

APPELLATE COURT UPDATE

Mississippi Public Defenders Conference
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Hollywood Casino
Bay St. Louis, Mississippi

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UNITED STATES SUPREME COURT CASES



HEIEN V. NORTH CAROLINA



HEIEN

Vasquez and Hein were traveling on I-77 in North Carolina. While watching for "criminal indicators of drivers [and] passengers," police officer saw Vasquez drive by and thought that he appeared "nervous." Vasquez slowed the vehicle when he approached a slower-moving vehicle, and the car's right brake light hadn't turned on.

Officer believed that that was in violation of the law.

It wasn't.

Question Presented: Does a police officer's mistake of law provide the individualized reasonable suspicion that the Fourth Amendment requires to justify a traffic stop?

HEIEN

The Court held that a search or seizure is reasonable under the Fourth Amendment when an officer has made a reasonable factual or legal mistake.

Because Fourth Amendment jurisprudence turns on the question of reasonableness, governing officials have traditionally been allowed leeway to enforce the law for the community's protection.

As long as the mistake of fact or law in question was reasonable, the Fourth Amendment does not hold such mistakes to be incompatible with the concept of reasonable suspicion.

However, the Court also held that those mistakes must be objectively reasonable; an officer cannot gain the benefits of Fourth Amendment reasonableness through a sloppy or incomplete knowledge of the law.

HEIEN

Justice Kagan's concurrence provides a more concrete and feasible test for how we determine an officer's reasonableness.

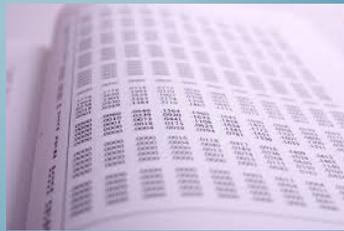
"[T]he government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law. And it means that, contrary to the dissenting opinion in the court below, an officer's reliance on "an incorrect memo or training program from the police department" makes no difference to the analysis." (citations omitted).

Justice Kagan's opinion focusses on the law in question itself, when outlining the reasonableness test: "the test is satisfied when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view."

MISSISSIPPI SUPREME COURT CASES



HAMPTON V. STATE
FOSTER V. STATE
(OCTOBER 16, 2014)



HAMPTON AND FOSTER

Both cases concern a trial judge's sentencing authority when a jury does not return a sentence of life in an armed robbery conviction.

Both defendants were sentenced in excess of their life expectancy, but the Court found the issues procedurally barred, because they were not raised by trial counsel.

So, a good rule of thumb would be for trial practitioners to properly present actuarial data for the trial judge to sentence the defendant to a sentence less than his or her life expectancy.

Hampton and *Foster* avoided a more significant question, however.

**HAMPTON
AND
FOSTER**

What are the limits of a trial judge's sentencing authority for armed robbery?

Section 97-3-79: [All defendants convicted of armed robbery] shall be imprisoned for life in the state penitentiary if the penalty is so fixed by the jury; and in cases where the jury fails to fix the penalty at imprisonment for life in the state penitentiary the court shall fix the penalty at imprisonment in the state penitentiary for any term not less than three (3) years

Stewart v. State, 372 So. 2d 257, 259 (Miss. 1979) required the trial court to impose a sentence less than a defendant's life expectancy. That language is not in the statute.

**HAMPTON
AND
FOSTER**

Justice Coleman, in his concurring opinion, wrote to express his opinion that the Supreme Court exceeded its constitutional authority in *Stewart*, by effectively amending §97-3-79 to prohibit a judge from sentencing one convicted of armed robbery to any term of years greater than the defendant's life expectancy. He believed *Stewart* should be overruled.

Despite such limits on Court power, the *Stewart* Court did indeed insert a requirement into Section 97-3-79 that the Legislature did not – the requirement that a judge-imposed sentence be for less than the defendant's reasonable life expectancy.

He believed the language of the statute allows the trial court to give any sentence not less than 3 years.

Justice Dickinson agreed with Justice Coleman's opinion. However, any retroactive application of that change would create due-process concerns. Therefore, applying *Stewart* to this case, Hampton received an illegal sentence. He agreed with a dissenter that concluded that Hampton's claim was excused from procedural bars, and that Hampton's sentence exceeded a reasonable calculation of his life expectancy.

