

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 9, 2025**SUPREME COURT - CIVIL CASES****LAKE V. CHESNUTT****CIVIL - WILLS, TRUSTS, & ESTATES**

WILLS & ESTATES - DEVISAVIT VEL NON - JURY TRIAL - Either side is entitled upon request for a jury to try the issue of whether the proposed will was genuine, or devisavit vel non; if a party desires a jury to try an issue of devisavit vel non, that party is under a duty to specifically request a jury before any hearing on the matter

WILLS & ESTATES - NOTICE OF JURY TRIAL - WAIVER - Since the right to a jury trial is a statutory right guaranteed by Miss. Code Ann. § 91-7-19, the right to a jury trial is preserved unless there is an explicit waiver made pursuant to Miss. R. Civ. P. 38(b)

FACTS

Chester Lake and Mary Chesnutt's mother died in January 2023 and left a Last Will and Testament. Chesnutt subsequently filed a Petition to Admit Will to Probate and for Letters of Testamentary. Lake then filed a Caveat to Alleged Last Will and Testament in which he claimed undue influence rendered the will inadmissible and requested the issue of devisavit vel non to be tried. The chancery court set a discovery deadline in October 2023 and a motions deadline in November 2023, with a trial being set for January 2024 that was not specific as to whether it would be a bench or jury trial. In December 2023, Lake filed a Notice of Jury Trial. Subsequently, Chesnutt filed a Motion to Strike Notice of Jury Trial and claimed that Lake's participation in pretrial proceedings was a waiver of his right to request a jury trial, which was under the chancery court's discretion, and was untimely as it was a motion. Lake filed a response to Chesnutt's motion to strike, and he claimed that Miss. Code Ann. § 91-7-19 required the chancery court to conduct a jury trial once requested and afforded the court no discretion over whether to do so. In Chesnutt's reply, she claimed that Lake agreed to a bench trial by signing the scheduling order and participating in multiple proceedings before then requesting a jury trial near the scheduled trial date. Chesnutt also emphasized that Lake's right to a jury trial could be impliedly waived. The chancery court entered an order granting Chesnutt's motion to strike, finding that Lake waived his right to a jury trial by the entry of the scheduling order and that his notice was untimely. Lake appealed.

ISSUE

Whether Lake's right to request a jury trial could be impliedly waived prior to a hearing on the issue of devisavit vel non.

HOLDING

Because Lake requested a jury trial on the issue of devisavit vel non and no hearing on that issue had taken place, and because Lake did not expressly waive his right to a jury trial pursuant to Miss. Code Ann. § 91-7-19, Lake's right to request a jury trial could not be impliedly waived prior to a hearing on the issue of devisavit vel non. Therefore, the Supreme Court reversed and remanded the judgment of the Madison County Chancery Court.

Reversed & Remanded - 2024-IA-00037-SCT (Jan. 9, 2025)

En Banc Opinion by Justice Ishee

Hon. Cynthia L. Brewer (Madison County Chancery Court)

O. Stephen Montagnet III for Appellant - Paul E. Rogers for Appellee

Briefed by [Katie Lowe](#)

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

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SUPREME COURT - ORDERS

IN RE: RULES & REGULS. FOR CERTIFICATION & CONTINUING EDUC. FOR CT. ADM'RS

ORDER

ORDER

In this Order, the Court granted a petition to amend the Rules and Regulations for Certification and Continuing Education for Mississippi Court Administrators, effective January 1, 2025, as outlined in Exhibit A.

Ordered - 89-R-99020-SCT (Dec. 17, 2024)

Order by Presiding Justice King

Briefed by [Olivia Knight](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 7, 2025

COURT OF APPEALS - CIVIL CASES

BEGNAUD V. BEGNAUD

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - EQUITABLE DISTRIBUTION - The foundational step to making an equitable distribution of marital assets is to determine the value of those assets based on competent proof

FAMILY LAW - DIVORCE - FERGUSON FACTORS - Under the *Ferguson* factors, the tax or other economic consequences and contractual or legal consequences to third parties of the proposed distribution will be considered when they directly impact the value and usability of the assets awarded

FAMILY LAW - DIVORCE - LOUK STANDARD - The chancery court must make specific findings of fact on all applicable *Ferguson* factors to ensure a fair and equitable division of the parties' interests; failure to consider all relevant factors is an error and warrants reversal

