

**MISSISSIPPI SUPREME COURT DECISIONS – JUNE 8, 2023*****SUPREME COURT - CIVIL CASES*****MISS. STATE DEMOCRATIC PARTY V. HICKINGBOTTOM****CIVIL - ELECTION CONTEST**

**ELECTION CONTEST - PETITION - GROUNDS** - Under Miss. Code Ann. § 23-15-961(1), to challenge a candidate's qualifications, an individual must file a petition that specifically sets forth the grounds for the challenge(s) within ten days after the qualifying deadline

**ELECTION CONTEST - PETITION - JUDICIAL REVIEW** - Under Miss. Code Ann. § 23-15-961(4), a petition for judicial review of the executive committee's ruling must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee

**FACTS**

On February 1, 2023, Bob Hickingbottom declared his candidacy to be the Democratic Party's nominee for governor. Nine days later, Jim Newman sent a letter to the Democratic Party Executive Committee ("DEC") challenging Hickingbottom's qualifications as a candidate. Newman's letter alleged that while running as a Constitution Party candidate in the 2019 election, Hickingbottom failed to file a statement of organization or a statement of economic interest in violation of Mississippi law. On February 16, the DEC held a Zoom hearing to address Newman's challenges. Hickingbottom was given the opportunity to rebut Newman's challenges in front of the DEC. The next day, the DEC informed Hickingbottom that the DEC had decided not to certify Hickingbottom because he did not meet the statutory requirements to run for office. On March 15, Hickingbottom's attorneys send a letter to the DEC, requesting that they either reconsider their decision to disqualify Hickingbottom, or, alternatively, that they conduct a hearing under Miss. Code Ann. § 23-15-299. On May 3, eighty-two days after Newman's original petition was filed with the DEC, Hickingbottom filed a petition to contest and overturn the DEC's decision and posted a cost bond of \$300. On May 8, the DEC filed a motion for summary judgment. The special judge overseeing the case set a hearing for May 26, 2023. At the hearing, the court ordered that Hickingbottom's name be placed on the ballot as a qualified candidate. Noting that there were no factual disputes to consider, the court found that the challenges to Hickingbottom's qualifications were not grounds for disqualification, and because Newman did not challenge Hickingbottom's qualifications as enumerated in Article 5 of the Mississippi Constitution in his petition, the petition was facially invalid. The court also found that the DEC's notice to Hickingbottom that he was disqualified was "deficient in due process, invalid and improper," and Hickingbottom's delay in filing a petition for judicial review did not outweigh his "right of ballot access in this case." The DEC appealed.

**ISSUES**

Whether Hickingbottom's petition for judicial review was time-barred.

**HOLDING**

Because Hickingbottom's qualifications were challenged by a third party pursuant to Miss. Code Ann. § 23-15-961, Hickingbottom was required to file his petition for judicial review no later than fifteen days after Newman's petition was filed with the DEC. Furthermore, because Hickingbottom failed to file his petition prior to the expiration of the fifteen-day deadline, his petition was time-barred. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

**Reversed & Rendered - 2023-EC-00611-SCT (June 8, 2023)**

En Banc Opinion by Justice Chamberlin  
Hon. Forrest A. Johnson Jr. (Hinds County Circuit Court)  
Gerald A. Mumford for Appellant - John R. Reeves for Appellee  
Briefed by [Meaghan Pickles](#)  
Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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

### **RE: RULES & REGULS. GOVERNING CERTIFIED CT. REPS.**

#### **EN BANC ORDER**

#### **ORDER**

This en banc Order by the Mississippi Supreme Court, made in consideration of its own motion, amended the Rules and Regulations Governing Certified Court Reporters to increase the Official Court Reporter's capacity to assist State courts and the Mississippi Workers' Compensation Commission. Official Court Reporters may assist other State courts or the Mississippi Workers' Compensation Commission with the express approval of their supervising judge when their attendance is not needed in their appointed court and when they have no delinquent appellate work.

[Exhibit A](#), referenced in and attached to the Order, shows the amendments to Rule I(U).

**Ordered - 89-R-99021-SCT (June 8, 2023)**

En Banc Order by Presiding Justice King  
Briefed by [Jacoby Gilmore](#)  
Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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

### **CHISHOLM V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - EVIDENCE - CHAIN OF CUSTODY** - There is a presumption of regularity that applies to public officers that must be rebutted with probable evidence of tampering to prove a break in the chain of custody

**CRIMINAL PROCEDURE - EXPERT WITNESS - EXPERT WITNESS QUALIFICATIONS** - A witness who is proffered as an expert must be qualified, tendered, and accepted under Miss. R. Evid. 702 at the discretion of the trial court

**CRIMINAL PROCEDURE - POST-CONVICTION MOTIONS - MISTRIAL** - A mistrial may only be declared when there is an error in the proceedings resulting in substantial and irreparable prejudice to the defendant's case

**CONSTITUTIONAL RIGHTS - RIGHTS OF THE DEFENDANT - BRADY VIOLATION** - A defendant has a right to given evidence upon request that is exculpatory or favorable to the defendant

**CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY OF THE EVIDENCE** - Evidence presented at trial is sufficient if, viewed in the light most favorable to the prosecution and given the prosecution all favorable

inferences reasonably drawn from evidence, any rational juror could have found the essential elements of the crime beyond a reasonable doubt

## **FACTS**

Around 2012, William Thomas Chisholm and Dr. Shauna Witt became romantically involved. After Dr. Witt ended the relationship in 2017, Chisholm became angry and allegedly burned her belongings that she kept at his home. Dr. Witt obtained a protective order against Chisholm around December 12, 2017 that expired December 30, 2017. On January 13, 2018 Chisholm entered the Wal-Mart Vision Center, an optometry office, where Dr. Witt was working. Heather Ashley, one of Dr. Witt's employees, subsequently called 911. Chisholm barged into an examination room where Dr. Witt was attending to a patient. Chisholm reached into his pocket and pulled out a gun. Dr. Witt begged him not to draw the gun on her. Dr. Witt slipped past Chisholm and began to run. Chisholm opened fire and struck her twice. Dr. Witt was hit once in the back and once in the back of the head. She died at the Vision Center from those wounds. Chisholm went back to his car in the parking lot where officers met him and arrested him. A grand jury charged Chisholm with capital murder in the commission of a burglary with intent to commit an assault inside the building. Chisholm pled not guilty. In July 2021, he notified the State of his intent to pursue an insanity defense and forwarded a report by his retained expert, Dr. Jennifer Carroll. After the State made its case, Carroll was called as an expert forensic psychologist. Upon questioning by the State, it became clear that the qualifications that she claimed to have were not true. She admitted she was not a licensed psychologist because the university she received her Ph.D. from was not accredited by the American Psychology Association (APA) as well as other shortcomings in her education. Carroll also conceded that she did not have a degree in forensic psychology, nor was her licensure as a professional counselor adequate to allow her to offer the court a forensic opinion. She also admitted it was outside the scope of her practice to offer an expert opinion on Chisholm's mental capacity at the time of the murder. For these reasons, the State objected to Carroll's testimony as an expert witness. The court sustained the objection. Chisholm motioned for a mistrial because Carroll misrepresented herself to the defense. This motion was denied. Dr. Robert Storer, the intended rebuttal expert witness, was used by both the State and the defense as an expert. The jury returned a guilty verdict, finding Chisholm guilty of capital murder. He was sentenced to life imprisonment without parole. Chisholm appealed.

