

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI COURT OF
APPEALS OF THE STATE OF MISSISSIPPI**

DENNIS G. WILKINS

APPELLANT

v.

CAUSE NO: 2007-TS-00349 COA

CITY OF FLORENCE, MISSISSIPPI

APPELLEE

BRIEF OF APPELLEE

DAVID RINGER, MSB # [REDACTED]
PROSECUTING ATTORNEY
FOR THE CITY OF FLORENCE
125 EAST MAIN STREET
POST OFFICE BOX 737
FLORENCE, MISSISSIPPI 39073
(601) 845-7349 / FAX (601) 845-6799

CERTIFICATE OF INTERESTED PERSONS

DENNIS G. WILKINS

APPELLANT

v.

CAUSE NO: 2007-TS-00349 COA


CITY OF FLORENCE, MISSISSIPPI

APPELLEE

The undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the appellate courts of, Mississippi may evaluate possible disqualification or recusal.

1. State of Mississippi, Appellee
2. Dennis G. Wilkins, Defendant/Appellant
3. Hon. Samac Richardson, Rankin County Circuit Court Judge
4. Hon. Kent McDaniel, Rankin County Court Judge
5. Hon. J. Edward Rainer, Attorney for Dennis G. Wilkins
6. David Ringer, Prosecuting Attorney for the City of Florence, Mississippi

THIS, the 13th day of July, 2007.



DAVID RINGER, ATTORNEY FOR THE
CITY OF FLORENCE, MISSISSIPPI

TABLE OF CONTENTS

I. STATEMENT OF ISSUES	1
II. STATEMENT OF THE CASE	2
A. NATURE OF THE CASE	2
B. COURSE OF THE PROCEEDINGS	2
C. FACTS	2
III. SUMMARY OF THE ARGUMENT	3
IV. ARGUMENT	6
A. Whether the Circuit Court of Rankin County, Mississippi, Violated the Defendant's Right to Equal Protection Under the Mississippi Constitution, in Failing to Grant the Defendant's Motion for Jury Trial Based on the Fact that a Similarly Situation Person in Justice Court is Guaranteed the Right to a Jury Trial While a Person in Municipal Court is Denied that Same Right.	6
B. Whether the Circuit Court of Rankin County, Mississippi, Violated the Due Process Clause of the United States Constitution and the Mississippi Constitution in Denying the Defendant's Motion for Jury Trial under uniform Circuit and County Court Rule 12.02 When Uniform Circuit and County Court Rule 10.01 Provides for a Jury Trial in All Misdemeanor Criminal Prosecutions.	8
C. Whether the Circuit Court of Rankin County, Mississippi, Erred in Finding the Defendant Guilty Against the Weight and Sufficiency of the Evidence Presented at Trial.	10
V. CONCLUSION	12

TABLE OF AUTHORITIES

CASES

<i>Blanton v. City of North Las Vegas</i> , 489 U.S. 538 (1989)	7, 8, 10
<i>Baldwin v. New York</i> , 399 U.S. 66 (1970)	7, 10
<i>Callan v. Wilson</i> , 127 U.S. 540 (1888)	8
<i>District of Columbia v. Clawans</i> , 300 U.S. 617 (1937)	8
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)	8
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972)	6
<i>Lewis v. United States</i> , 518 U.S. 322 (1996)	7, 10
<i>Cox v. City of Jackson</i> , 343 F.Supp.2d.748 (S.D. Miss. 2004)	3, 6
<i>Bush v. State</i> , 895 So.2d 836 (Miss.,2005)	11
<i>Harkins v. State</i> , 735 So.2d 317 (Miss., 1999)	4, 7, 9-10
<i>Herring v. State</i> , 691 So.2d 948 (Miss.1997)	11
<i>Humphrey v. State</i> , 759 So.2d 368 (Miss.,2000)	11
<i>Mississippi High School Activities Ass'n, Inc. v. Coleman</i> , 631 So.2d 768 (Miss., 1994)	6
<i>Pleasant v. State</i> , 701 So.2d 799 (Miss.1997)	11
<i>Case v. State of Mississippi</i> , 817 So.2d.605 (COA 2002)	4, 7

STATUTES

<i>Miss. Const. Art. 3, Section 26</i>	8
<i>Miss. Code Ann. § 11-9-143</i> (1972, as amended)	4, 6-7

OTHER AUTHORITIES CITED

Uniform Circuit and County Court Rules (UCCCR) 10.01	4, 5, 9
Uniform Circuit and County Court Rules (UCCCR) 12.02	4, 5, 9, 11

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI COURT OF
APPEALS OF THE STATE OF MISSISSIPPI

DENNIS G. WILKINS

APPELLANT

v.

