

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 12, 2017**SUPREME COURT - CIVIL CASES****H.A.S. ELEC. CONTRACTORS, INC. v. HEMPHILL CONSTR. CO.****CIVIL - CONTRACT**

JURY SELECTION - PEREMPTORY STRIKE - *BATSON* CHALLENGE - A party may challenge opposing counsel's peremptory strike of a juror as discriminatory by making a prima facie showing of discriminatory racial intent; the opposing party has an opportunity to rebut the prima facie case by providing race-neutral reasoning, which the moving party then has an opportunity to show as pretextual

FACTUAL FINDINGS - DISCRIMINATORY INTENT - STANDARD OF REVIEW - A lower court's determination as to the non-existence of discriminatory intent is reviewed under a reasonableness standard because findings of discriminatory intent are factual

REMEDIES - ATTORNEY'S FEES - REASONABLENESS - The reasonableness of attorney's fees is based on either a valid contract providing for them or a finding of outrageous conduct so as to support punitive damages

FACTS

Hemphill Construction Company, a general contractor, subcontracted with HAS Electrical Contractors. HAS filed suit for breach-of-contract for Hemphill's failure to make payments for work performed. During jury selection, Hemphill's counsel used a peremptory strike to eliminate a juror that was African American and sixty-three years old. HAS's counsel immediately objected, alleging Hemphill used race-based intent to strike the juror. The trial court determined that HAS had failed to establish a prima facie showing of racial intent, but nevertheless required of Hemphill's counsel a race-neutral reason for striking the juror. Hemphill provided reasoning that it did not want an older jury at trial. On appeal, the Supreme Court remanded the case to the trial court, finding that once Hemphill was required to provide a race-neutral reason for striking the juror, then HAS had the right to demonstrate the reasoning as pretextual to race-based discrimination. On remand, the lower court determined HAS failed to establish pretext of racial intent. Additionally, the lower court awarded Hemphill attorney's fees pursuant to provisions in the subcontract. HAS appealed.

ISSUE

Whether the trial court erred in (1) finding that there was no discriminatory intent to the peremptory strikes of potential jurors and (2) awarding attorney's fees to the prevailing party.

HOLDING

(1) Because the trial judge found that the selection of two older jurors before the strike and two African American jurors after the strike lent credence to Hemphill's race-neutral reason, the trial court did not err in finding that there was no discriminatory intent to the peremptory strikes of the potential jurors. (2) Because unilateral contract provisions are conscionable when made between two competent parties, and because HAS's contract was upheld as valid, the trial court did not err in awarding Hemphill attorney's fees. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Justice King argued that the majority opinion failed to review Hemphill's use of strikes as a whole, reviewing the entirety of the facts in the record. Arguing that Hemphill's race-neutral reasoning for use of its peremptory strike did not withstand scrutiny of its application of strikes throughout the entire jury selection, Justice King dissented from the majority.

Affirmed - 2015-CA-00596-SCT (Oct. 12, 2017)

En Banc Opinion by Presiding Justice Randolph Dissent by Justice King
Hon. John Huey Emfinger (Rankin County Circuit Court)
Jim L. Davis III for Appellant - David Bonds Ellis & Danny Alton Drake for Appellee
Briefed by [D. Kirkwood Palmer](#)

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ROBINSON V. MARTIN FOOD STORES, INC.

CIVIL - PERSONAL INJURY

FACTS

Aundrea Robinson sued Martin Food Stores, Inc. after a slip-and-fall incident while shopping. On July 19, 2016, the Court of Appeals [affirmed](#) the judgment of the Pike County Circuit Court, which granted summary judgment to Martin Food Stores. The Supreme Court granted the petition for writ of certiorari.

PER CURIAM

In a per curiam opinion, the judgment of the Pike County Circuit Court was affirmed by an equally divided court.

