

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 6, 2025***SUPREME COURT - ORDERS*****SMITH V. STATE****EN BANC ORDER****ORDER**

In this en banc Order, the Supreme Court denied Clyde Wendell Smith’s Motion for Leave to File Successive Petition for Post-Conviction Relief. Smith raised three issues in his second petition for post-conviction relief. After a complete review of Smith’s petition, the Court found that all of the claims before the Court were barred, and Smith made no attempt to argue his present claims should be excepted from the bars. The Court found no applicable exception under the circumstances here. Smith’s claims did not contain merit entitling him to relief. Therefore, the Court denied Smith’s Motion for Leave to File Successive Petition for Post-Conviction Relief.

Ordered - 2019-DR-01492-SCT (Feb. 4, 2025)

En Banc Order by Justice Chamberlin

Briefed by [Olivia Knight](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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SUPREME COURT - CRIMINAL CASES**BROOME V. STATE****CRIMINAL - FELONY**

EVIDENCE - HEARSAY - INADMISSABILITY - According to Miss. R. Evid. 801(c), hearsay is a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement; hearsay is generally inadmissible

EVIDENCE - TESTIMONY - HEARSAY - Testimony is not considered hearsay and is admissible if it is offered for some purpose other than to prove the truth of the matter asserted

EVIDENCE - HEARSAY - INVESTIGATORY STATEMENTS - A law enforcement officer’s testimony is not considered hearsay when it is offered to demonstrate the reason for the next investigatory step taken by that officer

CRIMINAL PROCEDURE - APPEALS - REVERSAL - An appellate court will not reverse a conviction for an erroneous evidentiary ruling unless the error adversely affects a substantial right of a party

FACTS

Staci Broome and Michael Mathis had an intimate relationship while Michael was still married to his wife. Over time, Broome developed animosity towards Michael’s daughter, Julie Mathis, after a series of petty disputes between the two. In March 2023, Julie went to Michael’s house to do homework and locked herself in his office, which connected to the garage. That day, Michael invited Broome and her daughter, Amber, to come to his house while he grilled. Michael

testified that when Broome arrived, she asked whether the car in the driveway belonged to Julie, though Amber testified that Broome said nothing and started to take out her earrings and walk toward the office. After an hour in the locked office, Julie heard Broome screaming and opened the office door to Broome shouting expletives at her. A brief fight ensued before Michael de-escalated the fight. Julie returned to the office, locked the door, and called 911. Broome subsequently grabbed a hammer and began to hit the office door. When Julie opened the door, the two began fighting again. Broome picked up a “shiny metal object” and struck Julie over the head multiple times. Julie wrestled the wrench out of Broome’s grasp when Michael broke up the fight again. Julie, with blood covering her face, called 911 again. In response, an investigator arrived, surveyed the scene, and found a metal object with spots of red and blonde hair attached. Broome was arrested for aggravated assault. At trial, the investigator testified that Julie was in an ambulance when he arrived at the scene. When the State asked the investigator why Julie was in the ambulance, Broome raised a hearsay objection. However, the trial court overruled the objection, finding that the investigator could “state what he learned through the investigation.” The investigator then testified that Julie told him that Broome had hit her in the head with a metal object. He further testified that Julie’s statement led him to discover the metal object that Broome used to assault Julie. Again, Broome objected to his testimony, citing hearsay, which the trial court overruled. Multiple other witnesses, including Julie and Amber, also testified about what happened in the fight, what led to the fight, and what weapon was used. Initially, Amber stated that Julie was the aggressor, but at trial, Amber unequivocally testified that it was Broome who beat Julie with a metal wrench. Additionally, Michael testified that when he pulled Broome and Julie apart for a second time, he noticed blood on Julie’s face, although he did not know whose blood it was at the time. Photos of Julie’s face from the day of the incident and the days following were shown to the jury as well. Ultimately, the jury found Broome guilty of aggravated assault. Broome appealed.

ISSUES

Whether the trial court erred by (1) allowing hearsay testimony; and (2) allowing opinion testimony from a lay witness regarding the ultimate issue in the case.

