

**MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 22, 2024*****SUPREME COURT - CIVIL CASES*****HASSIN V. MISS. BAR****CIVIL - BAR MATTERS**

**BAR MATTERS - PETITION FOR REINSTATEMENT - REQUIREMENTS** - The petitioner must (1) state the cause for suspension or disbarment; (2) give the name of the current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct, (3) make full amends and restitution, (4) show that he has the necessary moral character for the practice of law, and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

**BAR MATTERS - MISSISSIPPI BOARD OF BAR COMMISSIONERS - FACTORS** - The Court will consider the Mississippi Board of Bar Commissioners' position on reinstatement as a factor in determining whether to grant reinstatement

**FACTS**

Daniel Hassin Jr. was barred from the practice of law by default judgment after he violated multiple Mississippi Rules of Professional Conduct during his time representing Connie Gustavsen in a divorce matter. Hassin failed to abide by the terms of the settlement agreement with Gustavsen when he failed to complete Gustavsen's divorce matter. After Gustavsen filed a complaint, the Mississippi Board of Bar Commissioners ("The Bar") requested that Hassin respond to the informal complaint. Hassin testified that no response was ever filed due to being "hopelessly strung out" from his addiction to intravenous use of crystal methamphetamine, heroin, and Dilaudid. The Bar unsuccessfully attempted personal service of a formal bar complaint on Hassin and served him via publication in a Rankin County newspaper. Hassin stated that he "accepts full responsibility for the fact that he did not receive service of the Mississippi Bar's Formal Complaint, that he was not aware of the actions being taken against him, and that he was not aware of the notices by publication." More than three years later, Hassin petitioned for reinstatement, which was supported by the Mississippi Board of Bar Commissioners.

**ISSUE**

Whether the Court should grant Hassin's petition for reinstatement after Hassin has stated a cause for disbarment, provided the names of the harmed parties, made amends and restitution, showed that he has the necessary moral character, and demonstrated the requisite legal knowledge to be reinstated.

**HOLDING**

Because there was clear and convincing evidence that Hassin had taken responsibility for his actions and had demonstrated that he had achieved the moral and professional rehabilitation required for reinstatement, the Court granted Hassin's petition for reinstatement to the practice of law in Mississippi.

**Reinstatement Granted - 2023-BR-00315-SCT (Feb. 22, 2024)**

En Banc Opinion by Justice Chamberlin

Walter H. Boone for Petitioner - Kathryn A. Littrell for Respondent

Briefed by [Sydney Bailey](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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## SMITH V. MINIER

### CIVIL - WRONGFUL DEATH

**CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT** - A motion for summary judgment will only be granted if there is no genuine issue as to any material fact and when doubt exists where there is a fact issue, the non-moving party gets its benefit

**TORTS - NEGLIGENCE - FORESEEABILITY** - The question of the foreseeability of a particular injury is one best left to the deliberation of a jury

**TORTS - NEGLIGENCE - CAUSATION** - The cause in fact of an injury is “that cause which, in natural and continuous sequence unbroken by an efficient intervening cause, produces the injury and without which the injury would not have occurred”

### FACTS

In April 2013, Marcus D. Smith was involved in a multi-car accident while he was operating a tractor-trailer owned by Werner Enterprises (“Werner”). Ingeborg Steiner was also involved in the accident. Smith sustained injuries as a result. Smith was taken to the hospital and was prescribed pain medication containing acetaminophen. Smith was hospitalized for acute liver failure caused by acetaminophen toxicity. After being discharged, Smith received further pain medication containing acetaminophen. Smith passed away due to liver failure resulting from acetaminophen ingestion. Leslie Smith, as personal representative of Smith’s estate, filed a wrongful death action in the circuit court against Minier and Werner. The circuit court granted Minier and Werner’s motion for partial summary judgment as to the wrongful death claim and found that Smith’s death from acetaminophen-induced liver failure was not legally foreseeable as a proximate cause of an automobile accident. All remaining claims were later settled by the parties and as a result, a final judgment was entered. The Court of Appeals reversed the circuit court’s judgment and found a genuine issue of material fact existed as to the foreseeability of Smith’s death caused by liver failure. Minier and Werner appealed.

