Spring 2017 DUI Case Law Update

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Lyons v. State

NO. 2014-KA-00861-COA (July 26, 2016)

Felony DUI 3rd

- On 6/17/12, D was pulled over for swerving in the road. O approached vehicle & smelled strong odor of alcoholic beverage coming fr/D's vehicle & person. O observed D's bloodshot eyes & slurred speech. A search of the vehicle resulted in the discovery of an unopened beer can.
- D was arrested & charged w/DUI & possession of alcohol in a dry county.
- At the station, Intox. 8000 administered –BAC of .140 & .132.
- D had 2 prior DUI convictions fr/Feb. & April 2012 so was charged as a habitual offender.

Lyons v. State

NO. 2014-KA-00861-COA (July 26, 2016)
Felony DUI 3rd

- On appeal, D argued (1) circuit ct. erred in its use of the court abstracts of D's prior DUI convictions, (2) the ct. did not have jurisdiction over his case, (3) the State committed misconduct regarding the court abstracts of his prior DUIs during trial, & (4) he received ineffective assistance of counsel.
- Use of Prior DUI Convictions – G/R: It is well settled that "in Mississippi[,] prior convictions are necessary elements of the crime of felony DUI." *Ward v. State*, 881 So. 2d 316 (Miss. Ct. App. 2004).

Lyons v. State

NO. 2014-KA-00861-COA (July 26, 2016)
Felony DUI 3rd

- The Court also cited to *Watkins v. State,* 910 So.2d 591 (Miss. Ct. App. 2005), holding that "abstracts of court records, when properly certified, are clearly allowed to prove prior convictions."
- Here, it was uncontested that the abstracts used were certified. Since establishing prior convictions was required for felony DUI, circuit ct. did not err in admitting them.
- D argued that b/c he did not have the benefit of counsel for the 2 prior DUI convictions, the convictions are invalid citing to *Watkins*, 910 So. 2d at 595, where the Court stated that "an uncounseled misdemeanor conviction that results in jail time cannot be used to enhance a sentence for a subsequent conviction."
- However, the MS Supreme Ct. in *Watkins* clearly stated that a D challenging the use of a prior convictions must put on evidence that his prior DUI conviction was uncounseled & that he spent time in jail as a results of the conviction. "Unsupported factual assertions are not sufficient to rebut the presumption of validity…." *Id.*
- D did not offer any evidence to contest the validity of the abstracts nor object to their admission at trial. Furthermore, D signed a waiver of counsel for one DUI charge & then refused to sign the waiver of counsel for the other despite being advised of his rights. This issue is w/o merit.

Lyons v. State

NO. 2014-KA-00861-COA (July 26, 2016)
Felony DUI 3rd

- Jurisdiction – D argued the Ct. did not have subject matter jurisdiction over his felony DUI charge b/c his DUI ticket ordered him to appear at arraignment before the justice court and thus, the case was never properly transferred to the circuit court.
- On 8/13/12, D was indicted by a grand jury for felony DUI. The indictment vested jurisdiction of the matter solely with the circuit ct., not the justice court. "Justice courts have jurisdiction over misdemeanors, not felonies." *Levario v. State*, 90 So. 3d 608 (Miss. 2012). Thus, circuit ct. properly had jurisdiction over the case.
- D also argued he was improperly denied a prelim. The Court has held that "once a defendant has been indicted by a grand jury, the right to a preliminary hearing is deemed waived." Shields v. State, 702 So. 2d 380 (Miss. 1997).

Lyons v. State

NO. 2014-KA-00861-COA *(July 26, 2016)*
Felony DUI 3rd

- Prosecutorial Misconduct – D argued the State commented untruthfully about his prior DUI convictions—that the State lied when it told the ct. the waivers contained in the abstracts reflected that D either signed them or refused to sign them.
- The Court found no evidence the State acted deceptively when it informed the Ct. that the waivers were either validly signed or D refused to sign them. The State's assertions were supported by the record. This issue is meritless.
- Ineffective Assistance of Counsel – D argued his counsel was ineffective. It is well settled under MS law that when a party raises this claim on direct appeal, the proper resolution is to deny relief w/o prejudice to D's rt. to assert his claim in a PCR proceeding. *Trotter v. State*, 9 So. 3d 402 (Miss. Ct. App. 2008).
- Affirmed.