## **ISSUES**

Whether (1) the trial court erred in admitting evidence that had questions in its chain of custody; (2) the trial court erred in admitting evidence of Chisholm's prior bad acts; (3) the trial court erred by not admitting Jennifer Carroll an expert witness; (4) the trial court erred by denying Chisholm's motion for a mistrial; (5) the trial court erred by not allowing a heat-of-passion manslaughter jury instruction; (6) the prosecution violated Chisholm's *Brady* rights; (7) the trial court should have quashed his indictment or reduced his charge from capital murder to first-degree murder; (8) the jury's verdict was contrary to the sufficiency of the evidence in regards to his charge of burglary with intent to assault inside the building; and (9) whether the verdict was contrary to the weight of the evidence.

## **HOLDING**

(1) Because one must show a reasonable inference of probable tampering and because Chisholm offered no evidence of tampering or the breaking of the chain of custody, the trial court did not err in admitting evidence that had no questions as to the chain of custody. (2) Because Chisholm did not object at trial, he waived his right to appeal the issue, and therefore, the trial court did not err in admitting Chisholm's prior bad acts. (3) Because by Carroll's own admission her credentials did not qualify her to give an opinion as to the mental state of Chisholm at the commission of the crime and because she was not able to obtain the necessary licenses to qualify her, the trial court did not err in denying her admittance as an expert witness. (4) Because Chisholm proffered Carroll as an expert knowing that her credentials would be questioned, because it was up to the discretion of the trial court as to the admissibility of experts, and because no irreparable harm was done by denying Carroll as an expert, the trial court did not err in denying Chisholm's motion for a mistrial. (5) Because the record did not show a reasonable reaction to a provocation, the trial court did not err by not allowing a heat-of-passion manslaughter jury instruction. (6) Because Chisholm did not explain how the items he claimed contained exculpatory evidence were exculpatory and because Chisholm did not make any efforts to obtain these items, Chisholm failed to meet his burden to prove a *Brady* violation. (7) Because there was no requirement to specify the victim of the alleged assault, nor was there a requirement to specify the type of assault alleged, and because Chisholm's indictment sufficiently informed him of the capital murder charge, the trial court did not err in refusing to quash his indictment. (8) Because the State presented evidence sufficient to prove a constructive breaking, and because a

reasonable juror could have rationally said the State proved Chisholm's intent to commit an assault inside the building, the sufficiency of the evidence did not weigh contrary to the verdict. (9) Because the verdict when was not so contrary to the weight of the evidence that allowing it to stand would have been an unconscionable injustice and because the State presented a plethora of evidence against Chisholm, the verdict was not contrary to the weight of the evidence to justify overturning it. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2021-KA-01254-SCT (June 8, 2023)**

Opinion by Justice Maxwell

Hon. Lee J. Howard (Oktibbeha County Circuit Court)

Mark Andrew Cliett for Appellant - Danielle Love Burks & Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Micah McGaha](#)

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

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## CLANTON V. STATE

### CRIMINAL - FELONY

**EVIDENCE - PROCEDURAL BARS - OBJECTIONS** - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the evidence presented during trial

**EVIDENCE - ADMISSIBILITY - PROBATIVE & PREJUDICIAL** - Miss. R. Evid. 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by a danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence

**CRIMINAL PROCEDURE - APPEALS - HARMLESS ERROR** - An otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt; to apply the harmless error analysis, courts must determine whether the weight of the evidence against the defendant is sufficient to outweigh the harm done by allowing admission of the evidence

**EVIDENCE - ADMISSIBILITY - CRIMES & BAD ACTS** - Where another crime or act is so interrelated to the charged crime as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences, proof of the other crime or act is admissible; moreover, where substantially necessary to present to the jury the complete story of the crime, evidence or testimony may be given even though it may reveal or suggest other crimes

**CRIMINAL PROCEDURE - CLOSING ARGUMENTS - IMPROPER COMMENTS** - A prosecutor can comment on facts in evidence, and he can draw proper deductions and inferences from the facts; but a prosecutor cannot (1) state facts that are not in evidence, and which the court does not judicially know, in aid of his evidence; and (2) appeal to the prejudice of men by injecting prejudices not contained in some source of the evidence

**EVIDENCE - JURY INSTRUCTIONS - PRESUMPTION** - It is presumed that jurors follow the instructions of the court, and to presume otherwise would be to render the jury system inoperable

**CRIMINAL PROCEDURE - VERDICTS - ROLE OF JURY** - The jury is the ultimate trier of fact, listening to evidence presented, observing the witness's demeanor, determining witness's credibility, and deciding what weight to give each piece of evidence; the jurors are further permitted to, and have a duty to, resolve conflicts in testimony they hear

