

**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 17, 2017****SUPREME COURT - CIVIL CASES****GRACELAND CARE CTR. OF NEW ALBANY, LLC v. HAMLET****CIVIL - MEDICAL MALPRACTICE**

**CIVIL PROCEDURE - EX PARTE ORDERS - EFFECTIVE DATE** - Ex parte orders become effective when the order is signed by the judge and leaves the judge's hands

**CIVIL PROCEDURE - INTERLOCUTORY ORDERS - EFFECTIVE DATE** - Interlocutory orders become effective when they are filed with the clerk, except for emergency orders such as restraining orders or certain rulings of a judge that require immediate action such as contempt

**CIVIL PROCEDURE - MOTION OF EXTENSION - GOOD CAUSE** - There is no requirement for good cause when a motion for an extension of time to serve process is timely filed

**FACTS**

In a medical malpractice dispute, Teresa Hamlet moved to extend the time to serve process. The trial court granted the motion. One day before the deadline to serve process set by the first extension, Hamlet moved to extend the time to serve process a second time. The court granted the second extension; however, Hamlet did not file the order for the second extension with the circuit court clerk until three months later. Graceland Care Center of New Albany moved to dismiss Hamlet's complaint because the order for the second extension was not timely filed with the clerk. The trial court denied Graceland's motion. Graceland filed an interlocutory appeal.

**ISSUES**

Whether (1) the order to extend the time to serve process became effective when it was announced and/or signed by the judge or when it was entered into the record by the clerk; and (2) the trial court erred in finding that good cause was not needed in Hamlet's motion for extension.

**HOLDING**

(1) Because the order to extend the time to serve process was an ex parte order, it became effective when it was signed by the judge and left the judge's hands. If it were an interlocutory order, then it would have taken effect when it was filed with the clerk due to the importance of proper notice to all parties involved. (2) Pursuant to the holding in *Scafidi*, the motion to extend the time to serve process was timely filed, so there was no requirement for good cause. Therefore, the Supreme Court affirmed and remanded the judgment of the Union County Circuit Court.

**DISSENT**

Justice Coleman argued that an ex parte order impacts more than just the plaintiff, even if they are the only party to the action. He argued that allowing ex parte orders to go unfiled with the clerk damages the ability for defense attorneys to advise their clients about the risks of litigation and make strategic decisions accordingly.

**Affirmed & Remanded - 2015-IA-01829-SCT (Aug. 17, 2017)**

En Banc Opinion by Justice King - Dissent by Justice Coleman

Hon. John Kelly Luther (Union County Circuit Court)

Andy Lowry & Thomas L. Kirkland Jr. for Appellants - Richard Shane McLaughlin & Nicole H. McLaughlin for Appellee

Briefed by [Tyler Alcorn](#)

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## MISS. COMM'N ON JUDICIAL PERFORMANCE V. SHEFFIELD

### CIVIL - JUDICIAL PERFORMANCE

**JUDICIAL MISCONDUCT - CODE OF JUDICIAL CONDUCT - CANONS** - The Judicial Code of Conduct provides that a judge should uphold high standards of conduct in accordance with the position, including dignity, integrity, impartiality, and diligence

**JUDICIAL MISCONDUCT - MISSISSIPPI CONSTITUTION - DISCIPLINARY AUTHORITY** - The Mississippi Constitution permits the Supreme Court to impose discipline for judicial misconduct that is willful, negligent, ignorant, or incompetent and is prejudicial to the administration of justice which brings the judicial office into disrepute

**JUDICIAL MISCONDUCT - SANCTIONS - FACTORS** - The Supreme Court weighs six factors in determining the appropriateness of sanctions in judicial misconduct cases: (1) the length and character of the judge's public service; (2) whether there is any prior caselaw on point; (3) the magnitude of the offense and the harm suffered; (4) whether the misconduct is an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and (6) the presence or absence of mitigating or aggravating factors

