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**MISSISSIPPI SUPREME COURT DECISIONS – MARCH 20, 2025**

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**SUPREME COURT - CIVIL CASES****POWERS V. STATE****EN BANC ORDER****ORDER**

This en banc Order by the Supreme Court of Mississippi denied Stephen Elliot Powers's Motion for Relief Under Rule 60(b)(6). The court reviewed Powers's motion, the State's response, and Powers's reply and supplemental reply, which were filed without leave of court in violation of Rule 27(a). After due consideration, the court found no basis for granting relief and denied the motion.

**DISSENT**

Presiding Justice King argued the court's refusal to properly address Powers's *Batson* claims reflected a broader pattern of hostility toward enforcing *Batson* protections for Black jurors. Therefore, Presiding Justice King would grant Powers's motion for relief, as the failure to provide a fair hearing on his *Batson* claims deprived him of due process.

**Ordered - 2017-DR-00696-SCT (Mar. 11, 2025)**

En Banc Order by Chief Justice Randolph, Presiding Justice Coleman, Justice Maxwell, Justice Chamberlin, Justice Ishee, Justice Griffis, Justice Sullivan, and Justice Branning

Briefed by [Regena Rowe](#)

Edited by [Brandon Peterson](#) & [Aubrey Cagle](#)

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**SUPREME COURT - CRIMINAL CASES**

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**PITTS V. STATE****CRIMINAL - FELONY**

**CONSTITUTIONAL LAW - APPELLATE REVIEW - CONSTITUTIONALITY** - When determining the constitutionality of a legislative enactment there is a strong presumption of validity, and the unconstitutionality of a statute must be evident beyond a reasonable doubt

**EVIDENCE - WITNESSES - PRIVACY SCREENS** - Miss. Code § 99-43-101(2)(g) provides that children who testify have the right to a privacy screen that permits the judge and jury in the courtroom to see the child but obscures the child's view of the defendant

**EVIDENCE - HEARSAY - TENDER YEARS EXCEPTION** - Under Miss. R. Evid. 803(25), a statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability, and (b) the child either (1) testifies at the proceedings, or (2) is unavailable as a witness

**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

**CONSTITUTIONAL LAW - SIXTH AMENDMENT - CONFRONTATION** - The elements of confrontation are (1) the witness is under oath, (2) the witness is subject to cross-examination, and (3) the witness is under observation by the jury

### **FACTS**

In May 2020, four-year-old AGC told her mother that she was molested by her father Jeffrey Pitts. The mother contacted law enforcement and AGC participated in a forensic interview with a social worker, where she again stated that Pitts molested her. In August 2020, a Rankin County grand jury indicted Pitts for sexual battery. Pitts' trial began in February 2021. After the jury was selected, the trial court ruled that AGC's statements provided a substantial indicia of reliability and that she may testify at trial. Before AGC testified, the State moved under Miss. Code § 99-43-101(2)(g) to put in place a screen that would obstruct her view of Pitts. Defense counsel objected, contending that use of the screen would violate Pitts' right to confrontation. The trial court granted the motion with the condition that a video feed was set up so Pitts could observe AGC as she testified. AGC testified before the jury during direct and cross-examination that she understood the importance of telling the truth, loved Pitts, that Pitts had inappropriately touched her a few times, and that no one else had ever touched her in a similar manner. She further stated that Pitts did a bad thing, that she missed Pitts, and that she delayed telling her mother because she thought she would be mad. Pitts was convicted. Pitts appealed.

### **ISSUE**

Whether the trial court erred in granting the State's motion to erect a privacy screen during the testimony of AGC.

### **HOLDING**

Because AGC's testimony was before the jury while under oath, subject to cross-examination before the jury by Pitts' chosen counsel, and observable by the jury so they could assess her demeanor, all essential elements of confrontation guaranteed by the Confrontation Clause were satisfied, and thus the trial court did not err in granting the State's motion to erect a privacy screen during the testimony of AGC. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

### **CONCURRENCE IN RESULT ONLY**

Justice Maxwell argued that certiorari review was improvidently granted.

### **DISSENT**

Presiding Justice King argued that the Confrontation Clause and the precedent of the U.S. Supreme Court required the trial court to make individualized findings regarding the necessity of the screen before granting the State's motion. As a result, the judgment of the trial court should be reversed and remanded.