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- On 11/3/10, O witnessed a vehicle veer into median on interstate. D was a passenger in the vehicle. O conducted a traffic stop for careless driving, and, when the driver did not produce a DL, O had driver exit vehicle. Driver was frisked & admitted a lump in his pants contained drugs. O subsequently placed driver under arrest & called for backup.
- O determined that D (the passenger) had a suspended DL & would be unable to operate the vehicle, so O arranged to have the vehicle towed. O asked D to exit the vehicle so it could be inventoried, and D was directed to sit on the ground next to the patrol car. O noticed D acting "extremely nervous" and "fidgety" & he held onto his right shoe avoiding eye contact w/O. O asked D if he was in possession of anything illegal and D said "no."
- O asked D to remove his shoes, and D obliged. A Zippo lighter fell out of one of the shoes, and O took the lighter & and removed the refillable center compartment, finding marijuana and a small amount of crack cocaine.

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- D was arrested for possession of cocaine & subsequently gave a voluntary statement admitting the cocaine and marijuana were his.
- At trial, D proceeded *pro se* with the assistance of standby counsel. D filed a motion to suppress the evidence, which was denied after a hearing. D was convicted and sentenced as a habitual offender to life.
- On appeal, D argued his conviction & sentence should be reversed because the search of the lighter violated his Fourth Amendment rights.
- G/R: Our State and Federal Constitutions prohibit searches w/o a valid warrant unless an exception applies. *Galloway v. State*, 122 So. 3d 614 (Miss. 2014). The State bears the burden to show that a warrantless search falls under a permissible exception. If no exception is found, the evidence seized as a result of the search should be suppressed as "fruit of the poisonous tree." *State v. Woods*, 866 So.2d 422 (Miss. 2003).

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- Exceptions to the warrant requirement include consent and items w/i an officer's plain view or feel. *Ferrell v. State*, 649 So. 2d 831 (Miss. 1995)(plain view); *Gales v. State*, 153 So. 3d 632 (Miss. 2014)(plain feel).
- Consent – D argued his consent was involuntary under the circumstances as he was afraid b/c he had just seen his companion arrested, and was sitting on the side of the road w/no way to leave.
- The Court found that it was D's burden to prove his consent was involuntary, and there was no testimony of such. Rather, the evidence showed that D was generally cooperative & was allowed to sit w/minimal supervision to use his phone.
- The court found that D did consent to the removal of his shoe, voluntarily and knowingly.

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- The ct. then examined whether D's consent to his shoe removal constituted consent to the search of the lighter that fell fr/his shoe. The State argued consent for the removal of the shoe was imputed to searches of items contained within his shoes.
- However, the Court, under an "objective reasonableness" test, asked "What would the typical person have understood by the exchange between the officer and the subject?" *See O'Donnell v. State*, 173 So. 3d 907 (Miss. Ct. App. 2015).
- The court found that a "typical reasonable person" would not have understood the "request to remove his shoes as a request to search the contents of any object contained in the shoes."

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- Here, when D voluntarily removed his shoe, only the lighter was revealed. There was no testimony that the lighter was inherently incriminating or illegal, that the lighter was a weapon or contained a weapon, or that O was concerned for his safety b/c of the lighter. Thus, unless the scope of D's consent to remove his shoe extended to a search of the interior of the lighter, the search of the lighter was illegal.
- The ct. noted the evidence was not in plain view to O; rather, O had to dismantle the lighter to find the evidence. This was an important distinction.
- W/o consent, the State was required to prove PC or another exception to the warrant requirement for the contents of the lighter to be admissible under the 4th Amendment.

