

Dear Subscribers,

Thank you for your continued support of the *Mississippi Law Journal*. Due to our commitment to our studies during the exam period, the Exam Edition of *BriefServ* contains only summaries of the cases. The case summaries are longer and more detailed than the summaries that generally appear in the email and are intended to balance our needs in preparing for exams and your needs as subscribers.

Court of Appeals – Civil

Kidder v. State - Criminal Procedure – Venue – Jury Instructions – In February 2016, Jennifer Hentz and her mother, Monica Ross, were driving separate cars along a gravel road. Bobby Kidder pulled behind them in his truck and followed them closely. Ross pulled over to allow him to pass and, as Kidder passed, the passenger in his vehicle pointed a gun out of the window at Ross. Kidder then turned around and hit Ross's car. Kidder reversed and drove forward, hitting Hentz's car causing her airbag to deploy. Both Hentz and Ross sustained injuries, and their cars suffered significant damage. Both the Quitman County Sheriff's Department and the Tallahatchie County Sheriff's Department responded to the accident scene. Prior to trial, a motion to dismiss was raised as to venue regarding whether the accident occurred in Tallahatchie County or Quitman County. The trial judge denied the motion to dismiss, holding that venue was a question of fact to be resolved by a jury. After expert testimony regarding the issue, Kidder was convicted of two counts of attempted aggravated assault and was sentenced to five years for each count. Kidder appealed, arguing that the court erred in submitting the issue of venue to the jury because there was no genuine issue of material fact for the jury to consider regarding the county in which the collision occurred. Kidder also argues that the court erred in failing to give a jury instruction for the lesser included offense of attempted simple assault.

The Court of Appeals held that the issue of venue was properly submitted to the jury. Under Mississippi criminal procedure, questions of fact as to venue are for the determination of the jury and are not to be decided by the trial court. It is the function of the jury to pass upon the weight and worth of the evidence and to determine the credibility and veracity of the witnesses. The jury was not bound to accept the conclusions of any expert. Thus, due to conflicting testimony regarding the identity of the county in which the assault occurred, ambiguity existed, which made it appropriate for the jury to determine venue. Additionally, the trial court did not err when omitting the lesser included offense of attempted simple assault from the jury instructions. Because Kidder was unable to prove that a jury could reasonably find him not guilty of aggravated assault, while at the same time find him guilty of attempted simple assault, the trial court did not err by excluding the lesser offense from the jury instructions. Therefore, the Court of Appeals affirmed the judgment of the Quitman County Circuit Court.

Presiding Judge Wilson specially concurred, stating that the evidence at trial was sufficient for the jury to find that the crimes occurred in Quitman County and that the convictions should be affirmed. Further, he wrote separately to note that the venue statute indicated that the beyond-a-reasonable-doubt burden of proof should not apply to the issue of venue.

Briefed by [Madison Reightler](#)

Mohamed v. State - Controlled Substance – Expert Witness – Specific Intent – *Brady* Violation – In 2015, the Attorney General's ("AG") Office received an anonymous tip that Mohamed Anagi Mohamed was selling a leafy green plant known as khat at Hakim's Mini Mart in Greenville. Khat contains two controlled substances, cathinone and cathine. After the AG's Office facilitated a controlled buy with a confidential informant and searched both the mini mart and Mohamed's home, Mohamed was arrested and charged with drug trafficking. A two-day trial was held in May 2019, and the jury found Mohamed guilty. Mohamed appealed, asserting that the circuit court abused its discretion by excluding the testimony of his expert witness, allowing the State's

witnesses to refer to khat as a Schedule I controlled substance, limiting his cross-examination of the State's forensic scientist, and denying him the right to present his theory of defense. He also contended that the State committed a *Brady* violation.

