

Dear Subscribers,

This week's Brief*Serv* 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 Brief*Serv* contains only summaries of the cases. The case summaries are 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. The full Brief*Serv* Newsletters will begin again May 20th.

Supreme Court – Criminal

Sanford v. State - Appellate Procedure – Evidence – Credibility – Walter Sanford crashed into the rear of Kendra Newton's car while traveling with Teresa Ann Spiers on Interstate 59 North. Prior to the crash, Newton and an additional witness saw Sanford driving erratically, speeding up and slowing down several times in the left lane, before driving behind Newton's vehicle. Sanford admitted he had been drinking before the accident, and his blood alcohol concentration was 0.23%. Sanford was convicted for aggravated DUI causing death under Miss. Code Ann. § 63-11-30(5). Having found no appealable issues, Sanford's counsel filed a *Lindsey* brief. Sanford argued, *pro se*, insufficiency of the evidence. Because the State presented evidence that established beyond a reasonable doubt every essential element of aggravated DUI causing death, Sanford's argument of insufficiency of evidence lacked merit. Therefore, the judgment of the Pearl River County Circuit Court was affirmed.

Briefed by [Mary-Katherine Black](#)

Court of Appeals – Civil

C.S.H. v. Lowndes Cnty. Dep't of Human Servs. - Family Law – Parental Rights – Termination – C.S.H. is the biological mother of Leo, born July 2007, and Quinn, born June 2008. In 2008, the Lowndes County Youth Court found that C.S.H. had neglected eleven-month-old Leo, and C.S.H. entered into an individualized service plan with the Lowndes County Department of Human Services (DHS) in hopes of gaining reunification. The plan required her to, among other things, submit to random drug tests, enroll in a drug-treatment program, and attend Alcoholics Anonymous (AA) meetings. The Youth Court entered an order placing Leo in DHS custody, and provided for a six-month review of the matter. Because Quinn had been born with cocaine in his system, DHS had taken Quinn into custody. Youth Court conducted a permanency-review of Leo's case, in which the court granted C.S.H. an additional six months to make progress on her service plan. In two separate hearings, the Youth Court modified each child's plan from reunification to adoption due to C.S.H.'s failure to carry out her service plan. In 2011, DHS moved for termination of parental rights for both children. The Lowndes County Court held a hearing in May 2015, and between 2011 and the hearing, C.S.H. had successfully completed an in-patient drug treatment program. At the hearing, various parties testified that the boys' relationship with C.S.H. had deteriorated, and both considered their foster parents to be their true parents. The County Court found clear and convincing evidence supporting multiple statutory grounds for termination of C.S.H.'s parental rights. C.S.H. appealed.

Because the court found substantial credible evidence that C.S.H.'s continued drug use between 2008 and 2010 presented an ongoing danger to the children which prevented DHS from returning them within a reasonable period of time, the statutory prerequisites for termination of parental rights were met. Furthermore, because the court found that the burden of proof of clear and convincing was met regarding at least three of the statutory grounds for termination of rights, including C.S.H.'s failure to uphold her service agreement, the court found that the county court's termination of rights was proper. Therefore, the judgment of the Lowndes County Court was affirmed.

Judge Westbrook dissented, arguing the court should have taken into account C.S.H.'s successful completion of a drug treatment program in 2010, that she completed her service agreement before the hearing,

and that the county court and DHS only provided C.S.H. with one-hour visitation a month. Therefore, the erosion of her relationship with her children was natural, C.S.H. should not have been penalized, and the statutory grounds for parental termination were not met based on a comprehensive look at the timeline of DHS custody.

Briefed by [Daniel Tankersley](#)

Wright v. Minact Logistical Servs., LLC. - Workers' Compensation – Settlements – Reevaluation – On July 9, 2012 Angela Wright, an employee of Minact Logistical Services, LLC. (“Minact”), was injured on the job at the Nissan plant in Canton, MS. Wright was injured by falling off a crate that was on the back of a truck driven by a supervisor. On October 21, 2016, Wright and Minact agreed to a settlement. In February of 2017, Wright requested the Mississippi Workers' Compensation Commission re-open her claim. The Commission denied her request. Wright appealed pro se.

