

**SYNOPSIS OF OPINION IN DEATH PENALTY CASE IN THE MISSISSIPPI SUPREME COURT  
HANDED DOWN JUNE 15, 2017**

*Evans v. State*, No. 2013–DP–01877–SCT, 2017 WL 2592415 (Miss. June 15, 2017)

**CASE:** Direct appeal from conviction of capital murder and death sentence

**SENTENCE:** Death

**COURT:** Circuit Court, Hancock County,

**TRIAL JUDGE:** Hon. Lisa P. Dodson

**APPELLANT’S ATTORNEYS:** Office of the State Public Defender by Alison Steiner; Frank P. Wittmann, IV

**APPELLEE’S ATTORNEYS:** Office of the Attorney General by Cameron Leigh Benton

**DISTRICT ATTORNEY:** Joel Smith

**DISPOSITION:** Conviction of capital murder and sentence of death affirmed. Randolph, P.J. for the Court *en banc*. Waller, C.J., Maxwell, Beam and Chamberlin, JJ., concur. Coleman, J., concurs with separate written opinion joined by Randolph, P.J., Maxwell and Chamberlin, JJ.; Waller, C.J., joins in part. Kitchens, J., dissents with separate written opinion joined by Dickinson, P.J., and King, J.

**ISSUES:** Multiple errors were raised, including: 1) The failure to hold a hearing or adjudicate the defendant competent when a pretrial competency evaluation had been ordered; 2) Preventing the defense from asking jurors during voir dire if they could “use” evidence of alcoholism as a mitigating circumstance; and 3) The seating of an alternate juror who had not participated in guilt-phase deliberations for the sentencing phase of the trial.

**FACTS:** Evans was convicted and sentenced to death for the robbery-based capital murder of his roommate Wenda Hollings by strangling and smothering her after she refused to provide him more money to drink with. Taking her credit card and car, he disposed of her body in a remote Harrison County location and told both the police and her family that she was on vacation with former work colleagues. After her body was discovered three weeks later, Evans was arrested and admitted to everything he had done. On motion of the defense, the trial court ordered a mental examination including a competency evaluation, but relied on defense counsel representations that the examiner had found Evans competent rather than holding a hearing on the issue. Evans’s mitigation case relied heavily on his lifelong substance addiction, particularly his alcoholism but he was not allowed to voir dire jurors on whether they could use that as mitigation. After the guilt verdict, but before the sentencing phase began, a juror who had deliberated guilt was replaced with an alternate who had not, but who had remained separately sequestered.

**HELD:** 1) Although there was neither a hearing on nor a formal adjudication of Evans’s competency, the purposes of Rule 9.06 were satisfied under the circumstances because Evans made no allegations and presented no evidence to rebut the presumption of competency; 2) The trial court properly refused to let Evans ask the venire if it could or could not *use* alcoholism as a mitigating factor, noting that the correct form would have been to ask if venire “would or would not be willing to *consider* it as mitigating;” and 3) The seating for the sentencing phase of an alternate who did not deliberate guilt did not violated neither Miss. Code Ann. §13–5–67 nor the capital sentencing statute.

Coleman, J., concurring, would hold that acceptance by trial judge of counsel’s representations concerning outcome of competency evaluation was a “hearing” within the meaning of Rule 9.06. Kitchens, J., dissenting, would hold to the contrary on the three issues discussed in this synopsis.

To read the full opinion, click here: <https://courts.ms.gov/Images/Opinions/CO120937.pdf>

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