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

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## **Supreme Court – Civil**

**GEICO Cas. Co. v. Stapleton** - Intentional Torts – Statute of Limitations – Default Judgment – In 2004, GEICO obtained a default judgment against Bennie Stapleton. In February 2017, the default judgment was ultimately set aside, and GEICO's lawsuit was dismissed. In January 2018, Stapleton filed a lawsuit, alleging that the proceedings by GEICO amounted to an abuse of process, that GEICO negligently and tortiously engaged in invalid collection efforts, and that GEICO's negligent and reckless conduct caused severe emotional distress. GEICO responded with a motion to dismiss, contending that the statute of limitations had run on Stapleton's cause of action for abuse of process and intentional infliction of emotional distress. The trial court denied GEICO's motion and later granted GEICO's petition for an interlocutory appeal.

The parties disagreed as to when the statute of limitations began to run for Stapleton's causes of action for the intentional tort claims. Stapleton conceded that a one-year statute of limitations applied to his intentional tort claims and declined to challenge Supreme Court precedent and the Court of Appeals' holding supporting a one-year statute of limitation for claims of intentional infliction of emotional distress and abuse of process. Despite Stapleton's concessions, the Supreme Court overruled *Jones v. Fluor Daniel Servs. Corp.* to the extent that it applied the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to torts not specifically enumerated by the Legislature. Accordingly, the Court returned to its original interpretation in *Norman v. Bucklew*. Because Stapleton filed suit well within the three-year statute of limitations established by Miss. Code Ann. § 15-1-49, and because Stapleton's complaint repeatedly alleged negligence, the trial court was correct in allowing the claims to proceed. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Jack Hall](#)

**Kerr v. Kerr** – Family Law – Divorce – Cruel & Inhuman Treatment – Custody – In 2016, BJ Kerr filed a complaint for divorce to India Kerr and a complaint for custody of their child. BJ alleged that India was unfit to provide care or custody of their child and sought a divorce on the grounds of habitual cruel and inhuman treatment. India filed a countercomplaint for divorce and her own motion for temporary relief. After a hearing, the trial court found that BJ's motion for modification of temporary custody should be granted. The trial court awarded BJ primary custody and allowed India visitation on alternating weekends. India filed a motion for appointment of a guardian ad litem, which the court granted. India subsequently amended her countercomplaint, alleging that BJ had abused her during the marriage. India later dropped the domestic violence charge against BJ. Ultimately, the trial court held that the parties should share joint legal custody, but that BJ would have physical custody. The trial court ordered that India pay monthly child support based on her ability to earn minimum wage. BJ was to pay eighty percent of dental and medical expenses not covered by insurance and India was to pay the remainder. The trial court also denied India's request for alimony. Ownership

of the marital home was given to BJ. Because India's allegations of domestic violence were not credible and granted the divorce to BJ, the court denied India's request for attorneys' fees. India appealed.

On appeal, India raised five issues: whether (1) the chancellor erred by admitting the child's medical records into evidence; (2) India proved divorce grounds based on habitual cruel and inhuman treatment; (3) the chancellor erred by denying India's Miss. R. Civ. P. 41 motion to dismiss; (4) the chancellor should have applied the domestic violence-custody presumption against BJ; and (5) the chancellor's *Albright* analysis was flawed. The Supreme Court found no merit to any of India's arguments and held that the standard of the best interest and welfare of the child was applied to this custody decision. The Court further held that sufficient evidence entitled BJ to a divorce based on cruel and inhuman treatment. Therefore, the Supreme Court affirmed the judgment of the Jones County Chancery Court.

