**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-CT-00753-SCT**

***PAUL BARTON a/k/a PAUL ANTHONY BARTON***

***v.***

***STATE OF MISSISSIPPI***

**ON WRIT OF CERTIORARI**

| | |
|---|---|
| DATE OF JUDGMENT: | 02/02/2018 |
| TRIAL JUDGE: | HON. JANNIE M. LEWIS-BLACKMON |
| TRIAL COURT ATTORNEYS: | MICHAEL WILLIAMS<br>NATASHA WOODS<br>DEXTER WOODBERRY |
| COURT FROM WHICH APPEALED: | YAZOO COUNTY CIRCUIT COURT |
| ATTORNEYS FOR APPELLANT: | OFFICE OF STATE PUBLIC DEFENDER<br>BY: MOLLIE M. McMILLIN<br>GEORGE T. HOLMES |
| ATTORNEY FOR APPELLEE: | OFFICE OF THE ATTORNEY GENERAL<br>BY: BARBARA BYRD |
| DISTRICT ATTORNEY: | AKILLIE MALONE OLIVER |
| NATURE OF THE CASE: | CRIMINAL - FELONY |
| DISPOSITION: | AFFIRMED IN PART; REVERSED AND RENDERED IN PART - 10/01/2020 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

**EN BANC.**

**CHAMBERLIN, JUSTICE, FOR THE COURT:**

¶1. Paul Barton appeals his conviction for possession of a stolen firearm. In his petition for writ of certiorari, Barton argues that the evidence was insufficient to show that he knew the firearm was stolen. At trial, Barton was also convicted of possession of a firearm by a felon, but he now concedes that sufficient evidence supported that conviction.

¶2. The Court of Appeals affirmed Barton's convictions, concluding that the evidence was sufficient to support Barton's conviction for possession of a stolen firearm. ***Barton v. State***, No. 2018-KA-00753-COA, 2020 WL 205383, at *6 (Miss. Ct. App. 2020). After careful review, we affirm in part and reverse and render in part the judgments of the Court of Appeals and of the Yazoo County Circuit Court. Barton is acquitted on the charge of possession of a stolen firearm.

## FACTS AND PROCEDURAL HISTORY[1]

¶3. On March 1, 2017, Officer Edward Ferrell and Officer Cory Freeman, two Yazoo County Sheriff's Department officers, responded to a 911 call made by a woman named Doris concerning "a man chasing someone in the yard with a weapon." ***Barton***, 2020 WL 205383, at *1 (internal quotation marks omitted). When the officers arrived at the scene, Doris said that Barton had chased her grandson with a weapon. ***Id.*** She described what Barton was wearing and told the officers that Barton had already left. ***Id.*** Officer Freeman then left in search for Barton. ***Id.***

¶4. Officer Ferrell testified that shortly after Freeman left, he received a call from Officer Freeman that Officer Freeman had stopped a truck with Barton as the passenger. ***Id.*** Officer Ferrell responded to the scene. ***Id.*** Upon arriving, he heard Officer Freeman command Barton to "Quit reaching down!" ***Id.*** (internal quotation marks omitted). Officer Freeman

---

[1] The facts and procedural history of this case are heavily borrowed from the opinion of the Court of Appeals. ***Barton***, 2020 WL 205383, at *1–2.

informed Officer Ferrell that Barton had a gun, and Officer Ferrell testified that he then pointed his own weapon at Barton and that Barton then began complying with Officer Freeman's instructions. ***Id.*** Barton exited the truck, and Officer Freeman placed him in handcuffs. ***Id.*** Officer Ferrell testified that when the officers opened the truck's passenger door, they discovered a weapon "just laying right there, sticking out up underneath the seat." ***Id.*** (internal quotation marks omitted). Officer Ferrell ran the serial number on the weapon and testified that the weapon had been reported stolen. ***Id.***

