

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

**REGINALD FOWLER**

**APPELLANT**

**v.**

**2007-KM-00881-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

**APPEAL FROM THE FINAL JUDGMENT OF THE CIRCUIT COURT OF  
TUNICA COUNTY, MISSISSIPPI  
ENTERED MAY 1, 2007**

**ORAL ARGUMENT REQUESTED**

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**ATTORNEY FOR APPELLANT,  
REGINALD FOWLER**

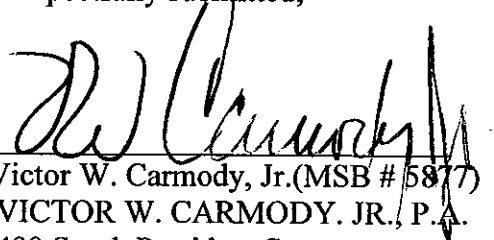
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## CERTIFICATE OF INTERESTED PARTIES

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

1. State of Mississippi;
2. Reginald Fowler, Appellant;
3. Honorable Charles B. Graves, Esq., Counsel for Appellee;
4. Honorable Victor W. Carmody, Jr., Esq.; Counsel for Appellant;
5. Honorable Albert B. Smith, Circuit Court Judge for Tunica County.

Respectfully submitted,



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## **STATEMENT OF THE ISSUES**

- I. THE CIRCUIT COURT OF TUNICA COUNTY ERRONEOUSLY DENIED APPELLANT HIS RIGHT TO A TRIAL DE NOVO ON THE MERITS FOLLOWING HIS APPEAL FROM THE JUSTICE COURT, CONTRARY TO MISSISSIPPI LAW.**
  - I(A). IS IT ERROR FOR A CIRCUIT COURT TO DENY A TRIAL DE NOVO TO AN APPELLANT WHO PLEADED GUILTY IN A JUSTICE OR MUNICIPAL COURT?**
  - I(B). DOES A DEPRIVATION OF THE RIGHT TO FUNDAMENTAL FAIRNESS INHERENT IN THE DUE PROCESS CLAUSE RESULT WHEN A CIRCUIT COURT IMPROPERLY DENIES AN APPELLANT THE RIGHT TO A TRIAL DE NOVO?**

## **STATEMENT OF THE CASE**

### **A. Nature of Case**

This is an appeal from the final judgment of the Circuit Court of Tunica County, Mississippi in favor of the State of Mississippi ("State"), in which the Circuit Court affirmed the verdict of the Justice Court of Tunica County, which found the Appellant, Reginald Fowler ("Fowler"), guilty of the offenses of Careless Driving and Driving Under the Influence, First Offense. The Circuit Court entered an Order which dismissed Fowler's appeal for a trial de novo, and affirmed the Justice Court's verdict. (R. at 33-34; R.E. at 3-4.)

### **B. Course of Proceedings and Disposition in the Court Below**

This case involves criminal charges brought by the State of Mississippi against Reginald Fowler. Fowler was charged with the offenses of Careless Driving and Driving Under the Influence, First Offense, on or about November 23, 2006, for an incident that occurred within Tunica County, Mississippi. (R. at 9-10.) He subsequently pleaded guilty to the charges and was found guilty in the Justice Court of Tunica County on December 20, 2006. (R. at 14.) Fowler signed a document stating that he waived his right to an attorney in accordance with the entry of his guilty plea. (R. at 13; R.E. at 6.)

Fowler thereafter retained counsel and appealed the Justice Court's verdict of guilty to the Circuit Court of Tunica County. (R. at 4.) The appeal was set to be heard as a trial de novo in the Circuit Court for the date of April 10, 2007. (R. at 17; R.E. at 5.) On this date, court was commenced in the Circuit Court and the Court denied a trial de novo for Fowler, instead ruling that Fowler had no right to appeal for a trial de novo as a result of his guilty plea in the Justice Court. (R. at 33-34; R.E. at 3-4.)



Being aggrieved by this judgment, Fowler filed a Motion For Reconsideration in the Circuit Court on April 25, 2007. (R. at 36-42.) On May 1, 2007, the Circuit Court entered an Order which denied Fowler's Motion for Reconsideration. (R. at 43; R.E. at 2.) Fowler, aggrieved by the disposition of the Circuit Court, now appeals to this Court. (R. at 45.)

