

**MISSISSIPPI SUPREME COURT DECISIONS – MARCH 8, 2018****SUPREME COURT - CIVIL CASES****COLLINS V. CITY OF NEWTON****CIVIL - TORTS**

**INTENTIONAL TORTS - RECKLESS DISREGARD - STANDARD** - The standard of reckless disregard is willful or wanton conduct, which requires knowingly and intentionally doing a thing or wrongful act

**CIVIL PROCEDURE - SUMMARY JUDGMENT - STANDARD** - Summary judgment is appropriate when the pleadings, depositions, interrogatories, and affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in the light most favorable to the non-moving party

**FACTS**

Several members of the Collins family were firefighters in the City of Newton (the City) fire department. Donnie was selected as chief of the fire department, but he was declined the job due to his brother also working for the department. Donnie instead became assistant chief, but he was subsequently stripped of this rank. After a meeting with the new chief, Donnie was fired. Soon after, all of the other members of the Collins family were fired. In 2012, a member of the Collins family had his home destroyed in a fire. The Collins family alleged that the department failed to respond to the fire properly. The Collins family sued the City, alleging wrongful termination, infliction of emotional distress, slander, and failure to respond properly to the fire. The City moved for summary judgment and was denied. The City then moved to amend or alter the judgment pursuant to Rule 59, but was denied. The City then petitioned the court for an interlocutory appeal, but the motion was denied and remanded. Upon remand, a new judge was assigned to the case. The City filed a motion for relief from order or reconsideration pursuant to Rule 60. The trial court granted this motion and dismissed the case. The Collins family appealed.

**ISSUE**

Whether the trial court erred in (1) applying Rule 60 when there was no final order; (2) granting summary judgment on the wrongful termination; (3) finding no intentional infliction of emotional distress; (4) finding no negligent infliction of emotional distress; (5) finding no slander; and (6) finding no reckless disregard.

**HOLDING**

(1) Because a trial judge has the authority to revise an order denying summary judgment pursuant to Rule 54 and a trial judge has authority to revise denial of summary judgment by a previous judge, the trial court did not err in revising the judgment. (2) Because the employee handbook stated that employment was by mutual consent and either party could terminate the relationship at any time, the *Bobbitt* exception did not apply, and the court did not err in granting summary judgment for wrongful termination. (3) Because the Collins family did not present any evidence of outrageous or revolting conduct sufficient to create a genuine issue of material fact, the court did not err in granting summary judgment on this issue. (4) Because the Collins family could not prove a physical manifestation of emotional distress, the court did not err in granting summary judgment on this issue. (5) Because the Collins family did not present any actual statements or articles in evidence, the court did not err in granting summary judgment on the this issue. (6) Because reckless disregard requires willful and wanton conduct, and the Collins family provided no evidence that would create a genuine issue of material fact, the court did not err in granting summary judgment on this issue. Therefore, the Supreme Court affirmed the judgment of the Newton County Circuit Court.

## DISSENT

Justice King argued that the *Bobbitt* exception should apply in this case. He further argued that there was some vagueness in the employee handbook about whether the employees could be terminated at will, and that this ambiguity creates a genuine issue of fact for trial. Justice King, therefore, argued summary judgment was inappropriate.

**Affirmed - 2017-CA-00137-SCT (Mar. 8, 2018)**

En Banc Opinion by Justice Coleman - Dissent by Justice King

Hon. Vernon R. Cotten (Newton County Circuit Court)

Joel W. Howell III for Appellants - James Cornelius Griffin, J. Richard Barry, & Brian Douglas Mayo for Appellees

Briefed by [Zachary Harper](#)

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## **SUPREME COURT - CRIMINAL CASES**

### **CHANDLER V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - STANDARD OF REVIEW - HEIGHTENED SCRUTINY** - Heightened scrutiny is reserved for death-penalty cases due to the unique and irreversible nature of that punishment