### FACTS

On June 11, 1996, James Harper was ordered to appear before Judge John H. Sheffield in the Lee County Justice Court on charges of driving under the influence and having an expired inspection sticker. Because Harper failed to appear, Judge Sheffield issued a warrant for his arrest. Harper stood trial before Judge Sheffield on September 11, 1996 and was convicted on both charges. Harper was ordered to pay a \$600 fine for the DUI and a \$50 fine for the inspection sticker, and a six-month suspended sentence was imposed. Harper paid \$50 to the court on September 13, 1996 and subsequently appealed his DUI conviction to the County Court of Lee County on October 10, 1996. Harper was convicted in county court on June 23, 1997 and satisfied the terms of his sentence. On April 9, 2013, Harper was arrested on a DUI charge in Lee County. He was told he could not post until he met with Judge Sheffield. Harper appeared before Judge Sheffield the next day. Although Harper protested that he had appealed the conviction and satisfied his sentence, and Judge Sheffield had with him the justice-court case files for Harper's earlier convictions, Harper was sentenced to serve six months at the Lee County Work Center for the 1996 DUI conviction. Harper served four months in the work center before being released due to an infection. On August 21, 2014, the Mississippi Commission on Judicial Performance filed a complaint against Judge Sheffield. The Commission recommended that Judge Sheffield be found to have committed judicial misconduct. In addition, the Commission recommended Judge Sheffield be issued a public reprimand, a 120-day suspension, and a \$3,000 fine, and assessed the costs of the proceedings to Judge Sheffield. The Commission submitted these recommendations to the Supreme Court of Mississippi.

### ISSUES

Whether (1) Judge Sheffield committed judicial misconduct based on the guidelines set forth in the Code of Judicial Conduct, (2) Judge Sheffield committed judicial misconduct based on the guidelines set forth in the Mississippi Constitution, and (3) the Commission's sanction recommendations should be followed.

### HOLDING

(1) Because Judge Sheffield's conduct did not reflect the dignity, integrity, impartiality, and diligence required by the Code of Judicial Conduct, Judge Sheffield's actions violated Canons 1, 2A, 3B(2), 3B(4), 3B(8), and 3C(1). (2) Because Judge Sheffield refused to listen to Harper's protests that he had satisfied his 1996 sentence and, further, failed to devote sufficient attention to Harper's record before him, Judge Sheffield committed negligent judicial misconduct. (3) Because Judge Sheffield had previously been found responsible of judicial misconduct, and because Judge Sheffield failed to take personal responsibility for his negligent error, the Commission's recommended sanctions were appropriate. Further, illegal incarceration is one of the most severe forms of harm. Therefore, the Supreme Court accepted the recommendations of the Mississippi Commission on Judicial Performance.

## **PARTIAL CONCURRENCE/DISSENT**

Justice King agreed with the majority that Judge Sheffield committed misconduct but disagreed with the majority's determination that the sanctions were proportionate to the offense. Instead, Justice King argued that Judge Sheffield should be removed from office based on Judge Sheffield's prior misconduct demonstrating a pattern of willful misconduct and the severe harm to Harper resulting in a serious infection.

### **Affirmed - 2016-JP-01513-SCT (Aug. 17, 2017)**

En Banc Opinion by Presiding Justice Dickinson - Partial Concurrence/Dissent by Justice King

Hon. Cynthia L. Brewer (Mississippi Commission on Judicial Performance)

Darlene D. Ballard, Rachel Wilson Michel, & Meagan Courtney Brittain for Appellant - Ben Logan for Appellee

Briefed by [Emily Warwick](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 15, 2017**

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

#### **IN RE ESTATE OF WYLIE**

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

**CIVIL PROCEDURE - APPLICABILITY OF RULES - SUMMONS** - Pursuant to Miss. R. Civ. P. 81(d), a Rule 81 summons is required of any action for will construction

**CIVIL PROCEDURE - JUDGMENT - RELIEF FROM JUDGMENT OR ORDER** - Pursuant to Miss. R. Civ. P. 60(b), a motion for relief from judgment does not concern the merits of the underlying claim, only whether the movant is entitled to relief from the judgment for one of the limited grounds permitted by the rule

**EVIDENCE - MULTIPLE INTERPRETATIONS - TRIER OF FACT**- When the evidence is subject to more than one reasonable interpretation, it is for the chancellor as the trier of fact to determine which to follow

#### **FACTS**

Vernon Marie Horn Wylie died in March of 2006. She left a will, executed in 1972, and a codicil from 1979. The codicil devised to Sheila Russell and Donnie Euvon Horn Byrd portions of land to be split between them. The eastern boundary of the land was described as “east 526 feet more or less to a ditch.” Nothing resembling a ditch was found 526 feet from what was previously believed to be the eastern boundary. Thus, there were two candidates for the ditch: a man-made ditch, and a small natural waterway, Martin Creek Branch. In March 2008, Russell and Byrd filed a petition for probate. The chancellor concluded that the manmade ditch was the boundary. In May 2008, Byrd filed a “motion to construe will,” contending that specific devises of the property were confusing and inapplicable due to subsequent transfers. Russell's attorney was sent notice of the motion, but on February 23, 2009, an order was entered allowing Russell's attorney to withdraw as counsel. On that same day, the chancery court held a hearing on the motion to construe the will. Russell did not appear. In March 2009, the chancellor entered an order on the motion finding the devises to be void for uncertainty. Later that month, Russell's new attorney filed a motion seeking additional time to file a motion for rehearing. In response to the motion, the chancery court held a hearing on what the chancellor called Russell's Rule 60 Motion (Relief from Order). The chancellor ruled that Russell was not entitled to relief. Russell appealed.

