

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 3, 2024***SUPREME COURT - ORDERS*****JORDAN V. STATE****ORDER****ORDER**

This Order by the Supreme Court was made in consideration of Richard Jordan’s Successor Petition for Post-Conviction Relief. Jordan claimed that his due process rights were violated under *Ake v. Oklahoma* and *McWilliams v. Dunn* because a court-appointed psychiatric examiner’s report was provided to both the defense and the State, that he received ineffective assistance of counsel because trial counsel failed to rebut the State’s execution-style theory, and that there was cumulative error. Additionally, Jordan invoked the intervening-decision exception to overcome both the one-year limitations period for capital cases and the successive motions bar. The Court found that the psychiatric examiner’s report was the subject of Jordan’s direct appeal, post-conviction, and habeas corpus proceedings, so it was barred by res judicata. The Court also found the intervening-decision exception provided Jordan no relief as *McWilliams* did not create a new rule of law, it only reinforced and clarified *Ake*. Additionally, the Court found that the State’s theory and Jordan’s defense had been the subject of prior proceedings, and Jordan could not overcome the statutory exceptions of cause and actual prejudice or newly discovered evidence. Thus, the Court found that Jordan’s ineffective assistance of counsel claim regarding the failure of counsel to rebut the State’s execution-style theory was barred. Further, the Court found that there was no cumulative error. Therefore, the Supreme Court denied Jordan’s Successor Petition for Post-Conviction Relief.

Denied - 2022-DR-01243-SCT (Oct. 1, 2024)

Order by Justice Griffis

Briefed by [Madeline Riddick](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 1, 2024***COURT OF APPEALS - CIVIL CASES*****HOWARD V. NELSON****CIVIL - CONTRACT**

CONTRACTS - VALIDITY - STATUTE OF FRAUDS - An oral contract is enforceable if it satisfies all the legal requirements for a contract, but a contract for the sale of land falls under the statute of frauds, which provides that, in order to be enforceable, all contracts for the sale of land must be in writing and signed by the person against whom enforcement is sought

CONTRACTS - STATUTE OF FRAUDS - EQUITABLE ESTOPPEL - Equitable estoppel is an exception that may be used to enforce an oral contract which would otherwise be unenforceable under the statute of frauds; equitable

estoppel requires (1) belief and reliance on some representation, (2) a change of position as a result thereof, and (3) detriment or prejudice caused by the change of position

CONTRACTS - EQUITABLE ESTOPPEL - EXCEPTIONAL CIRCUMSTANCES - Equitable estoppel applies solely when exceptional circumstances or substantial unfairness or inequity warrant it and must be based on public policy, fair dealing, good faith, and reasonableness

FACTS

William Howard Jr. and John Carpenter Nelson allegedly made an oral contract in May or June 2021 to exchange certain parcels of land that they owned adjacent to each other. At the time of Nelson's death in May 2022, the oral agreement had not been put in writing, nor were any properties conveyed. Howard filed a complaint alleging that Nelson's estate breached the contract that Howard and Nelson had made and that Howard was entitled to specific performance based on equitable estoppel. Specifically, Howard argued that the doctrine of equitable estoppel should apply because Howard reasonably relied on Nelson's promise and took actions necessary in a real estate transaction, including retaining a lawyer, obtaining the land surveys, and drafting the deeds before Nelson's death. Therefore, Howard alleged that Nelson's estate was equitably estopped from refusing to honor the alleged oral agreement and requested specific performance. Nelson's estate moved to dismiss under Miss. R. Civ. P. 12(b)(6), arguing that the alleged contract was unenforceable under the statute of frauds since it was a contract for the sale of land that was not reduced to writing. The trial court granted Nelson's estate's motion to dismiss. Howard appealed.

ISSUE

Whether the trial court erred in granting Nelson's estate's motion to dismiss for failure to state a claim.

