

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 16, 2020**SUPREME COURT - CIVIL CASES****OAK GROVE MARKETPLACE, LLC V. LAMAR CTY. SCH. DIST.****CIVIL - REAL PROPERTY**

REAL PROPERTY - SIXTEENTH SECTION LAND - RENT ADJUSTEMENT - In a Sixteenth Section lease, rent adjustment at least once every ten years is a mutual, mandatory obligation and not a mere right to be exercised or waived

REAL PROPERTY - SIXTEENTH SECTION LAND - TRUSTEE DUTIES - Because rent adjustment is part of a Sixteenth Section Land trustee's duty, it cannot be contracted away, even by mutual agreement of the parties

REAL PROPERTY - SIXTEENTH SECTION LAND - ADEQUATE CONSIDERATION - There is a constitutional prohibition against a trustee's donation of trust land by virtue of receiving grossly inadequate consideration

FACTS

On August 5, 2002, Oak Grove Marketplace, LLC, and the Lamar County School Board, as trustee of Sixteenth Section Land, entered into a forty-year commercial lease, giving Oak Grove Marketplace the right to lease Sixteenth Section Land for \$8,450.20 annually. The lease agreement, which was a form agreement provided by the Secretary of State's Office, stated that the School Board had the right to conduct an appraisal and adjust the rent within 60 days of the 10th, 20th, and 30th anniversary of the lease agreement. The School Board did not adjust the rental rate in 2012, but in 2017 it notified Oak Grove Marketplace that the rent was going to increase to \$32,250 that year and remain at that rate until a scheduled readjustment in 2027. Oak Grove Marketplace paid only \$8,450.20 and filed a complaint against the board in the Lamar County Chancery Court, stating that the lease agreement did not allow for such a readjustment at that time. The trial court held that the School Board had a statutory right to readjust the rent, and Oak Grove Marketplace petitioned for an interlocutory appeal.

ISSUES

Whether (1) the lease must be enforced because it was produced by the Mississippi Secretary of State, contains clear and unambiguous terms, and meets all constitutional and statutory requirements; (2) the lease was just as enforceable against the School Board, a state entity, as if it was a private party; and (3) the liability for the School Board's breach of its duty as school-land trustee cannot be shifted to Oak Grove Marketplace.

HOLDING

(1) Because the lease agreement did not allow for a mandatory rent readjustment at least once every ten years, it did not meet all statutory and constitutional requirements needed. It did not matter that the School Board had the option to readjust, the readjustment must be a mutually binding obligation of the lease. Also, the fact that the Secretary of State's Office provided the lease agreement does not free the School Board of its statutory obligations. (2) Because the School Board had a statutory duty as trustee of the Sixteenth Section Land, it could not contract away its statutory obligations under Section 29-3-69, and the lease was not enforceable. (3) Because the School Board could not, under Section 29-3-69, prevent consideration of its commercial lease from being readjusted for twenty years, the lease failed to meet the statutory requirements, even if the School Board was shifting its liability for failure to act onto Oak Grove Marketplace. Also, by insisting that the School Board must wait twenty years to readjust its rental rate, the Court would come dangerously close to violating the constitutional prohibition against trust land donation by inadequate consideration. Therefore, the Supreme Court affirmed the judgment of the Lamar County Chancery Court.

Affirmed & Remanded - 2018-IA-00759-SCT (Jan. 16, 2020)

Opinion by Justice Maxwell

Hon. Johnny Lee Williams (Lamar County Chancery Court)

R. Andrew Foxworth for Appellant - William A. Whitehead Jr. & Richard D. Norton for Appellees

Briefed by [Reid Hudson](#)

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WEIR V. MAYZE

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - VENUE - GENERAL - Miss. Code Ann. § 11-9-3 states that civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides . . . or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred

CIVIL PROCEDURE - VENUE - CLAIM OF VENUE - Plaintiff's choice of venue must be given the benefit of reasonable doubt and must be sustained unless in the end there is no credible evidence supporting the factual basis for the claim of venue

CIVIL PROCEDURE - VENUE - TRANSFER OF VENUE - If the plaintiff wishes to defeat a motion to transfer venue . . . he or she should be prepared to present some credible evidence supporting his or her choice of forum

FACTS

Renaulta Mayze, Markhail Mayze, and Tydarius Sago were traveling southbound on I-220 when they were rear-ended by Casey Weir. Mayze filed suit against Weir in the Hinds County County Court, alleging that the accident occurred in Hinds County. Weir filed a motion to transfer venue arguing that venue was not proper in Hinds County because he was not a resident of Hinds County and the accident occurred in Madison County. Mayze filed a response to Weir's motion and attached an affidavit stating that the accident occurred in "North Jackson, Mississippi," but he did not submit any further proof. Weir then filed his own affidavit that gave a detailed explanation of where the accident had occurred and included pictures and a copy of the accident report. The Ridgeland police officer who responded to the accident was subpoenaed and was present at the hearing, but the judge did not allow the police officer to testify because "[the officer's] police report speaks for itself." The county court heard Weir's motion and denied it. Weir appealed.

