

Dear Subscribers,

This week's *BriefServ* Newsletter, Exam Edition is below.

Thank you for your continued support of the *Mississippi Law Journal*. Due to our commitment to our studies during this two-week exam period, the Exam Edition of *BriefServ* contains only summaries of the cases. The case summaries are longer and more detailed than the summaries that generally appear in the email, and are intended to balance our needs in preparing for exams and your needs as a subscriber.

We will resume our normal *BriefServ* Newsletter next week. Thank you again for your support.

## **Supreme Court – Civil**

**Anderson v. Mississippi Bar** - Law License Suspension – Petition for Reinstatement – Jurisdictional Requirements – On November 30, 2017, the court-appointed Complaint Tribunal of the Mississippi Bar suspended John Anderson's law license for six months. On June 22, 2018, Anderson petitioned the Supreme Court to reinstate his license. Because the petitioner must demonstrate the jurisdictional requirements of Rule 12 of the Mississippi Rules of Discipline and state the cause or causes for suspension, and Anderson's petition did not describe the actions that led to his license suspension, Anderson's petition fell short of the jurisdictional requirements. Therefore, the Supreme Court denied Anderson's petition for reinstatement.

Briefed by [Davis Pigg](#)

**Campbell Properties, Inc. v. Cook** - Real Property – Forfeiture – Notice – Alan Osborne owned fifty acres of land in Warren County, Mississippi. In 2012, he failed to pay property taxes on the land, and in 2013, his property was auctioned for the unpaid taxes to Rachel Cook and not redeemed within the redemption period. Osborne filed suit to set aside the tax sale claiming that he did not receive notice by certified mail from the clerk's office. The chancery clerk sent notice to Osborne to an address that was returned as "not deliverable as addressed." Another address for Osborne was listed on several deeds available to the clerk, but the clerk continued to send notice to the address that precluded delivery. The Warren County Chancellor affirmed the tax sale and confirmed Cook as the title holder. Osborne appealed.

Osborne maintained that he did not receive adequate notice of the sale. Because the chancery clerk must strictly follow Miss. Code Ann. § 27-43-3, which calls for the clerk to diligently search and inquire for a new or different address to provide adequate notice for a tax sale to be valid, and the clerk's search and inquiry did not strictly comply with the statute as the clerk had access to another address for Osborne, Osborne did not receive adequate notice. Therefore, the Supreme Court reversed and rendered the judgment of the Warren County Chancery Court.

Briefed by [Karen Lott](#)

**NRG Wholesale Generation LP v. Kerr** - Civil Procedure – Expert Testimony – Venue – The Choctaw County Tax Assessor valued NRG Wholesale Generation LP ("NRG") power plant at \$467,213,070. NRG valued the facility at \$110,000,000. NRG challenged the tax assessor's amount, and, upon reconsideration, the Choctaw County Board of Supervisors found the true value of the facility was actually \$559,974,970. NRG appealed the Board of Supervisors' decision to the Choctaw County Circuit Court, and its expert used a combination of the sales-comparison approach, the income approach, and the cost approach to value the facility at \$180,000,000. The expert's testimony was excluded because it used methods different than the one mandated by state law. The Choctaw County Circuit Court entered judgment for Choctaw County. NRG appealed.

On appeal, NRG argued the Choctaw County Circuit Court abused its discretion by excluding NRG's expert testimony and erred in denying its motion to change venue because many of the jurors knew the Choctaw County officials named as defendants. Because the Mississippi Department of Revenue regulation controlled, and NRG's expert testimony applied an unacceptable method to determine the true value of NRG's facility, the Choctaw County Circuit Court did not err in excluding NRG's proffered expert testimony. Further, because NRG was afforded a fair and impartial jury where the jurors testified under oath that they could be fair and impartial, the Choctaw County Circuit Court did not abuse its discretion in denying NRG's motion to change venue. Therefore, the Supreme Court affirmed the judgment of the Choctaw County Circuit Court.