Affirmed - 2014-CT-01457-SCT (Oct. 12, 2017)

En Banc Opinion (Per Curiam)
Hon. David H. Strong Jr. (Pike County Circuit Court)
David Neil McCarty, Jonathan C. Tabor, Leigh-Ann Tabor, & Emily H. Burch for Appellant - Steven C. Cookston, Patrick M. Tatum, & William L. Morton III for Appellee
Briefed by [Allison A. Bruff](#)

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SUPREME COURT - CRIMINAL CASES

CARVER V. STATE

CRIMINAL - FELONY

FELONY - CONSTRUCTIVE POSSESSION - SUFFICIENCY OF THE EVIDENCE - A mere presence does not indicate participation in the purchase, nor does it support an inference of dominion and control over contraband

FELONY - CONSTRUCTIVE POSSESSION - SUFFICIENCY OF THE EVIDENCE - Dominion and control must be established by evidence more compelling than the momentary handling of contraband

FACTS

Marvin Rerockus Demond Carver was a passenger in a rental car driven by his half-brother Nicholas Ingram. When a state trooper pulled Ingram over for speeding, the trooper smelled marijuana coming from the car. Ingram consented to a search of the vehicle. The trooper found a small handgun under the seat, a small bag of marijuana in the console, two larger bags of marijuana and a digital scale in the trunk, and more than \$800 in Ingram's pocket. Both men were taken into custody, and Ingram took full responsibility for the illegal items. In his written statement, Carver said he knew about the marijuana because they were going to smoke it for Thanksgiving. But Carver said he did not know about the marijuana in the trunk. At trial, the jury acquitted Carver of conspiracy but convicted him of possession of

more than 30 but less than 250 grams of marijuana. Carver was sentenced to six years in prison. The Court of Appeals affirmed the conviction. Carter petitioned for certiorari.

ISSUE

Whether the evidence was sufficient to support the conviction.

HOLDING

Because the State did not meet its burden of proof to establish that Carver had exercised dominion or control over the marijuana, the case fell short of the sufficiency of evidence required to establish a conviction of constructive possession. Therefore, the Supreme Court reversed and rendered the judgment of the Madison County Circuit Court.

Reversed & Rendered - 2015-CT-00384-SCT (Oct. 12, 2017)

En Banc Opinion by Justice King

Hon. William E. Chapman III (Madison County Circuit Court)

Hunter Nolan Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Sarah Raben](#)

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LITTLE V. STATE

CRIMINAL - FELONY

CRIMINAL - MOTION FOR A NEW TRIAL - THIRTEENTH JUROR - In considering a motion for a new trial, the trial court sits as the thirteenth juror; neither the Supreme Court nor the Court of Appeals sits as the thirteenth juror when reviewing a motion for a new trial

CRIMINAL - MOTION FOR A NEW TRIAL - ABUSE OF DISCRETION - In determining whether the trial court abused its discretion, the court must weigh the evidence in the light most favorable to the verdict, and a verdict will only be disturbed when the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice

FACTS

David Ellis, a Nurse Practitioner, was robbed after he was attacked from behind when he was leaving his medical clinic. Ellis swung his computer bag at his attacker’s head. Ellis subsequently fell down as his attacker stumbled. The attacker stuck a .45 caliber gun in Ellis’s face. Ellis was about three feet away and observed the attacker “square in the face.” Ellis gave the attacker his wallet, and the attacker fled the scene. Ellis went straight to the Port Gibson Police. Ellis described his attacker as “a black male wearing all black with a hood over his head,” with a “small” body type, and 20 years old “or better.” Police Chief Calvin Jackson received a tip from an informant a few days later stating that Marlon Little was the attacker. Chief Jackson put Little’s photo in a lineup, which he presented to Ellis. Ellis identified Little immediately as his attacker. Little was indicted and tried a month later. The State called Chief Jackson and Ellis as witnesses. Chief Jackson testified about the informant’s tip and the presentation of the lineup to Ellis. Chief Jackson also testified under cross-examination about discrepancies between Ellis’s initial description of his attacker to police and Little’s physical characteristics. Chief Jackson was also asked about Ellis telling Little’s private investigator the attacker was clean-shaven. Little was known to keep a goatee, but Chief Jackson did not know if Little had facial hair at the time of his arrest. Chief Jackson agreed with defense counsel that Little was not stocky or muscular. Chief Jackson also testified he did not remember in Ellis’s initial description anything about Little’s gold teeth. Ellis testified clearly and unequivocally that Little was his attacker. Ellis recognized Little’s face, especially Little’s pronounced facial creases, or “nasolabial folds,” and Little’s “scared-looking” eyes. Ellis described Little as “slender but solid,” meaning he was not easily knocked down or moved. Ellis stated he did not recognize Little’s teeth because of the .45 pistol Little stuck in his face. Ellis initially described Little as 20 years old “or better” when Little was actually thirty-nine at the time, and

Ellis attributed this to him not being a good judge of age. Little called no witnesses, and Little was found guilty of armed robbery and possession of a weapon by a convicted felon. Little was sentenced to thirty years for armed robbery and ten years for being a felon-in-possession. Little's sentences were to run concurrently. Little's post-trial motions for judgment notwithstanding the verdict and for a new trial were denied. Little appealed. The Court of Appeals applied the "thirteenth juror" standard for review and reversed Little's conviction and remanded for a new trial. The State filed a petition for certiorari.

