
Mississippi Public Defenders Conference

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Appellate Update

Fall 2023



Counterman v. Colorado (June 27, 2023)

Counterman repeatedly contacted a person over Facebook, sending her “creepy” messages from several different accounts even after she had repeatedly blocked him.

Some of the messages implied that Counterman was watching her and saying that he wanted her to die or be killed. She reported Counterman to law enforcement, who arrested and charged him with one count of stalking (credible threat), one count of stalking (serious emotional distress), and one count of harassment. Before trial, the prosecution dismissed the count of stalking (credible threat).

Counterman claimed that the remaining charges, as applied to his Facebook messages, would violate his right to free speech under the First Amendment because they were not “true threats.” The trial court denied his motion to dismiss, and a jury found him guilty of stalking (serious emotional distress). The Colorado Court of Appeals affirmed his conviction.

Question Presented:

To establish that a statement is a “true threat” unprotected by the First Amendment, must the government show that the speaker subjectively knew or intended the threatening nature of the statement?



Counterman (cont.)

Holding: To establish that a statement is a “true threat” unprotected by the First Amendment, the government must prove that the defendant had some subjective understanding of the statements’ threatening nature, based on a showing no more demanding than recklessness.

Take a look at *Edwards v. State*, 294 So. 3d 671 (Miss. Ct. App. 2020), a Court of Appeals case that assesses a similar Mississippi law and found it to be unconstitutional.



Samia v. United States (June 3, 2023)

Defendants Joseph Manuel Hunter, Carl David Stillwell, and Adam Samia were tried jointly and convicted on five counts: conspiracy to commit murder-for-hire; murder-for-hire; conspiracy to murder and kidnap in a foreign country; causing death with a firearm during and related to a crime of violence; and conspiracy to launder money. All three defendants were sentenced to life imprisonment.

One piece of evidence used to convict the defendants was Stillwell's redacted confession. Samia challenged the admission of that evidence, arguing that the redactions were insufficient because jurors would immediately infer that the confession's references to "another person" referred to Samia himself. As such, Samia argued, his inability to cross-examine Stillwell violated his Sixth Amendment right to confront witnesses against him. The U.S. Court of Appeals for the Second Circuit disagreed and affirmed the district court's evidentiary ruling on that issue.

Question Presented:

Does admitting a codefendant's redacted out-of-court confession that immediately inculcates a defendant based on context violate the Confrontation Clause of the Sixth Amendment?



Samia (cont.)

Holding: The admission of a non-testifying codefendant's confession did not violate the Sixth Amendment's Confrontation Clause where the confession as modified did not directly inculcate the defendant but used the descriptor "other person" and the jury was instructed to consider the confession only as to the codefendant.



Smith v. United States (June 15, 2023) - The Constitution permits the retrial of a defendant following a trial in an improper venue conducted before a jury drawn from the wrong district. Justice Samuel Alito authored the unanimous opinion of the Court.

SCOTUS Quick Hit(s)



Young v (cont.)

Count V of Young's indictment simply mentioned he had been previously convicted of at least two felonies but did not specifically state the felonies or list any time served.

But... Young never raised any objections to his indictment prior to his appeal.

Mississippi Supreme Court



Mississippi Supreme Court

Young v. State (July 27, 2023)

After Young’s conviction but prior to Young’s sentencing, the State submitted what it called a “Pre-Post Sentence Investigation” report. (The Court noted this was a particularly confusing term.)

That report contained a section outlining Young’s prior criminal record.

The report stated that Young had been on probation once and incarcerated for a felony conviction once, but did not contain any information regarding the length of those sentences.



Mississippi Supreme Court Cases

Young (cont.)

Young *waived* his claim that his indictment was defective because he did not raise the issue at trial. Had young raised it, the State could have amended the indictment as to form.

But!

The State failed to present sufficient evidence to sentence Young as a habitual offender. The “Pre-Post Sentence Investigation” Report was not competent evidence to support Young’s habitual offender status.



Quick Hits

Beale v. State (SCT May 18, 2023) – an indictment for attempted murder does not require an overt act.

Mississippi Supreme
Court Cases



Court of Appeals Cases

Grimes v. State (May 16, 2023)

After Grimes’s conviction, Grimes learned that several jurors were not satisfied with the circuit court’s supplemental instruction on the definition of depraved heart. Jurors subsequently used their cell phones to research definitions to that and several other legal terms.

The trial court incorrectly required Grimes to show “good cause” that the extraneous information influenced the jury’s verdict. Instead, the standard is “good cause” that jurors may have been exposed to extraneous information.

This case has detailed legal analysis outlining the law around juror misconduct and extraneous information.



Lee v. State (August 29, 2023)

Lee’s murder conviction was upheld, but it was improper for Lee to be convicted of two counts of being a felon in possession of a firearm – pursuant to *McGlasten*. Additionally, the instruction for tampering with physical evidence failed to include the language “with intent to impair its use, verity, or availability in the pending criminal investigation or prospective official proceeding.” This was plain error.

Court of Appeals Cases



Court of Appeals Cases

Quick Hits (insufficient evidence!)

Love v. State (September 19, 2023) – insufficient evidence to convict a defendant of armed robbery.

Jackson v. State (October 10, 2023) – insufficient evidence to support a conviction for murder when based entirely on circumstantial evidence.

Rodgers v. State (October 10, 2023) – insufficient evidence to support a conviction for conspiracy to sell methamphetamines when there was no evidence that the alleged co-conspirator was aware of the alleged conspiracy. Also, the alleged co-conspirator was not in the charged county when she picked up money.



So, let's talk about the most important opinion from the Court of Appeals . . . or How *West v. State* is awful.

On August 1, 2023, the Mississippi Court of Appeals handed down *West v. State*, 2022-KA-00432-COA (Miss. Ct. App. 2023).

At trial, the State presented no evidence whatsoever as to a victim's date of birth or any discernable date of when any crime was committed against him.

The obvious thing to do on appeal then is to argue that the State presented insufficient evidence to convict West.

Which is what our office did.

So... Assuming there was no evidence presented regarding date of birth of victim and date of the alleged offense was West's conviction based on insufficient evidence?

Court of Appeals

WHO

KNOWS?



West (cont.)

Because West did not specifically challenge how the evidence against him was insufficient, he was procedurally barred from raising it on appeal.

Let's talk about what went wrong here.

Court of Appeals