FAMILY LAW - DIVORCE - HAMMETT STANDARD - The Social Security benefits received by a minor child based on his parent's disability or retirement are considered an alternative source of payment that should be credited toward the satisfaction of child support obligations; however, a child support payor is not entitled to a credit for Social Security benefits received by the child on account of the child's own disability

FACTS

Jamie and Michelle Begnaud consented to an irreconcilable differences divorce. At the time of the divorce, the couple had one adopted child, K.B. The Begnauds agreed to allow the chancery court to decide the distribution of the unresolved marital property and child support. Michelle valued the total marital estate at \$694,648.95, while Jamie valued it at \$560,930.95. One group of contested items were guns, ammunition, and scopes in the gun safe in the couple's bedroom. Michelle believed that she was entitled to some of the guns in the safe because she thought they were K.B.'s, but Jamie testified that the guns were not K.B.'s. He testified that the guns that belonged to him were worth between

\$1,500 and \$2,500. The court stated that an expert witness needed to be called to determine an accurate estimate of the guns, but it was unable to find an expert and ultimately averaged the parties' valuations. Michelle also testified that Jamie's Vanguard fund contained \$255,377.49, and Jamie contributed \$18,000 to that account before their marriage. Michelle also stated that she received \$700 a month from the State under the State's adoption assistance program. Jamie testified that he was willing to continue to pay the \$390 a month he was paying for temporary child support, but he was against paying that amount if Michelle received the adoption assistance. The chancery court ordered Jamie to pay child support payments but allowed the payments to be reduced to one-half of the adoption assistance the State was paying to Michelle. As a result, the chancery court awarded Michelle child support in the sum of \$581 per month, which was \$350 less than the statutory guideline. The chancery court also ordered Michelle to receive \$271,197, all of which was from Jamie's Vanguard retirement account. The distribution resulted in Jamie receiving 53% of the marital estate and Michelle receiving 47% of the marital estate. The chancery court entered a final judgment of divorce and distributed the property "in a nearly equal split," with Michelle receiving \$222,240 and Jamie receiving \$222,506 of the property value. Roughly \$200,000 was not accounted for in the chancery court's original final judgment. The final judgment stated that Michelle was awarded various items including \$204,523 from the Vanguard account and 46% of a Railroad Retirement Fund. Jamie was other items including the marital home with \$228,184 in equity. He was also awarded some of the unvalued guns, ammunition, and scopes, \$81,382 of the Vanguard account, and 54% of the Railroad Retirement Fund. Michelle filed a motion to amend the final judgment. In March 2023, the chancery court amended its final judgment to award Michelle all the funds in the Vanguard account and kept the rest of the distribution the same. The chancery court found that the total value of the marital estate was \$627,884.95. Michelle was awarded a total of \$291,746.50, and Jamie was awarded a total of \$329,811.96. Michelle's subsequent motion for reconsideration or a new trial was denied. Michelle appealed.

ISSUES

Whether the chancery court erred (1) by failing to assign a value to the guns, ammunition, and scopes located in the gun safe before ordering its distribution; (2) by ignoring the costs Michelle would incur to access the retirement funds awarded to her in order to meet her immediate needs; (3) by awarding Jamie a credit against his child support obligation for supplemental government assistance benefits received by the minor child through the adoption assistance program.

HOLDING

(1) Because the chancery court failed to value the items contained within the safe, the appellate court could not appropriately determine whether the chancery court abused its discretion, and the issue was remanded. (2) Because the chancery court did not refer to the tax or other economic consequences factor in any meaningful analysis of the *Ferguson* factors, and because there was evidence that Michelle would suffer from tax consequences to obtain cash to live on her own, the chancery court erred by ignoring the costs Michelle would incur to access the retirement funds awarded to her. (3) Because the adoption assistance payment from the State was for the benefit of K.B. and was not attributable to Jamie, the chancery court erred by awarding him credit against his child support obligations. Therefore, the Court of Appeals reversed and remanded the judgment of the Clarke County Chancery Court.

