

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT  
HANDED DOWN APRIL 28, 2016**

***Preston Overton v. State***, No. 2013-CT-01236-SCT (Miss. April 28, 2016)

**CASE:** Possession of Cocaine and Possession of a Firearm by a Convicted Felon

**SENTENCE:** 15 years for the possession charge and a consecutive 10 years for the weapons charge

**COURT:** Adams County Circuit Court

**TRIAL JUDGE:** Hon. Forrest A. Johnson, Jr.

**TRIAL ATTORNEYS:** Jeffery Kendrick Harness

**APPELLANT ATTORNEY:** George T. Holmes

**APPELLEE ATTORNEY:** Billy L. Gore, Jason L. Davis

**DISTRICT ATTORNEY:** Ronnie Lee Harper

**DISPOSITION:** Reversed and Remanded. Dickinson, Presiding Justice, for the Court. Lamar, Kitchens, King, Coleman and Beam, JJ., Concur. Randolph, P.J., Dissents with Separate Written Opinion Joined by Waller, C.J. Maxwell, J., Not Participating.

**ISSUE:** Whether the trial judge abused his discretion by excluding two defense witnesses based on late discovery.

**FACTS:** On July 12, 2012 Lieutenant George Pirkey and Deputy David Washington conducted a knock and talk at a house in Natchez after being informed that there were suspicious drug activities going on at the residence. The house belonged to Preston Overton who had inherited it from his grandmother in 2009. The officers claimed that Overton allowed them to enter. Overton admitted that he and his girlfriend had just finished smoking some marijuana in the house. Overton then signed consent to search form. Officers discovered cocaine and other materials such as a razor blade, a set of digital scales, and a 38 caliber revolver, all on the dresser in the room believed to be Overton's. Overton later signed a confession admitting the drugs were his. However, at trial, Overton claimed the officer entered without knocking, asking about the whereabouts of Jeremy Page. Overton claimed Page was renting a room from him, the room where the drugs and gun were found. He stated the gun had belonged to his grandmother and he did not know it was in the house. He also stated he signed the confession because police told him his girlfriend would be charged if he did not. On the evening before trial, the defense disclosed two witnesses (Overton's girlfriend and his aunt) to the State. The girlfriend planned to testify as an eyewitness to the events that occurred at Overton's home during the police officers' search, and Overton's aunt, planned to corroborate Overton's claim that Page was renting a room in Overton's house, and that the gun had belonged to Overton's grandmother. The State objected based on late discovery and the trial judge excluded their testimony. The COA affirmed the conviction last year, holding that the trial judge did not err in excluding the witnesses or denying a continuance. Since Overton admitted to signing the consent to search form and the confession, the COA found Overton was not prejudiced by the exclusion of the witnesses. [\*Overton v. State\*](#), No. 2013-KA-01236-COA (Miss.Ct.App. June 9, 2015). The SCT granted Overton's petition for certiorari.

**HELD:** Even assuming that Overton violated Rule 9.04, the trial judge erred by employing exclusion as a sanction. The record contains no evidence that either the defendant or defense counsel withheld the witnesses' identities to gain a tactical advantage, and the trial judge made no such finding. The judge ruled that defense counsel had done nothing wrong, but the witnesses would be excluded because they were “material.” “Our precedent clearly holds that exclusion is not an appropriate sanction absent *evidence* of an intentional violation.” [emphasis supplied]. Even had the judge ruled the discovery violation was wilful, there would have been no evidence to support that ruling. Overton was prejudiced by the rulings, as this case presented a pure battle of credibility.

**Randolph, Presiding Justice, Dissenting:**

Justice Randolph dissented, believing the judge made a finding of a wilful discovery violation by calling it “an egregious violation,” and a “trial by ambush.” He believed it was well within the court’s discretion to employ the sanction of exclusion.

To read the full opinion, click here:

<http://courts.ms.gov/Images/Opinions/CO110362.pdf>

**Also of Note:**

***In Re: Mississippi Rules of Appellate Procedure***, No. 89-R-99027-SCT (Miss. April 21, 2016). The Court amended MRAP 22, to allow trial courts the discretion to appoint attorneys, in death penalty PCRs, who may not meet the stated qualifications in the rule “upon a showing that the attorney’s experience, stature and record in a different type of practice (e.g., civil litigation, academic work, or work for a court or prosecutor) enable the trial court to conclude that the attorney has extensive experience in complex cases substantially equivalent to that of a qualified attorney.”

To read the full order, click here:

<http://courts.ms.gov/Images/Opinions/205202.pdf>

**DISCLAIMER:** These synopses are provided as a service by the Mississippi Office of State Public Defender. They are designed for the educational and research benefits of Mississippi public defenders only. As such, they do not necessarily represent the official opinion of the Office of State Defender or the Mississippi Public Defenders Association. They may be FREELY distributed whole or in part. — Beau Rudder, Director of Training, Office of State Public Defender.