sergeant Lampley testified that Johnson was very intoxicated, but was not aggressive nor armed. Sergeant Lampley testified that Johnson told him that two men attempted to engage in a verbal and physical altercation with him. With no objection from Turner, Sergeant Lampley also testified that there appeared to be a gunshot wound to the back and an exit wound in the chest. Johnson told Sergeant Lampley he tried to leave, but the men shot him in the back. Turner did not object to Sergeant Lampley's testimony of what Johnson told him at the scene. Detective Kevin Nash retrieved the convenience store's surveillance video that led to Turner and his nephew turning themselves in. During the trial, the surveillance video was entered into evidence, and Detective Nash narrated what happened in it. The surveillance video showed that Turner was the aggressor. Turner testified in his defense. Turner testified he was worried Johnson was going to kill him and that he thought Johnson was armed. The surveillance video was played again while Turner testified about what the video showed. Turner was sentenced to fifteen years in prison for aggravated assault. Turner appealed.

#### **ISSUES**

Whether (1) Turner's constitutional right to effective counsel was violated and (2) the trial court committed plain error by allowing Detective Nash to narrate portions of the surveillance video played to the jury.

#### **HOLDING**

(1) Because Turner failed to show his counsel's performance was deficient for failing to raise certain objections, because Turner failed to show his counsel's alleged failure to object prejudiced him since Turner failed to prove the outcome of the trial would have been different if his counsel had made the objections, because Sergeant Lampley's opinion was based on his observations as a police officer rather than specialized scientific knowledge, because Johnson's statement made to Sergeant Lampley at the scene was an excited utterance, and because other evidence presented at trial supported the State's position that Turner was the aggressor even without Johnson's statement, Turner failed to prove his



constitutional right to effective counsel was violated. (2) Because Turner’s counsel failed to object to the narration, because the State asking Detective Nash to describe what happened in the surveillance video did not itself require the trial court to intervene without objection by Turner’s counsel, because Turner’s counsel chose to cross-examine Detective Nash and challenged whether he actually could tell what transpired constituted trial strategy, because the jurors were able to form their own opinions while watching the surveillance video, and because Turner also presented his view of what the video showed, Turner failed to show prejudice nor that the trial committed plain error by allowing Detective Nash to narrate portions of the surveillance video played to the jury. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2022-KA-00236-SCT (June 22, 2023)**

Opinion by Justice Maxwell

Hon. Winston L. Kidd (Hinds County Circuit Court)

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Mariah Rhodes](#)

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

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## MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 20, 2023

### COURT OF APPEALS - CIVIL CASES

#### BRANDI’S HOPE CMTY. SERVS., LLC V. WALTERS

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

**EMPLOYMENT LAW - AT WILL EMPLOYMENT - WRONGFUL DISCHARGE** - Under *McArn*, an employee who is discharged for reporting illegal acts of his employer to the employer or anyone else is not barred by the employment at will doctrine from bringing action in tort for damages against his employer

**EMPLOYMENT LAW - AT WILL EMPLOYMENT - REASON FOR DISCHARGE** - An employee may be discharged at the employer’s will for good reason, bad reason, or no reason at all, excepting only reasons independently declared legally impermissible

**CIVIL PROCEDURE - MISS. VULNERABLE PERSON’S ACT - REPORTS** - Under the MVPA, any person who, within the scope of his employment at a care facility has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect, or exploitation shall immediately report the abuse, neglect, or exploitation; a report of conduct shall be made to the State Department of Health and the Medicaid Fraud Control Unit of the Attorney General’s Office

**TORTS - MALICIOUS OR TORTIOUS INTERFERENCE - ELEMENTS** - To recover on a claim for malicious or tortious interferences, a plaintiff must prove by a preponderance of evidence that (1) the defendant’s acts were intentional and willful; (2) they were calculated to cause damage to the plaintiff in his lawful business; (3) they were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant, which acts constitute malice; and (4) actual damage or loss resulted

