

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 7, 2016

SUPREME COURT - CIVIL CASES

ROOP V. SOUTHERN PHARM. CORP.

CIVIL - OTHER

WRONGFUL TERMINATION - JNOV - WEIGHT OF EVIDENCE - Judgment notwithstanding the verdict is not proper if there is evidence of such quality and weight that reasonable fair-minded jurors could reach different conclusions

EVIDENCE - TESTIMONY - CONFLICTING TESTIMONY - When there is conflicting testimony, the jury determines the weight and worth of the witnesses' testimony and credibility at trial

TORTS - DAMAGES - PUNITIVE DAMAGES - When a jury awards compensatory damages, an evidentiary hearing should be held to determine whether punitive damages might be considered

FACTS

Sothorn Pharmaceuticals Corporation (“SPC”) is a medical supply company owned principally by Glenn Lingle and Doug Martin. To increase the company’s diabetic sales business, Henry Roop was hired to serve as the Diabetic sales Director. Roop’s job primarily focused on SPC’s poorly performing branches, including the branch in Brandon, Mississippi. In July 2009, Roop along with the Brandon branch manager Johnny Pettigrew, met with Patrick Gregory to solicit sales of SPC’s diabetic equipment and gave Patrick a SPC employment application for his wife, Josephine Gregory. After the meeting Pettigrew told Roop that SPC was going to get in trouble because Josephine was not going to actually perform work or services for SPC. Roop called Martin and told him that he was unaware of the side deal and that it was illegal to give someone a kickback to induce referrals. Martin called Roop back the next day and fired him. Roop sued for wrongful termination on the basis that he was fired for reporting illegal activity. The trial court found for SPC and granted SPC’s motion for JNOV on the issue of whether Roop was terminated for reporting illegal activity. Roop appealed.

ISSUES

Whether the trial court erred in (1) granted SPC’s motion for JNOV on the issue of whether Roop was terminated for reporting illegal activity and (2) denying punitive damage instruction without conducting an evidentiary hearing to determine whether punitive damages were appropriate.

HOLDING

(1) Because there was substantial evidence introduced at trial for the jury to conclude reasonably that SPC fired Roop for reporting illegal activity, the trial court erred by setting aside the jury verdict and granting the JNOV motion. (2) Because the trial judge erred in overturning the jury’s verdict on the wrongful termination claim, the trial court erred in not ruling on punitive damages. Therefore, the Supreme Court reversed and remanded the judgment of the Lowndes County Circuit Court.

Reversed & Remanded - 2014-CA-00551-SCT (Apr. 7, 2016)

Opinion by Chief Justice Waller

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

Jim Waide & Scott W. Colom for Appellant - Jack H. Hayes Jr., Beverly A. Pohl, & Adam G. Rabinowitz for Appellee

Briefed by [Nash Gilmore](#)

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SUPREME COURT - CRIMINAL CASES

BOGGS V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSABILITY - CHARACTER EVIDENCE - Evidence of other crimes, wrongs or acts is admissible as character evidence, but it may be admitted for other purposes, such as proof of motive, opportunity, intent, reparation, plan, knowledge, identity, or absence of mistake or accident

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LIMITING INSTRUCTION - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found and where the defendant fails to request an instruction at the introduction of the evidence there is not error for giving the instruction only at the close of trial

APPEAL - REVERSIBLE ERROR - CUMULATIVE ERROR - Individual errors which are not reversible themselves may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

FACTS

Steven Lee Boggs allegedly had sexual interaction with three minors, K.E., S.S. and D.N., between the summer of 2009 and the summer of 2010. Boggs was indicted for misconduct towards S.S. and K.E.. However, the charge involving S.S. was dismissed on statute-of-limitations grounds. S.S. and D.N. testified for the State in support of Bogg's conviction for his misconduct against K.E.. Boggs was convicted and sentenced to fifteen years in MDOC custody. Bogg's appealed.

ISSUES

Whether (1) the trial court erred in allowing D.N. and S.S. to testify about other allegations of Bogg's sexual misconduct, (2) the trial court gave a proper limiting instruction concerning the testimony admitted under Rule 404(b), and (3) the effect of the cumulative error requires reversal.