Reversed & Remanded - 2023-CA-00822-COA (Jan. 7, 2025)

Opinion by Judge Lawrence

Hon. Lawrence Primeaux (Clarke County Chancery Court)

Jeffrey Birl Rimes & Sarah-Lindsey Hammons for Appellant - Theodore Mark Cooperstein & Susan Jeanne Clouthier for Appellee

Briefed by [Taylor Dorenkott](#)

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

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CHIMENTO V. SCHWARK

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - TESTAMENTARY CAPACITY - FACTORS - To prove testamentary capacity, it must be determined: (1) whether the testator had the ability at the time of the will to understand and appreciate the effects of his act, (2) whether the testator had the ability at the time of the will to understand the natural objects or persons to receive his bounty and their relation to him, and (3) whether the testator was capable of determining at the time of the will what disposition he desired to make of his property

WILLS & ESTATES - CONFIDENTIAL RELATIONSHIP - FACTORS - In order to determine whether a confidential relationship is present, a court should determine whether: (1) one person has to be taken care of by others, (2) one person maintains a close relationship with another, (3) one person is provided transportation and has his medical care provided for by another, (4) one person maintains joint accounts with another, (5) one is physically or mentally weak, (6) one is of advanced age or poor health, and (7) there exists a power of attorney between the one and another

WILLS & ESTATES - DUE EXECUTION - REQUIREMENTS - Miss. Code Ann. § 91-7-7 provides that the due execution of a will must be proved by at least one (1) of the subscribing witnesses, and if none are alive and competent, by proving the handwriting of the testator or the subscribing witness

WILLS & ESTATES - PROBATE OF WILL - ELEMENTS - Probate of the will requires: (1) the proof of the existence of the will, (2) evidence of its loss or destruction, (3) proof of its contents, and (4) that the testator did not destroy the will with the intent to revoke it

FACTS

Leonard Harvey and Ernest Jenkins were longtime friends. Harvey was also close with Jenkins's daughter, Nina Schwark. Harvey had no wife or children. Schwark continually visited him, accompanied him to his appointments, and ran errands for him until she relocated to Houston. According to Harvey's neighbor, Harvey stated that his nieces knew they were not inheriting anything from him and that he intended to leave everything to Schwark because "she's the only one that's ever come out here and took care of me." Harvey executed his will at Jenkins's house on January 17, 2015, with Christine Herring and Mark Janavich serving as the witnesses. In the will, Harvey bequeathed his entire estate to Schwark. At the time of the will execution, Schwark was in Houston. When she arrived at her father's house, Jenkins handed her an envelope that contained a copy of Harvey's will. On February 21, 2015, Harvey was found dead in his recliner. Believing that Harvey had no living family members, Schwark filed a petition for probate and the court admitted the will to probate. Months later, several of Harvey's nieces and nephews filed a motion to set aside the order establishing the heirs-at-law. On September 18, 2018, Robin Chimento, a niece of Harvey's, filed a motion to produce the original will. Schwark went to Harvey's house twice to locate the document but to no avail. Although Chimento argued that the will was fabricated, the chancery court held that Schwark had rebutted the presumption of revocation based on clear evidence and that the will was valid. Chimento appealed.

ISSUES

Whether the chancery court erred in finding (1) that Schwark proved testamentary capacity; (2) that there was no presumption of undue influence; (3) the legal requirements for due execution were met; and (4) Schwark proved by clear and convincing evidence the legal requirements needed to probate a lost will.

HOLDING

(1) Because Chimento failed to present any evidence showing that Harvey was not in his right mind, there was no evidence to overcome the prima facie case of testamentary capacity. (2) Because Schwark neither used her relationship with Harvey for personal gain nor was involved in the preparation of his will, there were no suspicious circumstances that gave rise to the presumption of undue influence. (3) Because there was testimony and evidence showing that Herring and Janavich signed the will and the affidavit, the legal requirements for due execution were fulfilled. (4) Because there was proof the original will existed, because there was evidence of its loss or destruction, because there was proof of its contents, and because there was no proof that Harvey destroyed the original will with the intent to revoke it, the will was found to be lost or destroyed, and the legal requirements needed to probate a lost will were met. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2023-CA-00398-COA (Jan. 7, 2025)

Opinion by Judge Westbrook

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Scott Corlew for Appellant - E. Foley Ranson for Appellee

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

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EVERETT V. STATE

CIVIL - STATE BOARDS & AGENCIES

STATE BOARDS & AGENCIES - APPEALING CORRECTIONAL AUTHORITY - TIMELINESS OF APPEALS - Pursuant to Miss. Code Ann. § 47-5-807, any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure under Miss. Code Ann. §§ 47-5-801 through 47-5-807 may, within thirty (30) days after receipt of the agency’s final decision, seek judicial review of the decision

STATE BOARDS & AGENCIES - APPEALING CORRECTIONAL AUTHORITY - DISMISSAL - Filing within the statutorily mandated time is jurisdictional; the failure to timely seek judicial review of an administrative remedy program decision will result in dismissal

