

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 12, 2024***SUPREME COURT - CIVIL CASES*****HARRIS V. HEMPHILL CONSTR. CO.****CIVIL - PERSONAL INJURY**

ADMINISTRATIVE LAW - COMMON LAW CLAIMS - EXHAUSTION - When no adequate administrative remedy exists for a person's common law claim, that person is not required to exhaust their administrative remedies prior to filing a complaint in the appropriate court

WORKERS' COMPENSATION LAW - EMPLOYEE CLASSIFICATION - CORPORATE OFFICERS - Compensation law applies to officers that regularly do work outside of their executive duties such as manual or non-supervisory tasks

WORKERS' COMPENSATION LAW - TORT IMMUNITY - COMPLIANCE - A contractor who contractually requires its subcontractor to obtain workers' compensation coverage is in compliance with the Mississippi Workers' Compensation Act and has tort immunity

FACTS

Hemphill Construction Company, Inc. ("Hemphill") entered into a contract with the city of Jackson to construct a water treatment plant. In September 2020, Hemphill entered into a subcontract with Interstate Carbonic Enterprises ("ICE"). The subcontract required ICE to obtain workers' compensation insurance for its employees. ICE obtained the insurance, but its principal owner and officer, Gay Lynn Harris Jr., voluntarily opted out of ICE's workers' compensation insurance coverage. Harris later suffered injuries after falling while at work at the water treatment plant. Harris sought benefits from Hemphill and its insurance carrier by filing a petition to controvert before the Mississippi Workers' Compensation Commission. Harris argued that Hemphill was his statutory employer, allowing him to receive benefits. Hemphill denied being Harris's statutory employer because ICE had secured workers' compensation coverage for his employees. Hemphill filed a motion to dismiss Harris's workers' compensation claim. The Administrative Judge granted Hemphill's motion to dismiss because Harris was prohibited from attempting to be covered as an employee from a statutory employer and not entitled to workers' compensation benefits under the Mississippi Workers' Compensation Act. Harris did not appeal the decision. Harris filed a negligence complaint against Hemphill in circuit court, alleging negligence and gross negligence. Hemphill filed a motion to dismiss and for judgment on the pleadings, asserting that it was entitled to tort immunity. Hemphill also asserted that Harris's tort claim was improper as he had failed to exhaust his administrative remedies. The trial court granted the motion to dismiss. Harris appealed.

ISSUES

Whether (1) Harris was required to exhaust his administrative remedies; and (2) Hemphill was entitled to tort immunity.

HOLDING

(1) Because Harris's failure to appeal the Administrative Judge's decision made it final, and because the issue before the Administrative Judge concerned his entitlement to compensation, the exhaustion doctrine did not apply, and Harris was not required to exhaust his administrative remedies. (2) Because Harris was an employee of ICE, and because Hemphill satisfied the statutory requirement to secure payment of compensation by contractually requiring ICE to obtain workers' compensation insurance, Hemphill was entitled to tort immunity. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2023-CA-00973-SCT (Dec. 12, 2024)

Opinion by Presiding Justice Kitchens
Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)
William Garrigues Shields & Mack Austin Reeves for Appellant - H. Wesley Williams III for Appellee
Briefed by [Ethan Hayes](#)
Edited by [Summie Carlay](#) & [Emily Phillips](#)

[Click here to view the full opinion](#)

NAT'L COLLEGIATE ATHLETIC ASS'N V. FARRAR

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

DUE PROCESS - STATE ACTION - PRIVATE ORGANIZATIONS - The Miss. Const.'s due process protections apply only to state actors, not private organizations

EVIDENCE - EMPLOYMENT ACTIONS - MALICIOUS INTERFERENCE - Courts require substantial proof of malice to sustain claims of malicious interference with employment

EMPLOYMENT ACTIONS - MALICIOUS INTERFERENCE - PRIVATE BYLAWS - Actions justified under an organization's bylaws negate claims of malicious interference unless clear evidence of malice exists

FACTS

The National Collegiate Athletic Association ("NCAA") conducted a five-year investigation into the University of Mississippi's ("University") football program, uncovering twenty-one alleged violations. These violations included improper benefits for recruits facilitated by Barney Lee Farrar, an assistant athletics director for football. Specific allegations included free merchandise, improper lodging, meals, transportation, and cash payments to recruits. The NCAA Committee on Infractions ("COI") deemed these actions severe Level I breaches of NCAA bylaws, significantly undermining the integrity of collegiate athletics. The COI issued a five-year show-cause order, effectively restricting Farrar's ability to engage in recruiting activities at NCAA institutions. Farrar denied many allegations but admitted to certain violations, including using a burner phone for recruiting and lying to NCAA investigators. In response, Farrar filed suit against the NCAA, alleging denial of due process and malicious interference with employment. The trial court partially denied the NCAA's motion for summary judgment. The NCAA appealed.

ISSUES

Whether the trial court erred in finding that (1) the NCAA was a state actor in connection with the enforcement process for due process purposes; (2) there was some proof of malice by the NCAA.

