
Mississippi Public Defenders Conference

Contact

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Appellate Update

Fall 2025



Question Presented:

Does the Double Jeopardy Clause of the Fifth Amendment prohibit a second prosecution for a crime of which a defendant was previously acquitted?

Upcoming SCOTUS cases

Case v. Montana: the Court will decide whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring.

Ellingburg v. United States: Court will decide whether a federal criminal restitution statute is penal for the purposes of the Ex Post Facto Clause.

Hamm v. Smith: the Court will decide whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim.

Villarreal v. Texas: the Court will decide whether a trial court violates a defendant's Sixth Amendment right to counsel by banning discussion of the defendant's ongoing testimony with counsel during an overnight recess.



Mississippi Supreme Court

Zero! Zilch! None! Nada!

Over the last six months, the Mississippi Supreme Court has not issued a single criminal reversal. In fact, of the few criminal cases it has decided, not a single dissent was written.

Well... except for one case... and it's a doozy.



Mississippi Supreme Court Cases

Allen v. State (June 5, 2025)

In March of 2024, the Court of Appeals reversed Allen's convictions of six counts of statutory rape, because the jury was not instructed that it had to find that Allen was twenty-four months older than the victim.

Pretty standard failure to instruct the jury on an element of the offense stuff.

Right?

....Right?

.....Right?



Mississippi Supreme Court Cases

Allen (cont.)

WRONG.

In this case, both the State and Allen submitted elements instruction. The State ultimately withdraw theirs because its initial instructions contained gratification of lust statutory language. The State accepted Allen's instruction, which failed to contain that essential element.



Mississippi Supreme Court Cases

Allen (cont.)

The Court recognized that not instructing the jury on every essential element of the crime is error. *See Harrell v. State*, 134 So. 3d 266 (Miss. 2014).

But...

The Supreme Court applied the “invited error” doctrine.

This doctrine “removes the temptation for defendant’s trial counsel to salt the record with error thereby planting potential grounds for reversal should the jury convict.”

So... the COA was reversed and Allen’s convictions were reinstated.



Mississippi Supreme Court Cases

Allen (cont.)

Does this make *any sense*?

This past six months of Mississippi Supreme Court caselaw betrays the reasoning of the Court in this case.

What do you all think?

Right?

....Right?

.....Right?



Court of Appeals Cases

Smith v. State (May 6, 2025)

Smith was convicted of ten counts of possession of child pornography and two convictions of sexual battery.

Pretty wild fact pattern!

Vicksburg respond to a shooting at a McDonald's parking lot, where they found a thirteen-year-old passenger dead inside Smith's vehicle. Smith explained that he was Calvin's godfather and that they were driving when Calvin was shot in the head from a stray bullet.

Police asked to Smith's phone for evidence, obtained consent and found evidence of child pornography.



Court of Appeals Cases

Smith (cont.)

Police stopped searching, got a warrant and extracted explicit material downloaded off of the internet as well as sexual images depicting Calvin.

Law enforcement questioned Smith about his sexual relationship with Calvin where he admitted to “having sex” with Calvin.

The question then turns to whether the state proved penetration, as required by statute.

“confession itself is not sufficient to support a felony conviction unless [the confession] is corroborated by independent evidence of the corpus delicti.” Smith never provided any details to clarify what he meant when by his admission of “having sex” with Calvin.

Insufficient evidence.



Court of Appeals Cases

Taylor v. State (May 6, 2025)

Taylor pled guilty to conspiracy to sell a Schedule III controlled substance and was sentenced to serve a total of fifteen years in the custody of MDOC.

Who sees the problem?



Taylor (cont.)

The maximum sentence for general conspiracy is five years.

Eight years later, Taylor figured this out and filed a PCR.

The Court found that Taylor's fifteen-year sentence exceeded the statutory maximum for the crime.

So, the Court of Appeals clearly reversed this injustice, right?

Court of Appeals Cases

Right?

....Right?

.....Right?



Taylor (cont.)

The Court said that because *Howell* eliminated the “fundamental rights exception” to the PCR statute’s statute of limitation, Taylor’s PCR motion was barred.

So, Taylor still sits in prison serving an illegal sentence.

Court of Appeals Cases



Court of Appeals Cases

Melton v. State (June 24, 2025)

Melton was convicted of misdemeanor child abuse following a bench trial in circuit court. But, there was no express waiver of the right to jury trial!

Gotta have that.



Court of Appeals Cases

State v. Mitchell (July 25, 2025)

This case is a mess.