#### FACTS

Heather Walters was employed at Brandi’s Hope Community Services, LLC (“Brandi’s Hope”) as a Direct Support Professional (“DSP”). Danny Cowart was owner and chief executive officer of Brandi’s Hope, a residential housing facility for adults with intellectual and developmental disabilities. In March 2017, a resident of Brandi’s Hope at Rock Cliff’s was hurt and sustained injuries to his face. Walters suspected the injuries were inflicted by a Brandi’s Hope employee, Cleatoria “Toney” Burns. Walters called her immediate supervisor, Caleb Texidora, and the site manager, Wanda Keith. Neither answered Walters’s call. Walters took a photo of the resident’s injured face with her personal cell phone and texted what happened to her supervisor and site manager, with a picture of the resident’s face. Documenting

and sharing a resident's personal information was prohibited by Brandi's Hope's confidentiality and communication policy. Walters received extensive training and course materials about the reporting requirements for DSPs. Keith returned Walter's call about the incident and stated that she would investigate the incident. Walters subsequently discussed the incident with Frankie Crump, a former supervisor at Brandi's Hope, to determine if there were any further reporting requirements. Walters also shared the photo with Crump. Walters later learned that Crump had reported the incident to the Attorney General's Office. At trial, Keith was called as an adverse witness. Keith notified Cowart about the incident. Keith completed her investigation with witness reports and a full incident report, and then sent to the Mississippi Department of Mental Health ("MDMH") and the Attorney General's Office. During the investigation, Walters attested per a written statement that she did not "take a picture of [John] and send it to a former staff." Keith and Cowart both learned Walters had disclosed the photograph to others after completing employee interviews. Cowart decided to terminate Walters for disclosing a patient's photo after the report had been submitted. After Walters's case-in-chief, Brandi's Hope and Cowart moved for a directed verdict, and the trial court denied it. The jury returned a verdict in favor of Walters on her retaliatory discharge claim and her malicious-interference-with-employment claim against Cowart. Brandi's Hope and Cowart filed a motion seeking a judgment notwithstanding the verdict ("JNOV"), a new trial, or a remittitur on the damages awarded to Walters. The trial court denied the motion. Brandi's Hope and Cowart appealed the trial court's judgment and its order denying the post-trial motion to trial court. The trial court affirmed the trial court's rulings and jury's verdicts. Brandi's Hope and Cowart appealed.

### ISSUES

Whether (1) Brandi's Hope and Cowart were barred from asserting on appeal that the trial court "expanded" *McArm* and ignored the Mississippi's Vulnerable Persons Act's ("MVPA") limited anti-retaliation provision because Brandi's Hope and Cowart did not raise this issue at trial; (2) the trial court erred in not entering a judgment as a matter of law in favor of Brandi's Hope and Cowart on Walter's retaliatory discharge claim against it; and (3) the trial court erred when it denied Brandi's Hope and Cowart's motion for a directed verdict and JNOV on whether Brandi's Hope and Cowart intentionally and maliciously interfered with Walter's employment.

### HOLDING

(1) Because Brandi's Hope and Cowart sufficiently raised the issue that the trial court "expanded" *McArm* and ignored the MVPA's limited anti-retaliation provision at trial, because Walters had the opportunity to address the issue during trial, in post-trial motion briefing, and in trial court, and because the issue was essentially the subject of a ruling by the trial court which had been appealed, Brandi's Hope and Cowart sufficiently raised the issue in the trial court and did not waive it on appeal. (2) Because Walter's disclosure to Crump would not be recognized as a protected report of abuse under the MVPA or *McArm* even under the broadest interpretation of the MVPA, because MVPA, HIPAA regulations, and Brandi's Hope's policy and training specifically identified the appropriate persons and agencies that allegations of abuse and neglect should be reported to as well as the appropriate method of reporting the allegations, because the regulations and policies did not protect an individual who disclosed suspected abuse to someone like Crump who was not authorized to receive such information, Walter's claim for discharge in violation of public policy failed as a matter of law, and because the trial court erred in expanding *McArm* to create an exception to the at-will employment doctrine for an employee disclosing suspected abuse to anyone else, Walter's claim for discharge failed as a matter of law, and the trial court committed reversible error in not entering a judgment as a matter of law in favor of Brandi's Hope and Cowart on Walter's retaliatory discharge claim against it. (3) Because the trial court's statements about HIPAA were inaccurate as a matter of law, because the statements were made outside the presence of the jury, and because it was too speculative to assume a reasonable jury could infer malice on Brandi's Hope and Cowart's part in terminating Walters's employment, the trial court committed reversible error when it denied Brandi's Hope and Cowart's motion for directed verdict and JNOV finding Brandi's Hope and Cowart did not intentionally and maliciously interfere with Walter's employment. Therefore, the Court of Appeals reversed and rendered the judgment of the Lee County Circuit Court.

