

201-7911

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
APR 20 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Lincoln Dille II — PETITIONER  
(Your Name)

vs.

The State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Mississippi Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lincoln Dille II  
(Your Name)

22689 HWY 63 NORTH, P.O. Box 1419  
(Address)

Leakesville, MS 39451 Building 1-Area II  
(City, State, Zip Code) Bed: 133

N/A  
(Phone Number)

QUESTION(S) PRESENTED

- I. Is the MS SUPREME COURT'S decision in conflict with BATSON V. KENTUCKY 476 U.S. 79 in which the State used all of its peremptory challenges/strikes, ten (10), against African American Jurors?
- II. Is the MS SUPREME COURT'S decision in conflict with BARKER V. WINGO 407 U.S. 514 regarding Dille's Right to Speedy Trial of the (6th) sixth Amendment?
- III. Is the MS SUPREME COURTS decision in conflict with whether the State failed to prove all of the elements of First degree murder?
- IV. Is the MS SUPREME COURT'S decision in conflict with BOSTON V. STATE OF MISSISSIPPI 234 So. 3d 1231 regarding the granting of the State's Pre-Arming Instruction?
- V. The Trial Court's mishandling of the Jury question was not harmless error.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. The State of Mississippi
2. Lincoln Dille II
3. Attorney General Lynn Finch
4. Honorable Judge Winston Kidd  
of Hinds County Circuit Court

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U.S. V. Hillsman 480 F. 3d 333, 335 (5<sup>th</sup> Cir. 2007)

OTHER

BLACK'S LAW DICTIONARY (11<sup>th</sup> ed. 2019)

Editor in Chief

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the MS Court of Appeals court appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 3/14/22 <sup>SCT</sup> ~~8/24/21~~  
A copy of that decision appears at Appendix E, A.

[ ] A timely petition for rehearing was thereafter denied on the following date: 12/7/21, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including 1/4/22 (date) on 12/16/21 (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. "Right to Bare Arms" of the 2nd Amendment
2. 6<sup>th</sup> Amendment, "Right to Speedy Trial"
3. The "Equal Protection Clause" of the 14<sup>th</sup> Amendment
4. "Due Process Clause" of the 14<sup>th</sup> Amendment
5. "Right to Counsel clause" of the 6<sup>th</sup> Amendment
6. "Cruel and Unusual Punishment Clause" of the 8<sup>th</sup> Amendment.

STATEMENT OF THE CASE

This appeal proceeds from the circuit court of Hinds County Mississippi and a judgement of conviction for first degree murder entered against Lincoln Dille II. Dille's first trial ended in mistrial when the jury was unable to reach a verdict (C.P. 135). Following a second trial on April 8, 2019, the Honorable Judge Kidd, circuit court judge presiding, Dille was convicted of murder Mississippi Code Annotated section 97-3-19 (1)(a) with a fire arm enhancement under Mississippi Code Annotated Section 97-37-37. The trial Court sentenced Dille to a term of incarceration for life in the custody of the Mississippi Department of Corrections (C.P. 321, R.E. 12). Dille's trial counsel a motion for New Trial or J.N.O.V. (C.P. 330, R.E. 14). The trial Court did not enter an order denying the post-trial orders or motions, so it is considered denied as an operation of law. Dille is presently incarcerated and appeals to this Honorable Court for relief.

REASONS FOR GRANTING THE PETITION

## REASON ONE

1. Absolutely, Yes. The MS SUPREME COURT'S decision is in conflict with **BATSON V. KENTUCKY** 476 U.S. 79.

2. In Batson V. Kentucky (1986), the court ruled that a State may not discriminate on basis of race when exercising Peremptory Strikes against Prospective Jurors in a criminal trial.

(Quoting **Flowers V. State of Miss.** 947 So. 2d 910)

## U.S. SUPREME COURT JUSTICE KAVANAUGH QUOTES:

This instant case presents us with as strong a **Prima Facie** case of racial discrimination as we have ever seen in the context of a **Batson Challenge**.

3. In Dille's Case in the trial court, (the State) used all of its peremptory challenges/strikes, **ten (10)**, against only African American Jurors / Black Jurors. Next, No white Jurors were struck, not one white Juror. Thus, this case is very important because of disparate treatment among jurors.

4P In *Flowers v. State of Miss.*, the State had violated Batson by discriminating on the basis of race in exercising all fifteen (15) of its peremptory strikes against [African American] black prospective jurors.

5P Likewise in Dille's Case, Dille established a very strong prima facie case of racial discrimination and also through extensive interpretation of Batson, gender discrimination. The State in Dille's case used all of its peremptory strikes; ten (10), against [African American] black prospective jurors: eight (8) of these African American jurors were female (women).

