

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 27, 2018**SUPREME COURT - CIVIL CASES****KENNEDY V. STATE****CIVIL**

APPELATE PROCEDURE - NOTICE OF APPEAL - PREMATURE - Under Miss. R. App. P. 4, notice of appeal shall be filed with the clerk of the trial court within thirty days after the date of entry of the judgment or order appealed from, and a notice of appeal filed after the announcement of a decision or order, but before the entry of a judgment or order, shall be treated as filed after such entry and on the day of entry

FACTS

In 1997, Eric Kennedy was indicted in Hinds County for capital murder stemming from the burglary and subsequent murder of Thomas Wood. On June 10, 1998, Kennedy entered a guilty plea to the lesser-included offense of murder. On December 16, 2013, Kennedy filed a second motion for post-conviction relief in Hinds County Circuit Court. On June 25, 2014, Kennedy filed a petition for a writ of mandamus in the Supreme Court, requesting that the circuit court be compelled to rule on his PCR motion. On August 29, 2014, the Hinds County Circuit Court denied Kennedy's PCR motion. However, the August 29 order was never provided to Kennedy. Additionally, the August 29 order was not entered on the docket until October 2015, more than thirteen months after it had been signed and stamped. On November 18, 2014, Kennedy filed a notice of appeal in the circuit court as well as a motion for an out-of-time appeal, which was denied by the Hinds County Circuit Court and was appealed by Kennedy to the Court of Appeals. On April 13, 2016, Kennedy filed a motion to treat his June 25, 2014 appeal as a direct appeal. On May 25, 2016, the Supreme Court entered an order holding that Kennedy had timely perfected an appeal of the order denying his PCR motion because the August 29 Order had not been filed and docketed until 2015. The Court of Appeals failed to consider the Supreme Court's order of May 25, 2016 when deciding on the November 18 Appeal and affirmed the Hinds County Circuit Court in denying Kennedy's motion for an out-of-time appeal. Kennedy petitioned for certiorari.

ISSUE

Whether the Court of Appeals erred by affirming the trial court's denial of Kennedy's motion for an out-of-time appeal.

HOLDING

Because the Supreme Court previously found Kennedy's November 18 Appeal to be timely in the May 25 Order, and the Court of Appeals failed to consider the May 25 Order in ruling on the November 18 Appeal, the Court of Appeals erred in affirming the trial court's denial of Kennedy's November 18 Appeal. Therefore, the Supreme Court reversed and remanded the judgment of the Court of Appeals for an opinion on the merits addressing Kennedy's second PCR motion.

Reversed & Remanded - 2016-CT-00755-SCT (Sept. 27, 2018)

En Banc Opinion by Chief Justice Waller

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

Pro se for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Carson Phillips](#)

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SUPREME COURT - ORDERS

MISSISSIPPI BAR V. HUGHES

COURT ORDER

STATE BAR - RULES OF DISCIPLINE - DISBARMENT - When an attorney is subjected to disciplinary sanctions in another jurisdiction, such sanction shall be grounds for disciplinary action in this state, and certification of such sanction by the appropriate authority of such jurisdiction shall be conclusive evidence of the guilt of the offense or unprofessional conduct on which the sanction was ordered

FACTS

Yvonne L. Hughes was removed from judicial office based on the recommendation of the Judiciary Commission of Louisiana. The Commission then filed fifteen formal charges against Hughes based on her activities as an attorney and three formal charges based on her activities as a judge. Among other findings, the Court found that as an attorney Hughes had demonstrated a pattern of taking money from clients, failing to perform the services for which she was retained, and refusing to refund her clients' money. On May 11, 2007, the Louisiana Supreme Court issued an order permanently disbaring Hughes. Subsequently, the Mississippi Bar filed a formal complaint against Hughes in the Supreme Court of Mississippi. The Bar requested reciprocal discipline based on the Louisiana disbarment pursuant to Rule 13 of the Mississippi Rules of Discipline.

