

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 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 and are intended to balance our needs in preparing for exams and your needs as a subscriber.

## **Supreme Court – Civil**

**Brown v. State** - Post-Conviction Relief – Successive Petition – Procedural Bar – In 1994, Joseph Patrick Brown was convicted of capital murder in Adams County. A jury found that he shot and killed a convenience-store clerk during a robbery, and Brown has been on death row since 1994. Brown's conviction was confirmed on direct appeal, and he has filed two previous post-conviction relief ("PCR") motions, both of which were denied. In 2015, Brown filed his notice of Intent to File a Successive Petition for Post-Conviction Relief and filed the petition in 2018. In his motion for PCR, Brown raised fifteen issues. Many of the challenges pertained to issues at the trial court level, but one claimed that Brown's post-conviction counsel was ineffective. Relief is warranted if the petitioner is able to show that the claims are not procedurally barred and make a substantial showing of the denial of a right. Procedural bars include failure to raise PCR claims within one-year period and successive-writ bars. Because Brown did not show that an applicable exception applied to his claims, his claims were procedurally barred. The Supreme Court found Brown's claim regarding ineffective assistance of post-conviction counsel to be without merit because his claim failed to meet the second *Strickland* prong. Therefore, the Supreme Court denied the motion for post-conviction relief.

Justice Coleman agreed with the majority but argued separately that any case in which the Court has held that the fundamental-rights exception to the procedural bars can apply to the substantive bars codified by the Uniform Post-Conviction Relief Act should be overruled.

Briefed by [Schyler Burney](#)

**Carver v. Pub. Emp't Ret. Sys. of Miss.** - Administrative Law – Statute Interpretation – Disability Benefits – Brian Carver, an employee of the Jackson Police Department ("JPD"), was involved in an officer-involved shooting in which he shot and killed a suspect. After his two required psychologist visits, Carver was cleared to return to work. He then experienced physical and mental health issues while on duty. Carver testified that he had post-traumatic stress disorder ("PTSD") that was primarily triggered by domestic violence situations and could no longer handle domestic-violence duty as a policeman. Carver was transferred to the police-motor unit where he dealt mainly with traffic-related matters, but he continued to experience physical and mental health issues while carrying out his duties. Carver testified that in instances in which people failed to stop right away, he would become anxious and feel as if he were still in a position requiring him to use deadly force. Carver began seeing Dr. Matheny, a licensed professional counselor, to help with his anxiety and inability not to overreact during routine policing situations. After another altercation with a driver refusing to comply, Carver told Dr. Matheny that he felt he was having trouble controlling his actions and that he was concerned he might misuse his weapon. Dr. Matheny informed Carver's supervisors, and the JPD relieved Carver of his gun, and Carver took a medical leave. Dr. Matheny wrote a letter in which she stated that Carver suffers from PTSD and that the impulses he describes are a manifestation of his PTSD. Carver underwent an independent medical evaluation. Dr. Mark Webb stated that all of the traumas he experienced caused Carver's PTSD. Subsequently,

Carver received two letters terminating his employment. Before being terminated, Carver applied for non-duty and duty-related disability benefits. The PERS Medical Board granted Carver's claim for non-duty related disability benefits and denied his claim for duty-related disability benefits. Carver appealed to the Disability Appeals Committee, and it recommended to the PERS Board that the claim be denied. Carver appealed to the Hinds County Circuit Court, and the circuit court affirmed the decision to deny Carver's claim for duty-related disability benefits because Carver's PTSD did not satisfy the statutory definition and his PTSD stemmed from multiple traumas and lack of mental health treatment. Carver appealed the circuit court's decision, and the Court of Appeals affirmed. Carver petitioned for a writ of certiorari.

The Supreme Court held that the decision of the PERS Board was not arbitrary or capricious and was supported by substantial evidence because the administrative agency's decision was based on substantial evidence from Miss. Code Ann. § 25-11-114(6). Also, the Court of Appeals did not err in its analysis of *Truelove* because PERS did not argue that Carver did not suffer from PTSD or that the disorder did not lead to physiological symptoms. PERS merely found that there was no physical injury that occurred in the line of duty. Finally, the Court of Appeals did not err in its analysis of the Miss. Code Ann. § 25-11-114(7)(b) because regardless of the Court of Appeals' finding that Miss. Code Ann. § 25-11-114(7)(b) separates mental and physical disabilities, Miss. Code Ann. § 25-11-114(6) requires a physical injury occurring in the line of duty because of an accident or traumatic event. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Presiding Justice Kitchens dissented, arguing that PTSD satisfies the physical-injury requirement of Miss. Code Ann. § 25-11-114(6) because it physically changes the brain and causes physical manifestations of behavior. He also argued that Carver provided substantial evidence that his physical and mental incapacity resulted directly from a traumatic event that occurred while he was in the course and scope of his employment and that the event caused his PTSD, a physical injury to the brain.