6P No white jurors were struck; not one.

Next, the MS SUPREME COURT'S decision is in conflict with *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). [J.E.B. quotes]

Held: The Equal Protection Clause prohibits discrimination in jury selection on the basis of gender or on the presumption that an individual will be biased in a particular case solely because that person happens to be a woman or a man. Respondant's gender-based peremptory challenges cannot survive the heightened Equal Protection Scrutiny that this Court affords distinctions based on gender....

Are we going to stand there and do nothing while women are being abused or take a stand for Womens' Rights?

7JP In MANNING V. STATE OF MISS. 765 So. 2d 516, 519  
(Miss, 2000)

The MS SUPREME COURT reiterated five indicia of pretext:

- (1) disparate treatment - that is, the presence of unchallenged jurors of the opposite race who share the characteristic given as the basis for the challenge;
- (2) the failure to voir dire as to the characteristic cited;
- (3) the characteristic cited is unrelated to the facts of the case;
- (4) lack of record support for the stated reason and (5) group-based traits.

8JP In Dille's case, the State's peremptory strikes were racial group-based and prejudiced towards blacks, namely black women.

First, All Miss. Supreme Court Justices are white; not one black person.

9JP Furthermore, We can not end discrimination without the help of the White community. These White persons will provide honorable service to humanity by granting this Writ and take a closer step towards assimilation, pluralism, and solidarity. The White community is nearly 70% of the United States.

Thus, it will take extraordinary courage for these White persons to take a stand against White supremacy.

Look at Mississippi's Senator Roger Wicker or Cindy Hyde-Smith; These Persons did not support Justice Jackson. There is obvious racial bias in Mississippi, Ladies and Gentlemen.

# Strikes for Cause

by the State

The State's very first strike was a Black male (Tr. 791)  
 Christian Pollard (Panel 5; Juror 8)  
 (Tr. 848-849)

- (2). Tomeka Winfield - Panel 5; Juror 9 - female (Tr. 849)
- (3). Kenitra Bullie - Panel 6; Juror 1 - female (Tr. 833)  
 (Tr. 830, 799, 795, 742)
- (4) James Coleman - Panel 6; Juror 2 - male (Tr. 819, 850).
- (5). Latonia Spells - Panel 6; Juror 7 - female (Tr. 772)
- (6). Angel [Dickson] Dixon - Panel 6; Juror 9 - female, black  
 (Tr. 832, 792, 799-800, 851)
- (7). Daniel Gibbs - Panel 6; Juror 12 - male (Tr. 851, 745)
- (8). Sarah Anthony - Panel 7; Juror 3 - female (Tr. 805, 835)
- (9). Kedra Johnson - Panel 7; Juror 7 - female (Tr. 836)
- (10). Krystal Bell - Panel 7; Juror 8 - female (Tr. 851, 775,  
 852, 836)
- (11) Stephanie Collins - Panel 8; Juror 5 - female (Tr. 829,  
 859 - 860)
- (12). Sheena Perry Gordon - Panel 8; Juror 9 - female  
 (Tr. 861- 862)
- (13) Sharlene Brown - Panel 8; Juror 10 - female (Tr. 854)  
 The Defense/Dille's Objection to strike on Sharlene Brown  
 Tr. 853

10 of 13 jurors Strikes for Cause were women.

11P Sharlene Brown was struck for cause because of Brown's knowledge of ~~asst. defense attorney~~ Princess Williams. Although acknowledged as church members, the record lacks support of any intimate connection between the two church members aforementioned. Sharlene never said she talks to Princess at Church unlike Juror Mona Couey's circumstances in which Mona admitted to speaking to her church member Jennifer Malik, asst. district attorney. Mona Couey should have been disqualified. (Tr.706,820,854) Couey still became a trial juror.

Circuit Court Judge Kidd quotes:

I think it would be inappropriate to have a church member that know her on the jury... (Tr.854)

12P Next on Tr. 790 and 820, Sharlene Brown stated she carried a gun; Then on Tr.789 Mona Couey stated she carried a gun too. Hence, this is "disparate treatment." Mona was a white woman, and church members with the Asst. D.A. Jennifer Malik. Mona was seated in the jury. This case was not thoroughly scrutinized by the higher courts of Mississippi. The State maliciously prosecuted Dille; this was Dille's second trial on the same charge. Dille was out on bond for several months, and Dille didn't incur any other charges.

