

Dear Subscribers,

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

Thank you again 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 longer and more detailed than the summaries that generally appear in the email. The enhanced case summaries are intended to balance our needs in preparing for exams and your needs as a subscriber. Thank you again.

Supreme Court – Civil

Cope v. Thrasher Constr., Inc. - Civil – Contract – Third-Party Beneficiary – Ike Thrash purchased a fifty percent interest in Inn by the Sea from one of Inn by the Sea's owners. Inn by the Sea was destroyed by Hurricane Katrina, and there was a plan to develop a new complex and rebuild. Thrash signed over part of his interest to Bruce and Mary Cope. Cope and Thrash entered into a settlement agreement with the other owner of Inn by the Sea to remove him after the subcontractors were not being paid for their work on this project. Thrasher Construction was one of the subcontractors who worked from April to July of 2009 to waterproof Inn by the Sea. Thrasher Construction sent monthly invoices to the general contractor, all of which went unpaid, so Thrasher Construction stopped working due to nonpayment after completing sixty-five percent of the work. They then filed a Notice of Construction Lien against Inn by the Sea in September of 2009. In this settlement agreement, Cope and Thrash agreed to pay the subcontractors provided that the invoices provided to them by the other owner of Inn by the Sea "were 'true, valid[,] and correct.'" Thrasher Construction's invoices were included. Cope and Thrash requested that the subcontractors come to Inn by the Sea during a specific two-day period to verify the work performed. Thrasher Construction did not verify its work within the two-day period because of the existing lien. All of the other subcontractors were paid except Thrasher Construction.

Thrasher Construction suit against the general contractor and Cope and Thrash for breach of contract. They alleged breach of contract as a third-party beneficiary against Cope and Thrash based on the settlement agreement. The county court dismissed Thrasher Construction's third-party beneficiary breach-of-contract claim during their case-in-chief after Cope and Thrash moved for a directed verdict. However, the court allowed Thrasher Construction to proceed under a quantum meruit theory, and the jury returned a verdict in favor of Thrasher Construction for \$69, 290. Cope and Thrash's JNOV was denied by the county court, and they appealed to the circuit court, which affirmed. The Supreme Court then assigned the case to the Court of Appeals, who held that Thrasher could not recover under quantum meruit but should have been allowed to proceed on its third-party beneficiary claim. The Court of Appeals reversed and rendered the judgment of the circuit court and reversed and remanded the judgment of the county court. Both sides filed petitions for certiorari. Cope and Thrash argue that the Court of Appeals correctly reversed the quantum meruit claim but erroneously revived the third-party beneficiary claim. Thrasher Construction argues that the Court of Appeals incorrectly reversed the judgment because the judgment of the county court should be affirmed under either the theory of quantum meruit or third-party beneficiary.

Thrasher Construction presented a valid third-party beneficiary claim. The settlement agreement entered into by Cope, Thrash, and the other owner of Inn by the Sea was entered into for the express benefit of Thrasher Construction. Under the contract, they named Thrasher Construction as a beneficiary. As a result, Thrasher Construction qualified as a third-party beneficiary. Although Cope and Thrash claimed Thrasher Construction

was required to meet with them during a specific two-day period, “no such condition was present in the settlement agreement.” The only condition present was that Cope and Thrash had to pay if the invoices were “true, valid[,] and correct.” While the court reached the right result under the wrong theory, Thrasher is entitled to damages, which the jury awarded under a quantum meruit theory as opposed to a third-party beneficiary theory. Therefore, the Supreme Court reinstated and affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Michael Farese](#)

In re L.B.C. - Criminal Law – Juveniles – Sexual Battery – L.B.C. admitted to sexually battering two six-year old girls when he was fourteen years old. L.B.C. was first charged as an adult, but the case was remanded to youth court based on a neurologist’s report that he functioned on the mental equivalent of a nine-year-old. The youth court accepted L.B.C.’s admissions, and adjudicated him delinquent under both counts. The youth court ordered L.B.C. to register as a sex offender and ordered L.B.C. into the custody of the Mississippi Department of Child Protective Services. On appeal, L.B.C. only argues against the youth court’s order requiring him to register as a sex offender.