HOLDING

(1) Because the trial court clearly concluded that the testimony of S.S. and D.N. established a common plan or scheme by Boggs to use his position of trust to take advantage of young girls and found that this probative value was not outweighed by the risk of unfair prejudice, there was no error. (2) Because the limiting instructions were fairly, though not perfectly, given and announced the applicable rules of law, there was no reversible error. (3) Because there are no individual errors, there can be no cumulative error. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE

Justice Dickinson argued that propensity evidence should not have been allowed in as evidence of motive and that the circuit court did error in failing to tailor the limiting instruction to the purpose for which the evidence was admitted. However it agrees with the admission of evidence regarding Boggs's inappropriate conduct toward D.N. and S.S..

Affirmed - 2014-KA-00194-SCT (Apr. 7, 2016)

Opinion by Chief Justice Waller- Concurrence by Justice Dickinson

Hon. Judge John Huey Emfinger (Rankin County Circuit Court)

Gary Lee Williams and J. Edwards Rainer for Appellant- Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Rod Hickman](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 5, 2016

COURT OF APPEALS - CIVIL CASES

HOLTON V. MISSISSIPPI

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - THREE-YEAR TIME PERIOD - GUILTY PLEA - A challenge to a guilty plea must be brought within three years of the entry of the judgment of conviction; if the defendant pleads guilty, the three-year time period begins when the judgment of conviction is entered

JUDGE RECUSAL - MOTION - THIRTY DAYS - Any party may move for a trial judge's recusal within thirty days of the judge's assignment to the case

INEFFECTIVE ASSISTANCE OF COUNSEL - WAIVER - GUILTY PLEA - When a defendant pleads guilty, his ineffective-assistance-of-counsel claims are waived, unless he can prove that, were it not for counsel's errors, he would not have pleaded guilty and would instead have insisted on going to trial

FACTS

On October 1, 2011 Johnny Holton pled guilty to one count of sexual battery of a child under fourteen and one count of sexual battery of a child under eighteen by a person in position of trust or authority. The final judgment of conviction was entered on October 25, 2011. On November 24, 2014, Holton filed a post-conviction relief (PCR) motion, asserting that his counsel was ineffective and that his defense was prejudiced, rendering his plea involuntary. The trial court summarily denied Holton's PCR motion. Holton appealed.

ISSUES

Whether (1) the defendant's PCR motion was timely; (2) the trial judge should have recused himself sua sponte since he had accepted the defendant's guilty plea; and (3) the defendant's counsel was ineffective.

HOLDING

(1) Because Holton pled guilty, his three-year time period began on the date of his judgment of conviction, his PCR motion was thus untimely. (2) Because Holton did not file the motion for the judge's recusal within thirty days of the judge's assignment to the case, Holton's argument for the judge's recusal is procedurally barred. (3) Because Holton was unable to prove that were it not for counsel's errors, he would not have pleaded guilty and would instead have insisted on going to trial, his ineffective assistance of counsel claim lacks merit. Therefore, the Court of Appeals affirmed the judgment of the Winston County Circuit Court.

Affirmed - 2015-CP-00008-COA (Apr. 5, 2016)

Opinion by Judge Ishee

Hon. C.E. Morgan III (Winston County Circuit Court)

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

Briefed by [Shayna Giles](#)

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JONES V. WAL-MART STORES EAST

CIVIL - PERSONAL INJURY

PREMISES LIABILITY - MAINTENANCE - DANGEROUS CONDITION - If the operator is aware of a dangerous condition, which is not readily apparent to the invitee, he is under a duty to warn the invitee of such condition

FACTS

Barbara Jones alleges that she tripped and fell in a pothole/crack in the parking lot of the Wal-Mart Super Center on Highway 49 in Gulfport. Jones sued Wal-Mart and two of its employees for negligence. The trial court granted Wal-Mart summary judgment. Jones Appealed.

ISSUE

Whether the trial court erred in granting Wal-Mart summary judgment.

HOLDING

Because Jones could not say that the crack at issue caused her to fall, there is no evidence that the store manager had actual or constructive knowledge of the crack. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2014-CA-01826-COA (Apr. 5, 2016)

Opinion by Judge Wilson

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court)

David Paul Pitre for Appellant - Wilbur Pemble Delashment, Chad Christopher Marchand & Ashley Powell Griffin for Appellees

Briefed by [Sean Doran](#)

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LEWIS V. JACKSON COUNTY YOUTH COURT

CIVIL - CUSTODY

APPEAL - STANDARD OF REVIEW - FINDINGS OF FACT - The youth court judge is the trier of fact, and the court will reverse her findings only if the evidence is opposed to the finding with such force that reasonable men could not have found as the youth court did by a preponderance of the evidence