May v. State

2014-KA-00681-COA (Dec. 13, 2016)
Unreasonable Search

- Here, O could not articulate anything more than speculation that D might have had something illegal in his possession. This is not enough. See *Rooks v. State*, 529 So. 2d 546 (Miss. 1988). When the lighter fell fr/the shoe, nothing illegal came into plain view or could be inferred fr/the lighter's outward appearance. Nor did the testimony show there was anything inherently dangerous about the lighter that would have justified a search for officer safety. Finally, there was no testimony that O's handling of the lighter led him to believe under the "plain-touch" doctrine that something illegal may be inside.
- B/c O had no basis to search the lighter & D had not consented to the search of the lighter, D retained a reasonable expectation of privacy in its contents, & violated his 4th Amendment rts.
- Reversed & Rendered.

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI felony

- On 7/5/13, O was performing routine night patrol & noticed vehicle driving w/o a tag. O followed vehicle to intersection where driver improperly signaled right, but turned left. O observed vehicle cross fog line 4-5 times w/i about 100 yards, & then commenced a traffic stop.
- O approached vehicle, & recognized D. D's DL info. was called in and dispatch informed O it was suspended. D appeared to be leaning towards P side as if to put distance b/t himself and O. O smelled strong odor of alcoholic beverage & asked D to exit vehicle. D began to argue w/O, & O noticed the smell of an alcoholic beverage getting stronger. D eventually complied & exited vehicle.
- D exhibited slurred speech, bloodshot eyes & was stumbling & swaying in his efforts to stand.

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI 3rd felony

- Another O arrived as backup & a pat-down of D was conducted. D was arrested for driving w/a susp. DL & informed he was suspected of DUI.
- O took D the jail for booking & to perform SFSTs (stated jail was a safer environment). Intox. test was performed--no reading was taken & it issued 2 error readings -- ambient fail (Crime Lab testified this meant that there was a substance in the air such as alcohol or another chemical) & interferent detected (Crime Lab testified this likely meant that a radio or cell phone signal had interfered w/the machine).
- O asked D to perform SFSTs – 1LS & WAT tests. O observed at least 3 three intoxication indicators during each test.
- At trial, D testified in his own defense stating he was driving to an apartment complex but was unable to enter b/c of a 10:00 pm curfew. He turned around and was driving to a gas station when his was pulled over. D claimed O never performed a field sobriety test on him.
- D also had a corrections officer (CO) testify on his behalf. W testified O asked him to look at the results of the 1st test which showed a reading of 0.00 BrAC. CO admitted he was not very familiar w/Intox. machine.

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI felony

- W stated O told him the reading of 0.00 was irrelevant because the machine was not working correctly. CO noted that he did not see O perform any SFSTs, but that it was possible SFSTs were performed while CO was out of the room.
- D was convicted of DUI, and appealed arguing that trial ct. erred in denying his motion for a new trial b/c the jury's verdict was against the overwhelming weight of the evidence.
- Specifically, D argued he was entitled to a new trial b/c he & CO contradicted O's opinion he was driving under the influence. He points to CO's testimony that his 1st test registered a reading of zero. D also argued there was no video evidence of the stop, and no evidence corroborating O's testimony that he conducted SFSTs.

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI felony

- The Court has held a verdict will only be overturned based on objection to the weight of the evidence when the verdict is "so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." citing *Bush v. State,* 895 So. 2d 836 (Miss. 2005).

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI felony

- Here, D was convicted of violating § 63-11-30(1)(a) which does not require a BAC reading for a conviction.
- The Court noted that "under the influence" means "driving in a state of intoxication that lessens a person's normal ability for clarity and control." citing *Gov't of Virgin Islands v. Steven,* 134 F.3d 526 (3d Cir. 1998). "This common understanding is consistent with the obvious purpose of drunk driving statutes; i.e., to prevent people from driving unsafely due to an alcohol-induced diminished capacity." *Id.*
- The Court has found that evidence of either slurred speech, bloodshot eyes, or erratic driving can constitute sufficient evidence to support a conviction under § 63-11-30(1)(a). *Evans v. State*, 25 So. 3d 1054 (Miss. 2010). Here, State presented evi. D had used wrong blinker, hit the fog line multiple times w/i a short distance, & failed to move his car off the road when pulled over. O observed D had slurred speech, bloodshot eyes & poor balance, smelled strongly of an alcoholic beverage, and failed 2 SFSTs.