HOLDING

(1) Because the Miss. Const.'s due process protections required state action, and because the NCAA did not operate as a state actor, the NCAA was not a state actor in connection with the enforcement process for due process purposes. (2) Because the NCAA's actions were justified under its member-adopted bylaws and were not driven by malice, because Farrar's objections to the NCAA's findings were procedurally barred, and because Farrar's objections to the NCAA's findings required malice be shown even though no malice was evident, there was no proof of malice by the NCAA. Therefore, the Supreme Court reversed and rendered the judgment of the Lafayette County Circuit Court.

DISSENT

Chief Justice Randolph argued that the trial court correctly denied summary judgment, identifying unresolved factual questions about the NCAA's enforcement procedures. He stressed the need for further examination to confirm whether the NCAA's actions aligned with the due process requirements of the Mississippi Constitution, which he claimed diverge from the federal standard. Chief Justice Randolph questioned the NCAA's consistency in adhering to its bylaws and whether its actions involved malice. He urged the trial court to collect and analyze additional evidence before deciding, criticizing the majority's decision as premature and claiming that it incorrectly interpreted the Mississippi Constitution's due process clause as analogous to the United States' Constitution's due process clause.

Reversed & Rendered - 2023-IA-00282-SCT (Dec. 12, 2024)

Opinion by Justice Griffis - Dissent by Chief Justice Randolph
Hon. Kent E. Smith (Lafayette County Circuit Court)
J. Cal Mayo Jr. & Kate M. Embry for Appellants - Jim Waide & John Bruster “Bruse” Loyd for Appellee
Briefed by [Regena Rowe](#)
Edited by [Brandon Peterson](#) & [Emily Phillips](#)

[Click here to view the full opinion](#)

SUPREME COURT - ORDERS

MCPHAIL V. MCPHAIL

EN BANC ORDER

ORDER

This en banc Order by the Supreme Court was made in consideration of Justin McPhail’s Motion for Leave to Proceed In Forma Pauperis and for Enlargement of Previously Filed Notice of Intent to Appeal. Justin was not entitled to proceed in forma pauperis on appeal because the right to do so in a case other than a criminal case existed only at the trial level. Justin requested a waiver of the security deposit for bond in lieu of the money judgment awarded against him, but the Supreme Court dismissed the request without prejudice to his right to seek relief in chancery court. The chancery court entered two orders that Justin claimed he was unaware of when he filed his Notice of Intent to Appeal, and the Supreme Court granted Justin’s Motion to Enlarge the Notice of Intent to Appeal to include these orders.

DISSENT

Justice Griffis agreed that the general rule only allowed for someone to proceed in forma pauperis at the trial level excluding criminal cases, but he argued that justice demanded this case be an exception to the general rule. Justice Griffis noted that the Supreme Court has recognized exceptions to this general rule in the past and argued that this case indicated unique circumstances such that the court should have accepted Justin’s appeal to proceed in forma pauperis.

Ordered - 2024-TS-00849 (Dec. 12, 2024)

En Banc Order by Chief Justice Randolph - Dissent by Justice Griffis

Briefed by [Connor Dixon](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

[Click here to view the full opinion](#)

SUPREME COURT - CRIMINAL CASES

QUINN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - VENUE - BURDEN OF PROOF - Proof of venue is an essential part of criminal prosecution, and the State bears the burden of proving venue beyond a reasonable doubt, through direct or circumstantial evidence; because venue is jurisdictional in criminal cases, it may be raised for the first time on appeal

CRIMINAL PROCEDURE - WITNESS TESTIMONY - CONFRONTATION CLAUSE - When a technical reviewer had intimate knowledge of the underlying analysis and report prepared by a primary analyst and the reviewer

was actively involved in the production of the report, even if he did not perform the tests first hand, then the defendant had the opportunity to confront and cross-examine the analyst at trial, which satisfies his Sixth Amendment right

CRIMINAL PROCEDURE - INDICTMENT - AMENDMENT - The State may only amend indictments if the amendment does not change the facts which are the essence of the offense, or materially alter a defense of the defendant so that it results in prejudice to the case; courts may amend indictments only to correct defects of form, rather than substance

CRIMINAL PROCEDURE - WITNESS TESTIMONY - DISCOVERY - In the context of discovery violations, exclusion of the evidence is a radical sanction that should rarely be used; if the trial court determined that a discovery violation is willful and motivated by a desire to obtain a tactical advantage, the discovered evidence or witnesses may be excluded

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER COMMENTS - Mistrial is reserved for those instances where the trial court cannot take any action which would correct improper occurrences inside or outside the courtroom; the grant of a mistrial is left to the sound discretion of the trial judge

EVIDENCE - REFRESHING A WITNESS - HEARSAY DOCUMENTS - Miss. R. Evid. 612(a) allows the questioning attorney to use any document or other item to try to jog or refresh the witness's memory or recollection; the document need not be admissible before it may be used to refresh a witness's recollection