### ISSUE

Whether the circuit court erred by granting partial summary judgment in favor of Minier and Werner.

### HOLDING

Because the determination of foreseeability of a particular injury was a jury question, a genuine issue of material fact existed, and the circuit court’s grant of summary judgment was improper. Therefore, the Supreme Court reversed and remanded the judgment of the Jackson County Circuit Court.

### DISSENT

Justice Coleman argued for the causation element, the majority correctly held that an issue of material fact existed for the fact-finder’s determination. He argued the driver of the truck owed no duty for the prescribing of drugs to the decedent or a duty to ensure the decedent would use the drugs in a manner commensurate with the prescription. Therefore, the foreseeability in the determination of duty was a question of law for the circuit court.

### DISSENT

Justice Maxwell argued no driver reasonably anticipated that driving negligently may result in liver failure caused by abuse or overuse of acetaminophen. He argued there was no legal duty to drive in such a manner that prevented medically induced liver failure.

### DISSENT

Justice Griffis argued that a person of ordinary intelligence would not know or anticipate the risk of the hepatotoxic effects of acetaminophen that resulted from Smith’s misuse of his pain medication. He argued that Smith’s expert witness testimony supported that, thus there was no evidence to support that liver failure was objectively foreseeable under the objective standard of law, even if it may occur.

**The Judgment of the Court of Appeals is Affirmed. The Judgment of the Jackson County Circuit Court is Reversed & Remanded - 2021-CT-01284-SCT (Feb. 22, 2024)**

En Banc Opinion by Judge Chamberlin - Dissent by Justice Coleman - Dissent by Justice Maxwell - Dissent by Justice Griffis

Hon. Robert P. Krebs (Jackson County Circuit Court)

Timothy M. O'Brien for Appellant - Glenn F. Beckham, David C. Dunbar, Christopher G. Dunnells, & Lauren T. Carpenter for Appellees

Briefed by [John Walker Webb](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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## TOOLPUSHERS SUPPLY CO. V. MISSISSIPPI DEP'T OF REVENUE

### CIVIL - STATE BOARDS AND AGENCIES

**APPELLATE REVIEW - TAX APPEALS - STANDARD OF REVIEW** - The chancery court shall give no deference to agency decisions when trying a case de novo and conducting a full evidentiary judicial hearing on all factual and legal issues

**TAX APPEALS - TAX EXEMPTIONS - WHOLESALERS** - A seller must exercise good faith in determining sales are to retailers that regularly sell the products

#### FACTS

Toolpushers Supply Company ("Toolpushers"), a Wyoming supplier of items used in the oil-and-gas industry, appealed a 2016 decision by the Mississippi Department of Revenue ("MDOR") that found that they owed \$124,728 for failure to remit sales tax on certain sales. Toolpushers first appealed the decision to the MDOR Board of Review, arguing that they relied on the presentation of sales tax permits by their purchasers to categorize the sales as wholesale, thus making them tax exempt. However, the MDOR Board of Review found that the purchasers were consumers and clearly not retailers of the products and entered judgment against Toolpushers. Toolpushers appealed to the Mississippi Board of Tax Appeals, which affirmed on the grounds that Toolpushers did not exercise the requisite good faith in determining that the sales were to retailers that regularly sold the products. Again, Toolpushers appealed, this time to the Hinds County Chancery Court. The chancery court affirmed for the same reason as the court below. The case was then appealed to the Mississippi Court of Appeals where the court affirmed the tax assessment. The Court of Appeals applied a pre-2015 amendment of Miss. Code Ann. § 27-77-7, which called for chancery courts to give deference to the agency decision while trying the case de novo and conducting a full evidentiary hearing. The post-amendment version of the statute required the chancery court to give no deference to the decision of the agency decision, try the case de novo, and conduct a full evidentiary hearing. After applying the pre-amendment standard, the Court of Appeals affirmed the chancery court's decision for the same reasons as the chancery court. Toolpushers appealed.

