

**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF  
MISSISSIPPI

PHILLIP EARL YOUNG

**FILED**

APPELLANT

JUN 18 2020

VS

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

No. 2005-<sup>CT</sup>MP-01690 <sup>SCJ</sup>~~GOA~~

STATE OF MISSISSIPPI

APPELLEE

PETITION FOR CERTIORARI REVIEW

COME NOW, the Appellant, Phillip Earl Young, petitions this Court pursuant to Rule 17(a)(3) of the Mississippi Rule of Appellant Procedure to grant this Petition For Writ of Certiorari. Young respectfully request that this Court review a decision handed down by the Mississippi Court of Appeal. See Exhibit C. The Court of Appeal affirmed a Sunflower Court Circuit Court, Cause No. 2001-0281-K, whereas in that matter the Sunflower Court, abuse of sound discretion when it invoked Mississippi Uniform Rules of Circuit and County Practice, Rule 6.04 and rejected Young's Weight and Sufficiency of Evidence Challenge to cause an illegal sentence. USCA 5.14.

**MOTION#** 2020-1999

## STATEMENT OF THE CASE

1. Phillip Earl Young, was found guilty of Carjacking in violation of Miss. Code Ann. § 92-3-115 and 97-3-117, he was sentence by the Sunflower Circuit Court, to fifteen (15) years in the Mississippi Department of Correction, with ten (10) years to serve and five (5) years post-release supervision.

## STATEMENT OF THE FACTS

2. Young was arrested November 9, 2001, without a warrant in Shaw, Mississippi, by Officer Sharod Reed about a stolen car from the Double Quick store in Indianola, Mississippi. See Exhibit E. Young was then brought back to the Indianola Police Department, the district where the offense was allegedly committed, See Federal Rule of Criminal Procedure 5(a), while in the police station, Young came into contact with Jerry Packer and Martha Grant as to show-up a critical issue, and a right to counsel to preserve his right to a fair hearing and trial. Young was booked and charged with Grand Larceny and taken to jail. See Exhibit

F. Nixon v. State, 533 So.2d 1078 (Miss. 1987).

3. The trial judge abuse of sound discretion upon physical fact. Young was arrested November 9, 2001, during a pre-trial confrontation at the Indianola Police Department, and for five (5) days thereafter, he was without legal representation, See Exhibit H, an invoke of law. Abram v. State, 606 So. 2d 1029 (Miss. 1992).

Young's counsel then, Marie Wilson, motioned to Suppress Identification testimony, but, was denied February 4, 2002. See Exhibit I. Young claims he was arrested and uncounseled ~~without~~ ~~without~~, and then incarcerated November 9, 2001, but never taken before a committing magistrate for examination into the Grand Larceny case, See Exhibit G, nor did he ever plea to the charge, a due process of law, a denial of a state and federal right. Lawrence v. State, 869 So. 2d 353, 356 (Miss. 2003)

4. While still incarcerated from a November 9, 2001, Grand Larceny charge from a pretrial confrontation and credible evidence the Indianola Police Department,

the authorities failed to comply with the initial appearance rule, through depriving Young of access to counsel. Abram v. State, 606 So. 2d 1015, 1029 (Miss. 1992).

5. Captain Charles Smith, with the Indianola Police Department, took matter of the charge November 13, 2001, four days (4) later from Sergeant Kirklin, after the adversarial proceeding had been initiated. Thompson, 726 So. at 236 (17) (Miss. 2003). Smith showed Jerry Parker and Martha Grant, a photographic identification of Young. His photo was then emphasized, he was then charged a second time by Captain Smith, on November 14, 2001, five (5) days after the pretrial confrontation, and during the initial appearance hearing Captain Smith, made a complaint against Young before the magistrate, See Exhibit D, as to charge Young with crimes of violence charges. Young claims he was without access to counsel at this unauthorized initial appearance hearing, an invoke of Rule 6.03 due process of law. No officer should make a complaint before the committing

magistrate is to charge a suspect with a crime. Moore v. State, 207 Miss. 140 (1949).

6. Young claims his <sup>Sixth Amendment</sup> constitutional right was invoked when Young was without legal representation at a initial appearance hearing November 14, 2001, See Exhibit H to help avoid prejudice effect, and the right to fair hearing. Abram v. State. Id at 1029. Young claims the Sunflower Circuit Court, abuse of sound discretion when it denied him a preliminary hearing under Mississippi Uniform Rule of Circuit and County Court Practice Rule 6.04, after this unauthorize initial appearance hearing November 14, 2001, to ~~the~~ <sup>determine</sup> whether the evidence presented November 14, 2001, creates a probable cause that a criminal offense has been committed and the accused committed this offense. Abram v. State, 1006 So. 2d 1015, 1029 (Miss. 1992).

7. Young claims the verdict was contrary to law ~~the~~ the trial judge abuse of ground discretion November 12, 2002, when rejecting the weight and sufficient of

evidence challenge for carjacking, Miss. Code 97-3-117(1).

The State failed to prove; 1) force or violence and 2) that the carjacking took place on the date specified in the indictment. See Exhibit B. The indictment as to Count 1, Carjacking, which Young stands convicted reads as follows:

"PHILLIP YOUNG, late of the County aforesaid, in the County aforesaid, on or before November 9, 2001, did unlawfully, feloniously, knowingly, reckless by any means take or attempt to take a motor vehicle from the immediate actual possession of Martha Grant by pushing her."

The indictment was factually defective as a matter of law, because it did not follow the language used to define the elements of carjacking under Miss. Code Ann. §§ 97-3-115 and 97-3-117. In particular, it did not contain the language by force or violence whether against resistance or by sudden or stealthy seizure or snatching or by putting in fear or attempting to do

so, described under Miss. Code Ann. 97-3-117-1 (Rev. 2006).

William v. State, 772 So. 2d 406 (Miss. 2000)

8. The State failed to prove variance between allegation and proof, the State failed to prove the carjacking act took place on the date specified in the indictment.

See Exhibit B. Because on or before November 9, 2001, as charged in the indictment was insufficient to charge Young with Carjacking Miss. Code Ann. § 97-3-117(1). On November 9, 2001, as charged in the indictment, Young was still incarcerated from the pretrial confrontation, and could not have carjacked on that date. The verdict unsupported by evidence contrary to evidence, conflicting with a clearly established federal law. Jackson v. Virginia, 443 U.S. 307 1979.

9. Young was found guilty of Carjacking in violation of Miss. Code Ann. 97-3-117. On insufficient evidence, Young claims counsel William Michael Mallette, was ineffective for failure to survey Sergeant Robert Kirklin, evidence

of the surveillance video from Double Quick store, Counsel was ineffective for failure to move for dismissal of the charges before trial on the grounds that 1:) the lack of an initial appearance from a pretrial confrontation, invoked Rule 6.03, there was no need for a trial for Garjacking and 2:) that Young was not present by himself or counsel for a preliminary hearing. Young claims counsel also failed to perfect his directed appeal to the Mississippi Supreme Court, to correct an illegal charge from a pretrial confrontation November 9, 2001, whereas Young was without legal representation. Abram v. State, 606 So 2d 1015. 1029 (Miss. 1992),

Young would ask this Court to order his discharge from custody and to quash the 2001-0281-K indictment and the proceeding



IN THE SUPREME COURT OF THE STATE OF  
MISSISSIPPI

No. 2005-KP-01690-COA

To: Jeremy Whitmie  
Supreme Court Clerk  
P.O. Box 249  
Jackson, Ms 39205-0249

From: Phillip E. Young #  
S.M.C.I. Area-II-C-1-B-zone  
P.O. Box 1419  
Hwy. 63 N.  
Leakesville, Ms 39451

Dear Mr. Whitmie

Please find inclose for your office files, my Petition  
For Certivari Review, see also attached Certificate of  
Service. Thank you for your Time in This Matter.