**CRIMINAL PROCEDURE - STANDARD OF REVIEW - MILLER CASES** - Whether the trial court applied the correct legal standard is a question of law subject to *de novo* review, and if the trial court applied the proper legal standard, its sentencing decision is reviewed for an abuse of discretion

**EIGHTH AMENDMENT - JUVENILES - LIFE IN PRISON WITHOUT PAROLE** - Courts must take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison

**EIGHTH AMENDMENT - JUVENILES - MILLER FACTORS** - Neither *Miller* nor *Parker* mandates that a trial court issue findings on each *Miller* factor

#### **FACTS**

Joey Chandler was a juvenile convicted of murder and sentenced to life in prison. Chandler received a new sentencing hearing in light of the United States Supreme Court's decision in *Miller v. Alabama* and the subsequent Mississippi decision, *Parker v. State*. Chandler was again sentenced to life in prison. Chandler appealed.

#### **ISSUE**

Whether (1) the appellate court should review the trial court's decision with heightened scrutiny because Chandler was a juvenile offender; and (2) the trial court properly considered the *Miller* factors before sentencing.

#### **HOLDING**

(1) Because this case is a non-capital case, it is not subject to heightened scrutiny and it is not reasonable to raise this standard of review just because Chandler was a juvenile. (2) Because consideration of each *Miller* factor is only a minimum requirement for the trial court, the trial court did not abuse its discretion in resentencing Chandler to life in prison without parole. Therefore, the Supreme Court affirmed the judgment of the Clay County Circuit Court.

#### **DISSENTS**

Chief Justice Waller argued that the primary focus of *Miller v. Alabama* was the juvenile's capacity for rehabilitation and the trial court's discussion on the ability for the executive to commute the sentence or pardon was not adequate consideration of Chandler's ability to be rehabilitated. Chief Justice Waller further argued that life without parole is

reserved for “the rarest of juvenile offenders whose crimes reflect permanent incorrigibility,” and the trial court failed to prove that.

Justice King argued that because life without parole is the highest possible punishment for a juvenile, it is akin to capital punishment and therefore deserves heightened scrutiny. Justice King further argued that using heightened scrutiny would ensure that only the rarest of juveniles would be sentenced to life in prison without parole.

**Affirmed - 2015-KA-01636-SCT (Mar. 8, 2018)**

En Banc Opinion by Justice Coleman - Dissents by Chief Justice Waller & Justice King

Hon. James T. Kitchens, Jr. (Clay County Circuit Court)

Erin Elizabeth Briggs & George T. Holmes (Pub. Def. Office) for Appellant – Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Tyler Alcorn](#)

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## SALLIE V. STATE

### CRIMINAL - FELONY

**SENTENCING - INCREASE AFTER APPEAL - DOUBLE JEOPARDY** - Neither appellate review of sentences nor increases after appeal will ordinarily implicate double jeopardy considerations

**SENTENCING - UNSERVED SENTENCE - EXPECTATION OF FINALITY** - A defendant has no legitimate expectation of finality in the original sentences when he has placed those sentences in issue by direct appeal and has not completed serving a valid sentence

**SENTENCING - RESENTENCING AFTER APPEAL - RESTRUCTURING A SENTENCE** - The judge should be free to review the efficacy of what remains of the sentence in light of the original plan and should be allowed to reconstruct the sentencing architecture upon remand, within applicable constitutional and statutory limits, if that appears necessary in order to ensure that the punishment still fits both crime and criminal

**SENTENCING - RESENTENCING AFTER APPEAL - VACATED SENTENCE** - Where a convicted defendant receives an illegal sentence, the sentence must be vacated and the case remanded to the trial court for resentencing because the defendant suffered prejudice

### FACTS

Craig Sallie was found guilty of aggravated assault and possession of a weapon by a convicted felon. The circuit court sentenced Sallie to twenty years for Count I and ten years for Count II, with sentences to run concurrently. The circuit court also sentenced Sallie to an additional ten years pursuant to a firearm-enhancement statute, with that sentence to run consecutively to other sentences, for a total sentence of thirty years. The Supreme Court later found the firearm-enhancement sentence to be improper and remanded the case for resentencing. The circuit court then sentenced Sallie to the same terms of twenty and ten years, but to run consecutively rather than concurrently. Therefore, Sallie’s total sentence remained thirty years. Sallie appealed.