**HAMPTON
AND
FOSTER**

Chandler and King dissented in *Hampton and Foster*, respectively, arguing that *Stewart* was properly decided.

"For four decades, this Court has correctly held that, under Section 97-3-79, when a jury of twelve peers fails to unanimously impose the maximum sentence of life, the judge lacks the authority to supersede the jury's judgment by imposing a sentence equal to or exceeding life. *Stewart v. State*, 372 So. 2d 257, 259 (Miss. 1979). The trial court must therefore "make a record of and consider all relevant facts necessary to fix a sentence for a definite term [of years] reasonably expected to be less than life. The court should consider the age and life expectancy of the defendant and any other pertinent facts which would aid in fixing a proper sentence. [emphasis in original]"

Stare decisis should control, and based on *Stewart*, Hampton's sentence is illegal.

Expect this issue to come up again soon.

HAMPTON AND FOSTER

Another armed robbery sentencing case worth considering:

Kendrick Cowart a/k/a Rat v. State (January 8, 2015). With a life expectancy of 50.86 years, Cowart was given 48 years for armed robbery with a consecutive 5 years for conspiracy after being acquitted of murder. Defendant failed to show he was being punished for going to trial when co-defendant pled guilty to manslaughter and armed robbery, but received a lesser sentence (40 or 45 years).

COOK V. RANKIN COUNTY
(OCTOBER 16, 2014)



COOK

Officer received a call from dispatch to be on the lookout for a vehicle that was driving erratically and the driver of the vehicle was possibly flashing a badge of some sort. The officer did not know who made the initial call; to his knowledge, the tip was from an anonymous caller and was uncorroborated.

The call described a gray Chevy Avalanche, and gave the license-plate number.

Officer saw a vehicle matching the description and starting following it. The officer did not see the driver flash a badge of any sort or drive erratically.

Nevertheless, the officer stopped the Avalanche and subsequently arrested Cook for DUI.

Cook

Cook was convicted in justice court and appealed for a de novo trial in county court. Cook argued the anonymous tip that led to the investigatory stop violated his 4th Amendment rights against illegal search and seizure. Cook then appealed to circuit court. Circuit court affirmed the conviction.

The COA also affirmed finding that the stop did not violate Cook's 4th Amendment rights. Essentially, COA found that there was sufficient indicia of reliability when the officers located a vehicle matching the description of Cook's vehicle. Further, the court held that the behavior reported – reckless driving and impersonating a law enforcement official – justified the investigatory stop to resolve the ambiguous situation."

Cook appealed once more and the SCT granted certiorari.

Cook

MSSC reversed. The officers here failed to take further action to corroborate the criminal activity reported in the tip prior to stopping Cook. Without taking further action to corroborate the criminal activity reported, the officers did not have reasonable suspicion to stop Cook. An accurate description of Cook's vehicle and location was insufficient.

"Further, permitting a stop solely on an anonymous tip such as the one here can open the door for legal stops based on tips provided by persons with intent to harass or embarrass others... To be clear, however, today's opinion does not stand for the proposition that any anonymous tip, standing alone, will not sufficiently justify a search. For example, a report of someone intending to carry out a mass shooting would not require the same indicia of reliability as a report of an erratic driver."

CAROTHERS V. STATE
(DEC. 11, 2014)

Fairly significant rule change regarding when a party may impeach its own witness.

Carothers's half-sister initially gave a statement to police implicating that Carothers had, among other things, run his car into hers during a car chase. When Carothers caught up to her, he assaulted her.

The next day, police requested a formal statement from Sheena and she refused, indicating that she was the cause of the accident, not Carothers.

In testimony at a bond hearing, Sheena testified that she was driving erratically, lost control, collided with an oncoming vehicle, and suffered injuries.

CAROTHERS

Nevertheless, Carothers was indicted on two counts of aggravated assault stemming from the incident.

The prosecution asked that sister be treated as a hostile witness. Over objection, the trial court granted the request, and Sheena was impeached with her prior inconsistent statements that Carothers chased and attacked her. The jury returned a verdict of guilty.