Under Miss. Code Ann. § 45-33-25(1)(b), a person who is at least fourteen years old and who is adjudicated delinquent of a sex offense that involved the use of force against the victim, must register as a sex offender. As L.B.C. was fourteen years old at the date of the crime, and because he pled guilty, he was properly required to register as a sex offender. The Supreme Court found that L.B.C.’s mental age did not affect his registration requirement because the youth court does not have discretion under the sex offender registry, as registration is mandatory. Finally, the Supreme Court found the sex offender registration did not violate the confidentiality of youth court proceedings, as there is a specific statutory exception to the confidentiality requirements relating to juveniles adjudicated delinquent for sexual battery. Therefore, the Supreme Court affirmed the Forrest County Youth Court.

Briefed by [Blake E. Brookshire](#)

Mitchell v. Moore - Heirship - Termination of Parental Rights - Inheritance Rights - In 2007-2008, DHS filed complaints against Travis Weems to establish if he was the father of Kevin Weems. Travis Weems never submitted to a paternity test, and in 2009, the court entered an order that stated Travis Weeks was Kevin Weems’s father based upon his previous voluntary acknowledgement. In 2010, Tabitha Moore, Kevin Weems’s mother, filed a complaint to terminate Travis Weems’s paternal rights. In 2011, the court terminated Travis Weems’s parental and inheritance rights of the child. In 2014, Travis Lynn Weems died in a car accident. In 2015, Tillmon Bishop, the state-appointed guardian for Kevin Earl Moore, filed a motion to revise the chancery court’s order, and argued it unintentionally terminated the rights of inheritance of Kevin Weems from his natural father. The court agreed and entered an order that revised the final judgment.

On January 5, 2016 at an heirship proceeding for the estate of Travis Weeks, Tabitha Moore was the only person who appeared before the court and provided testimony that Kevin was the heir of Travis Weems. The chancery court agreed, and based its judgment on the May 2009 paternity judgment. Dauwanna Mitchell, Weems’s mother, appealed and argued Weems was never adjudicated to be Moore’s natural father and that the chancery court improperly revised Weems’s parental rights.

The Supreme Court found that the chancery court was correct in finding that first complaint without prejudice for insufficient service of process did not bar the second complaint. Further, the chancery court’s decision that Weems had voluntarily acknowledged his paternity, as evidenced by him signing the birth certificate, demonstrated the issues were without merit. As to the second issue, children’s inheritance rights dominate

intestate's parents, and the disinheritance language in the 2011 judgment should have been noticed at that time, and any such person would have a duty to remedy it. Therefore, the Supreme Court affirmed the decision of the Lincoln County Chancery Court.

Chief Justice Waller dissented, arguing that neither that Rule 60(a) for clerical mistakes nor Rule 60(b) for errors of a more substantial nature permitted an amendment of the order, which terminated custody and inheritance rights. Further, he argued there was no good cause for the four-year delay, which prejudiced Mitchell since the change in the order would affect her inheritance from her son.

Briefed by [Sarah Myers Raben](#)

Wesley v. Washington County Democratic Exec. Comm. - Elections – Contest – Special Elections – In August 2015, the people of Washington County voted for their District 3 Supervisor. Once all ballots had been cast, Wesley alleges numerous violations occurred, voiding the results of the election. Wesley promptly sued the WCDEC and Carl McGee for election fraud. The Washington County Circuit Court ordered summary judgment for the WCDEC because Wesley had not proven that the vote would have ended up differently otherwise. On his appeal, Wesley alleges that the paper and electronic ballot boxes were not sealed and secure because the circuit clerk did not have them for weeks, the circuit clerk tallied the paper votes instead of the WCDEC, according to Mississippi law there must be an agreement in place for the Washington County Election Commission to handle and canvass the ballots for the WCDEC and there was no such agreement in place, there is no evidence of proper receipt of the election boxes (including numbers of boxes and votes), and the results from one entire precinct could not be found when Wesley conducted his examination.

The issue was whether or not the Washington County Circuit Court erred in granting the WCDEC and McGee's summary judgment motion. The Supreme Court looked to the *Noxubee County* test, which states special elections are required only when (1) enough illegal votes were cast for the contestee to change the result of the election, or (2) so many votes are disqualified that the will of the voters is impossible to discern. As Wesley only contested the paper ballot boxes, which contained 24 ballots (although Wesley argued that there can be no way to know how many there were originally because they were not secured), the Supreme Court held such allegations were not enough to void an entire election when over 97% of votes were cast electronically. Therefore, the Supreme Court affirmed the judgment of the Washington County Circuit Court.