APPEAL - FINDINGS OF FACT - CREDIBILITY OF WITNESSES - Weighing the credibility of witnesses is the province of the youth court, not an appellate court

EVIDENCE - HEARSAY - RECORDS FOR TREATMENT - There is a two-part test for admitting hearsay statements under Rule 803(4): (1) the declarant's motive in making the statement must be consistent with purposes of promoting treatment; and, (2) the content of the statement must be such as is reasonably relied on by the physician

EVIDENCE - HEARSAY - RECORDS FOR TREATMENT - Rule of Evidence 803(4) requires a showing that the proffered statements were made under circumstances substantially indicating their trustworthiness

ADMINISTRATIVE HEARINGS - EVIDENCE - COMPLIANCE WITH RULES - Adjudication hearings shall be conducted under the rules of evidence and rules of court as may comply with applicable constitutional standards

FACTS

Elizabeth Lewis (all names in the opinion are fictitious to protect the privacy of the minor child) told a classmate that her step-father, Phil Lewis, touched her inappropriately. Over the objection of Elizabeth's mother, Betty Lewis, the Jackson County Department of Human Services (DHS) took custody of Elizabeth, Elizabeth's younger brother and Betty's niece. At the hearing, Elizabeth testified that she was sexually abused. The judge declined to allow Betty's -expert witness to sit in the courtroom during the cross examination of Elizabeth. Betty's attorney's indicated that she would not call the expert witness during the initial hearing. The judge warned Betty that the expert must testify in person and the expert's report would not be admitting in evidence. However, when the hearing resumed on June 25, 2014, the expert witness was not present and the judge denied Betty's motion for a continuance. The judge denied Betty's motion to admit the expert's report into evidence. The youth court adjudicated Elizabeth to be a sexually abused child. Betty appealed.

ISSUES

Whether (1) the trial court's finding lacked sufficient evidentiary support, (2) the trial court erred in excluding the expert's report and precluding testimony about statements made on Twitter, and (3) the trial court erred in denying the appellant's motion for a continuance to allow an expert witness to testify.

HOLDING

(1) Because the trier of fact determines issue of credibility of witnesses, there was sufficient evidence to support the finding of fact. (2) Because the appellant sought to introduce the entire expert's report rather than specific statements needed for diagnosis of the children, the report was not admissible under Rule of Evidence 803(4). Further there was no showing that there were circumstances substantially indicating the trustworthiness of the statements because the expert was not present to testify. The appellant's argument that the hearsay rules do not apply in youth court was without merit. (3) Because the decision to grant or deny a continuance is within the trial court's discretion and because the trial court warned the appellant that he expert would need to be subpoenaed and testify in person, there was no error in the failure to grant a continuance. Therefore, the judgment of the Jackson County Youth Court was affirmed.

Minor Adjudicated to be a Sexually Abused Child - 2014-CA-01353-COA (Apr. 5, 2016)

Opinion by Judge Wilson

Hon. Sharon Willis Sigalas (Jackson County Youth Court)

Rick D. Patt for Appellant - Michael Wilson Breland for Appellee

Briefed by [Jacob A. Bradley](#)

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PATRICK V. PATRICK

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATION - APPEAL - WAIVER - A party generally may not appeal a judgment entered by consent or confession

DOMESTIC RELATIONS - APPEAL - WAIVER - A party to a consent judgment may not seek to litigate that which is already settled by consent

DOMESTIC RELATIONS - APPEAL - WAIVER - The only issues that are viable in an appeal where the appellant consented are claims such as fraud, misrepresentation, accident, or mistake

FACTS

Wesley and Catherine Patrick were married in June 2009. They have one daughter. In April 2012, Wesley filed for divorce. Wesley and Catherine both sought legal and physical custody of their daughter. At a hearing, Wesley alleged that Catherine had neglected or abused their daughter. The chancellor referred the allegations to the Department of Human Services ("DHS") to investigate and appointed a guardian ad litem ("GAL") for the child. After an initial trial, the chancellor awarded Wesley—and assigned him the debts and liabilities for—the marital home and two cars. Also, the chancellor found that neither parent was fit for custody and ordered the daughter into foster care. The chancellor also awarded Catherine \$12,910.04 in attorney's and ordered Wesley to pay the remaining balance of the GAL's fees of \$1,4412 because there was no substantiation of neglect as to the allegations of neglect or the deprivation of food. Wesley filed a timely motion for reconsideration. On January 22, 2015, the chancellor entered a "Consent Order on Modification and Reconsideration of Original Decree of Divorce" after the parties had come to an agreement. After the consent order was entered, there was no further action on the parties' respective motions for reconsideration. Wesley appealed.