ISSUE

Whether the trial court erred by denying Weir's motion to transfer venue from Hinds County to Madison County Court.

HOLDING

Because Mayze's only evidence was an affidavit, which was not included in the record, that stated only that the accident occurred in "North Jackson, Mississippi," and Weir had an affidavit that included a detailed explanation of where the accident had occurred in Madison County, which was consistent with the official accident report of the Ridgeland Police Department, along with photos of the incident, the trial court erred by denying Weir's motion to transfer venue. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County County Court.

Reversed & Remanded - 2018-IA-01720-SCT (Jan. 16, 2020)

Opinion by Presiding Justice Ishee

Hon. Larita M. Cooper-Stokes (Hinds County County Court)

Michael J. Tarleton for Appellant - Samac S. Richardson, Vatteria McQuitter Martin, & Deshun Terrell Martin for Appellees

Briefed by [Daniel Bond](#)

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SUPREME COURT - ORDERS

BROWN V. STATE

EN BANC ORDER

ORDER

Freddie Brown's conviction and life sentence as a habitual offender were affirmed on direct appeal on April 15, 1992. Brown filed a pro se application for Leave to Proceed in the Trial Court with Motion for Post-Conviction Collateral Relief. Brown was warned in previous court orders that future frivolous filings may result in both monetary sanctions, and restrictions on filing future post-conviction relief natured motions in forma pauperis. The current motion was Brown's eighth application for leave since his original 1992 appeal. Because Brown's application for leave was barred by the passage of time, and it did not meet any of the exceptions, the Application for Leave to Proceed in the Trial Court with Motion for Post-Conviction Collateral Relief was denied. Because the filing was deemed frivolous, Brown was restricted from filing further applications for post-conviction relief, or pleadings of that nature, related to the conviction and sentence in forma pauperis.

OBJECTION

Presiding Justice King argued that the court was prioritizing efficiency over justice by closing its doors to Brown and was subsequently violating both the Mississippi and United States Constitutions. Indigent litigants are often reprimanded while those with financial ability are allowed endless petitions. King argued that such inequality violates the oath each justice took to "do equal right to the poor and to the rich." Further, he argued that the order restricting future filings violates the unfettered access in civil causes to any tribunal in the State granted under article three of the Mississippi Constitution. Severing an indigent defendant's right to proceed in forma pauperis is also a violation of that defendant's fundamental right to vindicate his constitutional rights. King asserted that the more barriers placed between indigent defendants and civil tribunals, the greater the chance an indigent litigant with a meritorious claim is one day unable to find justice. Additionally, convictions with the best chances of being overturned are those repeatedly reviewed on appeal. Justice King would simply deny Brown's petition for post-conviction relief, without violating Brown's fundamental rights by restricting future filings.

Denied & Sanctions Imposed - 2019-M-00875 (Jan. 15, 2020)

En Banc Opinion by Justice Coleman - Dissent by Presiding Justice King

Briefed by [Charles Ellzey](#)

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DICKERSON V. STATE

EN BANC ORDER

ORDER

David Dickerson filed a Motion to Re-impose Stay Pending Collateral Appeal. A Response in Opposition was filed by the State, and the court then granted Dickerson leave to file a Rebuttal to the State's Response. After due consideration, the court denied Dickerson's Motion to Re-impose Stay Pending Collateral Appeal.

OBJECTION

Presiding Justice Kitchens argued that Dickerson's motion should be granted because his appeal of the trial court's competency determination is unresolved. If Dickerson is deemed incompetent, then he should not be compelled to proceed on post-conviction relief.

Denied - 2015-DR-00954 (Jan. 16, 2020)

En Banc Order by Justice Coleman - Objection by Presiding Justice Kitchens

Briefed by [Luke Seymour](#)

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MISS. BAR V. COLVIN

ORDER OF DISBARMENT

ORDER

Torrance J. Colvin was licensed to practice law in the District of Columbia and Mississippi. Colvin was disbarred in the District of Columbia pursuant to an order entered by the District of Columbia Court of Appeals, in which Colvin consented to his disbarment. The Mississippi Bar (“the Bar”) made an initial request for reciprocal discipline based on Colvin’s disbarment in the District of Columbia that was dismissed without prejudice due to improper service of process. The Bar later effected personal service on Colvin in accordance with Mississippi Rule of Discipline 16 and filed a second formal complaint for reciprocal discipline. In a reciprocal discipline case, the Court must determine the appropriate discipline to be imposed on the attorney which, absent extraordinary circumstances, generally mirrors the sanctions imposed by the sister state. Because Colvin failed to respond and the Court found no extraordinary circumstances to support variance from the District of Columbia’s discipline of disbarment, the Court granted the Bar’s complaint. Additionally, the Court ordered Colvin to reimburse the Bar for actual costs and expenses incurred in filing and serving its complaint.