CAUSE NO: 2007-TS-00349-COA

CITY OF FLORENCE, MISSISSIPPI

APPELLEE

BRIEF OF APPELLEE

I. STATEMENT OF ISSUES

- A. Whether the Circuit Court of Rankin County, Mississippi, Violated the Defendant's Right to Equal Protection Under the Mississippi Constitution, in Failing to Grant the Defendant's Motion for Jury Trial Based on the Fact that a Similarly Situation Person in Justice Court is Guaranteed the Right to a Jury Trial While a Person in Municipal Court is Denied that Same Right.
- B. Whether the Circuit Court of Rankin County, Mississippi, Violated the Due Process Clause of the United States Constitution and the Mississippi Constitution in Denying the Defendant's Motion for Jury Trial under uniform Circuit and County Court Rule 12.02 When Uniform Circuit and County Court Rule 10.01 Provides for a Jury Trial in All Misdemeanor Criminal Prosecutions.
- C. Whether the Circuit Court of Rankin County, Mississippi, Erred in Finding the Defendant Guilty Against the Weight and Sufficiency of the Evidence Presented at Trial.

II. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case involves the conviction of first offense Driving Under the Influence (DUI), Speeding, and Careless Driving based upon the officer's observations of the Defendant at the time of the arrest and upon the results of an Intoxilizer test.

B. COURSE OF THE PROCEEDINGS

After a bench trial on August 25, 2005, Defendant Wilkins was convicted of First Offense DUI, Speeding, and Careless Driving by the Municipal Court of the City of Florence, Mississippi. Defendant Wilkins appealed and filed a Motion for Jury Trial in the County Court of Rankin County, Mississippi. On January 31, 2006, the County Court of Rankin County, Mississippi entered an Order Denying Defendant Wilkins' Motion for Jury Trial.

After a *de novo* bench trial on February 3, 2006, the County Court of Rankin County, Mississippi likewise found Defendant Wilkins guilty of First Offense DUI, Speeding, and Careless Driving.

On March 2, 2006, Defendant Wilkins filed his Notice of Appeal with the Rankin County Circuit Court, same appealing the denial of his Motion for a Jury Trial in the County Court of Rankin County, Mississippi. Upon review of Defendant Wilkins' appellate brief and other relevant evidence, the Rankin County Circuit

Court subsequently affirmed the ruling of the Rankin County Court.

On June 13, 2007 Defendant Wilkins filed his Notice of Appeal with the Supreme Court for the State of Mississippi, same appealing the denial of his Motion for a Jury Trial and subsequent conviction in the Rankin County Court.

C. FACTS

On May 22, 2005, Defendant Wilkins was stopped for speeding and careless driving within the city of Florence, Mississippi by Officer Chandler of the Florence Police Department. While effecting the traffic stop, Officer Chandler detected an odor of an alcoholic beverage on Defendant Wilkins' breath, and observed that Defendant Wilkins' eyes were bloodshot and that his speech was slurred.

Officer Chandler requested that Defendant Wilkins perform three field sobriety tests – the eye nystagmus, the one-leg stand, and the 9-step heel-to-toe. Defendant Wilkins informed Officer Chandler that his performance on the examinations would be impaired due to a pre-existing knee injury. Defendant Wilkins' performance was impaired. It should be noted that not all of the tests performed required Defendant Wilkins to use his knee.

Subsequent to the three field sobriety tests, Officer Chandler administered a breath test upon Defendant Wilkins, which indicated a BAC of .09%. At that time, Officer Chandler arrested Defendant Wilkins and Defendant Wilkins was charged with First Offense DUI, Speeding, and Careless Driving.

III. SUMMARY OF THE ARGUMENT

Defendant Wilkins appeals to this Court claiming that in Denying his Motion for

a Jury Trial, the County Court of Rankin County, Mississippi violated his constitutional right to Equal Protection under the Fourteenth Amendment of the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment requires similar treatment for all classes of individuals in similar situations. *Cox v. City of Jackson*, 343 F.Supp.2d. 748 (S.D. Miss. 2004). In the instant case, the location of the traffic stop determined whether Defendant Wilkins was entitled to a jury trial. Had the stop occurred in an unincorporated area of Rankin County, this matter would have been subject to the jurisdiction of the Rankin County Justice Court. *Miss. Code Ann.* § 11-9-143 (1972, as amended).

