

**MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 16, 2017**

***SUPREME COURT - CIVIL CASES***

**HAMILTON V. YOUNG**

**CIVIL - CUSTODY**

**CHILD SUPPORT & CUSTODY – UCCJEA – UIFSA** – Questions relating to child support are reviewed under the requirements of the Uniform Interstate Family Support Act (“UIFSA”) and questions relating to child custody are reviewed under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”)

**CHILD SUPPORT & CUSTODY – CONTINUING JURISDICTION – EXCLUSIVE JURISDICTION** – Pursuant to MISS. CODE. ANN. § 93-25-17(3), Mississippi courts shall recognize the continuing, exclusive jurisdiction of the tribunal of another state which has issued a child support order

**JURISDICTION – CONTINUING JURISDICTION – MODIFICATION** – Pursuant to MISS. CODE. ANN. § 93-25-101, the continuing, exclusive jurisdiction of the issuing state remains in effect as long as one of the parents or the child still resides in the issuing state, unless the parties agree to the contrary

**JURISDICTION – CONTINUING JURISDICTION – MODIFICATION** – Consent to modify an order from another court which has exclusive jurisdiction is to be effected through a filed writing

**JURISDICTION – CONTINUING JURISDICTION – MODIFICATION** – As long as the issuing state retains its continuing, exclusive jurisdiction over its child support order, a registering sister state is precluded from modifying that order

**FACTS**

In 2010, an Ohio Court entered a judgment granting the divorce of John Hamilton and Kidron Wise Young and also provided for the custody and support of their daughter. Young and her daughter later moved to Mississippi. Young registered the divorce decree and requested that the Lee County Chancery Court assume jurisdiction of the case. The Lee County Chancery Court registered the Ohio decree and assumed jurisdiction of all matters relating to the child. The Ohio court ruled that, because Hamilton still resided in Ohio, it maintained jurisdiction. In 2015, Young filed, in Lee County Chancery Court, a complaint for modification of the Ohio orders. Hamilton filed a motion to dismiss the action based on the Ohio court’s continuing, exclusive jurisdiction over the matter. The Lee County Chancery Court denied Hamilton’s motion referencing a conversation held between the Lee County chancellor and the Ohio court in which it was agreed that the Ohio judge had relinquished jurisdiction. Hamilton appealed.

**ISSUES**

Whether the chancery court erred in denying Hamilton’s motion to dismiss for lack of jurisdiction.

**HOLDING**

Because Hamilton maintained continued residence in Ohio, there was no written evidence that Hamilton and Young agreed on the record to the transfer of jurisdiction, and there was no written evidence of the parties agreeing to or of the chancellor’s telephone call with the Ohio court in regard to Mississippi being a more convenient forum, the chancery court never acquired jurisdiction over child support or custody matters. Therefore, the Supreme Court reversed the judgment of the Lee County Chancery Court and rendered judgment in favor of the appellant.

**Reversed & Rendered - 2015-IA-01260-SCT (Feb. 16, 2017)**

Opinion by Justice Beam

Hon. Talmadge D. Littlejohn (Lee County Chancery Court)  
William Wayne Smith for Appellant - Roy O. Parker Jr. & T.K. Moffett for Appellee  
Briefed by [Kaitlyn McMellon](#)

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## LEE V. BOOKER

### CIVIL - STATE BOARDS AND AGENCIES

**CRIMINAL PROCEDURE - PAROLE ELIGIBILITY - CASE PLAN** - Because the Mississippi Legislature did not clearly express their intention for 47-7-3.1 to apply retroactively, inmates sentenced before July 1, 2014 are not entitled to a parole case plan

#### FACTS

On July 1, 2014, the Mississippi Legislature passed House Bill 585 which implemented a system requiring parole-eligible inmates to follow a “case plan.” After the bill was passed, John Earl Booker, an inmate sentenced in July 1981 and 1982, requested a case plan pursuant to Miss. Code Ann. § 47-7-3.1(1). His request was denied after the warden and Earnest Lee, the Superintendent of the Mississippi State Penitentiary, said that the statute does not apply retroactively. On August 11, 2015, the Sunflower County Circuit Court overturned this denial and ordered the MDOC to provide Booker with a case plan. Lee appealed.

