

**IN THE SUPREME COURT OF MISSISSIPPI****CALEB CORROTHERS,***Petitioner**versus***MSC Case No. 2015-M-00975-SCT****STATE OF MISSISSIPPI,***Respondent*

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**ANSWER IN OPPOSITION TO PETITION FOR PERMISSION TO  
APPEAL CIRCUIT COURT'S ORDER REQUIRING DISCLOSURE  
OF YOUTH COURT AND DHS RECORDS TO THE STATE**

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**COMES NOW**, the State of Mississippi, respondent, through undersigned counsel, in the above styled and numbered cause, pursuant to Rule 5(b) of the Mississippi Rules of Appellate Procedure and files this Answer in Opposition to the Petition for Permission to Appeal Circuit Court's Order Requiring Disclosure of Youth Court and DHS Records to the State filed on behalf of Caleb Corrothers, petitioner.

**I**

The present matter arises from a June 3, 2015, Order entered by the Circuit Court of Lafayette County, Mississippi, (the trial court). (Petitioner's Exhibit 1; Order, dated Jun. 3, 2015.) All of petitioner's requests for discovery have been granted with absolutely no resistance from the State. The instant matter is nothing more than a desperate attempt by petitioner to resist the ordered disclosure of relevant, pertinent information to the State.

At the outset, it must be noted that this Court strongly disfavors the "wholesale granting of interlocutory appeals of civil discovery disputes." *Haynes v. Anderson*, 597 So.2d 615, 617 (Miss. 1992) (quoting *In re Knapp*, 536 So.2d 1330, 1333 (Miss. 1988) ("Pre-trial discovery is governed

by flexible rules well within the administrative capacity of our trial courts.”)). The instant matter centers around one, primary issue. The primary issue is whether the rules promulgated by this Court permit one party to a lawsuit to invoke discovery while simultaneously precluding the other party from doing the same. The answer is glaringly obvious. The answer is no. Yet, petitioner asks this Court to allow him the opportunity to employ a tactic that is contrary to the entire adversarial system, and grant him relief that is truly unprecedented.

## II

The facts essential to understanding petitioner’s questions concerning the Order of the trial court which petitioner seeks permission to appeal are as follows:

On May 19, 2011, petitioner was convicted in the trial court on two counts of capital murder with the underlying felony of robbery in violation of Miss. Code Ann. § 97-3-19(2)(e).<sup>1</sup> He was also convicted on one count of aggravated assault in violation of Miss. Code Ann. § 97-3-7(2)(b). The following day, petitioner received a sentence of death for each capital murder conviction and a life sentence without the possibility of probation or parole for his aggravated assault conviction. Petitioner directly appealed his convictions and sentences to this Court. This Court affirmed his convictions and sentences on June 26, 2014. This Court issued Its Mandate on October 30, 2014.<sup>2</sup>

On December 5, 2014, petitioner filed a *pro se* Motion for Appointment of Post-Conviction Counsel. This Court granted petitioner’s *pro se* motion five days later with further instruction to the trial court and the Office of Capital Post-Conviction Counsel (CPCC) to select counsel, determine petitioner’s indigence, and appoint him counsel if necessary. On January 5, 2015, the trial court

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<sup>1</sup> A complete recitation of the facts and procedural history of this case can be found at *Corrothers v. State*, 148 So.3d 278, 288-92 (¶¶ 2-19) (Miss. 2014).

<sup>2</sup> (Respondent’s Exhibit A; Mandate of the Mississippi Supreme Court, dated Oct. 30, 2014.)

found petitioner indigent, and appointed attorneys with the CPCC to represent petitioner during his state post-conviction proceedings.<sup>3</sup> Approximately two months later, counsel for petitioner filed a Rule 22 statement with this Court. No cognizable collateral relief claims were stated in the Rule 22 statement.<sup>4</sup> Counsel for petitioner emailed undersigned a Proposed Agreed Order for pre-petition discovery on March 9, 2015. On March 18, 2015, undersigned expressly stated to counsel for petitioner that the State would be willing to execute the Proposed Agreed Order with a single contingency—that the State would receive true and complete disclosure of any and all items and/or things listed in and obtained *via* the Proposed Agreed Order. Counsel for petitioner refused.