¶5. Officer Freeman testified that the 911 dispatcher informed that "Mr. Paul Barton was chasing a child . . . and had a hand gun." ***Id.*** (alteration in original) (internal quotation marks omitted). The 911 dispatcher also described Barton's attire. ***Id.*** Upon arriving at the scene, Doris informed Officer Freeman and Officer Ferrell that Barton already left. ***Id.*** While speaking with Doris, Officer Freeman then saw a truck pass by with Barton inside. ***Id.*** He immediately pursued in his patrol car and eventually stopped the truck. ***Id.***

¶6. Officer Freeman testified that he approached the truck and observed Barton "trying to conceal something" under the passenger seat. ***Id.*** at *2 (internal quotation marks omitted). Officer Freeman stated he could see the driver Donelson's hands the entire time. ***Id.*** Therefore, he trained his weapon on Barton and ordered Barton to show his hands. ***Id.*** Barton initially refused. ***Id.*** Once he finally complied and raised his hands, Officer Freeman "heard something drop . . . [and] hit the bolts on the bottom of the floorboard." ***Id.*** (alterations in original) (internal quotation marks omitted). Officer Freeman stated at trial

that "it was like a weapon over there." ***Id.*** (internal quotation marks omitted). He ordered Barton and Donelson to exit the vehicle, and he placed Barton in handcuffs. ***Id.*** Officer Freeman testified he found a handgun after the officers opened the passenger door of the truck. ***Id.***

¶7. Officer Freeman testified that when he discovered the weapon, he and Officer Ferrell ran its serial number. ***Id.*** Dispatch then informed the officers "that the handgun was stolen out of Madison[, Mississippi]." ***Id.*** (alteration in original) (internal quotation marks omitted). Officer Freeman asked Barton who owned the weapon, and Barton denied that it was his weapon. ***Id.***

¶8. L.Q. Boyd Jr. testified that he owned the weapon that the officers discovered. ***Id.*** Boyd testified that the gun was stolen, but he did not know who had stolen it. ***Id.*** Boyd was never asked directly if he knew when the gun was stolen, only if he knew "[w]hat happened to it?" He testified that he "went to look for [the weapon] one day and it was gone. And then [Boyd] reported it was stolen." Boyd testified that he did not know Barton and that he did not give Barton his gun or let Barton borrow it. ***Id.***

¶9. After the State rested, the defense moved for a directed verdict. ***Id.*** It argued that the State failed to prove beyond a reasonable doubt Barton possessed a gun or knew the gun was stolen. ***Id.*** The trial court denied the defense's motion finding the State "has put forth a prima facie case of constructive possession" of a stolen firearm. ***Id.*** (internal quotation marks omitted).

¶10. Donelson, who drove the truck, testified that he never saw Barton with a weapon that day. ***Id.*** Donelson further stated that during the approximately five years he had known Barton, he never recalled seeing Barton with gun. ***Id.*** Donelson denied seeing Barton try to conceal a weapon during the traffic stop. ***Id.*** Donelson testified that another man, Main Gainwell, rode in the passenger seat of his truck earlier that same day but that Donelson stated he never saw Gainwell with a gun either. ***Id.***

¶11. Investigator Terry Gann of the Yazoo County Sheriff's Department testified that he also investigated the 911 call. ***Id.*** Investigator Gann further stated that Barton denied any involvement with the gun. ***Id.***

¶12. 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). ***Id.*** The Yazoo County Circuit Court sentenced Barton as a habitual offender under Mississippi Code Section 99-19-81 (Rev. 2015), to serve five years for Count I and ten years for Count II, with the sentences running consecutively. ***Barton***, 2020 WL 205383, at *2. Barton filed a posttrial motion for judgment notwithstanding the verdict or a new trial, which the trial court denied. Barton appealed, and we assigned the case to the Court of Appeals. The Court of Appeals found no error and affirmed Barton's convictions and sentences. ***Id.*** at *5. Barton petitioned the Court for certiorari solely on the possession-of-a-stolen-firearm conviction, which we granted.