ISSUES

Whether the chancellor erred in (1) failing to make findings to support his distribution of the marital estate and awarding Catherine seventy-five percent of the equity in the marital home; (2) awarding Catherine attorney's fees; and (3) ordering Wesley to pay all fees of the GAL.

HOLDING

(1) Because Wesley consented to the terms of the agreement, he waived the right to argue on appeal that the chancellor erred in dividing the marital property, (2) awarding attorney's fees, or (3) assessing GAL fees. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

Affirmed - 2015-CA-00335-COA (April 5, 2016)

Opinion by Justice Wilson
Hon. Percy L. Lynchard Jr. (DeSoto County Chancery Court)
Byron Russell Mobley for Appellant - Pro se for Appellee
Briefed by [Alexander Ash](#)

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PATRICK V. RAINES

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - NATURAL PARENT PRESUMPTION - In custody battles between a natural parent and a third party, it is presumed that it is the child’s best interest to remain with his or her natural parent

FAMILY LAW - CUSTODY - NATURAL PARENT PRESUMPTION - The natural parent presumption may be rebutted only if the third party proves by “clear and convincing evidence” that the parent abandoned or deserted the child; this is a factual determination best left to the trial judge

FAMILY LAW - CUSTODY - NATURAL PARENT PRESUMPTION - A natural parent who voluntarily relinquishes custody of a minor child, through a court of competent jurisdiction, has forfeited the right to rely on the existing natural parent presumption and may reclaim custody of the child only upon showing by “clear and convincing evidence” that the change in custody is in the best interest of the child

FAMILY LAW - VISITATION RIGHTS - GRANDPARENT VISITATION - In Mississippi there is no common-law right to grandparent visitation but only a statutory right, and the statute (Miss. Code Ann. §93-16-3(2)) requires proof that the parents have unreasonably denied the grandparent visitation rights with the child

FACTS

Brittany Raines and James Boyd had a son, Hayden, when they were sixteen years old. In 2008, when Hayden was only a one-year-old, James was in the middle of a one-year prison term, and Brittany’s life was so unstable that she voluntarily relinquished temporary custody of Hayden to her mother, Deanna Patrick. James, however, was incarcerated at the time and did not voluntarily relinquish custody of Hayden. Thereafter, Brittany and James remained at least somewhat involved in Hayden’s life but James’s probation was revoked, which led to another year of incarceration, and Deanna’s temporary custody of Hayden stretched to four years. In 2012, James was released from prison, avoided criminal activity, gained steady employment, and Brittany and James had a daughter together. They maintained regular visitation with Hayden and in 2013 they filed a petition for custody of him. Following a hearing in 2014, the chancellor awarded custody to James and Brittany, terminated James’s child support, and ordered the name on Hayden’s birth certificate to be changed from Hayden Raines to Hayden Boyd. Patrick appealed.

ISSUE

Whether the chancellor (1) misapplied the law and manifestly erred by awarding custody to James and Brittany, (2) should have granted Deanna more extensive grandparent visitation, and (3) lacked authority to terminate James’s child support obligations or to order changes to Hayden’s birth certificate.

HOLDING

(1) Because James did not voluntarily relinquish his custody rights, he was entitled to the natural parent presumption and the chancellor properly found that James had not deserted or abandoned Hayden. It was harmless error that the chancellor did not apply the clear-and-convincing-evidence standard to determine that it was in the best interest of Hayden for his mother to have custody, and the chancellor did not manifestly err by awarding custody to James and Brittany. (2) Because Patrick provided no proof that the child’s parents unreasonably withheld visitation, the chancellor’s award of grandparent visitation was adequate. (3) Because Patrick had no residual rights to the payments that James was required to pay to DHS, she lacked standing to challenge either the termination of James’s child support or the order to change Hayden’s name on his birth certificate. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Tate County Chancery Court.

DISSENTS

Chief Judge Lee argued that the chancellor erred when she found that James was able to rely on the natural-parent presumption and applied an erroneous legal standard when she awarded custody to Brittany. Therefore, Chief Judge Lee would reverse and remand both custody awards and the grandparent-visitation award.

Judge Carlton would find that neither Brittany nor James were entitled to the natural-parent presumption, and the record reflected no showing of a material change of circumstances adverse to the best interest of the child by Brittany or James. Therefore, Judge Carlton would reverse the chancellor's award of custody to Brittany and James.

