

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 23, 2018**SUPREME COURT - CIVIL CASES****IN RE ESTATE OF COLE V. COLE****CIVIL - WILLS, TRUSTS, & ESTATES**

WILLS & ESTATES - FINAL ACCOUNTING - INTERESTED PARTIES - A group that is not approved to represent an Estate by a chancery court and lacks a contract with the Estate does not have a direct pecuniary interest and therefore is not an interested party

APPELLATE PROCEDURE - FRIVOLOUS SUIT - DAMAGES - Damages for a frivolous suit are not justified when a party appeals a novel issue and shows some chance of success

FACTS

Brian Cole was killed in an automobile accident in 2001. In 2002, the chancery court approved the hiring of Eugene Tullos to represent Cole's Estate against Ford Motor Company. Thereafter, Tullos associated other attorneys, namely The Ferrell Group, with the litigation. The lawsuit was eventually settled, and in 2011 partial distributions were made to the Estate and attorneys. The current administrator for the Estate petitioned the court to close the Estate in 2016, and the petition was granted. The Ferrell Group filed a Petition to Set Aside or Amend Order Closing Estate and Providing Other Relief or in the Alternative Motion to Reconsider, claiming it was an interested party and required notice of the petition to close because of its contract with the Estate. However, the contract relied upon was between Tullos and the Estate, as approved by the court order in 2002. The court found that The Ferrell Group was not an interested party and set a hearing regarding sanctions. The Ferrell Group appealed.

ISSUES

Whether (1) The Ferrell Group was an interested party under Miss. Code Ann. § 91-7-295 and was entitled to notice regarding the final account; and (2) the appeal was frivolous.

HOLDING

(1) Because The Ferrell Group did not probate or attempt to probate a claim against the Estate even though the estate published notice in 2002, and lacked a contract and privity with the estate, The Ferrell Group lacked a direct pecuniary interest and was not an interested party. (2) Because the appeal was over a somewhat novel issue and The Ferrell Group showed some ties to the Estate, and because parts of the record upon which the Rule 11 hearing relied were not in the appellate record, it was inaccurate to state that The Ferrell Group had no chance of success and therefore the appeal was not frivolous. Therefore, the Supreme Court affirmed the judgment of the Jasper County Chancery Court.

Affirmed - 2017-CA-00774-SCT (Aug. 23, 2018)

Opinion by Justice King

Hon. H. David Clark II (Jasper County Chancery Court)

W. Brady Kellems & Chuck McRae for Appellants - Brian K. Herrington & H. Wesley Williams III for Appellees

Briefed by [James Adamoli](#)

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IN RE ESTATE OF EUBANKS V. HUBER

CIVIL - WILLS, TRUSTS, & ESTATES

APPELLATE PROCEDURE - APPELLATE REVIEW - BENCH TRIAL - As a practical matter, appellate courts may only rule on issues arising from a bench trial, in which the trial court has articulated its ruling and the facts it relies upon

APPELLATE PROCEDURE - BENCH TRIAL - ABUSE OF DISCRETION - In cases of any complexity, tried upon the facts without a jury, the trial court generally abuses its discretion should it make conclusions of law without making specific findings of fact to support such conclusions therein

CIVIL PROCEDURE - JUDICIAL DISCRETION - CONCLUSIONS OF LAW - Notwithstanding that failure to make specific findings of fact in support of conclusions of law is an abuse of discretion, a trial court on remand may generally conclude facts in the negative that depart from its original conclusion of law