Briefed by [Rachel Fewell](#)

**[Keller v. State](#)** - Post-Conviction Relief – Criminal Procedure – Ineffective Assistance of Counsel – In 2007, Jason Lee Keller robbed and murdered Hat Nguyen in her convenience store in Biloxi Mississippi. Police shot and apprehended Keller, and he confessed to the crime. The Supreme Court affirmed the conviction and Keller was sentenced to death. On his application for post-conviction relief, Keller argued his counsel was ineffective for failing to investigate and present evidence that would mitigate his sentence. At an evidentiary hearing, where Keller presented both lay and expert witnesses, the trial court found that Keller's ineffective assistance of counsel claim could not prevail and denied Keller's post-conviction relief. Keller appealed. Under the *Strickland* test, the defendant must prove that their counsel made errors so serious that they were not functioning as 'counsel' guaranteed by the Sixth Amendment, and that the deficient performance prejudiced the defense. Since Keller's trial counsel presented evidence relating to his learning disability, remorse for his actions, and familial relationships, his counsel was not deficient. Keller also argued that the circuit court manufactured a tactical decision for trial counsel and ignored evidence presented by expert witnesses. Instead of ignoring evidence, the Supreme Court found that the trial judge appropriately assessed the credibility of the witnesses and did not manufacture a decision for trial counsel. Furthermore, though it was error for the trial judge to conduct factual research beyond what was in the record, any improper factual research on the part of the judge was harmless error. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Kathleen Workman](#)

**Rollins v. Hinds Cty. Sheriff's Dep't** - Employment Law – Workers' Compensation – Subcontractors – Quality Choice Correctional Healthcare (“Quality Choice”) entered a contract with Hinds County to provide comprehensive medical care to inmates. Quality Choice hired Delorise Rollins as a nurse at the Hinds County Detention Center in Raymond, and Rollins was injured in the course of her duties in September 2014. At that time, Quality Choice did not carry workers' compensation coverage. Rollins filed a petition to controvert with the Mississippi Workers' Compensation Commission (“the Commission”). The Commission found that the Hinds County Sheriff's Department (“HCSD”) was not Rollins's statutory employer and denied workers' compensation benefits. Rollins appealed, and the Court of Appeals affirmed the Commission's decision. In an en banc opinion, the Supreme Court determined the issue of whether the HCSD was Rollins's statutory employer when she was injured in 2014. Pursuant to Miss. Code. Ann. § 71-3-7(6), when an employee suffers an injury compensable under workers' compensation law, a contractor is liable for compensation for subcontractor employees when the subcontractor fails to provide compensation. HCSD was not Rollins's statutory employer, and Rollins was an employee of Quality Choice. Because the HCSD was not Rollins a statutory employer and workers' compensation benefits were not available, the Court of Appeals and the Commission did not err in their decisions. Therefore, the Supreme Court affirmed the judgment of the Mississippi Workers' Compensation Commission.

Presiding Justice King dissented, arguing that the Supreme Court should remand this case to the Commission for full findings regarding the relationship between Rollins and the HCSD. He also argued that the majority's analysis hinged on the fact that only a single contract exists, which referred to itself as a “subcontract,” and that relying only on the number of contracts instead of examining the full relationship between the parties defied case law and statutory intent.

Briefed by [Mckenzie Williamson](#)

**RW Dev., LLC v. Miss. Gaming Comm'n** - Property – Public Trust Tidelands Act – Mississippi Gaming Control Act – This matter was the consolidation of two cases on appeal. In each case, the Harrison County Circuit Court affirmed the Mississippi Gaming Commission's (“MGC”) decision to deny the gaming application of RW Development, LLC (“RW”). The MGC and the circuit court found that RW's proposed gaming site failed to meet the governing statutory and regulatory requirements under Miss. Code Ann. § 97-33-1 in the first instance and 13 Mississippi Administrative Code Part 2, Rule 1.4(d) in the second instance.

