

**MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 16, 2023****SUPREME COURT - CIVIL CASES****K&C LOGISTICS, LLC v. OLD DOMINION FREIGHT LINE, INC.****CIVIL - OTHER**

**CIVIL PROCEDURE - BUSINESS REGISTRATION - CONSENT JURISDICTION** - Consent jurisdiction by business registration is premised on varying legal fictions, including the fiction that the corporation was present through its registered agent, and the fiction that the corporation has impliedly consented to jurisdiction in exchange for the privilege of doing business in the state; whether consent jurisdiction is created by registration in that state depends on the state's law

**CIVIL PROCEDURE - STATUTORY INTERPRETATION - AMBIGUITY** - Statutory interpretation is appropriate when a statute is ambiguous or silent on a specific issue; the appellate court's goal is to give effect to the intent of the Legislature

**CIVIL PROCEDURE - BUSINESS REGISTRATION - PERSONAL JURISDICTION** - Miss. Code Ann. § 79-35-15 does not solely establish personal jurisdiction for a represented entity based on the company registering and maintaining a registered agent within Mississippi

**CIVIL PROCEDURE - JURISDICTION - FOREIGN CORPORATIONS** - Even though Miss. Code Ann. § 79-4-15.05(b) seeks to balance the rights and obligations between domestic corporations and foreign corporations registered for business in Mississippi, it does not state that if a foreign corporation registers to conduct business in Mississippi that it submits itself to personal jurisdiction

**CIVIL PROCEDURE - PERSONAL JURISDICTION - WAIVER** - Miss. R. Civ. P. 12(h) provides that a defense for lack of personal jurisdiction may be waived if (1) it is omitted from a motion or (2) if it is neither made by a motion nor included in a responsive pleading or amendment permitted by Miss. R. Civ. P. 15(a)

**FACTS**

Daniel Cooper was an employee and a truck driver for Old Dominion Freight Line, Inc. ("Old Dominion"). Cooper was driving an Old Dominion truck when he collided with a K&C Logistics, LLC. ("K&C") truck in Arizona. At the time of the accident, Cooper was considered a citizen of North Carolina. Old Dominion was a foreign corporation headquartered in North Carolina, incorporated in Virginia, and registered to conduct business in Mississippi. K&C was a Mississippi Corporation. K&C filed a negligence suit against Old Dominion asserting that the circuit court had personal jurisdiction over Old Dominion because it conducted business within the state and had truck terminals located within Mississippi. Similarly, K&C alleged that the circuit court had jurisdiction over Cooper because he traveled through Mississippi while working for Old Dominion. Following K&C's complaint, Old Dominion filed its answer and filed a motion to dismiss claiming the circuit court lacked personal jurisdiction. Old Dominion and Cooper claimed that they were citizens of North Carolina and were only connected to Mississippi through K&C. The circuit court denied Old Dominion's motion to dismiss, finding that Mississippi's long-arm statute was inapplicable and there was no finding that supported specific personal jurisdiction over Old Dominion. Subsequently, the circuit court allowed K&C to engage in jurisdictional discovery to better determine if Old Dominion's contacts with Mississippi were sufficient to establish general personal jurisdiction. Old Dominion filed a renewed motion to dismiss stating they would provide documents pertaining to general personal jurisdiction. The circuit court granted Old Dominion's renewed motion to dismiss stating it lacked general personal jurisdiction because both Old Dominion and Cooper were citizens of North Carolina and neither had sufficient contacts with Mississippi to consider them "at home." K&C appealed.

**ISSUES**

Whether Old Dominion (1) consented to personal jurisdiction by registering to conduct business in Mississippi and (2) waived its defense to personal jurisdiction.

### **HOLDING**

(1) Because there was no state law basis to find that Old Dominion had impliedly or explicitly consented to the jurisdiction of the circuit court by simply registering to do business in Mississippi, because it was unclear whether Miss. Code Ann. § 79-4-15.05(b) subjected foreign corporations to the same rights and obligations as domestic corporations, because there was no basis to confer general personal jurisdiction over foreign companies through Miss. Code Ann. § 79-4-15.05(b), because reading Miss. Code Ann. § 79-4-15.05(b) with Miss. Code Ann. § 79-13-15 provided that the Legislature intended to prevent consent jurisdiction by Old Dominion registering to conduct business in Mississippi, because there was no case law to put Old Dominion on notice that it would subject itself to the circuit court’s jurisdiction from registering in Mississippi, and because the Mississippi long-arm statute did not apply to Old Dominion, Old Dominion did not consent to personal jurisdiction by registering to conduct business in Mississippi. (2) Because the notice of appearances filed by Old Dominion were not responsive pleadings that would waive its defense to personal jurisdiction, and because Old Dominion complied with Miss. R. Civ. P. 12(h) by asserting in its answer that the circuit court lacked personal jurisdiction, Old Dominion did not waive its defense to personal jurisdiction. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2022-CA-00939-SCT (Nov. 16, 2023)**

Opinion by Justice Chamberlin

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

William C. Bell for Appellant - David C. Dunbar & Christopher G. Dunnells for Appellees