### ISSUE

Whether the trial court erred in changing Sallie’s sentences on Count I and Count II to run consecutively.

### HOLDING

Because the trial court has the discretion to reconstruct the sentence after appeal to provide an appropriate sentence, the trial court did not err in changing Sallie’s sentences to run consecutively. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

### DISSENT

Justice King argued that the Court did not reverse, or even address, Sallie’s original sentences for Count I and Count II. Therefore, the trial court lacked jurisdiction to modify that portion of Sallie’s sentence.

**Affirmed - 2015-CT-00819-SCT (Mar. 8, 2018)**  
En Banc Opinion by Justice Beam - Dissent by Justice King  
Hon. John Huey Emfinger (Madison County Circuit Court)  
Cynthia Ann Stewart for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee  
Briefed by [Nathan Simpson](#)

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**MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 6, 2018**  
**COURT OF APPEALS - CIVIL CASES**

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**BOWDRY V. T. MART, INC.**

**CIVIL - PERSONAL INJURY**

**PERSONAL INJURY - DISCOVERY - DEPOSITIONS** - Dismissal of litigation pursuant to a discovery violation is appropriate only under the most extreme circumstances and only where lesser sanctions will not suffice  
**PERSONAL INJURY - DISCOVERY VIOLATIONS - MISSISSIPPI LAW** - The *Pierre* factors must only be employed in the most extreme circumstances of discovery violations; instead, courts should look to *Wood* and its progeny

**FACTS**

In 2011, Keith Bowdry was on duty as a Tupelo police officer. He was pulling out of a Texaco gas station when his vehicle collided with another vehicle. As a result, Keith was treated for pain in his neck, head, left knee, and lower back. Keith and his wife, Lakeisha Bowdry, filed a complaint against T. Mart, Inc. and Tommy Brooks Oil Company (collectively “T. Mart”), the owners of the Texaco gas station. The complaint alleged that the shrubbery on T. Mart’s property negligently inhibited the sight line of an exiting vehicle. Keith sought to recover damages from the accident, and Lakeisha sought damages for loss of consortium. Keith was served with interrogatories related to his prior medical history and treatment, and was asked whether he had been involved in any other accident or if he had any illness or sickness of any kind or any type or severity that required or resulted in him being seen or treated by any medical professional. In response, Keith disclosed a motor-vehicle accident that occurred in 2005. Keith did not disclose any information regarding his injuries, but did disclose that he saw two separate medical providers. Later, T. Mart deposed Keith and asked whether he had ever experienced prior neck problems, and he responded that he had not. Keith was also asked about having previous lower-back issues, which he denied. After the deposition, T. Mart obtained Keith’s prior medical records. The records revealed that he had received medical treatment for his neck and lower back after the 2005 accident. T. Mart then filed a motion to dismiss the complaint. After a hearing, the trial court granted the motion to dismiss with prejudice. The trial court concluded that, under the circumstances, no sanction less than dismissal would be appropriate. Since Lakeisha’s claim was derivative in nature, it was also dismissed with prejudice. Keith and Lakeshia appealed.

**ISSUE**

Whether the circuit court committed reversible error in the decision to dismiss the Bowdry’s complaint under Rule 37 and *Pierre*.

**HOLDING**

Because the discovery violation was more akin to the alleged discovery violation in *Wood* than the unequivocally false and misleading discovery violations in *Pierre*, and because dismissal would be appropriate only under the most extreme circumstances where lesser sanctions would not suffice, dismissal was not a reasonable sanction. Therefore, the Court of Appeals reversed and remanded the judgment of the Lee County Circuit Court.