On May 27, 2015, a motions hearing took place in the Circuit Court of Marshall County, Mississippi.<sup>5</sup> (See Petitioner’s Exhibit 12 at 1; Motion of Discovery and Reciprocal Discovery Hearing Transcript, dated May 27, 2015.) The trial court heard arguments from both sides concerning the State’s request for disclosure. (See *id.*) The State lodged no objection to petitioner’s request for discovery. (See *id.* at 17.) The trial court granted petitioner’s request for discovery and

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<sup>3</sup> Counsel for petitioner made two requests for mandatory discovery to the District Attorney’s, (D. A.), Office for Mississippi’s Third Judicial District on January 9 and 25, 2015. The Office of the Attorney General was not made aware of these requests until March 3, 2015. After learning that petitioner had not obtained mandatory disclosure, undersigned immediately contacted the D. A.’s office to facilitate the transfer of that office’s files to petitioner. Undersigned gave the D. A.’s contact information to counsel for petitioner. (Resp’t’s Ex. “B”; Email Correspondence, dated Mar. 20, 2015.) (The D. A.’s personal telephone number has been redacted.)

<sup>4</sup> (Resp’t’s Ex. C; Petitioner’s Rule 22 Statement, dated Mar. 5, 2015.)

<sup>5</sup> The time gap from March 18, 2015 to May 27, 2015, is attributed to the trial court’s busy docket. The trial court could only hear the arguments concerning the motions on two dates. Petitioner chose to have the trial court hear argument on May 27, 2015.

the State's request for disclosure. (Id. at 22.) The trial court entered two Orders on June 3, 2015.<sup>6</sup> The clerk's office emailed a .pdf of the Order granting the State's request for disclosure that day. Both parties were also mailed a copy of the Order granting the State's request for disclosure.<sup>7</sup> In spite of the trial court's Order, petitioner has yet to provide the State with any of these records and documents.

### III

#### A. PRESENT STATUS OF THE CASE

Petitioner is a post-conviction movant, who is conducting pre-petition discovery for purposes of supporting collateral relief claims that will appear in a petition for post-conviction relief to accompany an application for leave to proceed in the trial court. Petitioner's application for leave to proceed and motion for post-conviction relief are due to be filed in this Court on October 5, 2015.

#### B. TIMELINESS OF THE PETITION

The Petition for Permission to Appeal the Circuit Court's Order Requiring Disclosure of Youth Court and DHS Records to the State was filed in this Court on June 24, 2015, from a June 3, 2015, Order entered by the trial court. *See* Miss. R. App. P. 5(a). The State received service of the petition on June 29, 2015. The State is unaware of any stay of these proceedings from this Court or the trial court. Further, the trial court has not certified either of petitioner's two questions.

#### C. RELATED CASES OR PETITIONS PENDING

The State is unaware of any case involving the same or related issues pending in the Court.

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<sup>6</sup> (See Pet'r's Ex. 1; Order, dated June 3, 2015; and Ex. 11, Order Granting Discovery, dated Jun. 3, 2015.)

<sup>7</sup> (See Resp't's Ex. D at 7; Circuit Ct. of Lafayette Co., Miss., Gen. Docket Report for *State of Mississippi v. Caleb Carrothers*, Cause #LK09-380, dated Sept. 10, 2009—Jun. 19, 2015.)

**D. RULE 5(a) STATEMENT**

Rule 5(a) of the Mississippi Rules of Appellate Procedure provide three grounds or bases, which would warrant granting permission to appeal an interlocutory order. The rule states that:

An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:

- (1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or
- (2) Protect a party from substantial and irreparable injury; or
- (3) Resolve an issue of general importance in the administration of justice.

Miss. R. App. P. 5(a). None of these bases are present in this case.