FACTS

Dane Eubanks was killed in an automobile accident. He was survived by his father, David Eubanks, his mother, Celia Eubanks, his brother, Seth Eubanks, his maternal half-brother, Aiden Borries, his paternal half-siblings, Allison Eubanks and David Eubanks Jr, and his former stepfather, Kenny Borries. Celia, as administratrix of Dane's Estate, filed a wrongful death claim against the driver of the vehicle in which Dane was passenger. Celia settled the wrongful death claim with Allstate Insurance Company, and the chancery court named Celia, Seth, Aiden, Allison, and David Jr. as sole heirs of Dane's estate and wrongful death beneficiaries to share in the proceeds equally. Celia subsequently filed a separate uninsured-motorist claim under Kenny Borries's policy with Allstate, and Allstate also settled this claim. In chancery court, the Estate argued that Allison and David Jr. should not benefit from the uninsured-motorist claim because they were not heirs to the Estate under Mississippi law, and that they were only beneficiaries under the wrongful death claim. The chancery court, however, divided the settlement equally among them. The chancery court also awarded attorneys' fees of forty percent to the Estate's representatives for each settlement, to which the court determined Allison and David Jr. would be held responsible for two-fifths of the cost based on quantum meruit. The Court of Appeals reversed and remanded on the grounds that the chancellor did not make sufficient factual findings to aid and enable appellate review, including justifying the amount in attorneys' fees assessed against Allison and David Jr, and further instructed the chancellor to make sufficient factual findings regarding the efforts taken by the Estate's attorneys to exclude the half-siblings from the settlement. On writ, the Supreme Court could not reach a majority opinion regarding quantum meruit of attorneys' fees. On remand, the chancellor noted that Allison and David Jr. benefited from the Estate's representation but found that the elements of quantum meruit had not been met, but again did not make any factual findings. The Estate appealed.

ISSUES

Whether the trial court erred in (1) failing to make detailed findings of fact; (2) finding that the quantum meruit factors were not met; and (3) in not considering the right to a fee for recovery of a common fund.

HOLDING

(1) Because a trial judge, sitting without a jury, generally should make specific findings of fact supporting its conclusions of law in order to aid and enable appellate review, and because the Court of Appeals explicitly instructed the chancellor to make specific findings of fact, the trial court erred in failing to do so. (2) Because appellate courts cannot review a trial court's determination without knowing what the trial court did and why, and because the record supported that Allison and David Jr. benefitted from the Estate's representation, the trial court erred in finding that the quantum meruit factors were not met. (3) Because the trial court did not address the common-fund doctrine, it may address this on remand. Therefore, the Supreme Court reversed and remanded the judgment of the Jackson County Chancery Court.

PARTIAL CONCURRENCE

Justice Chamberlin argued the Supreme Court should remand to the chancery with instructions to apply the common-fund doctrine in awarding attorneys' fees because, notwithstanding support from the record, the chancellor determined the elements of quantum meruit were not met while Allison and David Jr. benefited from the settlements without

incurring any expenses. He would further instruct the chancery court to determine the reasonableness of the attorney fees, deducting any time the attorneys spent adverse to the interests of the half-siblings.

DISSENT

Justice Coleman argued that the chancery court was bound by, and did not violate, the Court of Appeals mandate following the Mississippi Supreme Court's 4-4 affirming vote on the issue of attorneys' fees on quantum meruit grounds. He further argued quantum meruit was inappropriate because the attorneys worked in direct conflict to the half-siblings' interests, and that sufficient facts supported this conclusion. He would therefore affirm the chancery court's decision.

Reversed & Remanded - 2016-CA-01274-SCT (Aug. 23, 2018)

En Banc Opinion by Justice King - Partial Concurrence by Justice Chamberlin & Dissent by Justice Coleman

Hon. Jaye A. Bradley (Jackson County Chancery Court)

H. Benjamin Mullen & Vincent J. Castigliola, Jr. for Appellant - Trevor Bruce Rockstad for Appellee

Briefed by [Tucker Hood](#)

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SUPREME COURT - CRIMINAL CASES

HILL V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - RIGHT TO COUNSEL - CONFLICT OF INTEREST - When an attorney provides adequate representation, a personality conflict between an attorney and a client is insufficient to establish an actual conflict of interest

CONSTITUTIONAL LAW - RIGHT TO COUNSEL - INEFFECTIVE COUNSEL - The test for whether counsel has effectively represented a defendant is whether the accused has been protected, so far as counsel can do so, in all of his legal rights

CONSTITUTIONAL LAW - RIGHT TO COUNSEL - INDIGENT DEFENDANT - An indigent criminal defendant is not entitled to expert counsel, or to counsel of his own choosing, but only to reasonably effective assistance of counsel