FACTS

Donald Quinn was indicted for the sexual battery of his seventeen-year-old niece, Jane, which resulted in her pregnancy. Before trial, the State filed a Motion to Amend the Indictment to change the date of the alleged sexual battery from a specific date in January 2016 to a one-year period from July 2015 to July 2016 and to correct the victim's age from sixteen to seventeen years of age. The trial court granted the motion, but the State had to change the ending date to May 25, 2016, which was the day Jane gave birth to her son. After Jane and her mother became unavailable to testify at trial, the defense moved to exclude their previous statements as impermissible hearsay in violation of the Sixth Amendment's Confrontation Clause. In response, the State agreed to call Detective Samuel Neal, the lead investigator, to testify about his investigation into the incident. The trial court allowed the testimony but limited his remarks only to how he received the complaint and his response. At trial, Neal testified that he learned that a sexual assault occurred sometime in August 2015 on Crawford Street in Jackson. According to his testimony, Neal responded to the complaint made against Quinn and learned of Jane's pregnancy. Furthermore, Neal testified that he collected swabs from Jane, her child, and Quinn for DNA paternity tests two days after Jane gave birth and that all three swabs were logged into evidence and submitted to the state crime lab. The State also called as a witness Dr. George Schiro, the lab director and technical reviewer at Scales Biological Laboratory. As Schiro began testifying about what DNA was, the defense objected on the grounds that he was not being offered as an expert witness. The trial court sustained the objection, ruling that he could not give expert testimony if he had not been designated as an expert witness prior to trial. The State responded by informing the court that Schiro's report had been sent to the defense, and it went on to lay the foundation to establish Schiro as an expert witness. When the State asked the trial court to designate Schiro as an expert witness, Quinn objected on the grounds that his defense did not receive proper notice of the expert witness designation prior to trial. The State argued that it did designate Schiro as an expert witness and put the defense on notice in 2018. After the State produced a copy of an email the State sent to the defense in 2018 indicating that DNA paternity results were attached to the email, the defense argued that the email was not a designation under the Miss. Unif. Cir. & Cnty. Ct. R. The State countered, arguing that Miss. R. Crim. P. 17.2 should apply instead. The trial court agreed with the defense but nevertheless ruled that Schiro could testify about the results from the DNA test. Accordingly, Schiro testified that Quinn could not be excluded as the biological father of the child because his probability of paternity was 99.99992 percent. Finally, the State called as a witness Carolyn Smith, Quinn's mother. Her testimony was used to prove that Quinn was Jane's uncle. After Smith's testimony, the State rested its case-in-chief. The defense then moved for a directed verdict, arguing that the State failed to prove venue. In support of its motion, the defense argued that the only mention of venue by the State came from Neal whose testimony was only offered to explain the course of his investigation and not for the truth of the matter asserted. In response, the State argued that Neal's testimony as to the location of the complaint was obtained during the course of his investigation. Importantly, the defense did not object to Neal's testimony regarding the location of the complaint. In denying the motion, the trial court concluded that the State had presented, through Neal's testimony, sufficient evidence as to where the alleged sexual battery occurred. The jury ultimately convicted Quinn of sexual battery, and the trial court sentenced him to twenty years in custody of the Miss. Department of Corrections.

Quinn filed a motion for judgment notwithstanding the verdict or, in the alternative, a motion for a new trial, which the trial court denied. Quinn appealed to the Court of Appeals, which reversed and remanded, holding that the State failed to prove venue beyond a reasonable doubt. The State petitioned for writ of certiorari.

ISSUES

Whether (1) the State sufficiently proved venue; (2) the trial court admitted Schiro's testimony in error; (3) Quinn's indictment was properly amended; (4) Smith's testimony was properly admitted; (5) the trial court erred by not granting a mistrial sua sponte during closing arguments; and (6) the trial court erred by allowing the State to use birth certificates to refresh Smith's memory.

HOLDING

(1) Because Quinn failed to object to Neal's testimony establishing venue at trial, the State sufficiently proved venue. (2) Because Schiro had intimate knowledge of the DNA report and was actively involved in its production as a technical reviewer, and because Quinn failed to object to his qualifications as an expert under Miss. R. Evid. 702, the trial court did not admit Schiro's testimony in error. (3) Because the amendment to Quinn's indictment was one of form and not substance, Quinn's indictment was properly amended. (4) Because Smith's testimony was limited to the birth dates of her children to establish a familial relationship between Jane and Quinn, Smith's testimony was properly admitted. (5) Because the trial court admonished the jury to disregard the improper statements made in closing arguments and Quinn did not ask the trial court to grant a mistrial, the trial court did not err by not granting a mistrial sua sponte during closing arguments. (6) Because Miss. R. Evid. 612(a) allowed for the use of any document or other item to refresh a witness's memory or recollection, the trial court did not err by allowing the State to use birth certificates to refresh Smith's memory. Therefore, the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed the judgment of the Hinds County Circuit Court.