FACTS

While serving multiple sentences in the custody of the Mississippi Department of Corrections (“MDOC”), Pervis Everett filed a request for administrative remedy with the Administrative Remedy Program (“ARP”) at the South Mississippi Correctional Institution seeking to have his earned time credits (“EDC”) recalculated. MDOC reviewed Everett’s request and, in the ARP Second Step Response Form, found that Everett needed to be in full compliance in order to receive EDCs. Full compliance meant no felony charges, reporting every month, paying monthly supervision fees and paying court fees. In June of 2021, Everett acknowledged receipt of the decision and was advised, in writing, that he had thirty days from that date to seek judicial review. In January of 2024, Everett filed a Petition for Judicial Review in the trial court. The trial court denied his petition as being untimely filed and without merit. Everett appealed.

ISSUES

Whether the trial court erred by dismissing Everett’s petition as time barred.

HOLDING

Because Everett received notice that he had exhausted his administrative remedies in June of 2021, because Everett was advised, in writing, that he had thirty from that date to seek judicial review, and because Everett did not file his petition until January of 2024, the trial court did not err by dismissing his petition as time barred. Therefore, the Court of Appeals affirmed the judgment of the Greene County Circuit Court.

Affirmed - 2024-CP-00206-COA (Jan. 7, 2025)

Opinion by Judge Emfinger

Hon. Robert Keith Miller (Greene County Circuit Court)

Pro se for Appellant - Kristi Duncan Kennedy & William R. Collins (Att’y Gen. Office) for Appellees

Briefed by [Evan Clay](#)

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

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WALKER V. MISS. STATE PAROLE BD.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - JUDICIAL REVIEW - PRIOR AGENCY DECISION - An inmate challenging the Mississippi Department of Corrections' calculation of credit for time served must first obtain a final Administrative Remedy Program decision before seeking judicial review

ADMINISTRATIVE LAW - JUDICIAL REVIEW - NOTICE - For a court to have personal jurisdiction over a petition for review of a lower decision, the appellant must file a written notice of appeal with the circuit court clerk and provide a copy to all parties or their attorneys of record and the lower authority whose order or judgment is being appealed

CIVIL PROCEDURE - FILING FEES - IN FORMA PAUPERIS STATUS - An inmate shall not bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of physical injury

FACTS

Demario Walker was incarcerated in the custody of the Mississippi Department of Corrections (“MDOC”). In April 2023, Walker filed a petition in the Hinds County Circuit Court seeking judicial review of the MDOC’s Administrative Remedy Program (“ARP”) and alleged that the MDOC failed to accurately calculate his trusty earned time under Miss. Code Ann. § 47-5-138.1. In his petition, Walker named the Parole Board, the MDOC Records Department, and the MDOC Sentence Computation Unit Supervisor as parties. Prior to the April 2023 appeal, Walker proceeded in forma pauperis more than three times, and the Court of Appeals recognized Walker had exceeded the permissible number and barred Walker from further proceeding in forma pauperis. In June 2023 the circuit court dismissed Walker’s petition for Walker’s failure to attach an ARP decision for the court to review and failure to exhaust available administrative remedies prior to seeking judicial review. Walker appealed.

ISSUES

Whether (1) the trial court erred in dismissing Walker’s petition for failing to exhaust available administrative remedies; (2) the circuit court lacked personal jurisdiction over the Parole Board for Walker’s failure to provide proper notice; and (3) Walker was entitled to recovering filing costs due to in forma pauperis status.

HOLDING

(1) Because Walker failed to seek judicial review of his claims prior to exhausting available administrative relief through MDOC’s ARP, the trial court did not err in dismissing Walker’s petition. (2) Because Walker submitted a letter to provide notice of his intent to seek judicial review in the circuit court and the Attorney General’s Office, and because of the leniency provided to inmates proceeding pro se, the court found Walker’s good-faith effort sufficient to confer personal jurisdiction (3) Because Walker previously filed at least three appeals which the trial court found qualified as frivolous and barred further appeals, Walker violated the three strikes rule and the lower courts were instructed to bar Walker from further proceeding in forma pauperis. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2023-CP-00919-COA (Jan. 7, 2025)

Opinion by Presiding Judge Carlton

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Kimberly Pine Turner & William R. Collins (Att’y Gen. Office) for Appellees

Briefed by [Victoria Warren](#)

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

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WILSON V. BARNES-WILSON

CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - When reviewing a claim that is dismissed with prejudice pursuant to Miss. R. Civ. P. 41(b), the court considers: (1) whether there was a clear record of delay or contumacious conduct by the plaintiff, (2) whether lesser sanctions may have better served the interests of justice, and (3) the existence of other aggravating factors

