

**MISSISSIPPI SUPREME COURT DECISIONS – MARCH 27, 2025*****SUPREME COURT - CIVIL CASES*****FOREMAN v. DHP1, LLC****CIVIL - REAL PROPERTY**

**REAL PROPERTY - TAX REDEMPTION - NOTICE** - Miss. Code Ann. § 27-43-1 provides that the clerk of the chancery court shall, within one hundred eighty and not less than sixty days prior to the expiration of the time of redemption with respect to land sold, either to individuals or to the state, be required to issue notice to the record owner of the land sold as of one hundred eighty days prior to the expiration of the time of redemption

**REAL PROPERTY - NOTICE - RECORD OWNER** - Pursuant to Miss. Code Ann. § 27-43-1 and Miss. Code Ann. § 27-43-3, the “reputed owner” is the “record owner of the land sold as of one hundred eighty days prior to the expiration of the time of redemption

**REAL PROPERTY - TAX REDEMPTION - INSUFFICIENT NOTICE** - If personal service is not obtained and certified mail is returned undelivered, the clerk must then make a diligent ‘search and inquiry’ to locate the record landowner. The clerk must file an affidavit documenting the specific search and inquiry undertaken and must keep the affidavit as a permanent record

**FACTS**

Emmett Hotard acquired Lots 16 and 17 of Leisure Time Park Subdivision. Subsequently, Peoples Bank entered into a loan agreement with Emmett, who used the lots as security for the agreement. Emmett defaulted on the promissory note, creating tax liens for failure to pay his property taxes. At a tax sale, Ken Foreman purchased Lot 17. The Peoples Bank assigned its interest in the promissory note and deed of trust to Emmett’s brother, Eric Hotard, who then initiated judicial foreclosure proceedings. DHP1, LLC (“DHP1”) later purchased both lots at a foreclosure sale. Eric was the sole member of DHP1. The chancery clerk sent a notice to Emmett, but the letter was returned to the clerk’s office due to an insufficient address. The clerk’s office also sent two lienholder notices of the tax sale and redemption period to Eric and The Peoples Bank. Further, a notice of the tax sale and redemption period was sent to Special Commissioner, Nicholas Van Wiser. The chancellor approved the foreclosure sale and authorized Van Wiser to execute, deliver and file a Special Commissioner’s Deed to DHP1 for the foreclosed property. The deed was recorded, and notice was published in the newspaper to notify Emmett of the maturity of the tax sale redemption period. After the tax sale redemption period matured, an affidavit was filed stating that three employees of the clerk’s office made diligent efforts to locate Emmett. A clerk’s conveyance of Lot 17 to Ken was recorded, who then conveyed Lot 17 to Baron Foreman via quitclaim deed. DHP1 filed a complaint to confirm and quiet title against Baron alleging that the tax sale is void for failure to satisfy the statutory requirements. The parties entered into discovery and deposed Kellar, who testified that Emmett was the owner of record until the Special Commissioner’s Deed was signed that there was no evidence in the clerk’s records that Emmett was served by mail or personal service. The parties agreed that Emmett was the record owner as of one hundred eighty days prior to the expiration of the redemption period. The chancellor granted summary judgment in favor of DHP1, finding that the clerk’s office failed to make a diligent inquiry in the land records when an alternative and correct address for Emmett was easily discoverable on the Deed of Trust with the bank that encumbered the property. The chancellor noted other errors with the notices sent out by the clerk’s office and declared the tax sale void. The tax deed to Ken and the quitclaim deed to Baron were declared void, and Baron retained a lien on the property for reimbursement of all taxes and fees paid by him plus any and all accrued interest. Baron appealed.

**ISSUE**

Whether the chancery court erred by holding that failure to provide Emmett with notice of forfeiture at an alternative address after he no longer had any interest in the subject property voids the tax sale.

### **HOLDING**

Because Emmett was the owner of record as of one hundred eighty days prior to the expiration of the redemption period, and because Emmett did not receive statutorily required notice of forfeiture, the tax sale was void. Therefore, the Supreme Court affirmed the judgment of the Hancock County Chancery Court.

**Affirmed - 2023-CA-01293-SCT (Mar. 27, 2025)**

Opinion by Justice Chamberlin

Hon. Margaret Alfonso (Hancock County Chancery Court)

Lewie G. "Skip" Negrotto IV for Appellant - Russell Scott Manning (Att'y Gen. Office) for Appellee

Briefed by [Taylor Dorenkott](#)

Edited by [Senneca Evans](#) & [Amber Meeks](#)

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## ***SUPREME COURT - ORDERS***

### **CONRAD V. MISS. BAR**

#### **EN BANC ORDER**

#### **ORDER**

On February 18, 2025, Richard T. Conrad III filed his petition for irrevocable resignation pursuant to Rule 11(a) of the Rules of Discipline for the Mississippi State Bar. In compliance with Rule 11.1, Conrad's resignation acknowledged a pending disciplinary matter by docket number, it stated that he did not desire to defend the case, and it requested permission to resign with prejudice. The Mississippi Bar responded, stating that Rules 11(a) and 11.1 were satisfied, and it requested the Court to enter an order granting Conrad's request for irrevocable resignation and bar him from seeking reinstatement in the future. The Court found that the petition was well-taken and granted Conrad's petition to irrevocably resign from the practice of law in Mississippi with prejudice. The resignation and Order were considered disciplinary action on the matters charged in the pending disciplinary case. Upon resignation, Conrad shall not practice law in Mississippi and is forever barred from seeking reinstatement to the privilege of practicing law in Mississippi.