#### ISSUE

Whether the Court of Appeals cited and relied on the incorrect standard for court review of Board and Tax Appeals decisions

#### HOLDING

Because the Court of Appeals affirmed the judgment of the chancery court, which correctly applied the de novo standard of review from amended § 17-77-7(5), and because the Court of Appeals properly granted MDOR summary judgment, the Court of Appeals's error in applying pre-2015 caselaw for § 17-65-77 was not reversible error. Therefore, the Supreme Court affirmed the judgment of the Court of Appeals.

**Affirmed - 2021-CT-01186-SCT (Feb. 22, 2024)**

En Banc Opinion by Justice Maxwell

Hon. Crystal Wise Martin (Hinds County Chancery Court)

C. Ted Sanderson Jr. for Appellant - John Stewart Stringer & Bridgette Trenette Thomas for Appellee

Briefed by [Summie Carlay](#)

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## ***SUPREME COURT - ORDERS***

### **ARMSTRONG V. STATE**

#### **EN BANC ORDER**

##### **ORDER**

Byron Armstrong previously filed two motions for writ of certiorari. Both motions were denied. Armstrong filed a third motion for leave to proceed in the trial court. The Supreme Court denied Armstrong's motion, stating it was frivolous. The Supreme Court warned Armstrong that future frivolous filings may result not only in monetary sanctions but also in restrictions on filing applications for post-conviction collateral relief. Therefore, the Supreme Court denied the motion for writ of certiorari.

##### **OBJECTION IN PART**

Presiding Justice King argued that the Supreme Court should have simply denied Armstrong's motion on its merits and not warned Armstrong of possible future sanctions. Armstrong's case may have been weak, but that did not mean it was frivolous. He argued that a sanctions warning should not have been ordered since it would deter criminal defendants from exercising their lawful right to appeal, violating their constitutional rights.

##### **Denied With Sanctions Warning - 2019-M-01025 (Feb. 16, 2024)**

En Banc Order by Justice Maxwell - Objection in Part by Presiding Justice King

Briefed by [Benjamin Duddy](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

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## ***MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 20, 2024***

### ***COURT OF APPEALS - POST-CONVICTION RELIEF***

### **GLEASON V. STATE**

#### **CIVIL - POST-CONVICTION RELIEF**

**CIVIL - POST-CONVICTION RELIEF - TIME-BAR** - Under Miss. Code Ann. § 99-39-5(2), a post-collateral conviction relief motion must be filed within three years after the entry of the judgment of conviction

**CIVIL - POST-CONVICTION RELIEF - EXCEPTIONS TO TIME BAR** - To overcome the time bar, a movant has the burden of proving that one of the exceptions outlined in Miss. Code Ann. § 99-39-5(2) applies to his motion

##### **FACTS**

In September 2018, Gleason entered guilty pleas to two counts of sexual battery. A judgment and sentencing order were entered on that same date. In October 2022, Gleason filed a post-conviction collateral relief ("PCR") motion, arguing that his due process rights were violated, his guilty pleas were involuntary, he received ineffective assistance of counsel, his indictment was defective, and his sentence was illegal. The trial court denied and summarily dismissed Gleason's PCR motion as time-barred under Miss. Code Ann. § 99-39-5(2). Gleason appealed.

## ISSUES

Whether Gleason's PCR motion (1) was time-barred and (2) raised claims sufficient to overcome the time-bar.

## HOLDING

(1) Because Miss. Code Ann. § 99-39-5(2) required the PCR motion to be filed within three years of the entry of the judgment, and because Gleason's PCR motion was filed four years after the entry of his judgment of conviction, Gleason's PCR motion was time-barred. (2) Because Gleason failed to raise any exceptions to the time bar enumerated in Miss. Code Ann. § 99-39-5(2)(a)-(b), the claims raised in Gleason's PCR motion failed to overcome the time bar. Therefore, the Court of Appeals affirmed the judgment of the Itawamba County Circuit Court.