#### ISSUE

Whether Mississippi Code Section 47-7-3.1 applies retroactively allowing Booker to be eligible for a case plan.

#### HOLDING

Because the Mississippi Supreme Court decided in *Fisher v. Drankus* that Mississippi Code Section 47-7-3.1 does not clearly express that it applies retroactively, it does not apply retroactively and Booker is not entitled to a case plan. Therefore, the Supreme Court reversed and rendered the decision of the Sunflower County Circuit Court.

#### **Reversed and Rendered - 2015-CA-01910-SCT (Feb. 16, 2017)**

En Banc Opinion by Justice King  
Hon. W. Ashley Hines (Sunflower County Circuit Court)  
Anthony Louis Schmidt Jr. & Darrell Clayton Baughn for Appellant – *Pro se* for Appellee  
Briefed by [Desire'e Martinelli](#)

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## SWARTZFAGER V. SAUL

### CIVIL - REAL PROPERTY

**CONTRACTS – STATUTE OF FRAUDS – DESCRIPTION** – To meet the statute of frauds requirement for contracts involving real property, a description may be considered sufficient, though it contains inaccuracies, if the property could be located with some certainty

**CONTRACTS – STATUTE OF FRAUDS – WRITING** – To meet the statute of frauds requirement, a writing must include a price if the price is *to be paid*; it need not include the price *already paid*

**CONTRACTS – EMOTIONAL DISTRESS – ELEMENTS** – When a claim for emotional distress is based on a contract, a plaintiff must show that (1) the emotional distress was a foreseeable consequence of the particular breach-

of-contract and (2) that he or she actually suffered emotional distress; plaintiffs need not prove any physical manifestation

**BREACH OF CONTRACT – PUNITIVE DAMAGES – ATTORNEY’S FEES** – Punitive damages are not a prerequisite for attorney’s fees, and a chancellor does not abuse his or her discretion by awarding such fees where an award of punitive damages would have been justified

**BREACH OF CONTRACT – PLEADING – PREJUDGMENT INTEREST** – While a party is not required to plead with specificity the date from which prejudgment interest accrues, a party must assert a demand for prejudgment interest in the appropriate pleading

### FACTS

Swartzfager, an attorney, offered Saul, a Mississippi highway patrolman, an opportunity to purchase a five-acre tract of land. Saul accepted the offer and subsequently sold his home in preparation for building on the new property. Swartzfager, however, had entered into negotiations to sell the entirety of the land containing Saul’s five-acre tract to another party. He approached Saul with another proposal that if he would relinquish any interest in the five-acre tract, Swartzfager would grant him six acres in a different sub-division. On June 7, 2002, Swartzfager drafted a basic agreement, signed it, and sent it to Saul. Saul then visited the sub-division, picked out six acres, drew a map of the land, and took both the agreement and the map to Swartzfager and requested that he close on the deal. Swartzfager either did not respond or delayed. Saul brought suit against Swartzfager claiming breach of contract, equitable estoppel, promissory estoppel and requested related damages. The Jones County Chancery Court found that the 2007 letter by Swartzfager, coupled with the map drawn by Saul were enough to form a binding contract. The court ruled that valuable consideration had been paid by Saul by foregoing his right to buy the initial five-acre tract. Based on Swartzfager’s intentional breach of contract, the court granted monetary damages for breach of contract, prejudgment interest, losses and costs incurred, emotional distress, and, in a separate hearing, attorney’s fees. Swartzfager appealed.

### ISSUES

Whether the chancellor erred by (1) finding an enforceable contract existed; (2) awarding damages for emotional distress; (3) awarding attorney’s fees; and (4) awarding prejudgment interest.

### HOLDING

(1) By reading the 2007 letter along with the map describing the land, the statute of frauds requirements were met and thus an enforceable contract existed; the map properly described the land to be purchase while the 2007 letter stated that Swartzfager had received good and valuable consideration. (2) Because the emotional distress asserted by Saul and his family was a foreseeable consequence of the breach and they actually suffered the emotional distress of having to purchase and move into a mobile home, the trial judge did not err in granting damages for emotional distress. (3) Since punitive damages would have been justified in this case, the trial court did not err in granting attorney’s fees. (4) Since Saul did not specifically demand prejudgment interest in his complaint, the court erred by awarding prejudgment interest. Therefore the Supreme Court affirmed in part and reversed in part the Jones County Chancery Court.