**Ordered - 2025-BD-00177-SCT (Mar. 20, 2025)**

En Banc Order by Justice Chamberlin

Briefed by [Eleanor Kast](#)

Edited by [Payne Phillips](#) & [Aubrey Cagle](#)

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

### **HUNTER V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - APPLICABILITY - PLAIN-ERROR DOCTRINE** - For the plain-error doctrine to apply, there must have been an error that resulted in a manifest miscarriage of justice or seriously affects the fairness, integrity, or public reputation of judicial proceedings

**EVIDENCE - ADMISSIBILITY - PRIOR CRIMES** - Under Miss. R. Evid. 404(b)(1)-(2), evidence of prior crimes is inadmissible; however, evidence of a crime, wrong, or other act may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

**EVIDENCE - OTHER CRIMES OR ACTS - INTERRELATED TRANSACTIONS** - Proof of another crime or act is allowed when it is so interrelated to the charged crime that it constitutes either a single transaction or occurrence or a closely related series of transactions or occurrences; evidence of other bad acts is admissible in order to tell a complete story to avoid confusion among jurors

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL EXCEPTION** - Generally, ineffective-assistance-of-counsel claims are more appropriately brought during post-conviction proceedings; such claims will be addressed on direct appeal when (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate and the Court determines that the findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed

## **FACTS**

In November 2022, Sergeant James Alford stopped Jaquarius Ross for having truck windows and a license plate cover that was too darkly tinted. Jakevion Hunter was in the passenger seat of the truck. Alford, having detected the smell of burning marijuana from the truck, searched it and found both marijuana and three firearms inside. Neither Ross nor Hunter claimed the marijuana, so Alford arrested them both for possession of a controlled substance, enhanced with a weapon. In January 2023, three days after both men pled not guilty, Ross and his friend, Zantavius Fuqua, drove to a house. Fuqua saw Hunter approach the truck and begin shooting. Hunter fired eight shots, hitting Ross multiple times. Fuqua fled the scene, and Ross was pronounced dead. Hunter was charged with first-degree murder and shooting into an occupied vehicle. Before trial, the State filed a Notice of Intent to Introduce Miss. R. of Evid. 404(b) Testimony and Evidence to prove that Hunter and Ross had agreed Ross would plead guilty to the drug charges and Hunter would help pay the fine after his own charges were dropped. The State argued that this deal was designed based on Hunter's fear of an adverse impact on his military career. Therefore, this evidence was relevant to establishing Hunter's motive, intent, and plan. At trial, Ronderick King testified that he saw Ross's truck outside Hunter's house with Ross motionless inside; King then called 911. Fuqua testified that he saw Hunter, wearing a hoodie, approach the truck and open fire—security footage confirmed this account. Ross's girlfriend, who was on the phone with him during the shooting, had earlier seen Hunter in the same color hoodie seen in the security footage and in Fuqua's account during a four-way FaceTime call where Ross and Hunter argued. A National Guard recruiter and mentor of Hunter testified that he informed Hunter that a drug charge could ruin his military career. Hunter made no objection during this testimony. Alford also testified about the earlier traffic stop, and after this testimony, the judge ruled the evidence admissible under Miss. R. Evid. 404(b). Lieutenant Ryan Wigley testified that text messages from Hunter's phone revealed a conversation with Ross about taking responsibility for a charge. Hunter asked Ross if he would take the blame for a charge and said he would help pay the fine. Ross responded "aight" but later pled not guilty. On the day Ross was shot, Hunter had told Ross to bring some shoes to his house. Police found shoes in Ross's truck after the shooting. Hunter did not call any witnesses. The jury found Hunter guilty of first-degree murder and shooting into an occupied vehicle. The court then denied Hunter's motion for a judgment notwithstanding the verdict, or in the alternative, for a new trial. Hunter appealed.

## **ISSUES**

Whether (1) the admission of Hunter's misdemeanor charge into evidence was a plain error and (2) Hunter's trial counsel was ineffective.

## **HOLDING**

(1) Because the trial court found that the evidence of possession of marijuana was admissible to show motive, intent, plan, and identity, and because the evidence of Hunter's drug charge was a closely related act that allowed the State to tell a complete story of the events that ultimately resulted in Ross's murder, no plain error occurred when Hunter's misdemeanor charge was admitted into evidence. (2) Because Hunter's brief was filed almost three months after the deadline, and because ineffective-assistance-of-counsel claims are more appropriately brought during post-conviction

proceedings, Hunter’s brief was struck as untimely. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2023-KA-01246-SCT (Mar. 27, 2025)**

En Banc Opinion by Justice Ishee

Hon. Dewey Key Arthur (Madison County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Christina Burse](#)

Edited by [Olivia Knight](#) & [Aubrey Cagle](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 25, 2025

### COURT OF APPEALS - CIVIL CASES

#### BLUMER V. MAJESTIC HOMES, LLC

##### CIVIL - CONTRACT

**CIVIL PROCEDURE - COURT ORDER - REVISION** - Pursuant to Miss. R. Civ. P. 54(b), whether as a claim, counter-claim, cross-claim, or third-party claim, or when multiple parties are involved, judgment or orders are subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties; a trial judge does have the authority to revise an order denying summary judgment under Miss. R. Civ. P. 54

**BUSINESS ASSOCIATIONS - CORPORATE VEIL - TORTIOUS INTERFERENCE** - If an individual member of a limited liability company participates in a tort, then the individual can be sued in spite of not piercing the corporate veil; in order to constitute tortious breach of contract alleged by a plaintiff, some intentional wrong, insult, abuse, or negligence so gross as to constitute an independent tort must exist

**CIVIL PROCEDURE - ATTORNEY’S FEES - REASONABLENESS** - Attorney’s fees are a special remedy available only when expressly provided for in either a statute or contract, or when there is sufficient proof to award punitive damages; attorney’s fees must be reasonable and the court must base their awards on the information already before it and the court’s own opinion based on experience and observation Miss. Code Ann. § 9-1-41