Briefed by [Blake Tims](#)

## **Supreme Court – Criminal**

**Barnett v. State** - Armed Robbery – Sufficiency of the Evidence – Circumstantial Evidence – In February 2019, a Forrest County Grand Jury indicted Tony Barnett Jr. for armed robbery under Miss. Code Ann. § 97-3-79. Barnett's case proceeded to trial in June 2019. After the State rested its case, Barnett moved for a directed verdict and argued that the State merely proved that Barnett had received stolen property and did not prove that Barnett had robbed the bank. The trial court found that the State had presented a "strong circumstantial evidence case" and overruled the motion. The defense called one witness who had been subpoenaed but did not show to testify at trial. After the trial court issued a bench warrant for the witness and were unable to locate the witness, counsel for Barnett made a proffer of what Barnett believed the witness's testimony would have been, stating that the witness was not a true alibi witness, but would have provided times and places in which Barnett was in the witness's presence that would account for Barnett perhaps not being at the robbery. The defense then rested its case. The jury was given a circumstantial-evidence instruction. Barnett was convicted for armed robbery and sentenced to serve a term of forty years in the custody of the Mississippi Department of Corrections.

On appeal, Barnett argued that the evidence presented at trial was not sufficient to support his conviction. Testimony and video evidence showed that, on the day of the robbery, a man with an armed handgun stole more than \$7,000 from the teller drawers of two employees of Great Southern Bank. The bank tellers' descriptions of the man who robbed the bank matched the physical description of Barnett. Approximately three hours after the robbery, a loaded handgun fitting the description of the one used in the robbery was found in Barnett's room. Law enforcement additionally found large amounts of cash in Barnett's room, including five fifty-dollar bills of bait money, which matched serial numbers from Great Southern Bank. Additionally, shortly before the robbery, Barnett had walked into Watkins Auto Sales and asked how much money he owed in order to recover his car from repossession. Shortly after the robbery, Barnett returned to Watkins Auto Sales and paid for his car in cash. The Supreme Court held that, when viewed with all reasonable inferences in favor of the conviction, a rational trier of fact could find beyond a reasonable doubt all elements of armed robbery. Therefore, the Supreme Court affirmed the judgment of the Forrest County Circuit Court.

Briefed by [Cecelia Hurt](#)

**Sandoval v. State** - Criminal Procedure – Competence Hearing – Competence Determination – Sergio Sandoval was indicted on four counts of touching a child for lustful purposes and one count of sexual battery of an eight-year-old girl. On the second day of trial, Sandoval collapsed and was taken by ambulance to Singing River Hospital, where he was examined by Dr. Benjamin Hudson. Hudson diagnosed Sandoval as having a panic attack, prescribed him non-narcotic medication for a stress-related headache, and released him. Later that day, Sandoval returned to the courthouse without restrictions and moved for a mistrial, claiming that he was physically and mentally unable to proceed. Subsequently, the trial court adjourned for the day. That same day, Sandoval returned to Singing River Hospital and was examined by Hudson again. After consultation with two other doctors, Hudson decided that it was not necessary to admit Sandoval. Sandoval refused to leave until Stefan Massong, Ph.D., a clinical psychologist, examined him later that evening. On the third day of trial, the trial court conducted a hearing to determine if Sandoval needed an additional evaluation to determine his competence to stand trial. Massong testified that Sandoval was fragile, confused, and disoriented and, in his opinion, needed to be hospitalized. The trial court found that there were reasonable grounds to believe Sandoval to be incompetent and ordered Sandoval to be evaluated at the Mississippi State Hospital. Following the examination, the trial court ordered Sandoval to undergo a second and third examination. Following all three evaluations, the trial court conducted a competency hearing pursuant to Miss. R. Crim. P. 12.5. Noting that several doctors had evaluated Sandoval and none had found him incompetent, the trial court found Sandoval competent to stand trial. The jury found Sandoval guilty on two counts of touching a child for lustful purposes and one count of sexual battery and sentenced him to fifteen years for the touching and thirty years for the sexual battery.

Sandoval moved for a new trial, arguing, *inter alia*, that he was incompetent. The trial court denied Sandoval's motion, and Sandoval appealed, challenging only the trial court's competency finding. The issue was whether the trial court erred by finding Sandoval competent. Because the burden of proof rested on Sandoval to prove that he was mentally incompetent to stand trial, because the doctors' testimonies that Sandoval was competent were unrefuted, and because the trial court's ruling was supported by, and not manifestly against, the overwhelming weight of the evidence, the trial court did not err in finding Sandoval competent. Therefore, the Supreme Court affirmed the decision of the Jackson County Circuit Court.