### FACTS

In November 2017, Officer Latayvin Taylor stopped Dekara Clanton for not having his license plate illuminated. While conducting the stop, Officer Taylor noticed the smell of marijuana emanating from the vehicle as he approached. Officer Taylor asked Clanton to step out of the vehicle so he could conduct an officer pat-down. The pat-down yielded of Clanton's front pocket yielded a total of \$1,204.00 in cash. Clanton then permitted Officer Taylor to search the vehicle. Officer Taylor recovered marijuana from the main cabin of the vehicle and a bag of multicolored pills from behind the radio. The marijuana was located in between the seats and in the bag with the multicolored pills. A field test on the pills revealed the pills were methamphetamine. Clanton was subsequently arrested and charged with possession of a quantity of twenty dosage units but no more than forty dosage units of methamphetamine. Before trial, Clanton filed a motion

in limine objecting to a photograph of the money laid out across a table that made it look like a big drug bust. Clanton argued in his motion that the picture was prejudicial because he was charged with possession, not possession with intent to distribute. The trial court found the photographs more probative than prejudicial because the money was part of the items found during Officer Taylor's search and admitted the evidence. The trial court ruled the State could not elicit testimony from Officer Taylor suggesting a connection between the money and the drugs. However, Clanton did not make a specific objection regarding Officer Taylor's testimony of the money found on Clanton, nor did he secure a ruling from the trial court. During trial, Clanton failed to object to Officer Taylor's testimony about the money. At trial, Officer Taylor offered testimony describing the traffic stop. The testimony included the presence of a marijuana cigarette that led Officer Taylor to believe marijuana was in the vehicle. He further found such marijuana inside the bag containing the pills. Furthermore, Officer Taylor testified to the money he recovered from Clanton and that Clanton was in apparent possession of the drugs. He believed Clanton was in possession because Clanton was in control of, was driving, seemed to own, and had knowledge about the workings of the vehicle. Finally, Officer Taylor stated he believed, based on his training and experience, the pills found in Clanton's vehicle were ecstasy, but Clanton failed to object to this statement. Clanton and the State both referred to the pills as methamphetamine and ecstasy interchangeably during the trial. Clanton objected to the State's classification of the pills as methamphetamine and ecstasy. The trial court overruled the objection and instructed the jury to follow its own recollection of the evidence. The State admitted the photo of the money laid across the table as Exhibit Four into evidence. The State then called a forensic scientist at the Mississippi Crime Lab, Arcie Nichols. Nichols testified the chemical and color test confirmed the pills were methamphetamine. On cross-examination, Nichols stated he did not perform a fingerprint analysis test on the bag that held the pills. Clanton called one witness, Shaquile Jackson, who testified that Clanton would let him borrow his vehicle, and that he borrowed Clanton's vehicle the day of the traffic stop. While borrowing Clanton's vehicle, Jackson testified that he got pills. Jackson also testified that he knew he put the pills by the radio but did not put any marijuana in the bag, nor was he ever in possession of marijuana while borrowing Clanton's vehicle. Lastly, Jackson stated that he never informed Clanton of the pills in the vehicle. During closing arguments, the State asserted that no other individual was in Clanton's vehicle besides Clanton himself between the time Jackson claimed he left the pills in the vehicle and when Officer Taylor conducted the traffic stop. The jury convicted Clanton of possession of methamphetamine. Clanton was sentenced to twenty years in the custody of the Mississippi Department of Corrections ("MDOC") with the potential to be released after eight years and placed on five years of post-release supervision. Clanton appealed.

## **ISSUES**

Whether (1) admitting testimony about money taken from Clanton's person was proper; (2) admitting photographs about money taken from Clanton's person was proper; (3) admitting photographs and testimony about marijuana found in Clanton's vehicle was proper; (4) permitting Officer Taylor's testimony that he thought he found ecstasy in Clanton's vehicle was proper; (5) overruling Clanton's objection to the State's alleged misstatement of evidence in its closing argument was proper; and (6) the verdict rendered supported the overwhelming weight of the evidence.

## **HOLDING**

(1) Because Clanton failed to secure a ruling on the admissibility from the trial court regarding Officer Taylor's testimony about finding money on Clanton from the trial court, and because Clanton failed to object to Officer Taylor's testimony when presented at trial, Clanton was procedurally barred from raising the issue on appeal. (2) Because the photograph of the money recovered from Clanton was cumulative to Officer Taylor's testimony, because the evidence was more than sufficient to overcome any prejudice Clanton might have suffered from the admission of the photograph, and because the verdict was not against the weight of the evidence, the admission of the photograph of money was harmless error. (3) Because the marijuana cigarette was necessary to tell the whole story of the traffic stop and how Officer Taylor came to search Clanton's vehicle, because Jackson indicated someone else put marijuana in the bag with his pills, therefore, making that person aware of the pills' presence, and because the presence of marijuana was critical proof and probative of guilt, it was proper to admit photograph and testimony about marijuana found in Clanton's vehicle. (4) Because Clanton failed to object at trial regarding Officer Taylor's testimony that he believed the pills found in Clanton's vehicle were ecstasy based on his training and experience, Clanton was procedurally barred from raising the issue on appeal. (5) Because Officer Taylor testified that Clanton was driving the vehicle where the marijuana and pills were found, and because Jackson testified there was no one else in the vehicle when he left the pills in the vehicle and returned it to Clanton, because Clanton's counsel used "ecstasy" and "meth" interchangeably throughout trial, and because



Clanton could not prove the interchanging of words prejudiced him since the trial court instructed the jury to follow its own recollection of the evidence, the trial court did not err in overruling Clanton's objection to the State's alleged misstatements of evidence in its closing argument that Clanton was the only person in the vehicle from the time that Jackson left the pill in the vehicle until Officer Taylor arrived and that the State misclassified the pills as ecstasy. (6) Because the jury heard all of the evidence, assigned weight to each piece of evidence, resolved conflicting evidence, and convicted Clanton of possession, and because the State provided the evidence was sufficient to convict Clanton of possession, the jury's verdict was not contrary to the overwhelming weight of the evidence presented. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2021-KA-01159-SCT (June 8, 2023)**

Opinion by Justice Ishee

Hon. John H. Emfinger (Madison County Circuit Court)

Jane E. Tucker for Appellant - Alexandra Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Kachla Outlaw](#)

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

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## HARVEY V. STATE

### CRIMINAL - FELONY

**EVIDENCE - SUBSTANCE OF EVIDENCE - CLARITY** - Miss. R. Evid. 103(a)(2) requires the substance of the evidence be made known to the trial court by an offer of proof unless the substance is otherwise apparent from the context

**EVIDENCE - CHARACTER EVIDENCE - ADMISSABILITY** - Miss. R. Evid. 404 provides that character evidence generally may not be used to prove a defendant acted in conformity therewith; character evidence may not be provided in the form of specific instances of conduct

**EVIDENCE - CHARACTER EVIDENCE - ESSENTIAL ELEMENT** - Where neither party's character for truthfulness or untruthfulness is not an essential element of the charge or defense in the case, Mississippi Rule of Evidence 405(b) is inapplicable

**EVIDENCE - LIMITING INSTRUCTIONS - QUALIFYING LANGUAGE** - The use of qualifying language in a jury instruction regarding prior bad act evidence will render that instruction nonperemptory, thereby making the instruction proper