HOLDING

(1) Because the investigator offered testimony to demonstrate why he entered the garage in search of a metal object and ultimately how he found a hammer and ratchet, because the record contained ample evidence corroborating the investigator’s testimony, and because the investigator’s testimony about the metal object was not hearsay when it was offered to demonstrate the reason for the next investigatory step taken, the trial court did not err by allowing the investigator to testify about Julie’s statement that she was hit with a metal object. (2) Because the State presented ample credible evidence, including Julie, Amber, and Michael’s testimony, the metal object itself, the investigator’s testimony about the red spots and hair on the ratchet, and photos of Julie’s injuries, any error resulting from the investigator’s testimony regarding the ultimate issue was harmless and did not prejudice Broome. Therefore, the Supreme Court affirmed the judgment of the Simpson County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis agreed with the majority that the investigator’s testimony identifying Broome as the person who assaulted Julie was hearsay. However, he argued that the inclusion of the hearsay testimony was not a harmless error, arguing that there was conflicting testimony and that allowing the investigator’s testimony likely influenced the verdict. Therefore, Justice Griffis would have reversed and remanded the case for a new trial.

Affirmed - 2023-KA-01163-SCT (Feb. 6, 2025)

Opinion by Justice Chamberlin - Concurrence in Part & Dissent in Part by Justice Griffis

Hon. Stanley Alex Sorey (Simpson County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Allison Horne (Att’y Gen. Office) for Appellee

Briefed by [Drayton Purvis](#)

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

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CRIMINAL - FELONY

CRIMINAL LAW - APPEALS - LINDSEY BRIEF - Under *Lindsey v. State*, if appellate counsel does not identify any arguable issues to appeal, counsel must file an appellate brief certifying that counsel scoured the record thoroughly and found no arguable issues; counsel must also send a copy of the *Lindsey* brief to defendant and advise defendant of his right to file a pro se supplemental brief

CRIMINAL PROCEDURE - APPEALS - PRO SE SUPPLEMENTAL BRIEF - If the defendant cannot raise any arguable issues for appeal in his pro se supplemental brief, and the appellate court cannot find any arguable issues in its review of the record, the judgment must be affirmed

FACTS

Brandon Mackabee was pulled over by Laurel Police Officer Shaymira Morgan for driving recklessly. Before she exited her car, Morgan saw Mackabee's car shake and two men switch seats. As she approached the vehicle, Morgan found Mackabee in the back passenger seat. After a portable breathalyzer test, both Mackabee and the passenger were above the legal blood-alcohol limit. Morgan took Mackabee into custody and released the passenger because he was not the driver at the time of the stop. Because Mackabee had a prior conviction for driving under the influence ("DUI") third offense, Mackabee was charged with felony fourth-offense DUI. The jury found Mackabee guilty of fourth-offense DUI, and the trial court sentenced him to ten years in the custody of Mississippi Department of Corrections, with two years suspended and two years of post-release supervision. Mackabee appealed.

ISSUE

Whether an arguable issue for appellate review existed.

HOLDING

Because Mackabee's appellate counsel properly filed a *Lindsey* brief, and because Mackabee did not file a pro se supplemental brief, no arguable issue for appellate review existed. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2023-KA-00644-SCT (Feb. 6, 2025)

En Banc Opinion by Justice Sullivan

Hon. Dal Williamson (Jones County Circuit Court)

George T. Holmes & Mollie Marie McMillin (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Payne Phillips](#)

Edited by [Brandon Peterson](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 4, 2025

COURT OF APPEALS - POST-CONVICTION RELIEF

WILSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - CONVICTION - FACTUAL BASIS - There are many ways to establish a factual basis, including a statement of the prosecutor, the testimony of live witnesses, and prior proceedings, as well as an actual admission by the defendant

POST-CONVICTION RELIEF - DENIAL OF MOTION - IN FORMA PAUPERIS STATUS - A pro se litigant persistently filing facially frivolous post-conviction relief pleadings may be denied by a circuit court and restricted from filing post-conviction relief applications again