This the 10<sup>th</sup> day of June, 2020.

Respectfully Submitted  
Phillip Earl Yang  
Appellant

## Certificate Of Service

I, Phillip Earl Young, do hereby certify that I have this day mail a true and correct copy of the foregoing Petition for Certiorari Review to the following listed person(s) below:

D. Jeremy Whitmire, Clerk  
Supreme Court of Mississippi  
450 High Street  
Jackson, Ms 39201

Attorney General

P.O. Box 220  
Jackson, Ms 39205-0220

This the 10<sup>th</sup> day of June, 2020.

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2001-0281-K

PHILLIP YOUNG

SENTENCING ORDER

This day came the District Attorney, who prosecutes for the State, and the Defendant, PHILLIP YOUNG, in his/her own proper person and by his/her attorney, MICKEY MALLATTE, who having been heretofore arraigned at a regular term of this Court on indictment and having been convicted by a jury on a former day in this Court of COUNT 1 - CAR-JACKING, the Defendant appears now before this Court for sentencing.

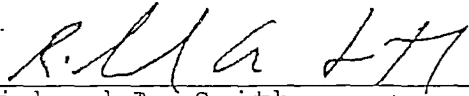
Whereupon, the Defendant, PHILLIP YOUNG, was brought to the Bar of this Court and asked if he/she had anything to say why the sentence of the Court should not be pronounced against him/her and having considered all testimony presented;

IT IS, THEREFORE, ORDERED, that for the crime of COUNT 1 - CAR-JACKING, of which he/she, the said PHILLIP YOUNG, stands convicted, that he/she be sentenced to a term of fifteen (15) years in the custody of the Mississippi Department of Corrections, five (5) years suspended, with five (5) years Post Release Supervision.

IT IS FURTHER ORDERED, that Defendant shall pay, \$530.00 in court costs, \$250.00 to the Crime Victims' Compensation Fund, and

a \$1,000.00 fine.

SO ORDERED AND ADJUDGED, this the 15th day of November,  
2002.

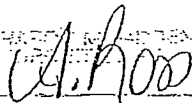


Richard A. Smith  
Circuit Court Judge

FILED

NOV 20 2002

CLERK OF COURT



MB 112  
PG 185-196

Back

01-28-13 15:45 TO- 916019733883

FROM- Sun co circuit clrk P0002/0002 T-778 F-671

3:13-cv-00500-TSL-JMR

Exhibit  
B

INDICTMENT CT I CARJACKING 97-3-117 (1) CTs. II & III  
AGGRAVATED ASSAULT 97-3-7(2)

RECEIVED  
JAN 28 2013  
MDOC CENTRAL RECORDS

STATE OF MISSISSIPPI

NO. 2001-0281-K

COUNTY OF SUNFLOWER

In the Circuit Court in and for said County, at the October, 2001, In Vacation Term.

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of the County aforesaid, duly elected, empanelled, sworn and charged at the Term aforesaid of the Court aforesaid, to inquire in and for the body of the County aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths, present: That

PHILLIP YOUNG

late of the County aforesaid, in the County aforesaid, on or before November 9, 2001,

COUNT I

did unlawfully, feloniously, knowingly or recklessly, by any means, take or attempt to take a motor vehicle from the immediate actual possession of Martha Grant by pushing her; AND

COUNT II

2001 did unlawfully, wilfully and feloniously cause or attempt to cause bodily harm to Jerry Parker by attempting to hit him with a deadly weapon, to-wit: an automobile; AND

COUNT III

2001 did unlawfully, wilfully and feloniously cause or attempt to cause bodily harm to Martha Grant and Jerry Parker by attempting to them with a deadly weapon, to-wit: an automobile; said acts being connected or constituting parts of a common scheme or plan against the peace and dignity of the State of Mississippi.

A TRUE BILL

*[Signature]*  
ASSISTANT DISTRICT ATTORNEY

*[Signature]*  
FOREMAN OF THE GRAND JURY

Filed and recorded the 28<sup>th</sup> day of December, 2001.

*[Signature]*  
Sharon McFadden, Circuit Clerk By: \_\_\_\_\_ D.C.

Exhibit  
C



**MANDATE**  
**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

To the Sunflower County Circuit Court - GREETINGS:

In proceedings held in the courtroom in the City of Jackson, Mississippi, the Court of Appeals of the State of Mississippi entered a judgment as follows:

Court of Appeals Case # 2005-KP-01690-COA  
Trial Court Case #2001-0281-K

Phillip Young v. State of Mississippi

**Tuesday, 31st day of July, 2007**

The judgment of the Sunflower County Circuit Court of conviction of carjacking and sentence of fifteen years in the custody of the Mississippi Department of Corrections with five years suspended and five years' post-release supervision, pay a fine of \$1,000 and pay \$250 to the Victim's Compensation Fund is affirmed. All costs of this appeal are assessed to Sunflower County.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Betty W. Sephton, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on August 21, 2007, A.D.

Exhibit (2) Betty W. Sephton  
CLERK

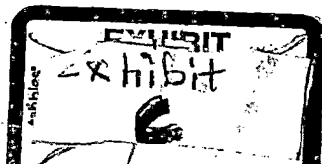


Exhibit  
D

THE STATE OF MISSISSIPPI }  
MUNICIPAL COURT }  
COUNTY OF SUNFLOWER }

**CERTIFICATE OF INITIAL APPEARANCE**  
**(Felony)**

I certify that PHILLIP YOUNG whose address is  
604 JULIE DR, ISOLA, MS 3854

was granted an initial appearance before me on the 14 day of NOV, 2001.

The following information was given to the defendant verbally and a copy of this certificate was also given the said defendant.

1. **CHARGE AND PENALTY.** You have been charged with the following felony crime(s) and if you are ultimately convicted you may be sentenced to the penalty shown after the crime(s).

Crime	Statutes	Penalty
A. <u>CAR JACKING</u>	_____	_____
B. <u>AGG. ASS.</u>	_____	_____
C. _____	_____	_____
D. _____	_____	_____

A copy of the complaint against you is attached to this certificate.

If your name and address as shown above are incorrect, the error should be pointed out to the Court, or any officer of the Court in which you appear.