**CIVIL PROCEDURE - ATTORNEY’S FEES - REASONABLENESS FACTORS** - In determining what constitutes a reasonable attorney’s fee, this court should consider: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform legal service properly; (2) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by client or by circumstances; (6) the nature and length of professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent

##### FACTS

In March 2021, Elizabeth Blumer contracted with Majestic Homes, LLC (“Majestic Homes”) to purchase a lot in Rankin County on which Majestic Homes would build her a home. The contract listed the seller as “Majestic Homes, LLC,” but it was electronically signed by Michael Armstrong, who was the sole member that established Majestic Homes as a limited liability company. The contract specified a closing date in August 2021, and it included a provision for the recovery of attorney’s fees if either party had to initiate litigation following a breach. When Majestic Homes failed to complete construction by the closing date, both parties executed an addendum to the contract. This addendum extended the closing date and provided for liquidated damages if the parties failed to close by the new closing date at the end of October 2021. The contract stated that Majestic Homes agreed to pay Blumer \$2,000 if the parties did not close by the new date and an additional \$2,000 for every thirty days of continued nonperformance. The parties did not close until

December 2021, which resulted in Majestic Homes owing Blumer \$4,000 in liquidated damages, a payment they failed to make at the time of closing. A week later, Blumer filed a complaint against Majestic Homes and Armstrong for breach of contract. Blumer then amended the complaint to add causes of action for tortious breach of contract and breach of the implied covenant of faith and fair dealing. Blumer sought contractual and consequential damages, attorney's fees and expenses allowed under the contract, and punitive damages. Majestic Homes admitted to entering into the contract and executing the addendum, but they denied all other claims. Majestic Homes and Armstrong filed a combined motion to dismiss, answer, and defenses. The motion to dismiss related to Armstrong's liability, and he stated that he was only an agent for Majestic Homes and should be individually dismissed from the litigation. In November 2022, Blumer questioned Armstrong both individually and as Majestic Homes's designee in a single deposition. Armstrong admitted that the addendum provided for liquidated damages, but he disagreed with the payment of \$4,000 to Blumer, stating that he could not control his subcontractors, which resulted in the delay. In January 2023, Blumer filed a motion for summary judgment. Blumer pointed to the original contract's provision regarding attorney's fees and stated that Majestic Homes and Armstrong's failure to pay liquidated damages made it necessary to initiate litigation, which entitled her to attorney's fees. Majestic Homes and Armstrong filed a response and stated that supply chain issues were out of their control. They reiterated that Armstrong should have no individual liability for the claims and that summary judgment as to him individually should be denied. In February 2023, the trial court held a hearing on Blumer's summary judgment motion. The defense attorney restated the points in their response and asserted that Blumer had provided no evidence justifying piercing the corporate veil. The court dismissed Armstrong. In April 2023, the trial court granted Blumer's motion for summary judgment, determining that the breach of the contract was clear and undisputed. The court stated that Blumer was entitled to liquidated damages of \$4,000, along with reasonable attorney's fees. Blumer then filed her motion for attorney's fees at a total of \$23,258.43, to which Majestic Homes and Armstrong responded that the fees were not reasonable. In Blumer's rebuttal, she pointed out that no order had been entered dismissing Armstrong, individually. In July 2023, the trial court granted Blumer's motion to award attorney's fees and expenses and found it reasonable. Majestic Homes and Armstrong then filed a Miss. R. Civ. P. 60(b) motion for relief from the trial court's order granting summary judgment, arguing that it failed to include the court's finding that Armstrong had no liability and should be dismissed. Blumer responded that the court had never dismissed Armstrong, individually, but they had taken the matter under advisement. In October 2023, the court entered an order denying Majestic Homes and Armstrong's motion. Blumer subsequently scheduled a hearing to request the entry of a final judgment, which resulted in the abandonment of her other claims. In January 2024, the parties appeared before the trial court, and the court asked if the parties had submitted everything that they wanted on the issue of attorney's fees. Both parties said they had, so in February 2024, the trial court entered a corrected order granting the Miss. R. Civ. P. 60(b) motion in favor of Majestic Homes and Armstrong. The court stated that after they considered the reasonableness factors, an award of \$1,700 in attorney's fees and expenses was more appropriate. They also dismissed Armstrong from the case and issued a final judgment. Blumer appealed.

## ISSUES

Whether (1) the trial court erred by entering a corrected order granting relief to Majestic Homes and Armstrong; (2) the trial court erred in dismissing Armstrong, individually; and (3) the trial court's prior award of attorney's fees was reasonable.

## HOLDING

(1) Because the prior orders were still subject to revision due to Blumer's other causes of action that were still pending and had not been certified as a final judgment, the trial court did not err by entering a corrected order granting relief to Majestic Homes and Armstrong. (2) Because Blumer abandoned her claim of any tortious breach of contract and proved no tortious conduct by Armstrong that would make him individually liable, the trial court did not err in dismissing Armstrong, individually. (3) Because Majestic Homes failed to provide sufficient proof that the drastically reduced amount of fees was reasonable while Blumer provided documented evidence of the reasonableness of the original award, the trial court's prior award of attorney's fees was reasonable. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Rankin County Circuit Court.