Briefed by [Caroline Heavey](#)

## **Court of Appeals – Civil**

**Broadway v. Warren** - Civil Procedure – Summary Judgment – Conversion – Deborah Broadway befriended Frankie and Bill Warren, a childless couple, when she was fourteen years old. The Warrens grew close to Broadway and treated her like a daughter. In 2014, Bill died, and Frankie became the sole owner of two accounts at Trustmark National Bank. In 2015, Frankie added Broadway to the accounts, which were styled as joint accounts with rights of survivorship. Without notifying Frankie, Broadway transferred \$200,000 from one of the accounts to CDs solely in her name in January 2018 and, in February 2018, Broadway transferred an additional \$100,000 from the other account, again to CDs solely in her name. During a visit, Frankie told her cousin Lillian Lovett that she had lost her purse containing personal and financial information. Lovett reported the incident to Trustmark. Two days later, Trustmark's head of security called Frankie and informed her that Broadway had stolen her money. Frankie filed an action against Broadway, seeking an immediate return of her money. Upon entry of an agreed preliminary injunction, Broadway complied and the funds were deposited into accounts in Frankie's name only. Subsequently, Frankie executed a power of attorney designating her cousin

Billy Walker as attorney in fact. In January 2019, Walker filed an action for a conservatorship for Frankie. David Marchetti was appointed conservator and a no-contact order was entered against Broadway. In August 2019, Broadway filed a petition to terminate the preliminary injunction and return the accounts to pre-judgment status. In response, Frankie filed a Miss. R. Civ. P. 12(b)(6) motion, moving for dismissal because Broadway failed to join necessary parties. The trial court granted the motion to dismiss; however, the order did not dismiss anything. Rather, it denied the relief requested by Broadway. After an unsuccessful motion for rehearing, Broadway appealed.

On appeal, Broadway argued that the trial court erred in granting Frankie's motion to dismiss without a trial on the merits, denying the petition to terminate the preliminary injunction and return the accounts to pre-judgment status, and finding that Broadway failed to join presumptive heirs. Although Frankie's motion was styled as a Miss. R. Civ. P. 12(b)(6) motion to dismiss, the Court of Appeals addressed it as a motion for summary judgment because the trial court considered matters outside of the pleading to reach its decision. Because the trial court considered the petition, pleadings, and evidence before dismissing the case, the trial court made a proper finding and did not violate Broadway's right to a trial. Further, because Frankie did not transfer an ownership interest to Broadway in the accounts, and because Broadway's withdrawals deprived Frankie of her interest in the funds, Broadway's actions constituted conversion and the trial court was correct in denying the relief she requested. Finally, because the Court of Appeals agreed with the trial court's findings, Broadway could not be restored to the accounts and the issue regarding the heirs at law was moot. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Briefed by [Jacob D. Hamm](#)

**Eichhorn v. Kroger Co.** - Workers' Compensation – Recusal – Apportionment – In April 2017, Teresa Eichhorn, a sixty-three-year-old cashier at The Kroger Company (“Kroger”), suffered a work-related repetitive-motion injury to her left shoulder. Seven months later, she reached maximum medical improvement with a three-percent impairment to her left upper extremity and was given restrictions not to carry or lift anything above twenty pounds or above her head. Eichhorn returned to work as a “U-scan” cashier, a light-duty position. Eichhorn filed a petition to controvert with the Mississippi Workers' Compensation Commission (“Commission”). Kroger admitted she had sustained an injury in the course of employment; however, it disputed the amount of the average wage stated in her petition and that she was permanently disabled to the extent stated in her petition. Furthermore, Kroger asserted an affirmative defense of apportionment, claiming that Eichhorn suffered from a preexisting disease. In 2019, a hearing was held before the Commission's administrative judge (“AJ”). The AJ issued an order, finding Eichhorn suffered fifteen-percent loss of use, entitling her to permanent partial disability benefits of \$357.75 per week for thirty weeks, and denied any apportionment as there was no showing of previous permanent impairment. Aggrieved at the percentage of permanent disability awarded, Eichhorn filed a request for review with the Commission and a recusal of the Commission's chairman, which the Commission denied. In December 2019, the Commission affirmed and adopted by reference the AJ's decision. On direct appeal, Eichhorn alleged that the (1) Commission erred in denying her motion to recuse the Commission's chairman; (2) AJ erred in determining her usual employment and the percentage of her permanent partial disability; and (3) AJ erred in finding that apportionment was not applicable. On cross-appeal, Kroger argued that the AJ erred in determining the percentage of Eichhorn's permanent partial disability, alleging that the AJ disregarded hearing testimony.

