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Project which culminated in a complete revision of the Indiana Rules of Appellate Procedure, the first comprehensive review of the appellate rules in 30 years. By designation of the Chief Justice of Indiana, Judge Najam has represented the Indiana judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council since it was created following the events of September 11, 2001. He also serves on the Court Security Committee of the Judicial Conference of Indiana. Judge Najam was an original member of the Indiana Supreme Court Judicial Technology and Automation Committee, which initiated the Odyssey electronic case and financial management system for Indiana courts.

While in practice he was a member of the Bloomington Rotary Club and the Greater Bloomington Chamber of Commerce. He has also served as a Director and President of the Monroe County YMCA and as a Director and Chair of the Community Foundation of Bloomington and Monroe County. He is currently a member of the Sycamore Land Trust Advisory Board.

Judge Najam is the author of “Public School Finance in Indiana: A Critique,” published in the Indiana Law Journal, and “Caught in the Middle: The Role of State Intermediate Appellate Courts” and “Merit Selection in Indiana: The Foundation for a Fair and Impartial Appellate Judiciary,” both of which were published in the Indiana Law Review. Judge Najam is a graduate of the Indiana Graduate Program for judges, a member of the American, Indiana, and Monroe County Bar Associations, and a Fellow of the American, Indiana, and Indianapolis Bar Foundations. He is a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

Judge Najam has authored over 3,500 majority opinions for the Court.

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arguments into community settings. In February of 2006, he served as the Distinguished Jurist in Residence at Stetson University College of Law; in 2007-08, he was the Moderator of the Indianapolis Bar Association’s Bar Leader Series; in 2009, he was designated an ASTAR Science and Technology Fellow.

Over the years, Judge Bailey has served on numerous committees of the bench and bar, including as the Chair of the Indiana State Bar Association's Appellate Practice Section and as a Board Member of the Indiana Judges Association and the Indiana University McKinney School of Law Alumni Association. Currently, he is a member of the Supreme Court Committee on Rules of Practice and Procedure. Judge Bailey also serves as an adjunct professor at the University of Indianapolis.

Judge Bailey was retained on the Court of Appeals in 2000 and 2010. His wife is a professor; the couple has two adult children.

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chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission and in July 2008, she was named as Chair of that Commission. While chair, she worked with the fourteen pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been a co-chair of ICLEF’s Indiana Trial Advocacy College from 2001 to present. Judge May also serves on the Civil Instruction Committee, an Indiana Judicial Conference Committee, which has been working to translate all of the civil jury instructions into “plain English.” She frequently speaks on legal topics to attorneys, other judges, schools, and other professional and community organizations.

In 2003, Judge May was named to the American Bar Association’s Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Robert H. McKinney School of Law, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana. In 2015, Judge May became a member of the American Board of Trial Advocates. Judge May was retained on the Court of Appeals in 2010, and lives in Morgan County.

SYNOPSIS

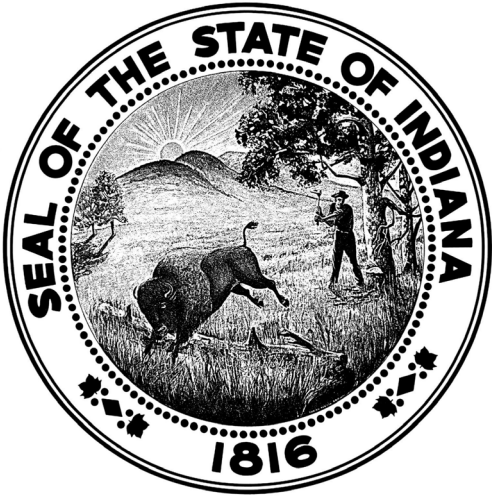
Following a forty-five-minute stand-off with Evansville Police officers, during which Maffett threatened to “blast” the K-9 unit if it were sent into Maffett’s apartment, Maffett surrendered himself to police. With a search warrant, officers then searched the apartment where Maffett had been and found a shotgun and some handgun ammunition. The State charged Maffett with Level 4 felony unlawful possession of a firearm by a serious violent felon. A jury found Maffett guilty of possession of the firearm, and Maffett admitted prior convictions that result in his being classified as a serious violent felon. Citing Maffett’s significant criminal history as an aggravator, and Maffett’s admissions together with the fact he has children as mitigators, the trial court sentenced Maffett to ten years.