Briefed by [Baxter Geddie](#)

**Rosenfelt v. Miss. Development Authority** - Contracts – Contracting Party – Standing – Adam Rosenfelt, a film producer, reached out to Mississippi officials to propose his company's plan for the state to invest in a new production studio, Mississippix, which was to be located in Mississippi. Over several years, the Mississippi Development Authority ("MDA") tried to find a way to bring Resenfelt's business to the state. In 2014, MDA's chief financial officer wrote a letter addressed to Rosenfelt stating that Mississippi would commit to an initial investment of \$10 million to Resenfelt's endeavors. However, the MDA did not have the money and failed to acquire it during the 2014 regular legislative session. Eventually, the MDA issued a guaranty for \$4 million of a loan provided by Planters Bank. In 2015, Rosenfelt reached out to the MDA to discuss the remainder of the originally promised \$10 million guarantee. The result was a term sheet signed by MDA's new chief financial officer, on behalf of MDA, and Rosenfelt, on behalf of "Mississippix Studios, LLC and Element studios LLC." The term sheet provided that any application to MDA for another loan guarantee would be considered by the internal loan guarantee committee in accordance with established processes. Rosenfelt applied for the remainder of the guarantee, but the MDA declined the application. Rosenfelt sought a declaratory judgment that MDA was bound by an enforceable contract, specific performance ordering MDA to execute a guarantee, and money damages. The Hinds County Chancery Court initially granted partial summary judgment for Rosenfelt, finding that the 2014 letter created an unconditional obligation on the MDA to a revolving loan guarantee of \$10 million. Rosenfelt later filed another motion for summary judgment seeking specific performance of the guarantee. MDA responded by filing a summary judgment motion of its own, challenging Rosenfelt's standing to bring any of his claims. The chancery court agreed with MDA and dismissed the complaint on the grounds that the contract was not recorded in the official minutes of MDA and both Rosenfelt and Element Studios, LLC, lacked standing. Rosenfelt appealed.

Because all of the alleged contract documents were either addressed to Rosenfelt in his capacity as an officer of an LLC or were signed by him in the same capacity, and none of the documents allow for a conceivable interpretation that Rosenfelt, personally, was a party to any agreement, Rosenfelt had no standing to enforce the agreements personally, even if the LLCs were entirely owned and operated by him, as it is well established in corporation and agency law that a corporations shareholder and contracting officer has no rights and is exposed to no liability under the corporation's contracts. Further, although the action may belong to Element Studios, LLC by virtue of being a direct party to the agreement with MDA, the issue had not been briefed on appeal and was not considered. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Briefed by [Carson Phillips](#)

## **Supreme Court – Post-Conviction Relief**

**Jordan v. State** - Death Penalty – Post-Conviction Relief – Lethal-Injection Protocol – In 1976, Richard Gerald Jordan was sentenced to death following his convictions on charges of kidnapping and murder. In his second successive petition for post-conviction relief, Jordan challenged the use of midazolam as the first drug in the three-drug lethal-injection protocol administered by the Mississippi Department of Corrections ("MDOC").

Jordan argued that midazolam did not meet the requirements in Miss. Code Ann. § 99-19-51(1), which direct MDOC to use an appropriate anesthetic or sedative as the first drug to render the inmate unconscious, so as to not entail a substantial risk of severe pain. Jordan submitted affidavits of Dr. Craig Stevens in support of his argument. Because, under *Glossip v. Gross*, Jordan failed to provide credible evidence that midazolam did not meet the statutory requirements to warrant an evidentiary hearing, the Supreme Court denied Jordan's petition.

Justice King dissented, arguing that the Supreme Court should not have decided the merits of Jordan's petition because he was entitled to an evidentiary hearing in the trial court and the affidavits of Dr. Stevens warranted an evidentiary hearing. Moreover, *Glossip* was not dispositive because it considered whether the use of midazolam violated the Eighth Amendment, while Jordan raised a state-law based claim.

Briefed by [Luke Phillips](#)

**[King v. State](#)** - Post-Conviction Relief – Sanctions – In Forma Pauperis – T.W. King petitioned for post-conviction relief after earlier petitions in 2003, 2009, 2012, and 2014, all of which were denied. King's latest petition for post-conviction relief alleged prosecutorial misconduct and misleading jury instructions.

Because Miss. Code Ann. § 99-39-5 establishes a time bar for post-conviction relief petitions and because King's petition fell outside the time bar, the Supreme Court, sitting en banc, held that King was procedurally barred from sustaining his petition. Further, because the Supreme Court found the appeal to be frivolous, the Supreme Court warned King that future filings deemed frivolous could result in monetary sanctions and in restrictions on his ability to file applications for post-conviction relief or pleadings of that nature *in forma pauperis*. Therefore, the Supreme Court dismissed King's Motion to Reopen Original Direct Appeal Based on Newly Discovered Evidence Regarding Prosecutorial Misconduct and Confusing Jury Instructions.