## The State's Peremptory Strikes

### (1) S-1 - Panel 5; Juror 1 - (Tr. 863-864)

The State's race-neutral reason for striking S-1 lacks support of the record. The State's response about S-1 was actually Robert Thomas' response Tr. 800-802 who was struck later by the defense.

### (2) S-2 Panel 5; Juror 2 (Tr. 863)

Jasmine Young (Tr. 864-865)

State Prosecutor Kurt Guthrie quotes:

race-neutral reason;

It was because when I asked her any questions where I was expecting people to invite conversation and talk, she crossed her legs and crossed her arms in a negative posture meaning that she does not want to participate in that...

141P Conversely, I find that Young actively participated in several questions and Guthrie's reason lacks support of the record. Tr. 787, 801, 819, and four questions on Tr. 818.

Judgement PP. 42 Paragraph (84) eighty-four.

Thus, the State's race-neutral reason was pretextual. The State was adamant about purposefully discriminating against Jasmine Young. The State is in error. Indeed, The Equal Protection Clause is very important. Jasmine Young is a Black Woman, the State's primary bias. Furthermore, more than seven Black Women were struck by the State.

15JP (3)

S-3 Panel 5; Juror 5 (Tr. 863-865)  
Stacia Elizabeth Foxx

The State's race-neutral reason was Foxx gave "negative responses".

The State quotes:

We felt that she[Foxx] was inattentive during voir dire and that she did not seem to pay much attention to the questions as being -- really to be honest with you, inconvenienced for being here....

16JP

Conversely on Tr. 727, Foxx talks about her job and duties. Next on Tr. 787, Foxx states she owns a gun for personal protection; this may be the State's problem with Foxx's belief for personal protection. Hence, the State's race-neutral reason lacks support of the record.

The State's response is pretextual for discrimination.

(4)

S-4 Panel 6; Juror 3 (Tr. 864)

Jasmine Thigpen

State Prosecutor Kurt Guthrie quotes:

She[J. Thigpen] failed to engage in any of the answering

Conversely, Jasmine Thigpen responded on Tr. 803 about self-defense.

(5) S-5 Panel 6; Juror 4  
(Tr. 864) Black female  
(Tr. 866)

(6) S-6 Panel 6; Juror 5  
(Tr. 864) Black Person  
Tr. 866

The First  
Batson Challenge is raised  
(Tr. 864)

(7) S-7 Panel 7; Juror 6 (Tr. 872-876)  
Thayne Haralson

State Prosecutor  
Kurt Guthrie quotes:  
We felt like she was  
kind of hiding some  
things....

Conversely, Thayne Haralson responded on Tr. 806

(8) S-8 Panel 7; Juror 12 (Tr. 872)  
Justin Roy Terry

17JP On Tr. 872-881, the State was suspiciously adamant about striking Justin Terry - their 8th strike on a Black prospective juror - and did not like Terry's responses on self-defense which is the theory of Dille's case. (also Tr. 874, 808)

(9) S-9 Panel 8; Juror 2 (Tr. 880) Black Female  
Tonya Bragg (Tr. 881)

State Prosecutor Kurt Guthrie  
quotes:  
(Tr. 881-882)

Tonya Bragg seemed irritated  
the entire time whether it was  
the State asking questions or  
the defense....

181P Conversely once again, Bragg engaged in several answers:

(1) Tr. 819-820 (2) Tr. 789 Bragg stated she owned a gun  
for personal protection and (3) Tr. 835 Bragg stated "she  
had three boys". The State's reason lacks support of the  
record because Bragg responded more than twice.

(10) Black Male - Jemarrim Hardin (Tr. 885)

(11) April Beckley - Black Female (Tr. 872-873, 806)

April Beckley was struck; then accepted after  
Batson was raised. I'm offering April Nicole Beckley  
as evidence of a pattern of strikes against Blacks  
namely Black women although she was later  
accepted. With her strike calculated with the  
previous ten strikes on Blacks, April Beckley  
would be the eleventh strike on Blacks.

Trial Jurors: Tr. 885-886

Mississippi's judicial system is flawed. I don't think the courts  
are reading this case thoroughly. It is really sad...  
Is this really a fair trial?

19/1P

## The State's Pattern of Discrimination

Jurors that answered questions regarding self-defense (Tr. 818-820) :

- James Coleman
- Jasmine Young
- Sharlene Brown
- Tonya Bragg

3 of the 4 Jurors were struck by the State.

20/1P

The Court made a strong *prima facie* finding in the discrimination of Blacks in Dille's case.

