

THE SUPREME COURT OF ARKANSAS RECOGNIZED THAT THE PRESENTMENT OF THE ISSUE WAS RELEVANT TO ESTABLISH WHETHER THE DOCTRINE OF LAW OF THE CASE APPLIED.

In *State v. Harrison*,¹ the Supreme Court of Arkansas held that the doctrine of the law of the case does not necessarily preclude a claim of ineffective assistance if that claim was not the direct issue in question during a previous case.² The court thus clarified the standard of what is barred by res judicata in the law of the case doctrine.³

This case involved the conviction of Kenneth Harrison for the capital murder of Fulton Watson.⁴ Harrison and Watson both worked at the automobile repair shop where the murder took place.⁵ Two other employees, Jacque Snider and Shuntae Ingram, were the only direct witnesses to the crime.⁶ The decision was appealed, and the Arkansas Supreme Court affirmed Harrison's conviction.⁷

Harrison petitioned the court for postconviction relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure based on ineffective counsel.⁸ Harrison's claim for ineffective counsel included the fact that his attorney failed to discover a juvenile adjudication for one of the only two witnesses, Shuntae Ingram.⁹ The attorney failed to use this information to either impeach Ingram or develop a new defense possibly implicating Ingram in the crime.¹⁰ The Pulaski County Circuit Court granted Harrison a new trial based on his petition, and the State appealed pursuant to Rule 2(a)(3) of the Arkansas Rules of Appellate Procedure—Civil.¹¹

The state asserted the following three claims on appeal: (1) the circuit court's ruling that Harrison was prejudiced directly contradicted the Arkansas Supreme Court's decision on direct appeal that he was not prejudiced, (2) the circuit court's ruling was contrary to Rule 609 of the Arkansas Rules of Evidence,¹² and *Zinger v. State*,¹³ and (3) the circuit court's ruling was clearly erroneous.¹⁴ All of these arguments center on the issue of prejudice.¹⁵

1. 2012 Ark. 198, ___ S.W.3d ___.

2. *Harrison*, 2012 Ark. 198, ___ S.W.3d ___.

3. *Id.* at 6, ___ S.W.3d at ___.

4. *Id.* at 1, ___ S.W.3d at ___.

5. *Id.*, ___ S.W.3d at ___.

6. *Id.*, ___ S.W.3d at ___.

7. *Id.* at 2, ___ S.W.3d at ___.

8. *Harrison*, ___ S.W.3d at ___.

9. *Id.* at 2, ___ S.W.3d at ___.

10. *Id.*, ___ S.W.3d at ___.

11. *Id.* at 1, ___ S.W.3d at ___.

12. Explaining that “the court may in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible

Whenever the court makes a decision regarding ineffective counsel, it uses the two-prong test that was established in *Strickland v. Washington*¹⁶ to analyze the totality of the situation.¹⁷ The two prongs required to prove a claim for ineffective counsel are that (1) “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment,”¹⁸ and (2) “counsel’s deficient performance prejudiced the defense.”¹⁹ To satisfy the second “prejudice” prong, the party must show that there was a reasonable chance that had the deficient performance not occurred, the outcome of the case would have been different.²⁰ Both prongs must be met to satisfy a claim of ineffective assistance.²¹

The State turned to the doctrine of the law of the case to make its first point that Harrison was not prejudiced by the failure of his counsel to find and utilize the juvenile adjudication of the witness.²² The doctrine of the law of the case states that a prior decision on appeal establishes the “law of the case” if that same case is subsequently remanded or appealed again.²³ The court rejected the State’s argument on this issue claiming that the previous appeal did not address the same issues that were addressed in this appeal.²⁴ The court identified that the main issue in the previous appeal had been the prosecution’s failure to disclose the witness’s juvenile adjudication, while this appeal dealt with counsel’s failure to discover the juvenile adjudication and utilize it at trial.²⁵ Based on this distinguishing characteristic, the court acknowledged that the prejudice determination in the initial appeal was not the same as the prejudice issue in this case.²⁶ This issue was therefore not barred by the doctrine of law of the case.²⁷

The State uses Arkansas Rule of Evidence 609 and *Zinger* in attempt to show that Harrison’s counsel could not have used the evidence of the juvenile adjudication in trial.²⁸ The claim regarding Rule 609 was nonetheless

to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.” ARK. R. EVIDENCE 609.