2. **RIGHT TO REMAIN SILENT.** You are not required to speak and any statements you make may be used against you.
3. **RIGHT TO AN ATTORNEY.** You have the right to the assistance of counsel and if you are unable to afford counsel an attorney will be appointed to represent you. If you wish to hire your own attorney, you will be given opportunity by the officer in charge of the jail to make necessary telephone calls to obtain counsel.
4. **RIGHT TO COMMUNICATION.** You have the right to communicate with your attorney, family or friends and reasonable means will be provided by the officer in charge of the jail to enable you to do so.
5. **RIGHT TO PRELIMINARY HEARING.** You have a right to a preliminary hearing before a judicial officer of the charges made against you to determine whether there is probable cause to believe that a crime has been committed and that you committed it. If such probable cause is found not to exist you will be discharged from custody. At any such preliminary hearing you shall have the right to cross examine any witnesses offered against you, compel the attendance of witnesses in your own behalf by subpoena and offer any evidence in your own behalf.

Date of hearing is 11-19-01

6. **BAIL.** You have/do not have a right to bail. Your bail corresponding to the charges set forth in paragraph 1 above is

A. NONE B. NONE C. \_\_\_\_\_ D. \_\_\_\_\_

7. **COMMITMENT.** You are hereby committed to the custody of the Sheriff of Sunflower County, Mississippi, to await posting of proper bail or by due course of law.

This 14 day of NOV, 2001

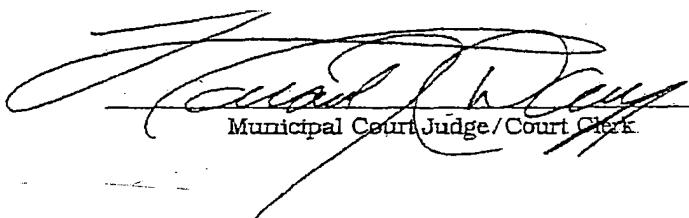
  
Municipal Court Judge/Court Clerk

Exhibit  
E

### SHAW POLICE DEPARTMENT

211 GILBERT STREET  
SHAW, MISSISSIPPI 38773  
(662) 754-5741

### OFFENSE REPORT

COMPLAINANT: Shaw Police Dept. CASE #: \_\_\_\_\_  
ADDRESS: 211 Gilbert PHONE: 754-5741  
PLACE OF OCCURRENCE: City of Shaw  
REPORT RECEIVED BY: Officer Williams  
DATE: 11/9/01 HOW REPORTED: By phone  
DATE & TIME OFFENSE COMMITTED: 11/9/01 1505  
OFFICER ASSIGNED: Officer Reed  
TIME OF INVESTIGATION: 1505 DATE OF INVESTIGATION: 9/11/01  
SUSPECTS AND/ OR PERSONS ARRESTED: Phillip Earl Young

#### DETAILS OF OFFENSE:

On the above date & time, I, Officer Sherrod Reed was advised by the Indianola Police Department that a stolen Nissan Maxima (Black) was en route to Shaw. I was advised that it was occupied by a Black male, identity unknown. The suspect came through the intersection of Hwy 61 & Hwy 448. I proceeded to chase the car down Peeler Avenue to White Oak. The subject then turned on Martin Luther King to Canal to Railroad. The subject then went back on Peeler to Gilbert to Bethlehem. He then went behind a house on Bethlehem to a field that leads to Issaquena. The subject then turned on Douglas to Mannaway & went across a bean field that leads to S. Issaquena. The subject then headed South on Issaquena & turned North on Hwy 61. The subject turned off Hwy 61 to Jackson where he entered into a driveway of 508 South St. The car was still running & I walked up to the car & the suspect had exited the vehicle. I looked around & saw the subject walking with no shirt on. I apprehended him & read him his rights. After searching the subject & finding identification, I identified him as Phillip Earl Young.

REPORT MADE BY: Officer Reed 5-5 DATE: 11/14/01



EXHIBIT F

MS0570100 Information Juvenile Involved Arrest

INCIDENT REPORT Entered By: PAGE 01 OF 05 Case# 01-2032

Address: Hwy 82 Business Name: Double Quick Zone: 05 Occurred From: Occurred To: Current Date:

OFFENSE DESCRIPTION Offense 1: GRAND LARCENY L-4 Offense 2: SIMP ASSAULT SA

LOCATION TYPE (Required on all Offenses) 1. Air/Bus/Train Terminal 7. Convenience Store 13. Highway/Interway/Alley 19. Rental/Storage Facility 27. Other: Car Wash

SPECIAL CIRCUMSTANCES BIAS MOTIVATION (Based on Factual Knowledge) 1. Offender is Mentally Disturbed 2. Hate Bias Circumstances 11. Anti-White 12. Anti-Black 13. Anti-American Indian 14. Anti-Asian/Pacific Islander 15. Anti-Multi Racial Group 21. Anti-Jewish 22. Anti-Catholic 23. Anti-Protestant 24. Anti-Islamic (Muslim) 25. Anti-Other Religion 26. Anti-Hate Religion 27. Anti-Atheism 31. Anti-Arab 32. Anti-Hispanic 33. Anti-Other Ethnicity/National Origin 41. Anti-Male Homosexual (Gay) 42. Anti-Female Homosexual (Lesbian) 43. Anti-Homosexual (Gay and Lesbian) 44. Anti-Heterosexual 45. Anti-Bisexual 88. None 89. Unknown

OTHER CIRCUMSTANCES (Required on Homicides/Aggravated Assaults) 1. Argument 2. Assault on Police Officer 3. Drug Dealing 4. Gangland 5. Juvenile Gang 6. Lover's Quarrel 7. Mercy Killing 8. Other Felony Involved 9. Other Circumstances 10. Unknown Circumstances 11. Child/Parental Abuse 12. Spouse Abuse 13. Institutional 14. Felon Killed by Citizen 15. Felon Killed by Police 16. Child Playing with Weapon 17. Gun Cleaning Accident 18. Hunting Accident 19. Other Negligent Weapon Handling 20. All Other

SOLVABILITY WEAPONS (Complete next block if any type of Firearm involved) 1. Suspect Named 2. Suspect Identified 3. Suspect Address 4. Suspect Located 5. Vehicle Identified 6. Tag Information 7. Tracable Property 8. Significant MO 9. Physical Evidence Exists 10. None 11. Firearm 12. Handgun 13. Rifle 14. Shotgun 15. Other Firearm 16. Lethal Cutting Weapon 17. Knife 18. Blunt Object 19. Shotgun 20. Personal Weapon 21. Poison 22. Explosives 23. Fire/Incendiary Device 24. Unknown 25. Drugs/Narcotics/Sleeping Pills 26. Other 27. Strangulation/Hanging 28. Thrown From High Place 29. NONE-N/A

Firearm (Caliber & Gauge) Approximate Caliber: .32 or smaller, .38, .40, .41 or larger, 410, 2016, 12 or larger, UNK SIZE, N/A

POINT OF ENTRY/EXIT (Required on Burglaries) 1. Airconditioner 2. Door-Balcony 3. Door-Front 4. Door-Garage 5. Door-Patio 6. Door-Rear 7. Door-Side 8. Door-Sliding 9. Door-Vehicle 10. Door-Other 11. Window-Top 12. Window-Rear 13. Window-Side 14. Window-Front 15. Vent/Plenum 16. Skylight 17. Wall 18. Ground Level 19. Upper Level 20. Other 21. Unknown 22. None-N/A