Both the Mississippi Supreme Court and the Mississippi Court of Appeals have ruled that Defendants have no constitutional right to a jury trial for "petty crimes", or those where the potential sentence for their crime is six months of incarceration or less. *Harkins v. State*, 735 So.2d 317, 318 (Miss., 1999); *Case v. State of Mississippi*, 817 So.2d. 605, 607 (COA 2002). The Mississippi Constitution of 1890 makes no provision to deny a jury trial in a "petty" case, when the criminal prosecution is based upon indictment or information, as it is in the instant case. *Miss. Const. Art. 3, Section 26*. The denial of a jury trial for "petty crimes" is based upon several United States Supreme Court rulings that examined other crimes with penalties of less than six months and a fine of less than \$5,000. *Harkins* at 318; *Case* at 607. Those cases fail to take into account a similar statutory scheme as experienced in Mississippi, where a Defendant is entitled to a jury trial by operation of statute in one Court but not in another Court.

Defendant Wilkins further appeals to this Court claiming that in Denying his Motion for a Jury Trial, the County Court of Rankin County, Mississippi violated his right to Substantive Due Process under the United States Constitution and the Mississippi Constitution. Defendant Wilkins bases this claim upon the seemingly contradictory Uniform Circuit and County Court Rules (UCCCR) 10.01 and 12.02. The State disagrees with this analysis.

Rule 10.01 serves only to define the number of jurors that will be used in Circuit and County Court misdemeanor trials, if and when a jury is utilized. Rule 12.02(c) allows the Court to determine when a jury trial shall be held in misdemeanor cases.

Rule 12.02(c), however, has not been fully tested or examined by the Mississippi Supreme Court or Court of Appeals as to its applicability in First Offense DUI trials in light of the statutory scheme which provides for jury trials, upon demand, in Justice Court but not in Municipal Court.

Defendant Wilkins further appeals to this Court claiming that the County Court of Rankin County, Mississippi found him guilty against the weight and sufficiency of the evidence. The State denies this argument.

Wilkins claims that the verdict of the Rankin County Court was against the weight and sufficiency of the evidence presented at trial, and claims that purported "discrepancies" in Officer Chandler's testimony "would tend to affect the credibility of his testimony." The County Court Judge, sitting as fact finder, weighed the credibility of Officer Chandler and the entirety of the evidence presented at trial and found Defendant Wilkins guilty. Despite Wilkins' strong belief that "he would be found not guilty" if this case were presented to a jury, that same jury could

equally weigh and review the evidence presented at trial and find him similarly guilty of the offenses for which he appeals.

IV. ARGUMENT

- A. *Whether the Circuit Court of Rankin County, Mississippi, Violated the Defendant's Right to Equal Protection Under the Mississippi Constitution, in Failing to Grant the Defendant's Motion for Jury Trial Based on the Fact that a Similarly Situation Person in Justice Court is Guaranteed the Right to a Jury Trial While a Person in Municipal Court is Denied that Same Right.*

Defendant Wilkins appeals to this Court claiming that in the Opinion and Order Affirming Lower Court Convictions, the Circuit Court of Rankin County, Mississippi violated his constitutional right to Equal Protection under the Fourteenth Amendment of the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment requires similar treatment for all classes of individuals in similar situations. *Cox v. City of Jackson*, 343 F.Supp.2d. 748 (S.D. Miss. 2004). "Analysis of an equal protection challenge involves the following determinations: (1) the character of the classifications, (2) the individual rights affected by the classifications employed, and (3) the state interests articulated in support of the classifications." *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So.2d 768, 776 (Miss., 1994) (Citing *Dunn v. Blumstein*, 405 U.S. 330, 335, 92 S.Ct. 995, 999 (1972)).

In the instant case, the location of the traffic stop determined whether Defendant Wilkins was entitled to a jury trial. Had the stop occurred in an unincorporated area of Rankin County, this matter would have been subject to the jurisdiction of the Rankin County Justice Court. Mississippi Statutes provide for

the right of trial by jury in Justice Courts:

On or before the return day of the process either party may demand a trial by jury, and thereupon the justice of the peace shall order the proper officer to summon six persons, competent to serve as jurors in the circuit court, to appear immediately, or at such early day as he may appoint, whether at a regular term or not, who shall be sworn to try the case; but each party shall be entitled to challenge peremptorily two jurors, and as many more as he can show sufficient cause for. If a sufficient number of jurors shall not appear, others may be summoned until a jury is made up, to consist of six, against whom legal objections shall not exist. If the jury fail to agree, it may be discharged and another jury summoned, and so on until a verdict is obtained, and judgment shall be entered by the justice on the verdict.