Affirmed - 2014-CA-01255-COA (Apr. 5, 2016)

En Banc Opinion by Judge Wilson - Dissents by Chief Judge Lee & Judge Carlton
Hon. Vicki B. Daniels (Tate County Chancery Court)
Byron Russell Mobley for Appellant - Kirkland Caldwell Willingham for Appellees
Briefed by [Robert T. Noland](#)

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COURT OF APPEALS - CRIMINAL CASES

FREEMAN V. STATE

CRIMINAL – FELONY

EVIDENCE - EXPERT TESTIMONY - RELEVANCE - The experts testimony must be relevant and reliable. It is relevant if it will assist the trier of fact in understanding or determining a fact at issue and reliable if it is based on methods and procedures of science, not unsupported speculation

EVIDENCE - RELEVANCE - INTOXICATION - The defendant can raise the victim's intoxication to demonstrate all the conditions existing at the time of and giving rise to the killing, including the victim's mental state. The defendant may show the deceased's intoxication as bearing upon his motive or intention and the defendant's belief in the imminence of his danger

FACTS

On June 11, 2012 Jessie Freeman was driving his seven-year-old daughter from Brandon, Mississippi to Jackson Mississippi looking for his wife Lenora Freeman. Mr. Freeman located Mrs. Freeman's phone at a motel using GPS technology. When he arrived he found Mrs. Freeman's truck with her sitting in the passenger seat and Alan Ramsey sitting in the driver's seat. Mr. Freeman testified that Ramsey pulled a gun so he grabbed his gun and fired three shots. While a gun was found in Mrs. Freeman's truck it was not loaded. Randolph Falcon witnessed the shooting and testified that Ramsey did not have a gun. The medical examiner testified that both Ramsey and Mrs. Freeman died from gunshot wounds. Ramsey was found to have an unidentified quality of methamphetamine in his system. Mr. Freeman claimed self-defense and wanted to offer an experts opinion that methamphetamine causes aggression, which caused Ramsey to pull a gun and required him to defend himself. Dr. Steven Hayne was allowed to proffer his opinion outside the presence of the jury and admitted that knowing the quality of methamphetamine would be helpful to determine the effect that it would have on behavior. Dr. Hayne's opinion was excluded because it was not based in facts because there was no testimony concerning a quantification of the substance. Freeman appealed.

ISSUES

Whether the trial court erred by refusing to allow Mr. Freeman's expert witness to testify.

HOLDING

Because the testimony offered by Dr. Hayne was speculative at best since it was based upon insufficient facts and data, the trial court did not abuse its discretion in excluding the expert testimony the trial court did not err in refusing Mr. Freeman's experts testimony. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

DISSENT

Judge Carlton disagreed that the testimony was speculative because the expert opinion proffered showed that methamphetamine use increases propensity for violence, regardless of the dosage. Further the exclusion implicates Freeman's Sixth Amendment right to confrontation. Therefore, in his opinion, the trial court did abuse its discretion

Affirmed - 2014-KA-016529-COA (Apr. 5, 2016)

Opinion by Judge Lee

Dissent by Judge Carlton

Hon. Jeff Weill Sr. (Hinds County Circuit Court)

William Scott Mullennix and Percy Stanfield for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Darlan Etienne](#)

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LEWIS V. STATE

CRIMINAL - FELONY

EVIDENCE - REVERSIBLE ERROR - DISCRETION - A trial judge enjoys a great deal of discretion as to the relevancy and admissibility of evidence

CRIMINAL PROCEDURE - DEFENSES - SELF DEFENSE - An assault is justifiable on the ground of self-defense when, at the time of the assault, the defendant had reasonable grounds to apprehend design on the part of the victim to kill, or to do him great bodily harm, and there was an imminent danger of such design being accomplished

CRIMINAL PROCEDURE - SELF DEFENSE - FORFEITURE - The right of self-defense is forfeited when the defendant is the initial aggressor and provokes a difficulty, arming himself in advance, and intending, if necessary, to use his weapon and overcome his adversary

EVIDENCE - RELEVANCE - INTOXICATION - In order for character evidence of a victim's intoxication to be relevant and admissible, the defendant must offer evidence of an overt act of aggression perpetrated against him by the victim and show that the alleged intoxication increased the victim's propensity for violence at the time of the crime

EVIDENCE - CHARACTER EVIDENCE – STATE OF MIND - Evidence of character, and specific acts of the victim toward the defendant, offered to show the defendant's state of mind, are admissible

FACTS

On May 11, 2013 David Lewis shot Patrick McQuirter in the leg after an altercation concerning Lewis's girlfriend and McQuirter's cousin. On October 3, 2013, Lewis was charged with aggravated assault and possession of a firearm by a felon. After a two-day trial, a Hinds County Circuit Court jury found Lewis guilty of both charges. Lewis claimed that McQuirter was intoxicated but was not allowed to testify to that fact. He was sentenced to serve ten years in the custody of the MDOC for aggravated assault and five years for possession of a firearm by a felon, with the sentences running consecutively. Lewis appealed.