Briefed by [Allie Zaring](#)

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

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## **RIVERHILLS CAP. CORP. V. AT HOME CARE, INC.**

### **CIVIL - CONTRACT**

**CIVIL PROCEDURE - JURISDICTION - DETERMINATION** - In determining which court has subject-matter jurisdiction, a court looks at the face of the complaint to ascertain the nature of the controversy and the relief sought; courts look at the substance, not the form, of the claims to make a determination whether the claims are legal or equitable

**CIVIL PROCEDURE - JURISDICTION - CHANCERY COURT** - While Miss. Const. art. 6, § 159 confers full jurisdiction over certain matters to chancery courts, it does not confer exclusive jurisdiction over all equity claims upon chancery courts

**CIVIL PROCEDURE - JURISDICTION - PENDENT AND ATTENDANT JURISDICTION** - If equity jurisdiction exists, the chancery courts may decide legal claims under their pendent jurisdiction; likewise, circuit courts with proper subject-matter jurisdiction over legal matters have pendent jurisdiction over any attendant equitable claims

**CIVIL PROCEDURE - JURISDICTION - CIRCUIT COURT** - Because circuit courts are courts of general jurisdiction and chancery courts are courts of limited jurisdiction, it is preferable for circuit courts to hear equity claims than for chancery courts to hear legal claims

**CIVIL PROCEDURE - JURISDICTION - BREACH OF CONTRACT** - Breach of contract cases are best heard in circuit court

### **FACTS**

In March 2018, At Home Care, Inc. (“AHC”) entered into a contract with the now-dissolved Hill City Oil Company, which was owned by now-deceased Herbert Stathes, to purchase two tracts of real property from Hill City Oil Company. On March 20, 2018, Hill City Oil Company and Stathes entered into a fifteen-year lease with RiverHills Bank for RiverHills Bank to have an ATM on the same property that was sold to AHC. On April 19, 2018, the Warranty Deed

to AHC was signed and provided that the deed was subject to all leases of record on the property. In its September 2021 complaint and January 2022 amended complaint filed in the Claiborne County Circuit Court against “RiverHills Capital Corporation, D/B/A RiverHills Bank” (“RHCC”) and Stathes and later Stathes’ estate (“Stathes”), AHC alleged breach of contract and breach of good faith and fair dealing claims against RiverHills Bank for failure to pay rent and failing to comply with the lease, conspiracy to commit fraud claims against Stathes and RiverHills Bank for making false statements and failing to disclose the lease prior to closing, breach of contract and breach of good faith and fair dealings claims against Stathes for entering into the lease and failing to inform AHC thereof, fraud claims against Stathes for making false statements and wrongfully withholding rent, and civil conspiracy to commit fraud against RiverHills Bank and Stathes for conspiring to enter into the lease and give Stathes the benefit of the lease. AHC further requested the court remove cloud from the title of the property, rescind the lease, and remove the ATM from the property, and AHC requested damages for the full amount of rent due under the entire term of the lease, economic damages for depreciated value and loss of future income, and punitive damages. RHCC filed its answer on April 19, 2022. RHCC then filed a motion to transfer the suit to Claiborne County Chancery Court, which argued the complaint was primarily a title dispute, and the circuit court, therefore, lacked subject-matter jurisdiction over the complaint and must transfer the case to chancery court. The circuit court denied the motion to transfer after finding that the substance of the Amended Complaint is one of legal issues. RHCC appealed.

### ISSUE

Whether the circuit court erred in denying RHCC’s motion to transfer for lack of subject-matter jurisdiction.

### HOLDING

Because the face of AHC’s complaint showed that the substance of the bulk of the complaint consisted of legal rather than equitable claims, because most of AHC’s claims touched on whether alleged contracts were adhered to or breached by the defendants, because AHC requested money damages as opposed to specific performance to make it whole from any alleged breach, because the default jurisdiction in a controversy that is a close call between being primarily legal or equitable in nature is in the circuit court, and because a determination as to whether RHCC and RiverHills Bank were completely separate legal entities, and, therefore, whether RHCC was not a viable party to AHC’s contract dispute with RiverHills Bank and Stathes, was not relevant to the motion to transfer for lack of subject-matter jurisdiction that was the sole motion before the circuit court, the nature of the controversy was primarily legal in nature and belonged in circuit court and, the circuit court did not err in denying the motion to transfer. Therefore, the Supreme Court affirmed and remanded the judgment of the Claiborne County Circuit Court.