First, with respect to advancing the termination of litigation, the State submits that petitioner is presently conducting pre-petition discovery pursuant to Miss. R. App. P. Rule 22(c)(4)(ii). Petitioner has not filed an application for leave to proceed in the trial court and motion for post-conviction relief. He is engaged in the initial portion of his post-conviction review proceedings—pre-petition discovery. Rule 22(c)(4)(ii) provides for mandatory and discretionary disclosure.<sup>8</sup> To be clear, the petition *sub judice* does *not* concern mandatory disclosure. That is not the issue here. This petition solely concerns the latter form of discovery, discretionary discovery. Given the posture of this case, the Court’s granting of petitioner’s petition will not advance the termination of litigation.

In fact, granting petitioner permission to appeal will cause the State to suffer substantial and irreparable injury. If the State is denied disclosure of the discovery that petitioner has obtained

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<sup>8</sup> See *Howard v. State*, 945 So.2d 326, 360-61 (Miss. 2006) (“M.R.A.P. 22(c)(4)(ii) creates two kinds of discovery available to capital post-conviction relief petitioners: that which is mandatory and that which is within the discretion of the trial court.”).

during pre-petition discovery, then it will have no other means for obtaining this discovery for the remainder of these post-conviction proceedings. Without true and complete access, the State will not be able to fully and competently respond to petitioner's application for leave to proceed and motion for post-conviction relief. That is contrary to the purposes that discovery serves to facilitate. The purposes of discovery include preventing "ambush" and "unfair surprise to either party[.]" *Taylor v. State*, 954 So.2d 944, 950 (Miss. 2007) (quoting *Le v. State*, 913 So.2d 913, 938 (Miss. 2005)).<sup>9</sup>

Finally, allowing petitioner an opportunity to appeal the trial court's June 3, 2015, Order will not resolve an issue of general importance to the administration of justice. For one, discovery is a basic, long-established tenet of the adversarial system. And two, Rule 22(c)(4)(ii) applies in extremely limited circumstances where post-conviction movants under sentence of death are engaged in pre-petition discovery. Miss. R. App. P. 22(c)(4)(ii). There is no issue of general importance in this case.

#### IV

##### A. REASONS FOR DISMISSING THE PETITION AND DENYING REVIEW

Petitioner seeks relief from the trial court's June 3, 2015, Order, granting the State true and complete disclosure of any and all youth court and DHS records, documents, and media obtained during discovery. He poses two questions for this Court's consideration. First, petitioner asks whether Rule 22(c) of the Mississippi Rules of Appellate Procedure precludes the State from

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<sup>9</sup> Evidence which is relevant and not absolutely privileged is discoverable. *Scott By & Through Scott v. Flynt*, 704 So.2d 998, 1004 (Miss. 1996); *see also Kindred v. Columbus Country Club, Inc.*, 918 So.2d 1281 (Miss. 2005) (ruling that cases should be decided on the merits.); *accord Buskirk v. Elliott*, 856 So.2d 255, 260 (Miss. 2003) (quoting *Harris v. General Host Corp.*, 503 So.2d 795, 796 (Miss. 1986)).

conducting discovery during the pre-petition period of a movant's state post-conviction proceedings. The second question petitioner asks is whether a post-conviction movant under sentence of death may use the confidentiality of Mississippi's Youth Court statutes as a sword, on the one hand, and a shield, on the other, when seeking collateral review and relief. The State respectfully requests this Court dismiss the present Petition for Permission to Appeal Circuit Court's Order Requiring Disclosure of Youth Court and DHS Records to the State, and deny petitioner's request for appellate review. The State submits the following four reasons for dismissing the present petition and denying petition permission to appeal the trial court's June 3, 2015, Order:

1. First, the Court should dismiss the present petition and deny petitioner the permission to appeal, because the State's request for disclosure is entirely consistent with the rules promulgated by this Court and the discovery process of our adversarial system. Here, invoking discovery is just as, if not more, important than at trial, because this Court can consider matters outside of the record. Miss. Code Ann. § 99-39-3(2). Discovery narrows issues, prevents surprise, and promotes just outcomes.<sup>10</sup> As this Court has previously held, the administration of discovery rules is done with a "strong bias in favor of the Court . . . receiving and considering all relevant and otherwise admissible evidence." *Houston v. State*, 531 So.2d 598, 611-12 (Miss. 1988). This Court, in *Box v. State*, 437 So.2d 19, 21 (Miss. 1983), held that "justice is more nearly achieved when, well in advance of trial, each side has reasonable access to the evidence of the other." *Id.* at 21 (citing URCCC 4.06; Miss. R. Civ. P. 26-37). The State submits that the holding in *Box* is equally, if not

