

MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 7, 2023***SUPREME COURT - ORDERS*****PARISIE V. STATE****EN BANC ORDER****ORDER**

In 2003, the Mississippi Court of Appeals affirmed the trial court's conviction of John S. Parisie for armed robbery, aggravated assault on a law enforcement officer, and possession of a firearm, which resulted in three consecutive life sentences without the possibility of parole. Parisie's pro se Application for Leave to Proceed in the Trial Court at issue here was his fifth application. The Supreme Court held that Parisie's application was time-barred and successive, without exception, pursuant to Miss. Code Ann. § 99-39-5(2)-27(9). The Court also found the filing frivolous. Thus, the Court denied Parisie's application and warned that future filings deemed frivolous may result in monetary sanctions and restrictions on future applications for post-conviction collateral relief.

OBJECTION IN PART

Presiding Justice King argued that the Court should not label Parisie's application as frivolous because that would mean that the applicant's motion has no hope of success. Even though he agreed with the denial of the order, he argued that Parisie made reasonable arguments in his application and therefore did not submit a frivolous application. He further argued that since the courts stand as a person's only recourse to right wrongs done against him, warning Parisie that future frivolous filings would be subject to monetary sanctions and restrictions on his filing abilities would violate Parisie's constitutional rights.

Denied with Sanctions Warning - 2017-M-00685 (Nov. 30, 2023)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice King

Briefed by [Taylor Coe](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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SUPREME COURT - POST-CONVICTION RELIEF**DAMPIER V. STATE****CIVIL - POST-CONVICTION RELIEF**

POST-CONVICTION RELIEF - SENTENCING - MILLER APPLICATION - When a juvenile's sentence is being reviewed years after the facts due to the intervening *Miller* decision, the focus is on whether a constitutional violation has occurred

POST-CONVICTION RELIEF - STATUTORY REQUIRMENTS - JUDGE SENTENCING - Under Miss. Code Ann. § 99-19-101(1), a trial judge is not required to reconvene a jury for sentencing when there is only one available

sentence to give; no constitutional or statutory violation has occurred when a judge has issued the sentence himself instead of reconvening the jury

POST-CONVICTION RELIEF - CONSTITUTIONAL REQUIRMENTS - MILLER CLAIM - When a post-conviction relief petitioner receives permission to proceed with a *Miller* claim in the trial court, the petitioner is being given an opportunity to “show that, under the application of the *Miller* factors, the offender’s life-without-parole sentence is unconstitutional”

POST-CONVICTION RELIEF - CONSTITUTIONAL REQUIRMENTS - RESENTENCING - Miss. Code Ann. § 99-19-101 does not address resentencing a juvenile offender based on the constitutional requirements of *Miller*

FACTS

In 2005, De’Andre Dampier was charged with capital murder. Dampier was tried before a jury and convicted of capital murder in 2006. The State decided not to pursue the death penalty because Dampier was sixteen years old when the murder occurred. The circuit court sentenced Dampier to life without the possibility of parole, which was the only sentence statutorily available for capital murder. Dampier appealed, and the circuit court affirmed the conviction. In 2012, the United States Supreme Court decided *Miller*, forbidding a mandatory life sentence without the possibility for parole for juvenile offenders. In 2013, following *Miller*, Dampier was granted a motion for alternative relief to file a motion for post-conviction relief seeking to vacate his sentence. The circuit court vacated Dampier’s sentence and ordered a new sentencing hearing. In 2018, Dampier moved the trial court to impose a life-without-parole sentence or, alternatively, convene a jury to sentence him under Miss. Code Ann. § 99-19-101. In 2021, the circuit court denied his motion, determining that Dampier’s “*Miller* resentencing” would be decided by the circuit court. In February 2021, the circuit court held a hearing and determined that Dampier failed to prove that the *Miller* considerations prohibited the imposition of a life sentence without the possibility of parole. The circuit court reimposed the life-without-parole sentence on Dampier. Dampier appealed, and the Court of Appeals affirmed Dampier’s sentence. Dampier petitioned for writ of certiorari.

