

**MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 4, 2018****SUPREME COURT - CRIMINAL CASES****TERRELL V. STATE****CRIMINAL - FELONY**

**EVIDENCE - TESTIMONY - CONTRADICTORY TESTIMONY** - While uncorroborated testimony may generally sustain a conviction, this notion is inapplicable when testimony is unreasonable, self-contradictory, or substantially impeached

**LARCENY - FRAUDULENT INDUCEMENT - ASPORTATION** - Innocence of the party carrying out the act of physically carrying away the property of another does not absolve a defendant who fraudulently induces the innocent party into doing so, such as through the use of artifice and false documents

**FALSE PRETENSES - ELEMENTS - DETRIMENT OR INJURY** - In addition to showing that pretenses are false, the defendant knew them to be false, and the pretenses were the moving cause by which money was obtained, the State must show that the property or money obtained under false pretenses were to the detriment or injury of the person from whom a defendant obtains the same

**FALSE PRETENSES - ELEMENTS - DETRIMENT OR INJURY** - The State need not show a monetary loss to prove a party suffered an injury due to false pretenses; resulting indebtedness or color of title may be sufficient for a jury to reasonably deduct that a party suffered injury

**CONSPIRACY - MULTIPLE CONSPIRACIES - DOUBLE JEOPARDY** - A single agreement to commit several crimes constitutes one conspiracy; multiple sentences for a single conspiracy, though leading to multiple crimes, would constitute double jeopardy by punishing an individual twice for the same illegal agreement

**FACTS**

In 2011, Robert Terrell recruited Ricardo L. Hawthorne to record forged property deeds purporting to convey Jom McLendon's property to Hawthorne. Terrell and his co-conspirators then used the forged deeds to fraudulently induce Bushy Creek, a timber company, to buy the timber rights and, unbeknownst to McLendon, harvest his timber. Terrell was found guilty of timber theft, conspiracy to commit timber theft, false pretenses, and conspiracy to commit false pretenses. Terrell was sentenced to 25 years and was ordered to pay nearly \$123,000 in fines and restitution. The trial judge denied Terrell's motion for directed verdict at the close of the trial, and his post-trial motion for judgment notwithstanding the verdict or, alternatively, a new trial. Terrell appealed.

**ISSUES**

Whether (1) the circuit court erred in denying Terrell's motions for directed verdict and JNOV; and (2) Terrell was entitled to a new trial based on the admission of the civil judgments, the prosecution's closing argument, the weight of the evidence, and/or the trial court's failure to approve his coconspirator's immunity arguments.

**HOLDING**

(1)(a) Because Terrell's claims that his coconspirators' testimonies contradicted and were substantially impeached fell under the weight and credibility of their testimonies, and it is the jury's job to make weight and credibility decisions, the circuit court properly accepted the testimony as evidence. (b) Because Terrell fraudulently induced the sale of timber leading to its removal from McLendon's land, it was immaterial that he wasn't the individual who personally carried away the timber. (c) Because Bushy Creek was indebted to McLendon for the fraudulently obtained timber, and paid for timber to which it never acquired title or interest, the jury properly deducted that Bushy Creek suffered a monetary loss necessary to find Terrell guilty of false pretenses. (d) Because the evidence was indicative of one conspiracy with

two illegal objects – to steal timber and obtain \$20,300 from Bushy Creek through false pretenses, the two five-year sentences for conspiracy violate the constitutional prohibition against double jeopardy. (2)(a) Because the admission of civil judgments was relevant to show Terrell’s intent to steal timber, the evidence was admissible. (b) Procedural bar aside, because the jury could have found Terrell guilty without the “send a message” argument, the closing argument was not reversible error. (c) Because testimony is viewed in a light most favorable to the verdict, and the conspirators’ testimonies supported the jury’s decision, the trial court did not err in denying Terrell’s motion for a new trial. (d) Because the issue of possible perjury stemming from an immunity offer is one for cross-examination, and the trial judge did not hinder Terrell’s right to vigorously cross-examine his coconspirators, the trial court did not reversibly err in approving immunity for Hawthorne and Nicholson. Therefore, the Supreme Court of Mississippi affirmed in part and vacated and remanded in part the judgment of the Jefferson Davis Country Circuit Court.