Because the standard for recusal in administrative hearings is more lenient than that imposed in courts of law, Eichhorn's claim that the Commission chairman violated the Mississippi Code of Judicial Conduct was without merit and an error as a matter of law, therefore, the Commission's denial of the motion to recuse was without error. Eichhorn claimed that the percentage of permanent partial disability should have been ninety-nine-percent, however, she failed to offer evidence to support her claim. Additionally, Kroger claimed that Eichhorn's percentage of partial disability should reflect her three-percent impairment rating. Because the AJ's ruling was supported by substantial credible evidence, there was no error in the Commission's decision regarding damages. Based on the evidence, apportionment was not applicable, as there was no showing of previous permanent impairment to Eichhorn's shoulder and the benefits awarded were not based on any other previous impairs to other parts of her body. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Presiding Judge Wilson concurred in part and in result regarding Eichhorn's percentage of permanent partial disability and the Commission's denial of her motion to recuse. However, he argued that the majority should not have addressed the issue of apportionment as neither party raised the issue on appeal.

Judge McCarty concurred in part and in result, agreeing with the majority's opinion that the Commission was correct in denying Eichhorn's request to recuse the Commissioner chairman. However, he argued the that the majority's reliance on decisions purely from administrative decisions was inappropriate.

Briefed by [Betsy Lee Montague](#)

**[Johnson v. Smith](#)** - Family Law – Custody – Service of Process – Summons – *Albright* Factors – Ashton Johnson and Thomas Smith had one child together in 2012. In February 2016, Smith filed a petition for he and Johnson to share joint legal and physical custody. In April 2016, both parties met with the chancellor in chambers, however, they did not agree upon a written order and no hearing occurred that day. Subsequently, Johnson and the child moved to Louisiana. In July 2016, Smith filed an amended petition seeking sole physical custody and joint legal custody. Johnson argued that Smith never served her with an amended petition pursuant to Miss. R. Civ. P. 81. At trial, Johnson sought to exclude Smith's amended petition from consideration, arguing that it was not filed properly. The chancellor granted Johnson's request and proceeded with the original petition. Following trial, the chancellor awarded Johnson and Smith temporary joint physical and legal custody to be followed by Smith having sole physical custody with Johnson receiving visitation. Johnson immediately retained new counsel and filed several post-trial motions which were denied. Johnson appealed.

Although Smith failed to serve Johnson with a Miss. R. Civ. P. 81 summons providing her written notice of the September 2016 trial, Johnson ultimately appeared at the trial, signed an order acknowledging the chancellor's jurisdiction over the matter, presented witnesses and defended the action, and failed to object to the lack of a summons. Because of this, Johnson waived her claims of a defective service of process and a violation of her due process right. The chancellor did not err in awarding Smith sole physical custody because Smith's original petition contained a prayer for general relief, the chancellor could grant relief not specifically requested, and Johnson had fair notice of Smith's request for sole physical custody. Johnson argued the chancellor's findings of the *Albright* factors; however, the chancellor's findings of fact were supported by substantial evidence in the record. Therefore, the Court of Appeals affirmed the judgment of the Wayne County Chancery Court.

Briefed by [Kathleen Workman](#)

**Magee Cmty. Care Ctr. v. Perkins** - Contracts – Arbitration Agreement – Validity – Mental Capacity – Actual and Apparent Authority – In October 2016, Lawrence Williams, the father of Trekeela Perkins’s minor son, was admitted into Hillcrest Nursing Center (“Hillcrest”), the operational name for Magee Community Care Center. Upon admission to Hillcrest, Williams was required to sign an admission agreement that included an arbitration agreement. Williams signed the agreement “Lawrence Williams.” Williams’s brother also signed the agreement as a responsible party and a witness acknowledgement of competency form. In July 2017, Williams died at Hillcrest. In February 2019, Perkins filed a complaint on behalf of and for the use and benefit of the wrongful death beneficiaries of Williams. Hillcrest moved to compel arbitration and to dismiss. In response to the motion, Perkins denied that she was bound to arbitrate because Williams lacked mental capacity to enter into the admission agreement and to agree to arbitration. The trial court denied Hillcrest’s motion to compel arbitration, finding that Williams lacked the mental capacity to enter the admission agreement. Hillcrest appealed.