On appeal, Maffett argues the trial court erred when it admitted tape-recorded evidence of conversations regarding his drug activity and handgun ammunition. Additionally, he argues his sentence is inappropriate in light of the nature of his offense and his character. The State counters no evidence of drug activity was admitted. If such evidence was admitted, along with evidence of the handgun ammunition, the State argues it was harmless. As to the appropriateness of the sentence, the State argues the offense was egregious due to the nature of the firearm possessed—a tactical shotgun—and that Maffett’s prior criminal history includes six felonies and several misdemeanors. The State notes Maffett was not given the maximum sentence even though his character certainly warranted it.

Court of Appeals of Indiana

Hearing oral argument at
Castle High School
Newburgh, IN

Tuesday, September 11 @ 10:00 a.m. CST



Damon Lamar Maffett

v.

State of Indiana

82A04-1711-CR-02679

*On appeal from the
Vanderburgh Circuit Court*

Attorneys For The Parties

Appellant Attorney

Karen Heard is the founder of Heard Law Offices and has been practicing law for more than 20 years. She began her career working for a 100+ law firm representing large companies in Cincinnati, Ohio. Upon her return to Evansville, Indiana, Karen opened her practice with one goal in mind providing quality legal services to regular people. Her practice has developed in a wide range of areas including family law matters such as divorce, parenting time, child support, paternity, and juvenile proceedings, Her practice also extends to Probate Matters such as adoptions, guardianships and estate proceedings. Finally, Karen’s practice includes criminal matters in which she not only represents clients in misdemeanor and felony courts; but also on appeal before the Indiana Court of Appeals and the Indiana Supreme Court. Karen received her undergraduate degree from Indiana University with majors in History and Political Science. She graduated with honors and was elected to Phi Beta Kappa for excellence in scholarship. Karen received her law degree from the Indiana University School of Law - Bloomington. She was part of the upper ten percent of her class and was a member of the Order of the Coif.

Appellee Attorney

Evan M. Comer is a Deputy Attorney General in the criminal appeals division of the Indiana Office of the Attorney General. He is a 2014 graduate of Butler University, where he received highest honors in history and honors in political science. He earned his law degree from the University of Louisville’s Louis D. Brandeis School of Law in 2017. In law school, Evan was executive editor of the Journal of Animal and Environmental Law. He participated in the law school’s Brandeis Impact Litigation Practicum, while also teaching constitutional law to high school students through the Marshall-Brennan Constitutional Literacy Project. Evan currently resides in Scottsburg, Indiana with his wife and 18-month-old son.

About the Court of Appeals

As the second-highest court in Indiana, the Court of Appeals hears appeals from the state’s trial courts and some state agencies. The Court does not preside over trials and must accept all appeals sent to it, with the exception of:

- Cases in which the death penalty or life-without-parole is rendered (appealed directly to the Indiana Supreme Court);
- Cases in which statutes are declared unconstitutional by a trial court (automatically appealed to the Supreme Court);
- Attorney disciplinary cases (which also go to the Supreme Court); and,
- Cases involving taxation (which go to the Indiana Tax Court).

As a result, the 15 members of the Court issue approximately 2,000 written opinions each year. A decision of the Court of Appeals of Indiana is final unless granted further review by the Indiana Supreme Court.

The Court hears cases only in three-judge panels. All panels have statewide jurisdiction and rotate three times per year. Cases are randomly assigned. In addition, there is no deadline for the Court to reach a decision in each case; however, the Court strives to issue decisions within four months of receiving an appeal. Opinions are often issued earlier.

What happens after oral argument?