**Affirmed in Part; Reversed in Part - 2015-CA-01187-SCT (Feb. 16, 2017)**

En Banc Opinion by Justice Maxwell

Hon. Hollis McGehee (Jones County Chancery Court)

Glenn S. Swartzfager for Appellant - Cory Nathan Ferraez & Samuel Steven McHard for Appellee

Briefed by [Joseph Rychlak](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 14, 2017

### *COURT OF APPEALS - CIVIL CASES*

**KENNEDY V. CLAIBORNE COUNTY**

## **CIVIL - CONTRACT**

**GOVERNMENT - LOCAL GOVERNMENT - ADMINISTRATIVE BOARDS** - Boards of supervisors and other public boards speak only through their minutes and their actions are evidenced solely by entries on the minutes  
**CONTRACTS - PUBLIC CONTRACTS - VALIDITY AND SUFFICIENCY OF CONTRACT** - A contract with a public board may be enforced if enough of the terms and conditions of the contract are contained in the minutes for determination of the liabilities and obligations of the contracting parties without the necessity of resorting to other evidence

**CONTRACTS - ADMINISTRATIVE BOARDS - BOARD AUTHORIZATION** - Board members, individually, cannot authorize an agent to bind the Board unless an order thereof was entered upon its minutes authorizing the giving of such authority, or unless the order constituting a contract recited the making thereof, and its approval by the Board

**CONTRACTS - ADMINISTRATIVE BOARDS - FORMATION OF CONTRACT** - Each person, firm or corporation contracting with a board of supervisors is responsible to see that the contract is legal and properly recorded on the minutes of the board

**CONSTITUTIONAL LAW - DUE PROCESS - PROPERTY RIGHT IN EMPLOYMENT** - A public employee has a property interest in his job if he has a legitimate claim of entitlement to it, a claim which would limit the employer's ability to terminate the employment; a claim of entitlement to job tenure may be created directly by statute or by written contract or by a mutually explicit understanding enforceable under state law as an implied contract

**APPELLATE PROCEDURE - INTERLOCUTORY APPEAL - MOOTNESS** - Appeals from the denial of a motion for summary judgment are interlocutory in nature and are rendered moot by a trial on the merits

### **FACTS**

In July 2012, the Claiborne County Board of Supervisors took control of the Claiborne County Hospital ("Hospital"), acting as the Board of Trustees ("Board") for the Hospital. As evidenced by the minutes of three Board meetings in August and September 2012, the Board selected Jerry Kennedy as the Hospital Administrator, approved a salary of \$20,000 per month for Kennedy as Hospital Administrator, and agreed to give "a 5-year contract with incentives," the last of which were adopted by action of the Board on October 4, 2012. In April 2013, the Board informed Kennedy that he did not have a valid contract because there was never one reflected in the minutes, and instead offered Kennedy a one-year contract. Kennedy refused the one-year contract and was terminated the next day. Kennedy filed a complaint against Claiborne County, by and through its Board of Supervisors, the Hospital, the Claiborne County Board of Trustees, and John Does 1-10, asserting claims for breach of contract, deprivation of civil rights, conspiracy to interfere with civil rights, and specific performance. The circuit court found that the minutes were not sufficient to create a valid and enforceable contract for a term of five years between Kennedy and the Board, that Kennedy failed to prove he was unlawfully terminated, and failed to establish Claiborne County violated his constitutional rights. Kennedy appealed.

### **ISSUES**

Whether the circuit court erred in (1) finding the contract of employment was not sufficiently evidenced on the minutes; (2) finding that the County did not breach the contract; (3) finding Kennedy did not have a property right in his continued employment; and (4) denying Kennedy's motion for partial summary judgment.