## STANDARD OF REVIEW

¶13. This Court has said, "[w]hen reviewing challenges to the sufficiency of the evidence, we view all evidence in the light most favorable to the State." ***Thomas v. State***, 277 So. 3d 532, 535 (Miss. 2019) (citing ***Cotton v. State***, 144 So. 3d 137, 142 (Miss. 2014)). This Court "must affirm if 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" ***Id.*** (quoting ***Cotton***, 144 So. 3d at 142). "[T]he [S]tate receives the benefit of all favorable inferences that may be reasonably drawn from the evidence." ***Id.*** (second alteration in original) (internal quotation marks omitted) (quoting ***Hughes v. State***, 983 So. 2d 270, 276 (Miss. 2008)). Importantly, this analysis does not involve a challenge to the overwhelming weight of the evidence, rather Barton challenges the sufficiency of the evidence. *See* ***Saucier v. State***, 950 So. 2d 262, 265 (Miss. Ct. App. 2007) (discussing the difference between sufficiency-of-the-evidence and weight-of-the-evidence standards).

## ANALYSIS

### I. Whether sufficient evidence supports Barton's conviction of possession of a stolen firearm.

¶14. Barton was convicted of possession of a stolen firearm under Mississippi Code Section 97-37-35(1), which states, "[i]t is unlawful for any person *knowingly* or intentionally to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm or attempt to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm." Miss. Code Ann. § 97-37-35(1) (Rev. 2014) (emphasis added). We find the

caselaw interpreting guilty knowledge in receiving-stolen-property cases to be helpful and analogous. *See* Miss. Code Ann. § 97-17-70(1) (Rev. 2014). Guilty knowledge is the gist of the offense of receiving stolen property. ***Tubwell v. State***, 580 So. 2d 1264, 1266 (Miss. 1991); ***Ellett v. State***, 364 So. 2d 669, 670 (Miss. 1978). This is likewise applicable to the charge of possession of a stolen firearm. ***Mayers v. State***, 42 So. 3d 33, 37 (Miss. Ct. App. 2010), *cert denied*, 42 So. 3d 24 (Miss. 2010), *overruled on other grounds by* ***Sallie v. State***, 155 So. 3d 760 (Miss. 2015) (quoting ***Long v. State***, 933 So. 2d 1056, 1058 (Miss. Ct. App. 2006)). "For the State to prove guilty knowledge , it must prove that [the defendant] received the property under circumstances that would lead a reasonable person to believe it was stolen." ***Id.*** (alteration in original) (internal quotation marks omitted) (quoting ***Long***, 933 So. 2d at 1058). The proof can be circumstantial. ***McClain v. State***, 625 So. 2d 774, 779 (Miss. 1993) (quoting 66 Am. Jur. 2d *Receiving Stolen Property* § 25, 313-14 (1973)).

¶15. The dispositive issue in this case is whether there is sufficient evidence to prove that Barton knew the firearm was stolen. First, we note that the Court of Appeals applied a four-factor test to analyze the guilty-knowledge element, citing ***Hobson v. State***, 181 So. 3d 1021, 1028 (Miss. Ct. App. 2015). ***Barton***, 2020 WL 205383, at *4. While ***Hobson*** was convicted of possession of a stolen firearm, this test was drawn from burglary cases and has only been used otherwise once, in ***Hobson***. ***Hobson***, 181 So. 3d at 1028. This test is specific to burglary cases. *See* ***Shields v. State***, 702 So. 2d 380, 382-83. While a court may certainly consider the individual factors in its analysis relating to guilty knowledge, we reject its