Affirmed - 2019-BD-01094-SCT (Jan. 14, 2020)

En Banc Opinion by Presiding Justice Kitchens

Briefed by [Anna McLemore](#)

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SUPREME COURT - CRIMINAL CASES

DANCY V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL LAW - ANIMAL CRUELTY - FORFEITURE - Under Miss. Code Ann. § 97-41-2(5), a court may order that an animal be permanently forfeited if the court finds that the owner of the animal is unable or unfit to adequately provide for the animal or that the animal is severely injured, diseased, or suffering, and therefore, not likely to recover

CRIMINAL LAW - ANIMAL CRUELTY - REIMBURSEMENT - The duty to reimburse a temporary custodian under Miss. Code Ann. § 97-41-2 ends when the justice court orders the animals be permanently forfeited; however, a judgment by a justice of the peace is vacated or superseded by appeal to the circuit court

CRIMINAL PROCEDURE - EVIDENCE - BOX PROCEDURE - If the defendant believes he may be prejudiced by the admission of previously undisclosed evidence to which he has objected, he must request a continuance; failure to request a continuance constitutes a waiver of the issue

CRIMINAL PROCEDURE - APPEALS - PLAIN-ERROR REVIEW - When an error impacts a fundamental right of the defendant such as protection against double jeopardy, procedural rules give way to prevent a miscarriage of justice, requiring the Supreme Court to address issues on plain-error review and correct any fundamental violations

FACTS

Union County Sheriff Jimmy Edwards received multiple complaints reporting that William Dancy’s horses were getting out and eating his neighbor’s soybeans. Sheriff Edwards and Keith Settlemires, with the Mississippi Department of

Agriculture, went to investigate the damage to the soybeans and the condition of the horses. During their investigation, the two became concerned after observing that Dancy's horses, dogs, and cats did not have adequate water and appeared malnourished. Shortly after Sheriff Edward's investigation, the Union County Sheriff's Department obtained a court order to seize Dancy's animals. In July 2017, the sheriff's department, accompanied by veterinarian Dr. Davis Hunt and representatives from animal-protection organizations, seized six horses, three dogs, and four cats from Dancy's property. After the animals were seized, they were placed in the custody of two animal-protection organizations pending a final determination of whether the animals should be forfeited. With respect to the horses, Dancy was charged with violating Miss. Code Ann. § 97-41-7. As to the dogs and cats, Dancy was charged with two separate violations of Miss. Code Ann. § 97-41-16(2)(a). In August 2017, the justice court found Dancy guilty on all three charges and ordered that the animals be forfeited. Following the justice court's decision, Dancy appealed to the circuit court. At trial, nearly all of the State's witnesses testified that Dancy's animals were without adequate food, water, or shelter. Additionally, Dr. Hunt testified that some of the horses had dermatophilosis, and that most of the dogs had swelling, parasites, ticks, and fleas. After the bench trial, the circuit court found Dancy guilty on all three counts of animal cruelty and ordered the animal be permanently forfeited. Moreover, the circuit court ordered Dancy to reimburse the horse's temporary custodian for care and boarding expenses. Dancy appealed.

ISSUES

Whether (1) the circuit court erred by ordering the permanent forfeiture of Dancy's animals; (2) the circuit court erred by ordering Dancy to reimburse the horses' temporary custodian for the costs it incurred caring for and boarding the horses; (3) the circuit court erred by allowing veterinarian Dr. Davis Hunt to testify; and (4) Dancy's two convictions under Miss. Code Ann. § 97-41-16(2) subjected him to double jeopardy.

HOLDING

(1) Because various witnesses testified to the poor condition of Dancy's animals and to their inadequate access to water, food and shelter, the circuit court's permanent forfeiture order was supported by substantial evidence. (2) Because Dancy appealed the justice court's decision, there was no judgment for purposes of reimbursement until the circuit court rendered its final judgment, therefore, the circuit court did not err by ordering Dancy to reimburse the horses' temporary custodian for the costs it incurred following the justice court's decision. (3) Because the circuit court provided Dancy with the opportunity to decide if he should request a continuance, the circuit court did not abuse its discretion by allowing Dr. Hunt to testify. (4) Because Dancy's conduct constituted a single offense under the plain language of Miss. Code Ann. § 97-41-16(2), and because the State could not punish Dancy twice for the same offense without violating his right to double jeopardy, Dancy's second conviction was vacated following a plain-error review. Therefore, the Supreme Court affirmed in part and vacated in part the judgment of the Union County Circuit Court.