MEANS OF ENTRY/EXIT (Required on Burglaries) 1. Alarm Bypassed 2. Attacked Hinges 3. Attacked Lock 4. Battering 5. Cut Screen 6. Cut Chain/Lock 7. Chopped/Smashed 8. Drill 9. Hammer 10. Hid in Building 11. Key/Slip 12. Kicked Out/in 13. Lifting 14. Pried/Jimmied/Picked 15. Punch 16. Removed Glass/Molding 17. Sawing 18. Unlocked/No Force 19. Other 20. UNKNOWN 21. None-N/A

TOOLS/INSTRUMENTS USED (Required on Burglaries) 1. Bodily Force 2. Bolt Cutters 3. Brick/Block/Object 4. Burn/Torch 5. Chopping Tool 6. Glass Cutter 7. Wrench 8. Hammer 9. Incend./Explosive 10. Key/Slip Device 11. Prying Tool 12. Punch 13. Pliers/Vice Grips 14. Saw/Drill 15. Screwdriver 16. Tire Iron 17. Tape/Wire 18. Vehicle 19. Other 20. UNKNOWN 21. None-N/A

ACTIVITY TYPE (Required on Drug Cases Only) 1. Buying/Receiving 2. Cultiv./Manufact./Publishing 3. Distributing/Selling 4. Operating/Promoting/Assisting 5. Possessing/Concealing 6. Transport/Transmitting/Importing 7. Using/Consuming 8. Other 9. UNKNOWN 10. None-N/A

WEATHER CONDITIONS TEMPERATURE RANGE LIGHTING CONDITIONS 1. Sunny 2. Cloudy 3. Rainy 4. Foggy 5. Snow/Sleet 6. Clear/Night 7. Unknown 8. Very Cold (below 30) 9. Cold (31-45) 10. Cool (46-65) 11. Warm (66-90) 12. Hot (91-95) 13. Very Hot (96 & Above) 14. Unknown 15. Sun/Daylight 16. Moon/Darkness 17. Artificial (Exterior) 18. Artificial (Interior) 19. Other 20. Unknown 21. None-N/A

SECURITY MEASURES (In use at time of incident) EVIDENCE 1. Silent Alarm 2. Audible Alarm 3. Property Marked 4. Burglar Bars 5. Security Guard 6. Video Surveillance 7. Neighbor Watch 8. Dead Bolt Locks 9. Guard Dog 10. Motion Lights 11. Color ID 12. Security Fence 13. None-N/A 14. Blood/Tissue 15. Weapons 16. Statements/Documents 17. Fingerprints 18. Projectiles 19. Photographs 20. Narcotics 21. Other (See Narrative) 22. None

# Victims: 01 # Suspects: 01 # Arrests: 01 # Witnesses: 01 # Vehicles: 01 Property Involved: Yes No Multiple Clearance Indicator Multiple Count Arrests N/A

Accident Officer ID: Name:

Priors For  
PHILLIP YOUNG

Date	Type	Type #	Case	Offense	Relation	Disposition
05/31/200	COMPLAINT	00-001238	00-970030053	1315 - AGGRAV ASSLT- WEAPON	COMPLAINANT	
05/31/200	COMPLAINT	00-001238	00-970030053	1315 - AGGRAV ASSLT- WEAPON	VICTIM	
<del>11/09/200</del>	COMPLAINT	<del>01-002652</del>	01-990040337	L4 - LARCENY - GRAND	SUSPECT	
	WARRANT	01-02672		L4 - LARCENY - GRAND	DEFENDANT	ARRESTED
	AFFIDAVIT	01-01425		L4 - LARCENY - GRAND	DEFENDANT	ARRESTED
10/01/200	ARREST	01-006441	01-970050015	L4 - LARCENY - GRAND	ARRESTEE	
11/09/200	ARREST	01-006785	01-990040337	L4 - LARCENY - GRAND	ARRESTEE	

Exhibit  
H

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

U/N

*Phillip Young*

*ORDER APPOINTING COUNSEL*

THIS DAY, this cause coming on for hearing and it appearing to the Court that the defendant: *Phillip Young*, is presently under arrest and in jail and charged with a serious crime, to-wit: *Car Jacking and Aggravated Assault* and prior to *Trial* thereasto, and the Court being advised that said person is an indigent and without funds with which to employ counsel, and he having requested that counsel be appointed for him, and the Court being duly advised in the premises;

It is ordered and adjudged that *Marie Wilson*, a practicing attorney of the local bar in good standing be, and is hereby, appointed to represent the said defendant upon said charge, and that he report to the Court the amount of money this defendant could contribute to his defense if released on bond pending trial.

ORDERED and ADJUDGED this the ~~14th day of November 2001~~

*Betty W. Darden*  
CIRCUIT JUDGE *by Sharon McFadden*

FILED

NOV 16 2001

SHARON MCFADDEN  
CIRCUIT CLERK

M.B. 105  
PAGE 614

BY: *Robinson De* D.C.

Pg. #4

Exhibit  
I

2 copy

## IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

VS.

CRIMINAL CASE NO.: 2001-0281

PHILLIP YOUNG

MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

This defendant moves this Court to suppress the pre-trial identifications by Martha Grant and Jerry Parker of the defendant as the perpetrator of an alleged carjacking on the 9<sup>th</sup> day of November, 2001, as well as any subsequent in-court identifications of the defendant. As grounds for this motion counsel states:

1. That on the 9<sup>th</sup> day of November, 2001, in the afternoon, Martha Grant and Jerry Parker were at the Double Quick car wash. While Mr. Parker was washing Ms. Grant's car, Ms. Grant went to the next stall to get change from Mr. Parker's car. She was pushed down and her car keys were demanded. Ms. Grant gave the perpetrator the keys to Mr. Parker's car and the perpetrator quickly drove off. Although Mr. Parker tried to stop the vehicle, the perpetrator never slowed down. Mr. Parker and Ms. Grant chased the perpetrator but were unable to catch him.

2. That a couple hours later on the 9<sup>th</sup> day of November, 2001, the defendant was arrested and paraded in front of Martha Grant and Jerry Parker who then identified the defendant as the perpetrator.

3. That on the 13<sup>th</sup> day of November, 2001, Martha Grant and Jerry Parker were shown a photo lineup and they again identified the defendant as the perpetrator.

4. That because of the differences in the picture of the defendant and the other persons pictured, the defendant's photograph was emphasized; at the photo lineup the defendant stood out because the other persons included in the lineup had characteristics substantially different from the defendant.

5. That said identifications of the defendant were highly suggestive and prejudicial to movant.



603  
6. That the identification procedure was so unreliable as to give rise to a very substantial likelihood of irreparable misidentification. Moreover, any in-court identification of the defendant at trial would be based upon the earlier suggestive and prejudicial identification or the suggestive nature of the courtroom confrontation and not upon the witness' brief opportunity to view the perpetrator of the offense. Such an in-court identification would be unreliable.

7. The circumstances under which Martha Grant and Jerry Parker first viewed the perpetrator of the crime were extremely poor and any subsequent identification based on that initial viewing would be unreliable, rendering misidentification likely.

8. It is of course well established that there is a great potential for misidentification when a witness identifies a stranger based upon a single, brief observation in a stressful situation. The lack of reliability of such evidence is well documented. input

9. It is well settled that the due process clause of the Fourteenth Amendment protects an accused against the admission of unreliable identification evidence.

WHEREFORE, movant prays that all evidence of identification of him by the said Martha Grant and Jerry Parker be suppressed and that they be prevented from identifying movant in the trial of the above styled and numbered case.