**DISSENT**

Judge Carlton argued that the record reflected that the circuit court weighed the relevant *Pierre* factors and applied them to the evidence accordingly. She found no error warranting reversal, and thus found that the circuit court did not abuse its discretion when it held that any sanction less than dismissal would not adequately serve Rule 37's deterrent purpose. Judge Carlton would affirm the circuit court's judgment dismissing Keith's claim with prejudice. Because Lakeisha's loss-of-consortium claim was derivative of Keith's, Judge Carlton would also affirm the circuit court's judgment dismissing Lakeisha's claim with prejudice.

**Reversed & Remanded - 2016-CA-01603-COA (Mar. 6, 2018)**

En Banc Opinion by Presiding Judge Griffis - Dissent by Judge Carlton

Hon. James Seth Andrew Pounds (Lee County Circuit Court)

Edward Blackmon, Bradford Jerome Blackmon, Marcus Amir Williams, & Shea Scott for Appellants - William G. Armistead &

John D. Brady for Appellee

Briefed by [Andrew P. Cicero, III](#)

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## HILL V. SUPERINTENDENT KING

### CIVIL - STATE BOARDS AND AGENCIES

**ADMINISTRATIVE AGENCIES - STANDARD OF APPEAL - SUBSTANTIAL EVIDENCE** - The decision of an administrative agency shall not be disturbed unless it is (1) unsupported by substantial evidence; (2) is arbitrary or capricious; (3) is beyond the agency's scope or powers; or (4) is violative of the constitutional or statutory rights of the aggrieved party

**ADMINISTRATIVE AGENCIES - HEARINGS - CONSIDERABLE FACTORS** - Written notice of violations, right to call witnesses, an impartial hearing, and assistance in preparation for hearing are all significant factors to consider in whether a decision reached by an administrative agency is appropriate

#### FACTS

Hill was an inmate in the custody of the Mississippi Department of Corrections (MDOC). During his incarceration, a green substance, an iPod, and an iPod charger were found under his bed. Hill was issued two rule-violation reports for possession of contraband, both of which he signed for. At the hearing for his contraband possession, Hill argued that the green substance was spice and was put under his bed by another inmate. Hill provided no defense to his possession of the iPod or charger. Hill was found guilty and ordered to lose privileges for eighteen months. Hill appealed through MDOC's Administrative Remedy Program (ARP) to the warden, who denied Hill's request. Hill then filed a complaint appealing the ARP decision to the circuit court, which dismissed Hill's complaint, finding that the MDOC decision was (1) supported by substantial evidence; (2) was not arbitrary or capricious; (3) was within the scope of the powers of the MDOC; and (4) did not violate Hill's constitutional rights. Hill appealed.

#### ISSUE

Whether the trial court erred in affirming the decision of the MDOC finding Hill guilty of possessing a green substance, an iPod, and an iPod charger while in the custody of the MDOC.

#### HOLDING

Because the MDOC's decision was (1) supported by substantial evidence; (2) was not arbitrary or capricious; (3) was not beyond the agency's scope or powers; and (4) did not violate his constitutional or statutory rights, the trial court did not err in affirming the decision of the MDOC. Further, Hill was provided with written notice of both violations, the right to call witnesses on his behalf, a hearing by an impartial hearing officer, and assistance in preparation for the hearing. Hill provided no evidence or witnesses to refute his possession of the iPod or charger. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2017-CP-00743-COA (Mar. 6, 2018)**

Opinion by Judge Fair  
Hon. William E. Chapman III (Rankin County Circuit Court)  
*Pro se* for Appellant - Darrell Clayton Baughn for Appellee  
Briefed by [Hale Neilson](#)

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## JONES V. JONES

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - MARITAL AGREEMENTS - STATUTE OF FRAUDS** - Pursuant to Miss. Code Ann. § 15-3-1(d), an action shall not be brought upon any agreement which cannot be performed within fifteen months of its making unless the agreement shall be in writing and signed by the party to be charged