ISSUE

Whether the trial court abused its discretion in denying Little's motion for a new trial.

HOLDING

Because the Court of Appeals erroneously applied the thirteenth-juror standard, the Court of Appeals erred in reversing the trial court's conviction. Further, the conflicting testimony in this case was thoroughly presented to the jury, who resolved the conflicts and found beyond a reasonable doubt that Little attacked Ellis, pointed a gun in his face, and robbed him. Accordingly, the trial court did not abuse its discretion in denying Little's motion for a new trial. The Supreme Court clarified that the thirteenth-juror standard applied only to the trial court and not to the appellate court. Therefore, the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed the judgment of the Claiborne County Circuit Court.

DISSENT

Presiding Justice Kitchens argued that the Supreme Court should affirm the judgment of the Court of Appeals, which reversed Little's convictions and remanded for a new trial, because the Supreme Court should evaluate the weight of the evidence and credibility of the witnesses to determine whether the trial court abused its discretion by not granting a motion for a new trial. Presiding Justice Kitchens stated that in Little's case, the verdict was against the overwhelming weight of the evidence as the State's only evidence was Ellis's identification of Little, so Little's conviction should not stand. Further, the admission of the informant's tip as additional substantive identification evidence and the prosecutor's closing argument encouraging the jury to consider this tip as further substantive identification evidence was plain error.

Reversed - 2014-CT-01505-SCT (Oct. 12, 2017)

En Banc Opinion by Justice Maxwell - Dissent by Presiding Justice Kitchens

Hon. Lamar Pickard (Claiborne County Circuit Court)

W. Daniel Hinchcliff & George T. Holmes (Pub. Def. Office) for Appellant - Joseph Scott Hemleben (Att'y Gen. Off.) for Appellee

Briefed by [Michael Farese](#)

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SUPREME COURT - ORDERS

UNIV. OF MISS. MED. CTR. v. HAMPTON

COURT ORDER

AFFIRMATIVE DEFENSES - WAIVER - UNJUSTIFIABLE DELAY - An eight-month unjustifiable delay in the assertion and pursuit of any affirmative defense or other right which, if timely pursued, could serve to terminate the litigation, coupled with active participation in the litigation process, constitutes waiver as a matter of law

FACTS

Kimrick Smith was discharged from UMMC on November 3, 2010, following his receipt of medical treatment after sustaining a stab wound. On November 8, 2010, Smith died suddenly at Marion County General Hospital from an undiagnosed heart wound. Following a tolling period for the statute of limitations pursuant to Miss. Code Ann. § 11-

46-11(3), Kim Hampton (Smith's mother) filed a *pro se* complaint with the Hinds County Circuit Court. UMMC filed a motion for summary judgment, asserting that Hampton's complaint was filed outside the statute of limitations. The trial court denied UMMC's motion for summary judgment and the case proceeded to trial, where it was decided in favor of Hampton. UMMC appealed, and the Mississippi Court of Appeals reversed and rendered, finding that Hampton's complaint had been filed outside the applicable statute of limitations. On May 18, 2017, the Supreme Court granted Hampton's petition for writ of certiorari.

ORDER

The Supreme Court found that there was no need for further review. The writ of certiorari was dismissed, as authorized by Miss. R. App. P. 17(f).

OBJECTION

Presiding Justice Kitchens objected to the Order, arguing that the Supreme Court should address the statute of limitations issue and reverse the judgment of the Court of Appeals for two reasons. (1) He argued that UMMC waived its affirmative defense of the statute of limitations by waiting an unjustifiable 241 days before filing a motion for summary judgment based on these grounds. (2) He also argued that the statute of limitations did not begin to run until Hampton received notice that UMMC had denied her claims, rather than her first discovery of the undiagnosed heart condition that led to her son's death; this caused her complaint to be filed in a timely manner. Presiding Justice Kitchens would reverse the decision of the Mississippi Court of Appeals and reinstate and affirm the judgment of the Hinds County Circuit Court.