### **Affirmed - 2021-CT-00740-SCT (Mar. 20, 2025)**

En Banc Opinion by Chief Justice Randolph - Concurrence in Result Only by Justice Maxwell - Dissent by Presiding Justice King Hon. John H. Emfinger (Rankin County Circuit Court)

J. Edward Rainer & Kimberly M. Phillips for Appellant - Lauren Gabrielle Cantrell & Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Ethan Hayes](#)

Edited by [Summie Carlay](#) & [Amber Meeks](#)

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## **WALKER V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE** - To be entitled to a lesser-included offense instruction, the defendant must point to evidence in the record from which a jury could

reasonably find him not guilty of the crime with which he was charged and, at the same time, find him guilty of the lesser-included offense; the evidence and all reasonable inferences that can be drawn therefrom must be in the light most favorable to the defendant

**CRIMINAL PROCEDURE - NEW-TRIAL - SUFFICIENCY OF THE EVIDENCE** - In reviewing the sufficiency of the evidence to sustain a guilty verdict on appeal, the evidence is viewed in the light most favorable to the prosecution, and the decision lies in whether a rational juror could have found the prosecution proved each element of the crime beyond a reasonable doubt

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - PLAIN ERROR** - To determine whether plain error occurred, it must be determined whether the trial court deviated from a legal rule, whether that error is plain, clear, or obvious, and whether that error has prejudiced the outcome of the trial

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS CONFERENCE - COURT RECORDS** - In all felony cases, the court reporter shall make a record of the voir dire and selection of the jury, opening statements, bench and in-chambers conferences, and closing arguments, whether such is ordered by the judge or requested by either party; it is the trial judge's responsibility to enforce this directive

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PROOF** - A claim of ineffective assistance of counsel requires proof that the counsel's performance was objectively deficient and that the defendant suffered prejudice as a result, requiring proof beyond conclusory assertions

## **FACTS**

In 2020, a Honda abruptly swerved and blocked a green van at the intersection of Colonial Drive and Old Canton Road in Jackson. Evidence was presented that a slender, younger black male exited the Honda from the driver-side door and fired multiple rounds into the van, killing Bryant Robinson. Evidence was presented that the shooter re-entered the driver-side door of the Honda before fleeing. After Officer Antonio Langston of the Jackson Police Department noticed the commotion, a woman pointed at the Honda which was in the process of making a U-turn in Marsha Robinson's yard, and informed Langston that the driver of the Honda just shot someone. At trial, Langston testified that he pursued the Honda and watched it wreck into a yard after the driver lost control of the vehicle. Langston approached the Honda in his patrol vehicle and observed that the driver-side door was already open. Langston parked twenty feet from the Honda as he awaited backup and observed a light-skinned black male around five-foot-nine in height with a "mini fro" haircut return to the Honda before going back inside the residence. Langston identified that person as the defendant, Harold Walker Jr. Through his interviews and testimony at trial, Walker changed his story several times. Walker informed officers in an interview that he rode as a passenger to a "DeAnthony Jacobs" the night of the shooting but failed to provide any verifiable information as to the whereabouts of Jacobs, claiming he only knew Jacobs from the spot where they sold weed. Yet, Walker claimed that Jacobs had been the shooter. At trial, photographs entered into evidence taken after Walker was in custody revealed that he was a light-skinned black male, average in height, slender, and that he indeed had a "mini fro" haircut. Evidence was presented that Walker's mother, Ulnia Walker, owned the Honda that fled the crime scene and wrecked in front of the home. Evidence was also presented that Ulnia had let Walker borrow the Honda that day. Evidence revealed that while officers spoke with Ulnia inside her home, Walker called and told her to report the Honda stolen. Additionally, evidence was presented that the projectiles that struck Robinson and his van were .40-caliber bullets, and thereafter, evidence was presented that a magazine containing .40-caliber bullets was recovered from the Honda. There was also white paint on the damaged front bumper of the van and green paint on the damaged rear bumper of the Honda. Evidence of an injury to Walker's right hand that was consistent with an injury made by a slide mechanism on a semi-automatic handgun was also presented. During trial, the jury instructions conference was not transcribed, and the record was picked back up the morning after the jury instruction conferences. Neither the State, defense counsel, nor the trial court dictated any objections to any of the proposed jury instructions. Walker moved for a directed verdict, contending that no evidence was presented identifying him as the shooter. The trial court denied the motion. The jury found Walker guilty of first-degree murder, guilty of shooting into a vehicle, and guilty of failing to stop for law enforcement. Walker moved for a judgment notwithstanding the verdict or, in the alternative, for a new trial. The trial court denied that motion. Walker appealed.