Clemons v. State

2015-KA-00742-SCT (Aug. 18, 2016)
DUI felony

- While D argued that he was not administered SFST, the Court resolved this conflict in the State's favor by the jury, which has the duty to weigh the credibility of the witnesses & their testimony. See *Flowers v. State*, 144 So. 3d 188 (Miss. 2014).
- The Court held the jury was also warranted in finding O to be a more credible witness than CO re: Intox. results. CO admitted he was unfamiliar w/operation of Intox., and both O and Crime Lab explained the Intox. did not produce a reading fr/D's breath on the night in question.
- Viewed in the light most favorable to the verdict, the weight of evidence supported the jury's finding that D was guilty of DUI.
- Affirmed.

Snyder v. State

2014-KA-00914-COA (May 30, 2016)
Leaving the Scene of an Accident -- Felony

- D was driving home around 6:40 p.m. on 2/22/13 when he struck & killed a 16 year old pedestrian (who was walking in the road according to her friend who was with her). Later determined that D was not at fault in the accident. Ws reported D left the scene for as long as 15 min. PBT reported positive presence of alcohol & at some point, a breath test was given to D indicating a BAC of .06%.
- D was convicted of Leaving the Scene under § 63-3-401 (1) & § 63-3-405 and was sentenced to 6 yrs. (5 yrs. susp.) with 5 yrs. PRS.
- D argued on appeal the evidence was insuff. to support his conviction as he did not intend to evade responsibility for the accident, and although he left, he returned and fulfilled his requirements under § 63-3-405.

Snyder v. State

2014-KA-00914-COA (May 30, 2016)
Leaving the Scene of an Accident -- Felony

- Miss. Code Ann. § 63-3-401(1)(Rev. 2013) states:
  - The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of § 63-3-405.

- Miss. Code § 63-3-405 (Rev. 2013) requires the driver to provide his name, address, and vehicle registration number. It also requires the driver to render the victim "reasonable assistance."

- Ct. found D's intent was irrelevant. Although D did return to the scene, the fact remained he did leave the scene, was aware he hit someone, was testimony D exited his truck, saw V, & then left the scene. Evidence suff. To support the verdict.

- Affirmed.

Swaim v. State

2015-CP-01341-COA (Nov. 1, 2016)
DUI 3RD – Felony /PCR

- D was indicted for felony DUI after being arrested on June 1, 2011, for his third DUI in 5 yrs. His previous convictions occurred in 2008 and 2010. D pled guilty & trial ct. sentenced him to 5 yrs., w/2 yrs. to serve, 3 susp., & 3 yrs. PRS.
- D filed a PCR and alleged he was improperly convicted for felony DUI when his prior convictions were for DUI 1st offense, & he received ineffective assistance of counsel, which resulted in an involuntary guilty plea.
- D argued his 2 prior convictions were for DUI 1st offense, meaning that the current DUI should be treated as a DUI 2nd rather than a DUI 3rd. D relied on *Page v. State*, 607 So. 2d 1163 (Miss. 1992) where the court held that "each prior conviction is an element of the felony offense, and each must be specifically charged." *Ashcraft v. City of Richland*, 620 So. 2d 1210 (Miss. 1993), extended this holding.

Swaim v. State

2015-CP-01341-COA (Nov. 1, 2016)
DUI 3RD -- Felony

- However, the MS Supreme Court overruled *Page* & *Ashcraft* "to the extent that they interpret the statute to requires that the indictment must specifically show a previous conviction of D.U.I. First prior to being convicted of D.U.I. Second and a conviction of DUI Second prior to being convicted for D.U.I. Third." *McIlwain v. State*, 700 So. 2d 586 (Miss. 1997).
- Thus, the only requirement for a felony DUI conviction is that "the indictment must . . . 'supply enough information to the defendant to identify with certainty the prior convictions relied upon by the State for enhanced punishment.'" *Id.*
- Here, the indictment stated both of the prior convictions & the dates of those convictions, as well as, D's petition to enter a guilty plea stated he sought to plead guilty to felony DUI & that he was arrested for his 3rd DUI offense after 2 prior misdemeanor offenses. showed he was properly convicted of felony DUI.