#### **ISSUES**

Whether (1) Russell waived the issue of notice by failing to raise it in the trial court or by pursuing a Rule 60 motion, and (2) the chancellor erred in concluding that the manmade ditch was the boundary to the property.

#### **HOLDING**

(1) Because complete absence of service of process cannot be waived and Russell's pursuit of a Rule 60 motion did not amount to an appearance and defense on the merits of a Rule 81 summons issue, Russell did not waive the issue of notice. Accordingly, Russell did not receive sufficient notice of the February 23, 2009 hearing on the motion to construe. (2) Because substantial evidence supported the chancellor's interpretation of the eastern boundary, the chancellor did not err in concluding that the manmade ditch was the eastern boundary. Therefore, the Court of Appeals affirmed in part, vacated in part, and remanded the judgment of the Prentiss County Chancery Court.

### **PARTIAL CONCURRENCE/DISSENT**

Judge Wilson concurred with the majority regarding the boundary dispute and that a Rule 81 summons was required for the motion to construe will. However, Judge Wilson argued that Russell waived any objection to Byrd's failure to serve the summons when Russell failed to raise the issue at the Rule 60 motion hearing.

#### **Affirmed in Part; Vacated in Part, & Remanded - 2015-CA-01852-COA (Aug. 15, 2017)**

En Banc Opinion by Judge Fair - Partial Concurrence/Dissent by Judge Wilson

Hon. Jacqueline Estes Mask (Prentiss County Chancery Court)

Thomas Melvin McElroy for Appellant - Duncan L. Lott for Appellee

Briefed by [Nathan Simpson](#)

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## **LOGAN V. KLAUSSNER FURNITURE CORP.**

### **CIVIL - WORKERS' COMPENSATION**

**WORKERS' COMPENSATION COMMISSION - STANDARD OF REVIEW** - If the Commission's order is supported by substantial evidence, then the court is required to award deference to its determination

**STATUTORY APPLICATION - WORKERS' COMPENSATION** - Miss. Code Ann. §§ 71-3-17(a) and 71-3-17(c)(25) require a wage-earning calculation when applied

### **FACTS**

Bettye Logan was an employee of Klaussner Furniture Company. Logan was injured when her left foot became caught in fabric fibers while at the Klaussner. Logan filed a petition to controvert with the Mississippi Workers' Compensation Commission, and an Administrative Judge (AJ) found that she had not suffered an industrial loss of use concerning her left leg. Logan appealed to the full Commission, and the AJ's decision was affirmed. Logan then appealed to the Mississippi Court of Appeals. The court held that, at the least, Logan should have been awarded loss of wage-earning capacity. The court remanded the issue to the Commission, and the Commission conducted an analysis of prior evidence and found that Logan suffered a 60% loss of industrial use to her left leg and could return to work at a sedentary level. The Commission relegated Logan's status to scheduled member disability instead of body as a whole disability, which limited her to 175 weeks of compensation instead of 450 weeks. Logan appealed.

### **ISSUE**

Whether the Commission erred in finding that Logan had not suffered a permanent total disability for the maximum of 450 weeks of compensable time.

### **HOLDING**

Because the Commission erroneously applied Miss. Code Ann. § 71-3-17(c)(2) instead of §§ 71-3-17(a) or 71-3-17(c)(25), its decision was an erroneous application of the law. Therefore, the Court of Appeals reversed and remanded the case to the Commission to determine the amount of Logan's loss of wage-earning capacity under the applicable sections.

### **DISSENT**

Judge Wilson argued that the Commission's finding of permanent partial disability was consistent with the court's holding and supported by substantial evidence. Also, he opined that the court convoluted §§ 71-3-17(c)(2) and 71-3-17(a). Judge Wilson would have affirmed the Commission's findings.