The COA reversed, holding that the circuit court committed reversible error by allowing the State to treat Sheena as a hostile witness because her testimony was not a surprise.

MSSC granted cert.

CAROTHERS

The COA erred in not considering that Sheena's prior inconsistent statements would have been admissible under other exceptions to hearsay: MRE 801(d)(1)(c) (identification evidence), MRE 803(2) (excited utterances), and MRE 803(4) (medical diagnosis and treatment).

Any error by the trial court in allowing the State to admit the sister's prior statements as impeachment of a hostile witness was harmless beyond a reasonable doubt.

Further, while the elements of surprise and/or unexpected hostility are an acceptable basis for allowing a party to impeach its own witness, neither is required for purposes of Rule 607.

To the extent *Wilkins v. State*, 603 So. 2d 309, 322 (Miss. 1992), held otherwise, it was overruled.

Instead, the Court held that, in order to prevent abuse of Rule 607, impeachment of one's own witness should be allowed only when circumstances indicating good faith and the absence of subterfuge are present.

CAROTHERS

Instead of looking at surprise and hostility, the trial court should focus on the actual purpose for the impeachment.

Although the State could not call the sister solely for the purpose of impeaching her with her prior statements, the State was entitled to prove the relevant facts about which Sheena testified. The trial court did not abuse its discretion in allowing the State to impeach the sister's testimony with prior contradictory statements.

While the elements of surprise and/or unexpected hostility are (and remain) an acceptable basis for allowing a party to impeach its own witness, they are not required for purposes of Rule 607.

The Court held that "to prevent abuse of Rule 607, impeachment should not be allowed where the trial court finds the purported purpose of impeachment for offering the statement(s) is in bad faith, or is subterfuge to mask the true purpose of offering the statement(s) to prove the matter asserted.

BROWN V. STATE
(DECEMBER 11, 2014)



Brown was convicted of the capital murder of his son.

BROWN Dr. Steven Hayne performed an autopsy determined that the child's manner of death was homicide, and that the cause of death was "consistent with" Shaken Baby Syndrome. Brown was subsequently arrested, as his statement did not match what happened to the child according to Dr. Hayne.

With the help of family and friends, Brown was able to make bond and hire private counsel.

The defense made a request for funds to hire an expert, but the trial judge denied the request without a hearing, finding no authority to allow funds for expert assistance to a defendant with retained counsel who has not been found to be indigent.

BROWN The trial judge did err in finding Brown was not entitled to funds to hire an expert because he had retained counsel. The court failed to hold a hearing on Brown's request. Dr. Hayne's opinion was the basis for the capital murder charge.

Without an independent expert, he had absolutely no way to counter the State's sole evidence of the cause of death, or even to determine the proper questions to ask to challenge Dr. Hayne on cross.

Further, family and friends help him pay for his counsel. His affidavit of indigently explained he did not have the \$6,600 needed to hire an expert. Brown was entitled to a hearing to determine if he was indigent, regardless of who was paying his attorney fees.

This was reversible error.

BROWN

Additionally, the trial judge also erred in restricting the defense counsel's cross-examination of the State's experts. During his cross of Dr. Wells, the child's pediatrician, counsel attempted to ask her about immunization studies producing events in children that mimic Shaken Baby Syndrome. The State objected since the doctor was not qualified as an expert in immunizations.

The State also objected to counsel's attempt to cross Dr. Hayne about medical personnel holding the child's head in order to intubate him as having foundation in the record. However, this was incorrect as Dr. Wells testified the child's head was held as the child was fighting the treatment. Sustaining the State's objections deprived Brown of the right to fully cross-examine to witnesses against him.

BROWN

Lastly, a concurring opinion from Justice Kitchens, joined by all of the Justices, strongly criticized the delay in Brown's appeal:

"Notwithstanding that Brown did achieve some degree of success in this Court, and regardless of the ultimate resolution of the grievous charge he still faces, all of us who bear responsibility for the reliable and timely functioning of our state's criminal justice system should be ashamed of the systemic failure which occurred in the case of Leevester Brown, so much so that we rededicate ourselves to a resolute determination that such a thing will never happen again."