**FAMILY LAW - DIVORCE DECREE - REVOCATION** - The judgment of divorce from the bonds of matrimony may be revoked at any time by the court which granted it, under such regulations and restrictions as it may deem proper to impose, upon the joint application of the parties, and upon the production of satisfactory evidence of their reconciliation

#### FACTS

Mike and Sheila Jones were married for almost thirty-four years. They filed a *pro se* Joint Complaint for Divorce on February 6, 2012. They attached an “Agreement” to the complaint. The Agreement included provisions for child custody and support, property settlement, and spousal support, among other provisions. A chancellor approved and executed the divorce decree that included the Agreement. On June 3, 2015, Sheila filed a “Petition for Contempt of Court,” claiming that Mike had ceased making payments according to their Agreement and asking that he be held in contempt until the payments were made. On November 16, 2015, the contempt matter was set for hearing before a special chancellor. At the hearing, Sheila testified that Mike had agreed to pay her certain amounts under the Agreement, he had not paid the full amount due, and he owed her the principal sum of \$19,000, plus attorneys’ fees. Mike asserted a statute of fraud defense. The Special Chancellor ruled that the statute of frauds was a sufficient defense to Sheila’s claim of contempt. Additionally, the Special Chancellor declared that because there was no “meeting of the minds,” the divorce decree and property division agreement would be set aside. Sheila appealed.

#### ISSUE

Whether the trial court erred by (1) dismissing Sheila’s contempt action; and (2) setting aside the divorce decree.

#### HOLDING

(1) Because the Agreement was approved by a chancellor and complied with the signature and writing requirements of Miss. Code Ann. § 15-3-1(d), the Special Chancellor committed manifest error and was erroneous in dismissing the contempt action. (2) Because neither party asked the Special Chancellor to set aside the divorce decree, it was beyond the Special Chancellor’s authority to set aside the decree. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Pontotoc County Chancery Court.

#### **Reversed, Rendered, & Remanded - 2016-CA-01008-COA (Mar. 6, 2018)**

Opinion by Presiding Judge Griffis  
Hon. Larry J. Buffington (Pontotoc County Chancery Court)  
Tommy Wayne Defer for Appellant - Timothy Baxter Tucker for Appellee  
Briefed by [Katie Berry](#)

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## RUSH FOUND. HOSP. V. CARLISLE

### CIVIL - WILLS, TRUSTS AND ESTATES

**WILLS & ESTATES - ESTATE ADMINISTRATION - INVENTORY** - Pursuant to Miss. Code Ann. § 91-7-93, an executor or an administrator of an estate is required to file an inventory within ninety days of the grant of letters testamentary

**WILL & ESTATES - ESTATE ADMINISTRATION - SOLVENCY**- Pursuant to Miss. Code Ann. § 91-7-261, an executor or an administrator of an estate is required to ascertain whether an estate is insolvent or solvent; if both the decedent's real and personal estates are insufficient to pay his debts, the executor or administrator must exhibit to the court a true account of all the personal estate, assets or every description, the land of the deceased, and all debts due from the deceased

**WILLS & ESTATES - SCIRE FACIAS - STATUTE OF LIMITATIONS** - Pursuant to Miss. Code Ann. § 15-1-25, an action or scire facias may not be brought against any executor or administrator upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such executor or administrator

### FACTS

On May 5, 2010, Christopher Powell died intestate. On November 10, 2011, the chancery court issued letters of administration to Powell's mother, Stephanie Carlisle, to serve as administrator of Powell's estate. Notice to creditors was published on November 15, 22, and 29 in 2011. On December 27, 2011, Rush Foundation Hospital, Medical Foundation, Inc., Rush Medical Group, and three Rush entities probated a claim against the estate. On March 21, 2016, Carlisle filed a final accounting and a motion to close the estate asserting Powell had no certain personal property, no assets, and no real property. Carlisle averred that Rush's claim was barred by the statute of limitations. Rush opposed Carlisle's motion, asserting its claim was not barred, and that Carlisle had not filed an inventory or pleading to ascertain whether the estate was solvent. The chancellor entered a judgment denying Rush's claim, finding it time-barred under Miss. Code Ann. § 15-1-25. However, the chancellor's judgment did not address the dispute over whether the estate was solvent, nor did it address Carlisle's statutory requirement as an administrator to file an inventory. Rush subsequently sought interlocutory review, which the Mississippi Supreme Court denied. The chancellor then entered a "Judgment Closing Estate and Discharging Administratrix." Rush appealed.