### FACTS

In April 2021, Edward Harvey was arrested following a domestic violence incident with his wife, Tammy, at his home. Harvey was indicted for aggravated domestic violence and kidnapping. Harvey found evidence that Tammy was having an affair, so he beat her when she arrived home from work. Tammy escaped and ran to her friend's house to call the police. The police took Harvey into custody. Later that day, Tammy had to go to the hospital because she was vomiting. At trial, photographs of Tammy's injuries were submitted into evidence. Additionally, a nurse who treated Tammy testified that she had an abrasion above her right eye, bruising around both eyes and along her entire jawline. Harvey testified that he was not trying to kill Tammy. Harvey testified that he confronted Tammy, and she became combative and tried to injure him, so he protected himself from her. During trial, Tammy testified that she was a good stepmother to Harvey's children. Tammy testified that she took Harvey's children where they needed to go. Tammy also testified that Harvey kidnapped her and physically assaulted her after he found out that she had guy friends on her Facebook page. The State drafted and submitted a limiting instruction to the trial court with no objections from Harvey's counsel. Immediately following the State's direct examination of Tammy, the trial court provided a limiting instruction that instructed the jury that acts testified to regarding abuse were acts Harvey was not on trial for and were to be considered only to prove motive, intent, common plan or scheme. Further, it instructed the jury not to infer Harvey acted in conformity with the previous acts. In response to Tammy's testimony about being a good stepmother to Harvey's children, Harvey sought to have his daughter testify to counter Tammy's testimony. Harvey's daughter testified on

behalf of Harvey’s defense. Harvey’s counsel asked Harvey’s daughter whether Tammy would get them to school and practice. The trial court sustained the State’s objection that the question was not relevant. Harvey’s counsel then asked Harvey’s daughter for her opinion of Tammy’s truthfulness, and she responded that Tammy was unfaithful and a liar. The trial court also provided a limiting jury instruction that informed them not to infer guilt based on prior acts by the defendant. The jury found Harvey guilty of aggravated domestic violence and not guilty of kidnapping. Harvey was sentenced to twenty years. Harvey appealed.

### **ISSUES**

Whether the trial court erred by (1) not allowing Harvey’s daughter to testify rebuttal evidence regarding Tammy’s testimony that she took her stepchildren places and retrieved them from school and (2) allowing a jury instruction regarding prior bad act evidence.

### **HOLDING**

(1) Because Harvey failed to argue the admissibility of his daughter’s testimony under Miss. R. Evid. 404 until appeal, because the record did not show what Harvey’s daughter would have testified, because procedural bars notwithstanding Harvey’s daughter was permitted to give her opinion of Tammy’s character when she indicated Tammy was unfaithful and a liar, because Harvey’s daughter was not allowed to provide opinion or reputation testimony as to Tammy’s truthfulness in the form of specific instances of conduct as prohibited by Miss. R. Evid. 404(a)(2)(B), because whether Tammy drove Harvey’s children places was collateral to the actual issue of the case and allowing it would not have affected the outcome of the trial, the trial court did not err by not allowing Harvey’s daughter to testify rebuttal evidence regarding Tammy’s testimony that she took her stepchildren places and retrieved them from school. (2) Because the limiting instruction contained “acts testified to” immediately before “regarding abuse that occurred,” the instruction was nonperemptory because of the qualifying language, because the jury was properly instructed not to single out one jury instruction alone as stating the law and to read the instructions as a whole, because “abuse” and “domestic abuse” were mentioned repeatedly to the jury throughout the case, and because the jury was instructed that it could not infer Harvey acted in conformity with his previous acts, the failure to include the word “alleged” before “abuse that occurred” was not a manifest miscarriage of justice, and the trial court did not err by allowing the jury instruction regarding prior bad act evidence. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2022-KA-00660-SCT (June 8, 2023)**

Opinion by Justice Beam

Hon. M. Bradley Mills (Rankin County Circuit Court)

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

Briefed by [Morgan Rushing](#)

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

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 6, 2023**

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

#### **HOLCOMBE V. ESTATE OF KING**

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

**WILLS & ESTATES - CONFIDENTIAL RELATIONSHIPS - FACTORS** - The following factors are considered in determining the existence of a confidential relationship: (1) whether one person has to be taken care of by others; (2) whether one person maintains a close relationship with another; (3) whether one person is provided transportation and has their medical care provided for by another; (4) whether one person maintains joint accounts with another; (5)

whether one is physically or mentally weak; (6) whether one is of advanced age or poor health; and (7) whether there exists a power of attorney between the one and another

**WILLS & ESTATES - CONFIDENTIAL RELATIONSHIP - UNDUE INFLUENCE** - If a plaintiff can demonstrate, by clear and convincing evidence, the existence of a confidential relationship between a grantor and a defendant grantee, a rebuttable presumption of undue influence arises regarding any inter vivos transactions between the grantor and the defendant grantee

**CIVIL PROCEDURE - JUDICIAL AUTHORITY - FACT FINDER** - When the trial judge sits as the finder of fact, he has the sole authority for determining the credibility of witnesses

### **FACTS**

Joyce King owned her home in which her daughter, Brenda, resided with her, while Joyce's son, Larue King, lived in a mobile home on the property with his wife, Burlene King. When Larue began suffering from multiple health conditions, he and his wife moved in with Joyce. Eventually, Joyce transferred the deed to her home and property to both Larue and Burlene, with Joyce maintaining a life estate in the property. A few years after the conveyance, both Larue and Burlene passed away. With power of attorney over her mother, Rachel Holcombe, Joyce's daughter, filed a complaint alleging the conveyance was the misuse of a confidential relationship giving rise to the presumption of undue influence. Amidst conflicting testimony, the trial court analyzed the evidence and weighed each of the factors used to determine the presence of a confidential relationship. The trial court determined that although there was evidence of Burlene having access to Joyce's bank account and Joyce was of advanced age, there was not clear and convincing evidence of a confidential relationship. Holcombe appealed.

### **ISSUES**

Whether the trial court erred by finding there was not a confidential relationship between Burlene and Joyce.

### **HOLDING**

Because the trial court carefully weighed the factors for establishing a confidential relationship, because the trial court had the sole authority for determining the credibility of witnesses, and because there was not clear and convincing evidence of a confidential relationship, even though Burlene had access to Joyce's bank account and Joyce was of advanced age, the trial court did not abuse its discretion in determining there was not a confidential relationship. Therefore, the Court of Appeals affirmed the judgment of the Pike County Chancery Court.