The Court of Appeals found that the testimony of Mohamed's expert witness was irrelevant because the expert's quantitative analysis did not measure the presence of cathinone in the khat as mandated by the Mississippi Code and it was undisputed evidence that the khat contained cathinone. Although khat itself was not illegal nor listed as a controlled substance, it was properly classified as a Schedule I drug because it contained cathinone and Miss. Code. Ann. § 41-29-113(f) considered any "preparation or mixture" of a prohibited substance to meet the Schedule I designation. Additionally, because the witness's testimony regarding "blanks" in testing the content did not open the door to cross-examination on how the witness actually measured and calculated the cathinone, the trial court did not abuse its discretion in limiting Mohamed's cross-examination. Mohamed argued that the jury instructions omitted the definition of "specific intent" and, in so doing, prevented him from presenting the defense that he did not have the requisite intent for the charged offense. The Court of Appeals found, however, that the jury instructions adopted by the trial court properly instructed the jury as to the requisite intent necessary to find him guilty. Lastly, because there was not a reasonable probability that the outcome of the case would have been different had the entire file documenting tests on the khat been disclosed, no *Brady* violation occurred. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Judge McCarty concurred in part and in result, arguing that the trial court's decision to exclude Mohamed's expert witness from testifying was an abuse of discretion.

Briefed by [John Michael Sweatt](#)

Court of Appeals – Criminal

Baker v. State - Plain Error – Ineffective Assistance of Counsel – Jury Instructions – In August 2017, Thomas Baker and Demetria Anderson had a violent altercation outside of Baker's apartment. The altercation left Anderson in the hospital with three stab wounds, one in her stomach and two in her back. Baker was arrested the night of the incident. In Baker's *Miranda* statement, he told the police that Anderson scratched on his door the night of the accident. When Baker answered the door, Anderson swung at him with a knife and, in self-defense, he grabbed a pool stick, hit her with it, got her to the ground, and took her knife. Baker then stabbed Anderson a couple of times in her shoulder before she ran away. Baker was indicted for aggravated assault. Anderson and Baker testified at trial in June 2019. According to Anderson, Baker attacked her as she was leaving the apartment complex. Baker then took the knife that she carried for protection and stabbed her three times. Baker's trial testimony differed from his recorded statement. He testified that he exited the apartment and Anderson, who appeared to be on drugs, initiated the fight. Butler testified that he had to act in self-defense and that Anderson stabbed herself in the back and stomach. The jury found Baker guilty of aggravated assault. Baker filed a motion for a new trial. The trial court denied his motion. Baker appealed.

On appeal, Baker argued that the trial court committed reversible error by failing to instruct the jury on the State's burden of proof because the State's elements for instruction did not include the language "not in necessary self-defense" and no other instruction informed the jury of the State's burden to prove beyond a reasonable doubt that he did not act in self-defense. Since Baker had no objection to any of the trial court's jury instructions, and because the trial court fully informed the jury as to the State's burden of proof and Baker's theory of defense by using elements as required by *Johnson* and *Philips*, the court found that Baker's fundamental right had not been violated due to plain error. Baker also argued on appeal that he received ineffective assistance of counsel. Baker failed to show his counsel's performance was deficient and the deficient performance prejudiced his defense as required by *Strickland*. Further, because the court found that the inconsistencies

between Baker's *Miranda* statement and trial testimony led to the jury's disbelief of Baker's version of events, Baker's claim for ineffective assistance of counsel was without merit. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Briefed by [Muriel Collins](#)

Jackson v. State - Appeals – Appellate Procedure – *Lindsey* Brief – Jermie Jackson contacted Crystal Hill, a woman whom he was dating, to ask about retrieving his “clipper bag” which was in her possession. She agreed, and Jackson went to her apartment in Winona. Hill stuck the clipper bag through the door, not opening the door fully. Jackson pushed his way inside and began hitting her, breaking her arm. At trial, Hill attested to these facts. Jackson confirmed their relationship. Another woman, Marilyn Coleman, who Jackson was also dating, confirmed that Jackson was not with her on the date of the alleged assault, but that he came to visit her in Tuscaloosa the following morning. At the close of the State's case, Jackson moved for a directed verdict, alleging that the State failed to make a prima facie case of aggravated assault and that the trial court impermissibly admitted medical records and photos from Hill's hospital visit. The trial court found that the State had in fact made a prima facie case and denied Jackson's request. Jackson then took the stand and alleged that he was in Tuscaloosa, not Winona, on the day of the assault. The jury convicted Jackson of aggravated assault and sentenced him to ten years, with four years suspended. Jackson appealed. On appeal, Jackson's appellate counsel found no arguable issues and filed a brief pursuant to *Lindsey v. State*. Because Jackson's appellate counsel complied with the procedure in *Lindsey*, and because counsel sent Jackson the brief and informed him that he found no arguable issues on appeal, also informing Jackson of his right to file a pro se brief, the Court of Appeals held that there were no arguable issues on appeal. Therefore, the Court of Appeals affirmed the judgment of the Montgomery County Circuit Court.