13. 313 Ark. 70, 852 S.W.2d 320 (1993).
14. *Harrison*, 2012 Ark. 198 at 3, ___ S.W.3d at ___.
15. *Id.*, ___ S.W.3d at ___.
16. 466 U.S. 668 (1984).
17. *Harrison* 2012 Ark. 198 at 4, ___ S.W.3d at ___.
18. *Id.*, ___ S.W.3d at ___.
19. *Id.*, ___ S.W.3d at ___.
20. *Id.*, ___ S.W.3d at ___.
21. *Id.* at 5, ___ S.W.3d at ___.
22. *Id.*, ___ S.W.3d at ___.
23. *Harrison*, ___ S.W.3d at ___.
24. *Id.* at 6, ___ S.W.3d at ___.
25. *Id.* at 7, ___ S.W.3d at ___.
26. *Id.*, ___ S.W.3d at ___.
27. *Id.* at 8, ___ S.W.3d at ___.
28. *Id.*, ___ S.W.3d at ___.

invalid because the rule specifically recognizes an exception to the rule in criminal cases that would make the evidence admissible.²⁹ The *Zinger* court explained that evidence implicating another person is only admissible if it points directly to another party's guilt.³⁰ This type of evidence is inadmissible if it only points to the opportunity or possible motive of a party other than the accused.³¹ The State claimed that there was no evidence that would directly link Ingram to the crime.³² However, Ingram's own testimony about his presence at the repair shop at the time of the murder, the fact that he was one of only two witnesses, and other available evidence could be enough information if fully developed to sufficiently meet the direct-link required by *Zinger*.³³ Based on the presence of this evidence, the Arkansas Supreme Court refused to rule that the circuit court clearly erred in deciding that this theory could have been developed.³⁴

The State's last claim was that no reasonable jury could have found Harrison innocent even if the juvenile adjudication of Ingram had been used as evidence at trial.³⁵ The court acknowledged that there was evidence that both of the only two eyewitnesses' testimonies could be called into doubt.³⁶ Both witnesses' statements contained inconsistencies and both had possible biases.³⁷ The court refused to say that the circuit court's ruling on this issue was clearly erroneous.³⁸

The Arkansas Supreme Court affirmed the ruling of the circuit court in granting Harrison's postconviction relief.³⁹ The court acknowledged that it also denied some of Harrison's other requests that were not appealed within the time required by the Arkansas Rules of Appellate Procedure, both Criminal and Civil.⁴⁰

*State v. Harrison*⁴¹ highlights the importance of counsel to properly investigate a witness's role in any given crime. It also serves to highlight the small nuances between issues that can be identified when utilizing the doctrine of law of the case. The presentment of the issue may easily determine whether or not an issue is barred by res judicata.

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29. *Harrison*, 2012 Ark. 198 at 10, 201 ___ S.W.3d at ____.
30. *Id.* at 11, ___ S.W.3d at ____.
31. *Id.*, ___ S.W.3d at ____.
32. *Id.* at 12, ___ S.W.3d at ____.
33. *Id.* at 13, ___ S.W.3d at ____.
34. *Id.*, ___ S.W.3d at ____.
35. *Harrison*, 2012 Ark. 198 at 13, ___ S.W.3d at ____.
36. *Id.* at 14, ___ S.W.3d at ____.
37. *Id.*, ___ S.W.3d at ____.
38. *Id.*, ___ S.W.3d at ____.
39. *Id.* at 15, ___ S.W.3d at ____.
40. *Id.* at 15–16, ___ S.W.3d at ____.
41. 2012 Ark. 198, ___ S.W.3d ____.

