



MISSISSIPPI SUPREME COURT DECISIONS – MAY 23, 2024

*SUPREME COURT - CIVIL CASES*

**ALLEN V. DICKERSON**

**CIVIL - REAL PROPERTY**

**REAL PROPERTY - PRIVATE NUISANCE - ELEMENTS** - A private nuisance may be found if the conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either intentional and unreasonable, or unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or abnormally dangerous conditions or activities

**REAL PROPERTY - PRIVATE NUISANCE - EVIDENCE** - When determining whether an intrusion constitutes a private nuisance, each case must be decided on its facts, taking into consideration the location and surrounding circumstances

**FACTS**

The Dickersons owned approximately 220 acres in Booneville. The Allens were members of Sand Hill Hunting Club and had permission to hunt near the Dickersons' property line. The Allens engaged in deer hunting with dogs during the appropriate dog hunting season. A deer hunt would begin on property the Allens had permission to hunt, but often the dogs would chase deer onto property that the Allens did not have permission to hunt. In August 2020, after years of confrontation, the Dickersons filed a complaint against the Allens. The Dickersons argued that the Allens' actions amounted to nuisance and sought injunctions that would require the Allens to keep their dogs off of the Dickersons' property and to prevent the Allens from stopping, parking, or walking on any road right-of-way that joins the Dickersons' land. The chancery court found that the Allens' dogs had regularly interfered with the Dickersons' peaceful and quiet enjoyment of their private property. The chancery court permanently enjoined the Allens from allowing their dogs or any dogs under their supervision from coming onto property owned or leased by the Dickersons. Allen appealed.

**ISSUES**

Whether (1) the chancery court committed reversible error by failing to specify its path to finding a private nuisance; (2) deer hunting with dogs can be considered a private nuisance when done within the parameters of the law and in an area long known for dog hunting; (3) reversal was warranted for failure to demonstrate damages; (4) the chancery court's injunction adequately addressed the nuisance; (5) alternative remedies precluded the issuance of a permanent injunction; (6) reversal was warranted to maintain separation of powers.

**HOLDING**

(1) Because the chancery court found that the private nuisance was both intentional and unreasonable, the chancery court did not fail to specify its path to finding private nuisance. (2) Because the chancery court's decision that deer hunting with dogs on private property constituted a private nuisance was supported with substantial evidence, the chancery court did not abuse its discretion by finding that the Allens' conduct was unreasonable. (3) Because the chancery court issued no monetary damages, the testimony established sufficient evidence of damages to support the chancery court's issuance of injunctions. (4) Because the Allens' dogs were the primary source of complaints made by the Dickersons, the chancery court's injunction remedy adequately addressed the nuisance claim. (5) Because the Dickersons alleged that the repeated intrusions of the Allens' dogs onto their property constituted a private nuisance, the chancery court did not abuse its discretion by finding that a permanent injunction was not precluded by alternative tort remedies. (6) Because the chancery court's injunction did not enjoin the statutory right to hunting with dogs as a

whole, as the Allens argued, and was only based on the specific facts of the case, the chancery court did not exceed its judicial authority. Therefore, the Supreme Court affirmed the judgment of the Prentiss County Chancery Court.

#### **SPECIAL CONCURRENCE**

Justice Maxwell argued that the chancery court's ruling should be affirmed but emphasized that the Court's ruling was neither a blanket indictment of lawful dog hunting nor a prohibition against it. Justice Maxwell clarified that the Court's ruling was based on a highly facts-specific finding in one lawsuit.

#### **DISSENT**

Justice Ishee argued that hunting deer with dogs was a statutory right, that the Allens' dogs' invasion of the Dickerson property was reasonable, and that the Allens were not reckless in their hunting practices.

#### **Affirmed - 2023-CA-00067-SCT (May 23, 2024)**

En Banc Opinion by Presiding Justice King - Special Concurrence by Justice Maxwell - Dissent by Justice Ishee

Hon. Stephen Travis Bailey (Prentiss County Chancery Court)

Jesse Dale Huske for Appellants - Greg E. Beard for Appellees

Briefed by [Jack Furla](#)

Edited by [Robert "Duncan" Jones](#) & [William Davis](#)

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## **CLAY V. TUNICA CNTY.**

### **CIVIL - WRONGFUL DEATH**

**CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT** - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in the light most favorable to the non-moving party

**CONSTITUTIONAL LAW - LOCAL GOVERNMENT - LIABILITY** - Municipalities and local governments, such as a county, are considered "persons" who can be held liable under 42 U.S.C. § 1983

**CONSTITUTIONAL LAW - LIABILITY - OFFICIAL POLICY** - To hold a local government liable under 42 U.S.C. § 1983, the plaintiff must prove that (1) an official policy or custom of the local government (2) directly caused the plaintiff's constitutional injury, and (3) the local government enacted or maintained such policy with deliberate indifference to the risk of such constitutional injuries

#### **FACTS**

Donnie Clay committed suicide while confined in the Tunica County Jail. Barbara Clay, Clay's wife, and Whitney Jackson, Clay's girlfriend, ("the plaintiffs") filed a wrongful death action against Tunica County Sheriff K.C. Hamp and Tunica County ("the County"), alleging a violation of Clay's Fourteenth Amendment rights under 42 U.S.C. § 1983. The trial court found Hamp was entitled to qualified immunity and separately granted summary judgment to the County. The court found that the plaintiffs failed to identify a single policy or practice of the County as the direct cause of Clay's suicide and failed to establish a causal connection between the County's alleged failure to train the jail staff and a violation of Clay's constitutional rights. The plaintiffs appealed.