Justice King, joined by Presiding Justice Kitchens, dissented to the order in part. Although Justice King agreed that the appeal was both time-barred and lacking in merit, he disagreed with the warning issued by the Supreme Court on the grounds that financially sanctioning an indigent defendant while cutting off his ability to proceed *in forma pauperis* would violate the defendant's constitutional rights by denying him access to the courts.

Briefed by [Jon-Paul Bushnell](#)

**[Loden v. State](#)** - Sentencing – Death Penalty – Lethal Injection Protocol – Thomas Loden Jr. pled guilty to capital murder, rape, and four counts of sexual battery. He voluntarily waived his right to a jury for both trial and sentencing and pled guilty to all six counts in the indictment. Loden's direct appeal was found meritless. In addition, his three previous petitions for post-conviction relief were either denied or dismissed.

Loden filed a PCR motion, arguing that the Mississippi Department of Corrections ("MDOC") currently uses a lethal-injection protocol that violates Miss. Code Ann. § 99-19-51(1) because midazolam is not an appropriate anesthetic or sedative that is likely to render the condemned inmate unconscious. Loden and the State produced contradictory affidavits regarding whether a 500-milligram dose of midazolam is an appropriate anesthetic or sedative. In cases where the petitioner and the state produce contradictory affidavits in post-conviction proceedings, where an affidavit is overwhelmingly belied by unimpeachable documentary evidence in the record, no hearing is required. Because Loden failed to demonstrate any likelihood of success on the merits of his challenge to midazolam and failed to present a substantial showing of the denial of a state or federal right based on MDOC's use of a 500-milligram dose of midazolam in its lethal-injection protocol, Loden did not demonstrate that he is entitled to post-conviction relief. Therefore, the Supreme Court denied Loden's petition.

Justice King dissented, arguing that Loden established a *prima facie* claim and was entitled to an evidentiary hearing, especially considering the heightened standard of review applied to death penalty cases. Therefore, Justice King would grant Loden's petition and remand to the trial court for an evidentiary hearing.

Briefed by [Natalie McCarty](#)

## **Supreme Court – Orders**

**Carter v. State** - Successive Writ – Frivolous Filings – Sanctions – Kenneth Carter was convicted of armed robbery and felon in possession of a weapon as a habitual offender in 2006. Since his conviction, he has filed seven requests for post-conviction relief. Carter filed this order, his eighth, alleging his indictment was invalid because the law under which he was convicted was void for vagueness, he received ineffective assistance of counsel, and the circuit court made findings outside his presence. Because Carter’s application was barred by the statute of limitations and the statute of successive application, the order was without merit. Additionally, the Court warned Carter that further post-conviction relief filings of similar merit may be considered frivolous. Therefore, the Supreme Court dismissed the order.

Justice King objected with a separate written statement. He specifically noted that the standard for frivolous motions is one in which the movant has “no hope of success” under *Roland*. Further, he argued Carter made reasonable arguments that were not frivolous, although they were weak. Finally, he noted that sanctions which may prevent convicted prisoners from accessing courts *in forma pauperis* may be unconstitutional. Briefed by [David Wellen](#)

**Cummings v. State** - Successive Writ – Procedural Bar – Monetary Sanction – Ottis J. Cummings filed his fourth application for leave to proceed in the trial court before an en banc Court. Cummings raised seven issues including that: (1) he lawfully refused blood-alcohol testing that should have been suppressed; (2) he was not advised of his rights under Miss. Code § 61-11-13; (3) the amended indictment charging him as a habitual offender unfairly surprised him and violated precedent; (4) an insufficient number of qualified grand jurors indicted him; (5) the post-indictment appointment of counsel prejudiced his defense; (6) trial counsel was ineffective; and (7) the trial testimony was polluted and misleading.

Because Cummings’s claims were not recognized exceptions to the time, waiver, and successive-writs bars, they were barred by the statute of limitations for post-conviction relief. Additionally, the amended indictment claim and the ineffective counsel were barred by res judicata. Finally, because the application was frivolous, the Court warned Cummings that he could face sanctions for future filings of relief *in forma pauperis*.

Justice King agreed that the application for post-conviction relief was without merit, but argued that the warning of sanctions was a violation of the Court’s sworn oath and that sanctions will dissuade defendants from their right to appeal.

Briefed by [Brandon H. Wilson](#)

**Gray v. State** - Habitual Offender Status – Enhanced Punishment – Time Bar – David Gray was convicted of capital murder and sentenced to life as a habitual offender. Gray filed an application for post-conviction relief, arguing he was serving an illegal sentence because his indictment did not properly notify him of the prior convictions that formed the basis of his habitual-offender status.

