

The Mississippi Jury Verdict Reporter

The Most Current and Complete Summary of Mississippi Jury Verdicts

July 2012

Statewide Jury Verdict Coverage

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Mississippi including court, division, presiding judge, parties, case number, attorneys and results. Notable results from the southern region, including Memphis and New Orleans, are also covered.

* * * Introducing * * *

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Auto Negligence - A drunk driver traveling in the wrong lane crashed into an oncoming car late in the evening of New Year's Eve – the crash killed an infant and injured both his sister and father – the drunk (whose BAC was .13) was hit with punitive damages by a Columbia jury in the sum of \$500,000

Woodward v. Kennedy, 10-214

Plaintiff: William H. Jones, Petal, Michael V. Ratliff, *Johnson Hall & Ratliff*, Hattiesburg and Paul D. Snow, III, Jackson

Defense: Lawrence E. Hahn, *McNeese & Hahn*, Columbia

Verdict: \$1,500,000 for plaintiffs

Court: **Marion**

Judge: Anthony Mazingo

Date: 5-22-12

It was after midnight on New Year's Eve in 2009 and Richard Kennedy (an Angie, LA resident) was driving drunk on Hwy 98 near Foxworth. His BAC would later be measured at .13. He was traveling in the wrong lane in a Chevrolet Silverado pick-up. An instant later he collided head-on with an oncoming SUV driven by Brandon Woodward. Passengers in the Woodward vehicle were his daughter,

Civil Rights - As the plaintiff arrived at a birthday party for her son, a ruckus broke out – 911 was called – minutes later (after the troublemakers had left), the plaintiff was arrested after she told responding deputy sheriffs (who she thought were rude) that she'd get a lawyer

Owens v. Mayhew, 1:09-180

Plaintiff: Jim D. Waide, III and Rachel M. Pierce, *Waide & Associates*, Tupelo
 Defense: William C. Murphree, *Mitchell McNutt & Sams*, Tupelo and Gary C. Carnathan, *Carnathan & McAuley*, Tupelo

Verdict: Defense verdict on liability

Federal: **Aberdeen**

Judge: Sharion Aycock

Date: 5-23-12

It was the evening of 8-2-08 and a private birthday party was being conducted for Andrew Owens. His mother (Torllie) who works two jobs in health care as a nurse assistant, arrived at home to find the party underway. It seems that several uninvited guests were disorderly. Torllie called 911 to help break up the ruckus.

Before Lee County deputy sheriffs could arrive, the troublemakers had left. Andrew was in the process of cooling off, taking a short walk with his father. As Andrew did this, the deputies arrived. Andrew would recall a deputy (Michael Mayhew) suddenly and without provocation struck him with a flashlight.

Torllie saw this and attempted to intervene. She would recall Mayhew then cursed her. An outraged Torllie replied that she'd get a lawyer. At this suggestion, Mayhew purportedly became enraged and roughly arrested her.

In this lawsuit against the sheriff's office, the mother-son plaintiffs presented slightly different claims. Andrew alleged state-law assault, Mayhew striking him without provocation. Torllie's claim was more nuanced, she alleging a First Amendment violation, Torllie arresting her because of her speech expressing that she would get a lawyer.

Mayhew first defended the assault claim. He cited that as he approached Andrew, Andrew drew his fist as if to

strike him. Mayhew responded with a brachial stun blow to subdue Andrew. Similarly, it wasn't Torllie's speech that motivated the arrest – Mayhew recalled she jumped on him as he tried to deal with Andrew.

The jury's verdict on the civil rights count (state-law assault) was for the deputy sheriff on the claim presented by Andrew. Torllie's First Amendment count regarding the arrest was also rejected. A defense judgment was entered.

Premises Liability - As the plaintiff shopped at a pharmacy, she was injured when she slipped and fell on a shiny (and just waxed) floor

Eason v. Walgreen, 3:11-190

Plaintiff: Gerald L. Kucia, *Morgan & Morgan*, Jackson

Defense: James P. Streetman, III and Leah N. Ledford, *Scott Sullivan Streetman & Fox*, Jackson

Verdict: Defense verdict on liability

Federal: **Jackson**

Judge: Daniel P. Jordan, III

Date: 6-5-12

Mona Eason shopped with a co-worker for business supplies on 1-26-10 at a Walgreen in Jackson. Walking into the store, Easton remarked to her co-worker that the floor seemed exceptionally shiny. An instant later she slipped and fell. Eason sustained a broken hip in the resulting fall.