### DISSENT

Judge McDonald argued Brandi's Hope and Cowart were procedurally barred from arguing that MVPA's retaliatory discharge and reporting requirements superseded or precluded Walter's *McArm* claim because it was raised for the first time on appeal. She also argued that Brandi's Hope and Cowart were procedurally barred from arguing that the statute and HIPAA's reporting requirements precluded any recovery by Walters. Thus, she would have affirmed the jury's verdicts.



**Reversed & Rendered - 2022-CA-00188-COA (June 20, 2023)**

En Banc Opinion by Presiding Judge Carlton - Dissent by Judge McDonald

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

Mark Nolan Halbert & Brandi S. Doss for Appellants - Jim Waide for Appellee

Briefed by [Tyler White](#) & [Anna Palmer](#)

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

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## BRIDGE PROPS. OF LAFAYETTE, LLC. V. 1000 JEFFERSON, LLC

### CIVIL - PROPERTY DAMAGE

**STANDING - LANDLORD & TENANT - TRESPASS** - A landlord out of possession cannot maintain an action for mere trespass of the land occupied by its tenant alone without actual permanent harm to the property of such sort as to affect the value of his interest; damages for trespass are only recoverable by the one who has possession or right of possession

**CIVIL PROCEDURE - JUDGEMENT - ORE TENUS MOTION** - Under Miss. R. Civ. P. 41 (b), an ore tenus motion to dismiss is granted if the plaintiff has failed to prove one or more essential elements of the claims, or if the quality of the proof offered is insufficient to sustain the burden of proof

**CIVIL PROCEDURE - JUDEGEMENT - CONTEMPT OF COURT** - A party can argue that his or her violation of the court's order was not willful or deliberate as to be labeled contumacious; the party's honest inability to perform according to the dictates of the order or decree can also serve as a defense to a claim for civil contempt

### FACTS

In 2007, Bridge Properties acquired title to 1002 Jefferson Avenue in Oxford that was leased to a commercial tenant, BankFirst Mortgage ("BankFirst"). In 2018, Corey Alger acquired the property located at 1000 Jefferson Avenue, and later conveyed the property to 1000 Jefferson LLC ("1000 Jefferson"). In 2021, 1000 Jefferson commenced construction of multi-level residential condominiums. Tonquin Stovall, BankFirst's representative, gave general permission for 1000 Jefferson to have reasonable access to the property at 1002 Jefferson for the purpose of performing construction work. In March 2021, construction workers at 1000 Jefferson damaged a buried sewer line that serviced 1002 Jefferson Avenue. As a result, Bridge Properties obtained a preliminary injunction and temporary restraining order against 1000 Jefferson, which prevented further construction activity along the property line. The parties reached an agreement at a subsequent hearing for 1000 Jefferson to receive a "limited right" to enter the property at 1002 Jefferson in order to backfill the voids on the property. 1000 Jefferson agreed to notify Bridge Properties's civil engineer at least twenty-four hours in advance of any work to be performed along the boundary of the properties. In March 2021, Bridge Properties filed a complaint against 1000 Jefferson for prescriptive easement, trespass, and injunctive relief, alleging that 1000 Jefferson damaged property at 1002 Jefferson. 1000 Jefferson denied the allegation of trespass. In May 2021, Bridge Properties petitioned the chancery court for an order holding 1000 Jefferson in civil contempt or alternatively, constructive criminal contempt for its failure to comply with the March 2021 agreed order. Trial was held in December 2021. 1000 Jefferson argued that Bridge Properties lacked standing as an out-of-possession owner to assert a trespass claim. On February 7, 2022, the chancellor entered a final judgement granting 1000 Jefferson's motion and dismissing Bridge Properties's complaint, holding that Bridge Properties did not have standing to pursue its trespass claim because Bridge Properties was a "lessor out of possession" and also held that Bridge Properties's trespassing claim failed because the evidence showed that BankFirst gave permission to 1000 Jefferson to be on the property at 1002 Jefferson Avenue, and BankFirst never revoked that permission. Bridge Properties filed a motion to alter or amend the judgment pursuant to Miss. R. Civ. P. 59(e), arguing that the chancellor's ruling made a "[s]ubstantial factual error" by finding that 1000 Jefferson damaged real property not covered by Bridge Properties' lease agreement with BankFirst, and that BankFirst did not have authority to provide the permission that Bridge Properties relied on as a defense to their trespass. 1000 Jefferson opposed the motion, asserting that Bridge Properties failed to meet the standard required for obtaining relief pursuant to Rule 59(e), arguing that at no time prior to or during the trial did Bridge Properties' claim that BankFirst's lease agreement only applied to the actual building and not the rest of the premises of 1002 Jefferson. The chancellor