## **ISSUES**

Whether (1) the trial court erred by refusing Walker's lesser-included-offense jury instruction for heat of passion manslaughter; (2) the evidence was insufficient to support a finding of first-degree murder, or, in the alternative, whether

Walker's conviction for first-degree murder was against the overwhelming weight of the evidence; (3) the trial court committed plain error by failing to exclude the portion of Walker's statement in which he stated that he met up with Jacobs at the weed spot; (4) the trial court erred by failing to ensure that the court reporter transcribed the jury instructions conference and a jury voir dire bench conference; and (5) Walker's trial counsel was ineffective in failing to ensure that the entirety of the proceeding was on the record and failing to object to the introduction of Walker's statement that he met up with Jacobs at the weed spot under Mississippi Rule of Evidence 404(b).

### **HOLDING**

(1) Because Walker expressed no prior knowledge of Robinson or any indication that the shooting resulted from road rage, the record failed to reveal any provocation that would provide an evidentiary basis for the trial court to grant Walker's lesser-included manslaughter instruction, and thus, the trial court did not err by refusing Walker's lesser-included offense jury instruction. (2) Because the evidence presented was sufficient for a reasonable juror to find, based on common sense and lived experience, that Walker was guilty of murdering Robinson without a reasonable doubt, the evidence was sufficient to support a finding of first-degree murder and Walker's conviction was not against the overwhelming weight of the evidence. (3) Because the State used Walker's statement about the weed to tell a rational and coherent story of what happened and prove that Walker failed to provide any verifiable information as to Jacobs, not to show that Walker had a propensity to use drugs, the trial court did not commit plain error by failing to exclude this portion of Walker's statement. (4) Because defense counsel failed to contemporaneously object to the trial court's decision to conduct the jury instructions conference off-record and failed to supplement the record with a statement of recollection as to the missing portions of the proceedings and because Walker suffered no prejudice from the lack of transcripts since the record was sufficient to analyze all of the issues and properly review the case, Walker is procedurally barred from raising this issue, and the trial court did not err by failing to transcribe the jury instructions conference. (5) Because Walker failed to show that his trial counsel's performance was deficient by failing to object to a statement that would have most likely been overruled and by failing to contemporaneously object to the jury instructions being off-record, Walker failed to show that he was deprived of a fair trial because of that failure. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2023-KA-01153-SCT (Mar. 20, 2024)**

Opinion by Chief Justice Randolph

Hon. Frank G. Vollar (Hinds County Circuit Court)

Damon R. Stevenson for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Lauren Bowlin](#)

Edited by [Katie Shaw](#) & [Aubrey Cagle](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 18, 2025**

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

#### **ANIMAL RESCUE FUND OF MISS. V. MISS. DEP'T OF EMP. SEC.**

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

#### **UNEMPLOYMENT COMPENSATION - APPLICABILITY - INVOLUNTARY ABANDONMENT -**

Unemployment benefits are available for employees who leave work involuntarily, through no fault of their own  
**UNEMPLOYMENT COMPENSATION - BENEFITS - JUDICIAL REVIEW PROCEEDINGS -** In any judicial proceedings, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law

#### **FACTS**

Donny Moore's employment at the Animal Rescue Fund of Mississippi (ARF) ended after a series of incidents that began in October 2012, when Moore was informed by his physician that he needed to have heart surgery. Moore returned to work and informed the employer of his physician's recommendation. Then, in early December 2012, Moore requested time off work and was told by ARF's executive director, Elizabeth Jackson, that he needed to take some time off to get his health in order. Moore never requested a medical leave of absence; rather, he asked for the day off to go visit the doctor and get his prescription refilled. Moore did not return to work at ARF and subsequently filed a claim for unemployment benefits with the Mississippi Department of Employment Security (MDES). As a part of MDES's investigation of the claim, they interviewed ARF Board of Directors member, Charles Jackson, who informed the claims examiner that due to Moore's recurring health issues, Moore was placed on a medical leave of absence in December 2012. According to Charles, Moore was advised to report back to ARF on January 2, 2013, to "reassess his health situation." Elizabeth similarly testified that she advised Moore to return on January 1, 2013. Moore disputed this version of events, stating that he was never placed on leave nor advised to report back to work on a certain date. Additionally, Moore asserted that Elizabeth advised him that he was being let go and took back his keys to the shelter and his work phone. The claims examiner issued a decision finding that Moore voluntarily left work when he failed to return after his leave of absence ended. As a result, Moore was disqualified from receiving unemployment benefits. Moore appealed the claims examiner's decision to an MDES administrative law judge (ALJ). After a hearing, the ALJ found that Moore did not voluntarily leave his employment but, instead, was discharged due to medical reasons beyond his control. The ALJ accordingly held that Moore was entitled to unemployment benefits. ARF appealed the ALJ's decision to the MDES Board of Review, which adopted the ALJ's opinion and affirmed the ALJ's decision. ARF next appealed to the Hinds County Circuit Court. The circuit court affirmed the Board of Review's decision and entered a judgment finding that the board's decision was supported by substantial evidence, was not arbitrary and capricious, was not beyond the scope of authority granted to the agency, and did not violate any constitutional right of the appealing party. The circuit court, therefore, denied ARF's motion for summary judgment. ARF appealed.