Eason sued Walgreen and alleged negligence by its cleaning subcontractor in waxing the floor to a clean and slippery finish. It cited proof that the night before her fall, the cleaning firm had waxed the floor.

Walgreen defended the case that Eason simply fell. It noted its receipt showed that the floor was cleaned (overnight) after Eason had fallen. The slip indicated the floor was cleaned from 10:50 to 1:26. Eason countered that the times were not conclusive, the slip being read (just as easily) that it was cleaned the night before she fell.

While this case represented an ordinary premises liability claim, the court treated it with an unusual level of secrecy. There was a pre-trial order. It is

sealed. There were exhibits introduced at trial. Sealed. The court prepared minutes about the conduct of the trial. Sealed.

Finally, the jury returned a verdict. It too was sealed. [Ed. Note -As we have discussed, the Southern District of Mississippi conducts the most secret civil jury trials. Anywhere in the United States. Seriously. And they know it. Wow.]

The court's instructions asked if Walgreen had proven each "essential element" of her claim. It is learned that the answer was no and Eason took nothing. A defense judgment was entered.

Medical Malpractice - Following a major pelvic surgery to treat prostate cancer, the plaintiff blamed a hospital nurse for permitting a Penrose drain (a rubber tube) to retract into his abdomen, the purported error leading to a second surgery to remove the drain

Willis v. Singing River Hospital, 09-102

Plaintiff: Mark V. Knighten, Pascagoula
 Defense: Thomas L. Musselman, *Dogan & Wilkinson*, Pascagoula

Verdict: Defense verdict on liability (Bench)

Court: **Jackson**

Judge: Dale Harkey

Date: 1-27-12

Borden Willis, then age 79, was treated for prostate cancer in December of 2003. As a part of that treatment, he underwent a complex pelvic surgery on 12-17-03 at Singing River Hospital. The surgery was performed by Dr. Roy Duncan. Following the surgery, Penrose drains (small rubber tubes) were placed at the site of the incision.

Four days later a hospital nurse (Clark) was attempting to advance the drain – this is done little by little each day until the wound heals and involves cutting a small portion of the drain. Willis would recall that as the nurse cut the drain, she suddenly said "Uh oh." She then bandaged the area and left the room. Willis didn't know what the "Uh oh" meant.

A day later his surgeon found out. The drain had retracted into his abdomen. This required a second surgery to remove the drain. While Willis recovered from the surgery, he would describe it was

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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The estate has since moved the court to allocate the full \$20,000,000 against Gairhan. It has argued that there shouldn't be a reduction because Gairhan never pled comparative fault as an affirmative defense by specifically identifying Hickey. The motion has focused on the identification issue. When the record was reviewed, the motion was pending. If Gairhan has sought post-trial relief, those motions were not a part of the court record.

A Notable Arkansas Verdict

Truck Negligence - An elderly woman was killed in an icy interstate crash in West Memphis when she lost control and was struck by a tractor-trailer

Sims v. Willis Shaw Transport, 04-376
 Plaintiff: Ronald Wilson, *Wilson & Associates*, West Memphis, AR and Sheila F. Campbell, Little Rock, AR
 Defense: Richard E. Glassman and Edwin E. Wallis, III, *Glassman Edwards Wyatt Tuttle & Cox*, Memphis, TN
 Verdict: Defense verdict on liability
 Court: **Marion, Arkansas
 Crittenden Circuit Court**

Judge: Cindy Thyer

Date: 4-29-11

It was in the middle of the night on 2-26-03 and Ruby Sims, age 68, traveled on I-55 in West Memphis. A wet sleet was falling. As Sims entered the elevated portion of a concrete bridge, she encountered icy conditions.

At the same time, a Robert Boyer, a trucker for Willis Shaw Transport, was operating a tractor-trailer. He had just reentered the interstate after stopping at a weigh station. It was his recollection that it was raining – he did not see any ice on the road when he first exited the weigh station. Suddenly though as he came to

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