**Affirmed - 2021-CA-01234-COA (June 6, 2023)**

Opinion by Judge McCarty

Hon. Wayne Smith (Pike County Chancery Court)

Todd Brentley Ott & Gary L. Honea for Appellant - Kimberly Courtney King, Sherrie Lynn Dewolf, & Connie Marie Smith for Appellees

Briefed by [Baylee Howard](#)

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

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## **TOOLPUSHERS SUPPLY CO. V. MISS. DEP'T OF REVENUE**

### **CIVIL - STATE BOARDS & AGENCIES**

**ADMINISTRATIVE LAW - APPEALS - STANDARD OF REVIEW** - Pursuant to Miss. Code Ann. § 27-77-7(5) the chancery court shall try the case de novo and conduct a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the action of the Department of Revenue

**ADMINISTRATIVE LAW - APPEALS - BURDEN OF PROOF** - The party petitioning the court for relief bears the burden of proving its claims by a preponderance of the evidence or a higher standard, if required by the issues raised

**ADMINISTRATIVE LAW - APPEALS - REQUIREMENTS FOR REVERSAL** - To be entitled to reversal of the agency's decision, a petitioner must raise and prove one or more of the following: (1) the agency's decision was



unsupported by substantial evidence, (2) the agency's decision was arbitrary and capricious, (3) the agency's decision was beyond the power of the administrative agency to make, or (4) the agency's decision violated the complaining party's statutory or constitutional right; the court does not adjudicate the wisdom or sageness of the agency's decision, but rather is limited to examining the legality of the decision

**ADMINISTRATIVE LAW - SALES TAX - EXEMPTION REQUIREMENTS** - The purchase of tangible personal property is excepted from the seven-percent sales tax if (1) the purchaser must be licensed under Miss. Code Ann. § 27-65-27 if it is located in Mississippi and (2) the purchaser must be a retailer who is making the purchase to sell or rent the items purchased in the regular line of business; the determination as to the second requirement must be made by the entity making the sale

**ADMINISTRATIVE LAW - SALES TAX - EXEMPTION** - Miss. Code Ann. § 27-65-5(1) does not exempt retail businesses from paying sales tax on all of their purchases, only those items purchased for resale

**APPELLATE PROCEDURE - APPELLATE ARGUMENTS - REQUIREMENTS** - Miss. R. App. P 28(a)(7) governs the argument section of appellate briefs and requires the argument to contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied upon, it does not simply require a party to mention authority; the authority must be used to develop the argument in a meaningful way

## **FACTS**

Toolpushers Supply Co. ("Toolpushers") sold items in the oil and gas industry. From April 2013 to June 2016, the Mississippi Department of Revenue ("MDOR") conducted an audit of Toolpushers. Following the audit, the MDOR issued an assessment finding that Toolpushers owed \$124,728.00 in taxes, failed to charge and remit sales tax on some of its sales, and considered some sales exempt when the sales were not exempt. Toolpushers appealed the assessment to MDOR's Board of Revenue ("BOR"). The BOR affirmed the MDOR's assessment finding that the sales were not exempt because Toolpushers's purchasers were using and consuming, rather than reselling, the products they purchased. Toolpushers subsequently appealed the BOR's order to the Mississippi Board of Tax Appeals ("BTA") arguing that the sales were not subject to seven-percent retail tax because the sales were wholesale sales rather than retail sales. BTA affirmed the decision of the BOR, finding that Toolpushers did not satisfy the obligations in the wholesale sales statute. Specifically, BTA found that Toolpushers did not exercise good faith in its determination that the items at issue it sold to its customers were to a retailer regularly selling or renting the property. In April 2018, Toolpushers filed a petition in Hinds County Chancery Court appealing BTA's order. Toolpushers's petition requested reversal of the order, a declaration that the application of the wholesale sale statute was an unconstitutional exercise of legislative authority, and an order preventing MDOR from collecting the regular retail sales tax. After the MDOR responded to the petition with a general denial, Toolpushers and MDOR each cross-motivated for summary judgment. Both BTA and the chancery court found that Toolpushers did not have a good faith basis to believe the purchaser was a retailer that regularly sold or rented the item they were purchasing from Toolpushers. BTA and the chancery court found it did not have a good faith basis because Toolpushers heavily relied upon, if not exclusively relied upon, the purchaser's business permit to determine whether to charge the purchaser retail sales tax. However, Toolpushers also needed to ask the purchaser their purpose for purchasing the item since not every business qualifies as exempt from retail sales tax. It would depend on the item whether the purchaser was using and consuming, or reselling the item, to determine whether the purchaser was exempt from retail sales tax. The chancery court found that MDOR was entitled to a judgment as a matter of law because Toolpushers failed to meet its burden of proof that they were entitled to relief. Toolpushers appealed.

## **ISSUES**

Whether (1) Toolpushers had a good faith basis to believe that the sales were wholesale sales; (2) an interpretation of Miss. Code Ann. § 27-65-27 that required Toolpushers to do anything more than checking purchasers for a business permit would have created constitutional issues and constituted a burden on interstate commerce; and (3) Toolpushers was entitled to relief on appeal from BTA's order.

## **HOLDING**

(1) Because Toolpushers did nothing more than accept the business permits when the purchasers presented them, and because there was no evidence that Toolpushers asked the purchaser the purpose of the item's purchase to determine whether the purchaser would be using and consuming or reselling the item, Toolpushers did not have a good faith basis to believe that the sales were wholesale sales rendering them exempt from the retail sales tax. (2) Because Toolpushers

failed to comply with Miss. R. App. P. 28(a)(7) by failing to develop meaningful arguments in support of its contentions, the issue of whether an interpretation of Miss. Code Ann. § 27-65-27 that required Toolpushers to do anything more than checking purchasers for a business permit would have created constitutional issues and constituted a burden on interstate commerce was procedurally barred. (3) Because Toolpushers failed to create a genuine issue of material fact, Toolpushers failed to show that it was entitled to relief on appeal from BTA's order. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

**Affirmed - 2021-SA-01186-COA (June 6, 2023)**

Opinion by Judge Emfinger

Hon. Crystal Wise Martin (Hinds County Chancery Court, First Judicial Dist.)