DISSENT

Presiding Justice Kitchens argued that venue was not established beyond a reasonable doubt because the victim was unavailable to testify at trial, and the record did not reveal where the evidence of the lead investigator's testimony came from. Furthermore, he argued that Schiro's testimony about the DNA test should not have been admitted because he was not disclosed pretrial as an expert witness. Thus, he would have affirmed the judgment of the Court of Appeals.

The Judgment of the Court of Appeals is Reversed; The Judgment of the Hinds County Circuit Court is Reinstated & Affirmed - 2022-CT-00962-SCT (Dec. 12, 2024)

En Banc Opinion by Justice Griffis - Dissent by Presiding Justice Kitchens
Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)
Robert B. Ogletree for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee
Briefed by [Douglas "Trey" Hubner III](#)
Edited by [Mattie Hooker](#) & [William Davis](#)

[Click here to view the full opinion](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 10, 2024

COURT OF APPEALS - CIVIL CASES

YOUNG V. MARTIN

CIVIL - REAL PROPERTY

PROPERTY - QUIET TITLE - SWORN COMPLAINTS - In all cases where the oath or affirmation of the party is required, such oath or affirmation may be made by his agent or attorney, and shall be as effectual for all purposes as if made by the party

CIVIL PROCEDURE - DEFAULT JUDGMENTS - MOTION TO SET ASIDE - A motion for relief from default judgment shall be made within a reasonable time... and not more than six months after the judgment, order, or proceeding was entered or taken

PROPERTY - DEEDS - INTENT - If a living or legal person is intended as the grantee and identifiable, the deed is valid however he may be named in the deed

FACTS

In 1927, Rowena Givens purchased a piece of property in Hancock County from Anna Henley. In 1969, Rowena signed and executed a deed conveying the property to “George Givens, Trustee.” George was Rowena’s son, and the deed was signed by Rowena’s six living heirs. In 2017, Randall Martin purchased the property at a tax sale after property taxes went unpaid. Following the two-year redemption period, Martin filed a complaint in 2019 to quiet and confirm title to the property. Martin did not personally swear to the complaint, but his attorney did. A default judgment was entered in January 2020, confirming Martin’s ownership as against Anna Henley, George Givens, and the heirs of both. Nearly a year later, Florence Young and Alton Pierce, heirs of one of Rowena’s daughters, filed a motion to set aside the default judgment. They argued that the 1969 deed naming “George Givens, Trustee” was a legal nullity and that Rowena’s heirs were not given notice of the tax sale, redemption period, or Martin’s lawsuit. Young and Pierce alleged that the failure to notify them of the proceedings violated their procedural due process rights and that the chancery court lacked jurisdiction. The chancery court denied the motion, finding it untimely and rejecting their jurisdictional challenge. Young and Pierce appealed.

ISSUES

Whether the chancery court (1) lacked jurisdiction because Martin did not personally swear to the complaint to confirm and quiet title; (2) erred in dismissing Young and Pierce’s motion to set aside the default judgment as untimely; and (3) erred in determining the notice of the tax sale was legally sufficient.

HOLDING

(1) Because Martin’s attorney swore to the complaint, and his signature was effectual, the chancery court did not lack jurisdiction. (2) Because Young and Pierce’s argument was not one of subject matter jurisdiction, and because the motion to set aside the default judgment was filed more than six months after the default judgment, the chancery court did not abuse its discretion in dismissing the motion. (3) Because the 1969 deed naming “George Givens, Trustee” failed to create a valid trust but effectively conveyed title to George Givens individually, the chancery court properly found that Young and Pierce were not entitled to notice as heirs of Rowena Givens. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Chancery Court.

Affirmed - 2023-CA-00980-COA (Dec. 110, 2024)

Opinion by Judge Lawrence

Hon. Carter O. Bise (Hancock County Chancery Court)

Edward Gibson for Appellants - Lewie G. “Skip” Negrotto IV Appellee

Briefed by [Zuri Williams](#)

Edited by [Summie Carlay](#) & [William Davis](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - CRIMINAL CASES

DAVIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SEARCH & SEIZURE - INVESTIGATORY STOP - Reasonable cause for an investigatory stop may be based on an officer’s personal observation or on an informant’s tip if it bears indicia of

reliability; reasonable suspicion is dependent upon both the content of the information possessed by the detaining officer as well as its degree of reliability

CRIMINAL PROCEDURE - SEARCH & SEIZURE - COMMUNITY CARETAKING FUNCTION - Under appropriate circumstances, a law enforcement officer may be fully justified in providing assistance without needing any reasonable basis to suspect criminal activity; courts should carefully analyze the totality of the circumstances so that the community caretaking function is cautiously and narrowly applied in order to minimize the risk that it will be abused as a pretext for conducting an investigatory stop and search for criminal evidence

FACTS

In June 2021, Officer Vaughn observed Dylan Davis walking on the interstate, sweating profusely and carrying a knife in his waistband. Vaughn initiated a welfare check, during which he noticed a bulge in Davis's pocket. Vaughn asked if Davis had a gun. Davis admitted to having a gun and consented to Vaughn removing it. After discovering that Davis was a felon, Vaughn took Davis into custody and charged Davis with being a felon in possession of a firearm. Davis moved to suppress the firearm, claiming the stop violated his Fourth Amendment rights, as Vaughn lacked reasonable suspicion to perform a *Terry* stop, and his consent was involuntary. The court denied the motion to suppress the firearm, ruling that the stop and search were justified under the community caretaking function and that Davis's consent was valid. At trial, Vaughn testified about the encounter as the State's only witness. Additionally, Davis and his wife, Tracy Lawless, explained Davis had been left on the interstate following an argument, and he had picked up the gun to return it to his wife. The jury found Davis guilty of possession of a firearm by a felon, and he was sentenced to five years of incarceration suspended pending good behavior with post-release supervision. Davis appealed.