### **Affirmed - 2023-CP-00357-COA (Feb. 20, 2024)**

Opinion by Judge Emfinger

Hon. Kelly Lee Mims (Itawamba County Circuit Court)

*Pro se* for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Andrew "Blake" Huffman](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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## **TONY V. STATE**

### **CIVIL - POST-CONVICTION RELIEF**

**CRIMINAL PROCEDURE - PROSECUTION - COMMENCEMENT OF PROCEEDINGS** - A prosecution may be commenced by the issuance of a warrant, or by binding over or recognizing the offender to compel his appearance to answer the offence, as well as by indictment or affidavit

**CRIMINAL PROCEDURE - STATUTE OF LIMITATIONS - CONTROLLED SUBSTANCE** - Pursuant to Miss. Code Ann. § 99-1-5, the criminal charge for introducing a controlled substance into a correctional facility has a two-year statute of limitations from the time of commission to prosecution

**CRIMINAL PROCEDURE - STATUTE OF LIMITATIONS - GUILTY PLEAS** - A valid guilty plea admits all elements of a formal charge and operates as a waiver of all non-jurisdictional defects, including the statute of limitations in a criminal case

## FACTS

In 2017, Melvin Toney was convicted of introducing a controlled substance into a correctional facility. In 2021, Toney entered a guilty plea for the charge within the indictment. In January 2023, Toney filed a post-conviction relief ("PCR") motion alleging that his conviction should be vacated due to a violation of his constitutional rights and that his prosecution was time-barred by the two-year statute of limitations. Toney claimed that his prosecution began when he entered his guilty plea. The Marion County Circuit Court denied his claim for relief and summarily dismissed his motion, finding that Toney's prosecution began when the indictment was returned within two years of the date of the offense. Toney appealed.

## ISSUE

Whether the trial court erred by dismissing the post-conviction relief motion.

## HOLDING

Because a prosecution may be commenced by warrant, binding over or recognizing the offender, indictment, or affidavit, because Toney's indictment was within the statutory period for prosecuting, and because he entered a guilty plea waiving the statute of limitations, the trial court did not err in dismissing Toney's PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

### **Affirmed - 2023-CP-00151-COA (Feb. 20, 2024)**

Opinion by Judge Emfinger  
Hon. Brad Ashley Touchstone, Marion County Circuit Court  
*Pro se* for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee  
Briefed by [Maggie Crain](#)  
Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

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## ***COURT OF APPEALS - CRIMINAL CASES***

### **FLUKER V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - EVIDENCE - SUFFICIENCY** - An appellate court will reverse and render if the facts and inferences favor the defendant with such force that reasonable jurors could not find him guilty beyond a reasonable doubt

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE** - To be entitled to a lesser-included offense instruction, the defendant must point to evidence in the record from which a jury could reasonably find him not guilty of the crime which he was charged and, at the same time, find him guilty of the lesser-included offense

**CRIMINAL PROCEDURE - CO-CONSPIRATOR’S GUILTY PLEA - PLAIN ERROR** - Evidence of a witness’s guilty plea may simply be consistent with the witness’s testimony at trial; further, a defendant’s opportunity to question a co-indictee regarding his or her guilty plea weighs against a finding of error regarding the admission of evidence regarding those same guilty pleas

**CRIMINAL PROCEDURE - LAY OPINION TESTIMONY - PLAIN ERROR** - To determine whether the admission of lay opinion testimony was plain error, the court considers: (1) first-hand knowledge of observations, and the helpfulness of the witness’s opinion in resolving the issues, (2) whether the error is plain, clear or obvious, and (3) whether the error prejudiced the outcome of the trial

**EVIDENCE - ADMISSIBILITY - AUTHENTICATION** - Miss. R. Evid. 901(a)’s fundamental inquiry is whether sufficient evidence exists to enable a reasonable jury to find beyond a reasonable doubt that the evidence is what it claimed to be

**CRIMINAL PROCEDURE - ERRORS - CUMULATIVE ERROR** - Under the cumulative-error doctrine, individual errors may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial; where there is no error in part, there can be no reversible error to the whole