HOLDING

Because Howard merely alleged that he undertook some typical preparations for a land transaction, and because Howard failed to show the required "exceptional circumstances" that would warrant the application of the doctrine of equitable estoppel, the trial court did not err by granting Nelson's estate's motion to dismiss. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2023-CA-00947-COA (Oct. 1, 2024)

Opinion by Presiding Judge Wilson

Hon. Rhea Hudson Sheldon (Forrest County Chancery Court)

Christopher M. Howdeshell for Appellant - Samuel Steven McHard & Brandi Denton Gatewood for Appellee

Briefed by [Mira Radu](#)

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

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LOWE V. WALL DOXEY STATE PARK

CIVIL - PERSONAL INJURY

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - PRESUIT NOTICE - Pursuant to Miss. Code. Ann. § 11-46-11(1), prior to filing a lawsuit against the State, the person must file a notice of claim with the chief executive officer of the proper governmental entity at least ninety days before instituting suit

MISS. TORT CLAIMS ACT - PRESUIT NOTICE - STATUTE OF LIMITATIONS - For claims arising under the Miss. Tort Claims Act, the statute of limitations will continue to run in instances where the plaintiff provides deficient presuit notice on the wrong person

FACTS

In September 2021, Debra Lowe visited Wall Doxey State Park and suffered injuries to her lower back, legs, and tailbone when a bench collapsed without warning as she began to sit down on it. Lowe's injuries required medical attention. In June 2022, Lowe mailed a certified letter to provide notice of her claim, a time-sensitive request to preserve evidence, and an outline of the basis of her personal injury claim. Lowe sent the letter to two different entities and addresses. The

first addressee was “North Regional Office” to a post office box in Enid, and the second addressee was “Mississippi Department of Wildlife, Fisheries, and Parks Commission” to an address in Jackson. Lowe began both letters with “Dear Owner/Legal Department” and addressed neither letter to any certain person. Approximately a year and six days after the incident, in September 2022, Lowe officially filed a personal injury lawsuit in the Marshall County Circuit Court, asserting a claim for negligence under the Mississippi Tort Claims Act (“MTCA”). Lowe captioned her suit with two different defendants: Wall Doxey State Park and Mississippi Department of Wildlife, Fisheries, and Parks Foundation. The State filed a motion to dismiss the complaint and claimed that Lowe had not complied with the notice requirements of the MTCA, that the one-year statute of limitations for filing her claim had expired, and that the park itself was not subject to liability because it was only a facility, not a governmental entity. Lowe responded in opposition and argued that because she incorrectly named the Mississippi Department of Wildlife, Fisheries, and Parks Foundation as a defendant, she should be able to change the named defendant to the Mississippi Department of Wildlife, Fisheries, and Parks Commission (the “Commission”). The State opposed the motion and argued that amending the complaint would be fruitless because, as a separate body of the Mississippi Department of Wildlife, Fisheries, and Parks, substituting the Commission was incorrect. The State asserted that because Lowe had failed to provide proper presuit notice on the correct chief executive of the correct entity, the suit was doomed. The circuit court conducted a hearing to consolidate the pending motions. After the hearing, the circuit court dismissed Lowe’s complaint. Lowe appealed.

ISSUE

Whether the circuit court properly dismissed Lowe’s negligence claim under the MTCA.

HOLDING

Because Lowe did not provide proper presuit notice to the chief executive officer of the proper governmental entity, and because the deficient presuit notice caused the statute of limitations to run in the meantime, the circuit court properly dismissed Lowe’s negligence claim under the MTCA. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

Affirmed & Remanded - 2023-CA-00828-COA (Oct. 1, 2024)

Opinion by Judge McCarty

Hon. John Kelly Luther (Marshall County Circuit Court)

Elaine Shen for Appellant - Bo R. Brock for Appellee

Briefed by [Andrew Grant](#)

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

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MAZIE V. BOOZIER-MAZIE

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - CHANCERY JURISPRUDENCE - CONTEMPT - He who disobeys the orders of a court of general jurisdiction does so at his peril; it is no answer that the judgment was improvidently or erroneously granted, however erroneous or improvident it may be

CIVIL PROCEDURE - CONTEMPT - DEFENSES - The two defenses to a contempt violation include the inability to comply with the court’s order or that the court order was unclear

CONSTITUTIONAL LAW - TAKINGS CLAUSE - MISSISSIPPI PROTECTION - The Miss. Const. provides broader protection of private property rights than the U.S. Const.