### ISSUE

Whether (1) Rush timely appealed; and (2) the statute of limitations had run.

### HOLDING

(1) Because the court rejected the executor's argument that the probate claim judgment was not final, and there was no final order closing the estate, the court determined Rush's appeal was timely. Further, the court found that the chancery court's judgment resolved the probate claim lodged against the estate, thus appealing from said judgment was proper and timely. (2) Because Carlisle was issued letters of administration on November 10, 2011, and the four-year statute of limitations began to run ninety days later from that date, Rush was required to bring an action against Carlisle before February 8, 2016. Rush failed to do so until May 26, 2016. Thus, Rush clearly exceeded the statute of limitations prescribed in Miss. Code Ann. § 15-1-25. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

### DISSENT

Judge Wilson argued that the Court of Appeals did not have jurisdiction to address Rush's appeal because Rush did not file a timely notice. Judge Wilson would find Rush's November 17, 2016 notice of appeal was untimely because it exceeded the thirty-day limitation.

### **Affirmed - 2016-CA-01661-COA (Mar. 6, 2018)**

Opinion by Judge Greenlee - Dissent by Judge Wilson

Hon. Lawrence Primeaux (Lauderdale County Chancery Court)

J. Richard Barry & James Cornelius Griffin for Appellants - John E. Howell for Appellee

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

### **CAISSIE V. STATE**

#### **CRIMINAL - MISDEMEANOR**

**PUBLIC SAFETY - SEARCH & SEIZURE - CHECKPOINTS** - A checkpoint set up for the specific purpose of checking driver's licenses, valid tags, and insurance serves a legitimate public safety purpose and does not violate a defendant's right of protection against unreasonable searches and seizures

**APPELLATE PROCEDURE - JUDICIAL REVIEW - DIRECT APPEAL** - An appellate court cannot review a matter that was not ruled upon by the trial court

**CRIMINAL PROCEDURE - PLEADING - SUFFICIENCY** - When a defendant refuses or neglects to plead, stands mute, or pleads evasively, the court should enter a plea of not guilty and proceed at trial

#### **FACTS**

On April 25, 2015, while driving through the town of Raleigh, Mississippi ("The Town"), Jason Caissie encountered a safety checkpoint and was asked to produce a valid driver's license and proof of insurance. When Caissie failed to comply with the request, a Raleigh Police Department officer arrested Caissie and issued him one ticket for operating a motor vehicle without a valid driver's license and a separate ticket for failing to maintain or provide proof of insurance. The municipal court found Caissie guilty of both offenses. Caissie appealed to the circuit court, which found Caissie guilty of both charges. Caissie appealed.

#### **ISSUE**

Whether (1) the circuit court erred by allowing an appeal from a void judgment; (2) the circuit court erred by allowing Caissie's prosecution based on "an illegal roadblock and false arrest;" (3) the circuit court erred by quashing the subpoenas Caissie issued to the Commissioners of the Mississippi Department of Revenue and the Mississippi Department of Public Safety; (4) the circuit court erred by failing to accept Caissie's plea of "non assumpsit by way of confession and avoidance;" (5) error occurred because the Town failed to provide Caissie with a charging instrument; (6) the circuit court erred by denying Caissie's request to voir dire his court-appointed armchair counsel; (7) the circuit court erred by refusing Caissie's request for "next friend" counsel; (8) error occurred because the Town failed to answer or address several of Caissie's pretrial filings; and (9) the circuit court erred by excluding an audio recording Caissie attempted to admit into evidence.