#### **FACTS**

In March 2021, inmate James Bryant was stabbed in at Forrest County Adult Detention Center (“the jail”). Bryant alerted jail authorities about the incident and informed them a group of inmates, including Laquon Fluker, had lured Bryant into a cell and assaulted him with shanks. In May 2022, a grand jury indicted Fluker for aggravated assault and conspiracy to commit aggravated assault. Fluker’s trial took place in June 2022. The State called Chiquita Caines, who testified that on the day Bryant was stabbed, she found a sharpened fork (“shank”) near the cell where Bryant was stabbed. Bryant was then called to testify, where he identified Fluker as being responsible for stabbing him. The State showed Bryant the shank the defense had objected to prior to trial, and he identified it as the weapon with which he was stabbed. The trial judge admitted the shank, finding that an adequate foundation had been laid. The defense did not orally object to the item’s admissibility at trial. One of Fluker’s co-conspirator’s, Reid, testified he motioned to Fluker and Smith to go into the room, but that Reid had not known that stabbing Bryant was the plan. The State called Investigator Greg Holliman. Holliman testified that he was brought into jail after the incident and was able to view the surveillance tape, review Bryant’s written statement, and interview him. Holliman confirmed the written statement, the

interview, and the surveillance footage were consistent with one another and testified that all the evidence, including the shank, was recovered from the same area. The defense called Adrian Ratliff, who was shift sergeant at the time of the incident. Ratliff testified that the stabbing was more or less a small puncture wound or scrape and that the shank allegedly used in the incident was never found. Fluker objected to two of the State's proposed instructions, but both objections were overruled. Fluker proposed a simple-assault instruction as to the conspiracy charge, which the trial judge refused because the shank was a deadly weapon. Following the jury's deliberations, Fluker was acquitted of aggravated assault but found guilty of conspiracy to commit aggravated assault. As a habitual offender, Fluker was sentenced to life imprisonment without eligibility for parole. He filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial; it was denied by the trial court. Fluker appealed.

## **ISSUES**

Whether (1) the evidence was sufficient to support Fluker's conviction; (2) the trial court erred by refusing a proposed jury instruction on the lesser included offense of conspiracy to commit simple assault; (3) the trial was prejudiced by the improper use of a co-conspirator's guilty plea; (4) the trial was prejudiced by improper lay opinion testimony; (5) the trial court erred in admitting an insufficiently authenticated prison shank; and (6) cumulative error required reversal.

## **HOLDING**

(1) Because the surveillance videos clearly showed a concerted effort to accomplish assault, because Reid provided testimony that there was a "meeting of the minds," and because the State presented numerous pieces of evidence, which, when viewed in the aggregate and in favor of the State, could lead a reasonable juror to find Fluker guilty of the conspiracy beyond a reasonable doubt, sufficient support existed for Fluker's conviction. (2) Because Fluker's only avenue to receiving a lesser-included offense instruction was showing negligence on his part and because there was nothing in the record that supported a showing of negligence, Fluker was not entitled to a lesser-included offense instruction. (3) Because there was no plain error in the State asking Reid about his guilty plea and because Fluker attempted to use the guilty plea to his advantage, this issue was without merit. (4) Because it would be speculative to conclude that the jury's verdict was based on one sentence of testimony from Holliman rather than all the evidence of guilt, Holliman's testimony did not prejudice the outcome of the trial. (5) Because the jury found Bryant's identification of the shank reliable and because Bryant testified that the shank admitted into evidence was the one used to stab him, there was no chain-of-custody issue and Fluker's arguments were without merit. (6) Because there was no error in Fluker's conviction or sentencing, the cumulative error doctrine did not apply. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

## **CONCURRENCE IN PART & DISSENT IN PART**

Presiding Judge Wilson agreed that the evidence was sufficient to support the conviction for conspiracy to commit aggravated assault. However, he argued for a new trial because the evidence also supported Fluker's "absolute right" for a lesser-included-offense instruction on conspiracy to commit simple assault because the essence of a conspiracy is the agreement to commit the crime, not any subsequent criminal activity. Thus, a rational jury could have found that Fluker agreed to commit only a simple assault and a rational jury could have found that the shank in evidence was not a deadly weapon. Therefore, Fluker had an absolute right to the instruction, and its refusal was a reversible error.

