

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-KM-01409-SCT**

***MICHAEL DANCY***

**v.**

***STATE OF MISSISSIPPI***

DATE OF JUDGMENT: 09/06/2018  
TRIAL JUDGE: HON. ANDREW K. HOWORTH  
TRIAL COURT ATTORNEYS: W. BRENT McBRIDE  
JOE MARSHALL DAVIS  
COURT FROM WHICH APPEALED: UNION COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: JIM WAIDE  
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL  
BY: JEFFREY A. KLINGFUSS  
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE  
NATURE OF THE CASE: CRIMINAL - MISDEMEANOR  
DISPOSITION: AFFIRMED IN PART AND VACATED IN  
PART - 01/16/2020  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**EN BANC.**

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

¶1. This case arises out of the seizure of Michael Dancy's six horses, four cats and three dogs. The Justice Court of Union County found Dancy guilty of three counts of animal cruelty and ordered the permanent forfeiture of Dancy's animals. Dancy appealed to the Circuit Court of Union County, where a bench trial was held de novo. The circuit court ordered that the animals be permanently forfeited and found Dancy guilty of three counts of animal cruelty. The circuit court further ordered Dancy to reimburse the temporary custodian

of the horses \$39,225 for care and boarding costs incurred during the pendency of the forfeiture and animal-cruelty proceedings. Aggrieved, Dancy appeals to this Court.

### **FACTS AND PROCEDURAL HISTORY**

¶2. In June and July of 2017, the Union County Sheriff's Department received five or six telephone complaints from soybean farmer Brian Camp reporting that Dancy's horses were getting out and eating Camp's soybeans. Deputies with the Union County Sheriff's Department responded each time and instructed Dancy to keep his horses on his property. Camp also contacted Union County Animal Control Officer Curt Clayton to address the issue. Officer Clayton and Union County Sheriff Jimmy Edwards responded to the complaint and witnessed the horses in Camp's soybeans. Sheriff Edwards spoke to Dancy on the phone that day and told him he needed to keep his horses on his property.

¶3. In July 2017, approximately a week before the seizure of Dancy's animals, Camp also contacted Keith Settlemires with the Mississippi Department of Agriculture to report the destruction of his soybeans by Dancy's horses. Settlemires then contacted Sheriff Edwards, and the two went to investigate the damage to the soybeans and the condition of the horses. Sheriff Edwards spoke with Dancy at Dancy's residence that afternoon and again asked Dancy to keep his horses on his property. Sheriff Edwards and Settlemires became concerned about the animals' welfare after observing that the horses, dogs and cats did not have adequate water and appeared to be malnourished. Camp's last complaint to the Union County Sheriff's Department occurred on July 23, 2017.

¶4. Under Mississippi Code Section 97-41-2 (Rev. 2014), the Union County Justice Court

signed an animal-seizure order on July 24, 2017, authorizing the Union County Sheriff's Department to seize Dancy's animals. In that order, the justice court found that

probable cause exists to believe that the animal(s) is/are being cruelly treated, neglected and/or abandoned; that [Dancy] has failed to properly care for the animal(s) and that, as a result of the actions and/or inactions of [Dancy], the animal(s) is/are in immediate need of protection, medical care and the attention of a veterinarian; that the animal(s) should be temporarily seized by the Petitioner; and that the medical care and costs of boarding and treatment of the animal(s) should be taxed to [Dancy].

¶5. On July 26, 2017, the sheriff's department, accompanied by veterinarian Davis Hunt and representatives from animal-protection organizations seized six horses, three dogs and four cats from Dancy's property. On that same day, investigator Chris Chapel with the Union County Sheriff's Department executed three affidavits charging Dancy with the misdemeanor offenses of cruelty to animals because of Dancy's treatment of the six horses, four cats and three dogs.