### **HOLDING**

(1) Because a copy of the employment contract was placed in a side pocket of the minute book, the contract was not properly attached to the minutes. Also, because the minutes only reflected the term of the contract and the salary Kennedy was supposed to receive, and no minutes were entered to show that the Board president had the authority to sign the contract, the terms and conditions of the contract were not sufficiently contained in the minutes for determination of the liabilities and obligations of the contracting parties, and, therefore, was unenforceable. (2) Because the employment contract was invalid and unenforceable, the Board could terminate Kennedy with or without cause without breaching the contract. (3) Without a valid contract, Kennedy did not have a constitutionally protected property interest in continued employment. (4) Because there was a trial on the merits, the appeal from a denial of a motion for summary judgment was a moot issue. Therefore, the Court of Appeals affirmed the decision of the Claiborne County Circuit Court.

**Affirmed - 2015-CA-01397-COA (Feb. 14, 2017)**

Opinion by Presiding Judge Griffis

Hon. Lamar Pickard (Claiborne County Circuit Court)

Chuck R. McRae, Seth C. Little, & Christopher A. Bambach for Appellant - Silas W. McCharen, Barbara M. Blackmon, Edward Blackmon Jr., & Peter J. McKelroy for Appellees

Briefed by [Mallory Bland](#)

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## STASHER V. PERRY

### CIVIL -REAL PROPERTY

**PROPERTY - ADVERSE POSSESSION - ELEMENTS** - Adverse possession requires the claimant to prove that his possession or occupancy was: (1) under claim of ownership, (2) actual and hostile, (3) open, notorious, and visible, (4) continuous and uninterrupted for a period of ten years, (5) exclusive, and (6) peaceful

**PROPERTY - ADVERSE POSSESSION - FENCES** - The existence of a fence is one of the strongest indicators of adverse possession.; however, mere existence of a fence near the boundary line does not establish that the fence is the accepted boundary between the parties

**PROPERTY - ADVERSE POSSESSION - PERMISSION** - The adverse possessor must hold the property without the permission of the true title owner since permission defeats adverse possession

**PROPERTY - ADVERSE POSSESSION - TAXES** - Payment of property taxes does not conclusively establish ownership; however, it is a very weighty fact in support of the title

### FACTS

In 1983, the Stashers purchased property in Madison County, Mississippi from Fulton Cannon. After purchase, Cannon pointed out the line where the Stashers should build a fence. Thereafter, Cannon's property transferred through a series of conveyances, where the entire property was ultimately conveyed to Randy Archie Springer in 2006. On August 1, 2007, Springer filed a Complaint for Adverse Possession and to Confirm and Quiet Title. After a bench trial, the chancery court entered an order in favor of Springer complaint and denied the Stashers' counterclaim. In addition, the chancery court denied the Stasher's motion for reconsideration. Stasher appealed.

### ISSUES

Whether the chancery court erred by finding that: (1) appellants could not claim adverse possession due to construction of a fence on appellee's property; (2) the fence was not in good repair sufficient enough to put the predecessor in title on notice of appellants' ownership; and (3) appellee held himself out as owner of the property in such a way to establish adverse possession.

### HOLDING

Because (1) the chancery court properly determined appellants had permission to build the fence, (2) the fence was insufficient to establish notice, (3) and appellee sufficiently established ownership, the chancery court did not err by granting appellees Complaint for Adverse Possession and to Confirm and Quiet Title. Therefore, the Court of Appeals affirmed the decision of the Madison County Chancery Court.

**Affirmed -2015-CA-01603-COA (July 15, 2015)**

Opinion by Presiding Judge Griffis

Hon. Cynthia L. Brewer (Madison County Chancery Court)

Sandra Stasher for Appellants - James M. Crews III for Appellee

Briefed by [Blake Brookshire](#)

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

### **STATE V. BOYCE**

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

**CIVIL - POST-CONVICTION RELIEF - SERVICE OF PROCESS** – The party filing lawsuit must properly serve the other party with service of process

#### **FACTS**

In 1984, Boyce Willard was convicted of murder and sentenced to life imprisonment. In 2015, Willard filed a petition for post-conviction relief in the Humphreys County Circuit Court. Willard's petition alleged that the Parole Board violated Miss. Code Ann. 47-7-18(6) (Rev. 2015) by imposing a five-year delay until his next parole hearing. The circuit court granted Willard's petition. The State of Mississippi appealed.

