

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN JULY 26, 2016**

Jordy Devonte Johnson v. State, No. 2014-KA-00937-COA

CASE: Statutory Rape
SENTENCE: 25 years with 20 years to serve, 5 years suspended and 5 years post-release supervision. Required to register as a sex offender

COURT: Sharkey County Circuit Court
TRIAL JUDGE: Hon. M. James Chaney, Jr.

APPELLANT ATTORNEYS: W. Daniel Hinchcliff, Jordy Johnson (Pro Se)

APPELLEE ATTORNEY: Jeffrey A. Klingfuss
DISTRICT ATTORNEY: Richard Smith, Jr.

DISPOSITION: Affirmed. Carlton, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUE: Whether Johnson's indictment was defective

FACTS: 18-year-old Jordy Johnson convicted of having sexual intercourse with a twelve-year-old child. On appeal, his appellate counsel filed a *Lindsey* Brief, certifying that counsel could find no arguable issues for appeal. Johnson filed a motion, pro se, attacking his indictment as defective. Johnson alleged that the indictment did not have the grand jury foreman's signature and the indictment was not marked "filed" with the entry signed and dated by the circuit court clerk.

HELD:

The two alleged defects in Johnson's indictment are non-jurisdictional. Johnson failed to raise these issues before the circuit court. Because these alleged defects appeared on the face of the indictment, Johnson should have objected before the start of his trial. Absent a showing of cause or actual prejudice, a defendant must raise any alleged non-jurisdictional defects in the indictment prior to appeal. Because Johnson failed to timely raise this issue with circuit court, the issue is procedurally barred.

Johnson's arguments also lack merit. The record reflects his indictment fulfilled the statutory requirement. The grand jury foreman's affidavit accompanied Johnson's indictment. The affidavit had the foreman's signature and stated that it was agreed upon by twelve or more members of the grand jury. At least 15 members of grand jury were present during all deliberations. Also, the record shows the circuit court clerk signed, dated and stamped the affidavit.

Jamie Danielle Carpenter v. State, No. 2014-KA-01573-COA

CASE: Felony Child Abuse
SENTENCE: 20 years in the custody of MDOC

COURT: Harrison County Circuit Court
TRIAL JUDGE: Hon. Roger T. Clark

APPELLANT ATTORNEYS: Michael W. Crosby

APPELLEE ATTORNEY: LaDonna C. Holland
DISTRICT ATTORNEY: Joel Smith

DISPOSITION: Affirmed. Lee, C.J., for the Court. Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUES: (1) Whether there was prosecutorial misconduct, (2) Whether the trial court erred by excluding witness testimony, (3) Whether the trial court erred by denying Carpenter's motions for directed verdict and motion for JNOV or, in the alternative, motion for a new trial, and (4) Whether there was cumulative error at trial.

FACTS: A 13-month-old baby, C.W., sustained life-threatening injuries consistent with child abuse. Her mother, Jamie Carpenter, told officers that she was the only adult that had access to the baby the night before she went to the hospital. She told officers she thought the baby's injuries were from a medical disorder and that the baby woke up that way. The medical staff did not agree and notified law enforcement and child protective services. Officers noted that Carpenter appeared "unconcerned, unworried and nonchalant." Before trial, the State excluded testimony from witnesses that would have said Carpenter's live-in boyfriend, Thomas Lindhurst, made statements that he was "sick of looking at [C.W.] and that he threw away the baby's high chair. The State also a witness statement that Lindhurst said it was unfair that C.W. lived while his own baby had died. Carpenter had recently miscarried Lindhurst's child.

HELD: (1) Carpenter took issue with several comments made by the State during closing argument. Carpenter's counsel did not object to the comments and they were not so inflammatory that the trial court should have objected, sua sponte. This issue is without merit.

(2) The trial court did not err in excluding the testimonies of several the witnesses who would have testified about statements Lindhurst made several days after the incident. The probative value, if nay, was outweighed by risk of confusing the jury.

(3) Carpenter failed to renew her motion for a direct verdict at the close of all evidence. The motion JNOV or, in the alternative, motion for a new trial, was filed more than two years after the judgment - leaving the issue procedurally barred.

(4) No cumulative error when there is no reversible error found in any part.