APPELLATE PROCEDURE - BRIEFS - ARGUMENTS - Miss. R. App. P. 28(a)(7) requires an appellant’s argument to contain the contentions of the appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on; this rule does not simply require a party to mention authority, the authority must be used to develop the argument in a meaningful way

FACTS

In 2021, Deonka Mazie filed for divorce from Alvin Mazie. Several months later, the parties agreed to the divorce and consented to an equitable distribution of their marital assets by the chancery court. In 2023, Deonka filed to enforce the judgment, claiming that Alvin should be held in contempt for not following the distribution order. Deonka claimed that she had only received a portion of her distribution and that Alvin still owed her for the marital distribution. At a hearing in March 2023, Alvin stated that he had a difficult time selling the properties, had issues communicating with Deonka, and that some of the properties had burned. However, he admitted to using insurance money from the burned properties to donate to charity as well as to purchase a new Chevrolet Corvette. Alvin also admitted to transferring titles to two of the properties to his sister and daughter. After hearing testimony from both parties, the chancery court granted Deonka's motion for contempt against Alvin, stating that Alvin's default was willful. The chancery court held that Alvin's actions had shown his intent to willfully refuse to comply with the distribution order, and he misled the court regarding his financial position. Therefore, the chancery court ordered that Alvin was to post a bond with the chancery court. Alvin subsequently filed a motion for a new trial alleging prejudicial errors and mistakes of law and fact. Deonka filed a motion for Alvin to be taken into custody, to have her allocated property seized, and to find Alvin in further contempt. The chancery court denied Alvin's motion, and amended the original order, requiring him to make a partial payment of money owed to Deonka on the day of the order, make two separate payments for the remaining money owed, and to turn over the title of the Chevy Corvette to be held in trust by the chancery court until Alvin paid his balance in full. Alvin appealed.

ISSUES

Whether (1) the chancery court erred in the determination of property values at stake; (2) the order that Alvin relinquish title to his automobile violated his constitutional rights; and (3) the chancery court had the power to create a bailment in which Hinds County was the bailee for title to Alvin's car.

HOLDING

(1) Because Alvin appealed the order of contempt and not the order concerning the distribution of marital assets, and because nothing in the record indicated the parties were unable to comply with the order or that its provisions were unclear, there was no defense for a contempt citation. (2) Because the chancery court never took possession of the car, but rather required Alvin to entrust the title to the chancery court, the chancery court was only trying to ensure compliance with the order. (3) Because Alvin's assertions of authority gave no support to his arguments other than general application, the issue of whether the chancery court had the power to create a bailment in which Hinds County was the bailee for title to Alvin's car was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2023-CA-00470-COA (Oct. 1, 2024)

Opinion by Judge Lawrence

Hon. Tametrice Edricka Hodges (Hinds County Chancery Court, Second Judicial Dist.)

M. Judith Barnett & Heather Lynn Hall for Appellant - Matthew Allen Baldrige for Appellee

Briefed by [Elizabeth Murphree](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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SHORT V. THE BREAK LAND CO., LLC

CIVIL - TORTS OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - PLEADINGS - MOTION FOR JUDGMENT ON THE PLEADINGS - Unlike a Miss. R. Civ. P. 56 motion for summary judgment, a Miss. R. Civ. P. 12(c) motion for judgment on the pleadings is decided on the face of the pleadings alone

CIVIL PROCEDURE - PLEADINGS - MOTION FOR JUDGMENT ON THE PLEADINGS - If a trial court considers matters outside of the pleadings, a motion for judgment on the pleadings is converted to one for summary judgment

CIVIL PROCEDURE - MOTION TO DISMISS - REFERENCED PLEADINGS - In the context of a motion to dismiss, documents referenced in the complaint may be considered if they are central to the plaintiff's claim, even though they are not attached to the complaint

CIVIL PROCEDURE - MOTION TO AMEND - PROPER FORM - Regarding motions to amend a pleading, Miss. R. Civ. P. 7(b)(1) states that “[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought”

FACTS

In 2017, Chester and Linda Short (“the Shorts”) suffered damage to their crops from deer that wandered from nearby ’27 Break Hunting Club Inc. (“Break Hunting Club”). The Shorts obtained depredation permits to kill the deer. The Shorts were also members of Break Hunting Club due to their ownership in The Break Land Company LLC (“Break Land”), which leased hunting lands to Break Hunting Club. Break Hunting Club subsequently adopted a rule that a member’s actions that harmed the club may result in fines or suspension of membership. In 2020, the Shorts sued Break Hunting Club for the loss of their crops, and Break Hunting Club suspended the Short’s membership privileges. In 2021, the Shorts again sued, inter alia, Break Hunting Club and Break Land on the theory that Break Land controlled Break Hunting Club. Break Land filed a motion to dismiss, alleging that the Shorts did not state a claim against Break Land, and Break Land attached its operating agreement to its pleadings. Break Land also filed a motion for judgment on the pleadings. In response to the motion for judgment on the pleadings, the Shorts requested to amend their complaint. The trial court did not rule on the Shorts’ request. At hearing, the trial court found that the Shorts complaint only concerned actions taken by Break Hunting Club rather than any action taken by Break Land. The trial court also found that the Shorts’ claims of corporate freeze out, breach of fiduciary duty, conversion, and breach of contract were precluded by Break Land’s operating agreement. The trial court dismissed Break Land with prejudice. The Shorts appealed.