CONCURRENCE

Chief Justice Randolph argued that application of the plain-error doctrine was not warranted because a miscarriage of justice had already been avoided. Specifically, Justice Randolph wrote that a miscarriage of justice was avoided when the circuit court suspended fines for all of Dancy's misdemeanor convictions.

Affirmed in Part & Vacated in Part - 2018-KM-01409-SCT (Jan. 16, 2020)

En Banc Opinion by Justice Chamberlin - Concurrence by Chief Justice Randolph

Hon. Andrew K. Howorth (Union County Circuit Court)

Jim Waide for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Harrison Smith](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 14, 2020

COURT OF APPEALS - CIVIL CASES

DESCHER V. DESCHER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - REASONABLE NEEDS - Even if a child's basic needs are met, it is not an abuse of discretion for the chancellor to consider the standard of living to which the child is accustomed in deciding what amount of support is reasonable

FAMILY LAW - CHILD SUPPORT - COLLEGE SUPPORT - Child support payments toward education are seldom used to offset child support as they do not diminish the child's need for food, clothing and shelter

FAMILY LAW - ALIMONY - PERMANENT PERIODIC ALIMONY - A spouse that seeks alimony must have a deficit with respect to having sufficient resources and assets to meet his or her needs and living expenses

FACTS

After seventeen years of marriage, April Descher filed a complaint for divorce from Jeff Descher in 2015. The parties consented to an irreconcilable-differences divorce on February 15, 2017. The consent decree asked the chancellor to determine child support and any related expenses, college support, life insurance, and permanent periodic alimony. Throughout their marriage, the Deschers built a sizeable marital estate from Jeff's ownership interest in numerous businesses. April was not listed as an owner on any of the businesses acquired during the marriage. The total sum of Jeff's interests in all of the businesses he acquired during the marriage was valued at \$2,301,300. April worked for the Descher business conglomerate. The chancellor found that April's yearly income was \$36,288, with an adjusted gross income of \$2,491.25 per month. April's financial statement listed \$12,784.82 in her personal monthly expenses and \$3,402.33 in expenses for the two children, for a total of \$16,168.33 in monthly expenses. Because April would receive the home and her vehicle free and clear of any debt, this left her personal monthly expenses at \$7,199.50 per month. The chancellor found that Jeff's after-tax monthly income was \$71,377.67. Jeff was ordered to pay \$7,500 in monthly child support. In addition, the chancellor determined that Jeff was responsible for the cost of the children's college education and related expenses, along with any health and medical expenses. Jeff was also ordered to obtain a one-million-dollar life insurance policy that named the children as beneficiaries to ensure that the support would continue if Jeff prematurely died. The chancellor found that the total marital estate was valued at \$3,584,766.75. The initial distribution of the marital estate, which included the marital home valued at \$620,000, left April with a total value of \$732,113.47 and Jeff with a total value of \$2,445,703.42. The chancellor found that after the distribution, April had a deficit of \$856,794.98 when compared with Jeff's portion of the estate. The chancellor therefore awarded lump-sum alimony in that amount. Finally, the chancellor ordered Jeff to pay April \$7,500 a month in permanent periodic alimony. Jeff appealed.

ISSUES

Whether the chancellor erred in awarding (1) monthly child support of \$7,500; (2) college support and related expenses; (3) the life insurance obligation; and (4) monthly permanent periodic alimony of \$7,500.

HOLDING

(1) Because the standard of living to which the child is accustomed may be considered in deciding what amount of child support is reasonable, the chancellor did not abuse his discretion. (2) Because Jeff was more than able to provide the children with collegiate education commensurate with their parents' station in life, and payments toward education are seldom used to offset child support as they do not diminish the child's need for food, clothing and shelter, the chancellor did not commit manifest error. (3) Because there was a future child support obligation of \$765,000, a one-million-dollar life insurance policy to guarantee support for the children was not an abuse of discretion. (4) Because April's equitable share of the marital estate was not income-producing and April was entitled to live in the standard to which she had become accustomed, the monthly permanent periodic alimony award was not an abuse of discretion. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

DISSENT

Presiding Judge J. Wilson argued the chancellor abused his discretion by ordering Jeff to pay child support to April that is more than three times the amount of the children's expenses claimed by April in her financial statement, and that the chancellor erred in awarding April permanent monthly alimony payments without properly considering her earning potential.

