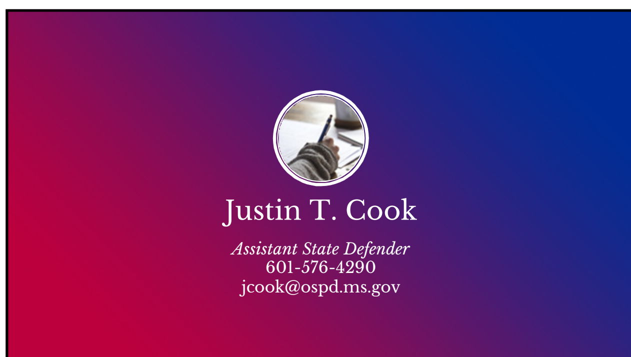


1.
United States Supreme Court Cases

McWilliams v. Dunn (June 19, 2017)

James McWilliams was convicted of capital murder. At the sentencing phase, defense counsel requested that the court order neuropsychological testing for McWilliams. The court did so and ordered that the Alabama Department of Corrections (DOC) conduct the testing.

The DOC doctor who conducted the testing recommended further testing from a doctor who was not affiliated with the DOC.

The second doctor's report was made available to both parties but did not arrive at the court until the day before the sentencing hearing, and the court did not allow a continuance for defense counsel to review the report with the assistance of an expert. At the sentencing hearing, the court concluded that there were aggravating factors but no mitigating factors and sentenced McWilliams to death.

The conviction and sentence were affirmed on direct appeal in Alabama state courts.

McWilliams filed a petition for a writ of habeas corpus in federal district court. The district court denied the petition without addressing all of the specific claims, one of which included a claim that he was denied his due process rights under the Supreme Court's decision in *Ake v. Oklahoma* because the court did not provide him with an independent psychiatric expert.

The U.S. Court of Appeals for the Eleventh Circuit vacated the lower court's decision and remanded the case for the district court to address the specific claims in the petition.

The district court again denied the petition, and the appellate court affirmed the lower court's decision by holding that McWilliams' due process rights were not violated because he was provided with a competent psychiatric expert, which met the requirement of *Ake*, and any harm that he might have suffered was not prejudicial to the outcome of the sentencing hearing.

Question presented: Does the Supreme Court's decision in *Ake v. Oklahoma*, which established that an indigent defendant is entitled to meaningful expert assistance, require that the expert be independent of the prosecution?

Ake v. Oklahoma clearly established that a state must provide an indigent defendant with access to an expert witness who is sufficiently available to the defense and independent of the prosecution to effectively conduct an examination and assist in the preparation of a defense.

After certain threshold matters--such as the defendant's indigence and whether his mental condition was relevant and in question--are met, *Ake v. Oklahoma* clearly requires that the defendant be provided with access to a competent mental health expert who can effectively assist in the "evaluation, preparation, and presentation" of a defense.

In this case, a single evaluation available to both parties and the assistance of an outside volunteer expert who suggested that the defense consult other experts as well did not relieve the state of its responsibility under *Ake*.

The Court declined to address the question of whether *Ake* required that the state provide an indigent defendant with an expert retained specifically for the defense, as this case could be resolved on narrower grounds.

Lee v. United States (June 23, 2017)

Jae Lee immigrated to the United States in 1982 when he was 13. He was a lawful resident but not a citizen.

Lee was indicted for a drug offense.

During plea negotiations, Lee repeatedly asked his lawyer if Lee was facing deportation if he plead guilty.

His attorney assured him he would not be deported if he plead.

He was wrong

Lee had actually plead guilty to an aggravated felony under the Immigration and Nationality act and was subject to mandatory deportation.

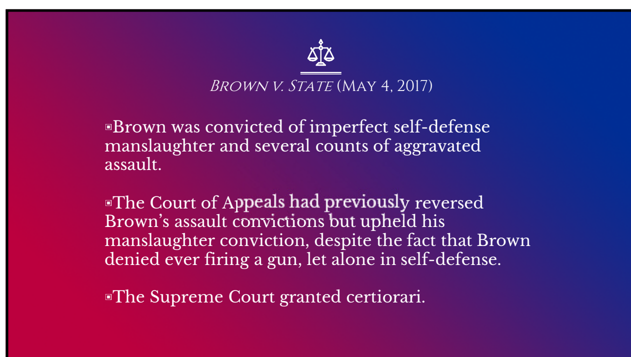
Lee demonstrated that he was prejudiced by his counsel's erroneous advice that he would not be deported as a result of pleading guilty to an aggravated felony.