### **C. Statement of Facts Relevant to the Issues**

On or about November 23, 2006, Reginald Fowler was arrested and charged with the offenses of Careless Driving and Driving Under the Influence in Tunica County, Mississippi. (R. at 9-10.) He subsequently pleaded guilty to the charges and was found guilty in the Justice Court of Tunica County on December 20, 2006. (R. at 14.) Fowler signed a document stating that he waived his right to an attorney in accordance with the entry of his guilty plea. (R. at 13; R.E. at 6.)

Fowler thereafter retained counsel and appealed the Justice Court's verdict of guilty to the Circuit Court of Tunica County. (R. at 4.) In compliance with Uniform Rules of Circuit and County Court Practice 12.02(A), Fowler filed a timely Notice of Appeal as well an appeal and cash bond. (R. at 4.) The appeal was set to be heard as a trial de novo in the Circuit Court for the date of April 10, 2007. (R. at 17; R.E. at 5.) On this date, court was commenced in the Circuit Court and the Court denied a trial de novo for Fowler, instead ruling that Fowler had no right to appeal for a trial de novo as a result of his guilty plea in the Justice Court. (R. at 33-34; R.E. at 3-4.) In open court, the Court stated, "this Court is of the position that when they plead guilty in the lower court . . . they don't have the right to appeal." (T. at 3.) The Court entered an Order which states, in pertinent part:

At a hearing before this Court on April 10, 2007, the Court determined that the Appellant had knowingly, freely, and voluntarily entered his plea of guilty and there was no evidence to

the contrary. The Court also determined that a valid waiver of counsel had been executed by the Appellant.

The Court is of the opinion that there is no valid basis to set aside the guilty plea entered by the Appellant. One possible basis may have been that he was unrepresented by counsel before the Justice Court, but he signed a waiver stating that he understood he had the right to an attorney and freely and knowingly gave up that right.

Having been given no other basis by the Appellant as to why his guilty plea was not valid, the Court hereby finds that the plea was knowingly, freely, voluntarily, and understandably given and should not be set aside.

Accordingly, the decision of the Justice Court is hereby AFFIRMED. The appeal in this matter is hereby DISMISSED.

(R. at 33-34; R.E. at 3-4.)

Being aggrieved by this judgment, Fowler filed a Motion For Reconsideration in the Circuit Court on April 25, 2007. (R. at 36-42.) On May 1, 2007, the Circuit Court entered an Order which denied Fowler's Motion for Reconsideration. (R. at 43; R.E. at 2.) Fowler, aggrieved by the disposition of the Circuit Court, now appeals to this Court. (R. at 45.)

## **SUMMARY OF THE ARGUMENT**

The Circuit Court of Tunica County erroneously denied Fowler's right to a trial de novo on the merits following his appeal from the Justice Court for the following reasons. Fowler entered a plea of guilty to the offenses of Careless Driving and Driving Under the Influence in the Justice Court, and thereafter perfected an appeal to the Circuit Court pursuant to the Uniform Rules of Circuit and County Court Practice. Mississippi, by statute and rules of procedure, allows one adjudged guilty in a justice or municipal court the right to appeal to the County Court (or Circuit Court, if there is not a County Court, such as in this case). Further, Mississippi case law clearly recognizes the right of one to appeal a justice or municipal court conviction, even if one has pleaded guilty in a justice or municipal court. Fowler submits that the denial of such a right results in a deprivation of one's constitutionally protected right to fundamental fairness inherent in the right to due process.

For these reasons, Fowler prays that this Court will reverse the decision of the Circuit Court, and hold that he is entitled to a trial de novo on the merits.