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<sup>10</sup> Cases should be decided on the merits. *Columbus Country Club, Inc.*, 918 So.2d 1281; *Buskirk*, 856 So.2d at 260 (quoting *General Host Corp.*, 503 So.2d at 796); Discovery is designed to prevent "ambush" and "unfair surprise to either party[.]" *Taylor*, 954 So.2d at 950 (quoting *Le*, 913 So.2d at 938).

more so, applicable in this case than at trial.<sup>11</sup> Why? If the State is denied disclosure, then petitioner will have the ability to pick and choose what information will be disclosed and what information will not. This one-sided ability to divulge information, at-will, is completely at odds with our adversarial system. And importantly, petitioner *cannot argue* that he has suffered undue prejudice. This is *not* a case where a petitioner has been denied *any* discovery.

Petitioner repeatedly complains that Rule 22(c)(4)(ii)'s discovery procedure was put into place so that movants under sentence of death would have a meaningful opportunity to support collateral relief claims with fact. (Petitioner's Petition 9-10.) His complaint is confounding and baffling, given the fact that all of petitioner's discovery requests have been granted *without* the slightest resistance from the State. The State is simply asking that true and complete disclosure of those records and documents, which petitioner obtains pursuant to the trial court's June 3, 2015, Order Granting Discovery, be disclosed to it pursuant to the trial court's other June 3, 2015, Order.

Nevertheless, petitioner challenges the trial court's June 3, 2015, Order. He does so by attacking the State's arguments and the rules it cited in the motion that it filed in the trial court. (Id. 8-9.) The State cited the Uniform Rules of Circuit and County Court Procedure, the Mississippi Rules of Appellate Procedure, the Mississippi Rules of Civil Procedure, and the UPCCRA in the motion and supporting memorandum that were filed in the trial court. The State cited these rules and the UPCCRA to make a specific point. That is, discovery is a fundamental tenet of the adversarial system, a touchstone process of fair litigation—be it civil, criminal, or quasi-civil.<sup>12</sup> Petitioner

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<sup>11</sup> Citing Rule 4.06, which pre-dated Rule 9.04 of the Uniform Rules of Circuit and County Court Procedure.

<sup>12</sup> (See Pet'r's Ex. 8; Resp. in Opposition to Petitioner's Motion for Discovery; and Incorporated Motion for Reciprocal Discovery, dated Apr. 2, 2015; )

strongly disagrees with the State. Petitioner simply misses the “relevant” point. So, out of an abundance of caution, the State will clarify.

The State’s reliance on various rules promulgated by this Court is consistent with the Mississippi Rules of Appellate Procedure, particularly Rule 22(c) which states that:

To the extent that the procedures set out in this rule may conflict with any other rule of procedure or practice, the procedures set out herein shall control in post-conviction proceedings on behalf of petitioners under a sentence of death.

Miss. R. App. P. 22(c)(7). Rule 1 of the Mississippi Rules of Appellate Procedure and comment thereto expressly state that:

These rules govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, and proceedings on petitions for writs or other relief which the Supreme Court or the Court of Appeals or a justice of the Supreme Court or judge of the Court of Appeals is empowered to grant. **When these rules provide for the making of a motion in the trial court, the procedure for making such motion shall be in accordance with the practice of the trial court.**

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*Rules which provide for the making of a motion in the trial court include Rules 4(g), extension of time to appeal; 6, determination of in forma pauperis status; 8(b), stay on appeal to be first sought in trial court; and 10(e) correction of record on appeal. Trial court practice is governed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Evidence, applicable uniform rules, and local rules where adopted pursuant to M.R.C.P. 83. The term “trial court” in these rules includes a circuit or chancery court sitting as an appellate court. Rule 46(b) concerning the admission of foreign attorneys governs admission in trial courts, in administrative agencies, and in the appellate courts.*

Miss. R. App. P. 1, cmt. (emphasis added). Rule 1 of the Mississippi Rules of Civil Procedure states that:

The rules govern procedure in the circuit courts, chancery courts, and county courts in **all suits of a civil nature**, whether cognizable cases at law or in equity, subject to certain limitations enumerated in Rule 81; however, even those enumerated proceedings are still subject to these rules where no statute applicable to the proceedings provides otherwise or sets forth procedures inconsistent with these rules.