ISSUES

Whether the trial court erred in (1) granting judgment on the pleadings for Break Land; (2) determining that Break Land’s operating agreement barred the Shorts’ claims of corporate freeze out, breach of fiduciary duty, conversion, and breach of contract; (3) considering the operating agreement; and (4) not considering the Shorts’ request to amend their complaint.

HOLDINGS

(1) Because the Shorts did not allege in their complaint any direct action taken by Break Land or its board of directors, the trial court did not err in granting judgment on the pleadings for Break Land. (2) Because Break Hunting Club and hunting rights are not mentioned in Break Land’s operating agreement, and because the Shorts did not allege any breach of duty found in the operating agreement, the trial court properly found that Break Land’s operating agreement barred the Shorts’ claims. (3) Because the Shorts mentioned the operating agreement in their complaint, and because Break Land attached the operating agreement to its answer, the trial court did not err in considering the operating agreement. (4) Because the Shorts never filed a separate motion for leave to amend their complaint but instead requested it in their response to Break Land’s motion for judgment on the pleadings, the trial court did not err in not considering the Shorts’ motion to amend their complaint. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2022-CA-01180-COA (Oct. 1, 2024)

Opinion by Chief Judge Barnes

Hon. Albert B. Smith III (Bolivar County Circuit Court, First Judicial Dist.)

John Thomas Lamar III & Taylor Allison Heck for Appellants - Arnulfo Ursua Luciano, Jamie Ferguson Lee, & Bethany Ann Tarpley for Appellee

Briefed by [Zuri Williams](#)

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

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SMITH V. EST. OF WATSON

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - ESTATE ADMINISTRATION - INSOLVENT ESTATES - Pursuant to Miss. Code Ann. § 91-7-269, for a chancellor to administer an insolvent estate, he must analyze the validity of each claim which has been probated and registered and such other claims as may have been filed with the clerk and hear evidence on each claim, either permitting or denying them

CIVIL PROCEDURE - ESTATE CLAIMS - PREFERENCES - Pursuant to Miss. Code Ann. § 91-7-261, the costs of last sickness, funeral, and administration of the estate must be paid first; following this, the remaining funds are applied to the remaining claims pro rata in accordance with Miss. Code Ann. § 91-7-271

FACTS

In September 2018, Stanley Watson died. Following his death, Brenda Smith filed a complaint to admit Watson's estate ("the Estate") to probate and to grant letters of administration. Martin Seib represented the Estate. Seib sought an approval of the Estate's accounting to address creditors' claims. The creditors' claims included a \$1,847.83 claim by Singing River Health Systems ("Singing River"), which the chancery court approved in a reduced form, and a \$20,079 claim by Smith for various matters, including funeral expenses. As part an extensive final accounting approval process, extensive federal litigation took place regarding the payment of Watson's benefits. During the federal litigation, Seib sought the legal assistance of David N. Harris. The matter was eventually settled, with the Estate's claims returning to the chancery court. Upon return to chancery court, it was discovered that the remaining funds of the Estate were insufficient to pay both Seib and Harris's fees, as well as Singing River's claim of \$1,847.83 and Smith's reduced claim of over \$18,000. The chancery court concluded the Estate was insolvent and, without findings or analysis of the latter two claims, ordered that Harris be paid in full and Seib to be paid the remainder, denying Singing River's and Smith's claims. Following the closure of the Estate, Smith moved the chancery court to reconsider its final judgment, for a new trial, or for relief from the judgment. The chancery court denied all three motions. Smith appealed.

ISSUE

Whether the chancery court erred in its distribution of the estate.

HOLDING

Because the chancery court made no factual findings and determined that the payment of attorney's fees took priority over all other creditors' claims, the chancery court erred in its distribution of the estate. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Chancery Court.