¶6. One affidavit charged Dancy with violating Section 97-41-7 for "willfully and unlawfully confin[ing] . . . 6 horses without supplying adequate shelter or a sufficient quantity of good wholesome food or water." As to the dogs and cats, Dancy was charged with two separate violations of Section 97-41-16(2)(a) for "willfully and unlawfully and intentionally or with criminal negligence . . . depriv[ing three dogs and four cats of] . . . adequate shelter and food and water."

¶7. After the animals were seized, they were placed in the custody of two animal-protection organizations pending a final determination of whether the animals should be permanently forfeited. The horses were placed with Redemption Road Rescue, and the cats

and dogs were placed with Animal Rescue Corps.

¶8. On August 1, 2017, the justice court held a hearing at which Dancy was represented by counsel. The justice court entered an order on August 4, 2017, finding Dancy guilty on all three cruelty-to-animals charges and finding that “the six horses should be forfeited, and three dogs and four cats as well.” The justice court did not order Dancy to reimburse the temporary custodians of the animals.

¶9. On September 1, 2017, Dancy appealed to the Circuit Court of Union County. The circuit court set the matter for a hearing on the merits to be held on March 7, 2018. The hearing was continued from March 7, 2018, to June 18, 2018.<sup>1</sup> On April 13, 2018, Dancy filed a motion for discovery requesting the name and contact information of “all veterinarians, or others, who inspected the animals . . . after they were seized.” The State did not respond to the discovery request, and Dancy did not move the circuit court to compel a response.

¶10. The circuit court held a de novo bench trial on June 18, 2018. The parties agreed to the circuit court’s presiding over the animal-forfeiture claim and the misdemeanor animal-cruelty charges during the same proceeding. The State, in its case-in-chief, called eight witnesses: Brian Camp, veterinarian Davis Hunt, Union County Animal Control Officer Curt Clayton, Keith Settlemires with the Mississippi Department of Agriculture, Union County Sheriff Jimmy Edwards, Union County Investigator Chris Chapel, Amy Halverstick with Animal Rescue Corps and Lori Collins with Redemption Road Rescue. Other than Camp,

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<sup>1</sup> Based on the record, it is unclear whether the State or Dancy requested the continuance or whether the circuit court continued the case sua sponte.

all the witnesses were present the day of the seizure and had personal knowledge about the condition of the animals and the manner in which they were being kept.

¶11. Nearly all of the State’s witnesses testified that the horses, dogs and cats were kept without adequate food, water or shelter. Veterinarian Dr. Davis Hunt testified that some of the horses had “rain rot, or dermatophilosis” and that a few of the horses had some “fly strike.” Hunt further testified that most of the dogs “had fly strike on their ears, some facial swelling. . . . were a little bit thin [and] a lot of parasites, ticks, [and] fleas[.]” On cross-examination, Hunt explained how pictures of the horses showed a “distended abdomen, poor muscle mass over the scapula, and poor muscle mass over the pelvis.” Amy Halverstick from Animal Rescue Corps testified that all three of the dogs tested positive for ehrlichiosis (a tick-borne blood disease) and that one dog tested positive for heartworms. Officer Curt Clayton described how the cats were covered with fleas and how he witnessed fleas leaving the cats and getting on people that handled the cats the day of the seizure. By stipulation of the parties, several dozen pictures of the animals and Dancy’s property were admitted into evidence. Two photographs showed empty water troughs inside the horses’ pens.

¶12. After the bench trial, the circuit court found Dancy guilty of animal cruelty for not caring for six horses, four cats and three dogs, and on de novo review, it ordered that the animals be permanently forfeited. The circuit court imposed but immediately suspended the maximum fine for each of Dancy’s misdemeanor criminal convictions. Additionally, the circuit court ordered Dancy to reimburse Redemption Road Rescue for the costs incurred in caring for and boarding the horses during the pendency of the forfeiture and animal-cruelty

proceedings. An order reflecting the circuit court’s judgment was entered on August 30, 2018. Dancy moved for a new trial under Rule 25.1 of the Mississippi Rules of Criminal Procedure, but that motion was denied on September 5, 2018.