In the first case, RW argued on appeal that the Public Trust Tidelands Boundary Line is interchangeable with the mean high water line (“MHWL”). Additional issues included whether (1) the MGC exceeded its statutory authority; (2) the MGC based its decision on any evidence and whether its decision was arbitrary and capricious; and (3) RW received due process. Based upon the Mississippi Constitution, which states that the “lands belonging to, or under the control of the State, shall never be donated directly or indirectly, to private corporations of individuals . . .,” the 1989 Mississippi Public Trust Tidelands Act, and based on the Attorney General's opinion, the Public Trust Tidelands Boundary Line was found not to be interchangeable with the MHWL. Additionally, the Supreme Court found that the MHWL means the intersection of the tidal datum place of mean high water with the shore, the applicable gaming statute does not wholly incorporate the Public Tidal Trust Tidelands Act, and the Mississippi legislature intended to limit the gaming with passage of the Mississippi Gaming Control Act. Also, the sand beach was not an easement, the MGC's decision was supported by evidence and was not arbitrary and capricious, and RW received an opportunity to be heard before its application was denied and thus it received due process. In the second case, RW argued on appeal that the

MGC exceeded its statutory authority in promulgating 13 Mississippi Administrative Code Part 2, Rule 1.4(d). The Supreme Court found that the Mississippi Gaming Control Act set out the MGC's specific authority to adopt rules and it has the authority to define and limit the area, games and devices permitted, and the method of operation. The MGC created Rule 1.4(d) to require that a gaming entity own or lease the premises where the MHWL falls, and Rule 1.4(d) also requires that the gaming entity own or lease the land contiguous. Because it was the Legislature's intent to ensure geographic proximity to the water, this rule was found to further that goal and it does not exceed the MGC's statutory authority. Further, RW failed to satisfy statutory and regulatory authority, and the MGC's decision was supported by evidence and was not arbitrary and capricious. Therefore, the Supreme Court affirmed the judgment of the Bolivar County Circuit Court.

Briefed by [Mackinlee Rogers](#)

## **Supreme Court – Criminal**

[McGraw v. State](#) - Criminal Procedure – Rape – Sufficiency of the Evidence – SR, a thirty-three-year-old woman, contracted bacterial meningitis at the age of two, and the infection was neurologically devastating. The muscles in SR's upper and lower body are severely underdeveloped, she cannot walk or talk, and she requires twenty-four-hour care and supervision. In early September 2017, SR's mother took her to the hospital due to a decline in her health and the doctors discovered that SR was nineteen weeks pregnant. The hospital contacted Michael Mattox, an investigator for the sheriff's department, and informed Maddox that SR was a pregnant vulnerable adult. Because SR was unable to leave her home unassisted, Mattox drew DNA tests from the five men that had access to her home. After testing the DNA samples, the laboratory was able to say with over ninety-nine percent certainty that SR's father, Andrew McGraw, fathered SR's child. McGraw was convicted of one charge of forcible rape and one charge of incest. McGraw appealed his conviction for forcible rape, arguing that the evidence was insufficient to prove that SR lacked the ability to consent to intercourse. Two obstetrician-gynecologists, the attending physician for SR and the resident on call when SR was admitted to the hospital, both testified that SR was unable to consent to any procedures and was unable to communicate with them. Mattox, the investigator who handled the case, stated that SR was unable to communicate with him "in any shape or form." He also testified that SR's family had to physically carry her or transport her in a wheelchair since she is unable to walk. Because a reasonable finder of fact could find beyond reasonable doubt that SR was incapable of consent due to her physical and neurological disabilities, the circuit court did not err in convicting McGraw of forcible rape. Therefore, the Supreme Court affirmed the judgment of the Kemper County Circuit Court.

Briefed by [Jacob D. Hamm](#)

## **Court of Appeals – Civil**

[Callender v. Callender](#) - Wills & Estates – Property Settlement Agreement – Joint Tenancy – Rights of Survivorship – Ralph Verdo Callender and Patricia Callender originally acquired interests in the Brookhaven and Mallalieu oil fields in Lincoln County as joint tenants with rights of survivorship. When the parties divorced, Ralph and Patricia entered into a property settlement agreement ("PSA") that the parties shall divide equally all mineral rights of the Brookhaven field and that Ralph shall have exclusive rights to all mineral rights associated with the Mallalieu field. Six years later, Ralph passed away, leaving a will that bequeathed the mineral rights in the Brookhaven and Mallalieu fields to his son, Robert Earl Callender. Robert filed a declaratory judgment action, alleging that Patricia unlawfully claimed an interest in both fields. Patricia filed a counter-petition, arguing that because she and Ralph acquired the fields as joint tenants with full rights of survivorship, she

became the sole owner of any and all mineral and royalty interests upon Ralph's death. The trial court held that pursuant to the PSA, Ralph's estate should receive an undivided one-half interest in all oil, gas, mineral, and royalty proceeds of both the Brookhaven field and the Mallalieu field. On appeal, Patricia argued that the trial court erred by declaring that Ralph's estate be vested with mineral rights because she and Ralph originally acquired title as joint tenants with rights of survivorship. Patria further argued that because she and Ralph acquired title as joint tenants with rights of survivorship, the final judgment of divorce and the PSA were irrelevant. Because Ralph and Patria entered into a clear and unambiguous PSA that clearly intended to sever the joint tenancy with rights of survivorship, the trial court did not err in holding that Ralph's estate should be vested with mineral rights. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Chancery Court.