On appeal, Hillcrest argued that the trial court erred by not granting its request for limited discovery and by deeming the arbitration provisions invalid and unenforceable. Because Hillcrest’s request for limited discovery was not presented to the trial judge as it was stated in a reply brief as opposed to being stated in a motion, as required by Miss. R. Civ. P. 7(b)(1), and because issues not presented to the trial judge are procedurally barred from being raised for the first time on appeal unless substantial rights are affected, Hillcrest did not properly preserve the issue and waived it on appeal. *Tarvin* set forth six elements for a valid contract, including the requirement that the parties have legal capacity to make a contract. Because of his medical history of severe mental illness, and because there was no proof in the record that Williams’s brother had actual or apparent authority to act as Williams’s agent, neither Williams nor his brother had the legal capacity to enter the admission agreement; thus, the arbitration provision was invalid and unenforceable. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

Briefed by [Ashley Pruitt](#)

**Peyton v. Longo** - Wills & Estates – Contest – Statute of Limitations – Concealed Fraud – Executorship – In September 2015, Lauree Davis died, leaving a will dated 2001 which named John Longo as the executor and sole beneficiary of her estate. In November 2015, Davis’s will was admitted for probate in common form and, in October 2018, Longo filed an affidavit and notice to creditors. In December 2018, Janet Peyton filed a claim against the estate for yard maintenance and Alvin Peyton filed a “Response and Notice of Claim” asserting that he and/or his daughters were named as beneficiaries of Davis’s estate. Longo asserted that the claims were barred by the statute of limitation. Alvin filed a response claiming that, in 1995, Davis executed a will naming him as executor and his three daughters as sole beneficiaries. Further, Alvin disputed the validity of the 2001 will, that Davis’s estate should remain open, that Longo should be removed as executor, and that Longo’s attorney should be disqualified from the present case. The trial court found that Janet’s claim was barred by the statute of limitations and denied Alvin’s request for relief, finding that Alvin’s contest occurred after the two-year period to contest a will probated in common form and that neither Alvin nor his daughters met any of the exceptions to the statute of limitations under Miss. Code Ann. § 91-7-23.

Alvin appealed, arguing he should have been joined as a necessary party, that Longo’s actions constituted concealed fraud, that Longo should be removed as executor, and that Longo’s attorney should be disqualified. Because Davis’s will was probated in common form, and because Alvin did not file a caveat or

contest the will within the applicable two-year period, Alvin failed to satisfy the statute of limitations. Further, because Longo referenced Davis's 2001 will in a prior appeal, the existence of the will was a matter of public record and could not be considered concealed fraud allowing an exception to the statute of limitations. Additionally, because the only beneficiary listed was Longo, Longo was not required to make a diligent inquiry to ascertain information about other heirs contained in Miss. Code Ann. § 91-7-293 therefore allowing Longo to remain executor. Finally, because the trial court found no restrictions on the attorney in this case as it was uncontested, Longo's attorney was not disqualified. Therefore, the Court of Appeals affirmed the judgment of the Lawrence County Chancery Court.