## **DISSENT**

Justice King argued that insufficient evidence existed to convict Terrell of timber theft. Specifically, he argued that the bulk of the evidence against Terrell consisted of the contradictory, inconsistent testimony and statements of Terrell’s alleged accomplices. Additionally, Justice King argued that the majority expanded the indictment to allow Terrell to be convicted based on different details than those provided in the indictment. Further, Justice King argued that the trial court abused its discretion by admitting the civil judgments against Terrell. Justice King would have reversed Terrell’s remaining convictions and remanded them for a new trial, in which Terrell could only be convicted of one conspiracy charge.

**Affirmed in Part; Vacated & Remanded in Part - 2016-KA-00774-SCT (Jan. 4, 2018)**

En Banc Opinion by Justice Maxell - Dissent by Justice King

Hon. Prentiss Greene Harrell (Jefferson Davis County Circuit Court)

J.M. Ritchey for Appellant - Kaylin Havrilla McClinton (Att’y Gen Office) for Appellee

Briefed by [Hale Neilson](#) & [Katie Berry](#)

[Click here to view the full opinion](#)

## **MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 2, 2018**

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

#### **IN RE ESTATE OF FLOWERS**

#### **CIVIL - WILLS, TRUSTS, & ESTATES**

**ESTATES - EXECUTORS - DE BONIS NON** - An administrator de bonis non with the will annexed can be appointed on the removal of an executor or his resignation, without notice to the legatees and without waiting for the final settlement

**ESTATES - EXECUTORS - ACCOUNTING** - An executor shall have the proper appraisements made, return true and complete inventories except as otherwise provided by law, collect all debts due the estate as speedily as may be, pay all debts that may be due from it which are properly probated and registered, so far as the means in his hands will allow, and settle his accounts as often as the law may require

#### **FACTS**

In 2001, the Leflore County Chancery Court appointed Brenda Flowers to represent her husband, Richard Flowers Jr., as his conservator due to Richard’s physical and mental incapacity. Five years later, Richard died. Brenda was named executor of Richard’s estate in his will. Brenda filed a petition to probate the will and the chancellor appointed Brenda as executor of the estate. Richard’s will specified that ownership of all of his property should be transferred to Brenda should she survive him for a period of 179 days. In the event that Brenda did not survive Richard for 179 days, the property was intended to be put in a trust for his son Knox and daughter Claire, along with any children born to Brenda

and Richard. Brenda died 122 days after Richard. She named Knox as the executor of her estate. Knox then filed a petition for appointment as Executor De Bonis Non with Will Annexed and requested to be substituted as the executor for Richard's estate. The chancellor approved this request and appointed Knox as executor of both Richard's and Brenda's estates. In the following years, Knox performed many duties as executor involving liquidating Richard's assets and depositing them in the estate account. During this time, Knox's sister Claire filed motions seeking to receive an accounting of the estates and to disqualify Knox as executor. Her original motion was denied, and a few years later she filed another motion asserting fraud and misappropriation of funds regarding the estate. The chancellor denied her motion and further denied her attempt to amend it. Claire appealed.

### ISSUES

Whether (1) Knox was improperly named as executor of Richard's estate; (2) Knox breached his fiduciary duty to administer the estate since Claire did not receive any money; (3) the chancellor erred in awarding a fee paid by Richard's estate to Knox's attorneys; and (4) the chancellor erred in denying Claire's motion to amend her petition for compensatory and punitive damages.

### HOLDING

(1) Because the chancellor possessed the discretion to appoint an executor in order to represent the best interests of Richard's estate, Knox was not improperly named executor of the estate. (2) Because there were no assets left in Richard's estate after all of his affairs and expenses were settled, Knox did not breach his fiduciary duty to Claire. (3) Because the chancellor was within his discretion to determine that Knox's attorneys were entitled to receive attorney's fees, he did not err in ordering that these fees be paid by Brenda's estate. (4) Because Claire's motion to amend failed to include any specifics about what she wished to amend or any facts that gave rise to a cause of action, the chancellor did not abuse his discretion in denying her motion. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Chancery Court.

**Affirmed - 2016-CA-00799-COA (Jan. 2, 2018)**

Opinion by Judge Carlton

Hon. Michael H. Ward (Leflore County Chancery Court)

David Neil McCarty for Appellants - Floyd M. Melton Jr., Floyd M. Melton III, & Richard A. Oakes for Appellees

Briefed by [Sean Grady](#)

[Click here to view the full opinion](#)

---

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

### **HOLMES V. STATE**

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

**POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - GUILTY PLEA** - There is no right to a direct appeal from a sentence imposed following a guilty plea; counsel's failure to advise the defendant of such a right does not give rise to ineffective assistance of counsel

### FACTS

Quincy Holmes pled guilty to robbery and motor vehicle theft, and the circuit court sentenced him to consecutive prison terms of fifteen years and ten years. Holmes later filed a petition for post-conviction relief in which he alleged, among other things, that he received ineffective assistance of counsel because his lawyer did not advise him of his right to appeal the sentence imposed following his guilty plea. The circuit court dismissed the petition. Holmes appealed.