**Affirmed in Part; Reversed & Rendered in Part - 2024-CA-00163-COA (Mar. 25, 2025)**

Opinion by Judge McDonald

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

Ginny Y. Deliman for Appellant - Jason Edwin Weeks & Frank Russell Brabec for Appellees  
Briefed by [Mattie Hooker](#)  
Edited by [Olivia Knight](#) & [Aubrey Cagle](#)

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## FOOTE V. MEM’L HOSP. AT GULFPORT

### CIVIL - MEDICAL MALPRACTICE

**EVIDENCE - COUNSEL ARGUMENTS - JURY CONSIDERATION** - A jury may not consider the arguments of counsel as evidence

**STANDARD OF REVIEW - REVERSAL - HARMLESS ERROR DOCTRINE** - Under the harmless error doctrine, if the weight of the evidence is sufficient to outweigh any harm done by the error, then reversal is not warranted

**TORTS - MEDICAL MALPRACTICE - PROXIMATE CAUSE** - Plaintiff must demonstrate through medical expert testimony that the alleged breach was the proximate cause or the proximate contributing cause of the alleged injuries

**EVIDENCE - OBJECTIONS - WAIVER** - The failure to object at trial to an issue operates as a waiver of the ability to assert the issue as an error on appeal

**TORTS - MISS. TORT CLAIMS ACT - FACT-FINDER** - The Mississippi Tort Claims Act requires that cases against public entities shall be heard by a judge without a jury

### FACTS

Hunter William Foote Jr. had hip replacement surgery in 2015. He was treated by Dr. Dudley Burwell, an orthopedic surgeon, at Burwell’s clinic. Burwell performed the surgery at Memorial Hospital at Gulfport (“Hospital”). Burwell admitted to penetrating Foote’s left iliac vein during surgery. He requested a consult from Dr. Joseph Graham, a vascular surgeon employed by the Hospital. Graham ultimately determined Foote was stable and could wait until after the surgery was done for further scans and treatment. Later, Foote was out of surgery and went into critical condition. Dr. Graham performed immediate surgery. Foote sued Burwell and Burwell’s clinic. He also sued the Hospital under the Mississippi Tort Claims Act (“MTCA”) for Graham’s negligence in allegedly failing to timely repair the damaged vein. Since the private defendants (Dr. Burwell and his clinic) were entitled to a jury trial whereas the MTCA stated that the claims against the public defendant (the Hospital) were to be tried and decided by a judge, the circuit court did not sever the claims but partially bifurcated the trial. The partial bifurcation allowed the jury to consider claims against all the parties, assess damages, and allocate fault, with the verdict being binding on only the private parties but advisory as to the Hospital. At trial, Foote’s counsel never directly asked Foote’s medical expert to give an opinion on if Graham proximately caused Foote’s injuries. In closing arguments, Foote’s attorney stated that he did not think that Graham did anything wrong. The jury found the private defendants and public defendant all liable and allocated fault as 75% and 25% respectively. The circuit court issued a judgment against Burwell and his clinic. After some time passed, the circuit court then issued findings of fact and conclusions of law dismissing Foote’s claim against the Hospital and holding that Foote failed to prove that any negligence by Graham caused him injury. The circuit court primarily relied on a determination that Foote’s medical expert did not offer any testimony on the issue of proximate cause regarding Foote’s claims against the Hospital. Foote appealed.

### ISSUES

Whether the circuit court erred in (1) including in its findings as evidence Foote’s counsel’s comments in closing argument that Dr. Graham did nothing wrong; (2) finding that Foote’s medical expert did not have the experience to testify to the standard of care of a hospital-employed vascular surgeon and that his testimony did not establish that Dr. Graham had proximately caused or contributed to Foote’s injuries; (3) allowing the Hospital to fully participate in the jury trial from voir dire to closing argument; and (4) allowing the jury to allocate fault and then finding that the jury’s allocation was not supported by substantial evidence.

### HOLDING

(1) Because there was other sufficient evidence to support the circuit court’s judgment in favor of the Hospital, the circuit court’s reliance on Foote’s counsel’s comments in closing argument was harmless error. (2) Because Foote’s expert was never asked to give an opinion to a reasonable degree of medical probability about what, if any, of the injuries were caused by Dr. Graham’s deviation from the standard of care, the circuit court did not err in finding that the expert did not establish proximate cause despite having experience to testify to the standard of care. (3) Because Foote waived this argument by failing to object when the Hospital questioned the venire during voir dire or presented witnesses, jury instructions, and a closing argument, the circuit court did not err in allowing the Hospital to fully participate in the trial. (4) Because the MTCA would be violated if the court was required to follow the jury’s opinion, the circuit court did not err in allowing the jury to allocate fault and then finding that the jury’s allocation was not supported by substantial evidence. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

## **DISSENT**

Judge Lawrence argued that nothing suggested that the circuit court relied on Foote’s counsel’s statement during closing argument as evidence. Further, he argued that it was apparent within Foote’s medical expert’s testimony that there was evidence of Dr. Graham proximately causing or contributing to Foote’s injuries.

### **Affirmed - 2023-CA-00504-COA (Mar. 25, 2025)**

Opinion by Judge McDonald - Dissent by Judge Lawrence

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)

Joe Sam Owen for Appellant - Fredrick B. Feeney II & Shellye Vines McDonald for Appellee

Briefed by [Natalie Xan](#)

Edited by [Senneca Evans](#) & [Aubrey Cagle](#)

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## **RODRIGUEZ V. DIAMONDHEAD COUNTRY CLUB & PROP. OWNERS’ ASS’N., INC.**

### **CIVIL – TORTS – OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

**TORTS - NEGLIGENCE - ELEMENTS** - To prevail on a claim of negligence, the plaintiff must show (1) duty; (2) breach of duty; (3) causation; and (4) damages

**TORTS - PREMISES LIABILITY - DUTY TO INVITEES** - A landowner owes an invitee the duty to keep the premises reasonably safe, and when not reasonably safe, to warn only where there is hidden danger or peril that is not in plain view or open

**TORTS - PREMISES LIABILITY - INVITEE** - A person is considered an invitee if she enters the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage

**TORTS - PREMISES LIABILITY - DANGEROUS CONDITIONS** - In a premises liability action, proof that an invitee’s injury was caused by a dangerous condition is an essential element

**TORTS - NEGLIGENCE PER SE - ELEMENTS** - A party asserting a negligence-per-se claim must demonstrate (1) that the party belongs to the class of people the statute intends to protect, (2) that the party suffered the type injuries the statute was designed to avoid, and (3) that the offender’s violation of the statute proximately caused the party’s injuries