Briefed by [Schyler Burney](#)

**Sanders v. Bowman** - Real Property – Boundary-Line Dispute – Deraignment – Harry Sanders brought an action against Joyce Bowman regarding a boundary-line dispute. The disputed portion of the property was “the SE 1/4 of section 17.” The boundary was traditionally marked by a fence. Both parties mutually relied upon and accepted the fence as the boundary until Sanders decided the fence was not the true boundary. At an unspecified date in 1989, Sanders stated he came across surveyors that allegedly surveyed “section 16” for a school. Sanders claimed he asked them to set his boundary with a new boundary line that encompassed more property, and they agreed. Sanders was unable to provide the names or qualifications of the surveyors, offered no evidence to verify they actually performed service relating to a survey of the property in dispute, and offered no evidence that they accomplished this task. Sanders relied on this alleged encounter and disregarded the language in his deed, which stated that the southeast corner was marked by the fence. Bowman's deraignment of title matched the language in Sanders's deed. At trial, it was pointed out that Sanders's deraignment omitted the “SE 1/4 of section 17” entirely. Sanders stated he had no proof of his ownership of the “SE 1/4 of section 17,” which was the subject of the dispute. The trial court determined that Sanders had not met the burden required by a complainant, namely a failure to perfect title commonly illustrated by deraignment. The trial court found that the property in dispute was located in the SE 1/4 of section 17, yet Sanders had no property therein by his deraignment of title and his admission. The trial court entered a judgment in favor of Bowman. Sanders appealed.

The issues were whether the trial court erred in granting Bowman's motion for directed verdict and in awarding Bowman land beyond what was in dispute. Because Sanders failed to perfect title and meet the burden with evidence of ownership, and because Bowman provided deraignment, the record supported the trial court's decision to grant Bowman's motion for a directed verdict. Furthermore, because Bowman never asserted a claim of ownership to property north of the fence, the trial court erred in granting Bowman land not in dispute or raised in pleadings. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Carroll County Chancery Court.

Briefed by [Joshua L. Holmes](#)

**Wood v. Reynolds** - Summary Judgment – Burden of Proof – Issue of Material Fact – Michael Wood filed a lawsuit against Dr. George Reynolds and TrustCare Clinics LLC (“TrustCare”), alleging that he had been billed for a nuclear stress test that was not administered to him. Wood alleged that on October 3, 2017, Reynolds performed one or more diagnostic heart tests on him. Wood alleged that Reynolds later recommended that Wood undergo further testing, but that he declined and did not return to the clinic. Wood claimed that Reynolds and TrustCare intentionally fabricated his medical records to show that he had submitted to further testing on October 13, 2017. They then assigned a bill to a debt collector, which damaged Wood's credit. TrustCare filed

an answer and a counterclaim, stating that Wood was scheduled for additional testing after his initial visit, including a nuclear stress test (“Lexiscan”), and the Lexiscan and other diagnostic tests were administered to Wood on October 13, 2017. TrustCare maintained that Wood’s credit card declined when he attempted to pay his bill. Township TC Heart, LLC (“TC Heart”) was substituted for TrustCare as the proper defendant. TC Heart filed a motion for summary judgment, which Reynolds later joined. Several exhibits were attached to the motion, containing notes from both visits, test results, and billing statements. Wood executed an affidavit, stating that he had an electrocardiogram and/or stress test on October 3, 2017, he cancelled his appointment for October 13, 2017, the records from the second visit were fraudulent, his signature on the consent form had been forged, and his credit card would have been accepted if he had attempted to pay for the test. The Madison County Circuit Court ultimately granted summary judgment in favor of the defendants and dismissed Wood’s claims with prejudice but denied the defendants’ request for attorney’s fees and costs. Wood appealed.

The party requesting summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. An opponent to a motion for summary judgment must rebut by producing significant probative evidence showing that there are indeed genuine issues for trial. Wood claimed his affidavit created a genuine issue of material fact as to whether he was present at the clinic on October 13, 2017. In their brief, TC Heart and Reynolds claimed that some or all of the claims asserted in Wood’s complaint were barred by the statute of limitations, however, the circuit court did not rule on the issue. The Court of Appeals stated that circuit court could consider on remand whether some or all of Wood’s claims were barred. TC Heart and Reynolds had requested attorney’s fees and costs; however, this claim was denied by the circuit court. They did not file a cross-appeal, therefore, it was procedurally barred. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Circuit Court.

Presiding Judge Wilson wrote a separate opinion, concurring in part and dissenting in part. He agreed that Wood’s affidavit created a genuine issue of material fact regarding whether he received the medical treatment for which he was billed. He dissented from the majority opinion as it refused to address the statute of limitations. He argued that the Court of Appeals cannot reverse a grant of summary judgment while refusing to consider grounds for summary judgment that were raised in the court below. He addressed the issue and asserted that TC Heart and Reynolds failed to establish that they were entitled to summary judgment based on the statute of limitations.