#### **ISSUE**

Whether the circuit court properly granted Willard's petition for post-conviction relief.

#### **HOLDING**

Because Willard failed to properly serve the Parole Board, his case was dismissed. Therefore, the Court of Appeals reversed and rendered the judgment of the Humphreys County Circuit Court.

#### **Reversed and rendered- 2016-CA-00284-COA (Feb. 14, 2017)**

En Banc Opinion by Judge Wilson

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

Anthony Louis Schmidt Jr. (Att'y Gen. Office) for Appellant – *Pro se* for Appellee

Briefed by [Kyle Hansen](#)

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### **WRIGHT V. STATE**

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

**APPEALS - COUNSEL - EFFECTIVENESS OF COUNSEL** - To prove ineffective assistance of counsel, a defendant must demonstrate that (1) the counsel's performance was deficient and (2) the deficient performance prejudiced the defense

**PLEAS - WAIVER OF RIGHTS - EXTRADITION** - Where a court has personal and subject-matter jurisdiction over a defendant at the time he voluntarily enters a guilty plea, the plea cannot be attacked for lack of jurisdiction due to an improper extradition

**JUDGES - DISQUALIFICATION TO ACT - RECUSAL** - Disqualification is required where the judge may have been of counsel, but conflicts that would normally require disqualification can be waived by the consent of the judge and of the parties

#### **FACTS**

Ronald Wright pled guilty to the charge of sexual battery and was sentenced to twenty-five years. Wright filed a motion for post-conviction relief, arguing that his plea should be set aside due to ineffective assistance of counsel, that his extradition from Ohio was improper, and that the sentencing judge was biased against him as evidenced by the fact that he received a higher sentence than that recommended by the State. The trial court denied his motion for post-conviction relief. Wright appealed.

## ISSUE

Whether the trial court erred in denying Wright's motion for post-conviction relief.

## HOLDING

Because Mississippi had jurisdiction to prosecute Wright regardless of any procedural irregularities in his extradition process from Ohio and Wright failed to demonstrate that he was entitled to a hearing on whether he received ineffective assistance of counsel, the trial court did not err in denying the motion. Further, because Wright waived any requirement that the sentencing judge recuse and the judge did not demonstrate bias in sentencing, the trial court did not err in denying his motion for post-conviction relief. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

**Affirmed - 2016-CP-00389-COA (Feb. 14, 2017)**

Opinion by Judge Greenlee

Hon. Christopher Louis Schmidt (Harrison County Circuit Court)

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

Briefed by [Catherine Norton](#)

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

### **FRIDAY V. STATE**

#### **CRIMINAL - FELONY**

**EVIDENCE - EXPERT FUNDING- INDEPENDENT DNA EXAM** - The State must take steps to assure that an indigent defendant has a fair opportunity to present his defense, and a trial court must provide expert assistance to a defendant when denial of such assistance would render the trial fundamentally unfair; This does not mean that an expert must be supplied any time an indigent defendant requests one; A defendant must demonstrate a substantial need in order to justify the trial court expending public funds for an expert to assist the defense

**EVIDENCE - HEARSAY - TENDER YEARS EXCEPTION** - Under Mississippi Rule of Evidence 803(25), a statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability, and (b) the child either (1) testifies at the proceedings, or (2) is unavailable as a witness

**EVIDENCE - TENDER YEARS EXCEPTION - PRESUMPTION** - There is a rebuttable presumption that a child under the age of twelve is of tender years; however, when the child is twelve years old or older, the presumption does not apply, and the trial court must make a case-by-case determination as to whether the child is of tender years on the record and based on a factual finding as to the child's mental and emotional age

## FACTS

Frank Friday was found guilty of three counts of sexual battery and two counts of fondling of his stepdaughter. The victim was twelve years old at the time of the crime. Friday appealed.

## ISSUES

Whether the trial court erred in (1) refusing to grant funds for an independent DNA examination and (2) failing to conduct a tender-years hearing.