Swaim v. State

2015-CP-01341-COA (Nov. 1, 2016)
DUI 3RD -- Felony

- D also argued he received ineffective counsel due to his trial counsel's failure to fully inform him of the applicable law. D stated he pleaded guilty in reliance on his attorney's advice, which rendered his guilty plea involuntary.
- G/R: Court has held to support an ineffective assistance of counsel claim, d must show: (1) his counsel's performance was deficient & (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668 (1984). "There is a strong presumption that counsel's performance falls within the range of reasonable professional assistance." *Hooghe v. State*, 138 So. 3d 240 (Miss. Ct. App. 2014).
- Further, in cases involving PCRs, "where a party offers only his affidavit, then his ineffective assistance claim is without merit." Cherry v. State, 24 So. 3d 1048 (Miss. Ct. App. 2010).
- Here, D failed to attach any affidavits in support of his contention & did not allege any specific acts w/the exception of his appellate brief. The Court held D failed to meet his burden.
- Affirmed.

Adams v. State

2015-KA-00520-COA (10/04/2016)
Drug Related Search Warrant

- O encountered D after he double parked his car (Kia)& was shining a flashlight into his other car (Impala). Upon O activating his blue lights, D exited vehicle & resisted instructions to remain where he was. D was arrested for blocking the roadway & what was later determined to be synthetic cannabinoids in the Kia. After a drug-detecting police dog was alerted to the presence of marijuana in the Impala, O obtained a search warrant for the vehicle where a plastic bag on the driver's side rear floor board.
- D appealed claiming the search warrant (Affidavit stated the dog had alerted to the presence of illegal drugs "on the rear quarter panel.") was illegally obtained based on a false statement in the supporting affidavit—that a drug dog had indicated the presence of drugs inside the vehicle. D based his contention on a dash cam video showing the dog being alerted to drugs on the rear bumper of the Impala. D argued after failing to find drugs in the bumper, O should have discounted the dog's alert as a false positive, and therefore they had no probable cause to search the interior of the Impala.

Adams v. State

2015-KA-00520-COA (10/04/2016)
Drug Related Search Warrant

- The Court held that the issue was procedurally barred. Although D did present several written motions to suppress, only 1 arguably challenged the search warrant directly, and it was a form motion that appeared to have been drafted to encompass every imaginable challenge to all of the evidence obtained ag. D. It was followed by a motion more specifically challenging D's arrest, but not the search warrant for the Impala. The trial court allowed D great latitude and heard any and every evidentiary challenge; however, when offered an opportunity to present evidence and arguments relating to the search warrant for the Impala, D's atty. simply "stood on the motion." The trial judge found the warrant was legally issued based on the evidence that had been presented on the other suppression issues. The Court found that the D's failure to make a specific argument deprived the State the opportunity to present evidence on the issue and denied the trial ct. the opportunity to make specific findings of facts on the contention. Notwithstanding the procedural bar, the Court saw no merit to D's claim.

Adams v. State

2015-KA-00520-COA (10/04/2016)
Drug Related Search Warrant

- D argued O misled the judge by claiming that the dog was alerting to the quarter panel rather than the bumper.
- The Court cited to *Petti v. State,* 666 So. 2d 754 (Miss. 1995), stating that D had to show "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and that the allegedly false statement is necessary to the finding of probable cause."
- The Court found that since this was a search of a vehicle, a warrant was not required; thus, the search would have been legal had PC existed notwithstanding the failure to describe it in the affidavit. *See Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

Adams v. State

2015-KA-00520-COA (10/04/2016)
Drug Related Search Warrant

- Here, D failed to make even a threshold showing that the O's description of where the dog alerted was false. His only attempt was by reference to the dash cam video, describing the dog's actions (how he put his muzzle between the bumper and jumping motions towards the bumper). D assumed that this behavior constituted the alert. However, the dog's handler testified at trial that the dog's behavior indicated that it was attempting to use it's muzzle for leverage to make a gesture at a higher point on the vehicle. The Court held that the video simply did not meet D's burden to show the affidavit's statement that the dog alerted on the quarter panel was false.