Respectfully submitted,  
PHILLIP YOUNG

BY: 

Marie Wilson, Esq.  
Sunflower Co. Pub. Def. Office  
P. O. Box 2019  
Indianola, MS 38702  
(662) 887-7050  
ATTORNEYS FOR DEFENDANT



CERTIFICATE OF SERVICE

I, Marie Wilson, attorney for Phillip Young, do hereby certify that I have this day served a true and correct copy of the above and foregoing Motion to Suppress Identification Testimony upon Hon. Hallie Gail Bridges, Assistant District Attorney, by placing the same in her usual mail box at the Office of the Sunflower County Circuit Court Clerk in Indianola, MS.

SO CERTIFIED, this the 11<sup>th</sup> day of January, 2002.

MARIE WILSON

IN THE SUPREME COURT OF THE STATE OF  
MISSISSIPPI

PHILLIP EARL YOUNG

APPELLANT

VS

No. 2005-KP-01690 COA

STATE OF MISSISSIPPI

APPELLEE

PETITION FOR CERTIORARI REVIEW

COME NOW, the Appellant, Phillip Earl Young, petitions this Court pursuant to Rule 17(a)(3) of the Mississippi Rule of Appellant Procedure to grant this Petition For Writ of Certiorari. Young respectfully request that this Court review a decision handed down by the Mississippi Court of Appeal. See Exhibit C. The Court of Appeal affirmed a Sunflower Court Circuit Court, Cause No. 2001-0281-K, whereas in that matter the Sunflower Court, abuse of sound discretion when it invoked Mississippi Uniform Rules of Circuit and County Practice, Rule 6.04 and rejected Young's Weight and Sufficiency of Evidence Challenge to cause an illegal sentence. USCA 5.14.

## STATEMENT OF THE CASE

1. Phillip Earl Young, was found guilty of Carjacking in violation of Miss. Code Ann. § 92-3-115 and 97-3-117, he was sentence by the Sunflower Circuit Court, to fifteen (15) years in the Mississippi Department of Correction, with ten (10) years to serve and five (5) years post-release supervision.

## STATEMENT OF THE FACTS

2. Young was arrested November 9, 2001, without a warrant in Shaw, Mississippi, by Officer Sharod Reed about a stolen car from the Double Quick store in Indianola, Mississippi. See Exhibit E. Young was then brought back to the Indianola Police Department, the district where the offense was allegedly committed, See Federal Rule of Criminal Procedure 5(a), while in the police station, Young came into contact with Jerry Packer and Martha Grant as to show-up a critical issue, and a right to counsel to preserve his right to a fair hearing and trial. Young was booked and charged with Grand Larceny and taken to jail. See Exhibit



f. Nixon v. State, 533 So. 2d 1078 (Miss. 1987).

3. The trial judge abuse of sound discretion upon physical fact. Young was arrested November 9, 2001, during a pre-trial confrontation at the Indianola Police Department, and for five (5) days thereafter, he was without legal representation, See Exhibit H, an invoke of law. Abram v. State, 606 So. 2d 1029 (Miss. 1992).

Young's counsel then, Marie Wilson, motioned to Suppress Identification testimony, but, was denied February 4, 2002. See Exhibit I. Young claims he was arrested and uncounseled ~~without~~ ~~without~~, and then incarcerated November 9, 2001, but never taken before a committing magistrate for examination into the Grand Larceny case, See Exhibit G, nor did he ever plea to the charge, a due process of law, a denial of a state and federal right. Lawrence v. State, 869 So. 2d 353, 356 (Miss. 2003)

4. While still incarcerated from a November 9, 2001, Grand Larceny charge from a pretrial confrontation and credible evidence the Indianola Police Department,

the authorities failed to comply with the initial appearance rule, through depriving Young of access to counsel. Abram v. State, 606 So. 2d 1015, 1029 (Miss. 1992).

5. Captain Charles Smith, with the Indianapolis Police Department, took matter of the charge November 13, 2001, four days (4) later from Sergeant Kirklin, after the adversarial proceeding had been initiated. Thompson, 726 So. at 236 (17) (Miss. 2003). Smith showed Jerry Parker and Martha Grant, a photographic identification of Young. His photo was then emphasized, he was then charged a second time by Captain Smith, on November 14, 2001, five (5) days after the pretrial confrontation, and during the initial appearance hearing Captain Smith, made a complaint against Young before the magistrate, see Exhibit D, as to charge Young with crimes of violence charges. Young claims he was without access to counsel at this unauthorized initial appearance hearing, an invoke of Rule 6.03 due process of law. No officer should make a complaint before the committing

magistrate as to charge a suspect with a crime. Moore v. State, 207 Miss. 140 (1949).

6. Young claims his <sup>Sixth amendment</sup> constitutional right was invoked when Young was without legal representation at a initial appearance hearing November 14, 2001, See Exhibit H to help avoid prejudice effect, and the right to fair hearing. Abram v. State. Id at 1029. Young claims the Sunflower Circuit Court, abuse of sound discretion when it denied him a preliminary hearing under Mississippi Uniform Rule of Circuit and County Court Practice Rule 6.04, after this unauthorize initial appearance hearing November 14, 2001, to ~~def~~ <sup>determine</sup> whether the evidence presented November 14, 2001, creates a probable cause that a criminal offense has been committed and the accused committed this offense. Abram v. State, 1006 So. 2d 1015, 1029 (Miss. 1992).

7. Young claims the verdict was contrary to law ~~by~~ the trial judge, abuse of ground discretion November 12, 2002, when rejecting the weight and sufficient of

evidence challenge for carjacking, Miss. Code 97-3-117(1). The State failed to prove; 1) force or violence and 2) that the carjacking took place on the date specified in the indictment. See Exhibit B. The indictment as to Count 1, Carjacking, which Young stands convicted reads as follows:

"PHILLIP YOUNG, late of the County aforesaid, in the County aforesaid, on or before November 9, 2001, did unlawfully, feloniously, knowingly, reckless by any means take or attempt to take a motor vehicle from the immediate actual possession of Martha Grant by pushing her."

The indictment was factually defective as a matter of law, because it did not follow the language used to define the elements of carjacking under Miss. Code Ann. §§ 97-3-115 and 97-3-117. In particular, it did not contain the language by force of violence whether against resistance or by sudden or stealthy seizure or snatching or by putting in fear or attempting to do

so, described under Miss. Code Ann. 97-3-117-1 (Rev. 2006).

William v. State, 772 So. 2d 406 (Miss. 2000)

8. The State failed to prove variance between allegation and proof, the State failed to prove the carjacking act took place on the date specified in the indictment.

See Exhibit B. Because on or before November 9, 2001, as charged in the indictment was insufficient to charge Young with Carjacking Miss. Code Ann. § 97-3-117(1). On November 9, 2001, as charged in the indictment, Young was still incarcerated from the pretrial confrontation, and could not have carjacked on that date. The verdict unsupported by evidence contrary to evidence, conflicting with a clearly established federal law. Jackson v. Virginia, 443 U.S. 307 1979.