Reversed & Remanded - 2023-CA-00761-COA (Oct. 1, 2024)

Opinion by Judge Smith

Hon. Ashlee E. Cole (Jackson County Chancery Court)

Paulette McLeod Turner for Appellant - David N. Harris Jr. & Martin A. Seib for Appellee

Briefed by [Grant Hughes](#)

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

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STALLWORTH V. MISS. DEP'T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - VOLUNTARY LEAVE - An employee is disqualified from receiving unemployment benefits if he voluntarily left work without good cause; the burden of providing good cause for voluntarily leaving employment rests with the employee

ADMINISTRATIVE LAW - STATE AGENCY DECISIONS - APPELLATE REVIEW - An agency's conclusions must remain undisturbed unless the agency's order: (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates a statutory or constitutional right of the complaining party

ADMINISTRATIVE LAW - STATE AGENCY DECISIONS - APPELLATE REVIEW - A rebuttable presumption exists in favor of the state agency, and the appellant has the burden of proving otherwise

FACTS

Emmanuel Stallworth's employment with IP Casino Resort Hotel Spa ("the Casino") was terminated in August 2020. Stallworth exceeded the absence policy and the Casino, after trying and failing to reach Stallworth, sent him a termination letter. Stallworth filed a claim for unemployment benefits with the Mississippi Department of Employment Security ("MDES") but was denied due to failure to show good cause for voluntarily leaving his employment. Stallworth appealed the decision to an administrative law judge. At the hearing, the Casino presented evidence that Stallworth called in sick for two consecutive shifts and then missed the next three consecutive shifts without calling in, putting him over the Casino's absenteeism policy. The Casino also presented evidence that, during this time, a casino employee informed Stallworth that a positive COVID-19 test would excuse his absences and encouraged him to visit the free on-site clinic. Stallworth neither presented a positive COVID-19 test nor visited the on-site clinic. The administrative law judge found for the MDES, leading Stallworth to further appeal to the Board of Review. The Board of Review also ruled against Stallworth, leading to an appeal to the Jackson County Circuit Court. The circuit court affirmed the Board of Review. Stallworth appealed.

ISSUE

Whether there was substantial evidence to support the decision that Stallworth voluntarily left his employment without good cause.

HOLDING

Because Stallworth exceeded the Casino's allowable number of absence points, and because he was given opportunities to preserve his employment by demonstrating that he had COVID-19 or some other illness, there was substantial evidence to support the MDES's conclusion that Stallworth voluntarily left work without good cause. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2022-CC-01300-COA (Oct. 1, 2024)

Opinion by Judge Lawrence

Hon. Kathy King Jackson (Jackson County Circuit Court)

Pro se for Appellant - Albert B. White for Appellee

Briefed by [Kennedy Guest](#)

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

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WALKER V. HASTY

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - VISITATION - Visitation is a matter within the chancellor's sound discretion, and the chancellor is charged with fashioning a visitation schedule that is in the best interest of the children; in situations where the parents cannot agree on visitation rights, the court must step in to define and fix those rights

FAMILY LAW - CUSTODY - MODIFICATION - In considering whether change in custody is warranted, the court looks to following: first, a party must show that since entry of judgment or decree sought to be modified, there has been material change in circumstances that adversely affects welfare of child; second, a party must also show that best interest of child requires change in custody

FAMILY LAW - CUSTODY - APPEAL & ERROR - An appellate court will not disturb a chancery court's findings of fact when supported by substantial evidence unless the chancery court abused its discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied

EVIDENCE - PRESERVING THE ISSUE - PROFFER - When testimony is not allowed at trial, a record of the proffered testimony must be made in order to preserve the issue for appeal