After oral argument, the judges confer to decide the outcome. A designated writing judge drafts an opinion for the others’ review. Final language may involve several drafts and significant collaboration. Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, some reverse in part, and some do both. Not infrequently, the opinion instructs the trial court about the next appropriate course of action. Many opinions are unanimous, although non-unanimous decisions (2-1) are not uncommon. Dissenting judges usually express their views in a separate opinion that becomes part of the permanent record of the case. Judges might also write separate, concurring opinions that emphasize different points of law or facts than the main opinion. No rules or laws govern how fast the court must issue an opinion. But the court strives to decide cases within four months of receiving all briefs, transcripts and other records. Once issued, all opinions are published on www.courts.in.gov and maintained in the permanent records of the Clerk of Appellate Courts. Parties can appeal decisions of the Court of Appeals to the Indiana Supreme Court by filing a petition to transfer within a prescribed number of days. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason. If the petition is denied, the Appeals Court decision stands.

Today’s Panel of Judges



The Honorable
Edward W. Najam,
Jr.

Monroe County

Edward W. Najam, Jr., of Bloomington, Monroe County, was appointed to the Court of Appeals by Governor Evan Bayh in 1992 and retained by the electorate in 1996, 2006, and 2016. Judge Najam graduated from Indiana University High School in Bloomington, where he grew up. He attended Indiana University-Bloomington, where he earned a B.A. in political science, with Highest Distinction, in 1969. Judge Najam earned his J.D. from Harvard Law School and was admitted to the Indiana Bar in 1972. While at I.U. he was elected to Phi Beta Kappa and was elected Student Body President. He was also the recipient of the Herman B Wells Senior Recognition Award for academic excellence and campus leadership, an award named for I.U.’s legendary President and University Chancellor. After his admission to the Bar, Judge Najam served as Administrative Assistant to the Mayor of Bloomington for two years and was a practicing attorney with a general civil and trial practice for eighteen years before joining the Court.

The Indiana Supreme Court appointed Judge Najam to the Supreme Court Committee on Rules of Practice and Procedure, which conducts a continuous study of the Indiana Rules of Procedure and the Indiana Rules of Evidence. He served on this committee for 10 years. As Chair of the Appellate Practice Section of the Indiana State Bar Association, Judge Najam initiated the Appellate Rules

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The Honorable
L. Mark Bailey

Decatur County

Lloyd Mark Bailey, was raised on the family farm in Decatur County. He was educated in Indiana, earning a B.A. from the University of Indianapolis (1978); a J.D. from Indiana University McKinney School of Law (1982); and an M.B.A. from Indiana Wesleyan University (1999). He also completed the graduate program for Indiana Judges. Judge Bailey was appointed to the Indiana Court of Appeals by Governor Frank O’Bannon in 1998, after having served as judge of the Decatur County and Decatur Superior Courts. During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He was the first Chairperson of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation’s Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. His writings include: “A New Generation for Pro Bono,” “Pro Bono Participation Preserves Justice,” and “An Invitation to Become Part of the Solution,” all published in the Indiana Lawyer. Judge Bailey also chaired the Local Coordinating Council of the Governor’s Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution Committee. Additionally, he has served on the Judicial Education Committee of the Judicial Conference of Indiana. In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral

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The Honorable
Melissa S. May

Vanderburgh County

Melissa S. May, was appointed to the Indiana Court of Appeals by Governor Frank O’Bannon in April of 1998. She was born in Elkhart, Indiana. She received a B.S. in criminal justice from Indiana University-South Bend and, in 1984, a J.D. from Indiana University School of Law-Indianapolis. She is also a graduate of the Graduate Program for Indiana Judges. Prior to her appointment to the Court, Judge May practiced law for fourteen years in Evansville, Indiana, where she focused on insurance defense and personal injury litigation. Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, as Chair of the Appellate Practice Section from 2008-2009, and as Secretary to the Board of Governors in 2008-2009. She is also a member of the Indianapolis Bar Association and the Evansville Bar Association. She is a fellow of the Indiana Bar Foundation and is currently serving on their Board of Directors. Judge May is a fellow for the American Bar Association, and a Master Fellow of the Indianapolis Bar Association. From 1999 until December 2004, Judge May was a member of Indiana’s Continuing Legal Education Commission, where she

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