These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Miss. R. Civ. P. 1 (emphasis added).

To emphasize the point, the State has, at no time and in no way, resisted petitioner's request for discretionary discovery. The State has cooperated, assisted, and facilitated petitioner's efforts throughout these proceedings *without* reciprocity. The State requested true and complete disclosure of *only* those records and documents that petitioner obtains pursuant to the trial court's June 3, 2015, Order Granting Discovery. And, that request was granted. (Pet'r's Ex. 1.) Petitioner refuses to accept the fact that he is not the only party who must develop facts to support a position even though Rule 22(c) expressly states that "[t]he State *shall* file a response to the application for leave to file a motion for post-conviction relief . . . ." Miss. R. App. P. 22(c)(5)(ii) (emphasis added).<sup>13</sup>

Instead, he takes the position that the State's request and the trial court's June 3, 2015, Order conflicts the rules promulgated by this Court, including Rule 22(c). But as the preceding shows, petitioner is simply mistaken. Petitioner argues that Rule 22(c) "does not include provisions for the State to request or receive discovery." (Pet'r's Pet. 2, 9-13.) He relies on *Brown v. State*, 88 So.3d 726, 730 (Miss. 2012), as authority to support that position. (Id. 9.) That is not what *Brown* holds. *Brown* holds that a petitioner is not entitled to Rule 22(c)(4)(ii)'s mandatory discovery once an application for leave to proceed in the trial court is granted. *Brown*, 88 So.3d at 730. Petitioner's arguments make clear that his position is premised on the misguided belief that he is the only party to these proceedings who enjoys discovery—a position that simply will not hold when considering

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<sup>13</sup> See *Harrell v. State*, 134 So.3d 266, 273-74 (Miss. 2014) (recognizing that the term "shall," *mandates* action); *Hathcock v. S. Farm Bureau Cas. Ins. Co.*, 912 So. 2d 844, 848 (Miss. 2005) (same).

the purpose that Rule 22(c) serves.

Rule 22(c) concerns petitioners under sentence of death for a very specific purpose. The UPCCRA provides the “exclusive and uniform procedure for the collateral review of convictions and sentences.” Miss. Code Ann. § 99-39-3(1). “No right of collateral review exists beyond that granted by th[e] [UPCCRA].” *Ragland v. State*, 586 So.2d 170, 171-72 (Miss. 1991). Rule 22(c)(4)(ii) is the *only* procedural channel for obtaining pre-petition, discretionary discovery that is available to *petitioners* under sentence of death. Rule 22(c)(4)(ii) provides these petitioners with the opportunity to invoke discretionary discovery and obtain factual information, so that they may meaningfully support claims for post-conviction relief. *Howard*, 945 So.2d at 360-61. Nowhere in Rule 22(c) is there a provision which prohibits the State from obtaining disclosure of petitioner’s pre-petition discovery.

The trial court’s June 3, 2015, Order, which grants the State true and complete disclosure is entirely consistent with the rules promulgated by this Court, including Miss. R. App. P. 22(c). The present petition amounts to nothing more than a desperate attempt to avoid the disclosure of relevant information to an adverse party.<sup>14</sup> For example, petitioner informs the Court that *he* will attach all *relevant* information to his application for leave to proceed. The State is interested in the information that petitioner relies upon. But, it has a more significant interest in the information that