## **FACTS**

Jane Rodriguez, a member of the Diamondhead Property Owners’ Association, tripped and fell from an approximately one-half-inch height difference in the sidewalk as she was leaving the pool area of the Diamondhead Country Club. She filed a premises liability complaint against Diamondhead Country Club and Property Owners’ Association, Inc. (“Diamondhead”), alleging negligence for failing to maintain a reasonably safe sidewalk. Diamondhead filed a motion for summary judgment arguing that the allegedly uneven sidewalk did not constitute a dangerous condition, and, thus, Diamondhead did not breach its duty to maintain its premises in a reasonably safe condition. In response, Rodriguez argued that material issues of fact existed regarding whether the uneven sidewalk constituted a dangerous condition,

and that Diamondhead was liable for negligence per se because the condition of the sidewalk violated a section of the International Building Code (“IBC”) that addresses accessibility to swimming pools as required by the Americans with Disabilities Act (“ADA”). Diamondhead argued that the ADA provisions which constituted the basis of Rodriguez’ negligence per se claim was inapplicable because Rodriguez was not part of the class of persons protected by the ADA, nor did she suffer the type of harm that these provisions were designed to prevent. The trial court granted summary judgment in favor of Diamondhead. Rodriguez appealed.

## **ISSUES**

Whether the trial court erred by granting summary judgment and finding (1) that the height differential between two sidewalk slabs at issue did not constitute an unreasonably dangerous condition, and (2) that there was no evidence to support a negligence per se claim under relevant provisions of the IBC and ADA.

## **HOLDING**

(1) Because height differentials in sidewalks or walkways are conditions normally encountered by invitees, because the height differential was not a concealed or hidden danger, because there is no heightened standard of care with respect to sidewalks in the common areas of a subdivision, and because the IBC code adopted by Diamondhead did not apply to uneven sidewalk slabs, there was no material fact issue as to whether the uneven sidewalk was a dangerous condition. (2) Because Rodriguez never alleged nor demonstrated that she had a disability or that she was discriminated against or denied access to the pool area due to the alleged sidewalk defects, the code provisions cited by Rodriguez did not trigger a negligence-per-se claim. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

**Affirmed – 2024-CA-00238-COA (March 25, 2025)**

Opinion by Presiding Judge Carlton

Hon. Randi Peresich Mueller (Hancock County Circuit Court)

Michael L. Fondren for Appellant – Wade G. Manor for Appellee

Briefed by [Anne Marie Lundy](#)

Edited by [Mira Radu](#) & [Amber Meeks](#)

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

### **BROWN V. STATE**

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

**CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - TIME-BAR** - Under Miss. Code Ann. § 99-39-5(2), a post-conviction relief petition must be filed within three (3) years after the time in which the petitioner’s direct appeal is ruled upon by the Supreme Court or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired

**POST-CONVICTION RELIEF - FUNDAMENTAL RIGHTS EXCEPTION - HOWELL RULE** – Under *Howell*, an untimely PCR petition is barred if it is filed beyond the three-year period unless the claim falls within one of the statutory exceptions of Miss. Code Ann. § 99-39-5(2); the “judicially crafted” fundamental-rights exception no longer exists

**CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - STATUTORY EXCEPTIONS** - Post-conviction relief claims are time-barred if filed beyond the three-year time period unless one of the following express statutory exceptions apply: (1) an intervening decision of the Supreme Court of either the State of Mississippi or the United States that would actually adversely affect the outcome of the conviction or sentence; (2) newly discovered evidence that is of such nature that it would be practically conclusive that it would have caused a different outcome if introduced at trial; (3) the testing of certain biological evidence; (4) claims that the petitioner’s sentence has expired, or



his probation, parole, or conditional release has been unlawfully revoked; and (5) certain motions for relief in cases where the death penalty is imposed

**POST-CONVICTION RELIEF - NEWLY DISCOVERED EVIDENCE - STANDARD** - To prevail on a newly discovered evidence claim, the movant must show that (1) the evidence was discovered after the trial; (2) it could not by due diligence have been discovered before trial; (3) it is material to the issue and not merely cumulative or impeaching; and (4) it would probably produce a different result or verdict in the new trial

### **FACTS**

Travis Brown was convicted of three counts of aggravated assault in the Forrest County Circuit Court. An eyewitness identified Brown as the shooter and surveillance footage corroborated that testimony. He was sentenced to serve twenty years on each count, with the terms set to run consecutively. Brown appealed his conviction, but the case was dismissed after he failed to file an appellant’s brief. Brown attempted to reinstate the appeal by motion; however, because Brown filed the motion over a year after his appeal was dismissed, the Court of Appeals denied the motion as untimely. Four years later, Brown filed a post-conviction relief (“PCR”) petition with the Supreme Court which was dismissed without prejudice for lack of jurisdiction. Brown then filed a PCR petition alleging ineffective assistance of counsel and citing new witness testimony that Brown was not involved in the crime. The Forrest County Circuit Court dismissed his petition as time-barred. Brown appealed.

### **ISSUES**

Whether (1) the matter involved a fundamental constitutional right; (2) the PCR petition presented evidence not reasonably discoverable at trial; and (3) the Supreme Court granted Brown leave to file his PCR petition in the circuit court.