C. Ted Sanderson Jr. for Appellant - John Stewart Stringer & Bridgette Trenette Thomas for Appellee

Briefed by [Naomi Migoya](#)

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

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

### **HAMILTON V. STATE**

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

**CIVIL - POST-CONVICTION RELIEF - MOTION TIMING** - In accordance with Miss. Code Ann. § 99-39-23(6), secondary or successive post-conviction relief motions are barred after an order has been filed

**CIVIL - POST-CONVICTION RELIEF - BAR EXEMPTIONS** - Under Miss. Code Ann. §§ 99-39-5(2) & 99-39-23(6), statutory bars to post-conviction relief motions can be exempted in instances of (1) an intervening decision of the Mississippi Supreme Court that “would have actually adversely affected the outcome of his conviction or sentence,” (2) newly discovered evidence that is “of such nature that it would be practically conclusive” that it would have caused a different outcome if introduced at trial, (3) the testing of certain biological evidence, (4) claims that the movant’s “sentence has expired or his probation, parole or conditional release has been unlawfully revoked,” and (5) certain motions for relief in cases where the death penalty is imposed

#### **FACTS**

In 2017, Christopher Hamilton pled guilty to two counts of attempted murder and was sentenced to sixty-five years. Hamilton filed four separate motions for Post-Conviction Relief (PCR) from March 2020 to December 2021. In March 2020, Hamilton filed a PCR motion requesting the circuit court to order his sentences to run concurrently rather than consecutively. The circuit court denied the motion. In December 2020, Hamilton filed a PCR motion arguing that his guilty pleas were involuntary because he had not been advised of the minimum and maximum sentences for attempted murder. The circuit court denied the motion as time-barred and without merit because the plea-hearing transcript contradicted Hamilton’s assertion that he was not advised of the possible sentences. In July 2021, Hamilton filed a PCR motion arguing that his due process rights were violated and that his guilty pleas were involuntary because he had not been informed that his sentences carried “mandatory time.” In December 2021, Hamilton filed a PCR motion arguing that his sentence in Count I was illegal because the circuit court impermissibly suspended a portion of the sentence. The circuit court denied the last two of Hamilton’s PCR motions as time-barred, successive, barred by res judicata, and without merit. Hamilton appealed.

#### **ISSUES**

Whether the circuit court erred in finding (1) that the final two PCR motions were barred and (2) that Hamilton had no exception to the statutory bars.

#### **HOLDING**

(1) Because the July 2021 and December 2021 PCR motions were filed outside of the three-year statute of limitations allowed for PCR motions, and because Hamilton’s second, third, and fourth motions were considered successive of the first motion, the circuit court did not err in finding that the final two PCR motions were barred. (2) Because Hamilton’s motions did not fall within any of the statutory exceptions to the bar, the circuit court did not err in finding that Hamilton had no exception to the statutory bars. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

**Affirmed - 2022-CP-00217-COA (June 6, 2023)**

Opinion by Judge Lawrence

Hon. Michael M. Taylor (Lincoln County Circuit Court)

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

**Consolidated with:**

**Affirmed - 2022-CP-00218-COA (June 6, 2023)**

Hon. Michael M. Taylor (Lincoln County Circuit Court)

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

Briefed by [Constance Hartline](#)

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

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## VARNADO V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - ISSUE ON APPEAL - WAIVER** - If a prisoner fails to raise an issue in the circuit court, he waives his ability to bring that issue on appeal

**POST-CONVICTION RELIEF - PAROLE - ELIGIBILITY** - Under Miss. Code. Ann. § 47-5-139(1)(a), an inmate sentenced to life in prison, who is at least sixty-five (65) years old, and has served at least fifteen (15) years in prison is eligible to petition the court for parole

**CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS** - A guilty plea will only be binding upon a criminal defendant if it is voluntary and intelligently entered, which means a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea

**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

**POST-CONVICTION RELIEF - PROSECUTORIAL MISCONDUCT - SWORN TESTIMONY** - Courts place great emphasis on a defendant’s sworn testimony, so contradictory evidence would be required to prove a finding of prosecutorial misconduct

### FACTS

On September 5, 2014, Eisenhower Durr called the Simpson County Sheriff’s Office, stating that he saw a black male and black female run out the front door of his home and down a pipeline behind his property. Upon entering his home, Durr found his wife, Neoma Durr, lying on the floor, where she was later pronounced dead. The next day, the sheriff’s office received a call from an individual named “Slim,” who suggested the officers speak with Durr regarding his granddaughter Kiki and her boyfriend. Slim stated that Kiki and her boyfriend had arrived at Gulfport, left their son with “a girl named Dee,” who was also Slim’s girlfriend’s cousin, and informed Dee that they were going to the casino. When Kiki and her boyfriend returned to Dee’s to pick up their son, Dee said both Kiki and her boyfriend were covered in blood. After Kiki and her boyfriend left, Dee informed Slim that Kiki stated they never went to the casino and instead went to her grandfather’s home to get the rest of her money. Kiki’s grandfather was not home when they arrived, but his wife Neoma was home. Kiki told Dee that when they heard someone pull up to the house outside, her boyfriend “freaked out,” stabbed Neoma, and they ran out the back of the house. In March 2016, the State filed a bill of

information in the Simpson County Circuit Court, which stated that Varnado had violated Mississippi Code Annotated section 97-3-19(1)(a). Varnado waived his right to an indictment and instead filed a petition to enter a guilty plea. Varnado stated he was guilty to the crime of first-degree murder and believed he would receive a “life with the possibility of parole” sentence. The same day Varnado entered his guilty plea, the circuit court held a hearing where they asked Varnado a series of questions to determine whether he read and understood the guilty plea. The circuit court then instructed the State to present the facts and evidence it would use against Varnado if the case went to trial. After the State concluded presenting its material, the State recommended a sentence of life imprisonment in accordance with Mississippi Code Annotated section 97-3-21(1). The judgment further stated Varnado was not eligible for parole until he reached the age of sixty-five (65). When asked if Varnado understood his sentencing and wished to continue to plead guilty, Varnado answered in the affirmative. The circuit court entered a final judgment sentence later that same day. In September of 2018, Varnado filed a pro se post-conviction relief motion. In his motion, Varnado alleged that his guilty plea was involuntary, that his counsel had not properly represented him, and that the State investigator’s report had falsified the condition of Neoma’s body which misled the court and negatively affected his sentencing. In July 2021, the circuit court denied Varnado’s motion for post-conviction relief on the grounds that Varnado “knowingly, intelligently, understandingly, freely, and voluntarily entered a guilty plea to the charge of first-degree murder.” Varnado appealed.