#### **Affirmed & Remanded - 2022-IA-00568-SCT (Nov. 16, 2023)**

Opinion by Presiding Justice King

Hon. Tomika Harris Irving (Claiborne County Circuit Court)

Emerson Barney Robinson III, Jeffrey Lee Oakes, John A. Crawford Jr., & Robert Binnion Andrews for Appellants - Larry Stamps & Anita M. Stamps for Appellee

Briefed by [Isabella Escobedo](#)

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

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## ***SUPREME COURT - POST-CONVICTION RELIEF***

### **BENNETT V. STATE**

#### **CIVIL - DEATH PENALTY - POST CONVICTION**

#### **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

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PER SE INEFFECTIVE ASSISTANCE OF COUNSEL** - Under *Cronic*, prejudice is presumed: (1) when counsel is completely denied; (2) when counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing; and (3) when counsel is called upon to render assistance under circumstances where competent counsel very likely could not

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DOUBLE-EDGED EVIDENCE** - Double-edged evidence is evidence that is just as likely to harm the defense’s case as it would benefit it, and it is not deficient performance for defense counsel not to present double-edged evidence in mitigation

**CRIMINAL PROCEDURE - CAPITAL MURDER DEFENSE STRATEGIES - RESIDUAL DOUBT** - Residual doubt describes an effective strategy in which a capital defendant, though convicted by the jury, hopes to avoid a death sentence by appeal to residual doubt regarding his guilt or the circumstances of the offense

## **FACTS**

In August 2000, Devin Allen Bennett brought his 10-week-old son Brandon Allen Bennett (“Brandon”) to the hospital where it was determined that he had no heartbeat or pulse. In the emergency room, medical professionals were able to restore Brandon’s heartbeat, and he was transferred to the pediatric unit at the University of Mississippi Medical Center where he remained in a coma with no signs of brain function. Dr. Bonnie Woodall examined Brandon for head injuries, and she determined that the multiple injuries he suffered were associated with extreme trauma. On August 27, 2000, Brandon was pronounced dead. When asked by medical staff, social workers, and later law enforcement what happened to Brandon, Bennett told at least seven different versions of the events leading to Brandon’s injuries, which all involved Brandon falling out of a car seat. In November 2000, a Rankin County grand jury indicted Bennett for capital murder, and he was charged with the underlying crime of felonious child abuse. Prior to his 2021 post-conviction relief (“PCR”) hearing in the trial court, Bennett attempted to take depositions of various people including Jennifer Clukey, Bennett’s cousin, and Kara Gialluca, a childhood friend. According to Bennett, Clukey and Gialluca would have been able to speak of his childhood abuse. The trial court allowed several depositions but denied the depositions of Clukey and Gialluca for several reasons, including that their affidavits had not been attached to the PCR motion, and they both lived 12 hours out-of-state. At Bennett’s 2003 trial, the state called Dr. Woodall, Dr. Andrew Parent, and Dr. Steven Hayne as expert witnesses in the fields of pediatric emergency medicine, pediatric neurosurgery, and forensic pathology, respectively. All three of their expert analyses determined that Brandon’s injuries were consistent with being shaken and thrown down on a hard surface and could not have been caused by Brandon falling out of his car seat. The jury found Bennett guilty of capital murder and sentenced him to death. The Supreme Court granted Bennett permission to file a PCR petition on his contention that he received ineffective assistance of counsel at sentencing. Bennett claimed that his trial counsel failed to investigate his history of a traumatic childhood, mental disorders, and substance abuse, and the Supreme Court concluded that Bennett was entitled to an evidentiary hearing on his claims. In September 2008, the Supreme Court’s clerk issued a mandate that granted in part and denied in part Bennett’s petition. At the 2021 evidentiary hearing, the trial court heard testimony from Rhonda Triplett Carter, a mitigation investigator; Dr. Brushan Agharkar, a forensic psychiatrist; and Ed Rainer, Bennett’s trial counsel. Carter prepared a psychological timeline for Bennett, which showed that he had a long history of drug abuse, antisocial behavior, and failed attempts at reform or treatment. Dr. Agharkar’s testimony concluded that Bennett suffered from PTSD, bipolar disorder, and polysubstance dependence. Lastly, Rainer was an experienced attorney who had been licensed for 30 years at the time of trial; however, Bennett’s was his first death penalty case. During his testimony, he discussed his investigations, his strategy at trial, and the reasons for his decisions. He explained that his goal was to have the jury conclude that Bennett was innocent, but if it failed, his goal was for the jury to doubt Bennett’s guilt. Furthermore, Rainer stated that he did not believe excusing Bennett’s conduct by reference to drug dependency would have been an effective trial strategy. The trial court denied Bennett’s PCR petition, reasoning that while Rainer’s strategy was unsuccessful, that did not mean he was constitutionally ineffective under *Strickland v. Washington*. Additionally, the trial court found that Bennett’s proposed mitigation case, which would have highlighted his drug and alcohol abuse, would not have “gone well with the jury.” Bennett appealed.

## **ISSUES**

Whether (1) trial counsel’s performance was per se ineffective assistance of counsel under *Cronic*; (2) trial court’s refusal to allow Bennett to depose two proffered witnesses had an effect on the outcome; and (3) Bennett was able to show ineffective assistance of counsel.