## Honorable Judge Winston Kidd quotes:

There has been a pattern striking potential jurors in a discriminatory manner and the Court makes that finding.... (Tr. 866)

21/1P

Defense Attorney Alice Stamps stated several times that there was a pattern of striking black jurors:

(1) On Tr. 875, it's consistent with the pattern of discrimination; every single one, every strike has been Black, every single one. The State have not struck one single white person, Your Honor....

(Defense Attorney Alice Stamps continues)

(2) On Tr. 881, there's a pattern of striking Black jurors, Your Honor....

(3) On Tr. 882, that's clearly a pattern of striking Black jurors and their excuses are "I just got a bad feeling about it...."

(4) On Tr. 883, Your Honor, it's part of the pattern for striking Black jurors, Your Honor.

22P

Ladies and gentlemen, this ostensible discrimination is reflected in the record before the facts of this case are considered. It is really sad that we will act like Black people are not human beings, and nevertheless, human beings that are not worthy of rights nor human rights. Mississippi is an obvious breeding ground for discrimination. Mississippi has the most recorded Black Lynchings in History. Remember Emmet Till. Have Blacks not suffered enough? Blacks beaten, starved, Black men sterilized; women raped.

23P

Thus, the MS SUPREME COURT'S Decision is in conflict with the "Equal Protection Clause" and the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution.

Mississippi has a history of Batson Violations: recently, Curtis Flower's Case and Carla Elicia Hughes Case.

Dille respectfully requests reversal of his conviction and sentence; and remand for a new trial.

## REASON TWO

Yes.

1P The MS SUPREME COURT'S decision is in conflict with BARKER V. WINGO 407 U.S. 514 (1972)

2P The foundation for the authority to dismiss in this cause is BARKER V. WINGO. The BARKER decision lists four factors to be considered. No one factor is dispositive by itself within the framework of plain-error review. The BARKER factors are:  
(Quoting BARKER 407 U.S. at 530)

A.

### Length of Delay

The Court of Appeals quotes:

In Mississippi, eight(8) months of delay presumptively prejudices the defendant at which point the reviewing court must carry out a full BARKER Analysis.

Graham 185 So. 3d at 1005;  
Paragraph 40

3P In Dille's case, Dille was charged and arrested on February 18, 2014 and not tried for trial until June 11, 2018 a delay of 1,574 days. This factor weighs heavily in Dille's favor (Judgement, pp. 47) Thus, this issue is very important, because Mississippi believes you can be held for half a decade without a trial.

## B.

### REASONS FOR THE DELAY

The MS Court of Appeals quotes:

Once a presumption of prejudice is shown, the burden of persuasion must shift to the State to show good reason for the delay.

Kelly 305 So. 3d at 1140-  
Paragraph 14

41P The Court of Appeals' decision states inaccurately that the "Reason for Delay" is Dille's fault. If this was the case, then the burden does not shift to the State. It is very disturbing that the MS Court of Appeals goes behind the Letter of the Law in BARKER and tailor the Law to the likings of the State. The State has the burden to explain the "unexplained hiatus" in Dille's case. I argue that this is another one of the state's unethical practices and let years and years pass by to scuttle Dille's defense. Hence, The STATE has FAILED, FAILED, FAILED its burden. This Barker factor weighs in Dille's favor.

## C.

### ASSERTION OF THE RIGHT TO SPEEDY TRIAL

51P At the very least, a defendant's assertion of his speedy trial right should manifest his desire to be tried.

In the present case, Dille asserted his Right to Speedy Trial early June 20, 2014 in a pre-trial motion and is mentioned in the judgement. This BARKER factor weighs in Dille's favor.

D.

## Prejudice to the Defense

Prejudice to the defendant, as a factor in test for evaluating claimed violation of constitutional right to Speedy Trial may manifest itself in two ways: first, the defendant may suffer because of the restraints to his liberty whether it be the loss of friends and family or anxiety. Second, the delay may actually impaired the accused ability to defend himself.

Ginn v. State Miss. 860 So. 2d 675 (2003)

6. First, Rosemary Johnson's testimony stated Dille lost his relationship with Johnson and there is likely prejudice in their separation. There is evidence from Rosemary's testimony that there is an ongoing relationship with the Lacey's family and Rosemary Johnson because of the connection with Johnson's child Raylin Lacey. The Lacey family has been intimidating Rosemary Johnson since Dille's arrest, 2/18/14. There is evidence of an ongoing feud and intimidation in Rosemary's testimony about Kedorie Lacey. Johnson had been labeled a hostile witness because of reluctance and inconsistency in testimony, Tr. 1194. Rosemary Johnson testified that she felt intimidated, Tr. 1240-1251. In the first trial, Rosemary Johnson was the State's primary witness; In the second trial, Rosemary Johnson became the Defense's primary witness. Thus "Intimidation" of Rosemary prejudices Dille's case. Also, Dille was employed and lost his job. Next, Rosemary's memory was impaired. (Tr. 267-272, 1192-1193, 333-339) Next, Dille also lost his mother, Pocahontas Dille, a JSU Alumni.