FACTS

Terry Hill was arrested in May 2016 and charged with sexual assault and robbery. The trial court appointed public defender Stephanie Mallette to represent Hill. In July 2016, Mallette filed a motion to withdraw because Hill had told her he no longer wanted her representation. The trial court denied the motion. In January 2017, Hill filed a motion for the appointment of new counsel, alleging that Mallette had failed to investigate exculpatory evidence in the case. At a hearing in July, Hill stated to the court that he did want Mallette's continued representation. Hill's trial began July 31, 2017, and Mallette again moved to withdraw after the prosecution failed to honor an alleged deal, to which she was a witness, with Hill to identify a co-defendant in the case. The trial court denied the motion. After voir dire but before jury selection, Hill told Mallette he would prefer to represent himself and told the trial court that a conflict of interest existed between him and Mallette, and further requested a continuance to find new counsel. The trial court gave Hill the choice of either representing himself, with Mallette as shadow counsel, or continuing to allow Mallette to represent him. Hill decided to continue with Mallette as counsel, and the jury was selected. After the first witness testified, Hill again stated he wanted to represent himself and, in speaking to the court, incriminated himself. Mallette requested a meeting in chambers and claimed she felt she was in danger after threats made by Hill. Mallette moved for a mistrial, arguing that the jury heard Hill's statements and the presence of law enforcement in the courtroom would prejudice the jury against Hill. Mallette also again moved to withdraw. The trial court denied the motions, and the trial continued. Hill

was found guilty. Hill moved for a new trial, or in the alternative, a judgment notwithstanding the verdict. The trial court denied the motion. Hill appealed.

ISSUE

Whether the trial court violated Hill's rights to due process and a fair trial by denying the motions to withdraw and for new counsel.

HOLDING

Because Mallette adequately represented Hill, Hill stated before trial he wanted Mallette's continued representation, and Hill caused the conflict between him and Mallette, Hill's rights to due process and a fair trial were not violated by the trial court's denial of Mallette's motions to withdraw and Hill's motions for new counsel. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

Affirmed - 2017-KA-01130-SCT (Aug. 23, 2018)

Opinion by Justice King

Hon. Lee Sorrels Coleman (Oktibbeha County Circuit Court)

Mollie Marie McMillin and George T. Holmes (Pub. Def. Office), for Appellant - Katy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Michael Lambert](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 21, 2018

COURT OF APPEALS - CIVIL CASES

HARPER V. HUDSPETH REG'L CTR.

CIVIL - WRONGFUL DEATH

TORTS - MISS. TORT CLAIMS ACT - MEDICAL NEGLIGENCE - To establish medical negligence, a plaintiff must prove (1) the defendant had a duty to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) the defendant failed to conform to that required standard; (3) the defendant's breach of duty was a proximate cause of the plaintiff's injury; and (4) the plaintiff was injured as a result

CIVIL PROCEDURE - STANDARD OF CARE - EXPERT TESTIMONY - The plaintiff must provide expert testimony articulating the requisite standard that was not complied with, and establish that the failure was the proximate cause or proximate contributing cause

FACTS

Laura Harper's brother, Theopolis Harper, filed suit against Hudspeth Regional Center ("Hudspeth") under the Mississippi Tort Claims Act. Laura Harper was a resident at Hudspeth, an intermediate-care facility for the developmentally disabled. Hudspeth created an individual-support plan (ISP) for Laura to specifically care for her needs. Laura's ISP indicated her tendency to try to steal food from the kitchen and to eat too quickly, therefore she should be monitored closely. On October 26, 2008, Laura left her room and moved throughout the facility, entered the kitchen and obtained a piece of cheese. Laura then returned to the classroom where a Hudspeth employee appeared to speak to Laura while she appeared to eat the cheese. The employee followed Laura to the bathroom, where Laura collapsed and died. After conducting a bench trial, the circuit court found in favor of Hudspeth. Theopolis appealed.

ISSUE

Whether the trial court erred in ruling that no breach of standard of care occurred to proximately cause Laura's death.

HOLDING

Because there was substantial credible evidence that the relevant standard of care appropriate for Laura was followed, there was no breach of duty to the standard of care. The Court of Appeals affirmed the judgment of the Rankin County Circuit.