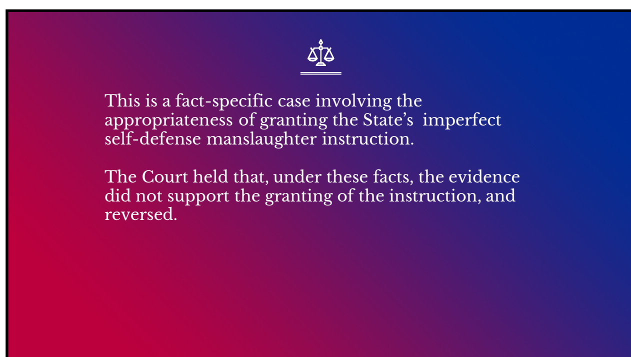
Misc. Cases

Packingham v. North Carolina (June 19, 2017) - Statute which prohibited registered sex offenders from accessing social networking websites impermissibly restricts lawful free speech in violation of the First Amendment.

Turner v. Massachusetts (June 22, 2017) - contains a really good analysis of the difference between "material" and "beneficial to the defense" evidence for the purposes of *Brady*. Somewhat fact specific.

Mississippi Supreme Court Cases


Brown v. State (May 4, 2017)
Brown was convicted of imperfect self-defense manslaughter and several counts of aggravated assault.
The Court of Appeals had previously reversed Brown's assault convictions but upheld his manslaughter conviction, despite the fact that Brown denied ever firing a gun, let alone in self-defense.
The Supreme Court granted certiorari.


This is a fact-specific case involving the appropriateness of granting the State's imperfect self-defense manslaughter instruction.
The Court held that, under these facts, the evidence did not support the granting of the instruction, and reversed.

Boston v. State (September 7, 2017)

Boston was convicted of capital murder. At trial, the State requested and the jury was given the following instruction:

"The Court instructs the Jury that if a person provokes a difficulty, arming himself in advance, and intending, if necessary, to use his weapon and overcome his adversary, he becomes the aggressor and cannot claim the right of self-defense."

Was that cool?

Nope.

The court has held that pre-arming instructions should only be given in exceedingly rare circumstances.

In fact, the Supreme Court has only upheld the granting of a pre-arming instruction in three cases.

In each case, the record was uncontradicted that the defendants armed themselves with the intent to initiate a confrontation.

In Boston, there was conflicting testimony about who started the conflict, and the only testimony about the knife was that it was purchased a month earlier.

CARVER V. STATE (OCTOBER 12, 2017)

Carver was accompanying his half-brother, Ingram, from Grenada to the coast for Thanksgiving. Ingram was driving the car when it was pulled over in Madison County for speeding.

The trooper testified he noticed the smell of marijuana and that Ingram's eyes were bloodshot.

Ingram admitted to smoking marijuana after a field sobriety test.

After consent to search, the trooper found a small handgun under the driver's seat and a small bag of marijuana in the center console.

The trooper found two larger bags of marijuana in the trunk, underneath a flap where the spare tire is stored.

Both Ingram and Carver were arrested.

In a police interview, Ingram admitted purchasing the marijuana and claimed sole ownership of it.

In an interview, Carver told police that he had known about the marijuana in the center console, but in a statement stated he did not know about the marijuana in the trunk.

Both Ingram and Carver were indicted for possession with intent while in possession of a firearm and conspiracy to distribute.

Ingram pleaded guilty and Carver's case went to trial. He was acquitted of conspiracy but convicted of possession.

The Court of Appeals affirmed, and certiorari was granted.

Because Carver was not in actual possession, the State was required to prove constructive possession. The MSSC concluded that the State presented insufficient evidence and reversed and rendered Carver's conviction.

"

Constructive possession may be shown by establishing that the drug involved was subject to his dominion or control. Proximity is usually an essential element, but by itself is not adequate in the absence of other incriminating circumstances."

The Court found that evidence of dominion and control was lacking. Ingram took full responsibility.

The Court noted that just because the two were half-brothers, it did not mean they were accomplices in the crime.

The Court rejected the Court of Appeals's reasoning that there was no evidence to suggest that Carver did not exercise dominion and control over the rental car and the marijuana in it. Simply put, it is the State's burden to prove Carver exercised dominion and control.

Cozart v. State (May 25, 2017) - application of the revised penalty for manslaughter of a child was an ex post facto violation.

Mississippi Court of Appeals cases

WHITE V. STATE (AUGUST 1, 2017)

The State had in its possession recordings of phone calls White made from the Simpson County jail after his arrest.

The recordings were in the State's possession for over two years and where covered by White's discovery request.

Nevertheless, the State failed to disclose.,

The Court of Appeals found a clear discovery violation. "Oversight," the excuse offered by the State, was not sufficient.

The Court found that the denial of a mistrial or continuance was an abuse of discretion by the trial court.

The State's other argument, that any error was harmless was rejected by the Court.

MCGLOTHIN V. STATE (AUGUST 22, 2017)

Police executed a search warrant on a house where McGlothin met with a criminal informant. There were two bedrooms in the home. There was women's clothing in one bedroom, and, in the other bedroom agents found a man's wallet on a dresser.