7P Next, Text messages were distorted after five years of delay. (Page 35 of 448 of Document #126)

Moreover, we do see that in the Discovery the State tendered information that JPD Detective Nashota Luckett recovered several cell phones and no texts from 2014 were discovered; there were only texts from 2013. Is that suspicious that 2013 texts- older texts- were discovered and newer texts of 2014 were not discovered for trial. pp. 110 and pp. 21 of 448 in Document #126

8P Furthermore, Preliminary Hearing Defense Attorney Lynn Watkins was unfortunately unable to defend Dille at Trial and present her first-hand knowledge of a January 911 Call and threatening text messages. In addition, Sgt. Hudson of JPD, who responded to the February 911 Call by Dille, could have testified about his prior knowledge of Lacey, his accomplices, and history of violence. Thus, because of delay, Dille's case was prejudiced and Dille's defense was impaired through intimidation of Johnson, loss of evidence, texts, and loss of witnesses.

9P Hence, Dille's Right to Speedy Trial and Due Process Clause was violated; Dille's 6th and 14th Amendment was violated. Dille respectively requests DISMISSAL OF ALL CHARGES:

- first degree murder § 97-3-19 (1)(a)
- fire arm enhancement § 97-37-37

## REASON THREE

1P

Whether the State failed to prove all the elements of first degree murder?

2P

Yes, the State failed to prove all requisite elements of first degree murder.

3P

The MS SUPREME COURT'S decision is in conflict with WADE V. STATE OF MISS. 748 So.2d 771.

QUOTING WADE:

Simpson had a prolonged history of violence exhibited towards Wade, especially when intoxicated, as he was on the night of this incident. The beatings he administered upon her were too numerous to count, but many were vivid to some witnesses due to their extremely brutal nature. Noteworthy are the two severe beatings of her head against tables administered upon Wade by Simpson shortly before this killing occurred. Simpson was known to carry a gun, and had exhibited and fired his gun inside the bar shortly this killing. Simpson had previously threatened to kill Wade. Wade knew [Simpson] had carried the gun and thought that he still had it at the time of the killing even though it had, in fact, been taken from him in her absence.

4JP

It is undisputed that when Wade re-entered the bar, Simpson took at least two steps toward her [Wade]. Whereupon she cursed and stated that You aint gonna hit on me no more and she shot him one time. Wade had only absented himself for a short time....

5JP

Paragraph 10 quotes:

While the jury could have declined to draw inference of malice, these particular facts, coupled with the other important facts set out herein related to the prior beatings and Wade's unique situation, are insufficient to support a finding of malicious intent....

6JP

Paragraph 20 quotes:

The Court has held in what is termed "the direct remand rule", that an appellate court may remand a case to the trial court for resentencing on a lesser-included offense where the greater offense was not proved, but the elements of the lesser-included offense were sufficiently met....

Dille notified the authorities multiple times about Lacey attempting to cause harm to him. Nevertheless, Dille was convicted of first-degree murder. Hence, this conviction is cruel and unusual punishment.

# DELIBERATE DESIGN

defined:

324. Deliberate Design, Miss. Plain Lang, Model Jury  
Instr. Crim. 324

Deliberate design is when a person decides to unlawfully kill another person, and there is no legally justifiable or excusable reason for doing so. The decision to kill a person can be formed very quickly and may occur only moments before the actual act of killing. However, deliberate design cannot be formed at the exact moment of the act of killing.

73P Deliberation is seldom defined separately from the other terms in this type of statute. To the extent that it adds anything, however, it appears to require that the defendant act in a cool state of blood. Thus, when a defendant is dominated by passion or fear, it may be impossible for him to deliberate to the degree necessary to render him a first degree murderer. e.g.,  
**Wells V. Co.**, 57 S.E. 2d 898 (Va. 1950)

It is 2022, and for the record,  
My Research says the Courts are bias against  
Black gun owners, even if these arms are legally Purchased.

# MALICE AFORETHOUGHT

defined :

BLACK'S LAW DICTIONARY (11<sup>th</sup> ed. 2019)

The requisite mental state for common-law murder, encompassing any one of the following:

- (1) the intent to kill;
- (2) the intent to inflict grievous bodily harm
- (3) extremely reckless indifference to the value of human life (the so-called "abandoned and malignant heart")
- (4) the intent to commit a dangerous felony (which leads to culpability under the Felony-murder rule).