David Lyons v. State, NO. 2014-KA-00861-COA

CASE: felony DUI, habitual offender

SENTENCE: five years in MDOC, day for day

COURT: Monroe County Circuit Court

TRIAL JUDGE: Hon. James Seth Andrew Pounds

APPELLANT ATTORNEY: Mollie McMillin, Lyons (Pro Se)

APPELLEE ATTORNEY: Lisa L. Blount

DISPOSITION: Affirmed. Ishee, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Carlton, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUES: (1) Whether circuit court erred by using abstracts of prior DUI convictions, where Lyons was convicted without benefit of counsel. (2) Whether the circuit court had subject-matter jurisdiction. (3) Whether the State committed prosecutorial misconduct. (4) Ineffective assistance of counsel.

FACTS: Lyons was arrested for DUI. When police ran his record, they found two prior DUI convictions, so Lyons was charged with felony DUI. He was also charged as a habitual offender under Miss. Code Ann. §99-19-81.

HELD: (1) The abstracts used in the case to prove the prior DUI convictions were certified. Lyons had signed a waiver of counsel on one of the DUI charges, and had refused to sign a waiver on the other. He did not present any proof that the prior convictions were uncounseled and resulted in jail time. (2) Because Lyons was indicted for felony DUI, the circuit court had jurisdiction, not the justice court. Further, Lyons's right to a preliminary hearing was waived once he was indicted by the grand jury. (3) The State did not commit misconduct in informing the court that the waivers of counsel in the abstracts showed that Lyons either signed or refused to sign. (4) Lyons's ineffective assistance of counsel claim should be reserved for PCR.

Malcolm Jamal Husband a/k/a Jamal Husband v. State, NO. 2015-KA-00558-COA

CASE: Manslaughter
SENTENCE: 20 years in the custody of MDOC, 10 years suspended, \$5000 fine, \$2500 restitution

COURT: Marion County Circuit Court
TRIAL JUDGE: Hon. Prentiss Greene Harrell

APPELLANT ATTORNEYS: Mollie McMillin
APPELLEE ATTORNEY: Barbara Wakeland Byrd

DISTRICT ATTORNEY: Hal Kittrell

DISPOSITION: Reversed and remanded. Barnes, J., for the Court. Lee, Irving and Griffis, P.JJ., Ishee, Carlton, Fair, James, and Greenlee, JJ., concur. Wilson, J., concurs in result only.

ISSUES: (1) Whether the trial court erred in giving a castle doctrine instruction in reference to the shooting victim. (2) Weight and sufficiency. (3) Whether trial counsel was ineffective for failing to request a castle-doctrine instruction on Husband's behalf.

FACTS: Husband and his 12-year-old stepson visited Husband's aunt and uncle, the McGowans at their duplex in Columbia. The McGowans' neighbors, Phylicia Stokes and Forester Crenshaw were sitting on the shared porch of the duplex having drinks and cooking. The stepson went back to the car. Husband and Crenshaw became confrontational and got in each other's faces. Husband went to his car, which was parked in the driveway. Crenshaw also left the porch. He went to Stokes's car and got her .380 caliber handgun from the glove box. Husband got in his car. Stokes said Husband appeared to be reaching for something in his car. Husband testified that it was his car keys he was reaching for.

Crenshaw walked to Husband's car, holding the gun at his side, and stood in the open door of Husband's car. He was preventing Husband and his stepson from leaving. The stepson testified that Crenshaw threatened to kill them. When Husband turned to look at someone on the porch, Husband grabbed his gun from the car and pointed it at Crenshaw. Crenshaw ran behind a car. Husband fired his gun into the air, but when Crenshaw returned fire, he began pointing the gun at Crenshaw. One shot hit Crenshaw in his lower back. Husband and his stepson drove away and were not injured. Crenshaw died at a hospital.

Husband was arrested and charged with heat-of-passion manslaughter.

HELD: Defense didn't object to the instruction, at least on the specific grounds that the castle doctrine presumption does not apply to the victim. But it is plain error. Here, it was

a misapplication of the law and prejudicial to Husband's claim of self-defense. The instruction shifted the burden of proof and eliminated the need for the State to prove that Husband did not act in self-defense. As for the other issues – the evidence would be considered sufficient had the jury been properly instructed; ineffective assistance of counsel issue is moot.