Because Gray’s conviction and sentence were affirmed more than thirty years prior to his filing for post-conviction relief, his claim was time-barred. Further, because the list attached to his indictment supplied enough information for Gray to identify with certainty the prior convictions the State relied on for enhanced punishment, Gray’s life sentence was legal. Therefore, the Supreme Court denied Gray’s motion for post-conviction relief.

Presiding Justice Kitchens objected to the order with a separate written statement, arguing the order mischaracterized Gray’s claim. Because the State never indicted Gray as a habitual offender and the Court’s precedent requires reversal when such omission occurs, Justice Kitchens would grant Gray’s application for leave to proceed in the trial court for post-conviction relief.

Briefed by [Katelin Davis](#)

**Linson v. State** - Successive Writ – Procedural Bar – Monetary Sanctions – Gregory Linson filed his sixth application for leave to seek post-conviction collateral relief outside the three-year limitations period. Linson claimed that he was unfairly surprised when the State amended his indictment to charge him as a repeat drug offender and a habitual offender; that the drug’s weight did not mandate a thirty-year sentence; and because his offense could have fallen under two criminal statutes, he should have been charged under the statute that applied the lesser punishment, arguing that there was substantial doubt as to which statute should have been applied.

Because Linson’s application was time-barred and was a successive writ, and the application failed to meet any of the exceptions, the Supreme Court ordered that the application was denied. Further, while Linson effectively challenged the legality of his sentence in his second and third claims, there was no arguable basis to warrant waiving the time, writ, and successive application bars. Finally, because the filing was frivolous, Linson was warned that future filings could result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief *in forma pauperis*.

Justice King objected in part, disagreeing with the warning that future frivolous filings could result in monetary sanctions or restrictions for post-conviction collateral relief *in forma pauperis*. Justice King argued that while Linson’s application for post-conviction relief did not merit relief, the Supreme Court should not discourage defendants from exercising their right to appeal by warning of future sanctions and restrictions.

Briefed by [Ryan Overturf](#)

**Mixon v. State** - Successive Writ – Frivolous Filing – Sanctions – Darryl Mixon petitioned the Supreme Court with an extraordinary writ seeking post-conviction relief. Mixon raised three issues stating that the trial court lacked jurisdiction because there was no “formal complaint”, he was actually innocent, and his sentence was disproportionate. Because Mixon’s claims did not meet any recognized exception to the time, waiver, and successive writ bars, they were without merit. Further, because Mixon’s filing was frivolous, the Court warned him that future filings could result in restrictions on filing applications for post-conviction collateral relief. Therefore, the Supreme Court dismissed the order.

Justice King objected to the order in part. Justice King argued that although Mixon’s application for post-conviction relief did not merit relief, the Court erred in ruling that his application was frivolous. Justice King further argued that Mixon made reasonable arguments regarding the trial court’s lack of jurisdiction, his actual innocence, and his disproportionate sentence. Finally, he argued that the mere threat of denying a defendant the right to proceed *in forma pauperis* is equivalent to denying a defendant’s access to court, thus violating the defendant’s constitutional rights.

Briefed by [Whitney Jackson](#)

**Wren v. State** - Successive Writ – Frivolous Motion – Sanctions – Wren filed eight applications for leave since his conviction of capital rape in 1999. Wren was previously sanctioned a total of \$200 for having filed frivolous applications for leave.

Because the instant application for leave was frivolous, time-barred, a successive application, and did not meet any of the exceptions, the application was without merit. Further, the Court warned Wren that future frivolous filings may result in additional monetary sanctions and restrictions on filing applications for post-conviction collateral relief. Therefore, the Supreme Court dismissed Wren’s “Motion for Permission to File a Second or Successive Petition.”

Justice King objected to the order in part finding that, although the application should be dismissed, the application was not frivolous and future filings should not result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief.

Briefed by [Drey Russell](#)



## **Court of Appeals – Civil**

**Culumber v. Culumber** - Domestic Relations – Habitual Cruel & Inhuman Treatment – Habitual Drunkenness – Robert Culumber and Toni Miles Culumber were married on May 22, 2013 in Las Vegas. In July 2014, the parties separated after only thirteen months of marriage. Robert filed for divorce on the grounds of habitual cruel and inhuman treatment and habitual drunkenness or, in the alternative, irreconcilable differences. Toni filed her answer and counterclaimed for a divorce. Following a trial, the Harrison County Chancery Court granted Robert a divorce from Toni on the grounds of habitual cruel and inhuman treatment and habitual drunkenness. Toni appealed.