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<sup>14</sup> It is entirely improper for petitioner to withhold this information after the trial court *ordered* him to disclose it to the State—regardless of whether or not he believed it was in his best interest to do so. *See Eaton Corp. v. Frisby*, 133 So.3d 735, 747-52 (¶¶ 45-61) (Miss. 2013) (providing an in-depth discussion of a trial court’s decision to impose substantial financial sanctions for evasive and deceptive discovery tactics; and ruling the trial court exercised sound discretion in imposing those sanctions) (citations omitted); *see e.g., Byrom v. State*, 863 So.2d 836, 870-71 (¶¶ 114-18) (Miss. 2003) (citations omitted). It is no stretch of the imagination to assert that most, if not all, petitioners under the same circumstances going forward will routinely make this argument.

petitioner does not disclose. To accept the petitioner’s position would endorse and otherwise embrace the withholding of highly relevant information that will advance the interests of justice in this case. The trial court’s Order does not constitute an abuse of discretion. The trial court’s Order is consistent with this Court’s procedural rules, particularly Rule 22(c). To reiterate, this Court strongly disfavors the “wholesale granting of interlocutory appeals of civil discovery disputes.” *Haynes*, 597 So.2d at 617 (quoting *In re Knapp*, 536 So.2d at 1333).

2. The second reason why the Court should dismiss the present petition and deny petitioner the permission to appeal concerns nature of the questions petitioner asks this Court to consider. “[A]n interlocutory order may be sought if a substantial basis exists for a difference of opinion on a *question of law* . . . .” Miss. R. App. P. 5(a) (emphasis added). Both of petitioner’s questions center around a basic tenet of the adversarial system—discovery. Discovery is a “matter[] of discretion . . . .” *American Elec., a Div. of FL Industries v. Singarayar*, 530 So.2d 1319, 1322 (Miss. 1988) (citing Rosenberg, *Appellate Review Of Trial Court Discretion*, 79 F.R.D. 173 (1979)). This Court applies an abuse of discretion standard to matters related to discovery. *Mingo v. State*, 944 So.2d 18, 26 (Miss. 2006).<sup>15</sup> A trial court maintains “wide” and “considerable” discretion concerning discovery matters. *McCarty v. Kellum*, 667 So.2d 1277, 1285 (Miss. 1995). “[A]cts of discretion [are] least eligible for interlocutory review.” *Singarayar*, 530 So.2d at 1322 (emphasis added). The trial court did not abuse its discretion in granting the State disclosure. For this second reason, the Court should dismiss the petition and deny petitioner permission to appeal, because he asks this Court to consider matters of discretion, not questions of law.

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<sup>15</sup> Citing *Flora v. State*, 925 So.2d 797, 819 (Miss.2006) (citing *Montgomery v. State*, 891 So.2d 179, 181 (Miss.2004)); accord *Kellum*, 667 So.2d at 1285.

3. The third reason for dismissing the petition and denying petitioner permission to appeal relates to the youth court records, which petitioner claims are confidential. This reason also concerns petitioner's Motion to File Under Seal that the State received on June 29, 2015. Petitioner argues that the trial court's Order should be vacated, because it is necessary to protect "the substantial and irreparable injury of disclosing his and his family's youth court and DHS records to the State." (Pet'r's Pet. 6, n. 14, 13-15.) He reasons that disclosure of these records will give the State confidential information, including information he may decide not to use.<sup>16</sup> Petitioner also argues that the trial court's Order is contrary to Mississippi law, because the trial court did not account for petitioner's best interest to keep these records and documents confidential. (Id.) (citing Miss. Code Ann. § 43-21-261). These arguments are specious.

His bald assertion that disclosure will cause "substantial and irreparable injury . . . ." does not justify his decision to violate a court order and withhold information.<sup>17</sup> (Id.) After all, petitioner initiated these proceedings, not the State. He, not the State, has "expos[ed] himself [and his family members] to the harsh realities of litigation." *Daniels by Glass v. Wal-Mart Stores, Inc.*, 634 So.2d 88, 93 (Miss. 1993). He relies on Miss. Code Ann. §§ 43-21-259 and 43-21-261 as authority. But, those statutes do not prevent the State from gaining access to the Youth Court and DHS records, which he has obtained or will obtain. The precedent of this Court teaches that:

The right of "confidentiality" on behalf of the child is a **"qualified" and not an "absolute" privilege** . . . . Although we are cognizant of the need to protect juveniles from the public disclosure of youth court records and proceedings, this need must be

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<sup>16</sup> See *supra*, p. 12 n. 14.