## **HOLDING**

(1) Because Bennett’s trial counsel called several witnesses and developed and argued a coherent, strategic method, Bennett failed to meet the standard for per se ineffective assistance of counsel under *Cronic*. (2) Because the additional testimonies would have focused on Bennett’s childhood abuse and because doing so would have had the double-edged effect of suggesting that Bennett himself was more likely to have abused his own child, the trial court’s refusal to allow Bennett to depose two proffered witnesses would not have led to a reasonable probability of a different outcome. (3) Because Bennett’s proposed mitigation case would not have led to a reasonable probability of a different outcome due to its double-edged nature and because trial counsel argued a coherent, strategic method, Bennett failed to show ineffective assistance of counsel. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2021-CA-01313-SCT (Nov. 16, 2023)**

En Banc Opinion by Justice Ishee

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Krissy Casey Nobile, Thomas M. Fortner, Mary Jo Woods, Sue Ann Werre, & Brandon Kyle Malone (Cap. Post-Conviction Couns. Office) for Appellant - Parker Alan Proctor Jr. & Brad Alan Smith (Att’y Gen. Office) for Appellee

Briefed by [Ramsey Thrasher](#)

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

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

### **LOLLIS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - CONSPIRACY AGREEMENTS - SUFFICIENCY OF EVIDENCE** - A conspiracy agreement may be inferred from the circumstances, particularly by declarations, acts, and conduct of the alleged conspirators

**CRIMINAL LAW - CONSPIRACY AGREEMENTS - CONNECTING DEFENDANTS** - Once the existence of a conspiracy is shown, only slight evidence is required to connect a particular defendant with the conspiracy

**CRIMINAL LAW - CONSPIRACY AGREEMENTS - OVERT ACTS** - If a person commits overt acts in furtherance of a conspiracy, such acts are strong evidence suggesting that the person is a member of that conspiracy

**CRIMINAL LAW - CONSPIRACY AGREEMENTS - INTENT** - Intent may be proven by showing the acts of the person involved at the time in question, and by showing the circumstances surrounding the incident

**CRIMINAL LAW - CONSPIRACY AGREEMENTS - LIABILITY OF CONSPIRATORS** - All members of a conspiracy are guilty of the crimes committed by members in furtherance of that conspiracy

#### **FACTS**

In November 2017, Carl Newton shot and injured Nathan Lollis. In July 2018, Charles Lee Wells shot and killed Newton. On the night of the murder, Marcel Smith picked up Newton and drove to Lollis’s home. Smith met with Lollis alone before leaving with Newton still in the truck. Thereafter, Smith arrived at an old church with Newton and Wells. Casey and Michael Anderson (“Anderson brothers”) were already at the church; they were driven there by Lollis. The Anderson brothers proceeded to beat Newton. Wells then pointed a gun at Newton. As the Anderson brothers fled, they heard gunshots behind them. Later that night, Smith returned to Lollis’s home where they met alone. The following day, Lollis paid the Anderson brothers \$300 to not tell anyone what happened. Cell phone location data indicated that Smith’s and Newton’s cell phones were located within twenty-five meters of the murder scene and the body location. Michael testified that after the November 2017 shooting, Lollis asked him if he wanted to make some money to “take Carl Newton out.” Casey also testified that Lollis drove him to the church where the murder took place.

Additionally, a person who lived with Lollis testified that Smith met with Lollis alone before and after the murder. Lollis received a life sentence for murder and twenty years for conspiracy to murder. The trial court denied Lollis's motion for judgment notwithstanding the verdict or, in the alternative, a new trial. Lollis appealed.

### ISSUES

Whether the trial court erred by finding the (1) evidence was sufficient for a rational trier of fact to determine that Lollis had the required intent to kill and was a member of the conspiracy to murder Newton and (2) jury had a sufficient evidentiary basis on which to find Lollis guilty of the murder of Newton.

### HOLDING

(1) Because the jury heard evidence that Lollis attempted to solicit Michael to kill Newton, because Lollis had suspicious interactions with Smith on the night of the murder, because Lollis informed the Anderson brothers of the location of the murder and helped them get to the location of the murder, because Lollis paid the Anderson brothers to keep quiet after the murder, because Lollis had expressed a desire to kill Newton, and because the jury believed the testimony against Lollis and determined that Lollis conspired to murder Newton, the trial court did not err in finding the evidence was sufficient for a rational trier of fact to determine that Lollis had the required intent to kill and was a member of the conspiracy to murder Newton. (2) Because the jury had a sufficient evidentiary basis on which to determine that Lollis was a member of the conspiracy to murder Newton and that Newton was murdered in furtherance of that conspiracy's plan, the trial court did not err in finding that the jury had a sufficient evidentiary basis on which to find Lollis guilty of the murder of Newton. Therefore, the Supreme Court affirmed the judgment of the Wilkinson County Circuit Court.