Briefed by [Nikki Breeland](#)

Supreme Court – Post-Conviction Relief

Supreme Court – Criminal

Amos v. State - Murder – Jury Instructions – Accomplice – Samuel Amos was convicted of the murder of Marquai Kirkland and sentenced by the Circuit Court of Neshoba County to life without the possibility of parole. In May 2014, according to the testimony of Terrance Hunter, Amos shot and killed Kirkland while Hunter drove the getaway vehicle. Hunter explained initially that he did not know of the intended murder plans but was only seeking drugs. On appeal from this conviction, Amos raises two issues. First, he argues that the trial court erred by refusing his proposed accomplice jury instruction. The Supreme Court held that the grant

of a cautionary instruction regarding the testimony of an accomplice witness is a matter of discretion within the trial court. The trial court does not abuse their discretion in denying a cautionary instruction if the witness was an accomplice and the witness' testimony was corroborated. Here, the accomplice in question was a witness and his testimony, although circumstantial, was corroborating. Furthermore, any alleged error was harmless beyond a reasonable doubt because the defense had an opportunity to cast aspirations on the accomplice witness's testimony. Therefore, the trial court did not abuse their discretion when refusing Amos's proposed accomplice jury instruction. Second, Amos argues that trial court erred by denying his motion for a mistrial when prosecutor referenced a polygraph test. Because the trial court immediately sustained the defense counsel's objection to a question regarding the polygraph test, and the trial court twice instructed the jury not to consider the evidence in rendering its verdict, there issue has no merit. Therefore, the Supreme Court affirmed the judgment of the Neshoba County Circuit Court.

Chief Justice Waller specifically concurred, reiterating that polygraph tests are not admissible as evidence in Mississippi courts. Further, he stated that the error was harmless due to the trial court's two instructions for the jury not to consider the evidence.

Presiding Justice Kitchens dissented, opining that Amos was entitled to have the jury instructed on accomplice testimony because no specific testimony corroborates that Amos pulled the trigger, killing Kirkland. Although the evidence was weak, Kitchens believes Amos should have been entitled to an accomplice testimony jury instruction.

Briefed by [Caroline Loveless](#)

Minor v. State - Armed Robbery – Sufficiency of the Evidence – Weight of the Evidence – On December 29, 2014, sixteen-year old Jessie Elbert Taylor Jr. was robbed and killed by a fatal gunshot wound to his back in Natchez, Mississippi. According to Emanuel Latham's testimony, he and Eddie Minor robbed Taylor, and when a disagreement happened with Taylor trying to get away after Minor tried to take a gun from him, both Minor and Latham shot at Taylor who ran down the street but died from his wounds. Eddie Minor was convicted of armed robbery in the Adams County Circuit Court and sentenced to serve a term of thirty-five years. Minor appealed his conviction arguing both that the evidence was legally insufficient to support his conviction, and that the jury's verdict was contrary to the overwhelming weight of the evidence.

The Supreme Court held that based on the testimony of Latham, a co-conspirator Taylor's statements to the on-the-scene police officers and Ketterria Noble, when viewing the evidence in the light most favorable to the guilty verdict, a rational juror could find beyond a reasonable doubt that Minor had committed armed robbery. Furthermore, regarding the weight of the evidence, the Supreme Court found that the jury's verdict was not so against the overwhelming weight of the evidence as to create an unconscionable injustice, thus this issue is without merit. Therefore, the Supreme Court sitting en banc affirmed the judgment of the Adams County Circuit Court.

Briefed by [D. Hunter V. Robertson](#)

Ragland v. State - Sufficient Evidence – Jury Instructions – Ineffective Assistance of Counsel – Harmless Error – Mario Ragland was convicted of armed robbery and conspiracy to commit armed robbery of a Krystal Restaurant in Olive Branch Mississippi. Surveillance video of the store showed a companion, Elbert Nichols, brandishing a pistol, threatening the employees, and robbing the Krystal of its safe and money. Upon reporting the robbery to the police shortly thereafter, Ragland and Nichols were pulled over and arrested just inside Memphis. Inside the car, police found the pistol and identical surgical masks and gloves as seen in the

surveillance videos. Ragland appealed his conviction on the grounds of (1) insufficient evidence to support a jury conviction, (2) defective or incomplete jury instructions, and (3) ineffective assistance of counsel.