**Denied; Reversed & Remanded - 2015-WC-01760-COA (Aug. 15, 2017)**

En Banc Opinion by Judge Greenlee - Dissent by Judge Wilson

Mississippi Workers' Compensation Commission

Roy O. Parker & Haley Wade McIngvale II for Appellant - Amy Lee Topik & Joseph Anthony Gerache III for Appellees

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

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## RASDON V. THRASH

### CIVIL - CONTRACTS

**CONTRACTS - IMPLIED COVENANT - GOOD FAITH & FAIR DEALINGS** - Good faith means the faithfulness of an agreed purpose between two parties, a purpose which is consistent with justified expectations of the other party

**CONTRACTS - COVENANT - BAD FAITH** - Bad faith requires a showing of more than bad judgment or negligence; rather, bad faith implies some conscious wrongdoing because of dishonest purpose or moral obliquity

**CONTRACTS - GOOD FAITH & FAIR DEALINGS COVENANT - BREACH** - A party does not breach the implied covenant of good faith and fair dealing when the party only took those actions which were duly authorized by the contract

### FACTS

Hunter Rasdon accepted an invitation to participate in a Mississippi State Championship Challenge Series (MSCCS) racing event. This event was promoted by Charles Thrash. As a condition of entry, race participants were required to adhere to MSCCS's "Rules and Specifications." Following the race, Rasdon was bequeathed the title "Fast Qualifier," and subsequently won the race. Per the "Rule and Specifications," Thrash collected samples of Rasdon's tires to test if the tires were chemically altered. The test results showed chemical alterations to Rasdon's tires. Consequently, Rasdon was disqualified as the winner of the race, fined \$500 and precluded from participating in future MSCCS events until the fine was paid. Rasdon brought suit against Thrash, individually and on behalf MSCCS, seeking compensatory damages and injunctive relief for breach of contract and breach of good faith and fair dealings covenant. The county court granted Thrash's motion for summary judgment, and the motion was later affirmed by the circuit court. Rasdon appealed.

### ISSUE

Whether the circuit court erred in affirming the county court's judgment to grant Thrash's motion for summary judgement.

### HOLDING

Because Thrash acted consistent with the MSCCS's "Rules and Specification," which Rasdon was aware of and agreed to prior to entering the race," the court found that Thrash's actions under the rules satisfied the goal of insuring a safe and level playing field. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

**Affirmed - 2016-CA-01402-COA (Aug. 15, 2017)**

Opinion by Judge Barnes

Hon. Justin Miller Cobb (Lauderdale County Circuit Court)

Brannon Lee Berry for Appellant - Stephen B. Jackson for Appellee

Briefed by [Charlotte Cooper](#)

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

### **BRADLEY V. STATE**

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

**POST-CONVICTION RELIEF - EVIDENTIARY HEARINGS - EXCEPTION** - No hearing is required where an affidavit overwhelmingly belied by unimpeachable documentary evidence is on the record

**POST-CONVICTION RELIEF - GUILTY PLEA - WAIVER OF CLAIMS** - A valid guilty plea waives the right to challenge the sufficiency of the State's evidence

**CRIMINAL PROCEDURE - INDICTMENT - PURPOSE** - The purpose of the indictment is to provide the accused reasonable notice of the charges against him so that he may prepare an adequate defense

**CRIMINAL PROCEDURE - APPEALS - PROCEDURAL BAR** - To appeal sentencing at the trial level, the recipient of the sentence must object to the sentencing at trial to raise the issue on appeal

#### **FACTS**

Andrew Bradley pled guilty to one count of cocaine possession with the intent to distribute. Bradley pled guilty as part of a plea bargain where the prosecution agreed to eliminate a recidivist enhancement and recommend a maximum ten-year sentence. Bradley was sentenced as a habitual offender, to a ten-year sentence without the possibility of probation or parole. Less than a year after trial, Bradley filed this motion for post-conviction relief. The circuit court dismissed it without an evidentiary hearing. Bradley appealed.

#### **ISSUES**

Whether (1) Bradley's plea was given voluntarily, (2) there was a factual basis for the guilty plea, (3) the conviction was against the weight of the evidence, (4) the preliminary hearing was timely, (5) the indictment was defective, and (6) the sentencing as a habitual offender was proper.

#### **HOLDING**

(1) Because the affidavit signed by Bradley contradicts the claim of an involuntary plea, it was without merit. (2) Because Bradley's sworn testimony contradicts his claim appealing the factual basis, this issue was also without merit. (3) Because Bradley entered a valid guilty plea, he waived his right to challenge the sufficiency and weight of the evidence. (4) Because a preliminary hearing is not needed if a grand jury indicted Bradley, and he was indicted by a grand jury, this issue was rendered moot. (5) Because the State met its burden of proving that Bradley possessed an amount of cocaine punishable under statute, this contention was without merit. (6) Because Bradley was procedurally barred from raising on appeal an issue that he did not object to at trial, there was no merit to his contentions. Therefore, the Court of Appeals affirmed the judgment of the Tate County Circuit Court.