entered an order denying Bridge Properties’s motion to alter amend the judgement under Rule 59(e). Bridge Properties appealed.

### ISSUES

Whether the trial court erred by (1) finding that Bridge Properties did not have standing to pursue its trespass claim; (2) granting the Rule 41(b) motion to dismiss; and (3) failing to find 1000 Jefferson in contempt of court.

### HOLDING

(1) Because Bridge Properties could not recover damages for mere trespass of the land occupied by its tenant and Bridge Properties therefore had no right to relief, the trial court did not err finding Bridge Properties lacked standing to sue 1000 Jefferson for trespass. (2) Because Bridge Properties lacked standing to bring the trespass action against 1000 Jefferson and because Bridge Properties failed to show “actual permanent harm” to the property that would affect the value of Bridge Properties’s interest, the trial court did not err by granting 1000 Jefferson’s Rule 41(b) motion for involuntary dismissal. (3) Because the trial court observed evidence that 1000 Jefferson took steps to complete the plan in the agreed order, because Bridge Properties lacked standing to bring the trespass action in the first place, and because the chancery court lacked subject matter jurisdiction to enter the trespass provisions of the agreed order, the trial court did not err by denying Bridge Properties’ motion to alter or amend the judgement pursuant to Rule 59(e). Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Chancery Court.

#### **Affirmed - 2022-CA-00631-COA (June 20, 2023)**

Opinion by Presiding Judge Carlton

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

Sheldon G. Alston & Robert Lane Bobo for Appellants - Walter Alan Davis for Appellees

Briefed by [Nivory Gordon](#)

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

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## **ESTATE OF ROGERS V. ESTATE OF ROGERS**

### **CIVIL - WILLS, TRUSTS, & ESTATES**

**CONTRACTS - ELEMENTS - VALIDITY** - The elements of a valid contract are: (1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, and (6) no legal prohibition precluding contract formation

**CONTRACTS - INTERPRETATIONS - MULTIPLE MEANINGS** - When a contract term can be interpreted in at least two ways, and when one of these interpretations would result in a valid contract and the other would cause the agreement to be void, the former interpretation is preferred

**CORPORATIONS - NONPROFIT - MEMBERSHIP** - Under Miss. Code Ann § 79-11-179, a non-profit corporation is authorized to impose restrictions on membership transfers

### FACTS

Herbert Rogers Jr. (“Herbert Jr.”) was a member of a private, nonprofit corporation named the North Mississippi Fish and Game Preserve Club (“Darden”) where he built a cabin on the lakeside lot exclusively assigned to him around 1960. Herbert Jr.’s wife and their three children, Frederick Robbins Rogers (“Fred”), Herbert G. Rogers III (“Herbert III”), and Mary Nell Rogers Brandt (“Mary Nell”) all used the cabin, and Herbert Jr. owned the membership in trust for the benefit of Rogers LP Gas Company (“Rogers LP”), which paid the cabin expenses until around 1986. When Darden was formed in 1929 as an unincorporated association, its members were issued stock certificates that set forth rules and conditions of the membership as provided by Darden’s Constitution and By-Laws, including restrictions on the use of the property, permissible guests, and disposing of interests. In 1984, Hebert Jr. transferred his Darden membership and cabin to Fred, and in consideration for the transfer, Fred signed an agreement requiring him “to hold [the] membership in trust for the use and benefit of” he and his two siblings “during [Fred’s] lifetime...or until the membership [was]