application as a test or standard in a receiving-stolen-property or possession-of-stolen-firearm case. We have sufficient caselaw, especially when using the analogous receiving-stolen-property cases, to guide our courts in addressing what evidence constitutes proof of guilty knowledge and drawing a proper conclusion as to its sufficiency. *See* ***Williams v. State***, 595 So. 2d 1299, 1303 (Miss. 1992) ("Inferential evidence abounds that Williams knew the origins and ownership of the skidder and more than shows guilty knowledge." (citing ***Lewis v. State***, 573 So. 2d 713, 715 (Miss. 1990))); ***Davis v. State***, 586 So. 2d 817 (Miss. 1991) (holding there was sufficient evidence to affirm a receiving stolen property conviction because the defendant knew the property was stolen); ***Ezell v. State***, 956 So. 2d 315, 321 (Miss. Ct. App. 2006) ("Despite Ezell's open use of the motorcycle in Brookhaven, there was sufficient evidence on the element of guilty knowledge to sustain Ezell's conviction of receiving stolen property."); *Cf.* ***Whatley v. State***, 490 So. 2d 1220, 1244 (Miss. 1986) (the evidence was insufficient to show guilty knowledge and sustain a conviction of receiving stolen property); ***McClain***, 625 So. 2d at 781 (recent possession and concealment sufficient); ***Lewis***, 573 So. 2d at 715 (no proof of guilty knowledge found); ***Tubwell***, 580 So. 2d at 1267 (holding that "the prosecution failed to prove beyond a reasonable doubt the defendant received the stolen items with knowledge they were stolen").

¶16. Two cases inform our decision today. In ***Rodgers v. State***, 222 Miss. 23, 75 So. 2d 42 (1954), the defendant was found in possession of stolen whiskey that he had concealed under his house and that he eventually drove to Port Gibson, where it was sold by a third party,

Williams. Williams had earlier told Rodgers that the whiskey had come from Louisiana, intimating that he had bought the whiskey in Louisiana. ***Id.*** at 43-44. In ***Rodgers***, this Court considered the same question presented here: whether the defendant knew the property, whiskey, had been stolen. ***Id.*** at 44. There was no direct proof of the defendant's guilty knowledge. ***Id.*** The State relied solely on the circumstantial evidence of "the secrecy and concealment surrounding the handling of the whiskey . . . ." ***Id.*** At that time, however, possession of whiskey was also illegal in Mississippi. ***Id.*** This Court reversed the conviction, holding that

> the secrecy surrounding the handling of the whiskey, and the fact that the appellant received two cases of the whiskey for his services tended just as much to show that the manner of handling the whiskey was because it was an illegal commodity as to show such secrecy and manner of handling the whiskey was because the parties were dealing with stolen property. One theory is just as reasonable as the other and the jury were not warranted in this situation in accepting that theory which pointed to the guilt of the appellant and rejecting the theory which pointed to his innocence.

***Id.*** The Court further stated that "[t]he evidence, in order to authorize a conviction for receiving stolen goods, must establish beyond a reasonable doubt that the accused knew the property had been stolen, and mere supposition or suspicion as to his knowledge will not suffice. ***Id.*** (internal quotation marks omitted) (quoting 79 C.J.S. *Receiving Stolen Goods*, § 19).

¶17. More than thirty years after ***Rodgers***, this Court again addressed the same question in a similar manner. ***Whatley***, 490 So. 2d 1220. In ***Whatley***, the defendant was convicted of receiving stolen property, a generator, which he had sold or pawned at an extreme discount.

***Id.*** at 1222. The State presented no direct evidence of Whatley's receipt of the generator but only the circumstantial evidence that he had sold or pawned the generator to the owner of a bar about twenty-four hours after it was stolen for substantially less than the value of the generator. ***Id.*** at 1222-23. The Court outlined three alternative theories for Whatley's quick sale of the generator—"guilty knowledge," "an immediate need for cash" or "it could indicate the defendant, Whatley, was guilty of actual theft of the generator." ***Id.*** at 1223. The Court determined that no evidence had been presented at the close of the State's case that Whatley had either illegally received or stolen the goods. ***Id.*** The Court held that "[t]he state's evidence, taken in the light most favorable to it at the close of the state's case, merely established possession of the property stolen" and "[t]hat evidence was insufficient to show guilty knowledge." ***Id.*** at 1224.