Briefed by [Mckenzie Williamson](#)

## **Court of Appeals – Criminal**

**Golden v. State** - Criminal Procedure – Jury Instructions – Right to a Speedy Trial – In September 2016, Camille Garrett drove Christopher Golden to the Magnolia Lodge (“Magnolia”) in Winona. Golden did not have an ID, so Garrett rented him a room in exchange for cash, then left. Nick Patel was working at the front desk and testified that later that night a man walked in and requested a plunger. Soon after, Patel stated that the same man returned and requested more towels because those in his room were wet from cleaning the overflowed toilet. Patel went to retrieve the extra towels and, when he returned, the man was holding a gun and demanding all of the money in the register. The man then forced Patel to drive approximately three miles at gunpoint before demanding to be let out. Patel identified the man to be Golden. On cross-examination, however, Patel stated that Golden looked like the man in question, but he could not be sure without knowing Golden’s height. Upon viewing the security camera footage, the investigating officer who had known Golden



for a “long time” stated he knew it was Golden and that, during his 16 years in law enforcement, he had “never been so sure about any other surveillance video.” Golden denied even being at Magnolia on the night in question. Additionally, Golden denied owning a gun because he was a convicted felon. Golden was tried and convicted of kidnapping, possession of a deadly weapon by a felon, and armed robbery. Golden appealed, claiming the circuit court erred in (1) refusing to give jury instruction D7 regarding identification testimony and (2) refusing to give jury instruction D8 regarding his alibi defense. Golden also filed a pro se supplemental brief arguing that his constitutional and statutory rights to a speedy trial were violated.

Where the identification of a defendant does not rest solely on the testimony of one eyewitness, there is no requirement for an identification jury instruction. The Court of Appeals found Golden’s first claim lacked merit because he was identified by more than one witness as the man who kidnapped and robbed Patel. A defendant’s alibi must be supported by evidence and, where the proof does not support an alibi defense, a jury instruction should not be granted. Because Golden offered no evidence to support his alibi defense other than one self-serving sentence, and because his alibi defense did not foreclose the possibility that he committed the crimes, the circuit court did not abuse its discretion by denying an alibi jury instruction. Given the lack of evidence of prejudice towards Golden and his untimely assertion of his demand for a speedy trial, his constitutional right was not found to be violated. Because Golden was tried within the parameters set forth in Miss. Code Ann. § 99-17-1, his statutory right to a speedy trial was not violated. Therefore, the Court of Appeals affirmed the judgment of the Montgomery County Circuit Court.

Briefed by [Brie Mansoor](#)

**[Reid v. State](#)** - Admissibility – Impeachment – Objection – While incarcerated, Jimmy Dale Reid was charged with three counts of possessing contraband. Chris Satcher, an investigator with the District Attorney’s Office, received a tip that Reid was in possession of a cell phone. Two investigators went to the jail to search the cell block where Reid was confined. The investigators discovered three cell phones in Cell Number 3, a one-man cell. Reid’s mother testified, stating that when he was booked into jail, she picked up his belongings, including a cell phone. Reid testified, denying that he had accessed his Facebook account from jail. Furthermore, he claimed that he did not have the “seniority” to have an individual one-man cell because he was not in any “little clicks.” A jury convicted Reid of all counts and the trial court sentenced him to serve three consecutive five-year sentences as a habitual offender. After the trial court denied his posttrial motion, Reid appealed, alleging that the trial court erred in allowing (1) hearsay testimony by investigators that they received a tip that Reid contacted a State’s witness through Facebook and (2) impeachment testimony regarding Reid’s alleged gang membership.

The Court of Appeals held that, because Reid’s defense was not prejudiced by the testimony that Reid contacted a State’s witness through Facebook, the admission of the testimony was harmless error. Further, because Reid “opened the door” on direct examination regarding his alleged gang membership, and because the defense did not object, the trial court did not err in allowing the State to impeach Reid. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Briefed by [Gabrielle Beech](#)

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