Affirmed - 2018-CA-01338-COA (Jan. 14, 2020)

En Banc Opinion by Judge Lawrence - Concurrence by Presiding Judge J. Wilson

Hon. James B. Persons (Harrison County Chancery Court, First Judicial Dist.)

David Alan Pumford, Richard Anthony Filce, & Erik M. Lowrey for Appellant - Joe Sam Owen & Ashley W. Gunn for Appellee

Briefed by [Michael Sturgus](#)

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McCARVER V. BOGAN

CIVIL - PERSONAL INJURY

TORTS - CLAIM DISCHARGE - ACCORD & SATISFACTION - The four basic elements of an accord and satisfaction are: (1) something of value must be offered in full satisfaction of a demand; (2) the offer must be accompanied by acts and declarations that amount to a condition that if the thing is accepted, it is accepted in satisfaction; (3) the party which offered the thing of value must understand that if he takes it, he takes subject to such conditions; and (4) the party offered the item must actually accept the item

TORTS - BURDEN OF PROOF - ACCORD & SATISFACTION - The moving party is burdened with proving by clear and convincing evidence that an accord and satisfaction was met

FACTS

Richard McCarver was injured in a vehicle accident caused by Richard Bogan. McCarver was insured by GEICO and Bogan was insured by Allstate. GEICO paid McCarver the base value of his vehicle under an underinsured motorist policy. However, McCarver contacted Allstate seeking reimbursements for other property damage, including improvements made to his vehicle. An Allstate adjuster visited McCarver at his shop and wrote a check to McCarver for \$2,160 which included the notation, "IN PAYMENT OF: FULL AND FINAL SETTLEMENT OF ANY AND ALL CLAIMS FOR BODILY INJURY ARISING FROM LOSS OF 8/22/2014." Subsequently, Allstate issued six additional checks to pay for McCarver's medical expenses and property losses. McCarver and his wife, Cynthia McCarver, filed suit against Bogan alleging that Bogan was liable for unpaid property damage and bodily injury claims resulting from the accident. Bogan moved for summary judgment, arguing that the check notation constituted an accord and satisfaction which barred the McCarvers from seeking additional funds, and GEICO joined the motion. In response, McCarver stated in an affidavit that the check in question stemmed from discussions regarding property damages only. McCarver never signed a release, and the Allstate adjuster did not supply an affidavit. Additionally, the parties had not yet taken depositions. The Marshall County Circuit Court granted Bogan's motion for summary judgment, and the McCarvers appealed.

ISSUES

Whether the trial court erred in (1) finding an accord and satisfaction and (2) granting Bogan's motion for summary judgment.

HOLDING

(1) Because Bogan did not prove McCarver's understanding by clear and convincing evidence, the trial court erred in finding an accord and satisfaction. (2) Because genuine issues of material fact existed, the trial court erred in granting Bogan's motion for summary judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Marshall County Circuit Court.

DISSENT

Judge Carlton argued that an accord and satisfaction was established when McCarver cashed the check in question, and accordingly, the trial court did not err in granting Bogan's motion for summary judgment. Because the check clearly stated "all claims for bodily injury" on its front, there was no genuine issue of material fact as to whether McCarver possessed the requisite understanding.

Reversed & Remanded - 2018-CA-01619-COA (Jan. 14, 2020)

En Banc Opinion by Judge Greenlee - Dissent by Presiding Judge Carlton
Hon. Andrew K. Howorth (Marshall County Circuit Court)
John Thomas Lamar III & Taylor Allison Heck for Appellants - Wilton V. Byars III, David Earl Rozier Jr., Jenessa Jo Carter Hicks,
& Mark Christopher Woods for Appellees
Briefed by [Eli Scott](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

MATHENY V. STATE

CIVIL - POST-CONVICTION RELIEF

CONSTITUTIONAL LAW - FOURTEENTH AMENDMENT - SELECTIVE PROSECUTION - In order to bring a selective prosecution claim the defendant must show: first, that others similarly situated generally have not been prosecuted; and second, that the Government's prosecution of him is selective, invidious, in bad faith or based on impermissible considerations such as race, religion, or his exercise of constitutional rights

CONSTITUTIONAL LAW - DUE PROCESS - VOID FOR VAGUENESS - The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness so that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement

CONSTITUTIONAL LAW - SENTENCING AND PUNISHMENT - DISPROPORTIONALITY - The United States Supreme Court has set out several factors in determining whether a sentence is disproportionate: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions

FACTS

Ransom Levi Matheny was indicted on three counts of child exploitation under section Miss. Code Ann. § 97-5-33(6). Count One involved R.C.M., who was fourteen years of age at the time; Count Two involved W.W., who was also fourteen years of age at the time; and Count Three involved C.W., who was thirteen years of age at the time. Matheny executed a sworn "Petition to Enter Plea of Guilty" to Counts One and Two. The State caused the entry of nolle prosequi for the charge in Count Three with the trial court's consent. The trial court ordered a pre-sentence investigation report and set a hearing date for Matheny's sentencing. The court reviewed the pre-sentence investigation report and the twenty-six letters submitted on behalf of and in support of Matheny and held conferences with representatives of the victims, Matheny's family members, the district attorney, and defense counsel. Following the conferences, the court sentenced Matheny to two concurrent forty-year terms, with twenty years to serve in the custody of the Mississippi Department of Corrections and twenty years' post-release supervision. Matheny timely filed a post-conviction relief ("PCR") motion, claiming that his indictment was defective, that he received ineffective assistance of counsel, and that his sentence was disproportionate in violation of the Eighth Amendment. The trial court denied and dismissed Matheny's PCR motion. Matheny appealed.

ISSUES

Whether (1) Matheny's prosecution under Miss. Code Ann. § 97-5-33(6) violated his Fourteenth Amendment right to equal protection under the law; (2) Miss. Code Ann. § 97-5-33(6) is vague and therefore void; (3) Miss. Code Ann. § 97-5-33(6) provides for a grossly disproportionate sentence; and (4) the alleged defect in Matheny's indictment requires reversal.

HOLDING

(1) Because Matheny failed to show that others similarly situated generally had not been prosecuted and that the State's prosecutions were selective or based on impermissible considerations, Matheny's prosecution under section Miss. Code

Ann. § 97-5-33(6) did not violate his Fourteenth Amendment right to equal protection under the law. (2) Because Matheny was given sufficient notice that his conduct was prohibited, and because the statute explicitly defines who is considered a child, and because Matheny did not make out a prima facie showing that the statute encourages arbitrary or erratic arrests, Miss. Code Ann. § 97-5-33(6) is not unconstitutionally vague. (3) Because Matheny failed to address any of the factors required to determine whether a sentence is disproportionate, Matheny's gross disproportionality claim was barred on appeal. (4) Because Matheny did not object to the indictment before entering a guilty plea to two counts of child exploitation, the alleged defect in Matheny's indictment was waived and does not require reversal. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2018-CP-00740-COA (Jan. 14, 2020)

Opinion by Judge McDonald

Hon. Prentiss Greene Harrell (Marion County Circuit Court)

Pro se for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Jordan Thomas](#)

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COURT OF APPEALS - CRIMINAL CASES

BARTON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INDICTMENTS - SUFFICIENCY OF ACCUSATIONS - The purpose of an indictment is to provide a defendant notice and a reasonable description of the charges against him so that he may prepare an adequate defense

CRIMINAL LAW - STATUTORY INTERPRETATION - ELEMENTS OF CRIME - The terms "willfully" and "knowingly" have substantially the same meaning in criminal statutes

CRIMINAL LAW - POSSESSION OF STOLEN FIREARM - KNOWLEDGE - To prove guilty knowledge in a possession of a stolen firearm case, the State must prove that the defendant received the property under circumstances that would lead a reasonable person to believe that it was stolen

CRIMINAL LAW - POSSESSION OF STOLEN FIREARM - EFFECT OF POSSESSION - The unexplained possession of recently stolen property is a circumstance from which culpability of a crime may be inferred, and to evaluate that inference courts examine: the temporal proximity of the possession to the crime to be inferred; the number or percentage of the fruits of the crime possessed; the nature of the possession in terms of whether there is an attempt at concealment or any other evidence of guilty knowledge; and whether an explanation is given and whether that explanation is plausible or demonstrably false

CRIMINAL LAW - POSSESSION OF STOLEN FIREARM - BURDEN OF PROOF - Possession can be proven by showing the accused either actually possessed or constructively possessed a weapon, and accordingly the jury must be correctly and fully instructed regarding each element of the offense charged