BP Every intentional killing is with malice aforethought unless under circumstances sufficient to constitute : (1) justification ; (2) excuse ; or (3) mitigation

Facts of mitigation are permeated in Dille's case. Moreover, Dille's fear of Lacey is a credible excuse.

# MALICE

defined:

## BLACK'S LAW DICTIONARY

- (1) The intent, without justification or excuse, to commit a wrongful act.
- (2) Reckless disregard of "the Law" or a person's legal rights.  
Also termed abandoned and malignant heart
- (3) ill will; wickedness of heart

9P

Malice means in law wrongful intention. It includes any intent which "the law" deems wrongful and which therefore serves as a ground of liability. Any act done with such an intent is in the language of "the law", malicious, and this legal usage has etymology in its favour. The Latin *malitia* means **badness**, physical or moral - **wickedness** in disposition or in conduct - not specifically or malevolence; hence the malice of English Law including all forms of **evil purpose**, design, intent, or motive.

10P

The killing lacks malice in Dille's case. Dille's reasonable fear distorts deliberation and malice/evil mind. Dille was afraid of Lacey. This is an important fact from direct evidence, e.g., Peace Bond Affidavit & Rosemary's testimony.

## WILLFULLY, WILLFUL

### BLACK'S LAW DICTIONARY

defined:

- Voluntarily and intentional, but not necessarily malicious.
- A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least in excusable carelessness, whether the act is right or wrong

## FELONIOUS, FELONIOUSLY

### BLACK'S LAW DICTIONARY

defined:

- Of, relating to, or involving a felony.
- Constituting or having the character of a felony
- Proceeding from an evil heart or purpose; malicious; villainous

11. These Terms/Words of Art were exercised in Dille's indictment. Nevertheless, Dille's response to Lacy's threat lacks the evil nature of these terms aforementioned, because Dille feared Lacy.

# BREACH OF PEACE

defined:

## BLACK'S LAW DICTIONARY

1. The criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise-

121P

A breach of the Peace takes place when either an assault is committed on an individual or public alarm and excitement is caused.

131P

In Dille's case on the night of February 18, 2014 Lacey immediately confronted Dille which breached the Peace. Lacey initiated the conflict.

### Lacey's Motive:

- (1) Lacey was a jealous ex-boyfriend (Tr. 293, 321, 1164)
- (2) Lacey was also upset about Rosemary Johnson filing their daughter Raylin Lacey on the tax returns.
- (3) From the first encounter of Dille and Lacey, Lacey clearly stated that he had a problem with Dille (Tr. 321)

## Dille's Mitigating Factors

14P There are several mitigating factors in Dille's case. First, the jury was misled about the accurate definition of a Peace Bond by Officers' inconsistent statements. In the Court of Appeals' decision on Page 7, Paragraph 12, Detective Owens stated that a Peace Bond is different from a restraining order; and the Court of Appeals overlooked Dille's support in the Peace Bond while in pursuit of a first degree murder charge. (Tr. 922-924). Secondly, Officer Lampley testified that he understood that when subject people are in the vicinity of one another, they are ordered to keep the peace. (Tr. 1041-1043).

15P Thus, Lacey breached the peace and the State maliciously disregarded Dille's remedial right conferred from Lacey's breach. Dille is owed some relief and the charge of first degree murder is unconscionable, unconstitutional, and malicious, coupled with all facts - even exculpatory facts, of this case. In essence, Dille's allegedly criminal act was fear-related, because Lacey threatened Dille on multiple occasions. (Judgement Page 2,11,12). The indictment quotes "willfully" in the first count of first degree murder. "Willfully" serves an evil purpose in the state of mind. Thus, fear distorts the willfullness in Dille's act which really was a response after Lacey threatened Dille that night. This conviction is cruel and unusual punishment of the 8th Amendment.

## Dille's Lack of Malicious Intent and Mens Rea

Dille clearly stated that he had no problem with Lacey (Tr.323)

Lacey would still be alive, but for Lacey's threat towards Dille's life. (Tr. 343-344, 339, 1212-1213)

## Lacey's Pattern of Stalking

161P 97-3-107; Stalking and Aggravated Stalking (1)(a)

Any person who purposefully engages in a course of conduct directed at a specific person or who makes a credible threat, and who knows or should know that the conduct would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person or to fear damage or destruction of his or her property, is guilty of stalking.

(2)(a) A person who commits acts that would constitute a crime of stalking as defined in this section is guilty of the crime of aggravated stalking if any of the following circumstances exist:

(i) at least one of the actions constituting the offense involved the use or display of a deadly weapon with the intent to place the victim of the stalking in reasonable fear of death or great bodily injury to self or a third person.