<sup>17</sup> Briefly, the State does not know if the records petitioner obtained from the Youth Court of Kemper County, Mississippi, are records of infants. What the State knows is that petitioner did not seek permission or obtain permission to invoke discovery of any infant during these proceedings.

balanced against the [defendant's] . . . right to assert its defense . . . . The youth court confidentiality statutes were enacted to prevent misguided youths from being stigmatized or receiving public scorn. **This protective shield which protects youths should not be used as a sword in civil cases.**

*Daniels by Glass*, 634 So.2d at 93-94 (emphasis added). The State is, as a party to this action, entitled to any and all youth court and DHS records and documents petitioner possesses and refuses to disclose. *See id.* at 94 (recognizing and agreeing with the Louisiana Court of Appeals holding that a defendant “insurance company was indeed an interested party and . . . [allowed] access to youth court files . . . .”) (citing *Daniels v. National Fire Insurance Company of Hartford*, 394 So.2d 683, 683-84 (La. Ct. App. 1981), *cert. denied*, 397 So.2d 806 (La. 1981)).

This Court, in *Daniels by Glass*, rejected the very tactic that petitioner asks that he be allowed to employ. In so doing, the *Daniels by Glass* Court explained that:

[I]t is imperative that the truth be ascertained. To do so mandates that evidence presented in the youth court proceedings be allowed to be introduced at Daniels’ slander suit. Since the truth is a total defense to a slander suit, it only seems equitable that Wal-Mart be allowed to use this evidence in its defense.

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*Justice requires a total view . . . .* We will not allow Daniels to use his shield to go on the attack. Nor will we allow the courts to only see part of the whole picture. Although justice is blind so that all who approach it do so on equal footing, justice is not dumb unless made so by courts or judges.

*Id.* at 92-94 (emphasis added)<sup>18</sup> (quoting *Yarborough v. State*, 514 So.2d 1215, 1219 (Miss. 1987) (holding “that the Youth Court Act does not require prior approval of the youth court before records may be used to impeach testimony of a witness in a criminal proceeding.”)).<sup>19</sup>

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<sup>18</sup> *See In re R.J.M.B.*, 133 So.3d 335, 341 (¶ 20) (Miss. 2013) (holding a trial court’s decision to release youth court records to the defendant was permissible, because the release was necessary to presenting a complete picture in a related civil lawsuit.)

<sup>19</sup> *Yarborough* was a *post-conviction movant*.

“[W]here the need for confidentiality is relatively weak and the need for the information in the matter at hand relatively strong, complete unrestricted access may be the rule.” *Baptist Memorial Hospital Union County v. Johnson*, 754 So.2d 1165, 1171 (Miss. 2000) (citing *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987)). The State can think of no stronger need than the present one, which is why it asked for and was granted unrestricted access. “The State has a duty to represent the public’s interest in prosecuting violent criminals, no matter what their age . . . . Both the State and the defense counsel have a right to see the youth court and school records and challenge them if necessary.” *State v. U.G.*, 726 So.2d 151, 156 (Miss. 1998). Again, petitioner, not the State, has put these records and documents into play.

Further, petitioner admittedly does not know the substance of many, if not most, of these records and documents. (See Pet’r’s Pet. 4, 15.) His argument that the trial court failed to account for the best interest of any juvenile or infant is disingenuous. He cannot, in good faith, argue that substantial and irreparable injury will result to any party when he admittedly does not know the substance of these records and documents. And even if petitioner did know the substance of these records and documents, the public interest overrides the need for confidentiality. *Daniels by Glass*, 634 So.2d at 93-94; *Baptist Memorial Hospital Union County*, 754 So.2d at 1171. The Court should not allow petitioner to use the youth court and DHS records and documents as a sword on the one hand, and the confidentiality of the State’s Youth Court statutes as a shield on the other. “Justice requires a total view . . . .” *Id.* at 93. His assertions concerning the confidentiality of these records and documents are no basis for granting petitioner permission to appeal the trial court’s Order, granting the State true and complete disclosure. For this third reason, the Court should dismiss the present petition and deny petitioner permission to appeal the trial court’s Order.