Writ Dismissed - 2014-CT-01079-SCT (Oct. 10, 2017)

En Banc Order by Justice Coleman Objection by Presiding Justice Kitchens

Briefed by [Kelsey Dismukes](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 10, 2017

COURT OF APPEALS - CIVIL CASES

EKANEM V. GREENVILLE PUB. SCH. DIST. BD. OF TRS.

CIVIL - OTHER

ADMINISTRATIVE LAW - APPELLATE REVIEW - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates one's constitutional rights

EVIDENCE - APPELLATE REVIEW - SUBSTANTIAL EVIDENCE - Substantial evidence means more than a scintilla or a suspicion

EVIDENCE - APPELLATE REVIEW - ARBITRARY & CAPRICIOUS ACTS - An act is arbitrary when it occurs not according to reason or judgment, but occurs based on the will alone, and is arbitrary and capricious when reason for the act is a sham or retaliation for the employee's constitutionally protected activity

FACTS

After being placed on several improvement plans without any positive effects, the Greenville Public School District Board of Trustees did not renew teacher Patricia Ekanem's employment contract at the Weddington Math, Science, and Technology Academy. Ekanem filed a petition for judicial review of the Board's decision, and the Washington County Chancery Court affirmed the Board's decision. Ekanem appealed.

ISSUE

Whether the trial court erred in upholding the Board of Trustees' decision because it was not supported by sufficient evidence and was arbitrary or capricious.

HOLDING

Because the record contained substantial evidence that Ekanem was underperforming (e.g., failure to complete improvement plans, excessive absences, letters of reprimand, etc.) and failed to comply with plans designed to improve her instructional skills, the Board's actions were not arbitrary or capricious, and there was no evidence to suggest that its decision was in violation of any statutory or constitutional right. Therefore, the Court of Appeals affirmed the judgment of the Washington County Chancery Court.

Affirmed - 2016-CC-01093-COA (Oct. 10, 2017)

En Banc Opinion by Presiding Judge Irving

Hon. Marie Wilson (Washington County Chancery Court)

Bryant Donlevy Guy for Appellant - Dorian E. Turner for Appellee

Briefed by [Nikki Breeland](#)

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ESTATE OF POUNDS V. SHIRLEY

CIVIL - REAL PROPERTY

PROPERTY DEED - MUTUAL MISTAKE - REFORMATION - In an action to reform a deed based on a mistake theory, the burden rests with the petitioner to prove beyond a reasonable doubt that a mutual or unilateral mistake occurred among the parties in addition to fraud or inequitable conduct on the part of the benefitting party

PROPERTY DEED - FRAUDULENT CONVEYANCE - STATUTE OF LIMITATIONS - Where a plaintiff alleging a possessory interest in the land brings an action to clear title or to recover land obtained by fraudulent conveyance, that action is governed by the ten-year statute of limitations; the right to bring suit accrues when the fraud is first known or, with reasonable diligence, discovered

FACTS

Jim Shirley ("Shirley") was deeded land east of the Brown's Creek Channel by his uncle in 1970. In 1988, Shirley was deeded land west of Brown's Creek by his uncle's widow. Shirley leased his land to James Pounds ("James") for several years. In 1997, Shirley decided to sell the tract of his land east of Brown's Creek to James. Shirley and James never discussed the exact acreage of the tract. James purchased the land from Shirley in 1997, and the tract was owner-financed by Shirley, who held a deed of trust that was never recorded. There were two deeds related to the 1997 conveyance of land. The first deed was signed on January 13, 1997, and the corrected second deed was signed the next day. Following James's death, his son, James Bradley Pounds ("Bradley"), had the land surveyed. As a result of the description of the property in the corrected deed, the surveyor included land west of Brown's Creek in his survey. On December 29, 2014, James's surviving heirs conveyed the entirety of the surveyed property, including the disputed tract, to Bradley. Bradley recorded the deed on December 30, 2014. After discovering that James's heirs asserted a claim against certain portions of land west of Brown's Creek, the Shirleys filed a complaint against the Estate for James Pounds ("Pounds Estate"). Shirley testified at trial that the sale of the land west of Brown's Creek was never contemplated. Further, several witnesses testified that James never informed them of his intent to purchase land west of Brown's Creek. The trial court found that the warranty deed mistakenly included property west of Brown's Creek, and that the Shirleys did not prove fraud by clear and convincing evidence. Finding that a mutual mistake had occurred, the court reformed the warranty deed and ordered the Shirleys to repay the Pounds Estate for the taxes James paid for the property. The Pounds Estate appealed.

