

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE  
OF MISSISSIPPI HANDED DOWN SEPTEMBER 20, 2016**

*Victor Sims v. State*, No. 2015-KA-01311-COA

**CASE:** Four counts armed robbery  
**SENTENCE:** 28 years on each count, concurrent

**COURT:** Jones County Circuit Court  
**TRIAL JUDGE:** Hon. Wayman Williamson

**APPELLANT ATTORNEYS:** George T. Holmes

**APPELLEE ATTORNEY:** Billy Gore  
**DISTRICT ATTORNEY:** Anthony J. Buckley

**DISPOSITION:** Affirmed. Carlton, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Fair, James, Wilson and Greenlee, JJ., concur.

**ISSUES:** (1) Whether Sims received ineffective assistance of counsel; (2) Whether the verdicts were contrary to the weight of the evidence.

**FACTS:** Sims was indicted for one count of armed robbery for taking the personal property of four women – Joyce McCoy, Evelyn Thomas, Dorothy Jackson, and Victoria Dean – using a gun. One of the women said that they had been playing cards when two black males entered the house with guns demanding their money. The two men fled in a black Pontiac. They identified Sims as one of the men who robbed them. A Laurel Police Officer had prior dealings with Sims and knew that his girlfriend, Sholanda Simmons, drove a black Pontiac. He drove toward Simmons’s house to try to locate the robbers.

On his way to Simmons’s house, the officer was stopped by Octavia Jackson, who told him that she had been at the residence earlier that night and Sims was also there. Sims appeared to be under the influence of something and had caused a disturbance. McCoy had forced Sims to leave.

Another witness told police that Sims wore sunglasses and concealed the lower part of his face, but she was sure he was the one who robbed them. McCoy testified that Sims had been at her house earlier that night, and that when he robbed them, he was wearing the same clothes he had been wearing earlier in the night. Sims stole money and credit cards from McCoy’s purse. Other witnesses testified that Sims had been there.

Sims testified that he was at a night club about 30 minutes away the night of the robbery. His nephew testified that he saw Sims at the club after midnight. However, another witness testified that she met up with Sims at the same time he was supposed to be in the club.

**HELD:** (1) Sims’s trial counsel was not ineffective for failing to object to prejudicial hearsay testimony from two State’s witnesses and for failing to request an alibi instruction. The Court found that the decision not to object to the hearsay testimony could be characterized as a strategic decision because the testimony was challenged by the defense attorney on cross-examination. Although Sims provided an alibi through his own testimony and that of another witness, the Court found that his defense was “general denial.” Further, Sims had not provided the State with notice of an alibi defense under URCCC 9.05. Sims’s general denial of guilt did not require an alibi instruction. The evidence failed to provide an evidentiary foundation to support the giving of an alibi instruction, thus, failure to request the instruction was not ineffective. (2) The verdicts were not against the overwhelming weight of the evidence.

**Joshua Allen v. State, No. 2015-KA-00861-COA**

**CASE:** Conspiracy and Armed robbery  
**SENTENCE:** five years for conspiracy, thirty-five on count II (armed robbery, concurrent

**COURT:** Rankin County Circuit Court  
**TRIAL JUDGE:** Hon. William E. Chapman, III

**APPELLANT ATTORNEYS:** Erin E. Pridgen

**APPELLEE ATTORNEY:** Billy Gore  
**DISTRICT ATTORNEY:** Michael Guest

**DISPOSITION:** Affirmed. Lee, C.J., for the Court. Griffis, P.J., Barnes, Ishee, Carlton, Fair, James, Wilson and Greenlee, JJ., concur. Irving, P.J. concurs in part and in the result without separate written opinion.

**ISSUES:** Whether the verdict is against the overwhelming weight of the evidence.

**FACTS:** Allen was convicted of armed robbery and conspiracy to commit armed robbery. He was sentenced to 35 years total. He filed a motion for new trial, which was denied.