ISSUE

Whether the trial court erred in failing to suppress the firearm on the grounds that Davis was seized without reasonable suspicion in violation of the Fourth Amendment.

HOLDING

Because Officer Vaughn's stop of Davis was justified under the community caretaking function, considering the totality of the circumstances, including Davis's physical condition, the hundreds of miles Davis was attempting to walk along a major interstate, the time of the morning, and the ambiguous nature of the encounter, the trial court did not err in denying Davis's motion to suppress the firearm. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2023-KA-00811-COA (Dec. 10, 2024)

Opinion by Judge McDonald

Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Madeline Riddick](#)

Edited by [Robert "Duncan" Jones](#) & [William Davis](#)

[Click here to view the full opinion](#)

GARDNER V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - PETERSON BALANCING TEST - The impeachment value of the prior crime, the point in time of the conviction and the witness' subsequent history, the similarity between the past crime and the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue should be weighed to determine the probative value of past convictions against the prejudicial effect of their admission under Miss. R. Evid. 609(a)(1)

CRIMINAL LAW - CONTROLLED SUBSTANCES - CONSTRUCTIVE POSSESSION - Where a defendant does not own the vehicle where contraband is found, the State is required to establish additional incriminating circumstances in order to prove constructive possession

CRIMINAL LAW - POSSESSION - CONSTRUCTIVE POSSESSION - There must be evidence, in addition to physical proximity, showing the defendant consciously exercised control over the contraband, and absent this evidence, a finding of constructive possession cannot be sustained

FACTS

Officer Ryan Jungers of the Ridgeland Police Department was on his way to join other officers conducting a safety checkpoint when he saw a car with its headlights off driving away from the checkpoint. Jungers activated his lights and sirens, but the car did not stop and drove away at a high rate of speed. The chase lasted approximately fifteen minutes. The fleeing car ran multiple red lights and reached speeds approaching 100 miles per hour before the car drove into a ditch at the end of a dead-end street. The driver and passenger quickly abandoned the car and fled on foot. Jungers apprehended the passenger, Julian Smith, but the driver escaped. Smith was questioned, and he identified Jimmie Gardner as the driver. Jungers conducted an inventory search of the car and found two prescription pill bottles for Gardner on the driver's side floorboard. One of the bottles contained a partial marijuana blunt and a small amount of marijuana. Jungers also found a small amount of suspected cocaine in the car, which was confirmed upon testing. In addition, Jungers found an Enterprise rental agreement signed by Gardner's mother in the car's glove box. Based on Smith's identification and the evidence in the car, a warrant was issued for Gardner's arrest. A grand jury indicted Gardner for possession of one-tenth of a gram but less than two grams of cocaine and felony evasion as a subsequent drug offender and nonviolent habitual offender. At trial, Smith testified that he asked Gardner several times to stop the car, and he denied that any of the drugs in the car belonged to him. After the State rested its case-in-chief, Gardner informed the court that he had decided to testify. The State indicated that it intended to use Gardner's prior convictions to impeach him. The State argued that it should be allowed to impeach Gardner by showing that he had been convicted of possession of codeine. Defense counsel argued that the conviction should not be admitted because they were prejudicial and that neither conviction reflected negatively on Gardner's veracity. After applying the Miss. R. Evid. 403 balancing test and only partially addressing one *Peterson* factor, the trial court ruled that Gardner's prior convictions would be admitted subject to a limiting instruction. Gardner acknowledged on direct examination that he prior convictions for burglary and possession of codeine. The state questioned Gardner about his prior conviction twice during his cross-examination. The jury convicted Gardner of cocaine possession and felony evasion. Gardner appealed.

ISSUES

Whether (1) the trial court erred by admitting evidence of Gardner's prior convictions for purposes of impeachment; and (2) there was insufficient evidence to sustain his conviction for cocaine possession.

HOLDING

(1) Because the trial court applied the Miss. R. Evid. 403 balancing test instead of the Miss. R. Evid. 609(a)(1)(B) balancing test, and because the trial court failed to address all of the *Peterson* factors, Gardner was unfairly prejudiced by the admission of his prior convictions. (2) Because the circumstances of Gardner's flight were extreme, because the jury logically could have inferred that Gardner fled in order to avoid arrest and prosecution for possessing cocaine, and because of Smith's identification of Gardner as the driver, there was sufficient evidence for a rational juror to find that Gardner constructively possessed the cocaine. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Circuit Court.