In this en banc opinion, the Supreme Court found that the evidence precluded a reasonable jury from considering Ragland's alternate theory explaining his presence near the restaurant after the robbery. Rather, the temporal proximity of the robbery to Ragland's subsequent arrest and the evidence in the vehicle supported a reasonable conclusion that Ragland and Nichols had a pre-arranged plan to rob Krystal, and that Ragland aided and abetted Nichols in carrying out the armed robbery itself. Further, the Court found that the jury instructions were not grounds for reversible error both because Ragland failed to raise the jury instructions as an issue at the trial court, and because the jury instruction at issue when read together with the other provisions of the instructions do not constitute plain error. Finally, the Court found that Ragland did not receive ineffective assistance of counsel for failure to object to the jury instructions because the instructions, when read together, conveyed the elements of the crime succinctly and were harmless error when failing to satisfy the Court's prior opinions to follow pre-drafted pattern jury instructions. Furthermore, because Ragland's additional *pro se* reply brief on further grounds for ineffective assistance of counsel relied on evidence outside the scope of review of a direct appeal, the Court dismissed for want of jurisdiction. Therefore, the Supreme Court affirmed the DeSoto County Circuit Court

Briefed by [D. Kirkwood Palmer](#)

Young v. State - Criminal – Motion to Dismiss – Testimonial Evidence – Keith Young was driving around Tchula, MS with his brother, Kelvin Young, and his friend, Travis Anderson. At some point, Keith dropped Kelvin off at a social gathering, and he continued to ride around with Anderson, eventually stopping to park off Highway 49. While sitting in the car, they saw Keith's cousin, Edward Young also known as "Bald Head", walking towards the car. Anderson rolled down the passenger window, and Edward called Anderson's name two or three times. At this point, the two men in the car noticed that Edward was carrying a gun. Anderson tried to lock the door, but Edward snatched open the passenger door and shot Anderson. Anderson then pushed Keith out of the driver's side door, exited the vehicle and ran onto the highway where he collapsed. Keith got back into the vehicle and drove off. He drove to pick up his brother and then to his parent's house where he told his parents what happened. Keith and his father drove back to the scene of the crime where Keith talked to the sheriff's deputy present at the scene. He was instructed to go to the Holmes County Sheriff's Department in Lexington, MS where he gave a statement to authorities. Edward became a suspect and was subsequently arrested. He denied any involvement in the shooting, but a gun residue test ("GSR") was performed on his hands and clothing. Edward was indicted for first-degree murder. Edward then filed a motion to dismiss alleging that the state failed to turn over the results of the GSR test performed on his hands and clothes. The state testified that the GSR kit had been lost or misplaced. The court ruled, however, that this was not done in bad faith, so the motion to dismiss was denied. On appeal, Edward argued that the court erred in failing to grant his motion for a new trial based on the verdicts being against the overwhelming weight of the evidence. He also filed a supplemental appellant's brief *pro se*, claiming an untimely initial appearance after his arrest, improper jury instructions, and ineffective assistance by both his trial and appeal counsel.

The Supreme Court held that testimony of a single eye witness was enough to support a conviction, even though denied by the accused, and the absence of physical evidence did not negate a conviction where there was testimonial evidence. The Court also ruled that failure to provide an arraignment within thirty days of indictment did not itself mandate reversal of a conviction where no prejudice is shown. The record reflected that the trial court did in fact grant Edward an alibi instruction requested and drafted by Edward's defense counsel. Edward did not state with particularity how his trial counsel was ineffective and because he failed to state what issues appellate counsel should have argued on appeal, the court denied relief without prejudice to Edward's ineffective assistance of counsel claim. Therefore, the Supreme Court affirmed the judgment of the Holmes County Circuit Court.

Presiding Justice Kitchens concurred in part and in result arguing that the trial court should have instructed the jury to disregard the prosecutor's improper argument concerning evidence not admitted during trial. However, in the context of the case, he concurred that the error was harmless beyond a reasonable doubt.

Briefed by [Maggie Vinzant](#)

Supreme Court – Order

Scott v. State - Constitutional Law – Speedy Trial – Presumptive Prejudice – James Wesley Scott was indicted for attempted rape, kidnapping, and burglary of a dwelling on September 26, 2011. He was arraigned on March 14, 2012 and, following recusal of the trial judge, he filed multiple motions to dismiss for speedy trial violations. His motions to dismiss were denied and the trial took place on August 19, 2014 where Scott was convicted of all three charges and sentenced to three life sentences in prison without the possibility of parole. Scott's conviction was affirmed on appeal. The Supreme Court granted certiorari. Four of the justices found that the judgment of the Court of Appeals should be affirmed, and four found that it should be reversed. Therefore, the Supreme Court entered an Order affirming the judgment of the Court of Appeals—by an equally divided court—without opinion.