#### **HOLDING**

(1) Because Caissie appealed his misdemeanor convictions and received a de novo trial in circuit court, there is no merit to his claims regarding the alleged defects in and the validity of the municipal court's judgment against him. (2) Because a checkpoint set up for the specific purpose of checking driver's licenses, valid tags, and insurance serves a legitimate public safety purpose, Caissie's right of protection against unreasonable searches and seizures was not violated. (3) Because Caissie failed to obtain the court's leave and no evidence existed to show that the commissioners possessed personal knowledge or relevant testimony related to Caissie's traffic tickets, the issue of quashing Caissie's subpoenas lacked merit. (4) Because Caissie was instructed he could plead guilty, not guilty, or nolo contendere and Caissie refused, there was no error in the circuit court's refusal to accept Caissie's plea of "non assumpsit by way of confession and avoidance," and to instead enter Caissie's plea as not guilty. (5) Because the traffic tickets at issue complied with Uniform Rule of Circuit and County Court 7.06's mandate to plainly and concisely set forth the essential facts underlying the respective charges with sufficient clarity and definiteness, Caissie was adequately notified of the nature and cause of the accusations against him. (6) Because the public defender was fully capable of serving as



Caissie’s “next friend” counsel, no manifest error is found in the circuit court’s denial of Caissie’s request to voir dire the public defender. (7) Because Mississippi law prohibits any person from engaging in the practice of law in the state who has not been licensed according to the law, there was no error in the circuit court’s denial of Caissie’s request for a “next friend” counsel who was not a licensed attorney. (8) Because Caissie, the appellant, failed to provide authority and support for his assignments of error, the appellate court is under no duty to consider the assignments of error. (9) Because the circuit court never actually entered a ruling on the Town’s judgment of the audio recording, the appellate court refuses to address the issue for the first time on appeal. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

**Affirmed - 2016-KM-00973-COA (Mar. 6, 2018)**

Opinion by Judge Tindell

Hon. Stanley Alex Sorey (Smith County Circuit Court)

*Pro se* for Appellant - David Garner for Appellee

Briefed by [Mary-Katherine Black](#)

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## MANNING V. STATE

### CRIMINAL - FELONY

**EVIDENCE - EXPERT TESTIMONY - CELL PHONE TOWERS** - Testimony that goes beyond the simple descriptions of cell-phone basics, and specifically testimony that purports to pinpoint the general area in which the cell phone user was located based on historical cellular data, requires scientific, technical, or other specialized knowledge and expert testimony

**EVIDENCE - REVERSAL - REASONABLENESS STANDARD** - When reviewing a challenge to the sufficiency of the evidence, the court will reverse only if the facts and inferences point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty

**CRIMINAL LAW - WITNESS INTIMIDATION - ELEMENTS** - A person commits the crime of intimidating a witness if he intentionally or knowingly harasses or intimidates, or attempts to threaten, harass or intimidate, a witness or a person reasonably expected to be a witness

### FACTS

Christopher Houston was the victim of a drive-by shooting in Starkville while standing on his front lawn. Houston’s girlfriend, Natalla Carter, was inside the house and came outside when she heard the shots. Carter later testified that Houston told her that “Papoose” (Immanuel Manning’s street name) had shot him. Houston also identified Manning as the shooter to a police officer who arrived on the scene shortly before Houston’s passing. Later, at the hospital, Carter told the same officer, Mahyar Netadji, that she believed that Manning would be fleeing to Jackson. Netadji then interviewed Houston’s neighbor, who said he saw a gray Pontiac Bonneville drive into the area before the shooting. He told Netadji that he saw a man wearing mustard colored pants and a dark colored jacket running towards the car after he heard the shots. Law enforcement was able to obtain Manning’s cell phone number, which was used to discover where Manning had been using his phone throughout the day. This information eventually led to Manning’s arrest in Pearl, Mississippi. Manning was eventually released on bond. Later, Carter encountered Manning in a parking lot, where he allegedly made kissing gestures at her and said something that she took as a threat (although she could not remember exactly what was said). Carter filed charges against Manning shortly after. Manning was indicted and charged with first-degree murder and witness intimidation, and the jury found him guilty. Manning appealed.