CIVIL PROCEDURE - DISMISSAL - ACTION OF RECORD - An action of record includes filings such as pleadings, discovery requests, and deposition notices as well as any act that advances the case to judgment

CIVIL PROCEDURE - DISMISSAL - CONTUMACIOUS CONDUCT - In reviewing whether a plaintiff's actions were dilatory or contumacious, the Court considers whether the plaintiff's conduct during the litigation was proactive or merely reactionary

FACTS

In December 2020, Joycie Wilson filed suit against her ex-husband's current wife, Lekeycha Barnes-Wilson, for alienation of affection, negligent infliction of emotional distress, and intentional infliction of emotional distress. Joycie alleged that Lekeycha induced Joycie's former husband, Walter Wilson, into an extramarital affair that resulted in the termination of Joycie and Walter's marriage. The case proceeded until March 2021, after which Joycie made no filing until May 2023. Lekeycha filed a motion for summary judgment or to dismiss for lack of prosecution, and the trial court granted both motions and dismissed the case with prejudice. Joycie filed a motion for reconsideration, and it was denied. Joycie appealed.

ISSUE

Whether the trial court erred when it dismissed Joycie's complaint with prejudice for failure to prosecute.

HOLDING

Because Joycie took no proactive steps to advance the case to judgment, and because her filings were merely reactionary, the trial court's decision to dismiss the case for lack of prosecution was proper. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2023-CA-00945-COA (Jan. 7, 2025)

En Banc Opinion by Judge Emfinger

Hon. Elanor Johnson Peterson (Hinds County Circuit Court, Second Judicial Dist.)

Jeanine M. Carafello for Appellant - Venecca Green Mason for Appellee

Briefed by [Payne Phillips](#)

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

JONES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - FILING - PROCEDURE - Post-conviction relief motions should be filed as a civil action, unless the petitioner's conviction and sentence have been either affirmed or dismissed by the Supreme Court of Mississippi

POST-CONVICTION RELIEF - PETITION - JURISDICTION - The Mississippi Supreme Court must provide permission prior to a post-conviction relief filing if the prisoner's conviction and sentence have been affirmed on direct appeal

FACTS

In 1996, a jury convicted Fredrick Jones of two counts of aggravated assault, and Jones was sentenced to serve two consecutive terms of life imprisonment as a violent habitual offender. Jones's convictions and sentence were affirmed

by the Court of Appeals. In 1999, the Mississippi Supreme Court denied Jones’s application for leave to file a motion for post-conviction relief (“PCR”). In 2023, the Supreme Court dismissed Jones’s second application for leave to file a PCR motion due to a failure to comply with the requirements of Miss. Code Ann. §§ 99-39-9 & 99-39-27. Prior to the dismissal, Jones filed a “Motion on Sentencing Relief” in the trial court. The trial court dismissed the motion for lack of jurisdiction because Jones had not received permission from the Supreme Court to file a PCR motion. Jones appealed.

ISSUE

Whether the trial court erred by denying Jones’s post-conviction relief motion for lack of jurisdiction.

HOLDING

Because Jones failed to obtain permission from the Supreme Court, the trial court properly dismissed his motion for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2023-CP-01247-COA (Jan. 7, 2025)

Opinion by Presiding Judge Wilson

Hon. William Hunter Nowell (Coahoma County Circuit Court)

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

Briefed by [Lexi Killebrew](#)

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

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RENCHER V. STATE

CIVIL - POST-CONVICTION RELIEF

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

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

POST-CONVICTION RELIEF - SPEEDY TRIAL - GUILTY PLEA - All nonjurisdictional rights to trial are waived, including the constitutional right to a speedy trial, when a defendant voluntarily pleads guilty to an offense

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - AFFIDAVIT - In cases involving post-conviction collateral relief, the standard requires more than the submission of a party’s own affidavit to support an ineffective assistance of counsel claim; without additional evidence or corroborating affidavits, such claims are deemed to lack merit and cannot be sustained