Affirmed - 2017-CA-00265-COA (Aug. 21, 2018)

Opinion by Judge Tindell

Hon. John Huey Emfinger (Rankin County Circuit Court)

David L. Valentine for Appellant - Stuart Robinson Jr. & Richard T. Conrad III for Appellees

Briefed by [Catherine Pettis](#)

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McCARLEY V. McCARLEY

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - RECORD - FINDINGS & CONCLUSIONS - The chancellor must find the facts specially and state conclusions separately only if a party makes a request in writing, filed among the papers in the action, or dictated to the court reporter for record and called to the attention of the chancellor

FAMILY LAW - DIVORCE - SEPARATE MAINTENANCE - The chancellor may award separate maintenance when the parties have separated without fault by the wife and the husband has willfully abandoned the wife and refused to support her

FAMILY LAW - DIVORCE - MATERIAL CONTRIBUTION - In order to receive an award of separate maintenance, a wife does not have to be blameless, but her misconduct must not have materially contributed to the separation

FACTS

Rickey McCarley and Kellie McCarley were married in 1979 and separated in October 2015. In February 2016, Rickey filed a complaint for divorce on the grounds of constructive desertion, habitual cruel and inhumane treatment, and irreconcilable differences. Kellie also filed a complaint, alleging that Rickey's adultery and habitual cruel and inhumane treatment caused the separation, and further requested temporary alimony and permanent separate maintenance. In a bench trial, following consolidation of the cases, the chancellor heard testimony from Rickey, Kellie, and four others. The chancellor informed the attorneys in a telephone conference, and later entered an amended order, that Kellie was without material fault in the separation, Rickey abandoned Kellie and refused to provide any support, and Kellie met her burden of proof necessary to support her claim for separate maintenance. The transcript of the telephone conference did not appear in the record. Rickey appealed.

ISSUES

Whether the chancellor erred in (1) failing to make the transcript of her telephonic hearing part of the record; and (2) awarding Kellie separate maintenance.

HOLDING

(1) Because Rickey did not request that the chancellor find the facts specially and state separately her conclusions of law either in writing, filed among the papers in the action, or dictated to the court reporter for record and called to the attention of the chancellor, the chancellor did not err in failing to direct that the transcript from the telephone opinion be made part of the record. (2) Because the record contained substantial credible evidence supporting the chancellor's finding that Kellie did not materially contribute to the separation, the chancellor did not err in awarding separate maintenance to Kellie. Therefore, the Court of Appeals affirmed the judgment of the Prentiss County Chancery Court.

Affirmed - 2016-CA-01674-COA (Aug. 21, 2018)

Opinion by Judge Carlton

Hon. Jacqueline Estes Mask (Prentiss County Chancery Court)

David O. Butts Jr. & William Wayne Housley Jr. for Appellant - Greg E. Beard for Appellee

Briefed by [Chadwick Lamar](#)

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PERKINS V. LITTLETON

CIVIL - TORTS

TORTS - DEFAMATION - BURDEN OF PROOF - An action based on defamation requires that (1) the words employed be clearly directed towards the plaintiff, and (2) the defamation be clear and unmistakable from the words themselves and not be the product of innuendo, speculation, or conjecture

DEFAMATION - BURDEN OF PROOF - EVIDENCE - It is not necessary that the plaintiff be designated by name; it is enough that there is such a description of or reference to him that those who hear or read reasonably understand the plaintiff to be the person intended

APPELLATE PROCEDURE - SCOPE OF REVIEW - DEFAMATION - The threshold question is whether the statement made was defamatory, therefore if the statement is not defamatory, the court need not address the other issues raised on appeal

FACTS

In 2014, James Littleton was one of three candidates for circuit court judge in the Fourth Court District, Place 3. One of the other candidates was the daughter of Willie Perkins. In August and September of 2014, a local newspaper published articles concerning a lawsuit between Littleton and his mother and sister. Later in September of 2014, Littleton ran radio advertisements stating that he knew of a conspiracy between his own family and “the father of one of his opponents.” At the time, the third candidate’s father had been deceased for ten months. In 2015, Perkins sued Littleton for slander, libel, and defamation based on the radio advertisements. Littleton moved for summary judgment arguing that his statement was not clearly and unmistakably directed towards Perkins because he neither knew the other candidate’s father was deceased, nor had been told which father had spoken to his family. The trial court granted Littleton’s summary judgment motion. Perkins appealed.