ORDER

Hughes did not respond to the Mississippi Bar's motion for reciprocal discipline and thus did not offer any mitigating factors for the Court to consider. The Mississippi Supreme Court ordered: (1) Hughes permanently disbarred from the practice of law; (2) notice of Hughes's disbarment; (3) the clerk forward an attested copy of the order to Hughes and the Executive Director of the Bar; (4) within thirty days following entry of this order, Hughes notify her clients and affected courts of her disbarment and disburse all funds held in trust; (5) within forty-five days following entry of this order, Hughes file an affidavit attesting to her clients' notification; (6) the clerk forward a copy of the order to the clerks of the United States District Courts for the Northern and Southern Districts of Mississippi, the United States Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States; and (7) assessment of costs of the formal complaint to Hughes.

Granted - 2018-BD-00196-SCT (Sept. 25, 2018)

En Banc Order by Justice Kitchens

Briefed by [Karen Lott](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 25, 2018

COURT OF APPEALS - CIVIL CASES

FERGUSON V. MISS. DEP'T OF PUB. SAFETY

CIVIL - OTHER

PARTIES - NAMED DEFENDANT - INTEREST - Named defendants are by their very nature interested parties; even if a plaintiff's intent is for declaratory relief to compel an action by a named defendant, said defendant does not become an uninterested party

APPEAL - SEX OFFENDER REGISTRATION - EXPUNGEMENTS - The Supreme Court in *Stallworth* held that expungement returns an offender to pre-conviction status

FACTS

Chelsey Ferguson pled guilty to disseminating sexually oriented material to a minor. The trial court sentenced Ferguson to one year in county jail. The trial court then suspended all of Ferguson's sentence, placed her on probation for a year, and required her to register as a sex offender. Five years later, Ferguson filed a successful expungement petition. The Mississippi Department of Public Safety ("MDPS") refused Ferguson's request for relief from her requirement to register as a sex offender. Ferguson filed a complaint, and the trial court ruled that she still must register as a sex offender after the expungement. Ferguson appealed.

ISSUES

Whether (1) MDPS had authority to challenge Ferguson's request for relief from duty to register as a sex offender; and (2) Ferguson still must register as a sex offender after the expungement.

HOLDING

(1) Because the Supreme Court has allowed MDPS's intervention in previous similar cases, and Ferguson named MDPS as the sole defendant, MDPS's intervention in this case was proper. (2) Because the Supreme Court has previously held that the expungement of an offense restores a petitioner to pre-conviction status, the expungement relieves Ferguson of any duty to register as a sex offender. Therefore, the Court of Appeals reversed the judgment of the Warren County Circuit Court.

CONCURRENCE

Judge Carlton concurred with the result, however, she believes that the precedent established in *Stallworth* should be overruled because the language of the Mississippi statute, unlike the Maryland statute at issue in *Stallworth*, does not allow for expunction.

Reversed & Rendered - 2017-CA-00912-COA

Opinion by Judge Greenlee - Concurrence by Judge Carlton

Hon. Isadore W. Patrick Jr. (Warren County Circuit Court)

Paul E. Rogers for Appellant - Anthony Louis Schmidt Jr. & Lora Elizabeth Hunter for Appellee

Briefed by [Andie Szabo](#)

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HARRIS V. STONE CTY. BD. OF SUPERVISORS

CIVIL - WORKERS' COMPENSATION

CIVIL PROCEDURE - WORKERS' COMPENSATION - APPEALS - Under *Bennett*, where findings of fact are unsupported by substantial evidence, the Court will reverse the Commission's decision

CIVIL PROCEDURE - WORKERS' COMPENSATION - PRIMA FACIE CASE - To establish a prima facie case for permanent total disability, the claimant has the burden to show he has sought and been unable to find work in the same or other employment

FACTS

Rob Harris was injured in the course of his work for Stone County. After recovering from multiple surgeries, Harris's doctor determined that Harris was able to work while sitting frequently and standing only occasionally. Given his educational and vocational history, Harris subsequently had difficulty securing employment that met his physical

limitations. The Mississippi Worker's Compensation Commission determined Harris was eligible for only partial disability instead of permanent total disability. Harris appealed.