FACTS

Bobby Wilson Jr. pled guilty in 1994 for attempted automobile burglary, for which he received a suspended five-year sentence. In 2023, Wilson filed his sixth motion for post-conviction relief (“PCR”) and claimed that there was no factual basis for the charge, that he “was innocent of the crime of auto burglary,” and that his guilty plea was involuntary. Wilson had previously filed numerous PCR pleadings from 2007 through 2020. Wilson argued that the State lacked a sufficient factual basis to support a conviction because he lacked intent to steal any property within the automobile. The circuit court denied his claim because Wilson freely admitted to the charge in a plea hearing in 1994. The circuit court entered an ordering denying the PCR motion and “all other accompanying motions” as “frivolous, successive, time-barred, and barred by res judicata.” The court further restricted Wilson from filing further pleadings in forma pauperis related to his 1994 conviction. Wilson appealed.

ISSUE

Whether the trial court erred in restricting Wilson from filing any further PCR pleadings in forma pauperis.

HOLDING

Because Wilson’s PCR motion was untimely and successive, because Wilson’s admission to the crime charged rendered his claim of innocence barred by res judicata and without merit, and because his filing was frivolous, the trial court did not err in restricting Wilson from filing further PCR pleadings in forma pauperis. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2023-CP-01050-COA (Feb. 4, 2025)

Opinion by Chief Judge Barnes

Hon. M. James Chaney Jr. (Warren County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Lexi Killebrew](#)

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

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COURT OF APPEALS - CRIMINAL CASES

CRAFT V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - SECOND DEGREE MURDER - The State must present sufficient evidence that proves without a reasonable doubt that a person engaged in “an act eminently dangerous to others and evincing a depraved heart” as required for second-degree murder

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT 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 - REVERSAL - Reversal is not warranted if the jury instructions fairly state the law and do not prejudice the defendant

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - ASSERTIONS - Failure to cite the relevant authority to support an assertion procedurally bars the issue from the appellate court’s review

APPELLATE PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - INSUFFICIENT EVIDENCE - An appellate court is limited to the trial-court record in its review of the claim of ineffective assistance of counsel, and there may be instances in which insufficient evidence and/or information exists within the record to

address the claim adequately; in such a case, the appropriate procedure is to deny relief, preserving the defendant's right to argue the issue through a petition for post-conviction relief

FACTS

While Jo Ann Craft's ("Jo Ann") son, Austin Spivey, was visiting home from college, Jo Ann went to her father's house after church, where she saw her brothers, Roosevelt Craft ("Roosevelt") and Douglas Craft ("Craft"), sitting on the tailgate of Roosevelt's truck. She attempted to open the front door, but when she realized it was locked, she began banging on the door and cursing. Roosevelt scolded her then pinned her down to the ground and pulled her arms behind her. Craft squatted beside them. Spivey saw all of this occurring, yelled "Get off my momma," and began to run toward her. Craft stood up, warned Spivey to get back, and pulled a gun from his pants. Craft then fatally shot Spivey in the chest. Roosevelt and Craft subsequently admitted that Craft shot Spivey. Craft was indicted for first-degree murder and no lesser offense. At trial, the court gave a jury instruction for the lesser included offense of first-degree murder. Craft was convicted of second-degree murder. He filed a motion for a new trial or judgment notwithstanding the verdict. The trial court denied both motions. Craft appealed.

ISSUES

Whether (1) the trial court erred in finding there was sufficient evidence for a rational jury to conclude beyond a reasonable doubt that Craft committed first-degree murder; (2) the trial court abused its discretion by denying Craft's motion for a new trial; (3) the trial court erred in its discretion in giving the jury instructions regarding lesser offenses; and (4) Craft was prejudiced because of ineffective assistance of counsel.