FACTS

Bradley Rhett Hasty ("Brad") and Jordan Barlow Walker ("Jordan") divorced in June 2019, in Hinds County, with their custody and property settlement agreement incorporated into the divorce decree. They shared joint legal custody of their child, LCH, with Jordan retaining physical custody. Brad was granted visitation rights, including weekends and holidays, but his new offshore job and Jordan's relocation to Flora made midweek visits challenging. Brad filed motions for contempt in late 2019, accusing Jordan of harassment and obstructing his visitation schedule, while Jordan counterclaimed, alleging Brad failed to pay daycare fees and violated court orders. In 2020, Jordan also accused Brad of abuse after LCH returned from visitation with bruises, prompting Child Protection Services investigations resulting in a no-contact order. However, medical evaluations found no evidence of abuse, and the no-contact order against Brad was lifted. By March 2022, a hearing was held to address multiple motions, including contempt filings and requests to modify the custody arrangement. The chancery court found no substantiated evidence to support the abuse claims against Brad. Testimonies from both parties revealed ongoing conflict, including Jordan's admitted derogatory texts and a prior domestic violence conviction for hitting Brad. The court modified the visitation schedule, granted Brad extended summer visits to make up for missed time, and increased his child support payments from \$300 to \$530 per month. Further motions led to a third contempt hearing in May 2023, where the chancery court emphasized Brad's right to substantial visitation for the child's best interests. Jordan appealed.

ISSUES

Whether (1) Jordan waived certain issues on appeal; (2) the chancery court erroneously modified custody under the guise of a change in visitation; (3) there was substantial evidence to support the chancery court's findings; and (4) the chancery court erred in denying Jordan's request to make a proffer.

HOLDING

(1) Because Jordan failed to request recusal from the chancery court and failed to raise the issue in a post-trial motion, Jordan waived her claims of denial of due process and the lack of a fair trial on appeal. (2) Because the modified visitation arrangement awarded by the chancery court to accommodate the parties' change in location and work schedules was consistent with the visitation the parties had originally intended, the chancery court complied with the terms agreed on by the parties and did not modify the custody itself. (3) Because the record contained email exchanges that indicated tension between the parties and obstruction of visitation, and because the chancery court looked to the intent of the original property settlement agreement when determining how to allocate the visitation time, there was enough evidence to support the chancery court's increase of visitation in the summer to compensate Brad for lost time. (4) Because the chancery court did not prohibit Jordan from making a proffer on the issue of visitation during the time allotted to her, and because Jordan failed to make a proper offer of proof by not including a specific summary of the testimony she would have given, the issue lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2023-CA-00675-COA (Oct. 1, 2024)

Opinion by Judge McDonald

Hon. Tametrice Edricka Hodges (Hinds County Chancery Court, First Judicial Dist.)

David Bridges for Appellant - John G. Holaday for Appellee

Briefed by [Senneca Evans](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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COURT OF APPEALS - CRIMINAL CASES

GANDY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF 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

CRIMINAL LAW - SEX CRIMES - VICTIM CREDIBILITY - The unsupported word of a sex crime victim is sufficient to support a guilty verdict if the testimony is not contradicted by other credible evidence; this principle is supported when the victim's conduct is consistent with one who has been the victim of a sex crime

EVIDENCE - IMPEACHMENT - INCONSISTENT TESTIMONY - The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity

EVIDENCE - WITNESSES - CREDIBILITY - It is well established that it is within the province of the jury to determine the credibility of witnesses; the jury may believe or disbelieve, accept or reject the utterances of any witness

FACTS

Charles Gandy was convicted on two counts of sexual battery and two counts of gratification of lust against his underaged stepdaughter, Jane. At trial, the State presented the testimony of Jane, her mother, her older brother, Lieutenant Roy Noe, and Investigator Cassidy Jumper. The State did not present physical, forensic, or medical evidence. The testimonies of both Jane's brother and mother corroborated Jane's testimony. Gandy testified in his defense, and, in doing so, he recanted the confession he gave during his initial interview. Following the guilty verdict, Gandy moved for a judgment notwithstanding the verdict or a new trial. Because the motion remained pending thirty days after the entry of judgment, the motion was deemed denied by operation of law. Gandy appealed.

ISSUE

Whether a new trial is warranted due to the verdict being contrary to the overwhelming weight of the evidence.

HOLDING

Because Jane's testimony was corroborated by her family members, and because the credibility of both Gandy's testimony and the witnesses' testimony was properly assessed by the jury, the jury's verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

Affirmed - 2023-KA-01017-COA (Oct. 1, 2024)

Opinion by Presiding Judge Carlton

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

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

Briefed by [Alden Wiygul](#)

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

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LONG V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - BATSON CHALLENGE - When a defendant does not raise any *Batson* challenges at any point during voir dire or during trial, he is procedurally barred from doing so on direct appeal; there is no requirement that the State and trial court must of their own accord, uncover and resolve all facts and circumstances that may bear on whether a peremptory strike was racially motivated when the strike's challenger has not identified those facts and circumstances