ISSUE

Whether Dampier was entitled to be resentenced by a jury.

HOLDING

Because the State did not pursue the death penalty because of Dampier’s age at the time of the crime, because there was no condition that required a jury sentencing for imposing a life-without-parole sentence, because the only available sentence for Dampier was life without the possibility of parole, because Dampier was given the opportunity to seek post-conviction relief and to show that his life-without-parole sentence was unconstitutional under *Miller*, and because Miss. Code Ann. § 99-19-101(1) did not apply since it was a review of Dampier’s sentence rather than an initial sentencing, Dampier was not entitled to resentencing by a jury. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Justice Coleman argued that no jury weighed the applicable statutory aggravating and mitigating factors in imparting the harsher of two sentences. He would reverse Dampier’s sentence and remand for a new sentencing hearing before a jury. He argued the lack of the jury’s consideration of the statutory aggravating and mitigating factors violated precedent that required a jury find the existence of sufficient aggravating factors.

Affirmed - 2021-CT-00280-SCT (Dec. 7, 2023)

En Banc Opinion by Justice Maxwell - Dissent by Justice Coleman

Hon. Dewey Key Arthur (Rankin County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Zylan Coleman](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – DECEMBER 5, 2023
COURT OF APPEALS - CIVIL CASES

BLANCHARD V. GEICO GEN. INS. CO.

CIVIL - INSURANCE

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - BORROWING STATUTE - If a cause of action accrued outside of Mississippi and is barred by the statute of limitations of the jurisdiction in which it accrued, then no action thereon shall be maintained in Mississippi

CIVIL PROCEDURE - MOTION PRACTICE - AMEND OR ALTER JUDGMENT - A motion to alter or amend the judgment may not be used to raise new arguments

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment cannot be granted on grounds not raised and properly supported in the summary judgment motion

FACTS

In December 2015, Paul Blanchard was involved in a car wreck in New Orleans. Blanchard alleged that an unidentified hit-and-run driver caused the wreck. At the time of the wreck, Blanchard lived, worked, was registered to vote, and filed his homestead in New Orleans. In addition, his car was registered in Louisiana, and he had a Louisiana driver's license. Prior to the subject car wreck, Blanchard used his Gulfport rental property's address to apply for and obtain a Mississippi auto insurance policy from GEICO. Just less than three years after the wreck, Blanchard sued GEICO in Mississippi circuit court, alleging that GEICO had denied his claim for uninsured motorist ("UM") benefits in bad faith. The circuit court granted summary judgment in favor of GEICO, holding that Blanchard's claims accrued in Louisiana, that his UM claim was barred by the applicable two-year prescription (statute of limitations) in Louisiana, that his bad faith claim was barred by the applicable one-year prescription in Louisiana, and that Mississippi's borrowing statute barred Blanchard from bringing the claims in Mississippi. Blanchard appealed.

ISSUES

Whether the trial court erred by holding (1) that Blanchard's claim for uninsured motorist benefits was barred by Louisiana's two-year prescription and Mississippi's borrowing statute; (2) that Blanchard's bad faith claim was time-barred by Louisiana's one-year prescription; (3) that Blanchard could maintain a bad faith claim when his underlying uninsured motorist claim was time-barred; and (4) that Blanchard's equitable estoppel argument was procedurally barred.

HOLDING

(1) Because Blanchard filed suit almost three years after his accident in Louisiana and because the borrowing statute barred claims that accrued out-of-state and were time-barred where they accrued, the trial court did not err by holding that Blanchard's claim for uninsured motorist benefits was barred by Louisiana's two-year prescription and Mississippi's borrowing statute. (2) Because Blanchard's bad faith claim accrued in Louisiana where the prescriptive period for first-party bad faith claims was ten years, the trial court erred by holding that Blanchard's bad faith claim was time-barred by Louisiana's one-year prescription. (3) Because GEICO did not move for summary judgment on whether Blanchard may maintain a bad faith claim when his underlying uninsured motorist claim was time-barred, the issue was beyond the scope of appeal. (4) Because Blanchard's equitable estoppel argument was not timely raised in the circuit court, the trial court did not err by holding that Blanchard's equitable estoppel argument was procedurally barred. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Harrison County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2021-CA-00883-COA (Dec. 5, 2023)