#### **ISSUE**

Whether the trial court erred by granting summary judgment to the County.

#### **HOLDING**

Because the plaintiffs failed to identify any official policy of the County or custom that was the direct cause of Clay's suicide, because the County's alleged failure to train officers did not amount to "deliberate indifference" to the rights of detainees, and because the plaintiffs did not present evidence that the training provided to officers was the direct

cause of Clay's suicide, the County could not be held liable under § 1983. Therefore, the Supreme Court affirmed the judgment of the Tunica County Circuit Court.

**Affirmed - 2022-CA-01106-SCT (May 23, 2024)**

Opinion by Chief Justice Randolph

Hon. Linda F. Coleman (Tunica County Circuit Court)

Daniel E. Morris for Appellants - S. Ray Hill III for Appellees

Briefed by [Hunter Seidler](#)

Edited by [Brandon Peterson](#) & [William Davis](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **PITTMAN V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - ADMISSION OF EVIDENCE - HARMLESS-ERROR ANALYSIS** - Errors in the admission of evidence are subject to a harmless-error analysis, preventing the setting aside of convictions for small errors or defects that have little, if any, likelihood of having changed the result at trial

**CRIMINAL PROCEDURE - HARMLESS-ERROR ANALYSIS - REASONABLE DOUBT STANDARD** - Where it is clear beyond a reasonable doubt that the error did not contribute to the verdict, the court need not reverse the conviction, for the error would be harmless

#### **FACTS**

Jerry Pittman and Brianna Pierce broke into David Parker's trailer and stole several items, including a cash box with about \$890 inside. Parker testified that Pierce was the only person besides him who knew where his cash box was located. Items belonging to Parker were later found in Pittman's truck during an investigation into Pittman stealing power tools in a separate incident. Investigator Burt of the Neshoba County Sheriff's Department testified to the finding of stolen items in Pittman's truck. In a written statement, Pittman claimed Pierce told him she formerly occupied the trailer and needed to get her belongings. Testifying in his defense, Pittman said Pierce asked him for a ride to get her belongings from the trailer and directed him on which items to take, claiming he did not know they were not her items. On cross-examination, Pittman admitted Pierce only told him to retrieve the lockbox and brown bag with a laptop and that Parker's property was commingled with stolen power tools. Pittman stated that the power tools were not stolen because he purchased them from someone whose name he did not know. Pittman claimed that he later found out that the power tools were reported as stolen. An investigator testified that Pittman admitted in his interview that he stole the power tools. The trial court gave a limiting instruction regarding the evidence of prior bad acts, and the jury found Pittman guilty of burglarly of a dwelling. Pittman appealed.

#### **ISSUE**

Whether the circuit court erred in admitting evidence of a prior bad act.

#### **HOLDING**

Because there was overwhelming evidence that Pittman committed burglarly of a dwelling, any error claimed by Pittman in admitting evidence of a prior bad act would be harmless. Therefore, the Supreme Court affirmed the judgment of the Neshoba County Circuit Court.

**Affirmed - 2023-KA-00367 (May 23, 2024)**

Opinion by Presiding Justice King

Hon. Caleb Elias May (Neshoba County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee  
Briefed by [Margaret Gardner](#)  
Edited by [Robert "Duncan" Jones](#) & [Emily Phillips](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 21, 2024

### COURT OF APPEALS - CIVIL CASES

#### McKENZIE V. MCKENZIE

##### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - DIVORCE - FERGUSON FACTORS** - In dividing the marital estate, the chancery court must consider the *Ferguson* factors, which include marital misconduct, economic and domestic contributions, earning capacities, and expenses

**FAMILY LAW - CHILD SUPPORT - REDUCED EARNING CAPACITY** - The chancery court may set child support based on available information about the specific circumstances including a loss in future earning capacity

**FAMILY LAW - ALIMONY - ARMSTRONG ANALYSIS** - In conducting an *Armstrong* analysis, the chancery court may consider the future employability of a dependent spouse and any future reduction in the earning capacity of the financially independent spouse

**FAMILY LAW - DIVORCE - ATTORNEY'S FEES** - Assets received by a spouse as part of equitable distribution may be considered in determining their ability to pay their attorney's fees

##### FACTS

Leah McKenzie and Matt McKenzie had three children. Matt was a successful attorney, and the two agreed that Leah would be a stay-at-home mother. Leah had a marketing degree and previously worked outside the home. The two lived a comfortable lifestyle, and Matt's income rose to over \$1,000,000 at one point. Matt battled alcohol addiction. In 2021, Leah filed for divorce based on irreconcilable differences. The same year, the parties agreed to a temporary order granting Leah use and possession of the marital home and use of the credit card for living expenses and the children. In 2022, Matt entered a treatment program. Around the same time, Matt's firm ended their partnership with him. He joined a new firm which required him to share a greater percentage of his fees resulting in a projected reduced adjusted gross income of \$163,850. The chancery court ordered Matt to pay child support of \$3,000 per month and distributed 49% of the marital estate to Leah and roughly 51% to Matt. The chancery court also ordered Matt to pay Leah \$5,000 per month for three years as rehabilitative alimony. Finally, the chancery court found that the parties should pay their own attorney's fees. Leah filed a motion for reconsideration. The chancery court denied Leah's motion. Leah appealed.