**Affirmed - 2016-CP-01314-COA (Aug. 15, 2017)**

Opinion by Judge Fair

Hon. James McClure III (Tate County Circuit Court)

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

Briefed by [Addison K. Watson](#)

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### **DUNCAN V. STATE**

## CIVIL - POST-CONVICTION RELIEF

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS** - Pursuant to Mississippi's Uniform Post-Conviction Collateral Relief Act (UPCCRA), a movant has three years to file a PCR motion, and failure to do so within the three years is a procedural bar

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - SUCCESSIVE MOTIONS** - Under the UPCCRA, any order denying or dismissing a PCR motion is a bar to a second or successive PCR motion

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - FUNDAMENTAL RIGHTS** - Errors that violate a fundamental constitutional right are excepted from procedural bars

### FACTS

In 1994, Wendell Duncan was convicted of conspiracy to commit burglary of a business and burglary of a business. Duncan was sentenced as a habitual offender to serve two consecutive sentences for a total of twelve years. In 1995, Duncan was convicted of armed robbery and sentenced as a non-habitual offender to serve thirty years in the custody of the Mississippi Department of Corrections, with the sentence to run consecutively to the previously imposed sentence of twelve years. Duncan filed his first PCR motion in 1996, which was dismissed by the circuit court. The Mississippi Supreme Court affirmed the dismissal. In 2008, Duncan filed another PCR motion that was dismissed by the circuit court as time barred and successive-writ barred. The Court of Appeals affirmed the circuit court's judgment. Duncan filed two subsequent PCR motions, and the trial court dismissed both motions. The Court of Appeals affirmed, finding the motions to be both time barred and successive-writ barred. In November 2015, Duncan filed a fifth PCR motion in the circuit court, alleging an illegal sentence and ineffective assistance of counsel for the conspiracy and burglary convictions. The motion was dismissed as both time-barred and successive-writ barred. Duncan appealed.

### ISSUE

Whether the trial court erred in denying Duncan's post-conviction relief motion alleging an illegal sentence and ineffective assistance of counsel.

### HOLDING

Because Duncan filed his PCR motion more than three years after the entry of his judgment of conviction in 1994, his motion was time-barred. Further, because this was Duncan's fifth PCR motion, any order denying or dismissing a PCR motion was a bar to a successive PCR motion, and as such, it is barred as successive-writ. Additionally, Duncan was unable to make showing sufficient to implicate the fundamental-rights exception to the procedural bars. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

#### **Affirmed - 2016-CP-00354-COA (Aug. 15, 2017)**

Opinion by Chief Judge Lee

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

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

Briefed by [Katie Berry](#)

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## STATE V. HARDIN

### CIVIL - POST-CONVICTION RELIEF

**PAROLE STATUTE - AMENDMENT - RETROACTIVITY** - Amendments to the parole statute are not retroactive and do not apply to prisoners admitted prior to the amendments' effective date

**POST-CONVICTION RELIEF - APPEAL - JURISDICTION** - Since amendments to the parole statute are not retroactive, they do not create a liberty interest that permits circuit courts to exercise jurisdiction over an appeal from the denial of parole

**PAROLE ELIGIBILITY - CIVIL ACTION - JURISDICTION** - The complaint of an inmate who files an action regarding the calculation of his sentenced time to serve and parole eligibility is a civil action and not a petition for post-conviction relief

### FACTS

In 1995, Joe Hardin was convicted of two counts of murder and sentenced to two consecutive life sentences. In 2015, Hardin was denied parole, and the Mississippi Parole Board set off his case for three years. Hardin then filed for post-conviction relief, claiming that, under the 2014 amendments to Miss. Code Ann. §§ 47-7-3.1 and 47-7-18(6), he was entitled to an annual hearing and a case plan to identify corrective actions he needed to take to prepare him for parole. The circuit court agreed with Hardin. The State appealed.

### ISSUE

Whether Hardin was entitled to a modified set off date or case plan based on the 2014 amendments to Miss. Code Ann. §§ 47-7-3.1 and 47-7-18(6).