**Affirmed - 2022-KA-00711-SCT (Nov. 16, 2023)**

Opinion by Justice Coleman

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

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

Briefed by [Joshua Arias](#)

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

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 14, 2023**

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

#### **BUMPOUS *EX REL.* BUMPOUS V. TISHOMINGO CNTY. SCH. DIST.**

#### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - SUMMARY JUDGMENT - BURDEN ON APPEAL** - On appeal of a grant of summary judgment, appellant has the burden of showing a genuine issue of material fact to warrant reversal

**TORT - NEGLIGENCE SUPERVISION - DUTY OF CARE** - Under *Henderson ex rel. Henderson v. Simpson Cnty. Pub. Sch. Dist.*, public schools have the responsibility to use ordinary care and to take reasonable steps to minimize foreseeable risks to students and thereby provide a safe school environment

**TORT - NEGLIGENCE - MEDIUM OF NOTICE** - There is no duty that requires school administrators to notify teachers of issues via email rather than another official medium of communication

#### **FACTS**

On February 27, 2020, eighth-grade student A.B. was attending show choir class in middle school. Bethany Cheaves, his show choir teacher, was contacting parents for a trip during class. Show choir was a class where students were not expected to stay seated, and students were often split in groups. During class it was not unusual or against the rules for students to have their cell phones out to help with lyrics or choreography. The class was described by students as a "safe" place where all students were friends. Cheaves had given students special permission to have their phones out to

contact their parents for the upcoming trip. Cheaves was sitting at her desk with a group of students talking to their parents. At the same time, two students decided to play the “Skull Crusher” challenge on A.B., where they asked A.B. to jump, and then kicked his legs from under him. A.B. hit the ground hard and was sent to the hospital as a result. Cheaves testified that she saw A.B. fall, while other students stated that Cheaves had her back turned. The offending students were suspended for three days. A.B.’s parents, Chelsea Bumpous and Jason Bumpous (“Bumpouses”), filed suit against the Tishomingo County School District (“TCSD”) on behalf of A.B. for negligent supervision. The circuit court granted summary judgment as the injury to A.B. was not foreseeable. The Bumpouses appealed.

### **ISSUE**

Whether the circuit erred in granting TCSD’s motion for summary judgment because a genuine issue of material fact existed as to whether Cheaves or TCSD breached their duty by failing to utilize ordinary care and take reasonable steps to prevent a foreseeable injury.

### **HOLDING**

Because Cheaves exercised ordinary care of a reasonable show choir teacher in allowing students to use their phones during class, because the only fact disputed, whether Cheaves actually witnessed A.B. jump and fall, was not material to the grant of summary judgment, because Cheaves was in reasonable proximity and was aware of the incident when it occurred, because TCSD held the offending pupils to strict account of their disorderly conduct and suspended both students involved for three days, because Cheaves had no forewarning of the incident, and because the school principal notified the teachers of the existence of the “Skull Crusher” challenge through a teacher’s forum, an official method of communication with teachers, there was no genuine issue of material fact that TCSD breached its duty of ordinary care to A.B. that would warrant a reversal of the circuit court’s grant of summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Tishomingo County Circuit Court.

### **DISSENT**

Judge McCarty argued that school districts had a duty to use ordinary care and to take reasonable steps to minimize foreseeable risks to students by providing a safe school environment under Miss. Code Ann. § 37-9-69. The admitted facts, taken in the light most favorable to the Bumpous family, showed that the school used no care. Therefore, the summary judgment should have been reversed and the case sent to trial.

#### **Affirmed - 2022-CA-01010-COA (Nov. 14, 2023)**

En Banc Opinion by Judge Greenlee - Dissent by Judge McCarty

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

James R. Franks Jr. & William R. Wheeler Jr. for Appellants - Daniel J. Griffith & Katherine M. Portner for Appellee

Briefed by [Youssef Kishk](#)

Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

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## **SCOTT V. LE**

### **CIVIL - CUSTODY**

**FAMILY LAW - CUSTODY - MODIFICATION** - At trial, the parent seeking custody modification must show: (1) a material change in circumstances occurred since the issuance of the decree sought to be modified; (2) that the material change adversely affected the minor child; and (3) that it would be in the child’s best interest for custody to change

**FAMILY LAW - CUSTODY - BEST INTEREST OF CHILD** - The polestar consideration in a child custody case is the best interest of the child

**FAMILY LAW - CUSTODY - ALBRIGHT FACTORS** - To determine the best interests of the child, Mississippi courts are guided by the factors set forth in *Albright*: (1) age, sex and health of the child; (2) which parent had the continuity of care prior to the separation; (3) parenting skills; (4) each parent’s willingness and capacity to provide primary child care; (5) the parent’s employment and its associated responsibilities; (6) physical and mental health and

age of the parents; (7) emotional ties of parent and child; (8) moral fitness of parents; (9) the child's home, school, and community record; (10) preference of the child at the age sufficient to express a preference by law; (11) the stability of the home environment and employment of each parent; and (12) any other factors relevant to the parent-child relationship

### **FACTS**

Nannette Scott and Chris Le were not married and had a daughter in 2013. After four months living together in Ocean Springs, the couple split, and Nannette moved to Biloxi with their daughter. Their daughter stayed with Nannette during the week and Chris during the weekends. In 2016, Nannette and Chris agreed to joint legal and physical custody, rotating custody for the Thanksgiving and Christmas holidays, and Chris would pay \$200 in child support. This arrangement continued until March 2020, when Nannette moved to New Orleans with her new boyfriend, who was in the Navy. During this period, the daughter stayed with Chris in Ocean Springs during the week and Nannette in New Orleans during the weekends. In December 2020, Nannette's boyfriend was transferred to Norfolk, Virginia. Nannette moved to Virginia as well, married her boyfriend, and joined the Navy herself. Throughout this transition, the daughter stayed with Chris in Ocean Springs, visiting the mother only during the summer. In 2023, Nannette sought sole physical custody of her daughter, alleging a material change of circumstances since the original court order, and Chris counterclaimed, seeking and alleging the same. After finding a material change, the chancery court conducted an analysis of the best interests of the child and determined Chris should have sole physical custody. Nannette appealed.