HOLDING

(1) Because Craft was convicted of second-degree murder, not first-degree, and because Craft shot and killed Spivey while he was unarmed, there was sufficient evidence presented at trial to prove that Craft was guilty of second-degree murder. (2) Because the jury determined matters of weight, credibility, and conflicting evidence, the overwhelming weight of the evidence was not contrary to the jury's verdict. (3) Because Craft's assertions warranted a procedural bar for failure to cite relevant authority, and because Craft was ultimately convicted of second-degree murder, the trial court did not abuse its discretion by giving the jury instructions regarding lesser offenses. (4) Because there was no affirmative showing of ineffective assistance of counsel, the Court of Appeals declined to address Craft's ineffective assistance of counsel claim but preserved his right to raise the issue in a properly filed motion for post-conviction relief. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

Affirmed - 2023-KA-00915-COA (Feb. 4, 2025)

Opinion by Judge Westbrook

Hon. Stanley Alex Sorey (Smith County Circuit Court)

John R. Reeves for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Christina Burse](#)

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

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HAGAN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - SIMPLE ASSAULT - ELEMENTS - Miss. Code Ann. § 97-3-7 provides that a person is guilty of simple assault if he (1) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or (2) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (3) attempts by physical menace to put another in fear of imminent serious bodily harm

CRIMINAL LAW - AGGRAVATED ASSAULT - ELEMENTS - Miss. Code Ann. § 97-3-7(2)(a) provides that a person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life

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 with which he was charged and at the same time find him guilty of the lesser-included offense

FACTS

Justin Hagan and his first cousin, Tyler Hancock, lived on adjoining rural properties. Six months before the incident at hand, the cousins had a falling out over payment for carpentry work, culminating in a fistfight. Since then, they had not spoken. In May 2022, Hancock was operating a tractor on his property near Hagan’s land when he heard what he described as “warning shots” from Hagan’s property. He ignored them, continuing to bush-hog. On his third pass, he was struck by birdshot, suffering injuries to his face, shoulder, and chest. Hancock rode his tractor home, and his wife called law enforcement. Deputy Gerald Willis responded, and Hancock identified Hagan as the shooter. Willis detained Hagan, who initially claimed he was shooting at a blue jay but later admitted he fired at Hancock to scare him. Investigators found a 12-gauge shotgun, an AK-47, a revolver, and spent shell casings in Hagan’s truck. Hagan explained he was angry Hancock had not paid him and shot over Hancock’s head from 35 to 40 yards away. Hagan was indicted for aggravated assault with a deadly weapon. At trial, he requested a lesser-included offense instruction for simple assault, arguing that the shotgun was not necessarily a deadly weapon given the type of ammunition and distance, and could be considered merely negligent. The trial court denied the instruction, citing precedent that a shotgun is inherently a deadly weapon. The jury convicted Hagan of aggravated assault. Hagan appealed.

ISSUE

Whether the trial court erred in refusing Hagan’s lesser-included instruction for simple assault.

HOLDING

Because simple assault had to be proved by demonstrating Hagan negligently caused bodily injury with a deadly weapon, and because there was no evidence Hagan acted negligently, the trial court did not err in refusing Hagan’s lesser-included instruction for simple assault. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2023-KA-00880-COA (Feb. 4, 2025)

Opinion by Chief Judge Barnes

Hon. Caleb Elias May (Neshoba County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Dixon Stone](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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JOHNSON V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - PROTECTIONS - The double jeopardy clause affords three protections: (1) protection from a second prosecution for the same offense after acquittal, (2) protection from a second prosecution for the same offense after conviction, and (3) protection from multiple punishments for the same offense

CRIMINAL LAW - SIMULTANEOUS POSSESSION - MULTIPLICITOUS CHARGES - Under Miss. Code Ann. § 97-37-5(1), the simultaneous possession of multiple firearms generally constitutes only one offense unless there is evidence that the weapons were stored in different places or acquired at different times

CRIMINAL PROCEDURE - SEARCH & SEIZURE - TERRY STOP - In determining whether there exists the requisite reasonable suspicion, grounded in specific and articulable facts, the court must consider whether, taking into

account the totality of the circumstances, the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity

CRIMINAL PROCEDURE - SEARCH & SEIZURE - PLAIN VIEW DOCTRINE - A warrant is not required to seize an object in plain view when (1) viewed by an officer from a lawful vantage point, (2) the object's incriminating character is readily apparent, and (3) the officer has a lawful right of access to the evidence

FACTS

Maurice Johnson was convicted of two counts of possession of a weapon by a felon and sentenced to two consecutive terms of ten years. On the day of Johnson's arrest, a Hattiesburg Police Department officer was conducting a security check at the local hotel due to frequent complaints about drug sales and prostitution. Throughout the day, the hotel clerk noticed numerous people walking to and from Johnson's vehicle, many of whom were not hotel guests. The clerk asked the officer to investigate the matter further and inform those who were not guests to exit the premises. As two officers approached Johnson's vehicle, one noticed that the vehicle lacked a handicapped windshield placard or license, although it had been parked in the handicapped space for nearly an hour. Once Johnson was recognized as a felon by one of the officers, Johnson was asked to exit the vehicle for safety concerns. In plain view on the front passenger seat was a glass pipe used to smoke narcotics and suspected methamphetamine. From outside the vehicle, one officer observed a Bowie knife positioned between the driver's seat and the center console. Johnson was arrested, given *Miranda* warnings, and agreed to speak with the officers. Johnson disclosed that he had purchased the Bowie knife less than an hour earlier at a motel. A subsequent warrantless search of Johnson's vehicle revealed a rifle in the trunk hidden underneath clothing. Johnson denied ownership of the rifle and claimed that a passenger of the vehicle must have just put it there. Johnson filed pro se motions to suppress the evidence seized and to dismiss the charges on the grounds of an unreasonable search, seizure, and arrest. The circuit court denied Johnson's motions without prejudice. Prior to trial, the parties stipulated, and the jury was instructed, that Johnson had been convicted of a felony in 1978. The jury found Johnson guilty on both counts of possession of a weapon by a felon. Johnson filed a motion for judgment notwithstanding the verdict or a new trial, and it was denied. Johnson appealed.

ISSUES

Whether (1) Johnson's conviction for the second count of possession of a weapon violated double jeopardy and (2) evidence found in Johnson's vehicle was the result of an unreasonable search and seizure.

HOLDING

(1) Because both of Johnson's weapons were acquired at different times, possession of each weapon constituted a separate offense, and the conviction of a second count did not violate the double jeopardy clause. (2) Because the officers had reasonable suspicion that warranted a brief investigation, were permitted to require Johnson to exit the vehicle, and observed a glass pipe and suspected methamphetamine in plain view, probable cause permitted the warrantless search of Johnson's entire vehicle and did not constitute an unreasonable search and seizure. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-00870-COA (Feb. 4, 2025)

En Banc Opinion by Presiding Judge Wilson

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Pro se & Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Kellis Adams](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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JONES V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - JURY INSTRUCTIONS - HEAT OF PASSION - The test for determining whether a manslaughter instruction based on a heat-of-passion theory is warranted is whether the defendant acted in the heat of passion and without malice; heat of passion is an objective standard that entails a state of mind marked by passion overthrowing reason, and malice is implied with use of a deadly weapon

CRIMINAL LAW - JURY INSTRUCTIONS - DEFENSE OF NECESSITY - The defense of necessity is available where the defendant reasonably acts out of fear of imminent danger of death or serious bodily harm to others, and the defendant must prove: (1) the act charged was done to prevent a significant evil, (2) no adequate alternative was there, and (3) the harm caused was not disproportionate to the harm avoided

CRIMINAL LAW - INDICTMENTS - DATE OF PRIOR CONVICTIONS - An indictment's failure to list any date for a prior conviction is not fatal to the indictment; the purpose of an indictment is to inform the defendant with some measure of certainty as to the nature of the charges brought against him so that he may have a reasonable opportunity to prepare an effective defense

CRIMINAL LAW - HABITUAL OFFENDER - PROCEDURAL BAR - When an accused fails to object to the habitual offender issue during the sentencing phase, he is procedurally barred from doing so for the first time on appeal