### ISSUE

Whether (1) the testimony concerning the cell-phone towers and pings was inadmissible based on it being improper lay opinion testimony; (2) the State presented insufficient evidence to support the conviction for witness intimidation;

(3) a jury instruction constructively amended Manning's indictment; and (4) Manning's conviction should be reversed based on retroactive misjoinder.

### **HOLDING**

(1) Because Manning's attorney failed to object to the testimony regarding cell phone towers, this issue was waived on appeal. (2) Because the jury found Carter's testimony as to the threatening nature of Manning's gestures credible, it was reasonable for the jury to find him guilty of witness intimidation. (3) Because Manning's lawyer failed to object to the jury instruction during trial, this issue was waived on appeal. (4) Because the omission of an overt act in the jury instruction did not change the elements of the offense or broaden the grounds upon which he could be found guilty, Manning's conviction was proper. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court

#### **Affirmed - 2016-KA-01301-COA (Mar. 6, 2018)**

Opinion by Judge Westbrook

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd & Ladonna Holland (Att'y Gen. Office) for Appellee

Briefed by [Sean Grady](#)

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## **SHOEMAKER V. STATE**

### **CRIMINAL - FELONY**

**INDICTMENTS - GRAND JURY - ELEMENTS** - An indictment must contain (1) the essential elements of the offense charged, (2) sufficient facts to fairly inform the defendant of the charge, and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense

**APPELLATE CLAIMS - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS** - To prove ineffective assistance of counsel, an appellant must prove: (1) the counsel's performance was deficient, and (2) the deficiency was prejudicial

**MISSISSIPPI RULES OF EVIDENCE - BAD ACTS - IMPERMISSIBLE USE** - Rule 404(b) prohibits the use of prior-bad-acts evidence to prove a person's character to show that he acted in conformity with the current charge

**MISSISSIPPI RULES OF EVIDENCE - BAD ACTS - ADMISSIBLE** - Rule 404(b) permits the use of prior bad acts evidence to show motive, opportunity, intent, preparation, plan, knowledge, identity, or lack of mistake

### **FACTS**

Ricky Shoemaker's thirteen-year-old step-granddaughter told her mother that Shoemaker sexually assaulted her on numerous occasions. The State brought charges against Shoemaker for sexual battery and gratification of lust. At trial, the State filed a notice of intent to elicit testimony about prior bad acts that Shoemaker had committed. The State intended to provide another witness, a young family member of Shoemaker, who would also testify that Shoemaker had sexually assaulted her when she was a child. The testimony was ultimately admitted. Shoemaker was convicted of sexual battery and gratification of lust, which carried concurrent fifteen-year sentences, with five years suspended and five years of supervised probation. Shoemaker appealed.

### **ISSUE**

Whether (1) appellant received ineffective assistance of counsel; (2) the indictment was defective; (3) the convictions violate his right against double jeopardy; and (4) the circuit court erroneously admitted prior-bad-acts evidence.

### **HOLDING**

(1) Because the trial record is inadequate to evaluate Shoemaker's claim for ineffective assistance of counsel, the claim for ineffective assistance of counsel is denied without consideration, properly preserving it for a post-conviction relief

motion. (2) Because the State is not required, and could not reasonably specify the dates of alleged abuse, the defective indictment issue is without merit. (3) Because the gratification of lust charge is not a lesser-included offense of sexual battery and, further, is procedurally barred, the double jeopardy claim is without merit. (4) Because the circuit court properly determined the probative value of the evidence outweighed its prejudicial value, and the circuit court also provided an appropriate limiting instruction to the jury, the issue over admission of prior-bad-acts evidence is without merit. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2016-KA-00983-COA (Mar. 6, 2018)**

Opinion by Judge Tindell

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

Justin Taylor Cook (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att’y Gen. Office) for Appellee

Briefed by [Addison K. Watson](#)

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