FACTS

Mancel Rencher lived with his girlfriend, children, and friends Angie McGaha and Casey Sanders. In March 2020, McGaha asked Rencher for a ride to Walmart, claiming Sanders had held her against her will. Rencher, McGaha, and Sanders were meth users at the time. Rencher drove McGaha to meet her parents. Sanders, uninformed of their departure, walked two miles to Walmart, confronted Rencher, threatened to harm him, and struck him. Rencher responded by shooting at Sanders thirteen times with a 9mm handgun, allegedly in self-defense, and then fled to his parents’ home. His mother, a Walmart employee, contacted law enforcement, after which Rencher turned himself in. At trial, Rencher testified he acted in self-defense, though Sanders was unarmed, and sought leniency due to personal reform. In July 2022, Rencher pled guilty to aggravated assault (reduced from attempted murder) and two counts of shooting into a motor vehicle. He was sentenced to 20 years for aggravated assault, two five-year suspended sentences, and five years of post-release supervision. A misstatement of his sentence by the trial court was promptly corrected. Rencher later filed a post-conviction relief motion, alleging ineffective assistance of counsel. His only support for his claim was his own allegations of ineffective assistance. The circuit court denied the motion. Rencher appealed.

ISSUES

Whether the circuit court erred in finding that Rencher did not receive ineffective assistance of counsel.

HOLDING

Because Rencher’s claims were not supported by affidavits other than his own, and because Rencher did not involuntarily or unknowingly enter into a plea, the trial court did not err in finding that Rencher did not receive ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2024-CP-0008-COA (Jan. 7, 2025)

Opinion by Judge Westbrook

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

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

Briefed by [Dixon Stone](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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COURT OF APPEALS - CRIMINAL CASES

BOONE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF THE EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

EVIDENCE - ADMISSIBILITY - PRIOR BAD ACT - Pursuant to Miss. R. Evid. 404(b), prior-bad-acts evidence may be introduced to the jury to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident and must be accompanied by a limiting instruction following a Miss. R. Evid. 403 analysis

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found

FACTS

David Boone and his former wife, Penny, separated in 2010, and a decree of divorce was entered in 2013. Their two children, ages six and three at the time, were in therapy during the continuous divorce, and, by 2012, the therapist had disclosed allegations of sexual abuse to the presiding chancellor. Following the disclosure, the chancellor appointed a guardian ad litem (“GAL”) who recommended supervised visits between Boone and his two daughters. Until Penny was granted sole custody in 2013, the children visited Boone every other weekend during the school year and every other week during the summer. Almost ten years later, the older child disclosed to her mother that Boone had sexually abused her and her sister between 2009 and 2012. Penny filed a report with the Southaven Police Department, and, a year later, a grand jury indicted Boone on two counts of gratification of lust. The GAL testified at trial that the children never disclosed any allegations of sexual abuse, and, from his understanding, the children always seem delighted to visit with Boone. The oldest child, now eighteen-years-old, testified that when she was eight years old, she told a forensic interviewer about the sexual abuse and how Boone would make her bleed. The lack of reporting, according to her, was because she wanted a relationship with her father, and he would coach her on how to handle the interviews with the GAL. During cross-examination, defense counsel sought to impeach her testimony with the youngest sister’s 2012 forensic interview that denied any allegations of sexual abuse. However, the trial court clarified that the oldest child was cross-examined on her sister’s 2012 report, not her own forensic report. The oldest child’s testimony at trial was consistent with her forensic interview in 2020, which again revealed that Boone touched her inappropriately in bed and forced her to touch his genitals. Prior to trial, defense counsel filed a motion in limine seeking to exclude any prior bad-acts testimony by the youngest child that, on multiple visitations, Boone would inappropriately touch her breasts in the bed. Despite defense counsel’s argument that the prior bad-acts testimony did not conform to the Mississippi Rules of

Evidence, the trial court ruled that the testimony was admissible to show proof of motive, opportunity, common scheme, or plan. After finding that the potential for unfair prejudice did not substantially outweigh the probative value of the testimony, the trial court accompanied the testimony with a limiting instruction. The trial court gave Jury Instruction 13, which stated, “The Court instructs the jury that, under Mississippi law, the unsupported word of the victim of a sex crime is sufficient to support a guilty verdict where the testimony is not discredited or contradicted by other credible evidence.” Defense counsel argued that the instruction was impermissible bolstering of the accused and the indictment’s testimony. However, the trial court overruled the objection and gave the instruction, finding that it was an appropriate instruction on the law. The jury found Boone guilty on both counts of gratification of lust. Boone appealed.

ISSUES

Whether (1) the verdict was against the overwhelming weight of the evidence; (2) the trial court erred in denying the motion in limine to exclude testimony about prior bad acts; and (3) the trial court erred in giving Jury Instruction 13.