On appeal, Wright argued that the Commission erred in denying Wright's request to re-open her claim. Because Wright did not demonstrate change in circumstances or a mistake in determination of fact necessary to re-open her claim, there was no error in denying Wright's request to re-open her claim. Therefore, the judgment of the Mississippi Workers' Compensation Commission was affirmed.

Briefed by [Jacob Swatley](#)

Court of Appeals – Post-Conviction Relief

Mann v. State - Civil – Post-Conviction Relief – Guilty Pleas – Kelly Mann appealed the denial and dismissal of his sixth motion for post-conviction relief from convictions of murder and armed robbery, resulting from his guilty plea. Because Mann's claims and arguments were the same as the ones previously dismissed by the court, the motion was denied. Therefore, the judgment of the Leake County Circuit Court was affirmed.

Briefed by [Jay Michael Patterson](#)

Court of Appeals – Criminal

Nowell v. State - Criminal – Traffic Stop – Search & Seizure – While on patrol, officer Mark Gore of the Philadelphia Police Department made a routine traffic stop after noticing that the driver and the passenger in a car were not wearing their seatbelts. When officer Gore approached the vehicle, he noticed the passenger, Jeremy Nowell, placing an object into the waist of his pants. He asked Nowell to exit the vehicle, and while questioning him, several items fell from Nowell's pant leg, including a clear plastic bag of methamphetamine. After securing Nowell, officer Gore went back to the vehicle where he found another bag of the same substance. The trial court found Nowell guilty of possession of at least two grams but less than ten grams of methamphetamine. On appeal, Nowell argued his motion to suppress the evidence regarding the second pouch of methamphetamine was erroneously denied.

Because Nowell was merely a passenger in the car, neither he nor the driver had a possessory interest in the vehicle, and the car was not Nowell's principal or usual mode of transportation, Nowell did not possess a reasonable expectation of privacy regarding the vehicle. As a result, Nowell had no standing to challenge officer Gore's search and seizure. Therefore, the judgment of the Neshoba County Circuit Court was affirmed.

Briefed by [Maggie Vinzant](#)

Young v. State - Juror Dismissal – Juror Impartiality – Unintended Juror Communication – Cedric Young was convicted of armed robbery, attempted murder, and being a felon in possession of a firearm after he robbed a gas station and shot the attendant. At trial, jurors were shown a video of Young's mother and sister watching surveillance footage of the robbery. The video showed the two discussing the footage and concluding that it showed Young committing the robbery. The jurors were given a transcript of the conversation shown in the video. Despite being instructed otherwise, one juror wrote notes on the transcript expressing his opinion of the video and its evidentiary weight. The State moved the court to remove the juror on the grounds that it was an unintended communication from a juror to an attorney on the case and that it was impossible to determine

whether the juror had communicated his opinions with other jurors. The juror was excused and replaced with an alternate. Young appealed his convictions on the grounds that the trial court erred in dismissing a juror and of ineffective assistance of counsel.

The court generally may remove a juror when it finds that the juror cannot competently or impartially decide the case, for any reason as such person would make his service as a juror oppressive, or for any reason which the judge deems sufficient. While the juror's note-taking may not have been intentional misconduct, it did cause communication between a juror and an attorney. Furthermore, the juror's notes indicated that he had made up his mind about the case before all evidence had been presented by both sides and could not be impartial. Thus, the judge acted within his discretion by excusing the juror and replacing him with an alternate. Finally, the court dismissed Young's ineffective assistance of counsel claim without prejudice, determining that the issue required additional findings of fact and reserving the issue for a post-conviction relief motion. Therefore, the judgment of the Oktibbeha County Circuit Court was affirmed.

Briefed by [Marilyn Higdon](#)

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