## **ISSUE**

Whether the Board of Review's decision that Moore did not voluntarily leave his employment was arbitrary and capricious and unsupported by substantial evidence.

## **HOLDING**

Because the Board supported its decision with substantial evidence in the form of Moore's testimony that he never requested a medical leave of absence, because Moore testified that he just asked for the day off to visit the doctor and get his prescription refilled, because Moore testified that Elizabeth never provided him with a return to work date, because Moore testified that his keys to the shelter and his work phone were taken, and because Moore maintained that he did not quit nor did he have any intention of quitting his employment, the Board's finding was not arbitrary or capricious and the trial court did not abuse its discretion in affirming the Board. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **Affirmed - 2024-CC-00152-COA (Mar. 18, 2025)**

Opinion by Presiding Judge Carlton

Hon. Jess. H. Dickinson (Hinds County Circuit Court)

Keith W. Turner & Adria Lyn Johnson for Appellant - Albert B. White & Anna Crain Clemmer for Appellees

Briefed by [Madeline Riddick](#)

Edited by [Robert "Duncan" Jones](#) & [Amber Meeks](#)

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## **CAFFEY V. FORREST HEALTH**

### **CIVIL - WORKERS' COMPENSATION**

**WORKERS' COMPENSATION - LOSS OF WAGE-EARNING CAPACITY - TOTAL DISABILITY** - Under *Jordan*, a claimant triggers a presumption of total disability when the claimant, having reached maximum medical



recovery, reports back to the employer for work and is refused reinstatement or rehire; thereafter, the burden shifts to the employer to prove a partial disability or that the employer has suffered no loss of wage-earning capacity

**WORKERS' COMPENSATION - LOSS OF WAGE-EARNING CAPACITY - REASONABLE JOB SEARCH** - Under *Thompson*, the claimant creates a prima facie case for total disability by making a reasonable effort to find other employment; relevant factors that constitute reasonable effort include the economic and industrial aspects of the local community, the jobs available in the community and surrounding area, the claimant's general educational background, including work skills, and the particular nature of the disability for which compensation is sought

### **FACTS**

Walter Caffey, a full-time security guard at Forrest General Health ("FGH"), injured his lower back during a work shift while helping an elderly patient from his vehicle to a wheelchair. After receiving treatment for low back pain and sciatica from local healthcare providers, Caffey returned to work in a limited capacity before being released to full-duty work without restrictions. Caffey subsequently underwent a lumbar spinal fusion of L4-5 due to continued symptoms. After two months off work post-surgery, Caffey returned to FGH in a modified capacity but he and FGH ultimately terminated their employment relationship in December 2021. One year after his surgery, Caffey was assigned a 13% permanent partial impairment rating and was restricted to sedentary and light-duty work. Both the AJ and the Commission found Caffey's official maximum medical improvement (MMI) date to be May 4, 2022. Following this placement at MMI, Caffey never returned to FGH to seek employment in an alternative position. FGH's Employment Manager, Angela Mucha-Brooks, was enlisted to find FGH jobs suitable for Caffey's work restrictions. Mucha-Brooks identified two such jobs and sent Caffey a certified letter making him aware of the positions and encouraging him to apply. Caffey never applied for these positions, inquired about the requirements, or otherwise responded to Mucha-Brooks' letter. FGH also engaged a vocational expert, Angela Malone, to complete a vocational rehabilitation evaluation of Caffey. Malone identified 4,260 comparable jobs in Hattiesburg within the range of Caffey's skills and abilities. Caffey spent only one day searching for new employment from the opportunities listed in Malone's report but blamed the limiting nature of the job descriptions and his lack of qualification for the alternative roles as restricting factors. Caffey also testified that his wife had recently suffered a stroke, and his ongoing care for her limited his ability to commit to employment. An administrative judge's ("AJ") order awarded Caffey temporary total disability benefits and permanent partial disability benefits. The Mississippi Workers' Compensation Commission ("the Commission") affirmed the order related to temporary benefits, but in a two-to-one split, the majority reversed the AJ's order regarding the permanent benefits. Caffey appealed.