Briefed by [William "Jack" Simpson](#)

**[Kendrick v. Warren](#)** - Wills & Estates – Will Construction – Disregard of Surplusage – In December 2016, Mittie Towne Warren's estate was opened and her will was admitted for probate. Mittie's nephew, Jimmy Kendrick, was appointed as the executor of the will. Mittie's widower, James Warren, filed a petition seeking an interpretation of Item II in Mittie's will, which provided, "I hereby devise my home and furnishings...to my husband, James Connie Warren, if he survives me, or, if he survives me, this devise shall be for his lifetime with remainder to Jimmy Nelson Kendrick, Jr." The chancellor determined that the language of Item II was unclear and, after reviewing the four corners of the will and rules of will construction, that Item II devised the home and furnishings to James in fee simple absolute. Kendrick, as executor of the estate, appealed.

On appeal, Kendrick asserted that the chancery court erred in interpreting the plain language of Item II as unclear rather than a clear testamentary disposition of a life estate in James Warren with a remainder in Kendrick. Also, even if Item II was doubtful, the chancery court erred in failing to determine that the property would pass to Kendrick under the residuary clause of the will. Pursuant to Miss. Code Ann. § 89-1-5, the property shall be deemed a fee simple if a less estate is not expressly stated or clearly intended. Pursuant to holdings from the Supreme Court, a preceding fee simple devise may not be reduced by succeeding language which is inferior in clarity or certainty. Because of this, the chancellor did not err in determining the property in Item II to vest in James Warren in fee simple. Additionally, the Supreme Court explained in *Keeley v. Adams* that a court retains no authority to add or take from a will, except when disregarding a surplusage of language. The Court of Appeals determined the alternative life estate disposition to be surplusage, rendering the life estate claim through the residuary clause without merit. As such, the chancellor appropriately disregarded this claim of error. Therefore, the Court of Appeals affirmed the judgment of the Warren County Chancery Court.

Briefed by [Ashley Pruitt](#)

**[Leverett v. Leverett](#)** - Wills & Estates – Property Settlement – Contempt – Child Support – In Sun and Randall Leverett's divorce agreement, Sun was awarded sole custody of their son, and Randall was ordered to pay monthly child support. The agreement also provided that each party would pay one-half of their son's high-school, college, extracurricular activities, and automobile expenses. Randall was also ordered to put aside five certificates of deposit ("CDs"), which would be used exclusively for their son's college expenses. Finally, with regards to their jointly owned business, the agreement provided that Sun would make monthly payments to Randall to purchase his shares of the business. Six years after the divorce, Sun filed a complaint against Randall, alleging contempt for his willful failure to pay his share of their son's expenses, child support, and misappropriation of the CDs. At hearing, Randall admitted he had improperly withdrawn the CDs. The chancellor found him in contempt for violating the prior order and ordered him to pay the amount of the CDs

plus interest. Sun admitted she failed to submit to Randall the other expenses, including the purchase of a new car for their son. The chancellor did not hold Randall in contempt for failing to pay these expenses, but ordered Randall to reimburse Sun for half of these expenses. Randall testified he did not have the funds to repay the CDs or any monetary award rendered against him. Randall agreed that he was willing for the amount he owed Sun to be offset by her payments owed to him for his shares of the joint business.

On appeal, Randall argued that the chancellor erroneously ordered him to reimburse Sun for half the costs associated with an automobile purchased for their son and erroneously offset the amount of his unpaid obligations and expenses with payments Sun owed him for his shares in the parties' jointly owned business. Because the divorce agreement provided that each party would be responsible for one-half of the costs of an automobile for their son, the chancellor did not erroneously order him to reimburse Sun for half the costs associated with the automobile. Additionally, because Randall admitted he did not have the financial means to pay the amount of the CDs or any additional judgment rendered against him, and because Randall expressed his willingness to offset his obligations with the payments for his shares and failed to raise the issue prior to appeal, the chancellor did not erroneously offset the amount of his unpaid obligations with payments for his shares. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Chancery Court.