### **Affirmed - 2022-KA-00692-COA (Feb. 20, 2024)**

Opinion by Judge Lawrence - Concurrence in Part & Dissent in Part by Presiding Judge Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Zachary Perez](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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## HARRIS V. STATE

### CRIMINAL - FELONY

**EVIDENCE - HEARSAY - TENDER YEARS EXCEPTION** - Under Miss. R. Evid. 803(25), a statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability, and (b) the child either (1) testifies at the proceedings, or (2) is unavailable as a witness

**CRIMINAL LAW - SEXUAL BATTERY - PENETRATION** - The parameters of the definition of sexual penetration are logically confined to activities, which are the product of sexual behavior or libidinal gratification

**CRIMINAL PROCEDURE - APPEALS - CUMULATIVE ERROR DOCTRINE** - Individual errors, which are not alone reversible, may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

### FACTS

Darrick Harris was convicted of sexual battery by a person in position of trust or authority for sexually abusing his daughter. In October 2019, Harris and his daughter lived part time with his girlfriend and part time with his mother. Harris's daughter disclosed to his girlfriend that Harris had sexually abused her. Later that month, Harris's daughter also disclosed the same to her school counselor. Both Harris's girlfriend and the school counselor testified about these disclosures at a "tender-years hearing" and at trial. Harris's girlfriend testified at the hearing that she periodically would tell her daughter and Harris's daughter to inform her if anyone ever touched them inappropriately. In early October 2019, Harris's girlfriend asked the girls this same question and she testified that Harris's daughter had "a look on her face." At trial, the daughter testified in detail about her father molesting her on multiple occasions. She further testified that Harris's mother demanded that she did not want Harris "to go to jail." She demanded that Harris's daughter not tell anyone about the abuse. After Harris's motion for a directed verdict was denied twice, he was found guilty of two counts of sexual battery by a person in a position of trust or authority. He was sentenced to fifteen years in prison, with five years suspended, followed by five-year probation. He was also ordered to register as a sex offender upon release. After his post-trial motions were denied, Harris appealed.

### ISSUES

Whether (1) the trial court erred by admitting tender-years testimony without properly analyzing the relevant factors; (2) the evidence was insufficient to prove the element of penetration under the sexual battery statute; and (3) cumulative error had a prejudicial effect on Harris's case and required reversal.

### HOLDING

(1) Because Harris failed to object to the testimony and because the trial judge found that Harris's daughter was not mature or advanced for her age, had no motive to lie, was not prompted or coached, and her disclosure was spontaneous, Harris waived this argument on appeal, and there was sufficient indicia of reliability to allow for the tender-years exception. (2) Because Harris's molestation of his minor daughter satisfied the legal definition of "sexual penetration" within the sexual battery charge, a rational jury could find his guilt beyond a reasonable doubt. (3) Because the court found no errors were committed at trial, the cumulative error doctrine did not apply, and this argument was therefore meritless. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

**Affirmed - 2022-KA-00505-COA (Feb. 20, 2024)**

Opinion by Judge Greenlee

Hon. Linda F. Coleman (Bolivar County Circuit Court, First Judicial Dist.)

Kaylyn Havrilla McClinton for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Forrest Carman](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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## QUINN V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - ESSENTIAL ELEMENTS - VENUE** - Proof of venue is an essential part of criminal prosecution, and the State bears the burden of proving venue beyond a reasonable doubt, and failure to prove venue results in reversal

**CRIMINAL PROCEDURE - VENUE - PROOF OF VENUE** - Testimony of an investigating officer can establish venue

**EVIDENCE - WITNESSES - REFRESHING MEMORY** - Documents used to refresh a witness's memory do not have to be admissible under the Rules of Evidence

### FACTS

Donald Quinn was indicted for sexual battery after his teenage niece became pregnant with his child. At trial, the only reference to venue was by a detective who testified that he learned that a sexual assault happened in Hinds County. Additionally, another witness was disqualified as an expert but subsequently testified to DNA testing and results, and was a lay witness. Quinn's mother also testified, and the State was permitted to show her the birth certificate of another one of her children to refresh her memory of the child's birthday, despite the birth certificate's inadmissibility as evidence. Quinn was convicted of sexual battery. Quinn appealed.