Presiding Justice Kitchens objected to the Order, arguing that, according to the *Barker v. Wingo* analysis, police negligence and lost evidence created a presumption of prejudice that negatively affected the defendant's constitutional right to a speedy trial, which he had already asserted. Accordingly, Presiding Justice Kitchens would reverse the conviction and render a judgment in favor of Scott.

Briefed by [Kelsey Dismukes](#)

Court of Appeals – Civil

Alston v. MS Dept. of Emp't Sec. - Administrative Law – Workplace Harassment – Unemployment Benefits – Jason Alston, a former employee of the Mississippi Department of Transportation (MDOT), resigned from MDOT in 2015. After three years of employment with the state agency, Alston claimed he was forced to resign due to workplace harassment by coworkers and supervisors. Upon leaving MDOT, Alston applied for unemployment benefits. The Mississippi Department of Employment Security (MDES) denied Alston's claim. Alston appealed. An MDES administrative law judge (ALJ), upon hearing testimony regarding multiple workplace incidents during a ten-month span in 2015, determined that he had not been subject to a hostile work environment, but had quit voluntarily and failed to show good cause. Alston appealed to the MDES Board of Review (Board). The Board adopted the ALJ's determination. Alston then appealed to the circuit court. The Attala County Chancery Court agreed with decision of the Board. Alston appealed.

On appeal, en banc, Alston claimed the ALJ and Board's ruling was not supported by substantial evidence, and was arbitrary and capricious. Because constructive discharge occurs when the employer makes conditions so intolerable that the employee reasonably feels compelled to resign, and because the record showed MDOT supervisors were attentive in addressing Alston's grievances, the issue was without merit. Further, Alston claimed his due-process rights were violated when his ALJ hearing was postponed for one month. Because Alston provided no authority for his due-process violation claim, because the circuit court found, and the record

confirmed, that Alston was given notice of hearing dates, and because Alston was able to attend, testify, and cross-examine witnesses, the issue was without merit. Finally, Alston alleged that MDOT engaged in misconduct by presenting improper evidence that was not timely disclosed during the hearing before the ALJ. Because the documents Alston cited were timely disclosed before and during the ALJ hearing, the issue was without merit. Therefore, the Court of Appeals affirmed the decision of the Attala County Chancery Court.

Judge Carlton, joined by Presiding Judge Irving, Presiding Judge Griffis and Judge Westbrook, dissented and argued that, upon a review of the record and applicable precedent, Alston met his burden of showing that his departure was based upon good cause, and, therefore Alston was wrongfully denied unemployment benefits.

Briefed by [William L. Moorer](#)

[Clark v. McCorkle](#) - Civil Procedure – Summary Judgment – Nonmovant’s Burden – On October 16, 2012, Ned Clark, Jr. (“Ned”) was driving a Ford Ranger when he rear-ended Charles McCorkle, who was driving a John Deere farm tractor pulling a flatbed cotton trailer. As a result of the injury, Ned suffered five broken ribs, a punctured lung, and his left arm was amputated. Ned filed suit claiming that McCorkle was (1) negligent, (2) grossly negligent, and (3) negligent per se because he was operating a tractor and trailer with inadequate lighting in a low-visibility area. The trial court granted summary judgment to McCorkle finding that no genuine issues of material fact existed concerning McCorkle’s negligence. Ned and his wife, Edna, moved for a rehearing and were denied. The Clarks appealed arguing that (1) the trial court erred in granting summary judgment; (2) the trial court abused its discretion in dismissing the opinion and testimony of Jason Walton, the Clarks’ expert witness; and (3) the trial court erred in failing to grant the Clarks their constitutional right to a trial by jury.

The Court of Appeals held that genuine issues of material fact indeed existed and thus precluded summary judgment. Specifically, whether the fog constituted an unusually dangerous condition and whether McCorkle was negligent in the illumination of his trailer in said fog at the time of the collision. Because genuine issues of material fact were found as to the summary judgment claim, the other two issues on appeal were moot. Therefore, the Court of Appeals reversed and remanded the judgment of the Carroll County Circuit Court.

Judge Greenlee dissented arguing that the trial court correctly found that the Clarks did not present sufficient evidence of (1) dangerous conditions at the time of the accident, and (2) negligence on the part of McCorkle regarding the hazard placard on his tractor. Therefore, the Clarks could defeat summary judgment.