## ARGUMENT

The appropriate standard of review for findings of a trial judge sitting without a jury is the substantial evidence/clearly erroneous test. *Bray v. City of Meridian*, 723 So. 2d 1200, 1202 (Miss. App. 1998). Thus, an appellate court must look to “the entire record and ‘must accept that evidence which supports or reasonably tends to support the findings of fact made below, together with all reasonable inferences therefrom and which favor the lower court’s findings of fact.’” *Jones v. Jones*, 760 So. 2d 828, 829 (Miss. App. 2000). Accordingly, the findings of a circuit court judge, sitting without a jury, “are safe on appeal where they are supported by substantial, credible, and reasonable evidence.” *Id.*

**I. THE CIRCUIT COURT OF TUNICA COUNTY ERRONEOUSLY DENIED APPELLANT HIS RIGHT TO A TRIAL DE NOVO ON THE MERITS FOLLOWING HIS APPEAL FROM THE JUSTICE COURT, CONTRARY TO MISSISSIPPI LAW.**

**I(A). IS IT ERROR FOR A CIRCUIT COURT TO DENY A TRIAL DE NOVO TO AN APPELLANT WHO PLEADED GUILTY IN A JUSTICE OR MUNICIPAL COURT?**

**Mississippi Code and Uniform Rules of Circuit and County Court Practice**

Mississippi law holds that the right of one to appeal an adverse judgment of a court must be provided statutorily. *Mitchell v. Parker*, 804 So. 2d 1066 (Miss. App. 2001), rehearing denied, certiorari denied. Once the right to appeal is afforded by statute, rules of procedure which govern the right to appeal may be produced by the Supreme Court of Mississippi. *Id.* In criminal cases, Mississippi has enacted statutory and procedural law governing the right to appeal.

Section 99-35-1 of the Mississippi Code specifies that, “[i]n *all cases of conviction* of a criminal offense . . . by the judgment of a justice court, or by a municipal court . . . an appeal may be taken within forty (40) days from the date of such judgment of conviction” to the County Court, or to the Circuit Court if there is no County Court. Miss. Code Ann. § 99-35-1 (1972), as amended. (Emphasis added.)<sup>1</sup> The statutory language makes no distinction between an appellant who enters a plea of guilty or a plea of *nolo contendere* versus an appellant who is convicted after a trial on the merits. *Id.* The final sentence of § 99-35-1 states that the appellant is entitled to a trial de novo upon the appellant’s appearance in the Circuit or County Court. *Id.*

Uniform Rule of Circuit and County Court Practice 12.02(A) states, “[a]ny person *adjudged guilty* of a criminal offense by a justice or municipal court may appeal to county court, or if there is no county court having jurisdiction, then to circuit court . . . .” URCCC 12.02(A). (Emphasis added.) This procedural rule, like § 99-35-1, does not distinguish between one who has pleaded guilty, one who has pleaded *nolo contendere*, or one who is found guilty after a trial. This rule grants an appellant the right to appeal an adjudication of guilty in a justice or municipal court to the Circuit Court because the appellant was *adjudged guilty* of a criminal offense. *Id.* (Emphasis added.)

Further, Rule 12.02 states, “[t]he appeal shall be a trial de novo” and “no motions may be allowed which deprive the accused of the right to a trial on the merits.” URCCC 12.02(C). Neither the statute, § 99-1-35, nor the rule of court, URCCC 12.02(A), contain any exceptions which would prevent one from appealing a finding of guilty in a justice or municipal court to the appropriate Circuit Court regardless of how that adjudication was reached, provided that a timely

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<sup>1</sup> While Miss. Code Ann. § 99-35-1 allows forty (40) days for an appeal from the date of a judgment of a justice or municipal court, this time period has been superseded with the adoption of the Uniform Rules of Circuit and County Court Practice, adopted and effective May 1, 1995. URCCC 12.02(A) allows thirty (30) days for such an appeal.

notice of appeal is filed, as well as a cost bond and appearance bond, in accordance with the rules. Miss. Code Ann. § 99-35-1 (1972), as amended; URCCC 12.02(A).

### **Case Law**

A line of cases beginning with *Bang v. State* holds that one who appeals a judgment of guilty from a justice court in Mississippi stands before the Circuit Court having jurisdiction as any other defendant accused of a criminal offense. *Bang v. State*, 106 Miss. 824, 64 So. 734 (Miss. 1914); *Parham v. State*, 220 So. 2d 582 (Miss. 1969); *Thigpen v. State*, 206 Miss. 87, 39 So. 2d 768 (Miss. 1949). Moreover, one's right to appeal a conviction in a justice court after entering a plea of guilty has been explicitly recognized in Mississippi jurisprudence.