En Banc Opinion by Presiding Judge Wilson

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)

John Paul Barber for Appellant - Edward C. Taylor & Katie Ryan Van Camp for Appellee

Briefed by [Reynolds Ward](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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BOYETT V. CAIN

CIVIL - OTHER

CIVIL PROCEDURE - JURISDICTION - INMATES - The county in which to appeal a Mississippi Department of Correction decision is where the prisoner is incarcerated at the time he requests relief

CIVIL PROCEDURE - IMPROPER VENUE - REMEDY - The appropriate remedy when a prisoner files his request for judicial review in an incorrect venue is to vacate the judgment and remand for the circuit court to transfer the action to the proper court

FACTS

In 2002, Jessie Boyett Jr. was convicted of rape and aggravated assault of a police officer. Boyett was sentenced to consecutive sentences of twenty and thirty years in the Mississippi Department of Corrections (“MDOC”). In April, 2022, Boyett requested to have his consecutive sentences commuted under Miss. Code Ann. § 47-5-139(2) and to be declared eligible for parole under Miss. Code Ann. § 47-7-3. Boyett sent his request through MDOC’s Administrative Remedy Program (“ARP”). ARP Director Richard Pennington responded to Boyett’s request via a formal letter on the ARP process. The letter instructed that only one complaint or request would be accepted. Additionally, the letter informed Boyett that commuting sentences was a trial court matter and, therefore, was beyond the power of ARP to grant. Additionally, parole eligibility date requests must be requested separately. Boyett sent another request two weeks later that argued it was “clear error” that his former request was rejected and that MDOC did have the power to commute his sentence through ARP. Further, Boyett claimed that Pennington was attempting to “thwart” Boyett from utilizing MDOC’s grievance process. Pennington sent Boyett a second letter which instructed again that only one request could be accepted. Additionally, the letter stated Boyett’s request was unclear. Boyett filed a complaint in the circuit court, arguing that MDOC declined to respond to his ARP requests. The circuit court dismissed Boyett’s complaint for lack of jurisdiction because his complaint needed to be resolved by the circuit court in Marshall County, which was where Boyett was incarcerated. Boyett appealed.

ISSUE

Whether the circuit court lacked jurisdiction.

HOLDING

Because Boyett filed his petition for judicial review in the incorrect venue, and because Boyett failed to exhaust his administrative remedies, the circuit court properly dismissed Boyett’s complaint. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2022-CP-00978-COA (Dec. 5, 2023)

Opinion by Chief Judge Barnes

Hon. Adrienne Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - William R. Collins & Suzanne Carlisle Hudson (Att’y Gen. Office) for Appellees

Briefed by [Selena Houston](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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ESTATE OF RALEY V. KEEL

CIVIL - INSURANCE

PROPERTY - INSURANCE OF PROPERTY - SULLIVAN TEST - When deciding whether a party who holds less than a full interest in a piece of property is entitled to the entire insurance proceeds or whether such proceeds must be shared, the court considers: (1) whether the insurance was obtained for the sole benefit of the person who procured it; (2) whether by express or implied agreement the person who took out the insurance did so for the benefit of the owners of the other interests in the property; and (3) whether the owners of the other interests contributed to the cost of the insurance

PROPERTY - RIGHT TO INSURE INTEREST - FAILURE TO EXERCISE RIGHT - When a person with a property interest fails to exercise his right to insure his interest in the property, there is no reason for permitting him to claim an interest in the independent contract between the life tenant and the insurance company, nor can the courts invade it