**IN THE INTEREST OF
S.M.K.S., A MINOR V.
YOUTH COURT OF
UNION COUNTY,
MISSISSIPPI
(JANUARY 22, 2015)**

Officer Kent with New Albany PD, responded to a report of shots fired by suspects in a tan Cutlass. Kent knew where he could find a tan Cutlass and drove in that direction. When he arrived, two boys were standing next to a tan Cutlass. With his weapon drawn, he told 13-year-old S.S. and his 16-year-old brother D.S to display their hands to make sure they were not armed. Neither complied. Both boys were told to place their hands on the car. Kent stated S.S. said, "I'm not putting my hands on the car." Kent then holstered his weapon and put S.S. "over the hood of the car" to check if S.S. had any weapons.

Other officers arrived at the scene. One of those officers stated S.S. was doing everything he could to not put his hands behind his back – kicking, yelling, punching.

S.S. had to be eventually tased. S.S. then stopped resisting, was handcuffed and arrested. The youth court found S.S. delinquent for resisting arrest.

IN THE INTEREST OF S.M.K.S.

The COA affirmed, finding Kent did not need probable cause to question S.S., and S.S. could have been arrested for a breach of the peace when S.S. failed to comply with Kent's order to place his hands on the car.

The SCT granted certiorari.

S.S. argued that police did not have probable cause to arrest him for anything. Therefore, Kent's actions in arresting him were unlawful, and one cannot be properly charged and convicted of resisting an unlawful arrest.

SCT disagreed.

IN THE INTEREST OF S.M.K.S.

The Court found the arrest for disorderly conduct was lawful, as the officer personally observed S.S. committing what he perceived to be a breach of the peace. The evidence was sufficient to adjudicate S.S. as a delinquent.

"We find that S.S.'s refusal to 'promptly comply with or obey a request, command, or order of' Officer Kent—a law enforcement officer, having the authority to . . . arrest any person for a violation of the law—constituted a circumstance 'which may cause or occasion a breach of the peace,' as two of the other officers at the scene described the situation as 'very hostile' and as 'mass chaos.' So Officer Kent, as a New Albany police officer, lawfully arrested S.S. for disorderly conduct when S.S. failed to obey Kent's commands to show his hands or to place his hands on the car under circumstances that could lead to a breach of the peace, which is all that is required under the disorderly conduct statute."

IN THE INTEREST OF S.M.K.S.

Chief Justice Waller concurred in the ruling, but wrote to express his belief that S.S. was never seized within the meaning of the 4th Amendment.

"I would find S.S. was never seized because he never actually submitted to Officer Kent's show of force." Police do not need probable cause to approach an individual while investigating criminal activity. S.S. was not unlawfully detained at any time prior to his refusal to obey Kent's orders. While Kent testified that he believed D.S., and not S.S., was involved in the shooting, a reasonable officer under the circumstances would conclude that S.S. may have had information regarding the shooting. Kent was justified in approaching S.S., and due to the threat posed by a potential armed gunman in the area, Kent acted reasonably in having his weapon drawn as he approached S.S.

**IN THE INTEREST
OF S.M.K.S.**

Justice Dickinson dissented, arguing that the assumption S.S. was arrested for disorderly conduct was never asserted at trial. The petition in youth court never charged S.S. with disorderly conduct. Officer Kent never expressed a concern that S.S. had a weapon. The officer specifically stated he did not believe S.S. had fired the weapon. Kent had no probable cause or reasonable suspicion concerning S.S. At the youth court hearing, the prosecutor never argued S.S.'s refusal to put his hands on the car was likely to lead to a breach of the peace.

"According to the majority, a citizen standing on a public sidewalk who is committing no crime, who has committed no crime and who is not even suspected of having committed a crime may properly be arrested for 'disorderly conduct' for refusing to put his hands on a car to be searched by a police officer who admits he has no probable cause or reasonable suspicion to conduct the search."

S.S. committed no crime to be arrested for, therefore he could not be guilty of resisting an unlawful arrest. "But I would reverse it for the additional reason that police officers who lack any probable cause or reasonable suspicion concerning a citizen have no right to order that citizen to put their hands on a car to be searched. And I am astonished that a majority of this Court believes otherwise."