ISSUES

Whether the trial court erred in (1) finding that Littleton’s statement was not clearly and unmistakably directed at Perkins; (2) granting summary judgment for Littleton regarding the defamation action; and (3) treating Perkins’s claim as one for slander as opposed to libel and denying Perkins’s motion for leave to conduct additional discovery and his motion to compel the newspaper publisher to respond to a subpoena.

HOLDING

(1) Because a plaintiff need not be designated directly by name, only by sufficient description or reference, and because Perkins was the only person Littleton could have reasonably been referring to due to the third candidate’s father being deceased, the trial court erred in finding that Littleton’s statement was not clearly and unmistakably directed at Perkins. (2) Because defamation requires that the words of defamation cause some harm to the public image of a plaintiff, and because Littleton’s words merely indicated that Perkins may have taken part in a political tactic and did not implicate Perkins in any crime or other salacious activity, the trial court did not err in granting Littleton’s summary judgment motion. (3) Because the court need not address the other issues if the statement was not defamatory, and because the court found that the statement was not defamatory, the court did not need to address the issues involving the mischaracterization of Perkins’ claim, the motions for additional discovery, and the motions to compel the newspaper to respond to a subpoena. Therefore, the Court of Appeals affirmed the Leflore County Circuit Court.

Affirmed - 2017-CP-00225-COA (August 21, 2018)

Opinion by Judge Wilson

Hon. W. Ashley Hines (LeFlore County Circuit Court)

Pro se for Appellant - *Pro se* for Appellee

Briefed by [Corban Snider](#)

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RYAN V. RAY

CIVIL - REAL PROPERTY

REAL PROPERTY - EASEMENT - DEED INTERPRETATION - Under *Favre v. Jordan River Estates*, the facts of the creation of an easement are determined by the language of the deed along with the circumstances existing at the time of its creation, and an accurate and clear description of the easement is required

REAL PROPERTY - EXPRESS EASEMENT - INTENT - Under *Warren v. Derivaux*, the exercise of the right of a grant written in general terms fixes the right and limits it to the course, manner, extent, and length to which it has been enjoyed

REAL PROPERTY - PRESCRIPTIVE EASEMENT - LEGAL CONTRADICTION - Under *King v. Gale*, use by express or implied easement cannot “ripen” into a prescriptive easement

FACTS

David and Nancy Ray listed their property for sale, which included a driveway easement over a lot owned by William and Pamela Ryan. After noticing the real estate sign, the Ryans’ had their title examined and found that the deed retained an ingress and egress easement to be used only for access to the chapel. The chapel referred to a building on the Ryans’ property, which was used as a residence at all times but no longer existed on the property. The Ryans’ filed a complaint to remove any cloud of title. The Rays’ counterclaimed that either a perpetual easement for ingress and egress had been created or they had established an easement by prescription. The Hancock County Chancery Court found that a perpetual easement for ingress and egress was established on the Rays’ property. The Ryans’ appealed.

ISSUES

Whether the chancellor erred in (1) finding that the term “chapel” rendered the easement ambiguous; (2) resolving the ambiguity in favor of the Rays and finding a perpetual easement for ingress and egress over the Ryans’ property; and (3) making an alternative finding of a prescriptive easement.

HOLDING

(1) Because the term “chapel” was subject to multiple interpretations, the easement was ambiguous. (2) Because deeds in both chains of title referenced an easement for ingress and egress without any reference to the “chapel,” a neighbor testified as to the use of the easement and the colloquial use of the term “chapel” in reference to the residence on the Rays’ property, and the immediate predecessor testified that the Rays’ used the easement driveway to access their property, a perpetual easement for ingress and egress was established on the Rays’ property. (3) Because express and prescriptive easements cannot co-exist, the finding of a prescriptive easement was legally erroneous. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Chancery Court.