##### ISSUES

Whether the chancery court erred in (1) dividing the marital estate; (2) ordering Matt to pay less child support; (3) determining the type or amount of alimony to award; and (4) denying Leah's request for attorney's fees.

##### HOLDING

(1) Because the chancery court provided an adequate discussion of the parties' respective earning capacities and financial needs, and because Leah offered no evidence as to disputed personal property, the chancery court did not err in dividing the marital estate. (2) Because Matt had been terminated from his previous job and would make less money in his new job, the chancery court did not err in ordering Matt to pay less child support. (3) Because substantial evidence supported the chancery court's factual findings, and because of Matt's job loss and anticipated reduction in income, the chancery court did not err in determining the type or amount of alimony to award. (4) Because Leah received assets in the divorce, and because Leah could use them to pay the remaining balance she owed her attorneys, the chancery court did not err

in denying Leah's request for attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Chancery Court.

**Affirmed - 2022-CA-01175-COA (May 21, 2024)**

Opinion by Presiding Judge Wilson

Hon. Kenneth M. Burns (Lafayette County Chancery Court)

A.E. (Rusty) Harlow Jr. & Kathi Chrestman Wilson for Appellant - T. Swayze Alford & Kayla Fowler Ware for Appellee

Briefed by [Joshua Arias](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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## SIGNAIGO V. GRINSTEAD

### CIVIL - REAL PROPERTY

**REAL PROPERTY - ADVERSE POSSESSION - ELEMENTS OF ADVERSE POSSESSION** - Pursuant to Miss. Code Ann. § 15-1-13, for a party to succeed on an adverse possession claim he must show that his possession of the disputed property was (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful

**REAL PROPERTY - ADVERSE POSSESSION - CLAIM OF OWNERSHIP** - When determining whether a party has staked a proper claim of ownership, the relevant inquiry is whether the possessory acts relied upon by the would-be adverse possessor are sufficient to put the record title holder on notice that the lands are held under an adverse claim of ownership; the claim of ownership must have existed at the beginning of the statutory period of possession and not possession with the intent to claim as soon as the statutory period passed

#### FACTS

In 1997, William and Judith Signaigo purchased lots 32-35 in Shoreline Estates subdivision. Myrna Grinstead claimed to be the sole legal heir to inherit her mother Helene A. Boubede's property ("subject property"). The subject property consisted of lots 36 and 37 within the Shoreline Estates subdivision, which were adjoined to the lots owned by the Signaigo's. After purchasing their property, the Signaigo's built a fence encompassing portions of their property and all of the subject property. The fence stood for about 25 years while the Signaigo's maintained the subject property throughout the entirety of that time. In 2021, the Signaigo's filed an adverse possession action against Grinstead, claiming title to the subject property. During a deposition of Judith Signaigo, she testified that she and her husband were aware that the subject property was not theirs when they built the fence, but they built the fence for their dogs' use. Judith Signaigo also stated that she and her husband decided to claim the subject property to the exclusion of the people who actually owned the subject property approximately seven years prior to the lawsuit. The trial court found that the Signaigos failed to establish their claim of ownership or that their use was open and notorious so as to satisfy their claim for adverse possession. The trial court also found that Grinstead's title to Helene Boubede's property was vested to her as a matter of law. The Signaigos appealed.

#### ISSUES

Whether the trial court erred in finding that (1) the Signaigos failed to establish that the subject property was adversely possessed and (2) Grinstead's mother's property was vested to Grinstead as a matter of law.

#### HOLDING

(1) Because the Signaigo's admitted in their deposition that at the time they fenced the subject property, they were aware that the subject property was not theirs and belonged to someone else, they could not satisfy their claim of ownership as required to show adverse possession. (2) Because the motion before the trial court was for summary judgment in an adverse possession action, the trial court's decision as to the vested title was beyond the scope of the summary judgment motion. Therefore, the Court of Appeals affirmed in part, reversed in part, and remanded in part the judgment of the Hancock County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2022-CA-01212-COA (May 21, 2024)**

Opinion by Judge Greenlee  
Hon. Margaret Alfonso (Hancock County Chancery Court)  
Robert Thomas Schwartz & Christian Strickland for Appellants - Kelly Michael Rayburn for Appellee  
Briefed by [Allie Kellest](#)  
Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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## SMITH V. WEST

### CIVIL - PERSONAL INJURY

**CIVIL PROCEDURE - DISMISSAL - PENALTY** - Miss. R. Civ. P. 41(d) allows courts to dismiss an action involuntarily for want of prosecution as a penalty for dilatoriness

**CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE** - Miss. R. Civ. P. 41(d) provides that in all civil actions wherein there has been no action of record during the preceding twelve months, the clerk of the court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within thirty days following said mailing, action or record is taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case, but if action of record is not taken or good cause is not shown, the court shall dismiss each such case without prejudice

**CIVIL PROCEDURE - FAILURE TO PROSECUTE - ACTION OF RECORD** - Under *Glass v. City of Gulfport*, an action of record is characterized as one that advances the case to judgment

#### **FACTS**

In September 2013, Lori Smith alleged that her employer, Dr. Peter West, attacked her. In September 2014, Smith filed a complaint against West and the Tupelo Dental Group. In December 2016, Smith filed a continuance for the purpose of completing discovery. The court granted the motion and rescheduled the trial for December 2017. In December 2017, the court continued the trial and ordered the parties to participate in mediation. Mediation was unsuccessful, and the court entered Qualified HIPPA Protective Order. In May 2019, due to the lack of action, the circuit court clerk filed a Miss. R. Civ. P. 41(d) (“Rule 41”) notice which initiated the case’s dismissal for want of prosecution. The court granted Smith’s motion to remain on the active docket. In August 2021, the court continued the trial due to the COVID-19 pandemic. In November 2022, the circuit clerk filed a second Rule 41 notice. The court conducted a hearing on Smith’s motion to remain on the active docket, dismissed the action for failure to prosecute, and found that Smith failed to show good cause why the matter should not be dismissed. Smith appealed.