Toni argued that the chancery court erred when it granted Robert the divorce on those grounds and denied her request for rehabilitative alimony. Toni further argued that there was not substantial credible evidence to support a divorce on either of those grounds. Because the divorce on the grounds of habitual cruel and inhuman treatment was based on substantial credible evidence, the divorce was properly granted. Further, there was testimony that Toni was verbally and physically combative towards Robert and that she often exhibited violent outbursts that caused physical destruction to the couple's home. Finally, because Robert's testimony about Toni's excessive drinking along with drug testing results that revealed alcohol and prescription pills in Toni's system were sufficient evidence, a finding of habitual drunkenness was supported. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Briefed by [Katie Humphries](#)

**Eskridge v. Peacock** - Constitutional Law – Religions Organizations – Secular Issues – After the death of Reverend James White in 2015, two groups within the Jacob Chapel Missionary Baptist Church vied for control of the church's administration and finances. Richard Eskridge, a deacon, led one group. Louella Peacock, the church secretary and treasurer, led the other. Community Bank, North Mississippi filed an action for interpleader in Sunflower Chancery Court, which the chancery court granted and subsequently moved the church's funds to the court registry. Peacock answered the complaint, and several months later Eskridge answered after the election of a new pastor, though Peacock disputed the legitimacy of the election. The chancery court ordered the two groups to go through mediation conducted by the Sunflower County Baptist Association. The chancery court adopted the association's findings and awarded the church's funds accordingly. Eskridge appealed, arguing the chancery court erred in ordering mediation, basing its ruling on the findings of the mediator, and failing to make findings of fact and conclusions of law.

The Court of Appeals confirmed that the chancery court's jurisdiction extends only to secular, not ecclesiastical matters, but that an exception exists where a church has unclear bylaws or procedures. Because the chancery court was deciding on a secular issue in an instance of unclear church procedures, the order for mediation was proper. Further, because Eskridge failed to show that the bylaws were not followed during the mediation, it was not improper for the chancery court to base its ruling on the findings of the mediator, and the chancery court was not required in this case to make findings of fact and conclusions of law. Therefore, the Court of Appeals affirmed the decision of the Sunflower County Chancery Court.

Briefed by [Michael Lambert](#)

**McAdams v. McAdams** - Domestic Relations – Alimony – Cohabitation – John and Julie McAdams were married for approximately three years. They divorced in 2005 due to irreconcilable differences. John had a resulting obligation to pay Julie \$2,000 per month in periodic alimony. John petitioned to terminate his alimony obligation because Julie was cohabiting and in a *de facto* marriage with A.J. Raymond. The chancellor denied John's petition. John appealed.

Because the chancellor had discretion to determine that cohabitation was not established between Julie and Raymond, and a chancellor may find a *de facto* marriage if the alimony recipient is deliberately avoiding remarriage merely to continue receiving alimony or the alimony recipient and another person have so fashioned their relationship to include their physical living arrangements and financial affair that they could reasonably be considered as having entered into a de facto marriage, the chancellor's finding was not manifestly wrong or clearly erroneous. Further, the chancellor did not err in denying John's petition to terminate or modify his alimony obligation. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Briefed by [Zachary Flowers](#)

**Palmer v. Clark Clinic, Inc.** - Direct Appeal – Wrongful Death – Extension of Time – After Showanda Palmer's medical malpractice suit on behalf of her deceased father was dismissed, Palmer's counsel unexpectedly left his firm without filing her notice of appeal. Subsequently, another attorney from her previous counsel's firm filed a motion for an extension of time to file the notice six days after the limitations period expired, and, alternatively, a second motion to reopen time to appeal. The Scott County Circuit Court denied both motions. Palmer appealed.