FACTS

Claude Raley owned property in Calhoun County. In 1981, he executed a special warranty deed to his niece and nephew, Barbara Raley and Kenneth Simpson. The interest in the land was conveyed to both of them as joint tenants with right of survivorship, and Barbara moved onto the property. In 2019, Barbara obtained insurance coverage for what was listed as a frame construction home on the property. The policy contained \$50,000 for the dwelling, \$25,000 for personal property, and other amounts for physical harm and medical payment, and the declarations page had a line that stated "No Related Private Structures Coverage." Barbara was the sole named insured, and the premium was \$1,081. In September 2019, Barbara passed without children and without a will. The policy was current at this time. Soon after, the house burned. Simpson then filed a claim for loss for the insured, in which he claimed a check from the insurer was delivered in the amount of \$67,158.27. The check expired, as it was not cashed. The following year, Billy Wayne Keel, Barbara's brother, petitioned the chancery court for letters of administration. Keel was appointed to fulfill that role, and it was found that Barbara's estate consisted chiefly of real property. The insurance company wrote another check to Keel as administrator of the estate. A petition for determination of heirship followed which alleged that Barbara was the owner of a certain parcel of real property in Calhoun County, and it asked for her four brothers to be named as her heirs. Simpson intervened at this point that the interest in the land was a joint tenant with right of survivorship with him, and that he became the owner of all such real estate in fee simple upon her death. He then denied that the four brothers should be allowed any ownership interest in the land. Simpson cross-claimed for the insurance proceeds resulting from the burned home, less the contents of the house. He claimed that upon her death any interest in the real property and attached home reverted to him. Therefore, he said he should receive the benefits of the policy for the house, less the contents, to the complete exclusion of the brothers. Hearings were held, and no witness ever testified despite the urging of the trial judge that a dispute over proceeds like this required more than just allegations. No evidentiary proof was made on the point of who tendered the premiums on the policy. The trial court found in favor of Barbara's adjudicated heirs and made a finding that Barbara obtained and paid for the policy without contribution from Simpson. The trial court found that Barbara was the owner and named beneficiary in the policy, and the insurance policy was taken out solely for her benefit, so the proceeds of the policy are property of her estate. Therefore, the trial court dismissed Simpson's arguments with prejudice and confirmed he was now vested with a fee simple interest in the entirety of the property. Simpson appealed.

ISSUES

Whether (1) the trial court erred in relevantly applying the *Sullivan* test which violated the rule against parol evidence; (2) upon the death of Barbara, the real property and home of the deceased became Simpson's whole property in fee simple, so any recovery should be his alone; (3) it would be inequitable for the brothers of Barbara to receive the insurance proceeds as this would constitute unjust enrichment; and (4) there was any provision in common law that makes a hazard insurance contract survivable beyond the life of the contracting party.

HOLDING

(1) Because *Sullivan* was the only route that a non-party to the insurance contract may take to recover when the sole basis of the claim to policy proceeds was co-tenancy, because *Sullivan* stated the general rule that the parol evidence rule applied only to controversies between parties to the agreement, because the insurance company was not a party to the suit, and because the policy only benefited Barbara, which she alone contracted and paid for, the rule against parol evidence did not apply, and the trial court did not err when it ruled that decedents were allowed to recover. (2) Because Simpson did gain the full interest in the property upon Barbara's death but ignored that the only way one can recover for a fire loss is through insurance and because the insurance was only in the name of Barbara, the policyholder, Simpson was not entitled to recovery. (3) Because Barbara bought the insurance policy using her own money, which was limited to the value of her home and its contents, and because Simpson failed to exercise his right to insure his interest in the property, it was not unjust for her heirs to recover under the fire hazard policy, and there was no reason for permitting Simpson to claim an interest in the independent contract between Barbara and the insurance company. (4) Because proceeds from an insurance contract were governed by the insurance policy and because proceeds did not run with the land, insurance benefits survive the death of the insured and benefit the named beneficiary or their heirs. Therefore, the Court of Appeals affirmed the judgment of the Calhoun County Chancery Court.