### **ISSUE**

Whether the chancery court correctly applied the *Albright* factors in the best interest of the child when the mother's relocation constituted a material change in circumstances.

### **HOLDING**

Because Nannette had not physically seen her daughter from August 2021 to May 2022, because Nannette did not provide for her daughter after moving to New Orleans, because Chris took his daughter to medical appointments, participated in recreational activities with her, and was active in her education, because Chris lived with his mother and stepfather in Ocean Springs for five years with relatives nearby, because his daughter was, at the time of trial, beginning third grade at the same elementary school she had been attending, because Nannette and her husband moved locations several times and recently gained sole custody of his child, and because Nannette held six different jobs, including the Navy, in the past two years, the decision to award Chris sole custody of his and Nannette's daughter was supported by substantial evidence, and the chancery court did not abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

**Affirmed - 2022-CA-00887-COA (Nov. 14, 2023)**

Opinion by Judge McCarty

Hon. Margaret Alfonso (Harrison County Chancery Court, Second Judicial Dist.)

William Brian Atchison for Appellant - Mark Vincent Watts for Appellee

Briefed by [Jonathan Gandara](#)

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

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## **SNYDER V. EST. OF COCKRELL**

### **CIVIL - TORTS - OTHER THAN PERSONAL INJURY AND PROPERTY DAMAGE**

**CIVIL PROCEDURE - SUMMARY JUDGMENT - NON-MOVANT'S BURDEN** - The non-moving party carries the burden of producing sufficient evidence of its claim at the summary judgment stage

**TORTS - PREMISES LIABILITY - DUTY** - Premises liability establishes the duty owed to someone injured on a landowner's premises as a result of condition of or activities on the land

### **FACTS**



In 2016, Herman Cockrell hosted a family gathering on his property. Cockrell left the gathering and left an unattended golf cart. After Cockrell left, Raygon Sullivan and her child got into the golf cart, and Sullivan’s child fell onto the accelerator, causing the golf cart to hit Jeff Snyder. As a result of the fall, Snyder sustained injuries. On December 23, 2019, Snyder filed a complaint against Cockrell’s Estate (“Estate”) alleging negligence for failure to secure the golf cart, failure to take steps to render the cart non-operational, and failure to warn bystanders that the cart was operable. On September 9, 2020, the Estate filed a motion for summary judgment. After a hearing, the circuit court granted summary judgment in favor of the Estate. Snyder appealed.

### **ISSUE**

Whether the trial court erred in granting summary judgment in favor of Cockrell’s Estate.

### **HOLDING**

Because Snyder failed to put forth sufficient evidence to create a genuine issue of material fact as to the essential element of a breach of duty committed by Cockrell, summary judgment was properly granted in favor of Cockrell’s Estate. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

**Affirmed - 2022-CA-00597-COA (Nov. 14, 2023)**

Opinion by Judge Smith

Hon. Stanley Alex Sorey (Smith County Circuit Court)

Raymond Patrick Tullos for Appellant - Patrick H. Zachary & Vicki R. Leggett for Appellee

Briefed by [John Walker Webb](#)

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

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

### **JOHNSON V. STATE**

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

**POST-CONVICTION RELIEF - GUILTY PLEAS - VOLUNTARINESS OF GUILTY PLEAS** - A plea is binding only if it is entered into voluntarily; a defendant’s guilty plea will be deemed involuntary if induced by fear, violence, deception, or improper inducements

**POST-CONVICTION RELIEF - EVIDENTIARY HEARINGS - GRANTS & DENIALS** - A defendant’s PCR motion that meets basic requirements is sufficient to mandate an evidentiary hearing unless it appears beyond a doubt that the movant can prove no set of facts in support of his claim which would entitle him to relief; the defendant may not demonstrate there are unresolved issues of fact through his own unsupported allegations

### **FACTS**

Shundray Johnson was indicted for two counts of first-degree murder. Johnson filed a petition to plead guilty to both counts. During Johnson’s first plea colloquy, Johnson stated that he understood the constitutional rights he would waive by pleading guilty and that no one had threatened or offered any inducement to persuade him to plead guilty. After the second plea colloquy, the circuit court found that Johnson had knowingly, intelligently, and voluntarily entered his guilty pleas. The circuit court accepted Johnson’s guilty pleas and sentenced him to two consecutive terms of life imprisonment. Johnson filed a timely post-conviction relief (“PCR”) motion and argued that his guilty pleas were involuntary and that he was denied due process and equal protection under the law because his trial attorney forced him to enter into his guilty pleas. The circuit court concluded that Johnson’s claims lacked merit and entered an order denying Johnson’s requested relief. Johnson appealed.

### **ISSUES**

Whether the circuit court erred in denying (1) Johnson’s PCR motion based on Johnson’s claim that he involuntarily entered his guilty pleas and (2) Johnson an evidentiary hearing on his PCR claims.