### **ISSUES**

Whether (1) Varnado was misinformed about his eligibility for parole; (2) Varnado’s guilty plea was not entered into voluntarily; (3) Varnado’s conviction and sentence resulted from prosecutorial misconduct; and (4) Varnado received ineffective assistance of counsel.

### **HOLDING**

(1) Because Varnado did not raise the issue that the court failed to inform him that he could withdraw his guilty plea if the court did not accept the State’s recommendation for sentencing and because Miss. Code Ann. § 47-5-139(1)(a) allowed for an inmate sentenced to life in prison for murder, who has reached sixty-five years and served at least fifteen years, to petition the court for an early release, Varnado waived his right to raise the issue on appeal and the court did not misinform him of his eligibility for parole. (2) Because Varnado failed to state who informed him that he would be found guilty and sentenced to death at trial, nor did he have any evidence to support this claim, and because during Varnado’s plea hearing he affirmed that he had not been threatened, forced, intimidated, or coerced in any way to plead guilty, Varnado voluntarily entered into his guilty plea. (3) Because Varnado failed to present any evidence that was contradictory to his sworn statements and because Varnado agreed with the evidence presented by the State when asked during his plea hearing, Varnado’s prosecutorial misconduct claim was without merit. (4) Because Varnado entered into a guilty plea and because Varnado asserted his satisfaction with the services and conduct of his counsel during the sworn statements at the sentencing portion of his hearing, Varnado waived his ability to raise a claim for ineffective assistance of counsel, but the claim was still without merit, and therefore the court did not err in denying his claim for ineffective counsel. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

### **DISSENT**

Judge Carlton argued that pursuant to the Supreme Court’s opinion in *Smith v. State*, errors affecting a clear denial of due process can be reviewed for plain error. She argued that the circuit court improperly used the words “parole or early release” when the proper term should have been “conditional release,” and as a result, Varnado relied on misinformation when he submitted his guilty plea. Therefore, the circuit court should not have held that Varnado did not present sufficient evidence to show that his guilty plea was not entered into voluntarily.

#### **Affirmed - 2021-CP-01073-COA (June 6, 2023)**

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

Hon. Stanley Alex Sorey (Simpson County Circuit Court)

*Pro se* for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Sierra Albano](#)

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

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## WINSTON V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - JURISDICTION - MUNICIPAL COURTS** - Municipal courts lack jurisdiction to hear motions for post-conviction relief because they are not courts of record

**POST-CONVICTION RELIEF - STANDING - MOVANTS** - Movants for post-conviction relief who were not sentenced in a court of record lack standing under Miss. Code Ann. § 99-39-5(1)

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - TIMELINESS** - Motions for post-conviction relief must be filed within three years of conviction, or else they are time-barred

#### FACTS

Charles Winston Jr. waived his right to an attorney and pled guilty to shoplifting in the Municipal Court for the City of Vicksburg in 2013. Winston was sentenced to two days in jail, and his sentence was suspended upon completion of an anti-shoplifting course. In 2020, seven years after his conviction, Winston filed an amended motion for post-conviction relief in the Vicksburg municipal court claiming that his plea was involuntary and that new evidence required his sentence vacated because his conviction prevented him from sealing a record in another state. The municipal court denied Winston's motion as time-barred under Miss. Code Ann. § 99-39-5(2). Then, Winston appealed to the Warren County County Court, where a prosecutor filed a motion to dismiss because the municipal court could not have considered Winston's motion because the municipal court was not a court of record as required under the Mississippi Uniform Post-Conviction Collateral Relief Act ("UPCCRA"). Winston replied by arguing that the municipal court indicated that it had jurisdiction, and the only basis for denial of his motion was the three-year statute of limitations. Winston's father also testified that Winston pled guilty with the understanding that his conviction would be expunged and that Winston did not realize until later that an expungement would not help Winston or allow him to seal the other record in another state. The county court held that the municipal court did not have jurisdiction to hear Winston's motion and denied Winston's motion for a rehearing. Winston appealed to the Warren County Circuit Court, which similarly held that Winston did not have standing to seek post-conviction relief in a municipal court. Winston appealed.

#### ISSUES

Whether (1) the municipal court had jurisdiction to consider Winston's motion and (2) Winston's motion was excepted from the three-year statute of limitations under Miss. Code Ann. § 99-39-5(2).

#### HOLDING

(1) Because Winston was sentenced in a municipal court, because the municipal court was not a court of record, and because Winston lacked standing to file a post-conviction relief motion since he was not convicted in accordance with Miss. Code Ann. § 99-39-5, the municipal court did not have jurisdiction to consider Winston's motion. (2) Because, assuming the municipal court had jurisdiction, Winston's motion was filed outside the three-year statutory limitations period, and because the judicially crafted fundamental-rights exception to procedural bars of post-conviction relief no longer applied to substantive, constitutionally bars as codified by the legislature in the UPCCRA, Winston's motion was not excepted from the three-year statute of limitations and it was properly denied. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

#### **Affirmed - 2022-CA-00747-COA (June 6, 2023)**

Opinion by Judge Greenlee

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

Ceola James for Appellant - Casey B. Farmer (Att'y Gen. Office) for Appellee

Briefed by [Holdon Guy](#)

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

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## COURT OF APPEALS - CRIMINAL CASES

### HILL V. STATE

#### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE** - To be entitled to a lesser-included offense instruction, the defendant must point to evidence in the record from which a jury could reasonably find him not guilty of the crime with which he was charged and at the same time find him guilty of the lesser-included offense

**CRIMINAL PROCEDURE - INDICTMENT - ELEMENTS** - An indictment must contain: (1) the essential elements of the crime charged; (2) sufficient facts to fairly inform the defendant of the charge against which he must defend; and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense; an indictment is sufficient so long as a fair reading of the indictment, taken as a whole, the nature and cause of the charge against the accused are clear

**CRIMINAL PROCEDURE - INDICTMENT - CONSTRUCTIVE AMENDMENT** - A constructive amendment of the indictment occurs when the proof and instructions broaden the grounds upon which the defendant may be found guilty of the offense charged so that the defendant may be convicted without proof of the elements alleged by the grand jury in its indictment

**CONSTITUTIONAL LAW - RIGHT TO A SPEEDY TRIAL - BALANCING TEST** - When the delay between the date of arrest and the defendant's trial is eight months or longer, the delay is presumptively prejudicial, and the *Barker* balancing test is triggered to analyze whether an accused's right to a speedy trial has been violated; the *Barker* factors are (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the defendant was prejudiced by the delay