¶18. Now, thirty years after ***Whatley*** and sixty years after ***Rodgers***, our caselaw remains the same, and the State's evidence in this case is insufficient to show guilty knowledge. Like in ***Rodgers*** and ***Whatley***, the State presented no direct evidence. It wholly relies upon circumstantial evidence to establish the essential fact that Barton knew or should have known that the firearm was stolen property. Our courts have long held that for circumstantial evidence to be sufficient evidence, such evidence must exclude every reasonable hypothesis consistent with the defendant's innocence. ***Johnson v. State***, 224 So. 3d 66, 68 (Miss. 2016); ***Goff v. State***, 14 So. 3d 625, 647 (Miss. 2009); ***Pryor v. State***, 239 So. 2d 911, 913 (Miss. 1970); ***James v. State***, 45 Miss. 572, 575 (1871). The State's burden here was not only to

prove Barton's guilt beyond a reasonable doubt but also to exclude of every reasonable hypothesis with his innocence. ***Rodgers***, 75 So. 2d at 44.

¶19. The circumstantial evidence, considered in the light most favorable to the prosecution, fails in this case. No evidence shows how Barton came to possess the hand gun or, alternatively, that Barton possessed recently stolen property. In fact, no evidence shows exactly when the firearm was stolen. The record only shows that the owner went to look for the firearm "one day" and did not find it. Additionally, the State argues Barton knew the firearm was stolen because Barton attempted to conceal the firearm.[2] But Barton is a convicted felon.[3] As in ***Rodgers***, which concerned illegal whiskey possession, here, Barton's possession of a firearm as a convicted felon was illegal. It is equally plausible that Barton hid the handgun not because it was stolen but because he was, in fact, a convicted felon. While Barton denied the gun was his, this fact likewise supports both theories equally.

¶20. The difficulty in this case for the prosecution is the dearth of evidence explaining how Barton came to possess the firearm in question. There is also no evidence as to when the gun was stolen, which would provide proof that Barton was in possession of recently stolen property. Combined with concealment, such evidence might be sufficient to overcome Barton's alternative theory. At the time the judge considered the motion for directed verdict,

---

[2] We have previously held that *concealment* offered as circumstantial evidence in a receiving-stolen-property case may be enough to show guilty knowledge when combined with unexplained possession of recently stolen property. ***McClain***, 625 So. 2d at 781.

[3] This fact was accepted by the jury when it simultaneously convicted Barton of possession of a firearm by a convicted felon.

however, there was no evidence that would allow a jury to determine that it was more likely that Barton hid the gun because it was stolen rather than because he was a convicted felon. There was no physical evidence that could be interpreted nor was there witness testimony that would be subject to a jury's credibility determination. Barton knew he was a convicted felon; the State failed to prove beyond a reasonable doubt that the gun was stolen.

¶21. Considered in the light most favorable to the State, the evidence of possession of the stolen firearm combined with its concealment is insufficient to prove Barton knew the firearm was stolen because it fails to exclude the equally plausible theory consistent with Barton's innocence on this charge: that he hid the weapon because he was a convicted felon. The State failed to meet its burden on the possession-of-a-stolen-firearm charge.

## CONCLUSION

¶22. We conclude that the State failed to present sufficient evidence to prove that Barton knew the firearm was stolen and, therefore, that the State failed to present sufficient evidence to support Barton's conviction of possessing a stolen firearm beyond a reasonable doubt. We affirm in part and reverse and render in part the judgments of the Court of Appeals and of the Yazoo County Circuit Court. We acquit Barton as to the possession-of-a-stolen-firearm charge.

¶23. **AFFIRMED IN PART; REVERSED AND RENDERED IN PART.**

**RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ., CONCUR.**