Briefed by [Glory Crocco](#)

**Mosely v. State** - Criminal Law – Ineffective Assistance of Counsel – Direct Appeal – Meae Mosely was shot and killed while lying on a couch in her trailer. Her son, Michael Mosely, called 911 and reported that he walked inside his trailer and found his mother. He said that she had been “shot or something” and that he needed an ambulance. The Bolivar County Sheriff's Department responded, and Deputy Sheriff Jonathan Trotter was the first responder at the scene. As he arrived, Trotter saw Michael come from behind the trailer. Trotter ordered Mosley to put up his hands to be sure that he had no weapons, and Michael complied. Trotter asked what had happened, and Michael replied that “they shot my mama—they shot my number one.” Trotter asked who had shot his mother, but Michael did not respond. Trotter handcuffed Michael and placed him in the back of his police car. Trotter told Michael that he was not under arrest, but that he was being detained until law enforcement could determine what was going on. Two hours after Trotter placed Michael in the police car, he was taken to the police station. Michael was not interviewed because he appeared to be under the influence of drugs, but police officers did collect samples from Michael's hands for a gunshot-residue test. At trial, several photographs were entered into evidence, including photographs law enforcement officers took of Meae's bloody body as they found her that night and others taken during the autopsy. Michael's counsel raised no objection to these photos. The autopsy report itself was not entered into evidence. The jury found Michael guilty of first-degree murder and possession of a firearm by a felon. On appeal, Michael argued that his counsel was ineffective at trial because his counsel failed to (1) raise a timely motion to suppress evidence of Michael's gunshot-residue test as the fruit of his unlawful arrest without probable cause and (2) object to the admission of gruesome, inflammatory photos from Meae's autopsy. The Court of Appeals found that an objection to the photos would have been futile because they did not rise to the level of gruesomeness to suppress the photos. Therefore, it did not prejudice Michael, and was used to aid a witness in his testimony. Further, the Court of Appeals could not determine from the record that Michael's counsel was ineffective in not filing a motion to suppress the gunshot-residue test results on Fourth Amendment grounds because such a determination can only be made with further testimony concerning the circumstances surrounding his custody and the rationale for obtaining the gunshot-residue samples. As a result, Michael's claim of ineffective assistance of counsel was dismissed without prejudice to his right to raise it in a motion for post-conviction collateral relief. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Briefed by [Fatelia Avery](#)

**United Roofing & Constr. of MS., Inc. v. Miss. Dep't of Revenue** - Civil Procedure – Summary Judgment – Tax Appeal – United Roofing & Construction of MS, Inc. (“United”) was in the business of selling and installing roofing materials. The Mississippi Department of Revenue (“MDOR”) informed Jon McCoy, the sole shareholder of United, that the sale and installation of roofing materials is a taxable event that is subject to either sales or contractor’s tax depending on whether the job is residential or commercial, respectively. After being audited twice, the assessments found that United did not remit sales taxes on its sales and installation of roofing materials on residential and commercial properties. United appealed both assessments to the MDOR’s Board of Review and the Board of Appeals, which both upheld the assessments. Then, United appealed both Board of Appeals orders to the Rankin County Chancery Court, where the two matters were consolidated. MDOR filed a motion for summary judgment, arguing that the sale and installation of roofing materials was a taxable activity and thus United had a duty to collect and remit sales tax. The chancery court granted summary judgment in favor of MDOR, finding no genuine issue of material fact and rendered judgment as a matter of law. United appealed.

On appeal, United argued that the chancery court erred in determining its roofing services are subject to sales tax under Miss. Code Ann. § 27-65-17. Further, United raised three issues: (1) whether there are genuine issues of material fact; (2) whether *Blount* or *Hinton* is applicable and whether statutory ambiguities exist; and (3) whether MDOR overcame its burden of persuasion for summary judgment. First, because United failed to cite any authority to support the argument that a lack of knowledge is a defense to not paying taxes, the chancery court did not err in finding no genuine issues of material fact. Next, because the facts in *Hinton* were substantially similar to the present facts, and because *Blount* referenced a different portion of the tax code and a different type of work, the chancery court did not err in finding *Hinton* provided the correct analysis of the taxation issues at bar. Additionally, because there is no ambiguity or inconsistencies in the statutes, a discussion of statutory interpretation principles was unnecessary. Finally, because United brought the appeal, and because the party bringing the appeal has the ultimate burden of persuasion for the appeal, MDOR met its burden of persuasion for summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Briefed by [MaryScott Polk](#)