Briefed by [Luke Kelly](#)

[Lee v. Keller Williams Realty](#) - Contracts – Lease Agreements – Duty to Repair – In April 2013, Tina Lee entered into a one-year lease agreement with Keller Williams for a residence in Horn Lake, Mississippi. The agreement contained a “condition of the premises” clause and an “indemnity” clause, relieving Keller Williams of its duty to make repairs after inception of the lease. In May 2013, after finding the property in good condition, Lee and her seven-year-old son moved in. Over the course of the lease, heavy rain caused the home to flood multiple times, resulting in mold. Lee filed a complaint against Keller Williams and Anderson Rentals LLC, alleging negligence and breach of contract for failure to repair the property or relocate her to another property. After Keller Williams responded to the original complaint, Lee filed a supplemental and amended complaint, adding a negligence claim for injuries suffered by her son as a result of the mold. Keller Williams and Anderson Rentals moved for summary judgment. The trial court granted Keller Williams’s motion for summary judgment, holding that under the lease agreement, Keller Williams didn’t assume the duty to repair the property. On appeal, Lee argued that (1) she did not waive Keller Williams’s duty to repair the property, and (2) Keller Williams assumed the duty to repair. Keller Williams argued that Lee’s amended complaint was not procedurally proper before the circuit court and was an insufficient basis for appeal.

The Court of Appeals held that the amended complaint could not be brought on appeal, as it was filed after Keller Williams's answer to the original complaint, and was thus procedurally improper under Miss. R. Civ. P. 15. Additionally, the Court of Appeals held that Keller Williams's duty to repair the property was waived. Though clauses limiting liability are given strict scrutiny in the state of Mississippi, they may be enforced where the limitation is fairly and honestly negotiated and understood by both parties. Because Lee and Keller Williams entered into the agreement in good faith with full understanding of its contents, the agreement and its provisions waiving Keller Williams's duty to repair were valid and enforceable. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Briefed by [Hale Neilson](#)

Mayton v. Oliver - Real Property – Restrictive Covenants – Attorney's Fees – This is a case about four neighbors on a cul-de-sac in Greenville. Three neighbors in Greenville (the plaintiffs) alleged that their other neighbor Jane Oliver (the defendant) violated a restrictive covenant and interfered with express or prescriptive drainage easements when she blocked a PVC pipe that emptied water from their lots onto her property. The chancellor found that the plaintiffs failed to establish the existence of an express or prescriptive drainage easement and denied their claims for injunctive relief and damages. The chancellor also denied Oliver's request for attorney's fees and her counterclaim for damages. The plaintiffs appealed, and Oliver cross-appealed.

On appeal, the plaintiffs argued that the chancellor erred by denying their claims for injunctive relief and damages and, specifically, that the chancellor erred when she found that the plaintiffs failed to prove express drainage easements, prescriptive drainage easements, or an actionable violation of the subdivision's restrictive covenants. On cross-appeal, Oliver argued that she was entitled to attorney's fees because she was wrongfully enjoined by the chancellor's order granting a preliminary injunction. The Court of Appeals found that the chancellor did not err in her findings and denial of the plaintiff's claims. Further, the chancellor was correct in denying Oliver attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Washington County Chancery Court.

Judge Greenlee concurred with the majority that the plaintiffs were not entitled to express drainage easements. However, Judge Greenlee dissented in part, arguing that the chancellor erred in concluding that the plaintiffs failed to present clear and convincing evidence that their use of the PVC pipe and Oliver's culvert were "open, notorious, and visible, and uninterrupted for at least ten years."

Briefed by [Allison A. Bruff](#)

Williams v. U.S. Bank Tr., N.A. - Real Property – Deed of Trust – Scrivener's Error – Franklin Williams bought five acres from Dan Boone Custom Homes, Inc. Williams executed a promissory note secured by a purchase money deed of trust. The deed of trust referenced the wrong plot of land. Ten years later, Williams defaulted on the promissory note, and the erroneous deed of trust was noticed for a foreclosure sale. U.S. Bank made a credit bid, and a substitute trustee's deed – with the erroneous description – was executed to U.S. Bank. U.S. Bank filed this action for reformation of the deed of trust to correct the property description. As part of its motion for summary judgment, U.S. Bank attached an affidavit from David Lopez as trustee. The chancery court granted summary judgment to U.S. Bank. Williams appealed.