### **HOLDING**

(1) Because alleging a violation of a constitutional right no longer provides an exception to the three-year time-bar, Brown’s ineffective assistance of counsel claim was without merit. (2) Because Brown failed to demonstrate that the new witness testimonies offered were not reasonably discoverable before trial, nor that it was probable that the testimonies would overcome eyewitness testimony that Brown was the shooter and corroborating surveillance footage to produce a different result or verdict, Brown did not meet the newly discovered evidence exception. (3) Because the Supreme Court did not address the issue of timeliness in its dismissal order, the order could not be construed to allow Brown to file an untimely PCR petition. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed – 2023-CA-00921-COA (consolidated with 2012-KA-01416-COA) (Mar. 25, 2025)**

Opinion by Judge Lawrence

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Anita M. Stamps for Appellant – Julianne Kay Bailey (Att’y Gen. Office) for Appellee

Briefed by [Douglas "Trey" Hubner III](#)

Edited by [Connor Dixon](#) & [Amber Meeks](#)

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## **DEER V. STATE**

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

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS** - A motion for post-conviction relief must be filed within three years of the entry of a conviction based on a guilty plea

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - STATUTORY EXCEPTIONS** - The post-conviction relief movant bears the burden to prove a statutory exception

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FUNDAMENTAL RIGHTS EXCEPTION** - According to the ruling in *Howell v. State*, Mississippi courts no longer recognize the judicially crafted fundamental-rights exception to the three-year statute of limitations for post-conviction relief motions

### **FACTS**

In 2017, Ulysses Deer was indicted for conspiracy to commit armed robbery, armed robbery, aggravated assault, kidnapping, possession of a firearm by a felon, and burglary of a dwelling with a sentencing enhancement of terrorizing the occupant. In January 2018, Deer pled guilty to aggravated assault and burglary of a dwelling and was sentenced to consecutive terms of twenty years and twenty-five years in custody. The State agreed to nolle prosequi the remaining counts of the indictment. In May 2022, Deer filed a motion for post-conviction relief (“PCR”), alleging that Deer was entitled to modify his sentence because it was in violation of the U.S. Constitution or Mississippi law and that the trial court lacked jurisdiction to sentence him. Deer also alleged that his PCR motion was excepted from the three-year statute of limitations because of new evidence, ineffective assistance of counsel before the plea, that his convictions were in violation of double jeopardy, that his sentence was cruel and unusual, and that he was forced to incriminate himself during pre-sentencing investigations. Deer did not provide support for these arguments. The trial court dismissed Deer’s PCR motion due to the three-year statute of limitations. Deer appealed.

### **ISSUE**

Whether the trial court erred by finding Deer’s post-conviction relief motion was barred by the three-year statute of limitations.

### **HOLDING**

Because Deer failed to offer show how any statutory exception would apply to his claims, and because the fundamental-rights exception to the three-year statute of limitations was foreclosed by *Howell*, Deer’s post-conviction relief motion was not excepted from the three-year statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2024-CP-00019-COA (March 25, 2025)**

En Banc Opinion by Presiding Judge Wilson

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

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

Briefed by [Margo Mabury](#)

Edited by [Connor Dixon](#) & [Amber Meeks](#)

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

### **DEWBERRY V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - PEREMPTORY STRIKES - BATSON CHALLENGE** - The *Batson* decision requires a three-part mechanism for determining whether a challenged peremptory strike was discriminatory: (1) the objecting party has the burden to make a prima facie case that race or gender was the criterion for the strike; (2) then, the burden shifts to the striking party to state a race or gender-neutral reason for the strike; and (3) if the striking party offers a valid race-neutral reason, then the trial judge must allow the strike unless the other party demonstrates the reason was a pretext for discrimination.

**CRIMINAL PROCEDURE - INDICTMENT – CONSTRUCTIVE AMENDMENT** – An indictment may not be amended to change the nature of the charge, except by action of the grand jury which returned the indictment; a

constructive amendment of an indictment occurs when the jury is permitted to convict the defendant upon a factual basis that effectively modifies an essential element of the offense charged

## **FACTS**

Amanda, a minor, revealed to her mother, Sarah, that her father, Timothy Aaron Dewberry, had been sexually abusing her during his visitation time. Sarah reported the abuse to the police and Dewberry was indicted for sexual battery, child exploitation, and fondling a child. During jury selection, the defense struck six of the seven female potential jurors from the panel. The State raised a *Batson* challenge, asserting the defense exercised its peremptory strikes to discriminate against women on the panel. The trial judge requested that the defense provide gender-neutral reasons for striking the female jurors, but they could only justify three of the six strikes. The trial court found the general reasons given by the defense to strike three of the female jurors to be insufficient and placed them back on the jury. The case went to trial, and Amanda testified that Dewberry regularly sexually abused her from the time she was three years old until the time she told her mother when she was nine years old. Sarah testified that Dewberry threatened Amanda to keep her from telling anyone about the abuse. The State called an expert in forensic interviewing and child abuse, who testified that Amanda described very detailed incidents of physical and sexual abuse. Dewberry called his mother and son, who both testified that they never saw any physical abuse. Dewberry also testified in his own defense and denied ever sexually or physically abusing Amanda. After the parties rested, Dewberry motioned for a directed verdict, which was denied. During the jury instruction conference, the trial court asked counsel if there were any objections to the court's jury instruction C-11, which addressed the elements of sexual battery and defined sexual penetration. Dewberry made no objection and agreed the instruction could be given. Dewberry was convicted of all three counts against him. Dewberry moved for judgment notwithstanding the verdict or a new trial but still raised no argument regarding Jury Instruction C-11. The post-trial motions were denied. Dewberry appealed.

## **ISSUES**

Whether (1) the trial court erred when it placed three jurors previously struck by the defense on the jury based on a *Batson* challenge by the State, and (2) jury instruction 11, which set forth the elements of sexual battery and defined "sexual penetration," impermissibly constructively amended the indictment.