CRIMINAL LAW - HABITUAL OFFENDER - JUDGE'S PURVIEW - When the defendant is indicted as a habitual offender, a jury is to decide the question of guilt, and the circuit judge is to serve as the finder of fact in determining whether the habitual offender part of the indictment is established by the requisite degree of proof

CRIMINAL LAW - PENITENTIARY PACKAGES - COMPETENT EVIDENCE - "Pen-packs" or penitentiary packages are the records maintained on inmates sentenced to the custody of the Department of Corrections; pen-pack records may constitute competent evidence

FACTS

DeShaude Jones lived in Illinois, where he was convicted of one count of robbery, two counts of unlawful delivery of a controlled substance, and one count of aggravated unlawful use of a weapon. Jones moved to Mississippi, where he regularly hung out at his friend, Hayes Butler's, apartment. Troy Taylor was Butler's barber, who occasionally visited the apartment while Jones was there. Jones testified that he had several violent interactions with Taylor, including Taylor placing Jones in a chokehold and pointing a gun at Jones. Later, Jones received some information about Taylor, and Jones feared Taylor was "getting too close to his home area." Due to those concerns, Jones bought a gun despite knowing he was not supposed to have one as a felon. Jones carried the gun regularly. Jones and his wife went to a bar in Ocean Springs, where Jones encountered Taylor. They exchanged heated words, and a drug dealer known by both men testified that he never heard Taylor threaten to harm or shoot Jones, but he heard Jones say he was not going to let Taylor shoot him. Jones then shot Taylor in the legs twice, then raised the gun and shot a couple more times. Several witnesses, including the bar security guard and Taylor's wife, testified that Taylor attempted to run away from Jones, but Jones followed after him and continued to shoot anyway. Taylor died in the parking lot. Jones left the scene and threw his gun in a pond. Security camera footage captured the shooting on surveillance video, and law enforcement officers testified that the bullets struck Taylor from behind four times. They also reported that Taylor was unarmed at the scene. Jones was indicted on charges of first-degree murder and felon in possession of a weapon. The trial court amended his indictment to charge him as a violent habitual offender, as the State submitted a penitentiary package reflecting three judgments of convictions from Illinois into evidence. At trial, Jones argued he acted in self-defense. A jury found Jones guilty of both charges. Later at Jones's sentencing hearing, the trial court judge considered Jones's prior Illinois indictments, one of which had an incorrect date, and found sufficient evidence to charge him as a violent habitual offender. Jones appealed.

ISSUES

Whether (1) the trial court erred in rejecting the heat-of-passion manslaughter jury instruction; (2) the trial court erred in rejecting the defense-of-necessity jury instruction; (3) the indictment was sufficient to charge Jones as a habitual offender; (4) the State proved habitual offender status beyond a reasonable doubt; and (5) the State violated Jones's Sixth Amendment right to confront witnesses at his sentencing hearing.

HOLDING

(1) Because Jones acted out of his own perceived notion of self-preservation and deliberately used a deadly weapon, which implied malice, Jones was not acting out of violent or uncontrollable rage to necessitate a heat-of-passion jury instruction. (2) Because Jones continued to carry the firearm after a notable period of time had lapsed following Taylor's

threats, and because Jones did not anticipate or fear he would encounter Taylor the evening of the shooting, Jones's possession of the firearm at the time was not out of necessity that would warrant a jury instruction. (3) Because Jones was properly informed on which prior convictions were utilized at the enhancement proceeding, and because Jones failed to object to the habitual offender status during the sentencing phase, the typological error in the indictment did not warrant reversal. (4) Because pen-packs were considered competent evidence, Jones's argument was without merit. (5) Because the right to confront witnesses did not apply at Jones's sentencing hearing, Jones's Sixth Amendment rights were not violated. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2022-KA-01124-COA (Feb. 4, 2025)

En Banc Opinion by Judge McCarty

Hon. Dale Harkey (Jackson County Circuit Court)

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

Briefed by [Victoria Warren](#)

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

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