### **ISSUES**

Whether the Commission erred as a matter of law in finding that (1) Caffey failed to make a prima facie case for total disability (1) under the *Jordan* test for wage-earning loss, and (2) Caffey's job search was unreasonable under the *Thompson* test.

### **HOLDING**

(1) Because Caffey never reported back to work after his MMI date, the Commission did not err in finding that Caffey failed to make a prima facie case for loss of wage-earning capacity under *Jordan*. (2) Because there were numerous suitable positions available in the Hattiesburg area requiring sedentary to light-duty work, because Caffey's prior work experience compensated for his work limitations, because Caffey only half-heartedly looked for a job for one day using the leads provided by FGH's vocational expert, because there was no evidence that Caffey independently searched for more suitable employment, and because there was evidence of unrelated, personal reasons for Caffey's lack of motivation to find a job, the Commission did not err in finding that Caffey's job search was unreasonable under *Thompson*. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

**Affirmed - 2023-WC-01232-COA (Mar. 18, 2025)**

En Banc Opinion by Chief Judge Barnes

Mississippi Workers' Compensation Commission

Taylor R. Brinkley for Appellant - Joseph O'Connell for Appellee

Briefed by [Evan Clay](#)

Edited by [Sarah Schlager](#) & [Amber Meeks](#)

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## **HARRIS V. CASINO VICKSBURG, LLC**

### **CIVIL - PERSONAL INJURY**

**TORTS - PREMISES LIABILITY - DANGEROUS CONDITION** - Although circumstantial evidence may be used to prove the length of time a dangerous condition has existed, the circumstantial evidence creates a legitimate inference that places it beyond conjecture

**TORTS - PREMISES LIABILITY - PERSONAL INJURY** - Where a dangerous condition resulted from another's conduct, the plaintiff must also produce evidence that the owner had actual or constructive notice of the danger for a period of time reasonably sufficient to remedy or warn of it

**CIVIL PROCEDURE - SUMMARY JUDGEMENT - GENUINE ISSUE OF MATERIAL FACT** - Summary judgment is proper where there is no significant probative evidence showing that there are indeed genuine issues for trial

**TORTS - NEGLIGENCE - PREMISES LIABILITY** - To show that a premises owner breached its duty of care, the plaintiff must prove one of three things: (1) that the business owner, through the negligent acts of its employees, created the dangerous condition that allegedly caused the fall, (2) that the business owner, while not creating the condition, did have actual knowledge of it, or (3) that the dangerous condition existed for a sufficient amount of time to establish constructive knowledge

### **FACTS**

In May 2021, while visiting Casino Vicksburg LLC d/b/a Waterview Casino ("Waterview"), Racheal Harris fell while attempting to sit in an unoccupied chair beside her husband. Another patron had moved the chair from another location and placed it beside an occupied seat at the opposite end of the slot machine row. The chair straddled the boundary between carpet and synthetic tile, marked by a metal edge trim. When Harris attempted to sit in the unoccupied chair, it slid from beneath her and caused her to fall backward onto the floor. A security guard offered medical assistance, but Harris declined and sought treatment the following morning. In October 2021, Harris filed a negligence lawsuit against Waterview for the injuries she sustained while on the casino's premises. Harris initially claimed that the chair was defective. After reviewing the discovery and video footage, Harris amended her complaint and alleged that the chair's placement between the carpet and synthetic tile created a hazardous condition. Harris designated Dr. Jeffery Lolli as an expert who planned to testify that allowing a chair to be in a place where it did not belong constituted a dangerous condition. Dr. Lolli also planned to testify that Waterview breached its duty of care by allowing patrons to walk around the casino without formal policies or employee training on chair placement. Waterview moved for summary judgment, and Harris sought partial summary judgment on Waterview's liability. The circuit court found that the chair at issue failed to create a dangerous condition, and Waterview had not breached its duty to Harris. Therefore, the circuit court denied Harris's motion for partial summary judgment and granted Waterview's motion for summary judgment. Harris appealed.