Adams v. State

2015-KA-00520-COA (10/04/2016)
Drug Related Search Warrant

- The Court further held D failed to establish that the allegedly false statement was material to whether PC was established in the affidavit.
- The Court referred to *United States v. Seals*, 987 F.2d 1102 (5th Cir. 1993) where it found that even if the dog was alerting to the bumper and probable cause was limited to the bumper, the totality of circumstances would have considered drug odor as to have probable cause to search the interior. D failed to address that possibility.
- D also argued the warrant was invalid because the supporting affidavit failed to attest to the dog's certifications, but this contention was not raised before the trial court and was procedurally barred on appeal. D presented no authority that a statement regarding the dog's certification was required to support a search warrant. Even if it were a requirement, the search would have still been valid under the automobile exception as the dog was certified and its training was discussed at length at trial. *See Townsend*, 681 So. 2d at 502.
- Affirmed.

Johnson v. State

2016-KA-00370-COA (02/28/2017)
Fleeing the Scene

- On 6/14/14 D was pulled over by O for failing to signal a turn. O noticed a box of alcohol and a white powdery substance in the back seat of the vehicle. O asked D if the box contained alcohol and D confirmed that it did. When asked what the white powdery substance was on his back seat, D stated baby powder. O returned to his patrol car to verify D's information & call for back up.
- Once back up arrived, O informed D that it was illegal to have alcohol in a dry county, and O suspected that D had illegal drugs based on the white powder across D's back seat & b/c D had previously arrested D for cocaine possession. O asked D to exit the vehicle. As O was attempting to open D's driver door, D fled the scene, resulting in a chase that exceeded 120 mph through traffic, crossing a double yellow line multiple times.
- Ultimately, D stopped his vehicle and was arrested.

Johnson v. State

2016-KA-00370-COA (02/28/2017)
Fleeing the Scene

- D was found guilty & sentenced as a habitual offender to 5 yrs. incarceration in the custody of the MDOC. On appeal he argued: (1) O had no PC for stopping him; & (2) that it was error to deny his lesser-included-offense instruction when the evidence supported a conviction of reckless driving.
- Probable Cause – G/R: The decision to stop an automobile is reasonable where the police have PC to believe that a traffic violation has occurred. *Woods v. State*, 175 So. 3d 579 (Miss. Ct. App. 2015).
- § 63-7-707 requires a signal when other vehicles *may* be affected by a turn—even when no accident is likely to occur as the result of the driver's failure to give a proper signal. *Id.* at 582.
- Further, the Court found it is well settled that an officer personally observing a traffic violation is sufficient to meet the requisite for a stop. *See Mosley v. State*, 89 So. 3d 41 (Miss. Ct. App. 2011).
- Here, O testified he personally observed D make a right turn onto a state hwy. w/o signaling while traffic was present---a traffic violation. This issue is w/o merit.

Johnson v. State

2016-KA-00370-COA (02/28/2017)
Fleeing the Scene

- Jury Instruction - D argued the ct. erred in denying his lesser included offense instruction b/c the evi. supported a conviction of a lesser included offense of reckless driving.
- For an offense to be a lesser-included one of the offense charged, all elements of the lesser offense must be included in the greater offense. *Hye v. State*, 162 So. 3d 750 (Miss. 2015).
- § 97-9-72(1) - The crime of failing to yield to a police officer requires the following: (1) a driver of a motor vehicle to be given a signal directing the driver to stop; (2) a law enforcement officer acting in the lawful performance of his duty and with reasonable suspicion to believe that the driver has committed a crime; and (3) the driver to willfully fail to obey the law-enforcement officer's direction.
- § 63-3-1201 - A person commits reckless driving when he operates a motor vehicle in a manner indicating either a willful or wanton disregard for the safety of persons or property.

Johnson v. State

2016-KA-00370-COA (02/28/2017)

Fleeing the Scene

- The Court held that because there was no element of the crime of reckless driving included in the crime of fleeing a law-enforcement officer, it is not a lesser-included offense.
- Further, the Mississippi SCT has explicitly rejected the authorization of lesser non-included offense instructions, and therefore this issue was without merit. *See Hye*, 162 So. 3d at 764.
- Affirmed.

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