## HOLDING

(1) Because Friday failed to present any specific reason why funding his own DNA expert would have significantly aided his defense the trial court did not err in refusing to grant funds for an independent DNA examination. (2) Because the

victim was twelve years old at the time of the crime, the tender-years presumption did not apply. The weight of the evidence of guilt outweighed any harm done by allowing admission of hearsay statement without a tender-years hearing. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

**Affirmed - 2015-KA-01343-COA (Feb. 14, 2017)**

Opinion by Judge Barnes

Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)

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

Briefed by [Lora Wuerdeman](#)

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## MEADOWS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - YOUTH COURT - JURISDICTION** - The youth court has exclusive original jurisdiction, attaching at the time of the offense, over all proceedings concerning delinquent children, children in need of supervision, neglected children, and abused or dependent children, unless either the act the child committed or attempted would be punishable by life imprisonment or death if committed by an adult or the act committed or attempted by the child involved the use of a deadly weapon and the act would be a felony if committed by an adult

**CRIMINAL PROCEDURE - JURISDICTION - TRANSFER** - When a person appears before another court in a proceeding over which youth court has jurisdiction, and jurisdiction has not been transferred to that court, that court must dismiss the proceeding without prejudice

**CRIMINAL PROCEDURE - JURISDICTION - TRANSFER HEARING** - A child under the jurisdiction of the youth court cannot be held criminally responsible or be criminally prosecuted by any court for any delinquent act unless the youth court conducts a transfer hearing and the youth court then transfers jurisdiction

### FACTS

The court's opinion is a consolidation of two cases. After an outing resulted in a broken four-wheeler, Timothy Williamson turned violent towards Timothy Meadows and Alex Crews. Williamson was dead when deputies arrived at the scene. The cause of death was asphyxiation associated with strangulation. Although both Meadows and Crews were both seventeen at the time of the incident, they were tried in the circuit court for heat-of-passion manslaughter. The trial court found both Meadows and Crews guilty and denied their motions for a judgment notwithstanding the verdict. Both Meadows and Crews appealed.

### ISSUE

Whether the trial court erred in exercising jurisdiction over the case.

### HOLDING

Because Meadows and Crews were seventeen at the time of the incident, the youth court possessed exclusive original jurisdictions over the proceeding, meaning that transfer was required for the circuit court to have jurisdiction. Therefore, the Court of Appeals reversed and remanded the decision of the Jones County Circuit Court.

**Reversed & Remanded - 2015-KA-01432-COA (Feb. 14, 2017)**

En Banc Opinion by Judge Carlton

Hon. Wayman Dal Williamson (Jones County Circuit Court, First Judicial District)

Erin Elizabeth Briggs & Hunter Nolan Aikens (Pub. Def. Office) for Appellants - Joseph Scott Hemleben (Att'y Gen. Office) for Appellee

Briefed by [Alison Guider](#)

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## SANDERS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - APPELLATE REVIEW - HARMLESS ERROR** - An otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt

**CRIMINAL PROCEDURE - SIXTH AMENDMENT - CONFRONTATION CLAUSE** - Testimonial statements of a witness who does not testify at trial are inadmissible unless the witness is unavailable, and the defendant had a prior opportunity for cross-examination

**EVIDENCE - HEARSAY - CONFRONTATION CLAUSE** - Statements are testimonial when the circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to the later criminal prosecution

### FACTS

On September 11, 2014, Marterius Sanders was captured on video exchanging \$200 for 1.65 grams of crack cocaine with undercover confidential informant, James White. After the transaction was complete, White reported to multijurisdictional narcotics agent, Chris Brown's, office. During the post-sale interview between White and Agent Brown, a video-recording device documented White telling Agent Brown that he purchased the crack cocaine from a man named "G" or "Greg." Agent Brown then conducted an investigation, and through witnesses' various statements and identifications, including fellow officer J.B. Long, determined that "Greg" was Sanders. Before trial, Sanders' defense attorney moved for the audio-video recording evidence to be suppressed, alleging that it was inadmissible hearsay in violation of the Confrontation Clause, which was denied. At trial, the prosecution admitted photographs from the audio-video recording that clearly depicted Sanders and the crack cocaine. On May 28, 2015, a jury found Sanders guilty of one count of transfer of a controlled substance, and he was sentenced to eight years as a nonviolent habitual offender. Sanders appealed.