#### FACTS

Shamell Hill and Lashawnda Wooten married in 2013. The couple's relationship became tumultuous after Hill started to believe Wooten was having an affair. The couple separated, and Wooten moved into another home. Hill stated he did not want to separate and tried to make things work, but Wooten insisted she needed space. Hill went to Wooten's home one night, but Wooten was driving away in a car with another man. Hill followed Wooten in a vehicle driven by his friend. Hill then called to accuse Wooten of cheating, and she replied she wanted a divorce. After losing sight of Wooten's car, Hill returned to the home where Wooten was parked, and the man was no longer with her. Hill then physically assaulted Wooten upon her exiting the car. In December 2018, Wooten got an emergency protective order against Hill. In January 2019, the trial court granted a permanent protective order that prohibited Hill from having contact with Wooten or going within one-hundred yards of her. The order was to be effective until January 2020. At the same time, Wooten filed for divorce. Hill and Wooten signed a joint complaint for divorce. Hill stated that a few days later, he called Wooten and asked her if she loved and cared for the another man, and Wooten replied that she did. After hanging up with Wooten, Hill made several distressed phone calls to his family. Hill then cried and prayed. Hill then stated he got the knife and a stick and walked five miles to Wooten's home. Hill broke into Wooten's home and began stabbing her. During the attack, Wooten's daughter tried to spray Hill with mace, but missed his face. Hill stabbed Wooten eighteen times which ultimately led to her death. After the attack, Hill unsuccessfully tried to hurt himself with the knife. Hill then turned himself over to the police. Hill was arrested in January 2019. During the subsequent interview, Hill gave a video confession, including an admission that he left his home with the intention of murdering his wife. In March 2020, the Supreme Court entered its first series of emergency orders that recognized the national emergency related to COVID-19 and gave trial courts the discretion to extend deadlines and to reschedule hearings and trials. In January 2021, Hill was indicted for capital murder in the commission of a burglary and charged as a habitual offender. Hill's arraignment was exactly two weeks after the indictment. In April 2021, over two years after his indictment, Hill formally filed a motion for speedy trial. The initial trial was set for May 2021. A week before trial, Hill filed a motion for mental evaluation and agreed to reset his trial to August 2021. In May 2021, Hill formally filed a motion for a mental evaluation to determine his competency to stand trial. In June 2021, Hill filed a motion for funds for investigative

assistance. The trial court granted both motions. Hill's mental competency evaluation was scheduled for August 2021. The trial was then reset to December 2021 pending the results of his mental competency evaluation. Again, the trial was reset to April 2022 because the psychology and investigator reports were still pending. Hill signed an order stating that he waived his right to a speedy trial. In April 2022, the trial court determined Hill was competent to stand trial, and his trial began just a few weeks later. At trial, Wooten's father testified that he was on the phone with her at the time of the attack, and he heard Hill yell that he warned Wooten he would get her. She cried for help, so her father dialed 911 and began driving to her home. Wooten's son testified to a similar statement by Hill. Wooten's daughter testified and corroborated the use of mace and that she ran across the street to get help from their neighbor that was a police officer. Finally, Hill took the stand in his own defense. He recounted the alleged affairs, the previous assault, and the persistent efforts to contact Wooten despite the protective order prohibiting contact. Contrary to his statement on the night of the arrest, Hill testified that he did not go to Wooten's home with the intent to kill her but stated that he was in the wrong state of mind. At the end of the trial, Hill proposed a jury instruction of heat of passion manslaughter because he claimed that he grabbed the knife for self-defense purposes and not to kill his wife. The State argued that malice was not required in capital murder cases. Further, Hill's effort to arm himself before the encounter with his wife and in preparation of the encounter with his wife negated the assertion of the heat of passion defense. The evidence did not support heat of passion, and thus, the trial court denied the instruction. Hill was found guilty of capital murder and sentenced to serve life imprisonment without eligibility for parole in the custody of the Mississippi Department of Corrections. Hill appealed.

### ISSUES

Whether (1) the trial court erred by refusing Hill's lesser-included-offense jury instruction of heat of passion manslaughter; (2) Hill's indictment was defective because it failed to state the judicial county that Hill's indictment was brought, the crime committed, or Wooten's cause of death; (3) Hill's indictment was constructively amended because the State presented evidence of a murder weapon even though the indictment never mentioned it; and (4) Hill's right to a speedy trial was violated.

### HOLDING

(1) Because Hill had substantial time to cool-off between the phone call that provoked Hill and Wooten's murder since he made phone calls to friends and family, prayed on the matter, and then walked five-miles to the Wooten's home before murdering her, because the jury believed that Hill left his house with the intent to murder Wooten, and because evidence that Hill broke into Wooten's home with the intent to kill her was not required since Hill was charged with capital murder, the trial court did not err by refusing Hill's lesser-included-offense jury instruction of heat of passion manslaughter. (2) Because Lauderdale County was not a two-district county, Hill's contention that the indictment was defective because it failed to provide the judicial district of the county in which his indictment was brought was without merit, because the indictment sufficiently described the crime committed, and because it was not necessary to set forth the manner in which or the means by which the death was caused since Hill was indicted for capital murder, Hill's argument that his indictment was defective because it failed to provide the judicial county that Hill's indictment was brought, the crime committed, or Wooten's cause of death was without merit. (3) Because the change to the indictment did not broaden the grounds Hill could have been found guilty, because the change did not materially alter the facts essential of the offense nor did it prejudice Hill's defense, and because it was not necessary to set forth the means by which Wooten's death was caused, the State presenting evidence of the stick used to break into Wooten's home and the knife used to kill Wooten did not constructively amend Hill's indictment. (4) Because the delay constituted an investigative delay since it took place before the indictment, because the delay was also due to over-crowded courts in the wake of COVID-19 rather than deliberate attempts to prejudice Hill, because the post-indictment delay was largely attributed to Hill's own motions delaying the trial pending the results of his mental evaluation and investigative reports, because Hill did not make a timely assertion of his right to a speedy trial, and because there was substantial evidence against Hill, his failure to provide evidence of his mental or emotional states did not prejudice his defense and the *Barker* factors indicated that Hill's right to a speedy trial was not violated. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

**Affirmed - 2022-KA-00524-COA (June 6, 2023)**

Opinion by Judge McCarty

Hon. Robert Thomas Bailey (Lauderdale County Circuit Court)

*Pro se* & Justin T. Cook (Pub. Def. Office) for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee  
Briefed by [Caitlyn Dills](#)  
Edited by [Kara Edwards](#) & [Ashley House](#)

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