CONCURRENCE IN PART & IN RESULT

Presiding Judge Wilson argued that Simpson was correct that the heirs had no insurable interest in the home, but he stated that Simpson lacked standing to raise that issue. Since it was a joint tenancy with right of survivorship, Barbara's interest did not pass to her heirs, so after her death, her entire interest in the real property vested exclusively in Simpson immediately upon her death. However, Simpson lacked standing to seek to recover the proceeds based on the heirs' lack of an insurable interest because he was not a named beneficiary under the policy, and he failed to identify any other legal or equitable basis for requiring Barbara's estate to pay the subject insurance proceeds to him.

Affirmed - 2022-CA-00704-COA (Dec. 5, 2023)

Opinion by Judge McCarty - Concurrence in Part & in Result by Presiding Judge Wilson

Hon. Lawrence Lee Little (Calhoun County Chancery Court)

Edward Dudley Lancaster for Appellant - Paul M. Moore Jr. for Appellees

Briefed by [Mattie Hooker](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

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RIORDAN V. ESTATE OF HAGUEWOOD

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - PERSONAL REPRESENTATIVE - DUTIES OWED TO CREDITORS - Miss. Code Ann. § 91-7-145 provides that an executor or administrator has the duty to make "reasonably diligent efforts to identify persons having claims against the estate" and to notify potential creditors to "probate and register their claim within ninety days after the first notice of creditors publication"

WILLS & ESTATES - CREDITOR'S CLAIMS - VALIDITY - To claim creditor's rights, one must first have a valid claim; for a claim to be valid, it must adequately notify the estate of its existence, clearly differentiate itself from similar claims with reasonable certainty, and provide essential information about the nature and amount of the demand to enable the estate representative to make informed decisions regarding its payment or rejection

WILLS & ESTATES CREDITOR'S CLAIMS - SCOPE - As used in statutes relating to claims against estates, the term "claim" means only definite money demands that are already due or will become due and excludes inchoate and contingent claims

WILLS & ESTATES - NOTICE TO CREDITORS - PUBLICATION - The publication requirement's purpose is not to provide a substitute for actual notice but rather to give constructive notice to creditors who cannot be identified through reasonably diligent efforts

FACTS

In November 2019, Fred Haguewood passed away, leaving a valid will that appointed his nephew, Roy Boutwell, as the executor. Haguewood's will devised a property and residence to Boutwell. Haguewood and George Riordan, Jr., his step-grandson, had been residing on that property for several years. However, the property was solely titled in Haguewood's name. In 2015, Haguewood and Riordan started a business. The terms of their joint partnership were orally agreed upon, with no written documentation. In March 2015, they opened a revolving line of credit with a bank to fund start-up costs. Haguewood and Riordan were jointly and severally liable for the amount due on the line of credit. In May 2021, Boutwell filed a petition to probate Haguewood's will in the chancery court. Notice to creditors was properly published. The chancery court entered a judgment admitting the will to probate and issuing letters of administration, and on the same day, Boutwell signed an "Affidavit of Legal Representation" affirming that he had made a reasonable and diligent effort to identify and locate all claims against the Estate. No claims were probated; so on January 6, 2022, Boutwell filed a motion to close the Estate, which was granted the same day. Ostensibly without knowing the Estate was closed, Riordan filed a complaint to impose a constructive trust against the Estate's Skyline Road property on February 4, 2022. Two weeks later, he moved under Miss. R. Civ. P. 60(b)(6) for relief from the judgment closing the Estate, alleging Boutwell should have provided notice to Riordan as a creditor of the Estate. Riordan also alleged in the motion that Haguewood contacted an attorney to draft a will that would "effectuate an unwritten agreement" between Haguewood and Riordan, where Haguewood would devise the Skyline property to Riordan "based upon work performed" by Riordan. Riordan requested the Estate be reopened to enable his motion for a constructive trust to be heard. After hearing arguments and testimony, the chancery court found Haguewood's Estate was properly administered and closed, with no reason to reopen it. Additionally, the chancery court found that the notice to creditors properly ran in the local newspaper, and Riordan could have filed a claim. However, the chancery court found Riordan was not a creditor and would not have a claim because there was no evidence to show the Estate owed him any money. The chancery court explained that Riordan's only expenditures for the business were the monies borrowed to buy used vehicles through the revolving line of credit, which would be recouped when the vehicles were sold. The chancery court denied Riordan's Miss. R. Civ. P. 60(b)(6) motion and dismissed his complaint to impose a constructive trust without prejudice. Riordan appealed.