Briefed by [Cameron Johnson](#)

Murshid v. State - Criminal Procedure – Evidence – Drug Possession – Abdulkhaliq Murshid owned and operated multiple convenience stores in Meridian, two of which were searched by the Mississippi Bureau of Narcotics (“MBN”) for evidence related to the sale of spice. In July 2016, a Lauderdale County grand jury indicted Murshid for the following: possession with intent to sell counterfeit goods, possession with intent to sell more than one kilogram of synthetic cannabinoids, possession with intent to sell recordings without the display of required information, and conspiracy to sell spice. At trial, Murshid moved to suppress evidence found during the execution of a search warrant, which the court denied. In May 2019, the State reindicted Murshid on identical charges except one count which provided the specific net weight of spice seized at the time of his arrest. The State dismissed the 2016 indictment and proceeded to trial on the 2019 indictment. Murshid moved to dismiss the charges, arguing that the 2019 indictment violated his right to a speedy trial, which the court denied. Murshid moved to exclude evidence of his alleged prior bad acts, including a 2013 arrest, which the court granted. At trial, the State asked an agent about Murshid's previous arrest; Murshid objected and moved for a mistrial. The circuit court sustained the objection but denied the motion for a mistrial. At the close of evidence, Murshid moved for a directed verdict on all counts; the circuit court granted the motion as to the charge of conspiracy to sell spice. The Lauderdale County Circuit Court jury convicted Murshid of the other counts. Murshid moved for a new trial, which the court denied.

On appeal, Murshid argued that the circuit court erroneously denied his motions to suppress evidence, to dismiss, for a mistrial, and for a directed verdict. The Court of Appeals found no error in any of the circuit court's actions. Because Murshid's store employee possessed sufficient common authority, mutual use, and joint control over the area to invite the MBN investigators behind the counter and voluntarily consent to a search, no unreasonable search and seizure resulted; thus, there was no error in the circuit court's denial of Murshid's motion to suppress evidence seized from the store. There was no merit to Murshid's motion to dismiss because the 2016 indictment was just over one year after Murshid's arrest and the State commenced the prosecution within the two-year statute of limitations. Further, the 2019 indictment was almost identical to

the 2016 indictment and, despite the passage of three years since the arrest, the prosecution of the indicted charges commenced during applicable statute of limitations. Because there was no evidence that the agent's single reference to Murshid's 2013 arrest substantially or irreparably prejudiced Murshid's case, because the State never sought to elicit improper testimony from the agent, because Murshid's attorney objected before the agent could reveal the nature of the prior charge, and because the court properly instructed the jury to disregard any statements that were inadmissible and lacked an evidentiary basis, the Court of Appeals found no abuse of discretion in the circuit court's denial of Murshid's motion for mistrial. Lastly, because the State presented evidence that Murshid exercised dominion and control over both convenience stores and that he possessed knowledge of the presence and character of the contraband sold at both stores, the State provided ample evidence from which the jury could find that Murshid constructively possessed the contraband seized; thus, the Court of Appeals upheld the circuit court's denial of Murshid's motion for a directed verdict. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Briefed by [Bess Fisher](#)

**Interested in more specific details about a particular case? Click the case name to view the full opinion.*

Thank you for your contributions to BriefServ and the *Mississippi Law Journal*. As always, feel free to contact me with any comments or suggestions, or if you need to change your Subscriber information.

MISSISSIPPI CASES EDITOR

GREYSON YOUNG

ASSOCIATE CASES EDITORS

GABRIELLE BEECH

CAROLINE HEAVEY

JOSHUA HOLMES

CECELIA HURT

BETSY MONTAGUE

BLAKE TIMS

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Greyson Young, newsletter@mississippilawjournal.org

All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007. Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Greyson Young, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org