Miss. Code Ann. § 11-9-143 (1972, as amended). An analogous statutory provision does not exist for those, such as Defendant Wilkins, who are tried in Municipal Court. As Defendant Wilkins was stopped within the City of Florence and not in an unincorporated area, he was subject to the jurisdiction of the Florence Municipal Court instead of the Rankin County Justice Court. Because of the location of his crime, he was afforded no right to a jury trial. By its construction, the Mississippi Code affords similarly situated individuals differing rights to a jury trial.

Relying upon *Blanton v. City of North Las Vegas*, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989); *Lewis v. United States*, 518 U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); and *Baldwin v. New York*, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970), the Mississippi Supreme Court has previously ruled that Defendants have no constitutional right to a jury trial if the potential sentence for their crime is six months of incarceration or less. *Harkins v. State*, 735 So.2d 317, 318 (Miss., 1999). The Mississippi Court of Appeals has relied upon the same

authority to reach a similar decision. *Case v. State of Mississippi*, 817 So.2d. 605, 607 (COA 2002). *Blanton* further explains that the basis for the denial of such jury trials, is that the 1989 Nevada Legislature, in establishing a maximum penalty of six months of incarceration, or, in the alternative, 48 hours of community work while identifiably dressed as a DUI offender in addition to a fine of up to \$1,000, a 90 day license suspension, and alcohol abuse education is that the legislature, in selecting such a limited maximum incarceration and fine considered the crime of first offense DUI a petty crime. *Blanton* at 540 (see also *Duncan v. Louisiana*, 391 U.S. 145, 159, 88 S.Ct. 1444, 1452, 20 L.Ed.2d 491 (1968); see also *District of Columbia v. Clawans*, 300 U.S. 617, 624, 57 S.Ct. 660, 661, 81 L.Ed. 843 (1937); and *Callan v. Wilson*, 127 U.S. 540, 557, 8 S.Ct. 1301, 1307, 32 L.Ed. 223 (1888)). *Blanton* did consider increased penalties for additional DUI offenses, it did not consider the Mississippi statutory scheme, or one similar, that creates two classes of defendants – one entitled to a jury trial while the other is not due to the location in which they committed their crime – for First Offense DUI.

Wilkins further argues that the Mississippi Constitution of 1890 makes no provision to deny a jury trial in a "petty" case, when the criminal prosecution is based upon indictment or information. *Miss. Const. Art. 3, Section 26*. In the instant case, Defendant Wilkins was prosecuted based upon information – the affidavit of Officer Chandler.

B. Whether the Circuit Court of Rankin County, Mississippi, Violated the Due Process Clause of the United States Constitution and the Mississippi Constitution in Denying the Defendant's Motion for Jury Trial under uniform Circuit and

County Court Rule 12.02 When Uniform Circuit and County Court Rule 10.01 Provides for a Jury Trial in All Misdemeanor Criminal Prosecutions.

Defendant Wilkins appeals to this Court claiming that in the Opinion and Order Affirming Lower Court Convictions, the Circuit Court of Rankin County, Mississippi violated his constitutional right to Equal Protection under the Fourteenth Amendment of the United States Constitution and the Mississippi Constitution. Defendant Wilkins bases this claim upon the seemingly contradictory Uniform Circuit and County Court Rules (UCCCR) 10.01 and 12.02. The State disagrees with this analysis.

UCCCR 10.01 serves only to define the number of jurors that will be used in Circuit and County Court misdemeanor trials, if and when a jury is utilized. "In all criminal misdemeanor actions tried in county court a six (6) person jury shall be used whether the case originated in county court or was appealed from lower court." *MS R Unif. Cir. and Cty. Ct. Rule 10.01.*

UCCCR 12.02(c) allows the Court to determine when a jury trial shall be held in misdemeanor cases. It states, in its pertinent part, that "[i]n appeals from justice or municipal court when the maximum possible sentence is six months or less, the case may be tried without a jury at the court's discretion." *MS R Unif. Cir. and Cty. Ct. Rule 12.02(c).*

When examining the potential for a conflict in UCCCR 12.02(c) and UCCCR 10.01, the Mississippi Supreme Court found that:

[UCCCR 12.02(c)] thus only grants the trial court discretion to deny a defendant's request for a jury trial in cases in which the maximum possible sentence is six months or less. This

provision is based upon United States Supreme Court decisions presumption that offenses carrying maximum sentences of six months or less are 'petty offenses' to which the Sixth Amendment right to trial by jury does not apply.

Harkins v. State at 318 (referencing *Blanton v. City of North Las Vegas*, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989); *Lewis v. United States*, 518 U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); and *Baldwin v. New York*, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970)).