### ISSUE

Whether video footage from the sting operation contained inadmissible hearsay and was erroneously admitted at trial, in violation of the Confrontation Clause of the Sixth Amendment to the U.S. Constitution.

### HOLDING

White's statement to Agent Brown was testimonial. When the statement was made, there was no ongoing emergency, and the purpose of the statement was to establish or prove past events potentially relevant to later prosecution. However, White was killed prior to trial and Sanders never had a previous opportunity to cross-examine him about his statement. Because White's statement was testimonial and Sanders never had the opportunity to cross-examine him, the circuit court erred when it admitted White's statement in violation of the Confrontation Clause of the Sixth Amendment. Additionally, in reviewing the record on the whole, the visual footage from the video recording, the still photographs, and the identification by Office Long overwhelmingly established that Sanders was the man who transferred the crack cocaine to White. Thus, the circuit court's error in admitting White's statement was a harmless one, and as such, no manifest miscarriage of justice occurred. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

### **Affirmed - 2015-KA-00971-COA (Feb. 14, 2017)**

Opinion by Judge Ishee

Hon. Thomas J. Gardner III (Lee County Circuit Court)

George T. Holmes for Appellant (Pub. Def. Office) – Barbara Byrd & Jason L Davis (Att'y Gen. Office) for Appellee

Briefed by [Amber Kipfmiller](#)

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## WHITE V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - THEORY OF DEFENSE - PRESENTING DEFENSE** - A criminal defendant is entitled to present his defense to the finder of fact, and it is fundamentally unfair to deny the jury the opportunity to consider the defendant's defense where there is testimony to support the theory

**EVIDENCE - CHARACTER - INADMISSIBILITY**- Pursuant to Rule 404(b), evidence of crimes, wrongs, or acts are not admissible to prove the character of a person in order to show that he acted in conformity therewith; however, this evidence may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

**EVIDENCE - RELEVANCE - PREJUDICE BALANCING** - Pursuant to M.R.E. 403, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence

**PROSECUTORIAL MISCONDUCT - FAIRNESS - REVERSAL** - Where prosecutorial misconduct endangers the fairness of a trial and the impartial administration of justice, reversal must follow

### FACTS

Counts I and III of the indictment charged Curtis White with gratification of lust and the statutory rape of MM, and Count II charged White with gratification of lust for LM. White was sentenced to serve eight years for each count of gratification of lust and thirty years for the statutory-rape charge. White's statutory-rape sentence was to be served without the possibility of early release, and was to run concurrently with one count of gratification of lust, and consecutively to the other count. White appealed.

### ISSUES

Whether (1) the circuit court erred by denying White the opportunity to authenticate evidence of electronic communications to attempt to establish the defense's theory regarding MM's motive to fabricate allegations; (2) the circuit court erred in denying White's motion in limine and trial objections regarding evidence of the nine-year-old uncharged statutory rape of AB and an indictment in Humphreys County; and (3) White was denied due process by the repeated and persistent acts of prosecutorial misconduct by the district attorney and assistant district attorney.

### HOLDING

(1) Because the nature of these types of child-victim cases inherently involves circumstantial, word-of-mouth evidence, evidence supporting MM's motive to lie was relevant. Under the specific facts, it was reversible error to deny White the chance to authenticate the proposed evidence, especially in light of the significance the evidence had to White's defense. (2) The circuit court also erred in admitting evidence of another statutory rape indictment. (3) Throughout White's trial, the district attorney made numerous prejudicial, inflammatory, and improper comments. While the comments may not be reversible standing alone, the cumulative effect of the otherwise harmless errors warranted reversal. Therefore, the Court of Appeals reversed and remanded the judgment of the Yazoo County Circuit Court.

### DISSENT

Presiding Judge Griffis argued that the circuit court did not abuse its discretion regarding the admissibility of the evidence and that White was not denied due process or a fair trial as a result of prosecutorial misconduct. Thus, Presiding Judge Griffis would affirm White's conviction and sentence.

### **Reversed and Remanded - 2015-KA-01458-COA (Feb. 14, 2017)**

Opinion by Judge Ishee - Dissent by Presiding Judge Griffis

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

Richard T. Starrett for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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