FACTS

The Yazoo County Sheriff Department responded to an emergency call from a woman who claimed that Paul Barton was chasing her grandson with a weapon. An Officer Freeman spotted Barton in a truck driving by the scene, followed the truck in his patrol car, and then performed a traffic stop. An Officer Ferrell, an officer who arrived at the traffic stop, identified Robert Donelson as the driver and owner of the pick-up truck. Officer Freeman testified that he approached the driver-side window, observed Barton, and noticed that Barton appeared to be trying to conceal something under the car seat. He yelled at Barton to "quit reaching down," and later informed Officer Ferrell that Barton had a gun. Officer Ferrell then pulled out his weapon and pointed it at Barton, ordering him to show his hands. Officer Freeman testified that once Barton complied, he heard something drop and hit the floorboard. Barton exited

the truck, and Officer Freeman placed handcuffs on him. Officer Freeman then went to the truck and discovered a weapon sticking out under the seat. Officer Ferrell ran the serial number on the weapon and testified that the weapon had been reported stolen. Officer Freeman testified that he asked Barton who the weapon belonged to, and Barton denied that it was his weapon and claimed the gun was stolen, but that he did not know who had stolen it. Another witness testified at trial that he owned the weapon Officer Freeman had discovered but that he did not know Barton and did not give Barton his gun. Donelson testified that he denied seeing Barton with a weapon that day, that he has known Barton for approximately five years and could not recall ever seeing Barton with a gun, and denied seeing Barton drop a weapon or try to conceal a weapon during the traffic stop. Donelson testified that another man rode in the passenger seat of his truck earlier that same day. However, Donelson stated that he had never seen that man with a gun. The Yazoo County Sheriff Department was unable to locate any fingerprints on the gun because of the gun's design and size. After the State rested, the defense moved for a directed verdict and argued the State failed to prove beyond a reasonable doubt that Barton had a gun in his possession or that Barton knew the gun was stolen. The Yazoo County Circuit Court denied the motion, explaining that the State made a prima facie case of constructive possession of a stolen firearm. The jury returned a verdict finding Barton guilty of one count of possession of a stolen firearm (Count I) and one count of possession of a firearm by a convicted felon (Count II). Although possession of a firearm statutorily requires the defendant to knowingly possess a stolen firearm, the indictment only charged Barton with willfully possessing a stolen firearm. The Yazoo County Circuit Court sentenced Barton as a habitual offender to serve five years for Count I and ten years for Count II, all in the custody of the Mississippi Department of Corrections, with the sentences to run consecutively. Barton filed a post-trial motion for judgment notwithstanding the verdict or a new trial, which the trial court denied. Barton appealed.

ISSUES

Whether (1) the indictment was defective because it failed to allege an essential element of the crime of possession of a stolen firearm, that Barton knowingly possessed a stolen gun; (2) the evidence was insufficient to support the jury's verdict; (3) the State inappropriately used the phrase "constructive possession" during Barton's trial; (4) the court erred in instructing the jury on both active and constructive possession; and (5) whether the cumulative error doctrine requires a reversal of Barton's convictions.

HOLDING

(1) Because Barton's indictment was sufficient to provide him with reasonable notice of the charges against him, the indictment was not defective. (2) Because Officer Freeman testified that he observed Barton trying to conceal something under the seat, that Officer Freeman heard a gun drop and hit the floorboard, that officers found a gun sticking out under the passenger seat, that the rightful gun owner reported the gun stolen, and because Donelson testified that the gun did not belong to him, the evidence was sufficient to create an inference that Barton knowingly or willfully possessed a stolen firearm and therefore the evidence was sufficient to support the jury's verdict. (3) Because possession can be proved by showing that the accused either actually possessed or constructively possessed a weapon, the State appropriately used the phrase "constructive possession" during Barton's trial. (4) Because the jury must be correctly instructed regarding each element of the offense, the court did not err in instructing the jury on both active and constructive possession. (5) Because no individual errors presented themselves on appeal, no cumulative errors occurred during Barton's trial which required reversal of Barton's convictions. Therefore, the Court of Appeals affirmed the judgment of the Yazoo County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Greenlee concurred with the majority concerning the validity of the indictment. However, Judge Greenlee dissented in part arguing that Barton's conviction for possession of a stolen firearm was not supported by sufficient evidence. Moreover, he argued that the court improperly applied a four prong test for an inference of possession of a firearm. However, even applying the test to Barton's case, the evidence presented by the State did not support such an inference of possession.

Affirmed - 2018-KA-00753-COA (Jan. 14, 2020)

En Banc Opinion by Presiding Judge Carlton - Concurrence in Part & Dissent in Part by Judge Greenlee

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Elena Mosby Peters](#)

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IN RE M.B.