ISSUES

Whether the trial court erred in excluding the defendant's testimony, specifically that McQuirter was high on drugs at the time of the assault.

HOLDING

Because Lewis showed no evidence of an overt act of aggression made by McQuirter, offered no specific testimony explaining how cocaine affects McQuirter's propensity for violence, offered no testimony explaining cocaine's effects on propensity for violence in general, and did not show the relevance of the character evidence on his own state of mind at the time of the assault, the trial court did not err in excluding the defendant's testimony. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2014-KA-01244-COA (Apr. 05, 2016)

Opinion by Judge Ishee

Hon. Jeff Weil Sr. (Hinds County Circuit Court)
Erin S. Pridgen (State Pub. Defender's Office) for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellees
Briefed by [Breanna Goff](#)

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WHITEHEAD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - INSUFFICIENT EVIDENCE - The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the accused committed the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - JURY - NEW TRIAL - Factual disputes are properly resolved by a jury and do not mandate a new trial

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - ERROR - When read as a whole, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL PROCEDURE - SEARCH AND SEIZURE - CURTILAGE - The curtilage of a dwelling is a space necessary and convenient, habitually used for family purposes and for the carrying on of domestic employment; it is the yard, garden or field which is near to and used in connection with the dwelling

FACTS

Kimberly Whitehead and her boyfriend, Shane Hulett, were arrested and subsequently charged with possession of pseudoephedrine and ammonium nitrate with the intent to manufacture a controlled substance in violation of Mississippi Code Annotated Section 41-29-313(1)(a)(ii) (Rev. 2013) and with possession of .1 grams or more but less than 2 grams of methamphetamine in violation of Mississippi Code Annotated Section 41-29-139 (c)(1)(b)(Rev. 2013). Hulett pled guilty to both charges. Whitehead filed a motion to suppress the evidence seized from the shed on her grandmother's property where she lived because she claimed the evidence was seized during an illegal search. She further argued that the written consents to search were not valid. Whitehead's grandmother testified that she did not tell the investigators that she owned the shed and thought that she was only consenting to a search of the mobile home. She also stated that Hulett owned the shed behind her home. The Warren County Circuit Court denied Whitehead's request to suppress the evidence seized from the shed. Despite Hulett's and Whitehead's testimonies that Whitehead was not involved in the cooking of methamphetamines, the jury found Whitehead guilty of both charges. Whitehead filed a post-trial motion for a judgment notwithstanding the verdict or a new trial. The court denied the motion. Whitehead appealed.

ISSUE

Whether (1) there was insufficient evidence to find the defendant guilty of either charge; (2) the jury's verdicts were contrary to the overwhelming weight of the evidence; (3) the evidence that led to her convictions was seized without a valid consent to search; and (4) two of the jury instructions were inadequate because they failed to list the precursors that she was charged with possessing.

HOLDING

(1) Because there was sufficient evidence to support both of Whitehead's convictions when viewing the evidence in the light most favorable to the prosecution, the guilty verdict was proper. (2) Because the jury simply did not believe Hulett's testimony and put more weight on other evidence, the jury's verdicts were not contrary to the weight of the evidence. (3) Because it was reasonable to consider the shed as part of the curtilage of the home, Whitehead's grandmother had the authority to consent to a search of the shed and the search was valid. (4) Because the jury instructions were adequate regarding the elements of the offense charged in the indictment when read together as a whole, Whitehead suffered no prejudice. Therefore the Court of Appeals affirmed the judgement of the Warren County Circuit Court.

Affirmed - 2014-KA-00697-COA (Apr. 5, 2016)

Opinion by Judge Ishee

Hon. M. James Chaney, Jr. (Warren County Circuit Court)

Kevin Dale Camp & Jared Keith Tomlinson for Appellant - John R. Henry, Jr. (Att'y. Gen. Office) for Appellee

Briefed by [Kathryn Fowler](#)

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