9. Young was found guilty of Carjacking in violation of Miss. Code Ann. 97-3-117. On insufficient evidence, Young claims counsel William Michael Mallette, was ineffective for failure to survey Sergeant Robert Kirklin, evidence

of the surveillance video from Double Quick store, Counsel was ineffective for failure to move for dismissal of the charges before trial on the grounds that 1:) the lack of an initial appearance from a pretrial confrontation, involved Rule 6.03, there was no need for a trial for Garjacking and 2:) that Young was not present by himself or counsel for a preliminary hearing. Young claims counsel also failed to perfect his directed appeal to the Mississippi Supreme Court, to correct an illegal charge from a pretrial confrontation November 9, 2001, whereas Young was without legal representation. Abram v. State, 606 So 2d 1015. 1029 (Miss. 1992),

Young would ask this Court to order his discharge from custody and to quash the 2001-0281-K indictment and the proceeding

IN THE SUPREME COURT OF THE STATE OF  
MISSISSIPPI

No. 2005-KP-01690-COA

To: Jeremy Whitmie  
Supreme Court Clerk  
P.O. Box 249  
Jackson, Ms 39205-0249

From: Phillip E. Young #  
S.M.C.I. Area-II-C-1-B-zone  
P.O. Box 1419  
Hwy. 63 N.  
Leakesville, Ms 39451

Dear Mr. Whitmie

Please find inclose for your office files, my Petition  
For Certiorari Review, see also attached Certificate of  
Service. Thank you for your time in This Matter.

This the 10<sup>th</sup> day of June, 2020.

Respectfully Submitted  
Phillip Earl Young  
Appellant

## Certificate Of Service

I, Phillip Earl Young, do hereby certify that I have this day mail a true and correct copy of the foregoing Petition for Certiorari Review to the following listed person(s) below:

D. Jeremy Whitmire, Clerk  
Supreme Court of Mississippi  
450 High Street  
Jackson, Ms 39201

Attorney General

P.O. Box 220  
Jackson, Ms 39205-0220

This the 10<sup>th</sup> day of June, 2020.



IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2001-0281-K

PHILLIP YOUNG

SENTENCING ORDER

This day came the District Attorney, who prosecutes for the State, and the Defendant, PHILLIP YOUNG, in his/her own proper person and by his/her attorney, MICKEY MALLATTE, who having been heretofore arraigned at a regular term of this Court on indictment and having been convicted by a jury on a former day in this Court of COUNT 1 - CAR-JACKING, the Defendant appears now before this Court for sentencing.

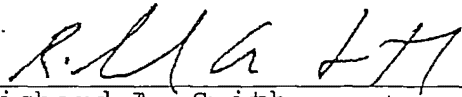
Whereupon, the Defendant, PHILLIP YOUNG, was brought to the Bar of this Court and asked if he/she had anything to say why the sentence of the Court should not be pronounced against him/her and having considered all testimony presented;

IT IS, THEREFORE, ORDERED, that for the crime of COUNT 1 - CAR-JACKING, of which he/she, the said PHILLIP YOUNG, stands convicted, that he/she be sentenced to a term of fifteen (15) years in the custody of the Mississippi Department of Corrections, five (5) years suspended, with five (5) years Post Release Supervision.

IT IS FURTHER ORDERED, that Defendant shall pay, \$530.00 in court costs, \$250.00 to the Crime Victims' Compensation Fund, and

a \$1,000.00 fine.

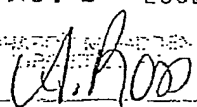
SO ORDERED AND ADJUDGED, this the 15th day of November,  
2002.



Richard A. Smith  
Circuit Court Judge

FILED

NOV 20 2002



MB 112  
PG 185-186

Back

01-28-13 15:45 TO- 916019733883

FROM- Sun co circuit clrk P0002/0002 T-778 F-671

3:13-CV-00500-TSL-JMR

7770 490

Exhibit

B

INDICTMENT CT I CARJACKING 97-3-117 (1) CTs. II & III  
AGGRAVATED ASSAULT 97-3-7(2)

RECEIVED  
JAN 28 2013  
MDOC CENTRAL RECORDS

STATE OF MISSISSIPPI

NO. 2001-0281-K

COUNTY OF SUNFLOWER

In the Circuit Court in and for said County, at the October, 2001, In Vacation Term.

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of the County aforesaid, duly elected, empanelled, sworn and charged at the Term aforesaid of the Court aforesaid, to inquire in and for the body of the County aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths, present: That

PHILLIP YOUNG

late of the County aforesaid, in the County aforesaid, on or before November 9, 2001,

COUNT I

did unlawfully, feloniously, knowingly or recklessly, by any means, take or attempt to take a motor vehicle from the immediate actual possession of Martha Grant by pushing her; AND

COUNT II

2001 did unlawfully, wilfully and feloniously cause or attempt to cause bodily harm to Jerry Parker by attempting to hit him with a deadly weapon, to-wit: an automobile; AND

COUNT III

2001 did unlawfully, wilfully and feloniously cause or attempt to cause bodily harm to Martha Grant and Jerry Parker by attempting to <sup>push</sup> them with a deadly weapon, to-wit: an automobile; said acts being connected or constituting parts of a common scheme or plan against the peace and dignity of the State of Mississippi.

A TRUE BILL

*[Signature]*  
ASSISTANT DISTRICT ATTORNEY

*[Signature]*  
FOREMAN OF THE GRAND JURY

Filed and recorded the 28<sup>th</sup> day of December, 2001.

*[Signature]*  
Sharon McFadden, Circuit Clerk

By: \_\_\_\_\_ D.C.

Exhibit  
C



**MANDATE**  
**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

To the Sunflower County Circuit Court - GREETINGS:

In proceedings held in the courtroom in the City of Jackson, Mississippi, the Court of Appeals of the State of Mississippi entered a judgment as follows:

Court of Appeals Case # 2005-KP-01690-COA  
Trial Court Case #2001-0281-K

Phillip Young v. State of Mississippi

**Tuesday, 31st day of July, 2007**

The judgment of the Sunflower County Circuit Court of conviction of carjacking and sentence of fifteen years in the custody of the Mississippi Department of Corrections with five years suspended and five years' post-release supervision, pay a fine of \$1,000 and pay \$250 to the Victim's Compensation Fund is affirmed. All costs of this appeal are assessed to Sunflower County.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Betty W. Sephton, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on August 21, 2007, A.D.

Exhibit (2) Betty W. Sephton  
CLERK

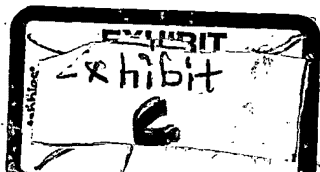


Exhibit  
D

THE STATE OF MISSISSIPPI  
MUNICIPAL COURT  
COUNTY OF SUNFLOWER

**CERTIFICATE OF INITIAL APPEARANCE**  
**(Felony)**

I certify that PHILLIP YOUNG whose address is  
604 JULIE DR, ISOLA, MS 38754

was granted an initial appearance before me on the 14 day of NOV, 2001.

The following information was given to the defendant verbally and a copy of this certificate was also given the said defendant.

1. **CHARGE AND PENALTY.** You have been charged with the following felony crime(s) and if you are ultimately convicted you may be sentenced to the penalty shown after the crime(s).