¶13. Dancy appealed to this Court on September 25, 2018, and contends that the circuit court erred by (1) ordering that his animals be permanently forfeited, (2) awarding a judgment for the costs of boarding incurred between the date of seizure and the circuit court trial and (3) allowing veterinarian Dr. Davis Hunt to testify at trial after the State failed to furnish Hunt’s name and proposed testimony in discovery.

#### STANDARD OF REVIEW

¶14. “The interpretation of a statute is a question of law, and the standard of review on appeal is de novo.” *Rex Distrib. Co., Inc. v. Anheuser-Busch, LLC*, 271 So. 3d 445, 449 (Miss. 2019) (citing *Natchez Hosp. Co. v. Adams Cty. Bd. of Supervisors*, 238 So. 3d 1162, 1163 (Miss. 2018)). “On appeal, we give a circuit-court judge presiding in a bench trial ‘the same deference with regard to his findings as a chancellor.’” *Falkner v. Stubbs*, 121 So. 3d 899, 902 (Miss. 2013) (quoting *City of Jackson v. Perry*, 764 So. 2d 373, 376 (Miss. 2000)). “Therefore, we review the circuit court’s interpretation and application of the law de novo, and its findings of fact will not be reversed if supported by substantial evidence.” *Id.* (citing *Davis v. Smith (In re Estate of Smith)*, 69 So. 3d 1, 4 (Miss. 2011)). The standard for “reviewing rulings of a trial court regarding matters of evidence, relevancy and discovery violations . . . is abuse of discretion.” *Jones v. State*, 283 So. 3d 64, 68 (Miss. 2019) (internal quotation mark omitted) (quoting *Myers v. State*, 145 So. 3d 1143, 1147 (Miss.

2014)).

## ANALYSIS

### **I. Whether the circuit court erred by ordering the permanent forfeiture of Dancy's animals.**

¶15. Dancy argues that no evidence supported the permanent forfeiture of his animals under Section 97-41-2(5) (Rev. 2014). We disagree.

¶16. Section 97-41-2(1) provides that “[a]ll courts in the State of Mississippi may order the seizure of an animal by a law enforcement agency, for its care and protection upon a finding of probable cause to believe said animal is being cruelly treated, neglected or abandoned.” Miss. Code Ann. § 97-41-2(1) (Rev. 2014). Subsection (2) allows an owner of a seized animal to request a hearing within five days of the seizure “to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal.” Miss. Code Ann. § 97-41-2(2) (Rev. 2014). Subsection (3) provides a nonexhaustive list of what a court may consider in determining whether the owner is fit to have custody of an animal, which includes

(a) Testimony from law enforcement officers, animal control officers, animal protection officials, and other witnesses as to the condition the animal was kept in by its owner or custodian.

(b) Testimony and evidence as to the type and amount of care provided to the animals by its owner or custodian.

(c) Expert testimony as to the proper and reasonable care of the same type of animal.

(d) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(e) Violations of law relating to animal cruelty that the owner or custodian has been convicted of prior to the hearing.

(f) Any other evidence the court considers to be material or relevant.

Miss. Code Ann. § 97-41-2(3) (Rev. 2014). Subsection (5) delineates the circumstances under which an animal may be permanently forfeited:

If the court finds the owner of the animal is unable or unfit to adequately provide for the animal or that the animal is severely injured, diseased, or suffering, and therefore, not likely to recover, the court may order that the animal be permanently forfeited and released to an animal control agency, animal protection organization or to the appropriate entity to be euthanized or the court may order that such animal be sold at public sale in the manner now provided for judicial sales; any proceeds from such sale shall go first toward the payment of expenses and costs relating to the care and treatment of such animal, and any excess amount shall be paid to the owner of the animal.

Miss. Code Ann. § 97-41-2(5) (Rev. 2014).