In *Harkins*, the Supreme Court did not examine the applicability of *Blanton*, *Lewis*, and *Baldwin* to the statutorily constructed two-tiered system of Mississippi Justice and Municipal Courts, one of which allows jury trials and the other which denies them to individual defendants based solely upon the jurisdiction in which their offense was committed, as Mr. Harkins was on trial for Second Offense DUI, a crime that allowed for imprisonment in excess of six months, but was still denied his right to a jury trial. *Harkins* at 318.

The purported conflict between UCCCR 10.01 and 12.02 does not grant the right of a jury trial and then seemingly snatch it away. Instead, UCCCR 10.01 and 12.02 define the number of jurors that are to be used in a misdemeanor trial, if a jury is utilized, and determine those misdemeanor cases in which the Court has the discretion to utilize or fail to utilize the services of a jury. UCCCR 12.02(c), however, has not been fully tested or examined by the Mississippi Supreme Court or Court of Appeals as to its applicability in First Offense DUI trials in light of the statutory scheme which provides for jury trials, upon demand, in Justice Court but not in Municipal Court.

C. *Whether the Circuit Court of Rankin County, Mississippi, Erred in Finding the Defendant Guilty Against the Weight and Sufficiency of the Evidence Presented at Trial.*

Defendant Wilkins appeals to this Court claiming that the County Court of Rankin County, Mississippi found him guilty against the weight and sufficiency of the evidence. The State denies this argument.

The Court "will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So.2d 836, 844 (Miss.,2005) (Citing *Herring v. State*, 691 So.2d 948, 957 (Miss.1997)). Wilkins claims that the verdict of the Rankin County Court was against the weight and sufficiency of the evidence presented at trial, and claims that purported "discrepancies" in Officer Chandler's testimony "would tend to affect the credibility of his testimony." An appellate Court should disturb the verdict only when it is "so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice..." *Humphrey v. State*, 759 So.2d 368, 386-387 (Miss.,2000) (Citing *Pleasant v. State*, 701 So.2d 799, 802 (Miss.1997)). Such an unconscionable injustice has not occurred in this matter. The County Court Judge, sitting as fact finder, weighted the credibility of Officer Chandler and the entirety of the evidence presented at trial and found Defendant Wilkins guilty. Despite Wilkins' strong belief that "he would be found not guilty" if this case were presented to a jury, that same jury could equally weigh and review the evidence presented at trial and find him similarly guilty of the offenses for which he appeals.


V. CONCLUSION

In conclusion, the State of Mississippi has created a statutory scheme that creates a two-tiered class of First Offense DUI offenders. Based upon the location of the offense, Defendants whose cases are heard in Justice Court are entitled to a jury trial while those whose cases are heard in Municipal Court are not. The case law upon UCCCR 12.02(c), which denies the right to a jury trial to those who are charged with misdemeanors carrying a possible term of imprisonment of less than six months, does not contemplate the two-tiered structure of the right, or lack thereof, to a jury trial in Justice and Municipal Courts. While Defendant Wilkins was convicted in accordance with the weight and sufficiency of the evidence presented to the County Court of Rankin County, Mississippi, even if Wilkins is entitled to a jury trial of his peers, the error was harmless.

THIS, the 13th day of July, 2007.

RESPECTFULLY SUBMITTED,

THE CITY OF FLORENCE, MISSISSIPPI



DAVID RINGER, ATTORNEY FOR THE
CITY OF FLORENCE, MISSISSIPPI

CERTIFICATE OF SERVICE


I, David Ringer, Prosecuting Attorney for the City of Florence, Mississippi, do hereby certify that I have this day mailed by first class United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee, to the following counsel of record at his/her usual address of:

J. Edward Rainer, Esq.
Rainer Law Firm, PLLC
Post Office Box 258
Brandon, Mississippi 39043

Hon. Samac Richardson
Circuit Court Judge
20th Judicial District
Post Office Box 1599
Brandon, Mississippi 39043

Hon. Kent McDaniel
County Court Judge
Post Office Box 1599
Brandon, Mississippi 39043

THIS, the 13th day of July, 2007.



DAVID RINGER, ATTORNEY FOR THE
CITY OF FLORENCE, MISSISSIPPI

DAVID RINGER, MSB # [REDACTED]
PROSECUTING ATTORNEY
FOR THE CITY OF FLORENCE
125 EAST MAIN STREET
POST OFFICE BOX 737
FLORENCE, MISSISSIPPI 39073
(601) 845-7349 / FAX (601) 845-6799