On appeal, Williams argued that the affidavit lacks personal knowledge because Lopez was not the scrivener and was not present at the auction. The Court of Appeals found that Williams offered no testimony to contradict Lopez's sworn statements. Further, Williams did not cite any authority requiring Lopez to have been the scrivener or present at the auction. All other issues raised by Williams on appeal were either procedurally barred or without merit. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Chancery Court.

Briefed by [Nathan Simpson](#)

Court of Appeals – Post-Conviction Relief

Ishee v. State - Constitutionality – Mens Rea – Michael Ishee was indicted on 19 counts of child exploitation, specifically the possession of visual depictions of children under 18 years of age, engaging in sexually explicit conduct. Ishee filed a motion for post-conviction relief, but it was denied by the Harrison County Circuit Court. Ishee appealed claiming that the statute which makes it unlawful for a person to possess any visual depiction of a child engaging in sexually explicit conduct was unconstitutional because it lacked a scienter element.

The Court of Appeals held that since the statute required the defendant to willfully possess the illegal material, the statute did in fact contain a mens rea element. Additionally, Ishee admitted to willfully possessing the material in his testimony. Therefore, the Court of Appeals affirmed the decision of the Harrison County Circuit Court.

Briefed by [Zachary Harper](#)

Johnson v. State - PCR – Indictment – Ineffective Assistance of Counsel – Guilty Plea – Edward Johnson entered into a plea agreement and plead guilty to several felonies including second degree murder. Johnson argued that the indictment was defective and unconstitutional. Challenges to an indictment for defects of form must be raised as a demurrer to the indictment, and the defendant's right to do so is waived upon entering a guilty plea. Johnson failed to raise the issue prior to entering a guilty plea, and by entering the plea he waived his right to do so. Johnson also argued ineffective assistance of counsel because his counsel failed to object to the indictment. The defect present in Johnson's indictment could have been fixed by simply amending the indictment, therefore Johnson could not prove that if not for the counsel's errors that the result of the proceeding might have been different.

Johnson also argued that his guilty plea was involuntary and that the court lacked a factual basis to accept his plea. However, neither issue was present in the circuit court petition and therefore are procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Briefed by [Tyler Alcorn](#)

Court of Appeals – Criminal

Gonzalez v. State – Evidence – Discovery – Medical Forms - Sergio Sebastian Gonzalez (“Gonzalez”) and Gina Rodriguez (“Rodriguez”) were married in 2010. By 2014, Gonzalez and Rodriguez were contemplating divorce. On August 9, 2014, in violation of a protective order, Gonzalez entered Rodriguez's home and saw Andres Gonzalez (“Andres”) on the couch in a state of undress. Gonzalez went into the kitchen and grabbed two kitchen knives. A struggle followed, and as a result, Andres suffered stab wounds on the right side of his

head, his side, his back, and lacerations to his arms. Four days after the incident, Gonzalez turned himself into authorities and was charged with aggravated assault.

At trial, Gonzalez testified in his own defense. Gonzalez claimed self-defense against Andres. Gonzalez claimed that Andres inflicted bite-marks and bruises on his arms. However, Gonzalez later admitted those bite-marks and bruises were inflicted after the incident. At trial, the prosecution presented a medical screening form that was unsigned, undated, and mostly blank. Lynn Parrish (“Parrish”), a jailer who booked Gonzalez, testified that the form was left blank because Gonzalez answered all medical questions in the negative. Parrish did not notice any bite-marks, cuts, or bruises on Gonzalez at the time of his booking. On appeal, Gonzalez contends that the medical form was not produced to defense counsel during discovery, and therefore, should not have been entered into evidence at trial, the form “ambushed” him on his rebuttal, and it should not have been employed by the jury for substantive proof that he did not sustain any injuries.

Because defense counsel did not request a continuance after the medical form was introduced, did not object to the medical form as rebuttal evidence, nor raise an objection concerning the submission of the medical form to the jury, Gonzalez’s conviction was proper. Therefore, the Court of Appeals affirmed the judgment of the Pontotoc County Circuit Court.