## **HOLDING**

(1) Because defense counsel failed to rebut the State's prima facie showing of gender discrimination under *Batson* with a gender-neutral explanation, the trial court did not err by seating the three challenged jurors on the jury. (2) Because the defense did not raise any challenge to the court's jury instruction C-11 at trial or in its post-trial motions, the issue was time-barred on appeal. Further, because the instruction's definition of sexual penetration did not substantially alter the elements of proof necessary for a sexual battery conviction nor relieve the State of its burden to prove the essential elements of sexual battery, and because nothing in the record showed that definition materially altered a defense to the indictment as it originally stood that would prejudice Dewberry's case, the trial court did not commit plain error by giving jury instruction C-11. Therefore, the Court of Appeals affirmed the judgment of the Yalobusha County Circuit Court.

**Affirmed - 2023-KA-01135-COA (Mar. 25, 2025)**

Opinion by Presiding Judge Carlton

Hon. Smith Murphey (Yalobusha County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Natori Weathersby](#)

Edited by [Payne Phillips](#) & [Amber Meeks](#)

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**RASBERRY V. STATE**

**CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - INDICTMENT - PREJUDICE** - In order for an indictment to be deemed nonprejudicial, the indictment must contain: (1) the essential elements of the offense charged, (2) sufficient facts to fairly inform the defendant of the charge against which he must defend, and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense

**CRIMINAL PROCEDURE - INDICTMENT AMENDMENTS - FORM AND SUBSTANCE** - The trial court may permit the indictment to be amended, but such amendments may pertain to matters of form only, not matters of substance

**CRIMINAL PROCEDURE - INDICTMENT AMENDMENTS - FORM AND SUBSTANCE** – An amendment is one of form if the amendment is immaterial to the merits of the case and the defense will not be prejudiced by the amendment

**CIVIL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL** - To prevail on a claim of ineffective assistance of counsel, the defendant must show both (1) that counsel's performance was deficient - that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment, and (2) that he was prejudiced as a result - that counsel's errors were so serious as to deprive the defendant of a fair trial

### **FACTS**

William Rasberry was convicted as a sex offender in Alabama in 2007. In 2021, Rasberry was indicted for failing to register as a sex offender in Lamar County, Mississippi "on or about April 27, 2020." Prior to trial, the State filed a motion to amend the indictment to allege that he failed to register "between April 27, 2020 and July 17, 2020." The State argued that this strictly fixed a clerical error and did not alter the substance of the indictment or the charges. Defense counsel did not object to this motion. Rasberry filed a motion in limine to suppress statements he had made during his arrest confessing to living at his parents' house in Lamar County for over a month before the arrest. The State brought witnesses showing that there was no record that Rasberry registered anywhere between April 2020 and July 2020. After the State rested its case, Rasberry rested without testifying or calling witnesses. The jury found Rasberry guilty of failing to register as a sex offender. Rasberry appealed.

### **ISSUES**

Whether (1) Rasberry's indictment was defective; (2) the trial court erred by granting the State's motion to amend the indictment; and (3) he received ineffective assistance of counsel.

### **HOLDING**

(1) Because Rasberry had fair notice of the charges against him and had an opportunity to prepare his defense, and because he did not identify any way in which his defense was prejudiced by the indictment, the lack of specificity in the indictment was a harmless error. (2) Because Rasberry agreed to the amendment of the indictment, and because his confession about living at his parents' house made the amendment not strictly necessary, and because the amendment did not alter the substance of his charge, the trial court did not err by granting the State's motion to amend the indictment. (3) Because Rasberry was not prejudiced by the lack of specificity in his indictment, and because the amendment to the indictment was proper, he did not receive ineffective assistance of counsel by not challenging the indictment or opposing to the amendment. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

**Affirmed - 2023-KA-01161-COA (Mar. 25, 2025)**

En Banc Opinion by Presiding Judge Wilson

Hon. Brad Ashley Touchstone (Lamar County Circuit Court)

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

Briefed by [Abby Church](#)

Edited by [Ethan Hayes](#) & [Aubrey Cagle](#)

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**CRIMINAL – FELONY**

**EVIDENCE – ADMISSIBILITY – TOO REMOTE IN TIME** – Evidence that is too remote in time or is otherwise far-removed from an issue at trial is not relevant under M.R.E. 401 and may be excluded by the trial court in the exercise of discretion

**EVIDENCE – EYEWITNESS TESTIMONY – WEATHERSBY RULE** – Under *Weathersby*, where the defendant or the defendant’s witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness for the state, or by the physical facts or by the facts of common knowledge

**CRIMINAL PROCEDURE – CONVICTION – SUFFICIENCY OF EVIDENCE** – When reviewing the sufficiency of the evidence, a court must review the evidence in the light most favorable to the prosecution to determine whether rational, reasonable fair-minded jurors could have found that each essential element of the crime were proven beyond a reasonable doubt

**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

**EVIDENCE – ADMISSIBILITY – EXPERT TESTIMONY** – The trial court acts as gatekeeper on questions of admissibility of expert testimony and, on appeal, a trial court’s admissibility determination will be reviewed for abuse of discretion

**EVIDENCE – ADMISSIBILITY – REBUTTAL TESTIMONY** – When there is doubt as to whether evidence is properly case-in-chief or rebuttal evidence, the court should resolve the doubt in favor of rebuttal if: (1) its reception will not consume so much additional time as to give an undue weight in practical probative force to the evidence, (2) the opposite party would be substantially as well prepared to respond to the evidence in surrebuttal as if the testimony had been offered in chief, and (3) the opposite party, upon request therefor, is given the opportunity to reply by surrebuttal

**CRIMINAL PROCEDURE - MIRANDA RIGHTS - WAIVER** - A valid waiver under *Miranda* must be voluntary, knowing, and intelligent; a waiver is considered voluntary if it is the result of a free and deliberate choice rather than intimidation, coercion or deception

**EVIDENCE - ADMISSABILITY - AUTOPSY PHOTOS** – So long as a photograph has probative value and its introduction serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, unpleasant, or even inflammatory; photographs are deemed to have evidentiary value if admitted to: (1) aid in describing the circumstances of the killing, (2) aid in describing the location of the body and cause of death, and (3) supplement or clarify witness testimony