DISSENT

Presiding Judge Carlton argued that allowing Gardner's prior convictions into evidence did not constitute a reversible error because they were introduced with a limiting instruction, and it was enough that the trial court conducted a balancing test in line with the spirit of *Peterson*.

Reversed & Remanded - 2023-KA-00903 Consolidated with 2018-KA-01337 (Dec. 10, 2024)

Opinion by Presiding Judge Wilson - Dissent by Presiding Judge Carlton

Hon. William E. Chapman III (Madison County Circuit Court)

Sanford E. Knott for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Aubrey Cagle](#)
Edited by [Sarah Schlager](#) & [Emily Phillips](#)

[Click here to view the full opinion](#)

KING V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - INDIGENT CRIMINAL DEFENDANT - LINDSEY BRIEF - *Lindsey v. State* establishes the procedure governing cases in which appellate counsel represents an indigent criminal defendant and does not believe his or her client's case presents any arguable issues on appeal; if appellate counsel finds no arguable issues in the record, he or she must then advise the defendant of his right to file a pro se brief

APPELLATE PROCEDURE - LINDSEY BRIEF - REVIEW - In reviewing an indigent criminal defendant's appeal, an appellate court must conduct an independent and thorough review of the record, and determine whether there are issues warranting reversal

FACTS

In July 2021, Rachelle Dodd and Michael Portillo met with Telisa ("Sissy") Benson and Randy ("Buzzard") Benson at the Bensons' apartment in Tupelo to purchase a vehicle. While Dodd and Sissy were outside the apartment, they observed Bradley King exiting an SUV and waving a gun. King asked for Buzzard, and when Sissy informed him that Buzzard was inside, he confronted her by pointing a gun in her face. Sissy threw King to the ground and ran to a neighbor's house. Dodd ran to Portillo's cousin's house and urged them to call 911. Both testified to hearing gunshots in the distance. Inside the apartment, Portillo testified that King entered, demanded \$1,200 from Buzzard, and threatened to shoot him if he did not pay. When Buzzard stated he had no money, King threw objects and ultimately shot Buzzard twice. In response, Buzzard attempted to defend himself by throwing a lamp at King but instead caused a power outage. Several more shots were fired. Until King left, Portillo hid and eventually escaped through a window. After multiple 911 calls, Lee County deputies arrived and found Buzzard unresponsive on his back, with blood on his torso and his legs unnaturally bent. An investigator collected evidence that included photographs, a shell casing, and interviewed witnesses, who identified King as the shooter. Law enforcement received tips about King's location and, with assistance from federal and state agencies, found him hiding in a cabin. King cooperated with authorities and disclosed the location of a .22-caliber Ruger handgun hidden in the woods. Evidence revealed that King was responsible for Buzzard's death. During trial, King testified that Buzzard and Sissy had previously offered him a place to stay but accused them of drugging him, which led to police being called to make him leave, money and pistol gone. Further, he asserted that he went to the apartment to recover his money and alleged that Buzzard threw a lamp at him, causing him to fire as he fell backwards. King was indicted for first-degree murder in February 2022, and his trial commenced in May 2023. The jury received instructions on both first- and second-degree murder and ultimately found King guilty of second-degree murder. King was sentenced to forty years in custody, with ten years suspended and five years of post-release supervision. King filed a motion for judgment notwithstanding the verdict or a new trial. The trial court denied the motion. King appealed.

ISSUE

Whether there were any arguable issues on appeal that warranted reversal of King's conviction and sentence.

HOLDING

Because King's appellate counsel filed a *Lindsey* brief certifying that there were no arguable issues supporting King's appeal after analyzing the record thoroughly, and because King did not file a pro se supplemental brief raising any legal issues, there was no issue on appeal that warranted reversal. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

Affirmed - 2023-KA-00658-COA (Dec. 10, 2024)

Opinion by Judge Westbrook

Hon. Michael Paul Mills Jr. (Lee County Circuit Court)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Abby Eason Koonce (Att’y Gen. Office) for Appellee
Briefed by [Joree Rose](#)
Edited by [Emily Kaplan](#) & [William Davis](#)

[Click here to view the full opinion](#)

LEVI V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - PRIOR CONVICTIONS - Under Miss. R. Evid. 404(b), evidence of prior involvement in a drug trade is admissible to prove intent to distribute

EVIDENCE - OBJECTIONS - PRESERVATION FOR APPEAL - Under Miss. R. Evid. 103(a), a contemporaneous objection on specific grounds must be made to the admission of evidence at trial in order for the issue to be preserved on appeal

CRIMINAL LAW - EVIDENCE - SIMPLE POSSESSION - A trial court abuses its discretion by admitting prior convictions for simple possession of drugs to address a supposed issue that was never contested or placed at issue by any witness

EVIDENCE - HARMLESS ERROR - UNDUE PREJUDICE - A trial court’s abuse of discretion in admitting evidence is deemed a harmless error if the appellant did not suffer any marginal undue prejudice because of the admission