***HYE V. STATE*
(FEBRUARY 5,
2015)**

Arguably the most significant case to come out of the Mississippi Supreme Court as of late.

A substantial change in the law.

At the onset, it is important to distinguish between lesser-included offenses and lesser offenses, sometimes called lesser-related or lesser non-included offenses.

For years, without significant challenge from the State, or question from the Supreme Court, the law has been that a defendant is entitled to have the jury instructed on lesser offenses if supported by the evidence.

This is no longer the case.

HYE

"We also find, after much consideration on the matter, that a criminal defendant no longer has the *unilateral right* under Mississippi law to insist upon an instruction for lesser-related offenses which are not necessarily included in the charged offense(s), i.e., so-called lesser-nonincluded-offense instructions. And we overrule *Griffin v. State*, 533 So. 2d 444 (Miss. 1988), and its progeny, to the extent they hold otherwise."

The SCT found that Mississippi's practice of instructing the jury on lesser nonincluded crimes is "fundamentally unsound." The doctrine of *stare decisis* did not limit the Court from correcting the *Griffin* decision. Federal courts and the vast majority of states do not allow the practice. The State determines the charges to present to the grand jury. The State undertakes no duty to prove uncharged, nonincluded offenses.

The SCT also mentioned that giving the defense the power to request an uncharged, nonincluded offense, "over the State's objection, ... usurps the State's exclusive charging discretion, and may therefore violate Mississippi's separation-of-powers clause..." [The Court stated it did not need to reach this question, but it is interesting to note.]

MANNING V. STATE
(FEB. 12, 2015).



MANNING

Willie Jerome Manning was convicted of the January 18, 1993 capital murder/robbery of two women and was sentenced to death on both counts.

Manning was seen by several individuals hanging out and drinking beer at the Brooksville Gardens Apartments in Starkville. The victims lived in an apartment there. Manning knew both victims

Kevin Lucious testified he was with Manning that afternoon and heard Manning complain he needed money. He testified he later looked out the window of the apartment he shared with his girlfriend, Likeesha Jones, and saw Manning force his way into the victims' apartment. Manning later told Lucious he would not have murdered the women had he know how little money they had. Lucious claimed Manning said he got about \$12. Lucious did not tell police about these conversations at first, but later agreed to tell police everything after being encouraged to tell the truth by his grandmother.

MANNING

Lucious was in jail on a murder charge in St. Louis at the time.

Manning's conviction and sentence of death were affirmed on direct appeal.

In response to Manning's PCR, the SCT allowed him to proceed in the trial court on claims relating to the State withholding evidence, Kevin Lucious's testimony, and ineffective assistance of counsel. The trial judge denied relief and Manning appealed.

The SCT agreed with the trial court's decision to reject recanted testimony. However, the SCT found error in the State's failure to provide evidence which would have impeached Lucious's testimony about seeing Manning enter the victims' apartment.

MANNING

he Starkville PD conducted a canvass of all residents of Brooksville Gardens Apartments during its investigation of the murders. Index cards recording the results of the canvass were completed and maintained by the police.

An entry on the cards reveals that the apartment from which Lucious testified he observed Manning enter the victims' apartment was vacant at the time of the crime, and neither Lucious nor his girlfriend Jones was listed as a resident of any of the apartments canvassed until two weeks after the crime.

These cards were not turned over to the DA or the defense counsel. Both the defense attorneys and the DA testified that their actions in preparing for the case and presenting the case would have been different had they possessed the evidence. There is a reasonable probability that the outcome of the proceedings would have been different had the evidence been disclosed. Manning is entitled to a new trial.

HARTFIELD V. STATE (MARCH 5, 2015)

Tabitha, her husband Ronald, Natasha Graham, and Cody Dixon were at Graham's trailer in rural Lamar County. As these things go sometimes, Tabitha was murdered.

Hartfield, Graham, and Dixon each gave conflicting statements. Dixon, testifying with a plea agreement, said Graham crushed some pills, mixed them in a glass of water, and brought the glass to Tabitha, who drank the mixture. Hartfield then strangled her with a dog leash.