### HOLDING

Because the Mississippi Parole Board was not named as a party to the complaint or served with process, which is required when filing a civil action, and because the Mississippi Supreme Court has now ruled that the 2014 amendments to the parole statute are not retroactive and do not apply to prisoners admitted prior to the amendment's effective date, the circuit court should have dismissed Hardin's motion for post-conviction relief. Therefore, the Court of Appeals reversed and rendered the judgment of the Choctaw County Circuit Court.

**Reversed & Rendered - 2016-CA-00878-COA (Aug. 15, 2017)**

Opinion by Judge Fair

Hon. Joseph H. Loper Jr. (Choctaw County Circuit Court)

Darrell Clayton Baughn & Anthony Louis Schmidt Jr. (Att'y Gen. Office) for Appellant - *Pro Se* for Appellee

Briefed by [Mary-Katherine Black](#)

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

### **CANTRELL V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL - JURY VERDICT - MOTION FOR NEW TRIAL** - When determining whether a jury verdict is against the overwhelming weight of the evidence, the Court of Appeals must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial

**CRIMINAL - JURY VERDICT - DISTURBING A VERDICT** - The Court of Appeals will not disturb a jury verdict unless it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

**CRIMINAL - STANDARD OF PROOF - SINGLE WITNESS** - The testimony of a single uncorroborated witness is sufficient to sustain a conviction

### FACTS



Officer Stanley Perry of the Cleveland Police Department received a call regarding a suspicious vehicle. Upon arriving at the address, Officer Perry approached the truck, shined his flashlight, and observed Jeffrey Cantrell coming from the side of the house walking towards the truck. At trial, Officer Perry testified that Cantrell was trying to elude him as he approached. Officer Perry then observed two more people inside the truck so he drew his weapon and ordered the two passengers and Cantrell to put their hands in the air. He further stated that at that time, Cantrell reached into his right pants pocket, removed something, and threw it on the ground approximately six to ten feet from the truck. Officer Perry maintained his attention on Cantrell and the two passengers and radioed for backup. Officer Smith responded to the request for backup and helped Officer Perry search the area for whatever Cantrell had in his pocket. They found two syringes, one of which contained a clear substance. Officer Perry also found a screwdriver with fresh paint on it located approximately twenty feet from the vehicle and twenty-four feet from the syringes. Officer Perry then radioed Officer Melton, a narcotics officer, who conducted a field test on the syringe that contained the clear substance and secured it as evidence. Officer Melton testified that the field test came back positive for methamphetamine, so he sent the syringe to the crime lab for further testing. Gary Fernandez, a drug analyst at the Mississippi Forensics Laboratory, testified as an expert witness and stated that he performed a technical review on the testing done at the crime lab and concluded that the testing of the syringe had been performed correctly and that the syringe contained methamphetamine. A Bolivar County grand jury indicted Cantrell as a habitual offender for one count of possession of methamphetamine. At trial, the jury found Cantrell guilty and the trial court sentenced him to the maximum sentence of six years without the eligibility for parole. Cantrell moved for judgment notwithstanding the verdict or, in the alternative, a new trial. The trial court denied Cantrell's motions. Cantrell appealed.

### ISSUE

Whether the trial court erred in denying Cantrell's motion for a new trial.

### HOLDING

Because the jury accepted the testimony of Officers Perry and Melton regarding identifying Cantrell at the scene, seeing him remove items from his pocket, and ultimately finding the syringes as substantial and believable evidence of Cantrell's guilt, the trial court did not err in denying Cantrell's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

**Affirmed - 2016-KA-00790-COA (Aug. 15, 2017)**

Opinion by Judge Carlton

Hon. Charles E. Webster (Bolivar County Circuit Court, Second Judicial Dist.)

Benjamin Allen Suber (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Sean Grady](#)

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## DANIELS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - EVIDENCE - EXPERT TESTIMONY** - In determining whether expert testimony rests on a reliable foundation, the testimony must be grounded in the methods and procedures of science, not merely a subject belief or unsupported speculation

**CRIMINAL PROCEDURE - EVIDENCE - FORENSIC RECORDS** - A document is testimonial when it is created for the sole purpose of the State's use as evidence against the defendant

**CRIMINAL PROCEDURE - JURISDICTION - VENUE** - Proof of venue is indispensable to a criminal trial, and it may be proved by direct or circumstantial evidence

**CONSTITUTIONAL LAW - INEFFECTIVE ASSISTANCE - TRIAL STRATEGY** - Counsel's choice of whether or not to file certain motions, call witnesses, ask certain questions, or make certain objections falls within the ambit of trial strategy and will not stand as support for an ineffective assistance of counsel claim