HOLDING

(1) Because the oldest child’s testimony was not discredited or contradicted by other credible evidence, because her 2012 forensic interview testimony was not admitted into evidence, and because her 2020 forensic interview was consistent with her testimony at trial, the jury verdict was not against the overwhelming weight of the evidence. (2) Because the youngest child’s testimony of sexual abuse was similar to her sister’s, because the method of the sexual abuse was identical to her sister’s, and because both methods reflected a common plan or scheme used by Boone, the trial court did not abuse its discretion by finding the prior-bad-act testimony admissible. (3) Because Jury Instruction 13 was an accurate statement of the law, because the unsupported word of the victim of a sex crime was sufficient to support a guilty verdict when not contradicted by other credible evidence, and because the instruction did not constitute an improper comment on the weight of the evidence, the trial court did not abuse its discretion in giving Jury Instruction 13. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2023-KA-00684-COA (Jan. 7, 2025)

Opinion by Chief Judge Barnes

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

Steven E. Farese Sr. & Joseph Whitten Cooper for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Kellis Adams](#)

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

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MOUNT V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - LEGAL COMPETENCY - STANDARD - A defendant is competent to stand trial if he has the ability to perceive and understand the nature of the proceedings, to communicate rationally with his attorney about the case, to recall relevant facts, and to testify in his own defense, if appropriate

DEFENSES - INSANITY - M’NAGHTEN TEST - To prove insanity, it must be proven that, at the time of the act, the accused was laboring under such defect from reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, he did not know that what he was doing was wrong

CRIMINAL PROCEDURE - LEGAL COMPETENCY - PSYCHIATRIC EVALUATIONS - The legal standard of competency, which focuses on a defendant’s ability to rationally understand and assist in his own defense, differs from the medical standard of competency, which evaluates total cognitive function

FACTS

Johnny Mount Jr. shot and killed a Waffle House waitress in Biloxi who told him he could not vape inside. He proceeded to ask whether the other people in the restaurant had anything to say and walked outside, where he waited for the police

to arrest him. He explained to the police what happened leading up to the shooting, stating that he got angry because the waitress yelled at him. He stated that he knew he couldn't "go back" after he shot her. Mount was indicted for first-degree murder. While awaiting a trial, Mount underwent several psychiatric evaluations to determine his competency to stand trial. Mount suffered from a traumatic brain injury ("TBI") from being hit by a car in 2002, which psychologists agreed was the root of his history with mental health issues. He eventually regained his pre-injury IQ. However, Mount's mother's testimony and psychologists' mental evaluations stated that Mount experienced religious delusions, such as communicating with God and considering himself a prince and prophet. After his arrest, a psychologist diagnosed Mount with TBI, psychosis, and personality disorder due to Mount's religious ramblings. Mount revealed to his attorney that, before he walked to the Waffle House, he had taken a Lortab and drank some beer. He explained that he was a vessel from God, but he did not reveal more since "the seal of revelation had not been broken." At a subsequent evaluation, Mount told the defense's psychologists that post-traumatic stress disorder caused his delusions. However, Mount stated that he was aware of the severity of his situation and that he needed an attorney to advise him. Ultimately, the defense's psychologists concluded that Mount was unfit to stand trial due to his psychosis and grandiose delusions affecting his ability to understand his legal situation and assist the attorneys. Subsequent evaluations by both the State's and defense's psychologists yielded similar results: Mount struggled to communicate rationally to his attorney or in his own defense due to his delusions, which formed their conclusions of Mount's incompetency. These reports were admitted in Mount's pre-trial competency hearing. A psychologist testified that Mount wanted to go to trial or be found not guilty by reason of insanity ("NGRI") and explained Mount's reliance on his delusions to form his insanity defense. Despite these reports, the trial court found Mount competent to stand trial since Mount could communicate his delusions to his attorney and understood that they formed the basis for his insanity defense. At trial, the trial court denied Mount's renewed motion to find him incompetent to stand trial. A psychologist testified that Mount did not pass the *M'Naghten* test for legal incompetency to stand trial at the time of the murder because Mount understood what he was doing was wrong. At trial, Mount testified about his delusions and government conspiracies but could not directly explain their connection to the murder, such as God pulling the trigger despite video evidence of Mount shooting the waitress. After instructing the jury and deliberation, a jury returned a guilty verdict. The trial court denied Mount's motion for a judgment notwithstanding the judgment. Mount appealed.

ISSUES

Whether (1) the trial court abused its discretion by finding that Mount was competent to stand trial; and (2) the jury's verdict was contrary to the overwhelming weight of the evidence regarding his sanity at the time of the offense.