ISSUES

Whether (1) Harris met his burden to establish permanent total disability; and (2) Stone County failed to rebut Harris's prima facie showing of permanent total disability.

HOLDING

(1) Because Stone County informed Harris that there were no positions available within his physical limitations and he had applied for other jobs without success, Harris met his burden to establish permanent total disability. (2) Because Harris could not provide evidence that suitable work was available to him, Stone County failed to rebut Harris's prima facie case of permanent total disability. Therefore, the Court of Appeals reversed the judgment of the Mississippi Workers' Compensation Commission.

Reversed & Rendered - 2017-WC-01396-COA (Sept. 25, 2018)

Opinion by Chief Judge Lee

Mississippi Workers' Compensation Commission

Yancy B. Burns for Appellant - Walter J. Eades for Appellee

Briefed by [Jack Schultz](#)

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IN RE BURRIS V. BURRIS

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - SUMMARY JUDGMENT - WILL CONTEST - Under Miss. R. Civ. P. 56, the contestant of a will may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial

WILLS & ESTATES - TESTAMENTARY CAPACITY - FACTORS - A determination of testamentary capacity is based on three factors: (1) whether the testatrix has the ability at the time of the will to understand and appreciate the effects of her act; (2) whether the testatrix has the ability at the time of the will to understand the natural objects or persons to receive her bounty and their relation to her; (3) whether the testatrix is capable of determining at the time of the will what disposition she desired to make of her property

WILLS & ESTATES - UNDUE INFLUENCE - CONFIDENTIAL RELATIONSHIP - A presumption of undue influence arises in a will contest when a beneficiary occupies a confidential relationship with the testator and there is active participation by the beneficiary in either procuring the will or in preparing the will

FACTS

Eddie Burris executed his last will and testament, leaving his entire estate to Renee Burris, his wife and executrix of his Estate. After Eddie's death, Renee's petition to probate the will in chancery court was granted. Eddie's only child, Milt Burris, to whom Eddie bequeathed a single dollar, filed a complaint contesting the validity of the will. Renee moved for summary judgment on the issues of Eddie's testamentary capacity and undue influence by Renee. Finding no genuine issues as to any material fact, the chancery court granted summary judgment. Milt appealed.

ISSUE

Whether the chancellor erred in granting summary judgment on the issues of testamentary capacity and undue influence rather than allowing these issues to be determined by a jury.

HOLDING

(1) Because the key to testamentary capacity is mental competency at the time the will is made, the contestant of a will in a summary judgment motion must allege specific facts showing that there is a genuine issue on this for trial, and

because Milt produced no evidence that his relationship with Eddie was no longer estranged or that Eddie lacked mental capacity at the time he created the will, the chancellor did not err in granting summary judgment on the issue of testamentary capacity. Further, because a presumption of undue influence arises in a will contest when a beneficiary occupies a confidential relationship with the testator and there is active participation by the beneficiary in either procuring the will or in preparing the will, and because Milt produced no evidence beyond Renee's confidential relationship with Eddie that she was present during the discussions of the will prior to, during, or after its execution, or that she arranged Eddie's appointments with the attorneys or paid for their services in the procurement of his will, the chancellor did not err in granting summary judgment on the issue of undue influence. Therefore, the Court of Appeals affirmed the judgment of the Amite County Chancery Court.

Affirmed - 2017-CA-01160-COA (Sept. 25, 2018)

Opinion by Presiding Judge Irving

Hon. Debbra K. Halford (Amite County Chancery Court)

Marc E. Brand for Appellant - Edwin L. Bean Jr. for Appellees

Briefed by [Tucker Hood](#)

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ROBERTS CONTRACTING, INC. V. MERSINO DEWATERING, INC.