ISSUES

Whether the chancery court erred in finding (1) Boutwell made reasonably diligent efforts to notify creditors and (2) the publication of the notice to creditors "excused" Boutwell's duty to send actual notice to Riordan.

HOLDING

(1) Because Riordan never specified the nature and amount of the demand of his vague and informal claim, because Riordan did not have any written evidence of his alleged contract with Haguewood for the sale of land, because co-signing on the bank loan made Haguewood and Riordan co-debtors rather than creating a debtor-creditor relationship between them, because Riordan never had a valid claim against the estate, because Riordan was not a creditor of the estate, because no evidence discoverable by Boutwell's reasonably diligent efforts would have revealed that Riordan had a valid claim against the estate, and because Boutwell had no duty to provide actual notice to persons not creditors of the estate, the chancery court did not err in finding that Boutwell made reasonably diligent efforts to notify creditors. (2) Because Riordan was neither a creditor nor a reasonably ascertainable creditor, and because Boutwell owed no duty to send actual notice to Riordan, the publication was not a "substitution" for actual notice to creditors, and the chancery court did not err in finding that the publication provided constructive notice to Riordan. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

Affirmed - 2022-CA-00606-COA (Dec. 5, 2023)

Opinion by Chief Judge Barnes

Hon. Charles E. Smith (Lauderdale County Chancery Court)

Stephen Paul Wilson for Appellant - Robert William Arledge for Appellee

Briefed by Joseph Muldrew

Edited by [Nivory Gordon](#) & [Ashley House](#)

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COURT OF APPEALS - CRIMINAL CASES

BUTLER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - FAILURE TO TESTIFY - TRIAL COURT INTERVENTION - The failure of the trial court to advise the defendant of his right to testify does not constitute reversible error when defendant was represented by counsel and when there was no indication in the record that the defendant desired to testify

CRIMINAL PROCEDURE - FAILURE TO TESTIFY - RECORD KEEPING - The court will consider evidence from the official trial court record in evaluating a defendant's desire to testify

FACTS

In November 2011, Lonnie Butler attended a gathering in Drew along with Kirby Griffin. Three eyewitnesses testified that throughout the night Demetrius Webb and Griffin had been arguing and eventually agreed to a fistfight. According to the eyewitnesses, as Griffin was preparing to fight by tying his shoes, he took a .38- caliber revolver from his back pocket and passed it to Butler, who put it in his pocket. Butler, standing a few feet in front of Webb, then pulled out Griffin's revolver from his pocket and shot Webb twice in the chest. Webb later died from the gunshot wounds. Butler was charged with first-degree murder (Count I) and as a felon in possession of a firearm (Count II). The State also sought a firearm enhancement for Butler under Miss. Code Ann. § 97-37-37. Butler was sentenced to life imprisonment for Count I, with an additional ten years for the firearm enhancement, followed by ten years for Count II, to be served consecutively. Butler appealed.

ISSUE

Whether the trial court violated Butler's constitutional right by not advising him to testify.

HOLDING

Because Butler was represented by counsel and because nothing in the official record indicated that Butler wanted to testify, the trial court was not required to advise Butler of his right to testify. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2021-KA-01323-COA (Dec. 5, 2023)

Opinion by Chief Judge Barnes

Hon. W. Ashley Hines (Sunflower County Circuit Court)

Catouche J. Body for Appellant - Lauren G. Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Madeline Crane](#)

Edited by [Kayla Tran](#) & [Mason Scioneaux](#)

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RATCLIFF V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONSTRUCTIVE POSSESSION - DOMINION & CONTROL - Constructive possession is established by showing that contraband was under the dominion and control of the defendant; sufficient facts must warrant a finding that the defendant was aware of the presence and character of the contraband and was intentionally and consciously in possession of it