According to *Nunnery*, the excusable-neglect standard takes into account all relevant circumstances surrounding a party's omission based on the danger of prejudice to the non-movant, the length of the delay and its potential impact on judicial proceedings, the reason for delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith. Because *Nunnery* and *Odom* both state, however, that the circuit court does not abuse its discretion by failing to delineate its reasons for denying a motion to extend time to file a notice of appeal, and the medical malpractice claim was four years old, judicial proceedings would be impacted. Further, Palmer's original attorney could have delegated the motion to someone else in his large firm or filed for an extension during the 28 days he was at the firm following the dismissal of Palmer's complaint. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Briefed by [Lauren Rogers](#)

**Turner & Associates P.L.L.C v. Watkins** - Contracts – Summary Judgment – Appeal Dismissed – Gerald Watkins, a roofing contractor, was injured when fell of a roof, so he hired Turner & Associates P.L.L.C to file his personal injury lawsuit. Turner & Associates never filed the lawsuit, and Watkins filed a complaint for legal malpractice, breach of contract, intentional or negligent misrepresentation and fraud, negligent supervision, and intentional infliction of emotional distress. Watkins filed a motion for summary judgment, which was denied. When Turner never responded, the trial court granted Watkins's second motion for summary judgment. Turner appealed.

Turner claimed Watkins did not prove the underlying claim would be successful, the paralegal Karriem's authority to enter into a settlement was not addressed by the requests for admissions, the trial court failed to make any findings of fact on whether Turner received the notice of service of discovery, the requests for admissions did not resolve all genuine issues of material fact, and the "release" was not enforceable. Because the trial court's order granting summary judgment was not final and appealable as the issue was not fully adjudicated, Turner's appeal was dismissed. Therefore, the Court of Appeals dismissed the appeal for lack of jurisdiction.

Briefed by [Andie Szabo](#)

**WC Baker Co. v. Stockton** - Contracts – Residential Builder's License – Time of Filing – Philden and Leigh Anne Stockton hired WC Baker Company ("WC Baker"), an Alabama L.L.C., to build their home in Itawamba County. The parties entered into an oral agreement that was not formalized in writing. WC Baker did not have

a residential builder's license when it contracted with the Stocktons or during construction of their home. In April 2016, WC Baker filed suit for breach of contract, claiming that pursuant to the terms of the contract, the Stocktons failed to pay \$57,683 in outstanding invoices. The Stocktons filed a motion to dismiss, arguing that Miss. Code. Ann. § 73-59-9(3) barred WC Baker from filing suit because it did not have a residential builder's license when it constructed the Stockton home. WC Baker's response argued that it had a builder's license prior to filing suit, which was the only requirement in the statute. Following a hearing, the circuit court granted the Stocktons' motion to dismiss. WC Baker appealed.

Because under Miss. Code. Ann. § 73-59-9(3) once a residential builder obtains a license an action may be brought to enforce a residential building or sales contract, regardless of whether the contract was made before or after the license was acquired, and because WC Baker became licensed two months before filing suit against the Stocktons, the claim was not barred. Therefore, the Court of Appeals reversed and remanded the judgment of the Itawamba County Circuit Court.

Briefed by [Tucker Hood](#)

## **Court of Appeals – Criminal**

**Baker v. Mississippi** - Felony – Burglary – Sufficiency of Evidence – On August 15, 2014, Okolona police officers encountered Thaxter Baker while responding to 9-11 call regarding a suspicious vehicle. While talking with Baker, the officers found a medicine bottle of hydrocodone which belonged to Cassidy Edwards, a Nintendo Wii, a Playstation, a television remote, and a tablet in Baker's pockets and backpack. Shortly after placing Baker under arrest, the police received a dispatch call reporting a break in at Edwards's house nearby. Responding to that call, Edwards informed the police that a TV, a tablet, headphones, a Playstation, a Nintendo Wii, a pocketknife, and her prescription cough medicine had all been stolen during the break in. Officer Dwight Parker also testified that, in two separate interviews, Baker had admitted to committing the crime. Additionally, Officer Joey Miller testified that Baker had agreed to lead him to the location of Edwards's stolen TV but, upon arriving and seeing no TV, Baker indicated that his accomplice must have already taken it. Baker denied that he admitted to the crime and that he agreed to lead Officer Miller to the location of a TV. The jury heard all of the testimony at trial on January 25, 2017, in the Chickasaw County Circuit Court and returned a guilty verdict. Baker was not granted the circumstantial-evidence jury instruction he requested during the trial and was sentenced to twenty-five years in custody, ten suspended and fifteen to serve, and was also forced to pay restitution to the victims, fines, and some court fees. Baker appealed.