### ISSUES

Whether the trial court erred by (1) finding that the State proved venue in Hinds County and (2) allowing the State to use birth certificates that were not admitted into evidence to refresh a witness's memory.

### HOLDING

(1) Because the State failed to provide any competent evidence upon which a rational juror could have found venue proven beyond a reasonable doubt, the trial court erred by finding that the State proved venue in Hinds County. (2) Because the document used to refresh a witness's memory did not have to be admissible, the trial court did not err by allowing the State to use birth certificates that were not admitted into evidence to refresh a witness's memory. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

### CONCURRENCE IN RESULT

Judge Emfinger argued that the judgment should be reversed and remanded because the trial court committed reversible error by allowing a witness who did not qualify as an expert to testify about DNA testing and results.

### CONCURRENCE IN PART & DISSENT IN PART

Judge Lawrence agreed with the majority that the trial court did not abuse its discretion by allowing the State to use birth certificates to refresh the memory of a witness. However, he argued that there were sufficient facts in the record for the jury's factual determination of venue, including the detective's testimony that he investigated a sexual assault in Hinds County.

### **Reversed & Remanded - 2022-KA-00962-COA (Feb. 20, 2024)**

Opinion by Judge McCarty - Concurrence in Result by Judge Emfinger - Concurrence in Part & Dissent in Part by Judge Lawrence Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

Robert B. Ogletree for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Caroline Byrd](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

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## SMITH V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - COMPETENCY TO STAND TRIAL - PRESUMPTION OF COMPETENCY** - There is a presumption that a defendant is mentally competent to stand trial; the burden is on the defendant to prove that he is mentally incompetent to stand trial

**CRIMINAL LAW - COMPETENCY TO STAND TRIAL - COMPETENCY DETERMINATIONS** - A trial court's competency evaluation order does not conclusively establish that the trial court had reasonable grounds to believe that the defendant was incompetent to stand trial; competency determinations must be made based on the facts and circumstances attending each case

**CRIMINAL PROCEDURE - APPELLANT'S BRIEF - CONTENTIONS & CITATIONS** - An appellant's brief must list the appellant's contentions, and the reasons for those contentions, with citations to authorities, statutes, and parts of the records relied on

### FACTS

Smith was arrested and requested the circuit court appoint him counsel, which it did. Despite having representation, Smith filed several pleadings pro se. Smith appeared in front of the circuit court with his appointed counsel. Based on Smith's behavior, the circuit court ordered a drug test and mental evaluation. The circuit court revoked Smith's bond when he refused to submit to a drug test. Smith continued to file pleadings pro se. At the next hearing, the circuit court withdrew its request that Smith undergo a mental evaluation. The circuit court allowed Smith's counsel to withdraw as counsel and appointed Smith another public defender. Smith was tried and convicted. Smith did not file any post-trial motions. Smith appealed.

### ISSUES

Whether the circuit court (1) erred by finding Smith was competent to stand trial without having a hearing on competency and (2) acted improperly.

### HOLDING

(1) Because the circuit court had the opportunity to consider Smith's pro se filings and demeanor at the hearing, and because the circuit court found on record that it no longer had a reasonable basis to require a mental evaluation, the circuit court did not abuse its discretion by withdrawing its order for Smith's mental evaluation. (2) Because Smith's briefs failed to make meaningful arguments regarding his contentions that the circuit court acted improperly, and because Smith failed to cite authority or the parts of the record he relied on for his contentions, Smith's claims that the circuit court acted improperly were procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2022-KA-00852-COA (Feb. 20, 2024)**

Opinion by Judge Emfinger

Hon. M. Bradley Mills (Madison County Circuit Court)

*Pro se* & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee

Briefed by [Ashley House](#)

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**MISSISSIPPI CASES EDITORS**  
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*Questions or comments: Ashley House & Mason Scioneaux, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)*

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