**CRIMINAL PROCEDURE – FAIR TRIAL – CUMULATIVE-ERROR DOCTRINE** – Under the cumulative-error doctrine, individual harmless errors may be aggregated with other errors to create reversible error where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

**FACTS**

Jakia Thomas lived together with boyfriend, DeMarcus Harris, and their infant child. On the day of the incident, Thomas called 911 to report that Harris had shot himself. When officers arrived, they found Harris deceased with a gunshot wound to the back-left side of the head and a casing lodged in the gun. Although Harris was right handed, a gun was found on the floor to his left. Harris was holding a photograph of his deceased sister. Thomas told officers that Harris had been suicidal over the loss of his sister, that he had held the gun to his head, and that when she attempted to take the gun away from Harris, it went off. A second casing fell from Harris's clothing as paramedics transported him from the house to the hospital, where he died four days later. After Harris was transported to the hospital, Thomas detained for questioning. After waiving her *Miranda* rights, Thomas told officers that she and Harris had been arguing for the past few days over a Facebook comment Harris made on another woman’s post. Gunshot residue was found on both Thomas and Harris. The medical examiner conducted an autopsy which showed no indication that gun was in close range to Harris’s head when fired and Harris’s death was ultimately ruled a homicide. Thomas was indicted for second-degree murder. At trial, the defense sought to introduce a seven-month-old Facebook post indicating that Harris had

suffered from suicidal thoughts. The prosecution objected and the trial court excluded the post. State forensic medical examiner, Dr. Mark LeVaughn, who was not present at the autopsy, testified that the manner of death was inconsistent with suicide and substantially contradicted Thomas's version of events. There was also testimony that it appeared the gun had been fired twice. Thomas's defense counsel called Eric Warren, a shooting incident reconstruction and firearms expert, to testify and he simulated how Harris's gunshot wound could have been self-inflicted. In response, the prosecution called Dr. LeVaughn to rebut Warren's testimony. Defense counsel objected, in part, on the grounds that LeVaughn was not a firearms expert and was therefore not qualified to rebut Warren's testimony. The trial court overruled the objection and allowed Dr. LeVaughn's testimony on the limited issues of projection angle and stippling. Following a jury trial, Thomas was found guilty and sentenced to thirty years. The trial court denied Thomas's motion for a judgment notwithstanding the verdict or a new trial. Thomas appealed.

## **ISSUES**

Whether (1) the trial court erred by granting the State's motion to exclude a Facebook post alleged to be pertinent to victim's mental state; (2) the trial court erred by denying Thomas's motion for directed verdict based the *Weathersby* rule; (3) the evidence was insufficient to support the conviction; (4) the verdict was against the overwhelming weight of the evidence; (5) the trial court erred by allowing the medical examiner to testify outside his area of expertise and give rebuttal testimony; (6) the circuit court erred in denying Thomas's motion to suppress her statement to police; (7) the circuit court erred in permitting the introduction of gruesome photos; and (8) cumulative errors deprived Thomas of a fair trial.

## **HOLDING**

(1) Because no evidence was presented that Harris continued to make similar suicidal statements or exhibit suicidal behavior between his Facebook post and his death seven months later, and because the State presented evidence that Harris did not dwell on his sister's death and was generally happy, the trial court did not err by excluding the Facebook post as too remote in time and irrelevant to Harris's state of mind at the time of his death. (2) Because the State presented physical evidence and credible witness testimony that substantially contradicted Thomas's account of the incident, the *Weathersby* rule was inapplicable and, thus, the trial court did not err by denying Thomas's motion for a directed verdict. (3) Because in viewing the evidence in the light most favorable to the State, a rational jury could have found that Thomas shot Harris and thereby committed an act evincing a depraved heart, regardless of human life, the evidence was sufficient to prove each essential element of second-degree murder beyond a reasonable doubt. (4) Because the State presented evidence that Harris's manner of death was not consistent with the account Thomas gave to police, because two medical examiners agreed that Harris's death was a homicide, because the State presented evidence of an ongoing argument between Harris and Thomas as motive for the murder, and because the evidence must be viewed in the in the light most favorable to the verdict, the jury's verdict was not against the overwhelming weight of the evidence. (5) Because there was no objection made at trial to LeVaughn's qualifications or his ability to give his opinion on the cause and manner of death because he was not present at the autopsy, the issue was waived on appeal. Further, because LeVaughn's rebuttal testimony was brief and limited to his opinion as a forensic pathologist regarding the accuracy of Warren's demonstration, because the rebuttal testimony could not have been presented during the State's case-in-chief, and because the defense cross-examined LeVaughn but did not seek surrebuttal testimony, the trial court did not err by allowing LeVaughn's rebuttal testimony. (6) Because Thomas was advised of her *Miranda* rights before she signed a waiver-of-rights form, because the interrogation video showed that she was calm and able to answer the officers' questions, and because there was no allegation that the officer's statements coerced Thomas to give any further information, the trial court properly admitted Thomas's statements to law enforcement. (7) Because the autopsy photos were relevant to the factual dispute regarding the victim's wound path, their probative value outweighed their prejudicial effect and, thus, the trial court did not err by admitting them into evidence. (8) Because the Court of Appeals otherwise found no reversible error, there could be no cumulative error. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2023-KA-00512-COA (Mar. 25, 2025)**

En Banc Opinion by Judge Westbrook

Hon. Winston L. Kidd (Hinds County Circuit Court)

Marcus Amir Williams, Kevin Brian Bass & Lawrence Stephen Blackmon for Appellant – Barbara Wakeland Byrd & Jody Edward Owens II (Att'y Gen. Office) for Appellee

Briefed by [Andrew Moyer](#) & [Amber Meeks](#)

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