CIVIL - CONTRACT

CIVIL - CONTRACTS - EXECUTION - Parties may agree to be bound by their written contract even though it is not signed by either one of them, or when it is signed by only one of them

CIVIL - CONTRACTS - INTERPRETATION - When the terms of a contract are vague or ambiguous, they are always to be construed more strongly against the party preparing the doubtful textual provisions

CONTRACTS - JUDGMENTS - DAMAGES - Damage awards are findings of fact that are only overturned when the trial judge has abused his discretion or in exceptional cases where such awards are so gross as to be contrary to reason

FACTS

Roberts Contracting Inc. ("RCI") served as the general contractor for DeSoto County Regional Utility Authority ("DeSoto County") on a project of a portion of DeSoto County's regional sewer system. RCI installed subsurface-mainline-sewer pipe for the project. RCI subcontracted Mersino Dewatering Inc. ("MDI") to perform dewatering for the project. MDI sent RCI a contract for the dewatering aspects of the project. The MDI contract included detailed price provisions and scope of work. Specifically, it stated that after six weeks each well would be provided at a rental price of \$600 per well per week, but did not state at what stage of the project the six-week period would commence. RCI executed and returned the MDI contract, then submitted a subcontract to MDI. The subcontract included a general scope-of-work paragraph and a general overall-pricing provision. MDI executed the subcontract. MDI also provided certain pumps and accessories (trash pumps) to RCI to use on the project. There was no signed written agreement between the parties regarding the trash pumps, but the parties operated in accord with the payment provisions of a trash-pumps rental proposal sent to RCI. Prior to trial, the trial court denied RCI's motion in limine to exclude testimony and evidence regarding MDI's damages. The DeSoto County Circuit Court held that RCI's contractual breaches entitled MDI to damages and prejudgment interest. After trial, MDI's motion for clarification on the issue of prejudgment interest was denied. RCI appealed. MDI cross-appealed regarding the trial court's failure to delineate the method for calculating prejudgment interest.

ISSUES

Whether the trial court erred in (1) failing to properly interpret and enforce the multiple contracts between the parties; (2) finding breach on the part of RCI; (3) denying RCI's motion in limine to exclude certain damage testimony; (4) its award of damages to MDI; (5) failing to rule on RCI's affirmative defenses; (6) finding the award was based on liquidated contractual damages; and (7) its award of prejudgment interest to MDI.

HOLDING

(1) Because the parties' actions reflected agreement to be bound by the MDI trash-pump proposal, because the price provisions of the MDI contract were not ambiguous, and because the trial judge thoroughly reviewed the evidence, the trial court properly interpreted and enforced the contracts. (2) Because the determination that RCI failed to pay for numerous specific items was supported by substantial evidence, the trial court did not err in finding breach. (3) Because the trial court did not abuse its discretion in admitting MDI's evidence of damages, the trial court properly denied RCI's motion in limine. (4) Because the award was not contrary to reason, the trial court did not abuse its discretion in its award of damages. (5) Because the first-material-breach defense had no support in the record, and because the trial court granted RCI set-offs in the damage calculation, the trial court properly addressed RCI's affirmative defenses. (6) Because the detailed calculation following the specific terms set forth in the contracts reflected the liquidated nature of the damage award, the trial court did not abuse its discretion. (7) Because neither the trial court nor the contracts specified how the interest was to be computed, and because ambiguous or vague terms of a contract are construed against the drafter, the trial court properly determined prejudgment interest. Therefore, the Court of Appeals affirmed as modified the judgment of the DeSoto County Circuit Court.

PARTIAL CONCURRENCE

Presiding Judge Irving agreed with the majority opinion except the discussion regarding the prejudgment interest calculation. He argued the court was procedurally barred from addressing the issue of prejudgment interest because MDI did not appeal the denial of its motion for clarification on the issue. He further argued that while it is true that an ambiguous contract is construed against its drafter, the contract was not ambiguous but merely silent. Therefore, he would affirm the judgment but remand the case for proper calculation of the prejudgment interest.