**Waring Invs., Inc. v. City of Biloxi** - Property – Rezoning Request – Public Need – In November 2017, Waring Investments Inc. (“Waring”) filed a rezoning request with the Biloxi Planning Commission (“the Commission”) to rezone a 4.4-acre parcel of land in Biloxi, Mississippi, from “low-density single-family residential” to “neighborhood business” to construct a convenience store and gas station. In December 2017, the Commission held a public hearing on Waring’s request. In support of its request, Waring asserted that the character of the neighborhood had changed to the extent necessary to justify the rezoning and that a public need existed for the convenience store and gas station. Thirteen concerned citizens attended the hearing and voiced their opposition to the rezoning request. Two additional land owners sent the Commission letters in opposition to request. After considering all of the evidence, including the maps, surveys, aerial photographs, and expert reports that Waring presented, the Commission voted. The Commission’s vote resulted in a tie: six members approved the request, six members opposed, and two members abstained. The Commission forwarded the request to the Biloxi City Council (“the City Council”) with “no recommendation.” In February 2018, the City Council held a public hearing to consider the matter. Waring again presented its evidence and made its argument. Nine concerned citizens attended the hearing and objected to the request. All six City

Council members who attended the hearing voted to deny the request. Waring sought judicial review of the denial and filed an agreed bill of exceptions in the circuit court. The circuit court affirmed the City Council's denial, concluding that decision was fairly debatable and not arbitrary or capricious. Waring appealed.

Waring argued that the circuit court erred in upholding the City Council's denial of the rezoning request because it was not fairly debatable. Waring asserted that the record reflected clear and convincing evidence of both a change in character to the neighborhood and a public need for the requested rezoning. Because Waring failed to prove both a change in the neighborhood's character sufficient to justify rezoning and a public need for rezoning, and because the record contained substantial credible evidence to support the City Council's denial of Waring's rezoning request, the circuit court did not err in determining that the City Council's decision was fairly debatable and was neither arbitrary nor capricious. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Caroline Heavey](#)

## **Court of Appeals – Post-Conviction Relief**

**Smith v. State** - Post-Conviction Relief – Successive Claims – Amended Indictment – In 2009, Donald Keith Smith pleaded guilty to one count of kidnapping, one count of armed carjacking, and one count of felonious evasion in the Jackson County Circuit Court. Smith subsequently filed several motions for post-conviction relief (“PCR”). The first PCR motion was filed in 2011 challenging his armed-carjacking conviction, and the circuit court dismissed his indictment. In 2012, Smith filed a second PCR motion arguing that there was no factual basis for his armed-carjacking charge and that he was entitled to a court-ordered mental evaluation prior to entering his guilty plea. The circuit court denied this motion as well, stating that it was a successive motion and that the trial court did not err in failing to provide him with a mental evaluation. The Court of Appeals consolidated Smith's appeals from his first two PCR motions and affirmed the circuit court's judgment. On appeal, the Supreme Court reversed the judgments of the Court of Appeals and the circuit court and remanded the case to the circuit court for an evidentiary hearing on Smith's claim that he was entitled to a mental evaluation. On remand, the circuit court granted Smith a full competency hearing, set aside his 2009 guilty plea, and reinstated his case to its active docket. The circuit court ultimately found he was competent to stand trial. In 2015, Smith filed a motion to quash his carjacking charge, arguing that the indictment was insufficient because the State was attempting to convict him of “armed carjacking” when the indictment labeled the crime as “carjacking.” The circuit court granted the State's motion to amend the indictment. It was amended to reflect the charge of armed-carjacking in the heading, but not the body. The State then re-indicted Smith in 2015 for the same charges in a new multi-count indictment. Despite the new indictment, Smith chose to plead guilty according to the charges of the original indictment and was sentenced to serve forty-five years in the custody of the Mississippi Department of Corrections. In 2017, Smith filed a third PCR motion, attacking the armed-carjacking count of the indictment, the subject-matter jurisdiction of the circuit court to convict him of armed-carjacking, and his sentence for attempted kidnapping. The circuit court found that Smith's sentence was outside the statutory limits for attempted kidnapping and re-sentenced him for the count of attempted kidnapping. The circuit court dismissed his remaining claims as successive-writ barred. Smith appealed, and the Court of Appeals found the claims were not successive because they stemmed from a new, separate and distinct, plea, conviction, and sentence. On remand, the circuit court ordered the State to file an answer to Smith's remaining claims and after reviewing the record and the parties' motions, the circuit court found the amendment to the indictment was proper, and Smith's PCR motion was denied. Smith appealed.