disposed of by mutual agreement of” all three siblings. The 1984 Agreement (“Agreement”) also provided that if Fred predeceased Herbert III and Mary Nell, Fred’s then-wife, Margaret Rogers (“Margaret”), would transfer the Darden membership to either Herbert III or Mary Nell. The Agreement had signature lines for Herbert Jr., Fred, Herbert III, Mary Nell, and Margaret; however, only Fred signed the Agreement. The stock certificate in the record was the certificate issued to Fred in 1984 and did not include the constitution or bylaws of the unincorporated association. After the transfer to Fred, Rogers LP continued to pay the expenses associated with the membership and cabin until 1986, when another company owned by Herbert Jr., Rogers Investments Inc. (“Rogers Investments”), began paying those expenses. In 1989, Herbert Jr. died, and Fred, Herbert III, and Mary Nell each inherited a one-third interest in Rogers Investments, which continued to pay the associated Darden expenses. From 1984 to 2018, the Rogers family shared the Darden cabin with an alternating-weeks schedule between Fred and Herbert III’s family, as Mary Nell lived out of state and rarely visited the cabin. Mary Nell, Fred, and Herbert III discussed the possibility of Fred and Herbert III buying out Mary Nell’s interests in the cabin so that Fred’s sons (Robbins and Bradley) and Herbert III’s sons (Chandler and Graham) could all share equally in the membership. Mary Nell obtained an appraisal of the cabin in 2017, but she testified that she did not think she ever discussed it with Fred. In 2011, Herbert III filed for bankruptcy and after defaulting on a loan for which he pledged his shares in Rogers Investments as collateral, Rogers Investments repaid the loan in exchange for a release of Hebert III’s shares. Thereafter, Fred and Mary Nell owned a one-half interest in Rogers Investments. Herbert III died in 2015, and Herbert III’s wife, Mary Swift Rogers (“Swift”) was the administrator of his estate (“Herbert III’s Estate” or “Estate”). In 1993, Darden was reorganized as a nonprofit corporation and adopted new bylaws which provided that any transfer of membership must comply with all requirements of the bylaws – and that any transfer that does not comply with the bylaws “shall be void.” Fred received a new stock certificate from the new nonprofit corporation. In December 2018, Fred notified Darden that he intended to transfer his membership to his son Robbins, after which Darden sent notice to all members, and in January 2019, the transfer was completed, and a new membership certificate was issued to Robbins. Robbins knew about the Agreement before the membership was transferred to him but considered himself the sole and exclusive owner of the membership and cabin upon the transfer. The same day the transfer was completed, Herbert III’s Estate filed suit against Fred, Mary Nell, and Darden. The next day, the Estate amended its complaint to add Robbins as a defendant and alleged that Fred’s transfer to Robbins violated the Agreement and that Fred lacked the mental capacity to transfer his membership to Robbins. The Estate asked the court to set aside the transfer and enforce the Agreement, or impose a “constructive trust” on the Darden membership and cabin, or award damages for “unjust enrichment” based on Herbert III’s alleged payment of expenses related to the cabin. Mary Nell joined in the Estate’s request to seek an order from the court to preserve the ownership interests of the Darden property to the heirs of Herbert III, to Fred, and herself. The defendants answered and filed motions for summary judgment arguing that the Agreement was void ab initio, that Hebert III’s Estate lacked standing and its claims were barred by judicial estoppel, since Herbert III did not disclose his alleged Darden membership interest in his prior bankruptcy filing, and that Fred was mentally competent to transfer his membership to Robbins. In April 2021, the chancellor denied the defendants’ motions for summary judgment and the case proceed to bench trial. In October 2021, the chancellor entered an opinion and final judgment dismissing all Herbert III’s Estate’s claims with prejudice. The chancellor held that although “the 1984 Agreement . . . was on its face a valid and enforceable contract,” it was “void ab initio in that it sought to circumvent the valid, enforceable contract of the existing members of the unincorporated association in 1984.” The chancellor also found that the Agreement was contrary to Darden’s current bylaws. Therefore, the chancellor held that neither Herbert III’s Estate nor Mary Nell had “any legally enforceable rights” to the membership or cabin. The chancellor also held that Herbert III’s Estate’s claims were barred by the doctrine of judicial estoppel, that Herbert III’s Estate failed to establish that Fred lacked mental capacity at the time he transferred his members to Robbins, that Herbert III’s Estate lacked standing, that Herbert III’s Estate failed to prove that it was entitled to any damages for unjust enrichment, and that Herbert III’s Estate failed to show that it was entitled to a constructive or resulting trust. Herbert III’s Estate appealed.