Affirmed as Modified - 2016-CA-00945-COA (Sept. 25, 2018)

En Banc Opinion by Judge Tindell - Partial Concurrence by Presiding Judge Irving

Hon. Robert P. Chamberlin (DeSoto County Circuit Court)

Stephen Fred Libby & Adam M. Nahmias for Appellants - Christopher Daniel Meyer & Bradley Barron Vance for Appellee

Briefed by [Baxter Geddie](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BATEMAN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURE - FILING OF MOTIONS - Miss. Code Ann. § 99-39-7 states that the defendant must obtain permission from the Mississippi Supreme Court to seek post-conviction relief from the circuit court if the criminal defendant's case was affirmed on direct appeal

POST-CONVICTION RELIEF - PROCEDURE - MOTION FRAMEWORK - *Edmond* states that the UPCCRA repealed post-conviction use of habeas corpus and implemented a motion framework for post-conviction collateral review of challenges to convictions or sentences as opposed to pre-conviction challenges

POST-CONVICTION RELIEF - PROCEDURE - REASONABLE TIME OF FILING - Under Miss. R. Civ. P. 60(b)(4) and (b)(6), the trial court may provide relief from judgment when it is void of for any other reason justifying relief, and a motion must be made in a reasonable time

FACTS

After being indicted for three counts of sexual battery and two counts of lustful touching of a child, Clayton Paul Bateman filed a "Petition for Habeas Corpus in Pre-Conviction" one year before his trial, claiming that he was illegally imprisoned and requesting immediate release. Bateman claimed that (1) no court within the State had jurisdiction over

his case; (2) the State took his liberty by fraud; (3) his indictment was due to lack of jurisdiction; and (4) the court's officers were illegitimate agents of the State. The petition was denied, and Bateman was convicted of two counts of sexual battery and two counts of lustful touching of a child with a sentence of ninety years. Bateman filed a "Motion for Relief of Judgments" four years after his conviction, claiming that the judgment was void and the State committed a fraud upon the court because it lacked jurisdiction. The Harrison County Circuit Court treated the motion as one for post-conviction relief and held that it lacked jurisdiction to hear the motion because Bateman failed to request permission to file the motion. Bateman appealed.

ISSUES

Whether (1) the circuit court misconstrued Bateman's motion as one for PCR; and (2) the State lacked jurisdiction over his entire criminal proceeding.

HOLDING

(1) Because Bateman had already been convicted before he filed the motion, the circuit court did not err in considering his motion as one for PCR. (2) Because Bateman did not obtain permission from the Mississippi Supreme Court, the circuit court properly dismissed the motion for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-CP-01353-COA (Sept. 25, 2018)

Opinion by Judge Barnes

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

Pro se for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Lauren Rogers](#)

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WALDEN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF

- Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - PREJUDICE - To show prejudice, the claimant must show that, but for his attorney's errors, there was a reasonable probability that the result would have been different

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL STRATEGY

Counsel's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections falls within the ambit of trial strategy does not give rise to an ineffective assistance of counsel claim

FACTS

Nathaniel Walden was convicted of murder and shooting into an occupied dwelling after shooting and killing his sister-in-law, Mary Walden. Following an evidentiary hearing on Walden's PCR motion in which he asserted ineffective assistance of counsel, the Holmes County Circuit Court denied Walden's motion on the merits. Walden appealed.

ISSUES

Whether (1) the doctrine of collateral estoppel required a finding of ineffective assistance of counsel; and (2) the circuit court erred in denying Walden's ineffective-assistance-of-counsel claim.

HOLDING

(1) Because the Court's previous determination regarding the jury instruction did not require or foreclose a finding that Walden's counsel was ineffective, collateral estoppel did not apply. (2) Because the circuit court's determination that Walden failed to meet the *Strickland* standard was not clearly erroneous and because the accident defense was not the only strategy and the jury was instructed on alternate theories, the circuit court did not err in denying Walden's ineffective assistance of counsel claim. Therefore, the Court of Appeals affirmed the judgment of the Holmes County Circuit Court.