FACTS

Larry Levi Jr. was convicted of possession of methamphetamine and cocaine with intent to distribute. Prior to trial, Levi filed a motion in limine to exclude evidence under Miss. R. Evid. 404(b) of prior convictions of (1) possession of cocaine with intent to distribute in 2015, (2) sale of cocaine in 2013, (3) sale of cocaine and transfer of marijuana in 2002, and (4) simple possession of cocaine in 1997. The trial court denied his motion, finding the convictions admissible to show intent to distribute. In response, the State argued that the prior convictions were admissible under Miss. R. Evid. 404(b) to show intent and knowledge, and the court agreed. The trial court directed the parties to prepare a jury instruction specifying that Levi’s prior convictions could be considered for “intent” and “knowledge” purposes but not as evidence of his guilt for the charges in the instant case. At trial, the sentencing orders for the prior convictions were admitted into evidence over Levi’s renewed objection, including a 2015 sentencing order showing that Levi pled guilty to felony fleeing, which was not mentioned at trial. Levi was convicted of possession of methamphetamine and cocaine with intent to distribute. Levi appealed.

ISSUES

Whether (1) the prior conviction for possession of cocaine should not have been admitted because the amount of cocaine involved in that offense (less than two grams) could have been consistent with personal use; (2) Levi’s prior conviction for felony fleeing and the details of his prior sentences were improperly admitted when his four prior sentencing orders were admitted into evidence; and (3) trial court erred by admitting Levi’s 1997 conviction of simple possession of cocaine.

HOLDING

(1) Because Levi did not object to his conviction of possession of cocaine on specific grounds in the trial court, Levi waived the issue on appeal. (2) Because Levi did not object to or make any mention of his felony fleeing conviction at trial, he was procedurally barred from raising the new issue on appeal. (3) Because the trial court’s error in admitting the 1997 conviction of simple possession of cocaine did not result in Levi suffering any marginal undue prejudice, the error was harmless. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Presiding Judge Carlton argued that the trial court did not abuse its discretion in admitting Levi's prior conviction for simple possession of cocaine because the State was required to prove both essential elements of the intent to possess the drugs and Levi's knowledge of what methamphetamine and cocaine were. She also argued that the trial court properly determined that the probative value of Levi's prior convictions was not substantially outweighed by any prejudice, given Levi's defense that the drugs were not his. Finally, Presiding Judge Carlton agreed that even if the trial court abused its discretion in admitting the prior conviction of simple possession of cocaine, the error was harmless and, therefore, concurred in part and in result, finding no reversible error in the trial court's findings.

Affirmed - 2023-KA-00718-COA (Dec. 10, 2024)

En Banc Opinion by Presiding Judge Wilson - Concurrence In Part & In Result by Presiding Judge Carlton

Hon. David H. Strong Jr., (Lincoln County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Abby Church](#)

Edited by [Katie Shaw](#) & [William Davis](#)

[Click here to view the full opinion](#)

NAILER V. STATE

CRIMINAL - FELONY

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

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL PROCEDURE - RIGHT TO TESTIFY - CULBERSON COLLOQUY - In any case where a defendant does not testify, before the case is submitted to the jury, the defendant should be called before the court out of the jury's presence and advised of his right to testify; a record should be made so that no question about the defendant's waiver of his right to testify should ever arise in the future; when an appellant has been represented by counsel throughout the proceeding and the record does not reflect any desire by the appellant to testify, the failure of the trial court to advise him of his right to testify does not constitute reversible error

CRIMINAL PROCEDURE - DEFENSE - RIGHT TO TESTIFY - If defense counsel rests without calling the defendant and the defendant does not assert that he wants to testify, the defendant's silence is interpreted as the counsel following the defendant's wishes

FACTS

Tanner and Tyler Feeney were driving a boat by Billy Shannell Nailer Jr.'s home when Nailer fired a crossbow bolt into the boat's passenger seat. Nailer was charged with aggravated assault as a habitual offender. At trial, Investigator Mike Davis testified that, while executing a search warrant at Nailer's home, Davis recovered a compound bow with arrows and a crossbow with crossbow bolts or arrows. According to Davis, the bolts found in Nailer's home were the same make, model, manufacturer date stamp, and description as the bolt removed from the boat occupied by the Feeneys. At the close of the State's case-in-chief, Nailer moved for a directed verdict. At the conclusion of the arguments regarding Nailer's motion for directed verdict, the trial court informed Nailer of his right to testify. The trial court then took Nailer's motion under consideration. The trial court ultimately denied the motion and asked Nailer's defense counsel if he was going to call any witnesses. During the jury instruction conference, the trial court denied Nailer's requested instruction on simple assault as a lesser-included offense to aggravated assault. The trial court gave Instruction

S-2, which provided, “the Court instructs the Jury that intent is an emotional operation of the mind, and it is usually shown by acts and declarations of the defendant coupled with facts and circumstances surrounding him at the time. The Defendant’s intention is manifested largely by the things he does.” Nailer’s defense counsel objected and failed to provide the trial court with any specific reason for his objection. The trial court also gave Instruction S-5, which provided, “the Court instructs that one does not have to possess ill-will toward or even know the identity of a specific individual to commit an aggravated assault on that person.” Nailer argued that this was not a correct statement of the law. The jury returned a guilty verdict. Nailer filed an amended motion for judgment notwithstanding the verdict or a new trial, which the trial court denied. Nailer appealed.