#### **ISSUE**

Whether the trial court abused its discretion by dismissing Smith’s case for want of prosecution.

#### **HOLDING**

Because Smith failed to take an action of record that advanced her case which caused several periods of inaction and undue delay, the circuit court was within its discretion to dismiss the case after allowing several continuances over the course of almost ten years. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

**Affirmed - 2023-CA-00297-COA (May 21, 2024)**

Opinion by Judge Westbrook  
Hon. Paul S. Funderburk (Lee County Circuit Court)  
Joe M. Davis for Appellant - T. Swayze Alford & Kayla Fowler Ware for Appellee  
Briefed by [Youssef Kishk](#)  
Edited by [Robert “Duncan” Jones](#) & [Emily Phillips](#)

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## TILLEY V. GIBBS

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - APPELLATE PRACTICE - STANDARD OF REVIEW** - The Court “will not reverse unless the [chancellor] made findings that are manifestly wrong or clearly erroneous or applied an improper legal standard”

**FAMILY LAW - CUSTODY - ALBRIGHT FACTORS** - The chancellor holds the ultimate discretion to weigh the evidence the way [he] sits fit in determining what is in the best interest of the child

#### FACTS

John Gibbs and Tiffany Tilley had one child, V.G.. Gibbs filed for divorce against Tilley. The parties agreed to a temporary order granting Tilley custody of their child and granted Gibbs visitation rights. The parties then withdrew fault grounds for divorce and proceeded on the contested issue of custody and child support. Before the court decided on the issues, Tilley filed a supplemental motion for a protective order against Gibbs concerning messages he sent to her containing possible threats and harassment. Gibbs admitted to sending the messages but denied the messages were directed at Tilley. The chancery court granted an irreconcilable differences divorce, awarded joint legal custody, and awarded Gibbs physical custody. Tilley filed a motion for a new trial and to alter the final judgment. The chancery court denied Tilley’s motion. Tilley appealed.

#### ISSUE

Whether the chancery court erred in the consideration and application of the *Albright* factors used in granting physical custody of V.G. to Gibbs.

#### HOLDING

Because there was substantial credible evidence to support the chancery court’s custody determination, the chancery court properly determined that V.G.’s interests were best served by being placed in Gibbs’s physical custody. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

**Affirmed - 2022-CA-01150-COA (May 21, 2024)**

Opinion by Judge Smith

Hon. Rodney Purvis Faver (Lowndes County Chancery Court)

William Paul Starks II for Appellant - Hal H. McClanahan III for Appellee

Briefed by [John Walker Webb](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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

## HAMER V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - APPEALS - PROCEDURAL BAR** - An issue is procedurally barred if not first raised in a post-conviction relief motion before a circuit court

**POST-CONVICTION RELIEF - DISMISSAL - EVIDENTIARY HEARING** - A post-conviction claim for relief is properly dismissed without the benefit of an evidentiary hearing where it is manifestly without merit

**POST-CONVICTION RELIEF - EVIDENTIARY HEARING - REQUIREMENTS** - To be entitled to an evidentiary hearing, the movant must demonstrate, through none of the movant’s own unsupported allegations, that there are unresolved issues of fact that would warrant relief if concluded favorably to the movant

## **FACTS**

The Mississippi Department of Child Protective Services placed two children in Tralyssa Hamer's foster home in October 2019. A grand jury indicted Tralyssa Hamer in December 2020 on two counts of child abuse in Alcorn County Circuit Court. The indictment alleged that Hamer "did intentionally, knowingly or recklessly, unlawfully, and feloniously whip, strike or otherwise abuse" each child in May 2020, resulting in serious bodily harm in violation of Miss. Code Ann. § 97-5-39. Hamer pled guilty to both counts in March and April 2023. Hamer filed a post-conviction relief ("PCR") motion in May 2023 and amended it shortly after, alleging that she received ineffective assistance of counsel based on a failure to litigate an alleged speedy-trial violation, that her guilty plea was rendered involuntary by counsel's ineffective assistance, and that she had a valid entrapment defense. The circuit court entered an order on her PCR motion in June 2023, concluding that all of Hamer's asserted grounds for relief were without merit and dismissed her PCR motion without an evidentiary hearing. The order pointed out that Hamer did not present any affidavits to support her PCR motion and that Hamer stated under oath "affirming that she was satisfied with the legal services and the advice of her attorney." Hamer appealed.

## **ISSUES**

Whether the trial court erred in (1) dismissing Hamer's PCR motion for raising new issues without merit and (2) failing to grant an evidentiary hearing on Hamer's PCR motion.