The wallet contained McGlothin's identification, social-security and bank cards.

Police also found a handgun inside of the pocket of a man's jacket hanging inside the closet.

None of documents found in the wallet listed the house as McGlothin's address.

The state offered no testimony that McGlothin lived or stayed overnight in the home, that the clothes there belonged to him, or that he had handled the firearm in the past.

The State's sole evidence was that McGlothin was observed standing on the home's front porch six days prior to the execution of the warrant.

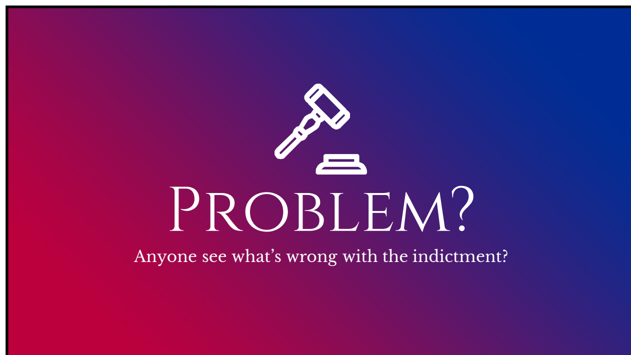
That fact alone did not indicate that McGlothin had dominion or control over the residence, any room in the house, or even the jacket where the gun was found.

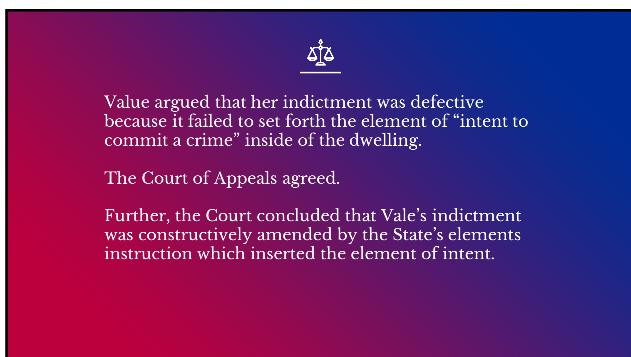
The Court of Appeals reversed for insufficient evidence.

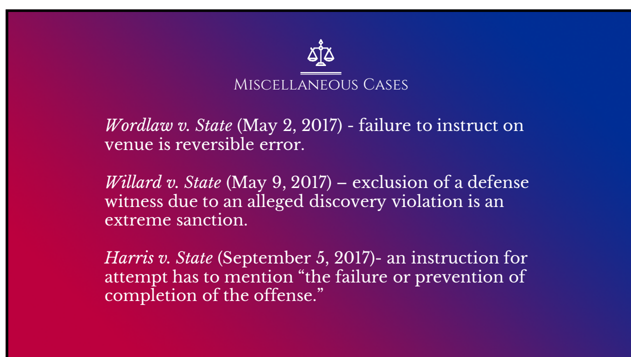
Vale v. State (August 29, 2017)

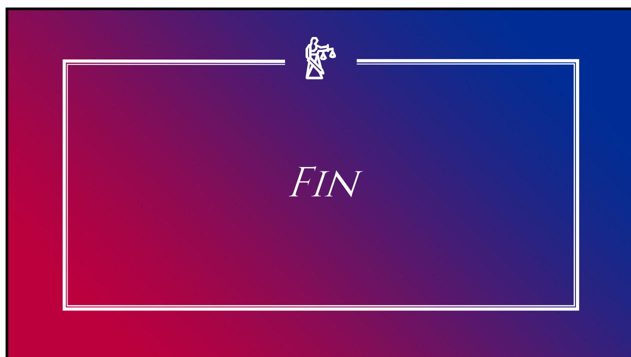
Vale's indictment for burglary read, in part:

"[I]n said County, District, and State, on or about the 27th day of April, 2015, A.D., [Vale] did then and there unlawfully, feloniously, and burglarious break into and enter the dwelling house of Carolyn Mulloy located at [address redacted], Laurel, MS, wherein valuable things were kept for use, and did carry away jewelry[.]"


PROBLEM?
Anyone see what's wrong with the indictment?


Value argued that her indictment was defective because it failed to set forth the element of "intent to commit a crime" inside of the dwelling.
The Court of Appeals agreed.
Further, the Court concluded that Vale's indictment was constructively amended by the State's elements instruction which inserted the element of intent.


MISCELLANEOUS CASES
Wordlaw v. State (May 2, 2017) - failure to instruct on venue is reversible error.
Willard v. State (May 9, 2017) – exclusion of a defense witness due to an alleged discovery violation is an extreme sanction.
Harris v. State (September 5, 2017)- an instruction for attempt has to mention "the failure or prevention of completion of the offense."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