Affirmed - 2017-CP-00515-COA (Sept. 25, 2018)

Opinion by Chief Judge Lee

Hon. Jannie M. Lewis (Holmes County Circuit Court)

Pro se for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Katie Humphries](#)

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COURT OF APPEALS - CRIMINAL

PALMER V. STATE

CRIMINAL - FELONY

CRIMINAL - GRATIFICATION OF LUST - AGE OF DEFENDANT - A jury may reasonably infer that a defendant was over eighteen years old from testimony that the defendant has a daughter and has been married and separated for a number of years, and by observing the defendant during trial

CRIMINAL - GRATIFICATION OF LUST - SUFFICIENCY OF EVIDENCE - Unsupported testimony by victim that defendant touched a minor's chest over and under her shirt, and below the waist inside of her underwear is sufficient to support a guilty verdict where the testimony is not discredited by other credible evidence

CRIMINAL - APPEAL - WEIGHT OF THE EVIDENCE - In determining whether a jury verdict is against the overwhelming weight of the evidence, the court will reverse a verdict only when the circuit court abused its discretion in failing to grant a new trial

FACTS

Gregory Palmer lived and worked at the Hidden Springs Arabian Horse Farm with Betty Skinner and K.S., a minor child. Skinner was the great aunt and legal guardian of K.S., and K.S. referred to her as her mother. Palmer worked on the farm as a farmhand, caregiver for another resident suffering from Parkinson's disease, and K.S.'s teacher. One evening, K.S., her brother, Palmer's daughter, and another friend went to Palmer's house for a sleep-over, where Palmer was to take the children to the flea market the next day. K.S. alleged that Palmer called her to sit in a recliner chair with him, began to rub her shoulders, and touched her chest over and under her shirt, and touched the skin under her bra and inside of her underwear without penetration. After Skinner called the police, Captain Johnny Martin was dispatched to the farm and was told that Palmer touched K.S.'s breast and inside her underwear. Martin spoke to Palmer on the phone about the allegations. Five days later, Palmer turned himself in to authorities. Palmer was convicted of gratification of lust. During trial, K.S. testified that she was fifteen years old. Palmer appealed.

ISSUES

Whether (1) the evidence was sufficient as to the element of Palmer's age at the time of the alleged offense; and (2) the guilty verdict was contrary to the overwhelming weight of the evidence.

HOLDING

(1) Because testimony was put forth at trial that Palmer had a fourteen-year-old daughter and that Palmer and his wife had been separated for fifteen years, along with the fact the jury observed Palmer during trial, the jury could have

reasonably inferred that Palmer was over the age of eighteen at the time of the alleged event. (2) Because K.S. testified that Palmer started rubbing her shoulder, touched her chest over and under her shirt, and below the waist inside of her underwear, immediately reported the incident to Skinner, and the investigator testified that her behavior was consistent with the actions of a victim of a sex crime, the jury's verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Newton County Circuit Court.

Affirmed - 2017-KA-01164-COA (Sept. 25, 2018)

Opinion by Judge Westbrook

Hon. Christopher A. Collins (Newton County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Chadwick Lamar](#)

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ROBINSON V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - INCHOATE CRIMES - ATTEMPTED ARSON - The evidence will be sufficient to support an indictment of first-degree arson under Miss. Code. Ann. § 97-17-1, rather than attempted arson, if the evidence shows the accused caused the house to be burned

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF THE EVIDENCE - An appellate court will defer to the judgment of the trial court unless the conviction in the case is contrary to the overwhelming weight of the evidence such that allowing the conviction to stand would sanction an unconscionable injustice

FACTS

Willie Robinson had been renting a room in Alice Crandle's house for about a month when, on March 20, 2015, Crandle told him to leave after the two had an argument. Crandle testified that, as her sons Damien and Cedric were moving Robinson's property out of the house, Robinson said he was going to burn down the house. Cedric also testified that he had heard Robinson tell his work supervisor that he would miss work the next day for being in jail and that he saw Robinson and his uncle at a gas station. On March 21, 2015, Crandle awoke to the sound of Robinson's voice outside her window. She discovered that her front and rear porches were on fire, and she called her son, Cedric. When Cedric arrived, he doused the flames and flagged down Gulfport Police Officer Brantley Cumberland, who was patrolling the area. Cedric stayed after Officer Cumberland left, and he testified that Robinson returned carrying a gas can. Cedric called the police, and Gulfport Police Officer Landon Williams came to the Crandle home. Officer Williams discovered Robinson standing in the middle of the road in front of Crandle's house with a gas tank and arrested him. Experts later identified the source of the fire at the Crandle home as an "ignitable liquid," such as gasoline. Robinson was indicted and convicted of first-degree arson. He filed a motion for a new trial on May 24, which the trial court denied. Robinson appealed.