### **HOLDING**

(1) Because Johnson failed to present any evidence other than his own bare assertions to support his involuntary plea claim or to overcome the high hurdle of recanting his sworn testimony before the circuit court, Johnson’s claim that he involuntarily pled guilty was without merit and the circuit court did not err in denying Johnson’s PCR motion. (2) Because Johnson’s allegations on appeal directly contradicted his sworn statements to the circuit court during his plea hearing, and because Johnson did not present sufficient evidence to support his involuntary plea claim, the circuit court did not abuse its discretion in denying Johnson an evidentiary hearing on his PCR claims. Therefore, the Court of Appeals affirmed the judgment of the Clay County Circuit Court.

**Affirmed - 2022-CP-01186-COA (Nov. 14, 2023)**

Opinion by Judge Smith

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

*Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Sydney Bailey](#)

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

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

### **BROWN V. STATE**

#### **CRIMINAL - FELONY**

**EVIDENCE - SUFFICIENCY OF EVIDENCE - CHALLENGES** - A challenge to the sufficiency of evidence will be unsuccessful where, after viewing the evidence in the light most favorable to the non-moving party, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - WAIVER** - Failure to object to proposed jury instructions waives the right to contest such instructions on appeal

**EVIDENCE - EXPERT TESTIMONY - CREDIBILITY** - The credibility of expert testimony can be established by the totality of the evidence considered by the expert in forming an opinion

#### **FACTS**

In June 2014, Sarrah Brown and her husband visited a convenience store in the early hours one morning. Brown remained in the vehicle while her husband entered the store. Upon exiting the store, Brown’s husband interacted with an individual in another car before returning to his car. As the pair left the parking lot, Brown pointed a gun out her window toward the other vehicle in the parking lot and fired. The car’s window shattered, killing the victim sitting in the back seat of the other car. The Browns left the convenience store but later returned to it and were apprehended by police. Brown was charged with first-degree murder. At trial, a forensic psychologist testified that Brown suffered from schizophrenia, that Brown had not been taking her medication leading up to the incident, that Brown appreciated right from wrong on the day of the incident, and that he believed Brown was shooting to scare or intimidate someone in the other car. The forensic psychologist did not receive all the medical records he requested, but he had received the vast majority. The State requested to read jury instructions for first-degree based on the theory of deliberate design murder, second-degree based on the theory of depraved heart murder, and manslaughter. The trial court refused to instruct the jury on second-degree murder, concluding that the jury could not consider both deliberate design and depraved heart murder. Brown agreed, noting that he would have objected to the second-degree murder instruction. The jury found Brown guilty of first-degree murder. Brown appealed.

## ISSUES

Whether the trial court erred in (1) determining that the State provided sufficient evidence to support a first-degree murder conviction; (2) failing to instruct the jury on second-degree murder; and (3) allowing testimony from the forensic psychologist regarding a psychological examination performed on Brown without having reviewed Brown's full medical history.

## HOLDING

(1) Because the jury determined the weight and credibility of all of the evidence, because a rational jury could infer the required intent from Brown's use of the gun and the evidence at trial, and because a rational jury could find all the essential elements of deliberate-design murder beyond a reasonable doubt, the evidence was sufficient to support a first-degree murder conviction. (2) Because Brown did not object to the trial court's refusal to instruct the jury on second-degree murder, the issue of whether the trial court erred in failing to instruct the jury on second-degree murder was waived on appeal. (3) Because the forensic psychologist received the majority of Brown's medical records, and because the forensic psychologist testified that he was able to formulate an opinion based on interviews he conducted with Brown and the records he received on Brown, the issue of whether the psychological examination could be properly completed was without merit. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2022-KA-00446-COA (Nov. 14, 2023)**

Opinion by Judge Greenlee

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)

Zakia Butler Chamberlain (Pub. Def. Office) & *Pro se* for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Thomas Andersen](#)

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

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## **CROOM V. STATE**

### **CRIMINAL - FELONY**

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

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - HARMLESS ERROR** - A trial court's error in omitting jury instructions is harmless if the same result would have been reached had the error not existed

**CRIMINAL LAW - CONSPIRACY - EXPRESS AGREEMENTS** - To prove conspiracy, the prosecution does not have to show that an express agreement to commit a crime was made, but rather that the acts and conduct of the defendants were in concert

**CRIMINAL LAW - CONSPIRACY - COMMISSION OF OFFENSE** - Commission of an offense is admissible as showing the conspiracy since what the defendants actually did is evidence of what they intended to do

## FACTS

In July 2021, Tory Lamar Croom and Steven Graves went for a ride in Lonnie Aleta's truck. Lonnie was the father of Croom's girlfriend, Tory Aleta. Croom and Graves arrived at the home of Donnie Nguyen with the intent of getting high. After realizing nobody was home, Croom and Graves decided to see what they could steal. After finding nothing worth taking in Nguyen's barn, they attempted to enter through a window but eventually broke when Croom kicked in the back door. Graves and Croom panicked when they discovered the home had a doorbell camera, but they stole Nguyen's laptop and two beers from the refrigerator. In the ensuing police investigation, Lonnie told the police about Croom's admission to him about being involved in the burglary. Croom himself admitted to being at Nguyen's during

the burglary but denied ever entering the home. Croom claimed that he had remained in the truck and had no knowledge that burglary was going to occur nor that it had occurred. At trial, the trial court denied Croom's attempts to enter a jury instruction for the lesser-included offense of trespass since there was no factual basis for it. Croom was convicted of burglary of a dwelling and conspiracy to commit burglary of a dwelling. Croom filed a motion for a judgment notwithstanding the verdict, or for a new trial, which was denied. Croom appealed.