	Crime	Statutes	Penalty
A.	<u>CAR JACKING</u>	_____	_____
B.	<u>AGG. ASS.</u>	_____	_____
C.	_____	_____	_____
D.	_____	_____	_____

A copy of the complaint against you is attached to this certificate.

If your name and address as shown above are incorrect, the error should be pointed out to the Court, or any officer of the Court in which you appear.

2. **RIGHT TO REMAIN SILENT.** You are not required to speak and any statements you make may be used against you.
3. **RIGHT TO AN ATTORNEY.** You have the right to the assistance of counsel and if you are unable to afford counsel an attorney will be appointed to represent you. If you wish to hire your own attorney, you will be given opportunity by the officer in charge of the jail to make necessary telephone calls to obtain counsel.
4. **RIGHT TO COMMUNICATION.** You have the right to communicate with your attorney, family or friends and reasonable means will be provided by the officer in charge of the jail to enable you to do so.
5. **RIGHT TO PRELIMINARY HEARING.** You have a right to a preliminary hearing before a judicial officer of the charges made against you to determine whether there is probable cause to believe that a crime has been committed and that you committed it. If such probable cause is found not to exist you will be discharged from custody. At any such preliminary hearing you shall have the right to cross examine any witnesses offered against you, compel the attendance of witnesses in your own behalf by subpoena and offer any evidence in your own behalf.

Date of hearing is 11-19-01

6. **BAIL.** You have/do not have a right to bail. Your bail corresponding to the charges set forth in paragraph 1 above is

A. NONE B. NONE C. \_\_\_\_\_ D. \_\_\_\_\_

7. **COMMITMENT.** You are hereby committed to the custody of the Sheriff of Sunflower County, Mississippi, to await posting of proper bail or by due course of law.

This 14 day of NOV, 2001

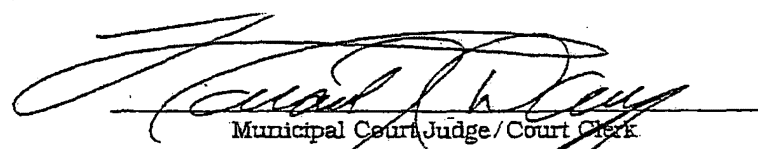
  
Municipal Court Judge/Court Clerk

Exhibit  
E

**SHAW POLICE DEPARTMENT**

211 GILBERT STREET  
SHAW, MISSISSIPPI 38773  
(662) 754-5741

**OFFENSE REPORT**

COMPLAINANT: Shaw Police Dept. CASE #: \_\_\_\_\_  
 ADDRESS: 211 Gilbert PHONE: 754-5741  
 PLACE OF OCCURRENCE: City of Shaw  
 REPORT RECEIVED BY: Officer Williams  
 DATE: 11/9/01 HOW REPORTED: By phone  
 DATE & TIME OFFENSE COMMITTED: 11/9/01 1505  
 OFFICER ASSIGNED: Officer Reed  
 TIME OF INVESTIGATION: 1505 DATE OF INVESTIGATION 9/11/01  
 SUSPECTS AND/OR PERSONS ARRESTED: Phillip Earl Young

**DETAILS OF OFFENSE:**

On the above date & time, I, Officer Sharon Reed was advised by the Indianola Police Department that a stolen Nissan Maxima (Black) was en route to Shaw. I was advised that it was occupied by a Black male, identity unknown. The suspect came through the intersection of Hwy 101 & Hwy 448. I proceeded to chase the car down Peeler Avenue to White Oak. The subject then turned on Martin Luther King to Canal to Railroad. The subject then went back on Peeler to Gilbert to Bethlehem. He then went behind a house on Bethlehem to a field that leads to Issaquena. The subject then turned on Douglas to Mannaway & went across a bean field that leads to S. Issaquena. The subject then headed south on Issaquena & turned North on Hwy 101. The subject turned off Hwy 101 to Jackson where he entered into a driveway of 508 South St. The car was still running & I walked up to the car & the suspect had exited the vehicle. I looked around & saw the subject walking with no shirt on. I apprehended him & read him his rights. After searching the subject & finding incrimination, I identified him as Phillip Earl Young.

REPORT MADE BY: Sharon Reed 5-5 DATE: 11/14/01

EXHIBIT F

MS0670100 Information Juveniles Involved Arrest

INCIDENT REPORT Entered NEDIC Yes No Entered By Date PAGE 01 OF 05 Case# 01-2632

Incident Location (City and Address) New York Double Quick Zone 05 Occurred From Occurred To Current Date

OFFENSE DESCRIPTION Offense 1 GRAND LARCENY L-4 Offense 2 SHAW LEASING SA Offense 3

LOCATION TYPE (Required on all Offenses) 1. Airport/Train Terminal 7. Convenience Store 13. Hospital/Pharmacy/Alley 19. Rental/Storage Facility 97. Other CAR WASH

SPECIAL CIRCUMSTANCES BIAS MOTIVATION (Based on Factual Knowledge) 1. Bomb Threat 2. Gasoline 3. Hate Crime 4. Hate Crime

OTHER CIRCUMSTANCES (Required on Homicides/Aggravated Assaults) 1. Argument 2. Assault on Police Officer 3. Drug Dealing 4. Gangland

SOLVABILITY WEAPONS (Complete next block if any type of Firearm involved) 1. Suspect Named 2. Suspect Identified 3. Suspect Address 4. Suspect Located 5. Vehicle Identified

Firearm (Caliber & Gauge) Approximate Caliber Exact Gauge 11.32 or smaller 12. Med. (33-40) 13. Hvy. (41 or larger) 410 20/16 12 or larger UNK SIZE N/A

POINT OF ENTRY/EXIT (Required on Burglaries) 1. Airconditioner 2. Door-Balcony 3. Door-Front 4. Door-Garage 5. Door-Patio 6. Door-Rear 7. Door-Side 8. Door-Sliding 9. Door-Vehicle 10. Door-Other 11. Window-Split 12. Window-Blind 13. Window-Door 14. Window-Other 15. Vent Pipe 16. Skylight 17. Wall 18. Ground Level 19. Upper Level 97. Other 98. Unknown 99. None-N/A

MEANS OF ENTRY/EXIT (Required on Burglaries) 1. Alarm Bypassed 2. Attacked Hinges 3. Attacked Lock 4. Battering 5. Cut Screen 6. Cut Chain/Lock 7. Chopped/Smashed 8. Drill 9. Hammer 10. Hid in Building 11. Key/Slip 12. Kicked Out/in 13. Lifting 14. Pried/Jammed/Pried 15. Punch 16. Removed Glass/Molding 17. Sawing 18. Unlocked/No Force 97. Other 98. UNKNOWN 99. None-N/A

TOOLS/INSTRUMENTS USED (Required on Burglaries) 1. Bodily Force 2. Bolt Cutters 3. Brick/Block/Object 4. Burn/Torch 5. Chopping Tool 6. Glass Cutter 7. Wrench 8. Hammer 9. Incend./Explosive 10. Key/Slip Device 11. Prying Tool 12. Punch 13. Pliers/Vice Grips 14. Saw/Drill 15. Screwdriver 16. Tire Iron 17. Tape/Wire 18. Vehicle 97. Other 98. UNKNOWN 99. None-N/A