## **HOLDING**

(1) Because Hamer raised new issues at the appellate level that were not raised before the circuit court the issues were procedurally barred. (2) Because Hamer did not present any sworn affidavits or good cause to demonstrate entitlement to an evidentiary hearing or to substantiate her claims with specificity, the trial court did not err by failing to grant an evidentiary hearing on Hamer's PCR motion. Therefore, the Court of Appeals affirmed Alcorn County Circuit Court.

### **Affirmed - 2023-CP-00701-COA (May 21, 2024)**

Opinion by Judge Smith

Hon. Kelly Lee Mims (Alcorn County Circuit Court)

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

Briefed by [Sydney Bailey](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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## **HEARN V. STATE**

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

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE** - A motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS** - Statutory exceptions to the three year limitations on filing a claim for post-conviction relief are: (1) an intervening decision which would have actually adversely affected the outcome of [the movant's] conviction or sentence, (2) conclusive evidence, not reasonably discoverable at the time of trial, (3) untested (or inadequately tested) biological evidence, and (4) an expired sentence or unlawful revocation of probation, parole, or conditional release

## **FACTS**

In July 1978, Michael Hearn was indicted for selling a controlled substance to an undercover agent. He pled guilty to this charge in February 1979 in the Oktibbeha County Circuit Court. In April 1979, Hearn was sentenced to six years in the custody of the Mississippi Department of Corrections ("MDOC"). In 1993, Hearn was convicted of aggravated assault and sentenced to twenty years in MDOC's custody. In April 2005, while serving that sentence, Hearn was indicted in the Lauderdale County Circuit Court on two counts of intimidating a judge. Due to Hearn's status as a



habitual offender, the State sought an enhanced sentence of life without the possibility of parole. In 2008, the Mississippi Supreme Court affirmed Hearn’s convictions and life sentences for the two counts of intimidating a judge. In April 2022, Hearn filed an application in the Mississippi Supreme Court for leave to seek post-conviction relief (“PCR”) to collaterally attack his 1979 conviction and sentence for selling a controlled substance. The Supreme Court found that Hearn pled guilty to that conviction and did not appear to have appealed his sentence. Thus, the Supreme Court dismissed Hearn’s application without prejudice to his right to seek PCR in the trial court. From November to December 2022, Hearn filed three pro se motions in the Oktibbeha County Circuit Court, which the circuit court considered together as one combined PCR motion. The circuit court denied relief and dismissed Hearn’s combined PCR motion as untimely, finding it was filed past the statute of limitations and that the motion met none of the statutory exceptions to Miss. Code. Ann. § 99-39-5(2). Hearn appealed.

#### **ISSUE**

Whether the circuit court erred in denying relief and dismissing Hearn’s PCR motion.

#### **HOLDING**

Because Hearn did not seek post-conviction relief regarding his 1979 sentence until 2022, and because Hearn’s combined PCR motion did not address any statutory exceptions to the three-year limitations period, the circuit court did not err in denying relief and dismissing Hearn’s PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

#### **Affirmed - 2023-CP-00275 COA (May 21, 2024)**

Opinion by Presiding Judge Carlton

Hon. Lee Jackson Howard V (Oktibbeha County Circuit Court)

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

Briefed by [Hayward Gordon](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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## **THOMPSON V. STATE**

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

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE** - Pursuant to Miss. Code Ann. § 99-39-5(2), a petitioner who enters a guilty plea must file a post-conviction relief motion within three years after entry of the judgment of conviction

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUBSEQUENT MOTIONS** - Pursuant to Miss. Code Ann. § 99-39-5(2), any order dismissing the petitioner’s motion or otherwise denying relief requested in a motion for post-conviction relief will bar successive motions

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS BAR - FUNDAMENTAL RIGHTS EXCEPTION** - The fundamental rights exception cannot apply to the substantive, constitutional bars codified in the Uniform Post-Conviction Collateral Relief Act

#### **FACTS**

In 2014, Paul Thompson pled guilty to sexual battery of a child in the Oktibbeha County Circuit Court. In 2017, Thompson filed a motion for post-conviction collateral relief (“PCR”) in the Sunflower County Circuit Court, as he was incarcerated in Sunflower County. The motion was dismissed for lack of jurisdiction, and the Court of Appeals affirmed, holding the circuit court in which Thompson was convicted had jurisdiction over his PCR motions. In response, Thompson filed a PCR motion in the Oktibbeha County Circuit Court alleging an ineffective indictment, ineffective assistance of counsel, an attorney conflict of interest, his failure to enter a guilty plea knowingly and intelligently, and that his confession was the result of police coercion. The Oktibbeha County Circuit Court dismissed the PCR motion, and the Court of Appeals affirmed. Thompson filed another motion for state writ in Oktibbeha

County in 2020, alleging ineffective assistance of counsel, insufficient evidence, and improper timing of arrest. The motion was denied without a hearing. In 2022, Thompson filed a petition for writ of habeas corpus alleging various Fourteenth and Fifth Amendment violations, which was treated by the circuit court as a PCR motion and denied on the basis of the Uniform Post-Conviction Collateral Relief Act's ("UPCCRA") three-year statute of limitations. Thompson filed two amended PCR motions in early 2023 in which he raised several issues that fell within the judicially created "fundamental rights exception." Both of these PCR motions were dismissed for the same reasons as the 2022 PCR motions. Thompson appealed.

### ISSUES

Whether the trial court erred in finding that (1) Thompson's PCR motions were time barred by the UPCCRA and successive; and (2) Thompson failed to meet the fundamental rights exception to the UPCCRA's statute of limitations.