### **ISSUES**

Whether the circuit court erred by granting Waterview's motion for summary judgment.

### **HOLDING**

Because video footage showed that Harris had an unobstructed view of the chair and its placement, and casino patrons were allowed to place or reposition chairs so that nothing could have prevented her from moving the chair to the same area of the floor, Harris failed to show the existence of a genuine issue of material fact or dangerous condition rather than a routinely encountered object. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

### **DISSENT**

Judge Westbrook argued that a genuine issue of material fact existed regarding whether Waterview exercised reasonable care in maintaining a safe gaming area for its patrons. She emphasized that Harris's testimony, the accident video, and Dr. Lolli's report provided sufficient evidence to create a jury question about whether the misplaced chair constituted a dangerous condition. Therefore, the Circuit Court's judgment should be reversed and remanded.

**Affirmed - 2023-CA-00959-COA (Mar. 18, 2025)**

En Banc Opinion by Judge Weddle Dissent by Judge Westbrook

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

Tremarcus D'Ray Keshon Rosemon for Appellant - W. Briggs Hopson III & Robert William Arledge for Appellee

Briefed by [Joree Rose](#)

Edited by [Emily Kaplan](#) & [Aubrey Cagle](#)

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

### **KING V. STATE**

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

**POST-CONVICTION RELIEF - PROBATION REVOCATION - CONDITIONS** - Under *Davis v. State*, a circuit court has the complete discretion to fashion a sentence as long as that sentence does not exceed the statutory limits prescribed for the crimes to which a defendant pleads guilty

**POST-CONVICTION RELIEF - POST-RELIEF SUPERVISION - IMPOSITION OF SENTENCE** - Under *Atwood v. State*, a court may impose the offender's full remaining suspended sentence for a third revocation

**CRIMINAL LAW - PROBATION – ILLEGAL SENTENCING** - Under Mississippi Law, an illegal sentence is one that does not conform to the applicable penalty statute.

#### **FACTS**

Brandon King was indicted by a Scott County grand jury on one count of child abuse and one count of child neglect in violation of Mississippi Code Annotated section 97-5-39(2). He pleaded guilty to both charges, and the court accepted his plea, affirming the state's sentencing recommendation. King was sentenced to forty years for child abuse and five years for child neglect, to be served consecutively in the custody of the Mississippi Department of Corrections ("MDOC"). This sentence did not exceed the statutory limit. However, the sentence was suspended, and he was placed on reporting supervised probation under the Eighth Judicial District Drug Court for five years. King's suspended sentence was contingent on compliance with the court's probationary terms, including completing the drug court program and adhering to other directives. On April 18, 2019, the circuit court found that King had violated the sentencing order and modified his probationary status, placing him in MDOC custody. After King's probation was subsequently revoked twice for violating the terms of his probation, the trial court terminated his participation in drug court and imposed his original forty-five year sentence. King then filed a motion for post-conviction relief (PCR), arguing that his violations were technical and that he should have been sent to a technical violation or restitution center instead. The circuit court summarily denied relief and dismissed King's PCR motion. King appealed.

#### **ISSUES**

Whether the trial court erred in (1) concluding that King's supervised probation through the drug court is not governed by Mississippi Code Annotated § 47-7-37(5); and (2) revoking King's supervised probation and imposing his full sentence after only two probation revocations.

#### **HOLDING**

(1) Because the trial court was clearly authorized to suspend King's sentence and place him on probation, and because King's sentence did not exceed the statutory limits, the trial court did not err in suspending King's forty-five year



sentence and giving him five years of probation supervised by the drug court. (2) Because King's probation had only been revoked twice, under § 47-7-37(5)(a), the trial court erred in imposing King's full sentence upon him. Therefore, the Court of Appeals reversed, vacated, and remanded the judgment of the Scott County Circuit Court.

### **DISSENT**

Judge Lawrence disagreed with the majority's approach to the resolution of the case, stating that King's original sentencing was improper and illegal under Mississippi law and that the circuit judge erred by imposing it.