If an indictment tracks the language of a criminal statute, it is sufficient to inform the defendant of the charged crime. The Court of Appeals determined that both the original and the amended indictment set forth the elements of the charge of armed-carjacking and therefore provided Smith with sufficient notice of his charge. Smith acknowledged under oath his full understanding that he was pleading guilty to the crime of armed-carjacking. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court. Briefed by [Brie Mansoor](#)

## **Court of Appeals – Criminal**

**Ball v. State** - Criminal Procedure – Conflict of Interest – Waiver – Deandre Ball appealed his first-degree murder conviction and life sentence for killing Trevues Martin, claiming that the Harrison County Circuit Court erred by granting the State’s motion to disqualify his counsel of choice. Prior to entering an appearance for Ball, Michael Crosby, Ball’s counsel of choice, had also entered an appearance as counsel for Kalisha Crockett. Crockett was charged in the same indictment for the murder of Martin, so the State filed a motion to disqualify Crosby, asserting that a conflict of interest existed in Crosby’s representation of both Ball and Crockett. Ball then signed a “Waiver of Conflict of Interest.” At the State’s motion hearing, the State proffered that Crockett had implicated Ball as the suspect who had killed Martin and that it intended to call Crockett as a witness against Ball. The circuit court recognized Ball’s right to counsel but found that an actual conflict existed and declined to accept Ball’s waiver.

In determining whether the circuit court erred by granting the State’s motion to disqualify Ball’s counsel of choice, the Court of Appeals found that an actual conflict of interest did exist because of Crosby’s representation of Crockett, a prosecution witness. Further, in its analysis of Ball’s waiver of an actual conflict of interest, the Court of Appeals weighed six factors, including whether: (1) the relevant conflict gravely imperiled the prospect of a fair trial, (2) the prosecution was in its early stages, (3) continued representation would violate an applicable rule of professional conduct, (4) the representation would result in proceedings that would appear unfair or improper, (5) there were available means for mitigating conflict, and (6) the State sought to manufacture the conflict. Because all six factors weighed heavily against Ball, his waiver was properly denied. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Rod Bridges](#)

**McNeer v. State** - Criminal Procedure – Jury Instructions – Reversible Error – Robert Little temporarily lived in Rickey McNeer’s home. McNeer and his family noticed that Little was stealing items from their home, such as prescription pills. In February 2017, McNeer confronted Little to ask him to move out because of the missing items, and Little denied that he had stolen anything. McNeer brought a gun when he confronted Little because Little and McNeer had a previous altercation in which Little became agitated and “kicked things all over the floor” and “body slammed” a duffle bag containing the items Little stole. McNeer testified he did not retrieve the gun with the intent to shoot Little, but because of their prior altercation and because he knew Little had taken hand-to-hand combat lessons and was capable of hurting him even without a weapon especially since McNeer had recently undergone back surgery. After asking Little to move out, McNeer was frightened by Little’s “evil” stare. Even after McNeer asked Little to leave, Little continued to sit in the chair and stare, never making a move to start packing his belongings. Due to Little’s behavior, McNeer then pulled out the gun and activated the laser sight. According to McNeer, Little deliberately placed his head into the line of the laser without saying a word, and then suddenly jumped out of the chair to approach McNeer. McNeer then shot

Little after he took a few steps towards him. McNeer was found guilty of second-degree murder. He filed for a motion for JNOV or, in the alternative, a new trial, which the circuit court denied. McNeer appealed.

On appeal, McNeer argued that the trial court erred in (1) refusing to give two of his proposed jury instructions; (2) failing to grant his motion for a directed verdict under the legal theory established in *Weathersby v. State*; and (3) denying his motion for a new trial. McNeer's proposed jury instructions would have instructed the jury that McNeer had no duty to retreat from the conflict before using deadly force if he was not the aggressor or engaged in unlawful activity pursuant to Miss. Code Ann. § 97-3-15(4). Because McNeer established a "meager" evidentiary predicate for defenses contained in his requested instructions, and because there was a factual question as to who the initial aggressor was, the circuit court abused its discretion and committed reversible error in refusing to instruct the jury on the proper jury instructions. Further, because the State presented a prima facie case with sufficient evidence to support McNeer's conviction of second-degree murder, and because McNeer's motion made no reference to insufficiency of the evidence based on the *Weathersby* rule, this issue was without merit. Lastly, because the appellate court reversed McNeer's conviction on the basis of the circuit court's failure to allow his proposed jury instructions, there was no need to address the circuit court's denial of McNeer's motion for a new trial. Therefore, the Court of Appeals reversed and remanded the judgment of the Grenada County Circuit Court.