## ISSUES

Whether (1) the chancellor erred by holding that the Agreement was void ab initio; (2) the Estate had standing and proved its claim for unjust enrichment and damages; (3) the Estate was entitled to a constructive trust or a resulting trust; (4) the doctrine of judicial estoppel barred the Estate’s claims; and (5) the chancellor erred by finding that the Estate did not prove that Fred lacked mental capacity at the time he transferred his membership to Robbins.

## HOLDING

(1) Because the Agreement met the elements of a valid contract, because Fred agreed to the provision to transfer the membership and cabin to either Herbert III or Mary Nell upon his death, because Fred signed the stock certificate in 1984 whereby he agreed to be bound by Darden’s membership-transfer restrictions and other bylaws, because Darden’s membership agreement required Fred to transfer the membership subject to and conditioned upon the Darden members’ approval, because the Agreement was consistent with Darden’s bylaws and membership restrictions, and because Fred breached the Agreement by transferring his membership to Robbins who was aware of the Agreement prior to the transfer and who gave no consideration for the membership, the chancery court erred by holding that Mary Nell had no legally enforceable rights under the Agreement, and therefore, the Agreement was valid and Mary Nell must elect whether to specifically enforce the right that she possessed under the Agreement. (2) Because Herbert III’s Estate alleged that Herbert III paid significant sums that unjustly enriched Robbins and Fred, because Herbert III died before Fred transferred the Darden membership to Robbins and any rights that Herbert III had to the membership and cabin were terminated when he predeceased Fred, because Fred fulfilled his promise to hold the membership and cabin “in trust” for Herbert III as long as Herbert III was alive, because Herbert III’s Estate failed to show that Herbert III had any personal claim for unjust enrichment since it could not distinguish at trial any payments made by Herbert III personally from payments made by Rogers Investments, and because Herbert III’s Estate failed to prove that any expenditures were made by Herbert III that increased the value of the property or membership, Herbert III’s Estate had standing but was not entitled to recover damages for unjust enrichment. (3) Because the Agreement provided that upon Fred’s death, the Darden membership should have been transferred to a surviving member sibling and because Herbert III predeceased Fred, Herbert III’s Estate had no right to the membership and was not entitled to a constructive trust or resulting trust. (4) Because Herbert III failed to disclose an interest in the Darden membership when he filed for bankruptcy in 2011 and because any rights that Herbert III had to the membership and cabin were terminated when he predeceased Fred, Herbert III’s Estate did not have any legal or equitable rights under the Agreement, and the Estate’s claim for damages failed on the merits. (5) Because Mary Nell had a right to specifically enforce the Agreement and because Herbert III’s Estate possessed no rights under the Agreement, Fred’s mental capacity at the time of the transfer was moot. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Union County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2021-CA-01269-COA (June 20, 2023)**

Opinion by Presiding Judge Wilson

Hon. Stephen Travis Bailey (Union County Chancery Court)

Chandler Rogers & J. Mark Shelton for Appellant - William Hull Davis Jr., H. Richmond Culp III, Robert E. Quimby, & *Pro se* for Appellees

Briefed by [Oliver Samples](#)

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

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

**EVANS V. STATE**

**CIVIL - POST-CONVICTION RELIEF**

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - TIMELY MOTIONS** - Under Miss. Code Ann. § 99-39-5(2), a PCR motion must be filed within three years of the entry of a judgment of conviction on a guilty plea