CRIMINAL LAW - POSSESSION - CONSTRUCTIVE POSSESSION - There must be evidence, in addition to physical proximity, showing the defendant consciously exercised control over the contraband, and absent this evidence, a finding of constructive possession cannot be sustained

CRIMINAL PROCEDURE - WEIGHT OF EVIDENCE - NEW TRIAL - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

FACTS

Lyncoya Ratcliff was pulled over by Hattiesburg police for a broken taillight while driving home from a party. Ratcliff did not have a valid driver's license and claimed to be driving because the owner was intoxicated and was a passenger. When the first officer went back to his car, another officer arrived on scene and heard Ratcliff whispering, "I've got dope on me" and "hand me that" while approaching the vehicle. The second officer relayed what he observed to the first officer. The first officer then reapproached Ratcliff and asked if there were any guns in the car and all passengers remained silent. The officers then asked Ratcliff to exit the vehicle and observed in plain view a small bag of marijuana, which prompted a search of the vehicle. In the search, officers discovered a .22-caliber revolver in the pocket behind the passenger's seat. In the back seat, the officers found a black bag with .22-caliber ammunition and two .45-caliber magazines, along with a woman's purse and ID. The officers also found a black puppy and a bag of dog food. Ratcliff denied knowledge of the revolver, but admitted the black bag was his. Suspecting there would be another gun to match the .45-caliber magazines, the officers then searched the front seats and found a .45-caliber pistol between the passenger seat and the center console. The officers ran a search of the serial numbers to discover that the gun was stolen from the owner's truck less than a month before. Ratcliff was arrested and indicted for possession of a stolen firearm and possession of a weapon by a felon. At trial, the jury heard from both officers on scene and viewed the body-camera footage, as well as from Ratcliff, who spoke in his own defense. On the stand, Ratcliff admitted to ownership of the black bag and the woman's purse, but claimed he did not know where the magazines came from or why they were in his bag. He also claimed that he was talking to or about his puppy when he said, "hand me that." However, the jury also viewed the dashcam footage where the passenger told the officer that Ratcliff was referring to the pistol when he said, "hand me that." Ratcliff was found guilty and sentenced to five years for count I and ten years for count II. Ratcliff moved for judgment notwithstanding the verdict, which was denied. Ratcliff appealed.

ISSUES

Whether (1) there was sufficient evidence to prove Ratcliff knowingly possessed the pistol and (2) Ratcliff's felon in possession of a firearm conviction of possessing a firearm as a felon was against the overwhelming weight of the evidence.

HOLDING

(1) Because the pistol was stolen twenty five days prior from a truck about twelve and a half miles away from the party Ratcliff attended, because Ratcliff refused to answer when asked if there were any guns in the car, because body camera footage showed the passenger telling the officers that Ratcliff asked him to hand him the pistol, and because Ratcliff's bag held the magazine that fit the stolen pistol, there was sufficient evidence to prove Ratcliff knowingly possessed the pistol. (2) Because the jury had an opportunity to hear the evidence that Ratcliff presented that the gun was not his and that multiple people had access to his bag throughout the night, and because the jury rejected Ratcliff's arguments, Ratcliff's felon in possession of a firearm conviction was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Wilson argued that while there was sufficient evidence that Ratcliff constructively possessed the pistol, there was insufficient evidence that Ratcliff knew the gun was stolen because the report stated the pistol was stolen along with a rifle, which was later recovered from a teen named Marco. No evidence was presented connecting Marco and Ratcliff or evidence regarding the theft and how or when the pistol came into Ratcliff's possession.

Affirmed - 2022-KA-00690-COA (Dec. 5, 2023)

En Banc Opinion by Judge McCarty - Concurrence in Part & Dissent in Part by Presiding Judge Wilson

Hon. Robert B. Helfrich (Forrest County Circuit Court)
Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee
Briefed by [Stephanie Iken](#)
Edited by [Kennedy Gerard](#) & [Ashley House](#)

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