¶17. At trial, the circuit judge heard testimony from several law-enforcement officers, a veterinarian and representatives from the Mississippi Department of Agriculture and two animal-protection organizations. All witnesses testified at trial and detailed how the horses, dogs and cats were kept without adequate water, food and shelter. Three witnesses testified that the dogs and cats were covered in fleas. Additionally, seventeen exhibits consisting of several dozen photographs of the animals and Dancy's property were entered into evidence by stipulation.

¶18. Based on the testimony and evidence presented at trial, the circuit court found that "overwhelming proof" supported permanent forfeiture. Specifically, the circuit court found that "all of these animals were not properly cared for, not adequately sheltered, they had sporadic access to water, and insufficient feed, which contributed to their overall poor

condition.” The circuit court clearly agreed with the justice court’s finding that Dancy was unable to care for the animals and determined that permanent forfeiture of the animals “was necessary for the well being of the animals and was required to alleviate their suffering.” Despite Dancy’s contentions, it is apparent from the record that the circuit court’s permanent forfeiture order was supported by substantial evidence.

¶19. Dancy also contends that the circuit court erred by releasing the horses to Redemption Road Rescue following the permanent forfeiture. Particularly, Dancy argues that Section 97-41-2(5) requires that permanently forfeited animals must either be euthanized or sold at a public sale. We disagree and find that Dancy misconstrues the statute’s plain language.

¶20. The plain language of Section 97-41-2(5) provides a court four different release options. The court may release the animals to (1) “an animal control agency,” (2) an “animal protection organization,” (3) an “appropriate entity to be euthanized” or the court (4) “may order that such animal be sold at public sale.” Miss. Code Ann. § 97-41-2(5) (Rev. 2014).

¶21. The circuit court properly followed the statutory directive by releasing the horses to an “animal protection organization”—Redemption Road Rescue.

**II. Whether the circuit court erred by ordering Dancy to reimburse the horses’ temporary custodian for the costs it incurred caring for and boarding the horses.**

¶22. At trial, the State entered an itemized list of Redemption Road Rescue’s costs for caring for the six horses from July 26, 2017, to June 18, 2018. Redemption Road Rescue’s care and boarding expenses totaled \$39,225.<sup>2</sup> Under Section 97-41-2(4), the circuit court

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<sup>2</sup> According to the itemized list, travel and transport of the horses cost \$300, hay for the horses cost \$30, tags and ties for the horses cost \$15, boarding for the horses cost

ordered Dancy to reimburse Redemption Road Rescue for all of the expenses it incurred as a result of the horses' seizure. Section 97-41-2(4) states that,

Upon proof of cost incurred as a result of the animal's seizure, including, but not limited to, animal medical and boarding, the court may order that the animal's owner reimburse the temporary custodian for such costs. A lien for authorized expenses is hereby created upon all animals seized under this section, and shall have priority to any other lien on such animal.

Miss. Code Ann. § 97-41-2(4) (Rev. 2014).

¶23. Dancy argues that he should only be liable for the cost incurred by Redemption Road Rescue up until the time that the justice court held the initial hearing on August 1, 2017. Dancy further argues that the circuit court's reimbursement order constitutes an excessive fine.

¶24. Dancy asserts that a proper reading of Section 97-41-2(4) in conjunction with Section 97-41-2(2) reveals that the duty to reimburse the temporary custodian ends when the justice court orders the animals permanently forfeited.<sup>3</sup> Dancy's claim, however, ignores the fact

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\$38,880, which was divided up at \$20 a day for each horse for 324 days. All of these costs added together totaled \$39,225.

<sup>3</sup> Section 97-41-2(2) states,

Within five (5) days of seizure of an animal, the owner of the animal may request a hearing in the court ordering the animal to be seized to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal. The court shall hold such hearing within fourteen (14) days of receiving such request. The hearing shall be concluded and the court order entered thereon within twenty-one (21) days after the hearing is commenced. Upon requesting a hearing, the owner shall have three (3) business days to post a bond or security with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs sufficient to provide for the animal's care. Failure to post such bond within three (3) days shall result in forfeiture of the animal to the court. If the temporary

that Dancy appealed the justice court’s decision for a trial de novo in the circuit court.