HOLDING

(1) Because Mount had a factual and rational understanding of the severity of his crimes and the evidence against him, and because Mount could effectively communicate to his attorney and understand the basis of his insanity defense, Mount was legally competent to stand trial. (2) Because Mount admitted that the waitress made him angry, because Mount recognized that he could not "go back" once he shot her, because Mount acknowledged that the waitress was not involved in his conspiracy theories, because Mount confronted other customers in the restaurant, and because Mount did not offer opposing testimony to rebut the expert's testimony that Mount understood the nature, quality, and wrongfulness at the time of his actions, which the jury had discretion to accept, the jury had sufficient evidence to determine that Mount was guilty of first-degree murder. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge McDonald argued that Mount's conviction should be reversed and he be re-institutionalized until he can meet all four of the elements to determine competency to stand trial. In her dissent, she stated that Mount lacked two of the four elements since he could not communicate rationally with his attorney or with the jury if he chose to testify. At the pre-trial competency hearing, she argued that the medical reports evaluating Mount's delusions cast more than a reasonable doubt about Mount's competency and that the trial court's ruling was against the overwhelming weight of evidence. She further argued that the proof that courts rely on to determine legal competency was largely based on medical facts, and as such, the three experts and two other doctors' refuted determinations of Mount's incompetency were the only evidence and by ruling against it, the circuit court's ruling was manifestly against the overwhelming weight of the evidence.

Affirmed - 2023-KA-00807-COA (Jan. 7, 2025)

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

Hon. Lisa P. Dodson (Harrison County Circuit Court, Second Judicial Dist.)

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

Briefed by [Drayton Purvis](#)

Edited by [Katie Shaw](#) & [Emily Phillips](#)

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POOLE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - ADMISSIBILITY - MOTION TO SUPPRESS - Objections to the admissibility of identification evidence should be made in a motion to suppress

CRIMINAL PROCEDURE - MOTION TO SUPPRESS - PROCEDURAL BAR - Motions to suppress evidence are generally required to be made before trial, and the failure to do so without good cause has been held to be not only a procedural bar, but a waiver of the issue

CRIMINAL PROCEDURE - OBJECTION TO EVIDENCE - ISSUE WAIVER - Failure to lodge a contemporaneous objection to the admission of evidence generally waives the issue on appeal

FACTS

Investigator Andy Davis and another investigator were dispatched to a mobile home community to speak with a resident who had information about burglaries and other crimes in the area. As the investigators turned into the neighborhood, they observed a vehicle leaving the resident’s home. As they passed the vehicle, Davis noticed the driver, James Poole, was not wearing a seatbelt. When the investigators stopped the vehicle to initiate a seatbelt violation, Davis saw a syringe on the center console, which prompted him to ask Poole to exit the vehicle. Davis asked Poole if he had any weapons or anything illegal, to which Poole replied that he did not. Poole then consented to a pat down search. During the pat down, Davis felt a soft, round object in Poole’s pocket, pulled it out, and found that it was a plastic bag containing a white substance believed to be methamphetamine. Davis arrested Poole. Poole was later indicted for possession of methamphetamine, and the matter proceeded to trial. Poole did not attend the trial, and his absence was seen as a knowing and intelligent waiver of his right to be present at trial. Davis testified about the events leading to the discovery of the substance. A chemical analyst testified that the substance was 3.91 grams of methamphetamine. The defense moved for a directed verdict and argued that the methamphetamine was the fruit of an illegal search because the stop was based upon a seatbelt violation. The defense claimed that the stop was invalid because Poole was not required to wear a seatbelt on privately owned property. However, the State argued that seatbelt statutes have been interpreted more broadly to include alleyways. The trial court denied the motion for a directed verdict. Poole was found guilty. Poole filed a motion for judgment notwithstanding the verdict, which was denied. Poole appealed.

ISSUE

Whether the trial court erred by denying Poole’s motions for a directed verdict and judgment notwithstanding the verdict.

HOLDING

Because Poole failed to file a motion to suppress the evidence prior to trial, and because Poole failed to make a contemporaneous objection to the evidence being admitted at trial, Poole’s claim was waived and precluded from review. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-01162-COA (Jan. 7, 2025)

Opinion by Judge Emfinger

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolen Aikens (Pub. Def. Office) for Appellant - Julianne Kay Bailey (Att’y Gen. Office) for Appellee

Briefed by [Margo Mabury](#)
Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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