CRIMINAL LAW - EVIDENCE - CONSTRUCTIVE POSSESSION - To establish constructive possession, the drug must be found near the defendant in a place over which the defendant exercises dominion or control

CRIMINAL LAW - EVIDENCE - PRESERVATION OF EVIDENCE - In order to find a due process violation by the State in a preservation of evidence case, (1) the evidence in question must possess an exculpatory value that was apparent before the evidence was destroyed; (2) the evidence must be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means; and (3) the prosecution's destruction of the evidence must have been in bad faith

CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - ADEQUACY OF THE RECORD - If an ineffective assistance claim is raised on direct appeal, and the record is incomplete, the appropriate procedure is to deny relief, preserving the defendant's right to argue the issue through a petition for post-conviction relief

FACTS

In January 2019, Officer John Brown was traveling on a highway when he observed a truck swerving in the road. After running the tag, it came back registered with an expired tag. Officer Brown attempted to pull over the truck with his blue lights, which initially stopped, but then pulled back out on the highway. Officer Brown initiated his siren, and the truck pulled over after a mile. While Officer Brown was approaching the truck, Michael Long exited the truck, and a pocketknife fell to the ground. Officer Brown conducted a quick pat-down search of Long. Officer Brown observed Long's agitated and excited behavior, and he obtained verbal consent to search the truck. Deputy Zachary Ruple arrived at the scene with a drug-sniffing canine that showed a positive alert for drugs near the passenger side door after conducting an open-air sniff. Officer Brown then deemed a search of the truck was warranted, instead of acting on the verbal consent of Long. A search of the truck found fourteen point eighty-three grams of methamphetamine, digital scales with crystalized residue, a glass pipe, and sandwich bags. Multiple officers testified the truck was small and that the drugs were within reach of the driver's seat. Long was charged with possession of a controlled substance with the intent to distribute. In October 2019, a grand jury indicted Long as a second subsequent drug offender subject to enhanced penalties. Long had a suppression hearing about the evidence obtained at the traffic stop, but the motion to suppress was denied. Before trial, the court conducted a voir dire to select a jury in which three members were struck by the court for cause. After voir dire, an in-chambers jury selection began. The State and defense each received six peremptory challenges. The State used six strikes, all on white jurors. The defense used five strikes, three of which were on black jurors. No explanations were given for the strikes, no statements were made regarding the jurors' race, and no requests were made for a race-neutral explanation for the strikes during the in-chambers selection. At trial, Long moved for a directed verdict after the State rested, arguing the State failed to prove possession and intent to distribute beyond a reasonable doubt. The motion was denied, and Long rested without putting on any testimony. The jury subsequently convicted Long of possession of a controlled substance with the intent to distribute. Long filed a motion for a new trial or a judgment notwithstanding the verdict, which was denied after a hearing. Long appealed.

ISSUES

Whether (1) a *Batson* violation occurred during jury selection when Long's trial counsel struck three black jurors; (2) the trial court erred in denying Long's motion for a directed verdict or a judgment notwithstanding the verdict; (3) the trial court erred in not dismissing Long's charges, or alternatively, in not providing a spoilation jury instruction, because of missing photographs law enforcement took of the truck and the scene of the arrest; and (4) Long's counsel rendered ineffective assistance of counsel.

HOLDING

(1) Because Long did not raise a *Batson* challenge at trial, such a challenge was procedurally barred. (2) Because there was sufficient evidence to prove that Long was in constructive possession of the methamphetamine in that Long had dominion or control over the methamphetamine and knew it was in the truck, the trial court did not err in denying Long's motion for a directed verdict or a judgment notwithstanding the verdict. (3) Because Long did not raise the issue before the trial court, and because there was no evidence of a due process violation by the State, the trial court did not

err in not dismissing Long's charges, or, alternatively, in not providing a spoliation jury instruction, because of missing photographs that law enforcement took of the truck and the scene of the arrest. (4) Because the State and Long did not stipulate that the record was complete, Long's counsel did not render ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2023-KA-00351-COA (Oct. 1, 2024)

En Banc Opinion by Judge Westbrook

Hon. Claiborne McDonald (Lamar County Circuit Court)

Jim L. Davis III for Appellant - Parker Alan Proctor Jr. (Att'y Gen. Office) for Appellee

Briefed by [James Riley](#)

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