Baker claimed that the State had not produced sufficient evidence to support his conviction and that the trial court erred in not providing his circumstantial-evidence jury instruction. Because Baker was found with several of the items missing from Edwards's recently burglarized house, and because reasonable fair-minded jurors in the exercise of impartial judgment might reach different conclusions on every element of the offense based upon these facts and the testimony presented, the trial court's determinations were not based upon insufficient evidence. Additionally, because the officers presented direct evidence of Baker's guilt in the form of his alleged confessions, and because a circumstantial-evidence jury instruction is not required when there is both direct and circumstantial evidence of the guilt of the accused, the trial court did not err in denying Baker's request for a circumstantial-evidence jury construction. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

Briefed by [Corban Snider](#)

**Blake v. State** - Double Jeopardy – Mistrial – Ineffective Assistance of Counsel – Charles Blake was charged with sexual battery of a child while in a position of trust or authority for performing sexual acts on his great nephew, John. After unexpected testimony was elicited from John during trial, Blake moved for a mistrial and the motion was granted, with a retrial being held five years later. During both trials, Blake's counsel made



numerous possible errors, and John's testimony of the acts performed did not perfectly comport with what was charged in the indictment. The jury ultimately found Blake guilty. Blake appealed.

Blake asserted the retrial was a violation of his right against double jeopardy, his initial counsel was ineffective, there was insufficient evidence for the jury to find him guilty, and that the verdict was contrary to the overwhelming weight of the evidence. Because Blake made the motion for a mistrial and his motion was not caused by the prosecutor goading him into it, Blake's right against double jeopardy was not violated. Further, because ineffective assistance of counsel is an issue more proper for post-conviction relief, Blake's ineffective assistance claim was dismissed without prejudice. Because under the standard which a motion for directed verdict is judged there was sufficient evidence to find Blake guilty, the verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Briefed by [James Adamoli](#)

**Booker v. State** - Criminal law – Appeal – *Lindsey* Brief – Justin Booker and two others were charged for robbing Goon's Grocery and killing the owner, Davis Goon. Booker turned himself in the same day as the incident and eventually admitted to being at the store, but claimed he stayed outside the store during the robbery and murder. However, a witness placed all three of the co-conspirators, including Booker, inside the store during the robbery. Booker was found guilty of robbery, but the jury could not reach a unanimous verdict on the murder charge.

On appeal, Booker's counsel filed a *Lindsey* brief, finding no appealable issues after a careful review of the record. Because there was no basis to disturb the jury's verdict on appeal, there were no appealable issues. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Briefed by [Tyler Alcorn](#)

**Keyes v. State** - Criminal – Felony – Weight and Sufficiency of Evidence – In October 2015, a man approached a woman outside her home, twisted her arm, then forced her into her bedroom and tied her arms behind her back and demanded money. The assailant then removed the victim's nightgown and attempted to penetrate her. The attacker exited the home leaving his jacket and a handkerchief used in the attempted penetration, which were sent for DNA analysis. Following a tip, the police took Delbert Keyes into custody. The jury found Keyes guilty of robbery, kidnapping, and forcible sexual intercourse, and sentenced him as a habitual offender to life without eligibility of parole. Keyes appealed.

Keyes argued that the trial court erred in denying his motion for a new trial as the verdict was against the overwhelming weight of the evidence, he should not have been sentenced as a habitual offender because the State failed to demonstrate that he had two prior convictions for which he served one year or more in custody, the evidence was insufficient to support his conviction for kidnapping, and the trial court exceeded its authority in sentencing him to life without parole for rape.

Because there was substantial evidence to convict Keyes, allowing the guilty verdict to stand would not sanction an unconscionable justice. Further, because the record contained sufficient legal documentation that Keyes served one year or more on two prior convictions, Keyes was properly sentenced as a habitual offender. Additionally, because the victim's testimony regarding the incident demonstrated that the victim was a prisoner in her own home, there was sufficient for a kidnapping conviction. Finally, because the trial court had no discretion to sentence Keyes to any term except for life for his convictions, the trial court did exceed its authority in sentencing Keyes. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Chadwick Lamar](#)

**Owens v. State** - Murder – Evidence – Ineffective Assistance – On May 27, 2015, Timothy Owens was arrested for the murder of Ruth Williams after she had been shot in the home they shared together. Williams’s son, Marcus, and Owens were the only ones present at the time of the murder. Owens admitted to shooting Ruth when police interviewed him. However, at trial, Owens asserted self-defense, claiming there was a fight over the gun and Williams was shot by accident. Owens was convicted of first-degree murder and sentenced to life in prison. Owens appealed his conviction and sentence, arguing the evidence was insufficient to support the conviction, he was prejudiced by ineffective assistance of counsel, and comments made by the State during closing arguments constituted prosecutorial misconduct, thus rendering Owens’s trial unfair.