## **FACTS**

On or about July 23, 2014, Pamela Ard reported an incident of sexual battery. Ard reported her son, H.A., had been sexually molested or raped by Dezjon Daniels, H.A.'s cousin. At the time of the incident, H.A. was either nine or ten years old and Daniels was nineteen years old. H.A. was later interviewed at the Children's Advocacy Center by forensic interviewer Jade Douglas. H.A. stated that Daniels told him in order to play a video game, H.A. had to give him "some booty" or have sex. H.A. stated that he went into the bathroom, pulled down his pants, put his hands on the toilet, then Daniels "put his thing in his thing." It was during the interview that Douglas learned H.A. was referring to Daniel's penis entering his anus. Ard testified at trial that she asked Daniels if he had sex with H.A., and Daniels replied, "If he said I did it, then I did it." Daniels was found guilty of sexual battery and later sentenced to thirty-five years in the custody of the Mississippi Department of Corrections, with ten years suspended and five years of post-release supervision. Daniels appealed.

## **ISSUES**

Whether (1) the trial court erred in admitting certain expert testimony, (2) admission of H.A.'s forensic medical records violated Daniels's Sixth Amendment right to confrontation, (3) the trial counsel's stipulation of forensic records constituted ineffective assistance of counsel, and (4) the evidence was sufficient to establish venue.

## **HOLDING**

(1) Because the expert witness relied on her education and training as a social worker in gathering as much information as possible, the testimony was not merely a subjective belief or unsupported speculation. (2) Because Daniels's trial counsel stipulated to the forensic records being submitted into evidence and relied on the results to form a defense, the forensic records were properly admitted. (3) Because Daniels's counsel's decision to stipulate the admission of the forensic records was within the ambit of trial strategy, Daniels did not receive ineffective assistance of counsel. (4) Because Ard testified that the incident took place in Pike County, venue was sufficiently established. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

**Affirmed - 2016-KA-00501-COA (Aug. 15, 2017)**

Opinion by Judge Westbrook

Hon. David H. Strong Jr. (Pike County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Joseph Scott Hemblen (Att'y Gen Office) for Appellee

Briefed by [Jay Patterson](#)

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## **RYAN V. STATE**

### **CRIMINAL - FELONY**

**APPEALS - MOTION FOR NEW TRIAL - WEIGHT OF EVIDENCE** - When reviewing a denial of a motion for a new trial based on an objection to the weight of evidence, a verdict will only be reversed when it is so contrary to the overwhelming weight of evidence that to allow it to stand would sanction an unconscionable injustice

**EVIDENCE - DOMESTIC VIOLENCE - INFERENCES** - Absent evidence sufficient to cast doubt on a claim, testimony and photographs supporting a claim are sufficient for a jury to reasonably infer guilt in a domestic violence case

**EVIDENCE - HABITUAL OFFENDER STATUS - PRIOR OFFENSES** - Incorrect listings of a defendant's information in prior offenses do not necessarily invalidate evidence to prove a defendant as a habitual offender where strong circumstantial evidence supports the validity of the evidence provided

**HABITUAL OFFENDER STATUS - PRIOR OFFENSES - ADMISSIONS BY DEFENDANT** - Department of corrections data from other states, verified or not, coupled with a defendant's admission to prior offenses, is sufficient to sentence a defendant as a habitual offender

## **FACTS**

Brent Ryan pinned down and choked his wife until she was unconscious, and Ryan was arrested the next day after a high-speed chase with police. In addition to being indicted on charges of felony fleeing from law enforcement and aggravated domestic violence, Ryan was charged as a habitual offender. The circuit court sentenced Ryan to twenty-five years without parole and denied his motion for a judgment notwithstanding the verdict. Ryan appealed.

## **ISSUES**

Whether the circuit court erred in (1) assessing the weight of evidence proffered, (2) applying habitual-offender status to Ryan, and (3) denying a new trial on grounds of ineffective assistance of counsel, due-process violations, and prosecutorial misconduct alleged in a pro se brief.