### HOLDING

(1) Because the PCR motions on appeal were filed almost nine years after Thompson entered his guilty plea, and because the 2023 motions were Thompson's fourth and fifth PCR motions, the motions were time barred and successive under the UPCCRA. (2) Because the fundamental-rights exception did not apply to the substantive, constitutional bars of the UPCCRA, Thompson failed to meet the judicially crafted "fundamental rights" exception to the UPCCRA's statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2023-CP-00218-COA (May 21, 2024)**

Opinion by Judge Westbrook

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

*Pro se* for Appellant - Scott Stewart (Att'y Gen. Office) for Appellee

Briefed by [Thomas Andersen](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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**Commented [SCT]:** Not sure if the name for the pro se appellant should be included or not. Could not ascertain from the briefing guide

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## *COURT OF APPEALS - CRIMINAL CASES*

### **CARR V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - IMPROPER COMMENTS** - Attorneys are allowed considerable latitude in the argument of cases as long as the attorney keeps fairly within the evidence and issues involved; attorneys are prohibited from using tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury

**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - MISTRIAL** - To be reversible plain error, an attorney's comment must be so inflammatory that the trial court should have objected on its own motion; the trial court should intervene when an attorney departs entirely from the evidence in his arguments, makes statements intended solely to excite the passions or prejudices of the jury, or makes inflammatory and damaging statements of fact not found in the evidence, resulting in unjust prejudice against the accused as to result in a decision influenced by the prejudice so created

**CRIMINAL PROCEDURE - ATTORNEY STATEMENT - JURY INSTRUCTION** - Opening and closing arguments of counsel are not evidence, and reversal is not required when a jury is properly instructed that statements made by counsel are not evidence

### FACTS

Antoine Carr was convicted of first-degree murder and sentenced to life imprisonment. In closing arguments at trial, the State reminded the jurors to use their intelligence during deliberations, to not be blinded by the "smoke screen" put

up by Carr, and to make a decision based on “what [they knew] the truth to be.” The State also commented that the jury would need little time to decide that Carr was guilty of the charged crime and that the State was sure Carr had celebrated the murder upon its completion and panicked upon realizing who he had murdered. Finally, the State stated at least three times that Carr committed the alleged murder, and it told the jury to come back from deliberations with justice for the victim. The trial court instructed the jury that the attorney’s statements were not evidence. Carr did not object to the State’s closing arguments at trial. Carr appealed.

#### **ISSUE**

Whether the prosecutor committed prosecutorial misconduct in closing arguments at trial.

#### **HOLDING**

Because Carr waived his argument by not objecting at trial, and because the State simply summarized and commented on the evidence, presented to the jury its own deductions and inferences drawn from the evidence, and did not offer an opinion as to Carr’s guilt, the State did not commit reversible plain error. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2022-KA-00491-COA (May 21, 2024)**

Opinion by Presiding Judge Carlton

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

Kaylyn Havrilla McClinton for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Isabella Escobedo](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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## **JACKSON V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - GRAND JURY - INDICTMENT** - A trial court that allows a defective grand jury indictment with only a procedural issue will not constitute reversible error if the State cures the error

**CRIMINAL PROCEDURE - STATEMENT MADE TO LAW ENFORCEMENT - SUPPRESSION** - For a statement to law enforcement to get suppressed, the police officers must have violated the defendant’s *Miranda* rights; a defendant waives these rights when he or she makes a voluntary, knowing, and intelligent waiver

**DEFENSES - JURY INSTRUCTIONS - INSANITY** - If a defendant voluntarily intoxicates himself or herself and his or her actions result from the intoxication, a court can properly deny jury instructions for insanity as a defense

**DEFENSES - JURY INSTRUCTIONS - IMPERFECT SELF-DEFENSE MANSLAUGHTER** - In order to receive a jury instruction for imperfect self-defense manslaughter, the defendant must show that his or her actions resulted from a bona fide belief that killing the victim proved necessary to prevent death or bodily harm

#### **FACTS**

Police officers responded to a 911 call about vehicle headlights shining in the caller’s home window. The officers found Jennifer Marie Irby-Melgoza dead inside a truck that had crashed into a tree. She was covered in blood and appeared to have a stab wound to her chest. The officers concluded that Erby Dean Jackson Jr. was the suspect after examining the truck’s contents such as his driver’s license, social security card, and his medicine bottles. As Major Kelly McMillen left the scene, he noticed the lights on at Chewalla Primitive Baptist Church, but he found no one inside. At the same time, Lieutenant Eric Knox noticed a man sitting on the front porch of Temperance Hill Baptist Church. The officers suspected this man to be Jackson and arrested him, noting that he cooperated and seemed to understand the things the officers told him. A few hours after Jackson arrived at the Marshall County Sheriff’s Department, Jackson disclosed the location of the knife to the officers, which they recovered from Chewalla Primitive Baptist Church and sent for DNA testing. Irby-Melgoza’s autopsy report indicated that she died from a stab wound to the chest, and the crime lab confirmed that the knife retrieved by the officers could be the murder weapon. At trial, McMillen testified to this fact