The first reported opinion on this issue is *Neblett v. State*, which was an appeal from the Circuit Court of Tunica County to the Supreme Court of Mississippi. *Neblett v. State*, 75 Miss. 105, 21 So. 799 (Miss. 1897). In *Neblett*, the Supreme Court reversed the Circuit Court's dismissal of Neblett's appeal from his Justice Court conviction, where he pleaded guilty, and held that the law "makes no exceptions as to appeals, and provides that the trial in the circuit court shall be, not upon the justice court record, but de novo." *Id.*

In *Jenkins v. State*, the Supreme Court cited *Neblett* wherein it held that there is no prohibition against appealing to the Circuit Court following the entry of a guilty plea in a justice court. *Jenkins v. State*, 98 Miss. 717, 54 So. 158 (Miss. 1911), citing *Neblett*, 75 Miss. 105, 21 So. 799. See also *Little v. Wilson*, 189 Miss. 825, 199 So. 72, 73 (Miss. 1940) (citing *Neblett* and *Jenkins* in holding that notwithstanding one's plea of guilty in a justice court, he or she has the right to appeal to the Circuit Court for a trial de novo), and *Ball v. State*, 202 Miss. 405, 409, 32 So. 2d 195, 196 (Miss. 1947) (one who pleads guilty in justice court does not thereby estop himself from appealing to the Circuit Court).

### **The Case *Sub Judice***

In the case *sub judice*, the Circuit Court affirmed the Justice Court's adjudication of guilty on the charges of Careless Driving and Driving Under the Influence, and dismissed the appeal for a trial de novo. (R. at 33-34; R.E. at 3-4.) In its Order, the Circuit Court relies largely on the rationale that Fowler signed a form which waived his right to counsel in the Justice Court, as well as finding that Fowler entered his plea knowingly, freely, voluntarily, and understandingly. (R. at 33; R.E. at 3.)

The form which Fowler signed in the Justice Court on December 20, 2006 states, in pertinent part, "You have the right to hire an attorney of your choice to represent you on the said charge(s). If because of your poverty you are financially unable to hire an attorney of your choice, the Court will select and appoint on [sic] to represent you." (R. at 13; R.E. at 6.) The next paragraph of this form indicates that the signee has read and understood that he or she will be waiving his or her right to counsel, and is doing so without any promises or threats having been made. (R. at 13; R.E. at 6.) This form is silent regarding whether the accused is giving up any rights to appeal upon the entry of a plea of guilty. (R. at 13; R.E. at 6.)

Regardless of the fact that Fowler waived his right to be represented by counsel in the Justice Court, the clear matter is that Mississippi law allows one the right to appeal a guilty verdict in a justice court even if one pleads guilty. Section 99-35-1 and URCCC 12.02(A) provide no exceptions which bar appeals in such situations, and the Supreme Court of Mississippi has, in the past, recognized this right.

**I(B). DOES A DEPRIVATION OF THE RIGHT TO FUNDAMENTAL FAIRNESS INHERENT IN THE DUE PROCESS CLAUSE RESULT WHEN A CIRCUIT COURT IMPROPERLY DENIES AN APPELLANT THE RIGHT TO A TRIAL DE NOVO?**

Fowler submits an article from the American Law Reports for this Court's consideration.

Although not binding on this Court, it is persuasive on this issue of rare impression in Mississippi law:

In support of the view that a right of appeal exists despite the plea of guilty, it has been pointed out that justice of the peace and similar inferior tribunals are not, as a rule, courts of record, nor are the magistrates trained in the law. To preclude the right of appeal after a plea of guilty, some courts reason, would mean that a person would have to submit to a trial or else lose his rights of appeal. In other words, he would be forced to undergo the expense of two trials, although he may have predetermined that he would not abide the decision of the inferior court. Similarly, the government would have to carry the extra expense. Such courts appear to favor a doctrine which would permit the accused to plead guilty, thus saving the expense of trial, and then by appealing, have the actual trial in the appellate tribunal. A further argument for permitting an appeal after a plea of guilty is the requirement that, since the inferior courts are not courts of record, the cause be heard anew without regard to what transpired in the lower court. Since the trial upon appeal is de novo, it is reasoned, the plea of guilty, being a part of the record, should not be considered.