4. Finally, there is *no* basis—much less a substantial one—for a difference of opinion on the process of invoking discovery. *See* Miss. R. App. P. 5(a) (requiring the existence of “a substantial basis . . . for a difference of opinion on a question of law . . .” as a prerequisite to taking an appeal from an interlocutory order). As the trial court astutely pointed out during the motions hearing, “if you treat [this case,] like any other civil case . . . discovery would be pretty easy for [the State] to obtain from you.” (Pet’r’s Ex. 12 at 15.) There is no basis for a difference of opinion on the process of invoking discovery just a desperate attempt by petitioner to resist the disclosure of information which is necessary to the *just* adjudication of this case. Discovery narrows issues, prevents surprise, and promotes just outcomes.<sup>20</sup> Petitioner cannot argue otherwise, especially when he is actively engaged in discovery. The Court should dismiss the petition and deny petitioner permission to appeal the trial court’s June 3, 2015, Order.

## V

For reasons stated above, the State submits that the Petition for Permission to Appeal Circuit Court’s Order Requiring Disclosure of Youth Court and DHS Records to the State should be dismissed; and permission to appeal the trial court’s June 3, 2015, Order, granting the State true and complete disclosure of the youth court and DHS records denied. Additionally, the State expects that petitioner will move this Court seeking to file a rebuttal to this Answer. The State requests that any such request be denied. *See* Miss. R. App. P. 5(b) cmt. (“*Rule 5(b) provides only for the petition and*

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<sup>20</sup> Evidence which is relevant and not absolutely privileged is discoverable. *Scott By & Through Scott*, 704 So.2d at 1004. Cases should be decided on the merits. *Columbus Country Club, Inc.*, 918 So.2d 1281; *Buskirk*, 856 So.2d at 260 (quoting *General Host Corp.*, 503 So.2d at 796); Discovery is designed to prevent “ambush” and “unfair surprise to either party[.]” *Taylor*, 954 So.2d at 950 (quoting *Le*, 913 So.2d at 938).

*the answer. A reply to the answer is not permitted and will not be considered.”*).<sup>21</sup>

**WHEREFORE, PREMISES CONSIDERED**, the State respectfully requests that this Court dismiss the present petition, and affirm the trial court’s June 3, 2015, Order granting the State true and complete disclosure.

Respectfully submitted,

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by: s/ *Brad A. Smith*

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<sup>21</sup> See *Coleman v. State*, 127 So.3d 161, 166 (Miss. 2013) (“[A] rule which is not enforced is no rule.”) (quoting *Illinois Cent. R. Co. v. Moore*, 994 So.2d 723, 726 (Miss. 2008)).

## **CERTIFICATE OF SERVICE**

This is to certify that I, Brad A. Smith, Special Assistant Attorney General for the State of Mississippi, have electronically filed, the foregoing Answer in Opposition to the Petition for Permission to Appeal Circuit Court's Order Requiring Disclosure of Youth Court and DHS Records to the State and attached Exhibits A, B, C, and D with the Clerk of the Court using the ECF system, which sent notification of said filing to:

**Loulynn Vanzetta Williams, Esq.**  
**Dellwyn Smith, Esq.**  
**Jamila Alexander, Esq.**

Office of Capital Post-Conviction Counsel  
239 North Lamar Street, Suite 404  
Jackson, Mississippi 39202

I further certify that I have this day caused to be mailed using the U.S. Postal Service, a true and correct copy of the Answer in Opposition to the Petition for Permission to Appeal Circuit Court's Order Requiring Disclosure of Youth Court and DHS Records to the State and attached Exhibits A, B, C, and D to:

**The Honorable Andrew K. Howorth**  
Lafayette County Circuit Court  
1 Courthouse Square, Suite 201  
Oxford, Mississippi 38655

This, the 10th day of July, 2015.

Respectfully submitted,

**BRAD A. SMITH,**  
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