Owens argued that the evidence was insufficient to support the conviction pursuant to the *Weathersby* rule, which finds that if the defendant is the only eyewitness to the homicide, his version, if reasonable, must be accepted as true unless substantially contradicted by a creditable witness or witnesses for the State. Because this rule is inapplicable where the conduct and statements following the killing are inconsistent with a defendant’s version as recounted at trial, the evidence was sufficient. Further, because the record must affirmatively show ineffectiveness of constitutional dimensions in order for a defendant to be prejudiced by ineffective assistance, this claim was without merit. Finally, because the record reflected that the trial court instructed the jury that it could not find Owens guilty of deliberate design murder unless the State proved every element of the offense beyond a reasonable doubt, and because the trial court granted Owens’s heat-of-passion manslaughter instruction and his self-defense instruction, Owens was not prejudiced by the prosecutor’s comments. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Catherine Pettis](#)

**Taylor v. State** - Jury Instruction – Self-Defense – Pre-Arming – After a series of physical and verbal alternations between family members, which included threats made by both the murderer and the victim, Dante Taylor shot and killed his uncle, Willie Taylor. At trial, the jury received instructions on first-degree murder, second-degree murder, imperfect self-defense manslaughter, and self-defense. The jury eventually convicted Taylor of first-degree murder. Taylor appealed.

Taylor asserted that the conviction was against the overwhelming weight of the evidence. Because Taylor did not raise the issue in his motion for a new trial, this claim was procedurally barred. Taylor also alleged a pre-arming instruction should have been given to the jury, which informed the fact-finder that one cannot arm himself in advance when he is not in any physical danger, go forth and provoke a confrontation with and shoot another, and then claim self-defense. Because the facts supported the instruction, and the instruction did not preempt Taylor’s self-defense claim, the trial court did not abuse its discretion. Finally, because Taylor’s theory of self-defense was properly presented and the rejected instructions were not supported by evidence, the jury was fully and fairly instructed. Therefore, the Court of Appeals affirmed the judgement of the Harrison County Circuit Court.

Judge Carlton dissented, arguing the trial court abused its discretion and committed reversible error by granting the pre-arming instruction to the jury. She argued that it is well established that a criminal defendant is entitled to assert their defenses to the jury and that pre-arming instructions are not appropriate when there is conflicting evidence whether the defendant armed themselves with the intention of initiating a confrontation. She would find the instructions were impermissible.

Briefed by [Jack Schultz](#)

**Turner v. State** - Criminal Law – Child Exploitation – Entrapment – Chad Turner was convicted of child exploitation. At trial, the evidence showed that a police officer, posing as a 15-year-old boy, communicated with Turner. Believing that he was communicating with a 15-year-old boy, Turner went on to propose a meeting where the two could engage in sexual conduct. When Turner arrived at the meeting place, the police arrested Turner under Mississippi Code Ann. § 97-5-33(6), which makes it a crime to solicit a child to meet for the

purpose of engaging in sexual conduct. At trial, Turner asked for a jury instruction on the affirmative defense of entrapment, arguing that he could not have violated Miss. Code Ann. § 97-5-33(6) without the officer posing as a 15-year-old boy. The trial court denied Turner's request for an entrapment instruction. Turner appealed.

Because Turner presented no evidence of police coercion, and the officer gave Turner multiple opportunities to exit the conversation, the trial court did not abuse its discretion in denying Turner's request for a jury instruction on the defense of entrapment. Further, because Turner's ineffective assistance of counsel claim should be brought in a post-conviction relief motion, this claim was dismissed without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Briefed by [Yance Falkner](#)

*\*Interested in more specific details about a particular case? Click the case name to view the full opinion.*

Thank you for your contributions to the *BriefServ* and the *Mississippi Law Journal*. As always, feel free to contact me with any comments or suggestions, or if you need to change your Subscriber information.

**MISSISSIPPI CASES EDITOR**

**EMILY A. WARWICK**

**ASSOCIATE CASES EDITORS**

**TYLER ALCORN**

**D. KIRKWOOD PALMER**

**D. HUNTER V. ROBERTSON**

**DANIEL TANKERSLEY**

*Thank you for supporting the Mississippi Law Journal.*

Questions or comments: Emily A. Warwick, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)

*All subscribers to BriefServ traditionally receive access to our website with archived case briefs since January 2007. Currently, our digital database is under construction. Requests for previous editions of the Newsletter can be made to Emily A. Warwick, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*