## **ISSUES**

Whether the (1) trial court erred in refusing to instruct the jury as to the lesser-included offense of trespass and (2) evidence was sufficient to support a verdict of guilty as to conspiracy.

## **HOLDING**

(1) Because Croom offered no evidence that would have supported the trial court providing a trespassing jury instruction besides the statements he gave to law enforcement, because the jury did not need to consider the offense of trespass since it found the State proved all of the elements of burglary of a dwelling beyond a reasonable doubt, and because it would have been harmless error if there was error in denying the lesser-included offense trespass since its denial did not contribute to Croom's guilty verdicts, the trial court did not err in refusing to instruct the jury as to the lesser-included offense of trespass. (2) Because Croom and Graves conspired to steal an item of value, and because Croom and Graves stole a laptop from Nguyen's home, there was sufficient evidence to support a verdict of guilty as to conspiracy. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2022-KA-00598-COA (Nov. 14, 2023)**

Opinion by Judge Emfinger

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Summie Carlay](#)

Edited by [Nivory Gordon](#) & [Ashley House](#)

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## **TAYLOR V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - TESTIMONY - PRIOR BAD ACTS TESTIMONY** - Prior bad acts are not admissible for the purpose of showing that the defendant has a propensity to engage in such conduct and that the defendant likely acted in conformity therewith on a particular occasion

**EVIDENCE - TESTIMONY - IDENTIFYING A SPEAKER** - Testimony of a person who hears a voice is competent and legitimate to establish the identity of the speaker, especially when there is substantial other evidence of guilt

**EVIDENCE - PRIOR BAD ACTS TESTIMONY- PREJUDICIAL & PROBATIVE** - A defendant must show that he or she is prejudiced by the admission of prior arrest testimony to the point where the admission of that testimony outweighs that testimony's value

**EVIDENCE - ADMISSIBILITY OF EVIDENCE - HARMLESS ERROR** - A harmless error occurs when the evidence against the defendant outweighs the harm done by the admission of the evidence

### **FACTS**

In May 2019, Timothy Taylor's mother reported to the Jefferson Davis County Sheriff's Office that Taylor had threatened her and her daughter-in-law. Deputy Pat Barnes and Deputy Vernon Dampier initially responded to the call with Barnes arriving at Taylor's trailer first, which sat on Betty's property since Betty owned the trailer. Barnes then approached the front door and announced his presence as law enforcement. Taylor responded that he was not going to jail and shot Barnes in the thigh. Dampier took Barnes to a hospital and other officers surrounded the trailer, attempting to negotiate Taylor's peaceful surrender. However, Taylor opened fire on the officers, and a gunfight ensued until the

police used an armored vehicle to ram parts of the trailer. Taylor then surrendered. Upon searching the trailer, law enforcement discovered the guns Taylor used and two plastic bags containing cocaine and methamphetamine. Prior to trial, the State wanted to admit testimony that Taylor had been previously arrested to assert Taylor's motive for shooting Barnes. The State also sought to use Dampier's testimony because Dampier could identify Taylor by his voice from the times he had arrested Taylor since Taylor denied shooting Barnes. Taylor wanted the testimony precluded. The circuit court granted the State's motion to admit the testimony. The jury convicted Taylor of attempted murder and possession of two controlled substances. Taylor later filed a motion for judgment notwithstanding the judgment, or in the alternative, a new trial, and the circuit court denied his motion. Taylor appealed.

### **ISSUE**

Whether the circuit court erred in admitting evidence of Taylor's prior arrests.

### **HOLDING**

Because the jury did not hear testimony regarding the details of Taylor's prior arrests, because Taylor's arrests formed the foundation for Dampier's identification of Taylor and did not constitute prior bad act evidence, because the testimony of Taylor's arrests was used for a limited purpose of identifying Taylor, because the State's questioning of prior bad acts was limited to whether Taylor had ever been arrested, because the admission of Taylor's arrests was not prejudicial since the trial's outcome would have likely yielded the same outcome had Taylor's prior arrests not been admitted since there was other substantial evidence to support Taylor's conviction, the circuit court did not err in admitting evidence of Taylor's prior arrests. Therefore, the Court of Appeals affirmed the judgment of the Jefferson Davis County Circuit Court.

### **Affirmed - 2022-KA-01042-COA (Nov. 14, 2023)**

Opinion by Judge McDonald

Hon. Prentiss Greene Harrell (Jefferson Davis County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Matt Hennington](#)

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

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