¶25. “A judgment by a justice of the peace is vacated or superseded by appeal to the circuit court . . . .” *Lucedale Commercial Co. v. Strength*, 163 Miss. 346, 141 So. 769, 770 (1932).

When Dancy appealed the judgment of the justice court to the circuit court, he was entitled to a trial de novo under Section 11-51-91: “the case must be tried anew as if it were originally instituted in the circuit court.” *Id.* at 769; *see also Ude v. State*, 93 So. 3d 891, 893 (Miss. Ct. App. 2012). By virtue of Dancy’s appeal to the circuit court, there was no judgment in this case until the circuit court rendered its final judgment on June 18, 2018. Therefore, this claim is without merit.

¶26. Dancy cites *One (1) Charter Arms, Bulldog 44 Special v. State ex rel. Moore* as authority to suggest that the circuit court’s reimbursement order constitutes an excessive fine. That case dealt exclusively with the constitutionality of the forfeiture of a Corvette alleged to have been used to facilitate violations of this state’s Uniform Controlled Substances Laws. *One (1) Charter Arms, Bulldog 44 Special v. State ex rel. Moore*, 721 So. 2d 620, 621–22 (Miss. 1998). By contrast, this case involves the reimbursement of care and boarding costs actually incurred by the horses’ temporary custodian. Thus, Dancy relies on inapplicable authority.

¶27. Here, Dancy’s animals were seized for the animals’ own protection after probable

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custodian has custody of the animal upon the expiration of the bond or security, the animal shall be forfeited to the court unless the court orders otherwise.

Miss. Code Ann. § 97-41-2(2) (Rev. 2014)

cause was found to believe that the horses were being maltreated and neglected by Dancy. The horses were placed in the temporary custody of Redemption Road Rescue during the court proceedings. Because Dancy appealed to the circuit court, he put Redemption Road Rescue in the position of having to keep the horses for 324 days. At trial, the State presented uncontested proof of the costs incurred by Redemption Road Rescue as a result of the seizure. Under the statutory authority in Section 97-41-2(4), the court ordered Dancy to reimburse Redemption Road Rescue a liquidated sum for the costs of caring and boarding the horses during the court proceedings.

¶28. This Court finds that the circuit court’s reimbursement order was permissible under Section 97-41-2(4) and that it was not imposed as a fine on Dancy. In fact, the circuit court did impose, but immediately suspended, the maximum fine for each of Dancy’s misdemeanor criminal convictions. For these reasons, we affirm the circuit court’s reimbursement order.

### **III. Whether the circuit court erred by allowing veterinarian Dr. Davis Hunt to testify.**

¶29. Dancy argues that the circuit court committed reversible error by allowing veterinarian Dr. Davis Hunt to testify at trial. Dancy quotes *Robinson v. State* and argues that the circuit judge was required to offer “defense counsel an opportunity to decide if he should request either a continuance or a mistrial.” *Robinson v. State*, 508 So. 2d 1067, 1071 (Miss. 1987). Based on our review of the record, the circuit judge did provide Dancy with an opportunity to request a continuance. However, Dancy never requested one. Therefore, the circuit court did not err by allowing Dr. Hunt to testify.

¶30. When the State called Dr. Hunt to testify at trial, Dancy objected. Dancy argued that

Dr. Hunt should not be allowed to testify because the State had failed to furnish Dr. Hunt's name in discovery. The State claimed it never received Dancy's discovery request. The circuit court took the position that Dancy should have asked the court to compel a response and overruled the objection. In overruling the objection, the circuit court suggested that Dancy seek a continuance to meet the proof if, after hearing Dr. Hunt's testimony, Dancy believed he was being unfairly prejudiced. Dancy did not seek a continuance at any point, but he did renew the objection in his motion for a new trial.