as stated in the report. Mark LeVaughn, a medical examiner at the state crime laboratory, further testified that the evidence presented indicated that a stab wound killed the victim. After indictment but before trial, Jackson moved to dismiss his indictment and suppress his statements to law enforcement. The trial denied Jackson's motion to dismiss the indictment, and at the suppression hearing, the court denied this motion as well because the court concluded that the State complied with the constitutional requirements of *Miranda*, finding that Jackson acknowledged his rights and understood them. At trial, Dr. William Criss Lott testified regarding his mental evaluation of Jackson several months after the crime. Lott testified that Jackson suffered from a drug-induced psychotic disorder at the time of the offenses; according to Lott, Jackson believed he was killing demons and did not believe his actions were wrong. Jackson had also never received treatment for this severe mental disorder. At the end of the trial, Jackson himself testified, describing his trip with Irby-Melgoza to obtain drugs. At some point during the trip, he got out of the truck, and he became increasingly agitated as she attempted to get him back in the vehicle. At this point, he approached the driver's side and stabbed Irby-Melgoza. He also explained that he took the Bible from Chewalla Primitive Baptist Church because he wanted to "protect the word of God." Jackson further testified that he did not remember any interactions between him and the police on the night in question. Ultimately, the jury found Jackson guilty of first-degree murder and burglary, and the court sentenced him to life in prison without the possibility of parole. Jackson appealed.

#### **ISSUES**

Whether (1) the trial court erred by denying Jackson's motion to dismiss his indictment; (2) the trial court erred by denying Jackson's motion to suppress the statements that he made to law enforcement; (3) the trial court erred by refusing to give Jackson's proposed jury instructions on insanity as a defense and imperfect self-defense manslaughter; and (4) the jury's guilty verdicts for both the first-degree murder conviction and the burglary conviction were against the overwhelming weight of the evidence.

#### **HOLDING**

(1) Because the error was merely procedural and the amended indictment by the State cured the error, the trial court did not err in denying Jackson's motion to dismiss his indictment. (2) Because Jackson made a knowing, intelligent, and voluntary waiver of his *Miranda* rights, the trial court did not err in denying the motion to suppress the statements that he made to law enforcement. (3) Because the evidence showed that Jackson's voluntary intoxication caused his psychotic behavior rather than any mental illness and because Jackson's actions were the result of drug-induced psychosis from long-standing use of drugs instead of a bona fide belief that killing the victim proved necessary to prevent his death or bodily harm, the trial court did not err in refusing to grant Jackson's jury instructions on insanity as a defense and imperfect self-defense manslaughter. (4) Because the jury was properly instructed that voluntary intoxication was not a defense to murder and resolving factual disputes lies within the jury's province, and because sufficient evidence of Jackson's felonious intent from which the jury could reasonably infer his intent to commit a crime inside the Chewalla Primitive Baptist Church existed, Jackson's convictions for first-degree murder and burglary were not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

**Affirmed - 2022-KA-01143-COA (May 21, 2024)**

Opinion by Judge Westbrook

Hon. Grady Franklin Tollison III (Marshall County Circuit Court)

Zakia B. Chamberlain (Pub. Def. Office) & *Pro se* for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Matt Hennington](#)

Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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**MARTIN V. STATE**

**CRIMINAL - FELONY**

**EVIDENCE - BEYOND A REASONABLE DOUBT STANDARD - SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE** - If the jury is convinced beyond a reasonable doubt, the court can require no more, and the jury will use its experience with people and events in weighing the probabilities with both direct and circumstantial evidence

**EVIDENCE - CIRCUMSTANTIAL EVIDENCE - WEIGHT** - Circumstantial evidence is entitled to the same weight and effect as direct evidence, and it is not inferior to direct evidence when all of the facts are considered

#### **FACTS**

John Davis was shopping at the mall. As he was resting on a bench inside a store, a man wearing sunglasses, a hoodie, and a mask attacked him. Davis's attacker tried to steal a bag of items that Davis had purchased from the mall and a necklace that Davis was wearing. The attacker then dropped the bag and the necklace and fled the scene. As he was fleeing, he knocked over a woman and a baby's stroller, which caused two men who were with the baby and woman to begin a physical fight with the attacker. Davis witnessed the fight between the three men. Davis identified his attacker as one of the men fighting, even though he was no longer wearing the sunglasses, hoodie, or mask. The mall's marketing director, Mandelyn Staggs, was walking the property when she heard people screaming and saw the altercation. She stopped the two men to ask about the incident while she kept the attacker in her sight. The attacker sat down on a bench to make a phone call, and then he exited the mall towards the parking lot. As he was leaving, Jeremy Iverson, a police officer, approached him. He attempted to flee as Iverson chased him on foot. Additional officers arrived and apprehended the attacker. At trial, Staggs and another officer identified the defendant, Darrell Devonte Martin, as the attacker leaving the scene. The jury found Martin guilty of aggravated assault and armed robbery. Martin filed a motion for a new trial, which the trial court denied. Martin appealed.

#### **ISSUE**

Whether the trial court abused its discretion by denying Martin's motion for a new trial.