**POST-CONVICTION RELIEF - PROCEDURAL BAR – SUCCESSIVE-MOTION BAR** - Under Miss. Code Ann. § 99-39-5(2), an order denying a PCR motion shall be a bar to a second or successive PCR motion

**FACTS**

In 2012, a grand jury indicted Choice Evans as a violent habitual offender for burglary. In March 2016, Evans filed a petition to plead guilty to burglary of a dwelling as a nonviolent habitual offender. The circuit court accepted Evans's guilty plea and sentenced him to serve nine years in the custody of the Department of Corrections as a nonviolent habitual offender. In 2017, Evans filed a motion for post-conviction relief ("PCR"), alleging that his attorney provided ineffective assistance of counsel and that the house he had burglarized was not a "dwelling" under the statute, which the circuit court denied. Evans appealed and the Supreme Court dismissed his appeal as untimely. In October 2021, Evans filed a second PCR motion, alleging that his plea was involuntary, that his indictment was defective, and that his attorney provided ineffective assistance. All the claims raised in Evans's second PCR derive from his claim that the house he burglarized was not a dwelling. The circuit court dismissed Evans's motion, holding that it was barred by both the three-year statute of limitations and the successive-motions bar of the Uniform Post-Conviction Collateral Relief Act. Evans appealed.

### ISSUE

Whether the circuit court erred by dismissing Evans's second PCR motion.

### HOLDING

Because Evans filed his PCR more than two years after the statute of limitations ran, because the circuit court already entered an order denying Evans's first PCR motion, and because Evans's claims did not fall under any exception to the statute of limitations or successive-motion bar, the circuit court properly dismissed Evans's second PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Clarke County Circuit Court.

#### **Affirmed - 2021-CP-01423-COA (June 20, 2023)**

Opinion by Presiding Judge Wilson

Hon. Charles W. Wright Jr. (Clarke County Circuit Court)

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

Briefed by [Hannah Elliott](#)

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

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## **LESTRICK V. STATE**

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

**POST-CONVICTION RELIEF - FILING - STATUTE OF LIMITATIONS** - A post-conviction relief motion must be filed within three years of the entry of a judgment of conviction on a guilty plea

**POST-CONVICTION RELIEF - FILING - PROCEDURAL BAR** - An order denying a post-conviction relief motion shall be a bar to a second or successive PCR motion

### FACTS

In 2009, Arthur Lestrick was found guilty of capital murder. Prior to sentencing, Lestrick filed a petition to plead guilty in exchange for the State's agreement not to pursue the death penalty, and the trial court determined Lestrick had done so voluntarily. Lestrick was subsequently sentenced to life in prison without parole. Since being convicted, Lestrick filed several Post-Conviction Relief ("PCR") motions. Lestrick's third PCR motion alleged that his attorney coerced him into pleading guilty and provided ineffective assistance of counsel. Additionally, Lestrick claimed that his conviction following both a guilty verdict and a guilty plea violated "double jeopardy." The trial court dismissed Lestrick's PCR motion, holding it was barred by the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act. Lestrick appealed.

### ISSUE

Whether the court properly dismissed Lestrick's PCR motion.

### HOLDING



Because a PCR motion must have been filed within three years of the entry of a judgment of conviction on a guilty plea and because an order denying a PCR motion was a bar to a second or successive PCR motion, the trial court properly dismissed Lestrick's PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Copleah County Circuit Court.

**Affirmed - 2021-CP-01409-COA (June 20, 2023)**

Opinion by Presiding Judge Wilson

Hon. Tomika Harris Irving (Copleah County Circuit Court)

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

Briefed by [Spencer Cash](#)