ACTIVITY TYPE (Required on Drug Cases Only) 1. Buying/Receiving 2. Cultiv./Manufact./Publishing 3. Distributing/Selling 4. Operating/Promoting/Assisting 5. Possessing/Concealing 6. Transport/Transmitting/Importing 7. Using/Consuming 97. Other 98. UNKNOWN 99. None-N/A

WEATHER CONDITIONS TEMPERATURE RANGE LIGHTING CONDITIONS 1. Sunny 2. Cloudy 3. Rainy 4. Foggy 5. Snow/Sleet 6. Clear/Night 7. Unknown 1. Very Cold (below 30) 2. Cold (31-45) 3. Cool (46-65) 4. Warm (66-90) 5. Hot (91-95) 6. Very Hot (96 & Above) 98. Unknown 1. Sun/Daylight 2. Moon/Darkness 3. Artificial (Exterior) 4. Artificial (Interior) 97. Other 98. Unknown 99. None-N/A

SECURITY MEASURES (In-use at time of incident) EVIDENCE 1. Silent Alarm 2. Audible Alarm 3. Property Marked 4. Burglar Bars 5. Security Guard 6. Video Surveillance 7. Neighbor Watch 8. Dead Bolt Locks 9. Guard Dog 10. Motion Lights 11. Caller ID 12. Security Fence 13. None-N/A 1. Blood/Tissue 2. Weapons 3. Statements/Documents 4. Fingerprints 5. Photographs 7. Narcotics 97. Other (See Narrative) 99. None

# Victims 01 # Suspects 01 # Arrests 01 # Witnesses 01 # Vehicles 01 Property Involved Yes No Multiple Clearance Indicator Multiple Court Arrestee N/A

Investigating Officer (I) Name

Priors For  
PHILLIP YOUNG

Date	Type	Type #	Case	Offense	Relation	Disposition
05/31/200	COMPLAINT	00-001238	00-970030053	1315 - AGGRAV ASSLT- WEAPON	COMPLAINANT	
05/31/200	COMPLAINT	00-001238	00-970030053	1315 - AGGRAV ASSLT- WEAPON	VICTIM	
11/09/200	COMPLAINT	01-002652	01-990040337	L4 - LARCENY - GRAND	SUSPECT	
	WARRANT	01-02672		L4 - LARCENY - GRAND	DEFENDANT	ARRESTED
	AFFIDAVIT	01-01425		L4 - LARCENY - GRAND	DEFENDANT	ARRESTED
10/01/200	ARREST	01-006441	01-970050015	L4 - LARCENY - GRAND	ARRESTEE	
11/09/200	ARREST	01-006785	01-990040337	L4 - LARCENY - GRAND	ARRESTEE	



Exhibit  
H

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

U/N

*Phillip Young*

**ORDER APPOINTING COUNSEL**

THIS DAY, this cause coming on for hearing and it appearing to the Court that the defendant: *Phillip Young*, is presently under arrest and in jail and charged with a serious crime, to-wit :~~Car Jacking and Aggravated Assault~~ and prior to *Trial* thereasto, and the Court being advised that said person is an indigent and without funds with which to employ counsel, and he having requested that counsel be appointed for him, and the Court being duly advised in the premises;

It is ordered and adjudged that *Marie Wilson*, a practicing attorney of the local bar in good standing be, and is hereby, appointed to represent the said defendant upon said charge, and that he report to the Court the amount of money this defendant could contribute to his defense if released on bond pending trial.

ORDERED and ADJUDGED this the 14th day of November 2001

*Betty W. Darden*  
CIRCUIT JUDGE *by Sharon McFadden*

FILED

NOV 16 2001

SHARON MCFADDEN  
CIRCUIT CLERK

M.B. 105  
PAGE 614

BY: *Robinson Dc* D.C.

Pg. #H

2 copy

## IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

VS.

CRIMINAL CASE NO.: 2001-0281

PHILLIP YOUNG

MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

This defendant moves this Court to suppress the pre-trial identifications by Martha Grant and Jerry Parker of the defendant as the perpetrator of an alleged carjacking on the 9<sup>th</sup> day of November, 2001, as well as any subsequent in-court identifications of the defendant. As grounds for this motion counsel states:

1. That on the 9<sup>th</sup> day of November, 2001, in the afternoon, Martha Grant and Jerry Parker were at the Double Quick car wash. While Mr. Parker was washing Ms. Grant's car, Ms. Grant went to the next stall to get change from Mr. Parker's car. She was pushed down and her car keys were demanded. Ms. Grant gave the perpetrator the keys to Mr. Parker's car and the perpetrator quickly drove off. Although Mr. Parker tried to stop the vehicle, the perpetrator never slowed down. Mr. Parker and Ms. Grant chased the perpetrator but were unable to catch him.

2. That a couple hours later on the 9<sup>th</sup> day of November, 2001, the defendant was arrested and paraded in front of Martha Grant and Jerry Parker who then identified the defendant as the perpetrator.

3. That on the 13<sup>th</sup> day of November, 2001, Martha Grant and Jerry Parker were shown a photo lineup and they again identified the defendant as the perpetrator.

4. That because of the differences in the picture of the defendant and the other persons pictured, the defendant's photograph was emphasized; at the photo lineup the defendant stood out because the other persons included in the lineup had characteristics substantially different from the defendant.

5. That said identifications of the defendant were highly suggestive and prejudicial to movant.



603

6. That the identification procedure was so unreliable as to give rise to a very substantial likelihood of irreparable misidentification. Moreover, any in-court identification of the defendant at trial would be based upon the earlier suggestive and prejudicial identification or the suggestive nature of the courtroom confrontation and not upon the witness' brief opportunity to view the perpetrator of the offense. Such an in-court identification would be unreliable.

7. The circumstances under which Martha Grant and Jerry Parker first viewed the perpetrator of the crime were extremely poor and any subsequent identification based on that initial viewing would be unreliable, rendering misidentification likely.

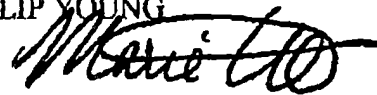
8. It is of course well established that there is a great potential for misidentification when a witness identifies a stranger based upon a single, brief observation in a stressful situation. The lack of reliability of such evidence is well documented.

9. It is well settled that the due process clause of the Fourteenth Amendment protects an accused against the admission of unreliable identification evidence.

WHEREFORE, movant prays that all evidence of identification of him by the said Martha Grant and Jerry Parker be suppressed and that they be prevented from identifying movant in the trial of the above styled and numbered case.

Respectfully submitted,  
PHILLIP YOUNG

BY:

  
Marie Wilson, Esq.  
Sunflower Co. Pub. Def. Office  
P. O. Box 2019  
Indianola, MS 38702  
(662) 887-7050  
ATTORNEYS FOR DEFENDANT

6 W



CERTIFICATE OF SERVICE

I, Marie Wilson, attorney for Phillip Young, do hereby certify that I have this day served a true and correct copy of the above and foregoing Motion to Suppress Identification Testimony upon Hon. Hallie Gail Bridges, Assistant District Attorney, by placing the same in her usual mail box at the Office of the Sunflower County Circuit Court Clerk in Indianola, MS.

SO CERTIFIED, this the 11<sup>th</sup> day of January, 2002.

MARIE WILSON