Briefed by [Andrew P. Cicero, III](#)

Johnson v. State - Ineffective Assistance of Counsel – Calling Witnesses - On the morning of June 7, 2015, James Lee Johnson III and Larry Gilliam, Jr went over to Troy Holmes’s house to ask the whereabouts of Curtis Mumford, who lived across the street from Holmes and often cut Holmes’s grass. Holmes stated that he had not seen Mumford since the day before. The next day, Holmes noticed Mumford’s home being investigated as a crime scene. Detective Darryl Linzy had discovered Mumford’s body in his home. Johnson was identified as a person of interest and was taken into custody. Blood and matching DNA evidence was discovered on evidence collected from a consensual search of his parents’ home. After the State rested its case-in-chief, defense counsel moved for a directed verdict, and argued there was no evidence Johnson aided, assisted, or acted in concert with Gilliam to commit murder. The trial court denied the motion and found that the State had presented sufficient evidence for the case to go to the jury. The defense rested its case without calling any witnesses, and the State finally rested. After considering the evidence presented and the instructions given, the jury found Johnson guilty of first-degree murder. Johnson was sentenced to life in the custody of the Mississippi Department of Corrections.

On appeal, Johnson argued his trial court was ineffective because his trial counsel (1) called no witnesses, (2) neglected to give an opening statement, (3) filed no motion to suppress the voluntariness of an unrecorded statement to police, (4) requested no expert for independent forensic investigation, and (5) failed to instruct the jury on any viable theory of defense.

The Court of Appeals held that (1) the record did not affirmatively show ineffectiveness of constitutional dimensions, and (2) the State did not stipulate that the record was adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge. Therefore, the Court of Appeals reversed and remanded the judgment of the Quitman County Circuit Court.

Briefed by [Katie Berry](#)

Lewis v. State - Felony – Hybrid Representation – Opening Statements – In October 2015, Ridgeland officers responded to a call about a disturbance in a motel parking lot. Upon arriving in the parking lot, officers encountered Henry Lewis and Latoya Walker arguing. Lewis became agitated and tried to flee the scene.

Officers arrested Lewis and subsequently verified Lewis's motel room number, in which they retrieved a 9-millimeter "semiautomatic machine gun," as well as marijuana. A grand jury later indicted Lewis, as a habitual offender, for possession of a firearm by a convicted felon. The circuit court assigned Lewis's case to the public defender's office. At Lewis's trial, the public defender made the opening statement and closing argument, cross-examined the State's witnesses, and moved for a directed verdict following the State's case-in-chief. A jury found Lewis guilty of possession of a firearm as a convicted felon. The Madison County Circuit Court then sentenced Lewis as a habitual offender to ten years in the custody of the Mississippi Department of Corrections (MDOC). Lewis appealed.

On appeal, Lewis argued that the circuit court judge committed reversible error by telling Lewis that he would have to represent himself at trial with standby counsel if he chose to give his own opening statement. Mississippi case law allows a defendant to exercise both his right to counsel as well as his right to pro-se representation. Lewis sought hybrid representation and expressed a desire to participate in his defense on a limited basis by giving his own opening statement. The circuit court judge, however, stated that Lewis must choose between his right to self-representation or his right to representation by his attorney. Because the circuit court erroneously prevented Lewis from exercising his constitutional right to participate in his defense by giving his own opening statement, the Court of Appeals found error in Lewis's conviction and sentence. Therefore, the Court of Appeals reversed and remanded the judgment of the Panola County Circuit Court.

Briefed by [Emily Warwick](#)

Lewis v. State - Statutory Rape – Habitual Offender – In 2015, Larry Lewis was arrested pursuant to an interview conducted by Department of Human Service, whom investigated an allegation of "an inappropriate relationship." The sexual relationship began when the minor was thirteen-years-old, and Lewis was fifty. Lewis and the minor child had a consistent sexual relationship for nearly three years. Lewis was convicted on two counts of statutory rape and sentenced to life imprisonment pursuant to the habitual offender statute. Subsequent to his conviction, Lewis filed a judgment notwithstanding the verdict. Alternatively, he filed for a new trial. The circuit court denied the motion. Lewis appealed.

On appeal, Lewis asserted no direct evidence connected him to the crime of statutory rape. Thus, the evidence set forth in trial was not sufficient to support his guilty verdicts. Upon reviewing this matter, the court cited *Jordan*, which held, witness testimony alone is sufficient to secure a conviction. At trial, all of the following testified against Lewis: an expert in the field of child abuse and forensic interviewing, a nurse coordinator at a rape crisis center, Lewis's coworker, and Lewis's biological daughter. In light of the evidence presented at trial, the Court of Appeals found there was sufficient evidence for a reasonable jury to find Lewis's guilt on both counts of statutory rape. Therefore, the trial court's judgment was affirmed.

Briefed by [Charlotte Cooper](#)

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