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

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

### **MOORE 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**

Eddie Lynom was shot in the stomach through his bedroom window in August 2020. Lynom identified Martavis Moore as the shooter. Lagarius Washington, a cousin of Moore, testified that he saw Moore and Moore's friend, Xavier Gray, at Lynom's window from approximately 300 feet away after hearing gunfire. Washington also stated to the police following the incident that Moore shot Lynom, and Washington told police where the gun was buried. Additional witnesses placed Moore and Gray at or near the scene of the crime, including Dennis McNutt who heard a gunshot from a street over and then saw Moore and Gray running down the street, as well as Officer Ricardo Tell who recovered the gun used in the crime in the backyard of Gray's mother's home. Moore and Gray were arrested and jointly indicted for one count of aggravated assault with a firearm enhancement. A joint trial resulted in Moore being found guilty of aggravated assault with a firearm enhancement and an acquittal for Gray. For the aggravated assault charge, Moore received a sentence of ten years in custody, with three years suspended and seven years to serve, and three years of post-release supervision. Moore was ordered to serve a concurrent term of five years in custody for the firearm enhancement. Moore filed a motion for judgment notwithstanding the verdict, or a new trial. An amended motion was filed approximately three and a half months later. Appellate counsel filed a *Lindsey* brief stating there were no arguable issues on appeal. Agreeing with appellate counsel, the trial court entered an order denying the amended motion. Moore appealed.

#### **ISSUE**

Whether there were any arguable issues on appeal that warranted supplemental briefing or reversal of Moore's conviction and sentence.

### **HOLDING**

Because Moore's appellate counsel properly filed a *Lindsey* brief certifying there were no arguable issues on appeal, because appellate counsel properly informed Moore that he could file a supplemental brief pro se, and because Moore failed to file a pro se brief, there were no arguable issues on appeal that warranted supplemental briefing or reversal. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

#### **Affirmed - 2022-KA-00480-COA (June 20, 2023)**

Opinion by Judge Westbrook

Hon. Linda F. Coleman (Bolivar County Circuit Court, Second Judicial Dist.)

Justin T. Cook (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Mason Borneman](#)

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

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## **POWE V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - APPEALS - NO ARGUABLE ISSUES** - Under *Lindsey v. State*, if direct appellate counsel for an indigent criminal defendant does not believe defendant's case presents any arguable issues on appeal, counsel must file a brief showing no arguable issues on appeal

### **FACTS**

On January 22, 2018, Officer DeReginald Williamson and Officer Robert Klem responded to a call regarding a suspicious male and female in a green vehicle in the Hardee's parking lot in Petal, Mississippi. Williamson testified that, upon arrival, he asked the male for identification. After identifying the male as Powe, Williamson determined that there was an outstanding warrant for his arrest. Williamson conducted a pat down of Powe. Williamson handed Powe over to Klem after he determined Powe did not have any weapons. Klem conducted a more thorough search of Powe before placing him in the officers' vehicle, at which point Klem found a substance in Powe's sock that he believed to be methamphetamine. During the jury trial, defense counsel questioned Klem on cross-examination about a "chain of custody" form. The form stated that Klem found the substance in Powe's jacket pocket. Klem testified that there was a clerical error in the form and that he found the substance in Powe's sock. Klem also showed that the label on the actual evidence bag stated that the substance was found in Powe's sock. An expert in drug analysis from the Mississippi Forensics Laboratory confirmed that the substance found in Powe's sock was 1.133 grams of methamphetamine, a Schedule II substance. After considering the evidence, a jury convicted Powe of possession of methamphetamine. Powe filed a motion for judgment notwithstanding the verdict, or a new trial, which was denied. The circuit court sentenced Powe as a nonviolent habitual offender to serve a term of three years in the custody of the Mississippi Department of Corrections. On December 12, 2022, Powe's appointed appellate counsel filed a brief representing that the record presented no arguable issues on appeal but requested that the Court grant Powe forty days of additional time to file a pro se supplemental brief. The Court granted the additional time, but Powe failed to file a brief within forty days.

### **ISSUE**

Whether Powe had any arguable issues to raise on appeal.

### **HOLDING**

Because Powe's appointed appellate counsel complied with the procedure under *Lindsey v. State*, because Powe failed to raise any arguable issues on appeal within the forty-day extension to file his pro se brief, and because the Court found

no issues within the record that warrant reversal, Powe's conviction and sentence were proper. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2022-KA-00405-COA (June 20, 2023)**

Opinion by Judge Greenlee

Hon. John Mark Weathers (Forrest County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Madison McLean](#)

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

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