Affirmed - 2017-CA-00365-COA (Aug. 21, 2018)

Opinion by Chief Judge Lee

Hon. Jennifer T. Schloegel (Hancock County Chancery Court)

Patrick W. Kirby for Appellants - Donald Alan Windham & Matthew Ward McDade for Appellees

Briefed by [Lauren Rogers](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

MAGEE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - STATUTE OF LIMITATIONS - Under the Uniform Post-Conviction Collateral Relief Act, a PCR motion challenging a guilty plea must be filed within three years of the entry of the judgment of conviction

POST-CONVICTION RELIEF - COMPETENCY TO STAND TRIAL - COMPETENCY HEARING - The defendant has the burden of proof to show substantial evidence that his competency to stand trial is in question

POST-CONVICTION RELIEF - DISCRETION - EVIDENTIARY HEARING - The trial court has considerable discretion in deciding whether an evidentiary hearing is warranted

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - RIGHT TO A SPEEDY TRIAL - There is a strong rebuttable presumption that counsel's conduct falls within the wide range of reasonable professional assistance

FACTS

On December 3, 2004, Keith Magee was indicted by a grand jury on a capital murder charge. Magee entered a plea of guilty as an accessory before the fact to capital murder and was sentenced to life imprisonment without parole. On September 24, 2010, Magee filed a PCR motion claiming his life sentence without parole was illegal. The trial court denied relief, and Magee appealed. In November of 2013, the Court of Appeals issued a mandate to dismiss Magee's appeal for failure to file a brief. Magee filed a second PCR motion on June 7, 2016, alleging that his indictment failed to charge intent to cause the death of the victim. Following the motion, Magee filed a document entitled "Amended Claims" and raised additional ineffective assistance-counsel-claims including failure to seek dismissal due to a speedy trial violation, and denial of due process and an involuntary plea because his attorneys did not request a competency examination before his guilty plea was accepted. Magee also claimed that he was prejudiced by a delayed trial. The court dismissed Magee's motion for being time-barred, successive, and without merit. Magee appealed.

ISSUES

Whether (1) Magee's claims were excepted from the statute of limitations procedural bar because his claims affect his constitutional rights; (2) a competency hearing should have been conducted to determine if Magee was competent to stand trial; (3) the trial court erred by dismissing Magee's motion without an evidentiary hearing; and (4) Magee's attorneys provided effective assistance of counsel.

HOLDING

(1) Because the mere assertion of a constitutional rights violation without facts that support a basis of truth is not enough to trigger a constitutional violation, Magee's claims were procedurally barred. (2) Because the record showed that Magee was competent to stand trial and he provided no facts to the contrary, the trial court did not abuse its discretion. (3) Because the trial court has considerable discretion in granting evidentiary hearings, and Magee did not provide any facts that would have entitled him to relief, the trial court did not err in denying an evidentiary hearing to Magee. (4) Because Magee provided no facts to prove that his trial counsel was deficient or that he was prejudiced by the deficiency, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2017-CP-00532-COA (Aug. 21, 2018)

Opinion by Judge Barnes

Hon. Prentiss Greene Harrell (Marion County Circuit Court)

Pro se for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Andie Szabo](#)

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PARTEE V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - PRIOR CONSISTENT STATEMENT - Miss. R. Evid. 801(d)(1)(B) provides that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with his testimony

EVIDENCE - ADMISSIBILITY - COURT'S DISCRETION - Admissibility of evidence is largely within the discretion of the trial court and reversal may be had only where that discretion has been abused

FACTS

Fred Partee was convicted of burglary of a dwelling. He alleged that he was prejudiced by hearsay when an investigator stated that a witness testified that Partee entering the dwelling. The witness later testified at trial and was available for cross-examination. Partee appealed.

ISSUE

Whether the trial court erred by admitting an investigator's statement concerning the testimony of a witness.

HOLDING

Because a witness testified at trial and was available for cross-examination, the investigator's statement concerning the witness's earlier testimony was not barred by the hearsay rule. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2017-KA-00932-COA (Aug. 21, 2018)

Opinion by Judge Tindell

Hon. Charles E. Webster (Tunica County Circuit Court)

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

Briefed by [Nathaniel Snyder](#)

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EMILY A. WARWICK

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D. HUNTER V. ROBERTSON
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