ISSUES

Whether the trial court erred in finding (1) that the warranty deed denoted a mutual mistake by including property west of Brown's Creek, and (2) that the Shirleys' claims were not barred by the applicable statute of limitations.

HOLDING

(1) Because the totality of the evidence supported a finding of mutual mistake in the warranty deed, the trial court correctly found that the property west of Brown's Creek belonged to the Pounds Estate. (2) Because the cause of action did not accrue until the Pounds Estate sought to enforce the 1997 warranty deed, the trial court correctly found that the statute of limitations did not prohibit the Shirleys' claims. Therefore, the Court of Appeals affirmed the judgment of the Prentiss County Chancery Court.

Affirmed - 2016-CA-00590-COA (Oct. 10, 2017)

Opinion by Judge Westbrook

Hon. C. Michael Malski (Prentiss County Chancery Court)

Greg E. Beard for Appellants - Casey Langston Lott & Joe-Colby Ray Langston for Appellees

Briefed by [Emily Warwick](#)

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ROBERTS V. EADS

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - The chancellor should consider the following *Albright* factors to determine the best interest of the child: (1) age, health and sex of the child; (2) determination of the parent that had the continuity of care prior to the separation; (3) which has the best parenting skills and which has the willingness and capacity to provide primary child care; (4) the employment of the parent and responsibilities of that employment; (5) physical and mental health and age of the parents; (6) emotional ties of parent and child; (7) moral fitness of parents; (8) the home, school and community record of the child; (9) the preference of the child at the age sufficient to express a preference by law; (10) stability of home environment and employment of each parent; and (11) other factors relevant to the parent-child relationship

FAMILY LAW - CUSTODY - DEFERENCE - The court must defer to the chancellor's factual findings so long as they are supported by substantial evidence

FAMILY LAW - CUSTODY - JOINT CUSTODY - A chancellor may grant joint custody, even if neither parent presents the issue, if it is in the best interest of the child

FACTS

Lauren Roberts and Tyler Eads were granted joint legal and physical custody of their eight-year-old son by the Forrest County Chancery Court. This ruling came as a response to Roberts's petition seeking sole custody of the child. Eads filed a counterclaim seeking sole custody, or joint custody in the alternative. A guardian ad litem (GAL) was assigned to the case, and after an analysis of the *Albright* factors, the GAL determined that the factors were in favor of Roberts. However, after discovering new information regarding the relationship between the child and Eads's family, the GAL recommended that Eads and Roberts be awarded joint custody. The chancellor determined that the *Albright* factors were split evenly and thus, awarded joint custody to both parents. Roberts appealed.

ISSUES

Whether the chancellor erred in his application of (1) the *Albright* factors and (2) Mississippi statutory law and case law.

HOLDING

(1) Because the chancellor found that the child had emotional attachment to each of the parents, each of the parents could provide for the child financially, and each of the parents provided a stable home for the child, the chancellor did not err in his application of the *Albright* factors. (2) Because joint custody was in the best interest of the child based on

the *Albright* factors, the chancellor did not err in applying Mississippi statutory law and case law. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2016-CA-01242-COA (Oct. 10, 2017)

Opinion by Judge Carlton

Hon. M. Ronald Doleac (Forrest County Chancery Court)

Gay L. Polk-Payton for Appellant - Barbara Bond Parker for Appellee

Briefed by [Zachary Harper](#)

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WESTFALL V. GOGGINS

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - DISMISSAL - DISCOVERY VIOLATION - When a defendant asks for dismissal of the action for a discovery violation, the trial judge and appellate court must begin with the important admonition in *Pierce v. Heritage Properties, Inc.*, which sets forth that dismissal is appropriate only under the most extreme circumstances and only where lesser sanctions will not suffice

CIVIL PROCEDURE - DISMISSAL - DISCOVERY VIOLATION - A party's confusion of previous injuries does not amount to intentional and deceitful misrepresentation

FACTS

On June 3, 2013, Shannon Westfall was involved in an automobile accident with a tractor trailer driven by Randy Goggins and owned by his employer, Carnes Frames, Inc. Shannon and her husband, John Westfall, commenced a civil action against Goggins and Carnes. On September 15, 2014, Goggins filed a motion to dismiss, claiming Shannon made false representations in her discovery responses that were willful and in bad faith. Goggins argued the only appropriate sanction for such discovery violations was dismissal of the Westfalls' complaint with prejudice. Goggins argued Shannon's actual pre-existing medical history was contrary to her interrogatory answers and deposition testimony, alleging that she sought medical attention for pain in her shoulders on many more occasions than she disclosed during discovery. On July 1, 2015, the Westfalls' counsel provided an affidavit from a medical provider. The information was provided in a timely manner and corrected an inaccuracy in one of the medical records relied on by Goggins and Carnes. On April 26, 2016, the trial court dismissed the Westfalls' complaint with prejudice. The Westfalls appealed.