#### **HOLDING**

Because the events in the testimony provided sufficient circumstantial evidence for the jury to find beyond a reasonable doubt that Martin was the man who attacked Davis, the trial court did not abuse its discretion by denying Martin's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

**Affirmed - 2023-KA-00044-COA (May 21, 2024)**

Opinion by Judge Emfinger

Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Forrest Carman](#)

Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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## **McVAY V. STATE**

### **CRIMINAL - FELONY**

**APPELLATE REVIEW - PROSECUTORIAL MISCONDUCT - FAILURE TO OBJECT** - On appeal, questions of prosecutorial misconduct will not be addressed where the defendant did not raise the question at trial

**APPELLATE PROCEDURE - ARGUMENTATION - CITATION TO AUTHORITIES** - Appellants must argue the issues present with citations to relevant authorities, statutes, and parts of the record to develop the argument in a meaningful way

**APPELLATE REVIEW - PLAIN ERROR - OBVIOUS AND PREJUDICIAL** - Appellate courts may remedy obvious legal errors that cause a manifest miscarriage of justice, affect the fairness, integrity, or public reputation of judicial proceedings, and prejudice the outcome of the trial in the absence of overwhelming evidence against the defendant

**APPELLATE PROCEDURE - JUDICIAL ROLE - ADVOCACY** - A trial court is not to act as an advocate for a party on appeal who does not affirmatively raise or demonstrate an error in the lower court

**TORTS - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS** - A claim for ineffective assistance of counsel must demonstrate that the counsel's performance fell outside of sound trial strategy and was deficient, and that deficiency prejudiced the defendant according to a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different

#### **FACTS**

In 2017, a police officer conducted a welfare check and discovered the bodies of Edna Durr, Tomecca Pickett, Kiearra Durr, and Owen Pickett. The day before the killings, Karon McVay visited and got into an argument with his girlfriend, Tomecca, at her workplace because she did not wish to continue the relationship. The day after the killings, McVay returned to the crime scene and gave a voluntary statement to the sheriff's department. During subsequent interviews, he admitted to owning a gun that was located at the crime scene despite also having a prior felony conviction. During a second interview, McVay admitted to killing the four victims. Before trial, the State filed a motion in limine to introduce evidence of McVay's prior bad acts, including a violent incident between Tomecca and McVay in 2014. The trial court admitted the evidence. During trial, McVay chose to testify as the sole defense witness, stating that his relationship with Tomecca was not abusive and that he did not murder the family despite his previous admission. On cross-examination, the State confronted McVay about whether his relationship with Tomecca was violent, drawing on evidence of an incident in 2014 where Tomecca called the police. The State did not officially impeach McVay, and McVay never objected to any of the questions. The jury returned a guilty verdict of four counts of capital murder and one count of possession of a firearm by a felon. McVay appealed.

#### **ISSUES**

Whether (1) the State improperly introduced the 2014 prior domestic violence with Tomecca without an evidentiary basis and (2) McVay's attorney's failure to object to the State's questions constituted ineffective assistance of counsel.

#### **HOLDING**

(1) Because McVay did not object at trial and failed to cite any authority or provide a meaningful argument on appeal as to plain error, because the evidence was previously ruled as being relevant and admissible for motive and intent, and because the evidence against McVay was so overwhelming due in part to his own admissions, the prosecution did not commit a plain, clear, or obvious error warranting reversal. (2) Because counsel's choice whether to object to questions falls within the ambit of trial strategy, because the trial court had already deemed the evidence behind the questioning admissible in a pretrial hearing, and because the evidence against McVay was overwhelming, McVay failed to prove deficient performance or prejudice, rendering the issue without merit. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

**Affirmed - 2022-KA-00523-COA (May 21, 2024)**

Opinion by Judge Lawrence

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

George T. Holmes & W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Jonathan Gandara](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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## **PICKENS V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - APPEAL - LINDSEY BRIEF** - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

**CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE** - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record and convey its decision on the appeal

#### **FACTS**

In March 2018, Mississippi Department of Corrections (“MDOC”) Officer Dwight Winter, Kobrin Pickens’s parole officer, received an anonymous tip that Pickens was engaged in criminal activity. Winter contacted narcotics Agent Michael Fowler, who set up a safety checkpoint with law enforcement officers. Fowler witnessed Pickens drive up to the checkpoint. Fowler then asked Pickens for consent to search his vehicle, and Pickens consented. During the search, officers discovered narcotics, contraband, and a firearm in his vehicle. Pickens was arrested. After testing, the Tupelo Crime Laboratory confirmed that the narcotics were thirty-six point seventy-five grams of methamphetamine. Pickens was indicted for trafficking thirty grams or more of methamphetamine with a firearm enhancement. At trial, Pickens testified that he did not know that a firearm or narcotics were inside of the vehicle. The jury found Pickens guilty of possessing thirty grams or more of methamphetamine and guilty of possessing a firearm at the time of the offense. At the sentencing hearing, the State offered evidence of Pickens’s prior convictions, and the trial court found that Pickens’s prior convictions satisfied the requirements of a second or subsequent offender pursuant to Miss. Code Ann. § 41-29-147 and of a habitual offender pursuant to Miss. Code Ann. § 99-19-81. The trial court sentenced Pickens as a habitual offender to a term of eighty years in the MDOC’s custody, with thirty years suspended and fifty years to serve. Pickens filed a motion for judgment notwithstanding the verdict or a new trial, which the trial court denied. Pickens appealed.

#### **ISSUE**

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

#### **HOLDING**

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Pickens never filed the granted supplemental pro se brief, the Court of Appeals reviewed the briefs and the record and found no issues that warranted reversal. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

#### **Affirmed - 2022-KA-00822-COA (May 21, 2024)**

Opinion by Presiding Judge Carlton

Hon. John Kelly Luther (Chickasaw County Circuit Court, First Judicial Dist.)

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Ramsey Thrasher](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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