C.S. Parnell, *Plea of Guilty in Justice of the Peace of Similar Inferior Courts as Precluding Appeal*, 42 A.L.R.2d 995 (1955).

Although Mississippi justice courts are considered courts of record, there is no statutory provision which requires that official court reporters be provided to justice courts. Miss. Code Ann. § 9-11-15 (1972), as amended. For this reason, the Mississippi Code provides that the attorney of record may utilize a recording or stenographical device, at the attorney's own expense, to record the proceedings. Miss. Code Ann. § 9-13-32 (1972), as amended. As a result, it is a routine practice among attorneys practicing before the justice courts to have the



proceedings recorded at their own expense. This lesser degree of formality in the justice courts of Mississippi (i.e., no official court reporter is provided) is a sound basis for the allowance of appeals for trial de novo in the Circuit Courts, where court reporters are provided and where the proceedings are cloaked in formality.

The denial of a trial de novo in the Circuit Court, even after the entry of a plea of guilty in the lower court, deprives an appellant of his or her right to fundamental fairness that is inherent in the due process clause of the state and federal constitutions. U.S. Const. amend. XIV; Miss. Const. art. III, § 14. “Fundamental fairness” has been defined as “the touchstone of due process,” which was recently reiterated in dicta by this Court. *Pruitt v. State*, 953 So. 2d 302, 305 (Miss. App. 2007), quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 786, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Thus, fundamental fairness requires that one who appeals a judgment of guilty in a justice or municipal court must have an opportunity to present his defense fairly and fully in a trial de novo in the Circuit Court.

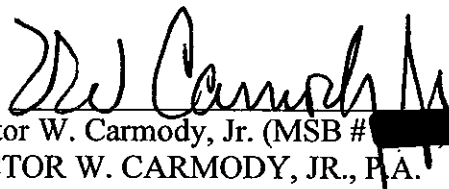

## CONCLUSION

For the above and foregoing reasons, the Circuit Court of Tunica County, Mississippi erred when it improperly denied Reginald Fowler his right to a trial de novo. By statute, Mississippi law gives one the right to appeal a criminal conviction rendered in a justice court, and there are no statutory or procedural prohibitions against appealing for a trial de novo, even if the appellant pleaded guilty in the lower court.

Further, Mississippi case law has recognized that an appellant is not estopped from appealing an adjudication of guilty in a lower court for a trial de novo in the Circuit Court, notwithstanding that the appellant pleaded guilty. A denial of such a right infringes upon fundamental fairness that is the touchstone of due process. For the reasons specifically set forth above, Reginald Fowler respectfully requests that this Court reverse the Order of the Circuit Court of Tunica County and order that Fowler is entitled to a trial de novo on the merits.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Victor W. Carmody, Jr., counsel for Reginald Fowler, do hereby certify that I have this day delivered a true and correct copy of the foregoing Brief of Reginald Fowler in a manner prescribed by law to:

Betty Sephton  
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P.O. Box 22847  
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Honorable Albert B. Smith III  
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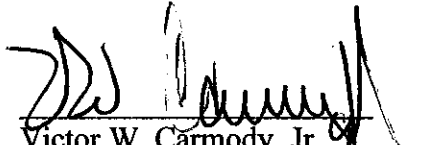
This service effective this the 2<sup>nd</sup> day of November, 2007.

- ( ) Handing same to said attorney(s).
- ( ) Delivering same to the office of said attorney(s).
- ( ) Depositing a copy thereof in the United States Mail, postage prepaid and addresses as indicated above.

X

Depositing a copy thereof in the United States Mail, certified, return receipt, restricted delivery, address correction requested, postage prepaid and addressed as indicated above.

( ) Faxing as well as mailing.

  
Victor W. Carmody, Jr.  
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