CRIMINAL - MISDEMEANOR

CRIMINAL LAW - VANDALISM - MALICIOUS MISCHIEF - Miss. Code Ann. § 97-17-67 states that every person who shall maliciously or mischievously destroy, disfigure, or injure, or cause to be destroyed, disfigured, or injured, any property of another, either real or personal, shall be guilty of malicious mischief

YOUTH COURT ACT - DELINQUENCY ADJUDICATION - STANDARD OF PROOF - Miss. Code Ann. § 43-21-561 states that if the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision

FACTS

M.B., a minor, was charged with malicious mischief for allegedly spray-painting three vehicles and several exterior doors and walls at Calhoun City High School. At M.B.'s hearing, the State relied heavily on footage of the vandalism captured by the school's security surveillance equipment. Because the subject wore a hooded sweatshirt that obstructed the camera's view of his or her face, none of the witnesses could provide a facial identification. However, an unidentified student submitted a social-media image of M.B. in a sweatshirt and Nike shoes similar to those worn by the subject in the surveillance footage. Testimony offered during the hearing cast serious doubt about who possessed the incriminating clothing at the time of the vandalism. Neither the sweatshirt nor the shoes were ever introduced into evidence. However, witness affidavits placing M.B. at a local Dollar General store on the evening of the incident were introduced as evidence. The State contended that M.B. got the spray-paint used in the vandalism from the store. Despite conflicting testimony that M.B. was at home asleep at the time of incident, the youth court determined by a "preponderance of the evidence" that he was responsible for the incident and adjudicated him a delinquent child. The court placed M.B. on probation and ordered the payment of restitution, totaling \$3,152.85. M.B. filed a motion for rehearing, which was denied on the merits. M.B. appealed.

ISSUE

Whether the youth court applied an erroneous legal standard to adjudicate M.B. as a delinquent.

HOLDING

Because the proper standard for a delinquency adjudication is "proof beyond a reasonable doubt," the youth court erred by applying the wrong standard of proof—"preponderance of the evidence"—to adjudicate M.B. as a delinquent child. Therefore, the Court of Appeals reversed, vacated and remanded the judgment of the Calhoun County Youth Court.

Reversed, Vacated & Remanded - 2018-KM-00581-COA (Jan. 14, 2020)

Opinion by Judge Westbrook

Hon. Paul M. Moore Jr. (Calhoun County Youth Court)

Alexander J. Simpson III & James O. Ford for Appellant - Tina Scott for Appellee

Briefed by [Charity Karanja](#)

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MORRIS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - PROOF - SUFFICIENCY OF EVIDENCE - Positive identification by one witness of the defendant as the perpetrator of the crime may be sufficient evidence for a conviction

CRIMINAL LAW - JUROR VERDICT - WEIGHT OF THE EVIDENCE - Courts view the evidence in the light most favorable to the verdict and disturb the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

CRIMINAL LAW - CIRCUMSTANCIAL EVIDENCE - BURDEN OF PROOF - A defendant is entitled to a circumstantial evidence instruction if the case against him/her is entirely circumstantial and there is no direct evidence of the offense charged; direct evidence includes a confession, the testimony of an eyewitness to the gravamen of the offense, or surveillance video of the gravamen of the offense

FACTS

Christopher Morris was convicted of first-degree murder, aggravated assault, and shooting into a dwelling by the Lauderdale County Circuit Court. Morris pulled up to Crystal King's house where Morris got into an argument with Manuel Torres. The argument progressed and Morris began shooting a gun. Some of the shots struck Torres in the leg while others were directed at King's home causing damages. Inside of King's home was her boyfriend, Wilson Gates, who sustained a minor injury from one of the bullets grazing his back. Torres was taken to the hospital to treat his injuries and doctors were forced to amputate his leg. Torres died a week later as a result of complications from his gunshot wound. Before Torres was taken to the hospital, detectives asked him to identify his shooter to which Torres responded with the name "Bo." A jury found Morris guilty on all three counts. Morris filed a motion to supplement the trial record and subpoena the trial recording, which was denied three separate times. Morris appealed.

ISSUES

Whether (1) there was sufficient evidence to support his convictions; (2) the jury's verdict was against the overwhelming weight of the evidence; (3) the trial judge erred by denying his request for a circumstantial evidence instruction; (4) Morris was deprived of a fair trial; and (5) Morris's constitutional right to a speedy trial was violated.

HOLDING

(1) Because King's testimony that Morris was the person shooting at Torres and at her home was sufficient to support convictions on all three charges, there was sufficient evidence to support Morris's convictions. (2) Because the jury is the ultimate decision-maker as to what weight and worth is to be given to witness testimony, Morris's conviction was not against the overwhelming weight of the evidence. (3) Because King was an eyewitness and identified Morris as the shooter, a circumstantial evidence instruction was not required. (4) Because Morris's arguments are cursory and cite no relevant authority, Morris was not deprived of a fair trial. (5) Because Morris failed to apply the four "*Barker* factors" and failed to articulate the relevant delay in his case, the claim for violation of a speedy trial is waived. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2016-KA-01710-COA (Jan. 14, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Justin Miller Cobb (Lauderdale County Circuit Court)

Sharon D. Henderson for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Robert M. Rhea](#)

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