ISSUES

Whether (1) the evidence was insufficient to support an indictment for first-degree arson, and (2) the verdict was against the weight of the evidence.

HOLDING

(1) Because the evidence was sufficient to show or prove that Robinson caused Crandle's house to burn, rather than just set fire to the house, the evidence supported an indictment for first-degree arson. (2) Because the overwhelming weight of the evidence supported the trial court's determination, the verdict was not against the weight of the evidence. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-00786-COA (Sept. 25, 2018)

Opinion by Presiding Judge Irving

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)
W. Daniel Hinchcliff and George T. Holmes (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee
Briefed by [Michael Lambert](#)

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WEAVER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DIRECTED VERDICT - JURISDICTION - Evidence that a crime occurred within a county based upon a defendant’s statement and the location of the victim is enough to support a finding of jurisdiction

CRIMINAL LAW - JURY INSTRUCTION - IMPERFECT SELF-DEFENSE - Imperfect self-defense is a theory that can reduce an intentional killing from murder to manslaughter where the killing is committed without malice but under a bona fide but unfounded belief that it was necessary to prevent great bodily harm

FACTS

Kenneth Weaver was charged with second-degree murder of his girlfriend, Sara Lynn Beard. Beard was found in a lake in Lauderdale County with a gunshot wound to her head. Weaver gave several conflicting stories to law enforcement and in trial as to what occurred, the common thread being that Weaver and Beard left a casino in Philadelphia, Mississippi and got into an argument on the way home. Beard, while driving, sprayed Weaver with pepper spray, at which point Weaver brandished his gun, pulled back the hammer, and then fired, either by accident or purposely. Weaver then dumped her body in the lake. Weaver never spoke of another lake throughout these retellings until trial. Weaver also placed several 911 calls that night, all of which were placed in Neshoba County. At trial, Weaver made motions for a directed verdict both at the close of the State’s and defense’s cases in chief, stating the State had failed to prove the jurisdictional element beyond a reasonable doubt. Both motions were denied, as was a jury instruction on imperfect self-defense, and Weaver was convicted of second-degree murder. Weaver appealed.

ISSUES

Whether the trial court erred in (1) overruling Weaver’s motion for a directed verdict or, in the alternative, his motion for a new trial; and (2) refusing his jury instruction on imperfect self-defense.

HOLDING

(1) Because Beard’s body was found in a lake in Lauderdale County, and Weaver admitted to dumping the body a few yards from where the car was located in his third statement to police, there was sufficient evidence in the record to support a jurisdictional finding in favor of the State. (2) Because there was no evidence of an intention to shoot Beard, and there was no evidentiary foundation to support the instruction of imperfect self-defense, the trial judge did not abuse his discretion in denying Weaver’s jury instruction on imperfect self-defense. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

DISSENT

Judge Fair argued that there was some evidence in the record that Weaver had intended to shoot Beard, and that there was evidence Weaver had a bona fide fear for his life at the time. Because there was evidence, no matter how flimsy, Weaver’s proposed jury instruction on imperfect self-defense should have been given. Therefore, Judge Fair would reverse and remand.

Affirmed - 2017-KA-00255-COA (Sept. 25, 2018)

Opinion by Presiding Judge Irving - Dissent by Judge Fair

Hon. Lester F. Williamson Jr. (Lauderdale County Circuit Court)

George T. Holmes & Phillip Broadhead (Pub. Def. Office) for Appellant - Katy Taylor Gerber (Att’y Gen. Office) for Appellee

Briefed by [James Adamoli](#)

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