¶31. Both Dancy and the State agree that Mississippi Rule of Criminal Procedure 17.9(b) governs this issue. "This rule . . . adopted the procedures set forth in *Box v. State*, 437 So. 2d 19, 23–24 (Miss. 1983) (Robertson, J., specially concurring)." *Terrell v. State*, 237 So. 3d 717, 730 (Miss. 2018). "These *Box* procedures apply when the State attempts to enter previously undisclosed evidence over the defendant's objection." *Id.* (citing *McCullough v. State*, 750 So. 2d 1212, 1217 (Miss. 1999)). This Court has provided specific guidance to trial courts on the *Box* procedure and has explained that,

When faced with previously undisclosed evidence to which the defendant has objected, the trial court should give the defendant a reasonable opportunity to familiarize himself with the evidence. If the defendant thereafter believes he may be prejudiced by admission of the evidence because of his lack of opportunity to prepare to meet it, he *must* request a continuance. *Should the defendant fail to request a continuance, he has waived the issue.*

*McCullough*, 750 So. 2d at 1217 (emphasis added) (quoting *Snelson v. State*, 704 So. 2d 452, 458 (Miss. 1997)).

¶32. Under *McCullough*, Dancy has waived this issue for appellate review by failing to seek a continuance. Procedural bar aside, we find no abuse of discretion.

¶33. In this case, Dancy filed a motion for discovery that went unanswered for two months. Dancy chose not to file a motion to compel a response. At trial, the circuit judge properly followed the *Box* protocol by providing Dancy with the opportunity to decide if he should request a continuance. In fact, the circuit judge even suggested that Dancy should seek a continuance to meet Dr. Hunt’s testimony rather than stand on his objection. Dancy disregarded this suggestion and chose not to seek a continuance. Thus, the circuit judge did not abuse his discretion by allowing Dr. Hunt to testify.

**IV. Whether Dancy’s two convictions under Section 97-41-16(2) subjected him to double jeopardy.**

¶34. Dancy failed to raise this issue on appeal. After reviewing the record, we find that Dancy’s two convictions under Section 97-41-16(2) are contrary to the statutory language and amount to double jeopardy warranting application of the plain-error doctrine. Accordingly, we vacate Dancy’s conviction that coincides with Union County Justice Court Arrest Warrant 7036219.

¶35. Double jeopardy “protects against multiple punishments for the same offense.” *White v. State*, 702 So. 2d 107, 109 (Miss. 1997) (internal quotation marks omitted) (quoting *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076, 23 L. Ed. 2d 656 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989)). This Court has unequivocally stated that ““the protection against double jeopardy is a fundamental right . . . .”” *Rowland v. State*, 42 So. 3d 503, 508 (Miss. 2010) (emphasis omitted) (quoting *Graves v. State*, 969 So. 2d 845, 846–47 (Miss. 2007)).

¶36. Even though Dancy did not claim this error on appeal, “this Court ‘has noted the

existence of errors in trial proceedings affecting substantial rights of the defendants although they were not brought to the attention of the trial court or of this Court.” *Cozart v. State*, 226 So. 3d 574, 581 (Miss. 2017) (quoting *Grubb v. State*, 584 So. 2d 786, 789 (Miss. 1991)). Rule 28(a)(3) of the Mississippi Rules of Appellate Procedure provides that this court “may, at its option, notice a plain error not identified or distinctly specified.” Miss. R. App. P. 28(a)(3). “When an error impacts a fundamental right of the defendant, ‘procedural rules give way to prevent a miscarriage of justice,’ requiring this Court to address issues on plain-error review and correct any fundamental violations.” *Cozart*, 226 So. 3d. at 581 (quoting *Gray v. State*, 549 So. 2d 1316, 1321 (Miss. 1989)). “Plain-error review is properly utilized for correcting obvious instances of injustice or misapplied law.” *Swinney v. State*, 241 So. 3d 599, 605 (Miss. 2018) (internal quotation marks omitted) (quoting *Green v. State*, 183 So. 3d 28, 31 (Miss. 2016)).