**HELD:** URCCC 10.05 requires a motion for new trial be filed within 10 days of a judgment. Allen’s conviction was entered March 3, 2015, but his motion for new trial was not filed until May 7, 2015, beyond the 10 day period, and also outside the term of court. An argument that the verdict was against the weight of the evidence must first be raised in a motion for new trial. Further, Allen’s motion for new trial did not challenge the weight of the evidence. Thus, the issue was nor

preserved for appeal and the trial court did not err in denying the motion for new trial.

*Joseph Keys a/k/a Skeet Keys v. State*, No. 2013-KA-00475-COA

**CASE:** Sexual battery as a habitual offender

**SENTENCE:** life without parole

**COURT:** Covington County Circuit Court

**TRIAL JUDGE:** Hon. Eddie H. Bowen

**APPELLANT ATTORNEYS:** W. Daniel Hinchcliff

**APPELLEE ATTORNEY:** Lisa Blount

**DISTRICT ATTORNEY:** Daniel Christopher Jones

**DISPOSITION:** Affirmed on rehearing. Griffis, P.J., for the Court. Lee, C.J., Irving, Barnes, Ishee, Carlton and Fair, JJ., concur. James, Wilson and Greenlee, JJ., not participating.

**ISSUES:** (1) Whether the trial court erred in prohibiting Keys from impeaching testimony of a witness; (2) Whether the jury instruction allowing the jury to set the sentence at life was erroneous; (3) Whether Keys's right to speedy trial was violated by an 18 month delay between arrest and trial; (4) (Pro se) whether newly discovered evidence can be raised on direct appeal; and (5) whether Keys received ineffective assistance of counsel.

**FACTS:** Keys was indicted for sexual battery of his cousin "Jane." He was 50 and she was 11. Keys was indicted as a 99-19-81 habitual offender. One of the witnesses, McGill, testified that Jane told her of the abuse and also about admissions Keys made about being in love with the girl. The trial court did not allow Keys to question another witness, Taylor, during the defense case about a possible conversation between Taylor and McGill in which McGill may have said that her testimony was fabricated. Additionally, the trial court prohibited Keys from presenting evidence that Jane's grandfather, whom she lived with, was a registered sex offender in another state. The defense failed to provide notice that it intended to submit evidence of Jane's prior sexual behavior, as required under MRE 412(c)(1) and defense counsel stated to the court that he had no knowledge that the grandfather may have been the abuser. The trial court found the potential for prejudice outweighed the probative value of the evidence and that the evidence was not relevant.

**HELD:** (1) Keys had ample opportunity to present testimony from Taylor regarding the

phone call from McGill. Keys failed to ask McGill about the phone call during her testimony. The Court gave Keys an opportunity to have McGill come back to court to testify about the phone call. Further, Keys did not make a proffer of what Taylor's testimony would have been. Additionally, there was no abuse of discretion in prohibiting evidence that Jane's grandfather was a registered sex offender. (2) Instruction S-8 gave the jury three options – guilty, and fix the sentence at life; guilty, and can't agree to fix the penalty at life; and not guilty. The jury chose the first option – guilty, and fix the penalty at life. Miss. Code Ann. § 97-3-101(3) provides that the circuit court shall fix the penalty. The Court found the instruction to be erroneous, but found the error to be harmless because Keys was sentenced as a habitual offender and the only sentence he could receive was life without parole. (3) Keys raised the speedy trial issue in a pro se brief, and speedy trial was not raised before the trial court. However, it is subject to a plain error analysis to see if a fundamental right was impacted. For speedy trial to be plain error, the appellant must point to specific prejudice that arose and created a miscarriage of justice. The delay of 18 months does not show prejudice. Keys argued that McGill could have been available to testify to lay the predicate for impeachment testimony if she had not gone into labor after being excused. Had Keys been tried earlier, McGill's pregnancy/childbirth would not have impacted his defense. The Court of Appeals found that Keys could not show any prejudice – the reason McGill was not available to testify again to lay the predicate for defense evidence was because the defense attorney agreed to finally excuse her as a witness. (4). Newly discovered evidence is not properly considered on appeal but may be the grounds for post-conviction relief. (5). Ineffective assistance dismissed without prejudice because the record does not show that defense counsel's performance was constitutionally defective.