## **HOLDING**

(1) Because the jury could reasonably infer from the testimonies and photographs adduced at trial that Ryan strangled his wife, the circuit court properly weighed the evidence offered by the State. (2) Because the State utilized a photo and conviction data on Ryan, and Ryan admitted to previous offenses, the circuit court did not err in applying habitual-offender status. (3) Because the contentions in Ryan's pro se brief were without merit, the circuit court properly denied Ryan a new trial. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

### **Affirmed - 2016-KA-00125-COA (Aug. 15, 2017)**

Opinion by Presiding Judge Irving

Hon. Lee J. Howard (Lowndes County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Hale Neilson](#)

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## **SMALL V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - HEARSAY EXCEPTIONS - STATEMENT AGAINST INTEREST** - Under Miss. R. Evid. 804(b)(3), for a statement against interest to be admissible as an exception to the rule against hearsay, (1) the declarant must be unavailable; (2) the statement must have clearly subjected the declarant to liability; and (3) if tending to exculpate another, "corroborating circumstances" must clearly indicate the statement's trustworthiness

**EVIDENCE - STATEMENT AGAINST INTEREST - CONTEXT** - In analyzing an alleged statement against interest, the reasonableness of any specific statement should be viewed in the context of the declarant's overall statement and the surrounding circumstances

**EVIDENCE - STATEMENT AGAINST INTEREST - SELF-DEFENSE** - A claim of self-defense is not admissible under Miss. R. Evid. 804(b)(3) because it is not a statement against interest

## **FACTS**

George Harrison and Donterrius Jackson were walking near an intersection in Tunica when they encountered Dedrick Small, Cortez Bass, and Bass's cousin, Kendrick. After some words were exchanged, Bass shot Jackson in the back of the head, killing him. In a statement to a detective following the incident, Bass claimed that he had retrieved his gun from under his mattress after an encounter with Jackson earlier that day, that Jackson had fired a gun at him first, and that Small had not given him the gun used to kill Jackson. However, other witnesses saw Small hand Bass the gun just before the shooting. At Bass's separate trial, Bass claimed that Small had in fact given him the gun, contrary to what Bass had previously told the detective. Bass was ultimately convicted. Before Small's trial, he filed a motion to permit him to use Bass's first statement to the detective as evidence at trial, arguing it was a statement against Bass's penal interest under Miss. R. Evid. 804(b)(3) that showed Bass's premeditation, and was therefore an exception to the rule

against hearsay. Finding that Bass's statement was a claim of self-defense rather than a statement against interest, the trial judge denied the motion. Small was convicted of first-degree murder for aiding and abetting Bass. Small appealed.

### ISSUE

Whether the trial judge abused his discretion by excluding Bass's original statement to the detective.

### HOLDING

Because Bass's statement to the detective, when viewed as a whole, was a claim of self-defense, and therefore did not clearly subject him to criminal liability, and because no corroborating circumstances indicated the trustworthiness of Bass's statement, the trial judge did not abuse his discretion in excluding the statement as inadmissible hearsay. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

**Affirmed - 2016-KA-00595-COA (Aug. 15, 2017)**

Opinion by Judge Wilson

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

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Daniel Tankersley](#)

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## WOLFE V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JURY SELECTION - *BATSON* CHALLENGE** - A criminal defendant may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose

**CRIMINAL PROCEDURE - JURY SELECTION - PEREMPTORY STRIKES** - Inconsistency between oral responses and a juror's questionnaire has been determined a valid neutral reason for exercising a peremptory challenge

**CRIMINAL PROCEDURE - PEREMPTORY STRIKES - DISCRIMINATION** - The use of peremptory strikes on a majority of potential jurors of a particular race or gender does not, standing alone, establish a prima facie case of discrimination

### FACTS

Demarco Wolfe was convicted of aggravated assault, carjacking, and armed robbery. During jury selection at his trial, the State used two peremptory strikes on African American males for the two panels of the venire. The two African American males who were struck each had more than a 30-year age difference than the defendant. A third African American male was selected as an alternate juror, as well as several African American females, but the record did not indicate the exact number. Wolfe's attorney raised a *Batson* challenge, asserting the State had deliberately acted to prevent African American males from serving on the jury. The State then asserted its race neutral reason for its peremptory strikes: that the two individuals were inattentive and unengaged with the proceedings, even though they were sitting in front of the prosecutor. The State also noted that one of the individuals indicated on his jury questionnaire he had been a juror previously on a criminal trial but failed to respond to the same question when asked verbally to the venire. The defense rebutted that the State believed the African American males would empathize with the defendant. The trial court held that Wolfe did not establish a prima facie case of discrimination and denied the *Batson* challenge. Wolfe appealed.

### ISSUE

Whether the trial court erred in its denial of the *Batson* challenge.

### HOLDING

Because the use of peremptory strikes on a majority of potential jurors of a particular race or gender does not alone establish a prima facie case for discrimination and because the jury included a large number of African American females, the trial court did not err in its denial of the Batson challenge. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2016-KA-00401-COA (Aug. 15, 2017)**

Opinion by Judge Greenlee

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Sarah Raben](#)

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