ISSUES

Whether (1) the trial court erred by denying Nailer’s requested instruction on simple assault as a lesser-included offense to aggravated assault; (2) the State presented sufficient evidence to convict Nailer of aggravated assault; (3) Instructions S-2 and S-5 impermissibly commented on the weight of the evidence, were argumentative, and deprived Nailer of a fair and objective consideration of the evidence by the jury; and (4) Nailer’s right to testify was violated.

HOLDING

(1) Because Nailer never argued before the trial court that the crossbow was not a deadly weapon, and because no reasonable juror could find Nailer not guilty of the indicted offense and guilty of the lesser-included offense, the trial court did not err by denying Nailer’s requested instruction on simple assault as a lesser-included offense to aggravated assault. (2) Because there was legally sufficient evidence for a reasonable jury to find beyond a reasonable doubt that Nailer intended to cause bodily harm when he fired the crossbow into the boat, the State presented sufficient evidence to convict Nailer of aggravated assault. (3) Because Nailer failed to provide the trial court with grounds for his objection on Instruction S-2, because Nailer raised a different basis for his objection to Instruction S-5 to the appellate court than he did to the trial court, and because the language in Instructions S-2 and S-5 was proper, the trial court did not abuse its discretion in granting those instructions. (4) Because the trial court provided a *Culberson* colloquy, and because it was not unreasonable to presume Nailer waived his right to testify when he said nothing after defense counsel rested without presenting any evidence, Nailer’s right to testify was not violated. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2023-KA-00627-COA (Dec. 10, 2024)

Opinion by Judge Emfinger

Hon. Randi Peresich Mueller (Harrison County Circuit Court, First Judicial Dist.)

Justin T. Cook (Pub. Def. Office) & *Pro se* for Appellant - Casey B. Farmer (Att’y Gen. Office) for Appellee

Briefed by [Alden Wiygul](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

[Click here to view the full opinion](#)

WAGNER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEAL - LINDSEY BRIEF - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant and does not believe his or her client’s case presents any arguable issues on appeal, counsel must file and serve a brief indicating in good faith a lack of arguable issues on appeal and that counsel reached this conclusion after scouring the record thoroughly; counsel then must send a copy of the brief to the defendant to inform him that no appealable issues were found and notify the defendant of his right to file a pro se brief

CRIMINAL PROCEDURE - LINDSEY BRIEF - ARGUABLE ISSUE - The appellate court will determine if there is any arguable issue based on its review of the record and any pro se brief filed

FACTS

In September 2020, Nicholas Wagner and his then-girlfriend, Lauren Marshall, got into an argument, which led to a physical altercation. Wagner lifted Marshall off the bed, pinned her against a wall, then slammed her to the floor. He held her neck for about fifteen seconds while Marshall said she thought she was going to die. Wagner then slammed Marshall on the ground, dragged her by her ankles and hair to the bathroom where he poured cleaning fluid on her face to get her to stop screaming. Marshall also threatened her with an axe and nicked her thigh with it. Wagner testified that he took crystal methamphetamine on the day of the altercation and had taken LSD twenty-four hours before the altercation. He testified that the drug use made him lose control of himself for a moment. The jury returned a guilty verdict of felony aggravated domestic violence. The circuit court sentenced Wagner to twenty years, with eight years suspended, leaving twelve years to serve in the custody of the Mississippi Department of Corrections, along with three years of post-release supervision. Wagner filed a motion for judgment notwithstanding the verdict or, alternatively, a new trial, which the circuit court denied. Wagner appealed.

ISSUE

Whether Wagner’s conviction presented any arguable issues for appeal.

HOLDING

Because Wagner’s counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Wagner never filed the granted supplemental pro se brief, Wagner’s conviction presented no arguable issues for appeal. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2023-KA-01123-COA (Dec. 10, 2024)

Opinion by Judge Lawrence

Hon. Lisa P. Dodson (Hancock County Circuit Court)

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Julianne Kay Bailey (Att’y Gen. Office) for Appellee

Briefed by [James Riley](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

[Click here to view the full opinion](#)

MISSISSIPPI CASES EDITORS
WILLIAM DAVIS & EMILY PHILLIPS

ASSOCIATE CASES EDITORS

SUMMIE CARLAY
MATTIE HOOKER
ROBERT “DUNCAN” JONES
EMILY KAPLAN
SARAH SCHLAGER
KATIE SHAW
BRANDON PETERSON

Thank you for supporting the Mississippi Law Journal.

Questions or comments: William Davis & Emily Phillips, 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 William Davis or Emily Phillips, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org