¶37. Section 97-41-16(2)(a) makes it a misdemeanor for a person to “intentionally or with criminal negligence wound, deprive of adequate shelter, food or water, or carry or confine in a cruel manner, any domesticated dog or cat . . . .” Miss. Code Ann. § 97-41-16(2)(a) (Rev. 2014). Subsection (d) of that same section provides that,

For purposes of this section, one or more alleged acts of the offenses of simple cruelty to a dog or cat or aggravated cruelty to a dog or cat, committed against one or more domesticated dogs or cats, *or any combination thereof*, shall constitute a single offense if the alleged acts occurred at the same time.

Miss. Code Ann. § 97-41-16(2)(d) (Rev. 2014) (emphasis added). According to the statute’s plain language, cruelty to a combination of dogs and cats occurring at the same time “shall constitute a single offense.” Miss. Code Ann. § 97-41-16(2)(d) (Rev. 2014).

¶38. In this case, Dancy received two convictions under Section 97-41-16(2)(a): one for simple cruelty to his four cats and one for simple cruelty to his three dogs. Both of Dancy’s violations were alleged to have occurred at the same time—“on or about the 26th day of July, 2017.” This is, likewise, supported by the evidence presented at trial.

¶39. Because the statute makes Dancy’s conduct “a single offense,” the State cannot punish Dancy twice for the same offense without violating his right against double jeopardy. Dancy should have received only one conviction under Section 97-41-16(2)(a)—simple cruelty committed against a combination of dogs and cats occurring on or about July 26, 2017. “Plain-error review is properly utilized for ‘correcting obvious instances of injustice or misapplied law.’” *Smith v. State*, 986 So. 2d 290, 294 (Miss. 2008) (quoting *Newport v. Fact Concerts*, 453 U.S. 247, 256, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981)). Being convicted of a crime for which you cannot legally be convicted meets that criteria. We utilize plain-error review to correct this misapplication of the law. Accordingly, we vacate Dancy’s second conviction under Section 97-41-16(2)(a) that coincides with Union County Justice Court Arrest Warrant 7036219.

### CONCLUSION

¶40. We affirm the circuit court’s permanent forfeiture and reimbursement orders because those orders were supported by substantial evidence. Furthermore, the circuit court did not abuse its discretion by allowing Dr. Davis Hunt to testify at trial. We affirm Dancy’s conviction under Section 97-41-7, and we affirm Dancy’s conviction under Section 97-41-16(2)(a) that coincides with Union County Justice Court Arrest Warrant 7036216. However,

we find that Section 97-41-16(2)(a) makes Dancy's cruelty to his dogs and cats one offense. As a result, we vacate Dancy's second conviction under Section 97-41-16(2)(a) that coincides with Union County Justice Court Arrest Warrant 7036219.

¶41. **AFFIRMED IN PART AND VACATED IN PART.**

**KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., CONCURS WITH SEPARATE WRITTEN OPINION.**

**RANDOLPH, CHIEF JUSTICE, CONCURRING:**

¶42. I fully concur with Parts I, II, and III. I acquiesce to Part IV of the Court's opinion and judgment *dubitante*. A sound argument could be made that a miscarriage of justice was avoided when the circuit court suspended fines for all of Dancy's misdemeanor convictions. The convictions reversed in Part IV were not raised as error before the trial court or this Court. In *Cozart v. State*, we recognized that "the plain-error exception to the contemporaneous-objection rule is to be 'used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.'" *Cozart v. State*, 226 So. 3d 574, 581 (Miss. 2017) (internal quotation marks omitted) (quoting *United States v. Young*, 470 U.S. 1, 15, 105 S. Ct. 1038, 1046, 84 L. Ed. 2d 1 (1985)).