#### **Reversed, Vacated, & Remanded - 2023-CA-00770-COA (Mar. 18, 2025)**

Opinion by Judge McDonald - Dissent by Judge Lawrence

Hon. Caleb Elias May (Scott County Circuit Court)

Eric Cerra for Appellant - Casey Farmer (Att'y Gen. Office) for Appellee

Briefed by [Zuri Williams](#)

Edited by [Summie Carlay](#) & [Amber Meeks](#)

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

### **PORTER V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - VOLUNTARY CONFESSION - MINOR** - Where the crime is such that the circuit court has original jurisdiction over a crime, age has no special bearing on a minor's ability to be questioned without a parent and voluntarily waive his rights; when determining the admissibility of a minor's confession, inquiry must be made into the totality of the circumstances surrounding the interrogation, such as reviewing the testimony of the investigating officers and determining the absence of evidence of mental or intellectual impairment or any factors attributable to the minor's age

**CRIMINAL LAW - JURY SELECTION - RACIAL DISCRIMINATION** - The three-prong test for determining whether a jury selection has been unfair requires that (1) the group alleged to be excluded is a "distinctive" group in the community; (2) the representation of this group in venire from which jury is selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this under representation is due to the systematic exclusion of the group in the jury-selection process; the Sixth Amendment has never been held to require that petit juries must mirror the community and reflect the various distinctive groups in the population

**CRIMINAL LAW - TRIAL - OPENING STATEMENTS** - The purpose of an opening statement is to inform the jury what a party to the litigation expects the proof to show; the trial court is in the best position to weigh the consequences of the objectionable argument, and unless serious and irreparable damage has been done, the court will admonish the jury then and there to disregard the improper comment

**EVIDENCE - EXCLUSION - TRIAL COURT'S DISCRETION** - The trial court has great deference of discretion in the admission or exclusion of evidence; unless an appellate court concludes that the decision was arbitrary and clearly erroneous, amounting to an abuse of discretion, the trial court's decision will stand

**CRIMINAL LAW - TRIAL - CLOSING STATEMENTS** - Attorneys are generally afforded wide latitude in closing arguments; however, a golden-rule argument, in which an attorney asks the jurors to put themselves in the place of one of the parties, is prohibited, but there must be evidence suggesting that a defendant is unduly prejudiced by the statement to warrant reversal

### **FACTS**

In February 2020, seventeen-year-old Jaquez Porter, Jarvis Cook, and Willow and Yakeshia Blackmon, were together when they saw a Snapchat post from Madison Harris advertising marijuana for sale. Willow and Yakeshia had a prior

disagreement with Harris and talked about wanting to go beat her up. The group planned for the sisters to physically confront Harris while Porter and Cook stole the marijuana. Before executing their plan, the group visited Walmart and Academy Sports, where Porter purchased bullets for his handgun. They also picked up Jasmine Kelley and dropped her off at Harris's house to gather information about when they could enter the house. Porter, Cook, Willow, and Yakeshia arrived and went to Harris's bedroom window. Porter, armed with his handgun, pointed it at Harris and her boyfriend, Paul White, through the window. Willow and Yakeshia entered the house through another door. Harris called 911 but was disconnected when Yakeshia took her phone. Porter then handed Yakeshia his gun through the bedroom window. As Porter and Cook attempted to enter the house through the carport door, a struggle ensued between White and Yakeshia over the firearm, leading to its discharge, and a fatal shot struck Harris. Porter and Cook fled with the Blackmon sisters. Harris's father rushed inside upon hearing the shot and found his daughter wounded. He attempted CPR while White called emergency services. Law enforcement reviewed doorbell-camera footage, identified the vehicle used by the group, and arrested Porter, Cook, Willow, Yakesha, and Kelley. During interrogation, Porter was read and waived his *Miranda* rights. Although his mother requested to be present during questioning, her request was denied and Porter did not request her presence, nor that of an attorney. Porter admitted to the group's plan to steal the marijuana and acknowledged providing the handgun used in the shooting. He was indicted for capital murder along with Cook, Willow, Yakeshia, and Kelley. The co-defendants entered plea agreements in which Willow pleaded guilty to manslaughter and robbery, Kelley and Cook pleaded guilty to manslaughter, and Yakeshia pleaded guilty to second-degree murder and robbery. Porter pleaded not guilty, and his request for a manslaughter plea deal was denied by the prosecution. At trial, Porter moved to suppress his confession, arguing that his status as a minor and the absence of a parent or attorney rendered the statement involuntary. The court denied this motion, finding that Porter knowingly waived his rights. The two investigators that questioned Porter testified to his mental competence and clearness and stated that Porter understood the questions being asked. A videotape of the questioning was viewed by the circuit court, which found that there was no coercion or undue influence. Porter also challenged the jury composition due to racial disparity as well as the size of the jury pool. The court overruled both objections. After the jury was selected, Porter renewed his objection, but he admitted there was no systematic intent to exclude blacks in the selection process, which was a requirement to find a violation. In opening statements, Porter's attorney asked that the jury convict Porter of manslaughter and explained that other defendants in the matter had pleaded guilty to that charge. The State objected to this discussion, and Porter's attorney was encouraged to stick to the facts that would be presented. Because of Porter's attorney's belief that there were restrictions on what he could say in the opening statement, he moved for a mistrial, which was denied. The State called several witnesses, and their final witness was one of the investigators who questioned Porter. Porter tried to question him about some of White's conflicting statements, but the court ruled that it was hearsay. After the State rested its case, Porter moved for a directed verdict, which the court denied. He chose not to testify but sought to introduce two character witnesses' testimony attesting to his peaceful and honest nature. However, the court excluded the character witness testimony, finding it irrelevant since the State had not challenged his truthfulness. Porter was allowed to proffer the testimony. The court also refused to instruct the jury on several lesser-included manslaughter instructions. During the closing arguments, the State made a statement in their rebuttal about what it would have been like for Harris's dad to hold her for the last time, which was objected to by Porter and the court said to move on. Porter also objected to another statement of the prosecutor injecting himself into the case, which was not ruled on substantively, but it was found that the State was out of time for rebuttal anyway. During jury deliberations, the jury sent a note to the court that asked if a not guilty verdict would mean Porter's immediate release, which prompted the defense to request a mistrial. The court made no ruling on the motion. Porter was convicted of capital murder and sentenced to life imprisonment with eligibility for parole. He then filed a motion for a new trial or judgment notwithstanding the verdict, which was denied. Porter appealed.