(a) Course of Conduct means a pattern of conduct composed of a series of two (2) or more acts over a period of time, however short evidencing a continuity of purpose and that would cause a reasonable person to fear for his or her own safety, to fear for the safety of another, or fear damage or destruction of his or her property.

Such acts may include but are not limited to, the following or any combination thereof, whether done directly or indirectly: following or confronting the other person in a public place or on private property against the other person's will . . . .

ITP Lacey assaulted Rosemary Johnson many times. (Tr. 259, 316, 338-339, 1164) Lacey would get in Johnson's face with hostility and often hit and slapped Rosemary, a woman.

Lacey conspired to attack Dille with help of his cousin on two occasions; On one of the occasions, Lacey was armed, and chased Dille with the gun into his home.

(Tr. 270, 319, 340) Never the less, Dille is wrong for defending himself against Lacey. Dille has been over-sentenced. This is cruel and unusual punishment. 29 Lacey initiated the conflict.

# Lacey's Pattern of Assaults/ Course of Conduct:

first incident; Tr. 322

second incident; Tr. 325

At Family Dollar - third incident; Tr. 329, 1193

Christmas Day - fourth incident; Tr. 332, 1200-1202

Gas Station/Sano - fifth incident; Tr. 338

sixth incident; Tr. 339

## February 18, 2014

18JP A 911 call was made only hours before the shooting. Next, when Lacey arrived to the gas station, Lacey ominously parked his car blocking Dille and Johnson's car.

This can be deemed as the first breach of Peace coupled with the facts of prior contention between the parties. (False Imprisonment)

19JP Lacey chased Dille with a gun a week prior, so Dille's fear was reasonable according to the Peace Bond. State of Mind is an important element of crime. Dille did not say anything to Lacey. (Tr. 260)

20JP Next Lacey initiated contact and confronted Dille at the gas station, which is deemed as Stalking / Assault and Lacey's second breach of Peace. Lacey threatened Dille's life. This is more likely than not because of Lacey's prior pattern / Course of Conduct toward Dille. (Tr. 343-344, 1212-1213, 339) Hence, Dille's fear was exasperated to the highest degree on that night of February 18, 2014. A cause of action for Dille is conferred by law for Lacey's breaches of Peace.

21P Thus, the facts, case law, and research confirms that Dille could not act in deliberate design and fear Lacy. Furthermore, allowing first degree murder in this cause will be a miscarriage of justice. Deliberate design does not involve fear. Dille's fear of Lacy is acknowledged in the facts of this case. We cannot disregard the fear lodged on Dille's person, nor should we disregard Lacy's violent history. Even the Asst. Attorney General acknowledged that the evidence favors Dille. So why does the verdict not favor Dille? The facts support manslaughter.

22P Thus, this is more likely a case for self-defense manslaughter which was submitted to the jury in the first trial and ended as a mistrial or heat-of-passion manslaughter, coupled with the facts of Dille's reasonable fear of Lacy and prior conflicts. The primary cause of this incident is Lacy's jealousy and this important fact has been disregarded when we look at this conviction. Lacey consistently targeted Dille. Dille's act lacked malice and this is important. If you are not convinced, then look how many times Dille alerted the authorities. Is this really Equal Justice Under Law? In conclusion, Dille respectfully requests remand and resentencing for heat-of-passion manslaughter or self-defense manslaughter.

## REASON FOUR

11P

Yes. First on Tr. 1325, S-13 was denied by Judge Winston Kidd. The defense counsel, Mr. Franklin argued a Holding from **BOSTON V. STATE** 234 So. 3d 1231 (2017) quoting:

The only evidence concerning the knife from Auto Zone about a month before the incident and was carrying it in his pocket with intent to provoke an altercation with Dean.

**Waller**, Chief Justice for the MS SUPREME COURT quotes:

Kevin Boston was convicted of Capital Murder in the Washington County Circuit Court for the killing of Willie Dean. Boston raises five issues on appeal. One of which is raised by Boston himself in a Prose Supplemental Brief. Boston argues that the trial court erred by granting the State's Pre-Arming Instruction. **Finding** that the granting of the Pre-Arming Instruction was **reversible error**. We reverse Boston's conviction and sentence and remand the case for a new trial.