ISSUE

Whether the trial court committed reversible error in its decision to dismiss the Westfalls' complaint under Miss. R. Civ. P. 37 and *Pierce v. Heritage Properties, Inc.*

HOLDING

Because dismissal under Miss. R. Civ. P. 37 and *Pierce v. Heritage Properties, Inc.* is appropriate only under the most extreme circumstances and only where lesser sanctions will not suffice, and because Shannon did not blatantly lie about the existence of a witness, completely misrepresent years of medical history and procedures, nor hide any other surgeries, the trial court erred in dismissing the complaint. Therefore, the Court of Appeals reversed the judgment of the Pontotoc County Circuit Court and remanded the case for further proceedings.

DISSENT

Presiding Judge Irving argued Shannon's actions fell within the parameters of conduct that permit a trial judge to dismiss a plaintiff's complaint when the plaintiff has deliberately attempted to subvert the judicial process by willfully refusing to be forthcoming with information that is required to be disclosed during the discovery process. He would have affirmed the judgment of the Pontotoc County Circuit Court.

Reversed & Remanded - 2016-CA-00727-COA (Oct. 10, 2017)

En Banc Opinion by Presiding Judge Griffis Dissent by Presiding Judge Irving

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

William O. Rutledge III, Laurance Nicholas Chandler Rogers, & Valarie Blythe Hancock for Appellants - Rebecca B. Cowan &

Joseph Walter Gill for Appellees

Briefed by [William L. Moorer](#)

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COURT OF APPEALS - CRIMINAL CASES

HERRINGTON V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - LAY OPINION TESTIMONY - Lay witness opinion testimony is proper if it is rationally based on the perception of the witness, helpful to the clear understanding of testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge

EVIDENCE - ADMISSIBILITY - INCONSISTENT TESTIMONY - The hearsay exception in Miss. R. Evid. 801(d)(1)(B) is satisfied when a reasonable mind would accept the central thrust of the prior statement as being consistent with the witness's in-court testimony

EVIDENCE - SUFFICIENCY - Evidence is sufficient if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - NEW TRIAL - A motion for a new trial must be made within ten days of the judgment

CRIMINAL PROCEDURE - SENTENCING - In general, a sentence which falls within the permissible range designated by statute will not be disturbed on appeal

FACTS

Jonathan Herrington was indicted by a Neshoba County grand jury for the deliberate-design murder of Billy Scott Bishop. After hearing all the evidence and testimony, the jury convicted Herrington of manslaughter, and the circuit court sentenced him to twenty years in the custody of the Mississippi Department of Corrections. Herrington subsequently filed an unsuccessful motion for a new trial. Herrington appealed.

ISSUES

Whether (1) the circuit court erred by admitting improper opinion testimony; (2) the circuit court erred by admitting Kimberly Gentry's four written pretrial statements; (3) insufficient evidence supported the verdict; (4) the verdict was against the overwhelming weight of the evidence; and (5) resentencing or sentence clarification is needed.

HOLDING

(1) Because the opinion testimony consisted of nothing more than first-hand observations that were rationally based on personal perceptions that required no specialized knowledge, the circuit court did not abuse its discretion. (2) Because the defense introduced Gentry's prior statements on cross-examination and a reasonable mind could accept the central thrust of the prior statements as being consistent with the in-court testimony, the statements were admissible. (3) Because sufficient evidence existed for a rational trier of fact to find the State met the essential elements of manslaughter beyond a reasonable doubt, sufficient evidence supported the verdict. (4) Because Herrington's attorney did not sign and submit the motion for a new trial until well after the ten-day time period, the circuit court did not err in denying his motion for a new trial. (5) Because Herrington's sentence fell within the statutory range of two to twenty years, it was not disturbed on appeal. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2016-KA-01376-COA (Oct. 10, 2017)

Opinion by Judge Carlton
Hon. Vernon R. Cotten (Neshoba County Circuit Court)
George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee
Briefed by [Luke Kelly](#)

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