## **ISSUES**

Whether the circuit court erred (1) when it denied Porter's motion to suppress his statements; (2) when it failed to disqualify the venire or order a mistrial; (3) when it restricted Porter's attorney's opening statement; (4) by not allowing Porter's attorney to impeach State's witness Paul White by questioning the chief investigator; (5) by excluding character witnesses; (6) by refusing Porter's lesser-included offense instruction of manslaughter; (7) by not granting a mistrial for the State's remarks during closing; (8) by not granting a mistrial when the jury sent out its first note; and (9) through cumulative errors of the trial which denied Porter a fair trial.

## **HOLDING**

(1) Because Porter was not entitled to have a parent present due to being charged with a capital offense, and because the officers methodically reviewed and explained each of Porter's rights to him which he knowingly, intelligently, and voluntarily waived, the circuit court did not err when it denied Porter's motion to suppress his statements. (2) Because Porter presented no proof that black people were intentionally or systematically excluded because of their race, the circuit court did not err when it failed to disqualify the venire or order a mistrial. (3) Because Porter was allowed in his opening statement to tell the jury the basic facts of the plea bargains reached by the other co-indictees and communicate his desire to plead guilty to manslaughter, the circuit court did not err when it restricted Porter's attorney's opening statement. (4) Because Porter cited no legal authority to support his argument of error which procedurally barred the issue, and because Porter was allowed to impeach White's statements about handling the gun but failed to lay a foundation under Miss. R. Evid. 613(b) to question Barnum about other matters, the circuit court did not err by not allowing Porter's attorney to impeach State's witness Paul White by questioning the chief investigator. (5) Because Porter acted contrary to the character trait of peacefulness, and because the circuit court did not act arbitrarily or abuse its discretion, the circuit court did not err by excluding character witnesses. (6) Because Porter cited no legal authority to support his argument of error which procedurally barred the issue, and because the instructions proposed by Porter had no foundation in the evidence that a reasonable jury could find him not guilty of capital murder, the circuit court did not err by refusing Porter's lesser included offense instruction of manslaughter. (7) Because the prosecution's first remark was not asking the jury to find Porter guilty or put themselves in Harris's father shoes, and because the prosecutor's remark merely reiterated the jury's duty as set forth in the instructions from the court, the circuit court did not err by not granting a mistrial for the State's remarks during closing. (8) Because the circuit court never ruled on Porter's motion which procedurally barred the motion, and because the circuit court acted appropriately when the jury sent out its note, the circuit court did not err by not granting a mistrial when the jury sent out its first note. (9) Because cumulative error could not be found in a case where no error could be found, the circuit court did not err through cumulative errors of the trial which did not deny Porter a fair trial. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

**Affirmed - 2023-KA-00809-COA (Mar. 18, 2025)**

Opinion by Judge McDonald

Hon. Randi Peresich Mueller (Harrison County Circuit Court, Second Judicial Dist.)

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