Dixon testified that Graham cut Tabitha's wrists with a kitchen knife and helped wrap her body in a blanket. Dixon originally told police he had strangled Tabitha while Hartfield slept. He later wrote a letter to investigators admitting that he had falsely implicated Hartfield to save himself. He later denied writing the letter.

Graham reported the murder and stated she had killed her cousin. She told police Dixon had helped her but that Hartfield remained in the house. Graham was called as a witness but invoked her 5th Amendment privilege.

HARTFIELD

Hartfield then sought to introduce several letters Graham had written indicating that Dixon, acting on his own, had strangled Tabitha while Hartfield was inside asleep.

The letters prompted a hearsay objection from the State. Defense counsel argued the letters would fall under the hearsay exception laid out in Rule 804(b)(3) — statement against interest— but the trial court sustained the objection.

The COA reversed and remanded, finding the letters were hearsay, but they had sufficient corroborating circumstances to indicate trustworthiness when the statements were used to exculpate the accused.

The COA found it fundamentally unfair to deny the jury the opportunity to consider the defendant's defense (the letters) where there was testimony to support the theory.

The supreme court granted certiorari.

The letters were clearly hearsay. To be admissible under the exception in MRE 804(b)(3), the declarant must be unavailable, must be against the declarant's penal interests, and corroborating circumstances clearly indicate the trustworthiness of the statement.

HARTFIELD

The letters were not against the Graham's penal interest, and therefore were properly excluded by the trial court. In the letters, Graham asserted that she had participated in the crime under duress, therefore the letters were not against her penal interest. Her letters were nothing more than an attempt to exonerate herself from her pending murder charge and place all blame on Dixon. There was no need to discuss the trustworthiness of the letters.

Justice Coleman dissented on the Court's finding that Graham's letters were not against her penal interest.

HARTFIELD

In his opinion, a reasonable person in the Graham's position indeed would not have made the statements she did unless she believed them to be true. The plurality failed to consider the position in which Graham found herself at the time she wrote the letters. He believed the COA was correct in finding the trial judge in error.

Interestingly, this is a plurality opinion. Justice Lamar concurred in part and in result, but the opinion is unclear what "in part" she concurred with.

Justice Coleman's dissent goes out of the way to use the word "plurality."

QUICK HITS

Tipton v. State (Miss. October 30, 2014): [original opinion affirming the case from March 20, 2014 was withdrawn]. A person wrongfully convicted of a crime and placed under house arrest is entitled to compensation under the wrongful imprisonment statute.

Tyrone Lewis, Sheriff Hinds County, Mississippi v. Hinds County Circuit Court (Miss. February 19, 2015). The sheriff has the authority to compensate, appoint, and remove bailiffs, as bailiffs are deputies of the sheriff. Bailiffs are not employees of the circuit court. Although bailiffs work in a courtroom, they are members of the executive branch. The circuit court may remove a bailiff after a hearing and a showing that removal will serve the public interest.

Williams v. State (Miss. December 11, 2014). A circuit court judge does not have the authority and/or jurisdiction to appoint the Mississippi Attorney General as a special prosecutor where the district attorney opposes such action.

QUICK HITS

Wells v. State (Miss. February 12, 2015). The trial judge erred in stating his belief that he had no choice but to double defendant's sentence as a subsequent drug offender. Trial judges have complete discretion on whether and how much to enhance a defendant's sentence as a subsequent drug offender under §41-29-147.

Barnes v. State (Miss. February 19, 2015). The trial judge erred in failing to grant a lesser included trespass instruction in burglary case. The SCT has consistently articulated a low threshold with regard to what the defendant must show in the record to support a tendered "theory-of-the-case" instruction.

Sallie v. State (Miss. January 22, 2015). Defendant convicted of aggravated assault and possession of a weapon by a convicted felon. At the sentencing hearing, Sallie objected to consideration of the §97-37-37 firearm enhancement based on a lack of notice from the State and based on the trial court raising the enhancement *sua sponte*. The SCT found that although the jury found the elements of the firearm enhancement beyond a reasonable doubt, Sallie had a right to fair notice that the sentence enhancement was being sought. The lack of notice violated his right to due process.