### ISSUE

Whether the trial court erred in dismissing Holmes's petition for post-conviction relief.

## **HOLDING**

Because there is no right to a direct appeal from a sentence imposed following a guilty plea, Holmes' claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

**Affirmed - 2016-CP-01374-COA (Jan. 2, 2018)**

Opinion by Judge Wilson

Hon. Lee Sorrels Coleman (Lowndes County Circuit Court)

*Pro se* for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Addison K. Watson](#)

[Click here to view the full opinion](#)

---

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

### **SMITH V. STATE**

#### **CRIMINAL - FELONY**

**EVIDENCE - TESTIMONY - ALIBI WITNESS** - Upon the written demand of the prosecuting attorney stating the time, date, and place at which the alleged offense was committed, the defendant shall serve upon the prosecuting attorney within ten days, or at such other time as the court may direct, a written notice of the intention to offer a defense of alibi

**EVIDENCE - TESTIMONY - ALIBI WITNESS** - The requirement to disclose an alibi witness is triggered by the prosecution; only after the prosecuting attorney makes a written demand is the defendant then required to provide written notice of his intent to offer a defense of alibi

**EVIDENCE - HEARSAY - CONFRONTATION CLAUSE** - A general hearsay objection is insufficient to preserve an alleged Confrontation Clause violation for appellate review

#### **FACTS**

On the morning of July 13, 2013, Jessica Keys and Cameron Conner were at a gas station in Jackson, Mississippi, when a car pulled next to them and began shooting. After hiding under their vehicle, both Conner and Keys survived. Keys was transported to a hospital, and Conner left the scene in another vehicle. Keys identified Frederick Smith as one of the shooters in a line up, and Smith was indicted for two counts of aggravated assault with a weapon. During trial, Detective Rozzerio Camel testified regarding tips received to Crime Stoppers despite the trial judge's motion in limine to exclude tips and third-party identifications, as they were impermissible hearsay. Furthermore, during trial, Smith's trial counsel notified the court that there was an alibi witness that Smith had not mentioned until the second day of trial. After a proffer of testimony from the alibi witness, Kenzoro Williams, the trial court sustained the State's objection to Williams's testimony. The jury returned a verdict of guilty on both counts, and the trial judge sentenced Smith to twenty years, fifteen years to serve and five years on probation. Smith appealed.

#### **ISSUES**

Whether the trial court erred in (1) not allowing an alibi witness to testify; (2) allowing impermissible hearsay testimony in violation of *Cranford v. Washington*; and (3) finding the evidence sufficient to sustain the conviction as to the assault on Jessica Keys.

#### **HOLDING**

(1) Because the prosecution did not make a written demand requesting any alibi witnesses prior to trial, the trial court erred by preventing Smith's alibi witness from testifying. (2) Because Smith failed to make a Sixth Amendment objection at trial, the Court of Appeals found the issue procedurally barred. (3) Because a rational trier of fact could find that Smith assaulted Jessica keys, and because witness credibility is a jury question, the Court of Appeals found this issue to

be without merit. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

**Reversed & Remanded - 2016-KA-00309-COA (Jan. 2, 2018)**

En Banc Opinion by Judge Greenlee

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial Dist.)

John M. Colette & Sherwood Alexander Colette for Appellant - Alicia Marie Ainsworth & Robert Shuler Smith (Att'y Gen. Office) for Appellee

Briefed by [Blake Brookshire](#)

[Click here to view the full opinion](#)

**MISSISSIPPI CASES EDITOR**

**ALLISON A. BRUFF**

**ASSOCIATE CASES EDITORS**

**BLAKE BROOKSHIRE**

**SPENCER NEWMAN**

**BETHANY POPPELREITER**

**LORA WUERDEMAN**

*Thank you for supporting the Mississippi Law Journal.*

Questions or comments: Allison A. Bruff, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)

*All subscribers to BriefServ traditionally receive access to our website with archived case briefs since January 2007. Currently, our digital database is under construction. Requests for previous editions of the Newsletter can be made to Allison A. Bruff, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*