Briefed by [Allison Payne](#)

**Pulliam v. State** - Criminal Procedure – Imperfect Self-Defense – Castle Doctrine – Jury Instructions – A jury convicted Quavares Pulliam of imperfect self-defense manslaughter for the death of Dwight Thedford. During the trial, Arthurly Phillips testified to having seen and talked to Pulliam at the Double Quick gas station on the night in question. Shortly after Pulliam departed the gas station, the Greenville Police Department ("**GPD**") received a call about gunshots. Officer Jeff Wilson arrived at the scene to a shirtless Thedford and an unknown man who left the crime scene before he could question him. The police officers questioned Phillips, who identified Pulliam. Investigator Jeremy Arendale went to Pulliam's apartment and took him into custody. Pulliam voluntarily provided a statement to Officer Xavion Clay while awaiting transportation. Later that same day, Pulliam provided a statement to Deputy Darrel Saxton. Investigator Eric Sutton and two officers performed a recorded interview with Pulliam during which he indicated he was wearing a yellow shirt at the time of the shooting and that he disposed of the gun in Lake Ferguson. Investigator Sutton recovered the yellow shirt but was unsuccessful in retrieving the weapon. Dr. John Brently Davis testified that Thedford was killed by a gunshot wound to his head. Following the conclusion of the evidence, the jury found Pulliam guilty of the lesser-included offense of manslaughter and did not find him guilty of the firearm enhancement. Pulliam was sentenced to serve twenty years in prison. Pulliam filed an unsuccessful motion for judgment notwithstanding the verdict or, alternatively, a new trial. On appeal, Pulliam argued (1) the circuit court erroneously excluded evidence that Thedford had schizophrenia; (2) the circuit court erroneously refused to instruct the jury on the castle doctrine; (3) the circuit court gave a self-defense jury instruction that misstated the relevant caselaw; and (4) there was insufficient evidence to support the jury's verdict.

Because Pulliam failed to establish the threshold requirement of the evidence's relevance, there was no abuse of discretion in the circuit court's exclusion of Thedford's medical history. Additionally, the castle-doctrine instruction lacked evidentiary basis because Pulliam voluntarily exited his vehicle, and Thedford did not begin acting physically aggressive until both men were standing outside the vehicle together. Further, there was no abuse of discretion in the circuit court's decision to give jury instruction S-4 because it fairly "announced the law of the case and created no injustice." Finally, in connection with the details Pulliam provided during his

confessions, the State presented sufficient evidence to support the elements of imperfect self-defense manslaughter such that a rational juror could have found beyond reasonable doubt that Pulliam killed Thedford due to a bona fide but unfounded belief that he faced imminent danger of death or serious bodily harm. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.  
Briefed by [Lynette Potter](#)

**[Ross v. State](#)** - Evidence – Impeachment – Prior Criminal Conviction – In October 2018, two men broke into the OK Food Store in Columbus, Mississippi, which triggered the alarm system. When police officers arrived at the store, they found a trail of packs of cigarettes and a cash-register tape, which led them to the Greenville Columbus railyard. At the railyard, they found Kenneth Moore overdosing and holding the cash register. Moore stated that he and Antonio Ross robbed the OK Food Store and that Ross planned the burglary and requested his assistance. Ross told Moore that they could not stay in the store longer than fifteen seconds because Ross was wearing an ankle monitor that tracked his location. Using this information, police were able to obtain data from Ross’s ankle bracelet and identify Ross’s location. The data confirmed that he was within 200 feet of the OK Food Store at the time of the burglary, and the police arrested Ross. A Lowndes County grand jury indicted Ross for one count of burglary of a business and a habitual-offender charge based on the following four felonies: (1) a 1996 auto burglary; (2) possession of cocaine in 2004; (3) a 2004 escape; and (4) possession of cocaine in 2017. During trial, Ross was found indigent and was appointed counsel, but he chose to represent himself. The State moved for a *Peterson* hearing to determine whether Ross’s prior crimes could be used for impeachment in accordance with Miss. R. Evid. 609, if Ross were to testify. The circuit court applied the *Peterson* factors and found that the State could not use the 2004 crimes, but were permitted to use the 2017 possession of cocaine felony. Ross did not testify, and evidence of his 2017 prior felony was never presented to the jury. The jury found Ross guilty of burglary, and because Ross was a habitual offender, he was sentenced to serve the maximum term without eligibility for parole. Ross filed a motion for judgment notwithstanding the verdict (“JNOV”) or a new trial, which the circuit court denied. Ross appealed, raising the sole issue of whether the circuit court erred when it allowed the State to use his prior conviction for impeachment. The Court of Appeals found that the circuit court analyzed the *Peterson* factors and properly concluded that Ross’s prior felony could be used to impeach him as a witness. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Briefed by [Claire Scott](#)

**MISSISSIPPI CASES EDITOR**

**ANNA MCLEMORE**

**ASSOCIATE CASES EDITORS**

**MELISSA FENWICK**

**JOHN FORREST KELLY**

**MATTHEW RHEA**

**MATTHEW RUSS**

**LUKE SEYMOUR**  
**FRANK WOOD**

*Thank you for supporting the Mississippi Law Journal.*

*Questions or comments: Anna McLemore, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)*

*All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007. Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Anna McLemore, [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)*