MISSISSIPPI COURT OF APPEALS CASES



WILLIAMS V. STATE (DECEMBER 2, 2014)

On July 19, 2010, Baxter failed to appear for his sentencing hearing for manufacture and possession of methamphetamine, and a bench warrant was issued for his arrest. On July 21st, Sheriff Gary Welford told deputies to be on the lookout for Baxter. Later that day, Deputy Bobby Daffin saw Brandy Williams, Baxter's girlfriend, driving her father's truck in Lucedale.

Daffin began following the truck and a high speed chase ensued. The driver refused to stop, leading law enforcement on a 17-mile chase, with speeds reaching over 100 miles per hour. Sheriff Welford and several deputies set up a roadblock for the truck. The truck accelerated through the intersection and swerved around the cars, striking Sheriff Welford and killing him.

None of the officers could positively identify the driver at the time Welford was struck. The truck eventually crashed and the occupants fled. Baxter and Williams were found the following morning hiding in a trailer in the woods.

Baxter later confessed and admitted to his participation in the high-speed chase, stating he was the driver for the entire pursuit. He later stated that Williams was initially driving, but explained that they switched seats before the sheriff was hit. He was adamant that Williams played no part in the crime, only acting at his direction.

Both Baxter and Williams were charged with the capital murder of Sheriff Welford. Baxter was called as a defense witness in Williams's trial, but invoked the 5th Amendment. Calling it a "close call," the trial judge did not allow the defense to enter Baxter's statement into evidence. She appealed.

WILLIAMS

Williams argued that Baxter's statement exculpates her and that it is corroborated by other independent reliable evidence—testimony that she saw the truck cross Highway 98 moments after it passed through the roadblock, and it was being driven by a male, and the facts that Baxter's DNA was found on the steering wheel and no female DNA was recovered from the truck. Baxter's statement met all the requirements as an exception to hearsay under MRE 804(b)(3). He was unavailable, his statement was against his interests and subjected him to criminal liability. A reasonable person in Baxter's situation would not have made such a statement unless he believed it to be true. Finally, there was corroborating evidence to indicate the trustworthiness of the statement.

"Had the jury heard Baxter's statement to law enforcement, it is possible that they could have found that Williams was not driving at the time Sheriff Welford was killed and that Williams sought to end the chase and was not an active participant in Welford's death." Baxter told police that Williams tried to get him to stop. Had the jury heard this, she may not have been convicted of capital murder. It was reversible error to exclude the statement.

WILLIAMS

The Court of Appeals also found that the trial judge also erred in granting an instruction concerning whether Williams's action were a contributory cause of death. The jury was given three separate aiding and abetting instructions. These instructions adequately explained the source of Williams's liability.

By adding an instruction on contributing causes of death, the court needlessly created a risk that the jury would convict unless the defense could prove that the initial flight was not a contributing cause of the death. The instruction improperly shifted the burden of proof to the defense to prove that Williams was not driving at the moment of impact, and that she had abandoned the flight.

How does this opinion gel with *Hartfield*, mentioned earlier?

QUICK HITS

Brown v. State (November 4, 2014). During voir dire, potential juror stated, "It would be hard to be impartial." When asked if she thought she probably should not sit, she answered, "Probably so." No further inquiry was conducted either by the defense, the State, or the circuit court. Trial counsel was ineffective for allowing a biased juror to serve on the jury, thereby denying defendant a fair and impartial trial. The record is sufficient on direct appeal to demonstrate counsel was constitutionally ineffective. Bias is presumed since there was no rehabilitation of the juror.

Warren v. State (January 27, 2015). Indictment deficient for failing to specify the nature of the controlled substance that defendant was alleged to have possessed in a correctional facility. The State's failure to include the identity of the controlled substance prevented defendant from preparing a possible defense: namely, that her possession of the controlled substance was lawful.

Hull v. State, (March 17, 2015). The trial judge erred in finding sufficient evidence to prove Hull was a habitual offender. Although Hull did not contest he was a habitual offender, the State failed to introduce his prior convictions into evidence or make them part of the record.