21P Likewise in Dille's case on Tr. 1126, 1203-1204, Lincoln Dille II purchased a gun weeks prior to February 18, 2014. This was after being attacked Kanisky Lacey. On Tr. 1295, Mr. Franklin also argued that testimony was given that Dille carried his gun every where. Dille has a constitutional right to the 2nd Amendment "to bare arms" and Dille was not a convicted felon at the time that the shooting occurred. Next, Dille's gun was registered to the State. Moreover after being assaulted with a gun by Lacey and his cousin, Dille lodged a Peace Bond on Kanisky Lacey. Rosemary Johnson and Lincoln Dille Sr.'s testimony stated that Dille feared Lacey. The Pre-Arming Instruction denies Dille the right to self-defense which is the theory of Dille's defense. Dille is denied his 2nd Amendment also. The 2nd Amendment is governed and protected by the 14th Amendment to the states.

Dille respectfully requests reversal of his conviction and sentence and remand case for a new trial.

## REASON FIVE

1<sup>IP</sup> The Court of Appeals determined that the trial Court violated Dille's constitutional right to be present for all stages of his trial and that the trial court violated Rule 23(a) of the Mississippi Rules of Criminal Procedure, when the trial court responded to a question from the jury without informing either the Stater or Dille. (Opinion at ¶62) The trial court then failed to make any record of the jury's question or its response to the jury for the appellate courts to review. However, the Court of Appeals found that violation of Dille's Constitutional rights to be harmless error.

2<sup>IP</sup> The Court of Appeals noted that "[b]ecause the question and response are not in the record, we cannot determine whether a substantive supplemental instruction could have been crafted. We only have the juror's affidavit, which contains her recollection of the jury question." (Opinion at 32, n.12). But the Court of Appeals held that "the circuit court granted no substantive supplemental instruction to the jury," and so the error was harmless.

31P It is the trial Court's failure to notify and consult with the parties, coupled with its failure to preserve the jury's note and the court's response, that makes this **violation** of Dille's rights egregious. The Juror who notified the defense counsel about the question the jury sent to the court stated that the jury sought additional information about what would be considered the "fatal act" for First-Degree Murder. But the trial Court, when responding to the argument during the hearing on Dille's JNOV motion, stated that the Jury requested information on deliberate design. As the above-noted, and in the Court of Appeals opinion, neither note was preserved for the record.

41P The Court of Appeals relied on *Cooper v. State*, 745 N.W. 2d 188, 192 (Minn. 2008), to find that the "trial court's violation of Dille's constitutional right to be present at every stage of trial" was harmless error and did not require reversal. (Opinion at 961). But in *Cooper*, the trial court had access to the notes exchanged between the jury and the trial Court. The Court in *Cooper* specifically stated, This note was sent to the jury in the absence of Cooper and his Counsel. The note was placed in the district court file the next morning. *Id.* (emphasis added).

5P The Court of Appeals found the error in Dilles case harmless because the circuit court did not grant any "substantive supplemental instruction." (Opinion at 962). But there is no way to know that the jury was not provided substantive supplemental instruction without the note, nor is there any way to determine whether supplemental instruction would have been appropriate without being able to consider the contents of the jury's note. The parties only found out about the communication between the judge [Judge Winston Kidd] and the jury members by chance when they were talking with jurors after the verdict.

6P In *United States V. Pleitez*, 876 F. 3d 150, 157 (5<sup>th</sup> Cir. 2017), the Fifth Circuit Court of Appeals addressed the absence of counsel at a critical stage of a criminal proceeding. Pleitez pled guilty and was sentenced to pay restitution. His restitution sentence was modified days later when he was no longer ~~represented~~ by counsel. The court held, "However, a trial is unfair if the accused is denied counsel at a critical stage of his trial, and no showing of prejudice is required."

*United States V. Pleitez*, 876 F. 3d 150, 157 (5<sup>th</sup> Cir. 2017)  
Quoting *United States V. Cronic*, 466 U.S. 648, 659, 104 S.Ct. 2039 (1984)

7P "If counsel for the accused is absent during a critical stage, then there is a presumption of prejudice and reversal is automatic." *Id.*  
(quoting *United States v. Hillman*,

480 F.3d 333, 335 (5<sup>th</sup> Cir. 2007) (emphasis added)

8P The trial court's error was not harmless. Dille was not present when the trial court addressed the jury's question. Neither he nor his attorney were notified by the trial court that the jury had a question. Acting without Dille present is reversible error.

9P All that is available in this case is an affidavit from a single juror and the trial court's recollection when confronted with the error in the JNOV hearing. This Court should not find that the violation of Dille's rights is harmless when the trial court, not the defendant, failed to make a proper record. Accordingly, Dille respectfully requests this Honorable Court grant this petition for Writ of Cert. reverse his conviction, and remand his case for a new trial.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Date: 4 /20/22