In February 2019, Nathan Rogers—known for erratic behavior—returned to the Tallahatchie Gourmet restaurant in New Albany, Mississippi, acting agitated and frightening a young waitress. Lane Mitchell, a patron, intervened after his father (the bartender) confronted Rogers. Believing Rogers might be armed, Mitchell stabbed him in the neck with a paring knife. Rogers survived but was seriously injured.

Rogers later became the ward of a Tennessee conservatorship due to mental health issues following the attack. When Mitchell’s criminal trial began in 2023, Rogers—still under conservatorship—did not appear, and Tennessee courts found him incompetent to testify. The trial court concluded that the “prosecution team” (including the conservator) had violated Mitchell’s constitutional rights and dismissed the case with prejudice.



Court of Appeals Cases

Mitchell (cont.)

The court found appellate jurisdiction proper under Miss. Code Ann. § 99-35-103(a), which allows the State to appeal a dismissal of an indictment before a decision on the merits.

The trial judge erred in dismissing the indictment and labeling it an acquittal because there was no factual determination of innocence—only a procedural finding about witness unavailability.

The Tennessee probate court's refusal to compel the victim's attendance did not amount to State misconduct or denial of compulsory process.

The conservator was not part of the prosecution team, and the trial court's remedy (dismissal with acquittal) was improper.



Court of Appeals Cases

Mitchell (cont.)

A four-judge dissent, authored by Chief Justice Barnes, however, found:

The State lacked statutory authority to appeal under § 99-35-103(a) or (b).

The dismissal occurred after jeopardy had attached, so the case was effectively an acquittal not subject to review.

Allowing such appeals violates double jeopardy protections.

Expect this to go up on cert.



Court of Appeals Cases

Jackson v. State (July 22, 2025)

Jackson was convicted in Pearl River County of trafficking marijuana and MDMA and aggravated trafficking of THC after officers executed a search warrant at his home. Police seized about ten pounds of marijuana, MDMA pills, THC edibles, amphetamines, drug paraphernalia, cash, and a rifle.

This was based on an *anonymous* Crime Stoppers tip.

The Court of Appeals dissected four pieces of information offered in support of the warrant.



Court of Appeals Cases

Jackson (cont.)

The anonymous tip merely said an “unknown white male” was selling drugs at Jackson’s address. Anonymous tips alone to not establish probable cause.

A second source told officers that there were two trailers on the property – one lived in, one under renovation, and the same guy owned both. This might help describe the scope of the property, but it had no connection to illegal conduct.

A previously reliable confidential informant told police that there “may be narcotics being delivered to that address through parcel services.” This is hearsay speculation with no underlying facts or corroboration; at best, it suggested a *possibility* of drugs, not a *probability*.



Court of Appeals Cases

Jackson (cont.)

Officers stopped an unidentified motorcyclist leaving Jackson's driveway who admitted having "a little weed." He refused to say where it came from, and there was **no link** between his marijuana and Jackson's residence. A third party's possession of marijuana, without evidence tying it to the residence, doesn't establish probable cause to search the home.

Bottom line: "The circumstances here, in totality, are merely one anonymous tip, another source who could only say that drugs might have been delivered, and one motorcyclist who had a little weed in his pocket after leaving Jackson's driveway. ...

Uncorroborated and unsubstantiated hearsay will simply not suffice."

So, the Court obviously reversed.

Right?

....Right?

.....Right?



Court of Appeals Cases

Jackson (cont.)

Although the affidavit failed to establish probable cause, the Court of Appeals held that the good-faith exception to the exclusionary rule applied, allowing the evidence to stand.

Under *United States v. Leon*, 468 U.S. 897 (1984), and *White v. State*, 842 So. 2d 565 (Miss. 2003), evidence should not be suppressed if officers reasonably relied on a facially valid warrant issued by a neutral magistrate, unless one of four exceptions applies (e.g., false information, magistrate abandonment, entirely baseless affidavit, or facial deficiency).

Ugh.

A motion for rehearing is pending.



Court of Appeals Cases

Clark v. State (September 23, 2025)

During the closing argument in Clark’s sexual battery prosecution, the prosecutor told the jury there was DNA under Clark’s fingernail, even though every witness at trial testified that no DNA was collected.

The prosecutor repeatedly referred to events the trial court had ruled inadmissible, like claiming the child’s mother “chose her daughter over Justin Clark” after the accusation.

Those statements exploited the trial court’s own exclusion order and misled the jury.

The Court of Appeals held that, taken together, those actions denied Clark a fair trial. Even though defense counsel didn’t object, the misconduct met the plain error standard, because it affected the fairness and integrity of the proceedings.

2025 Fall OSPD & MPDA Public Defender Conference

Session Two:
Fall 2025 Appellate Update

Wednesday, October 22, 2025
2:05- 3:20 p.m.

Justin Cook

