

# 2008-KA-01621-COAR+

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## REPLY ARGUMENT

### **THE DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION, AMENDMENT FOURTEEN, AND THE MISSISSIPPI CONSTITUTION, ART. 3, SECTION 14, PROHIBIT CONVICTION FOR USING AN ELDERLY PERSON'S RESOURCES IN AN "ILLEGAL" OR "IMPROPER" MANNER.**

Appellant, Vanessa Decker, a financially impoverished person, used her mother's money to care for Decker's tragically-injured son who had failed in a suicide attempt. The State conceded that Decker's mother consented to this use of the money. Nevertheless, the State successfully prosecuted Decker on the basis that Miss. Code Ann. § 43-47-5(1), outlaws the "illegal" or "improper" use of a "vulnerable" person's money, and this use of the money is "illegal" or "improper."

The Appellee's brief never addresses the issue of how Decker was supposed to know it was "illegal" or "improper" to use her mother's money, with her mother's consent, to care for the mother's grandson. The State's brief fails to distinguish *Schad v. Arizona*, 501 U.S. 624 (1991), which said:

The axiomatic requirement of due process that a statute may not forbid conduct in terms so vague that people of common intelligence would be relegated to differing guesses about its meaning, see *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 619, 83 L.Ed. 888 (1939) (citing *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127-128, 70 L.Ed. 322 (1926)), carries the practical consequence that a defendant charged under a valid statute will be in a position to understand with some specificity the legal basis of the charge against him. Thus, it is an assumption of our system of criminal justice

“so rooted in the traditions and conscience of our people as to be ranked as fundamental,” *Speiser v. Randall*, 357 U.S. 513, 523, 78 S.Ct. 1332, 1340-1341, 2 L.Ed.2d 1460 (1958) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934)), that no person may be punished criminally save upon proof of some specific illegal conduct. . .

501 U.S. at 632-33.

To defend the unfairness of this prosecution, the State invoked this Court’s reluctance to strike down State statutes, by observing that this Court, through Justice Easley, has said he would do so only if it entertained no “reasonable doubt” about the matter. *Edwards v. State*, 800 So.2d 454 (Miss. 2001), had no similarity to this case, since the statute there did not require the accused to guess at what crucial statutory terms meant. The statute at issue in *Edwards* defined a “dwelling house” as being “every building joined to or immediately connected with or being part of a dwelling house.” Miss. Code Ann. § 97-17-31 (2000) cited at 800 So.2d at 462.<sup>1</sup>

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<sup>1</sup> The *Edwards* “reasonable doubt” test of the constitutionality of a State’s statute is suspect when gauging State’s statutes against the United States Constitution. The Supremacy Clause of the United States Constitution, Art. 6, states “This Constitution . . . shall be the supreme law of the land. . . Anything in the Constitutional laws of any State to the contrary, notwithstanding,” actually prohibits some type of “reasonable doubt” standard being applied to determine that State’s laws do not contravene the United States Constitution. Such a quote of “reasonable doubt standard” would make a the federal Constitution inferior to State law, since the federal Constitution would be applied only if it were demonstrated beyond a “reasonable doubt” that it should be applied. This does not put the State law and federal Constitution on equal footing. By virtue of the Supremacy Clause, the reasonable doubt standard cannot be applied to uphold the constitutionality of this statute. See, *Gibbons v. Ogden*, 9 Wheat. 1, 22 U.S. 1, 211, 6 L.Ed. 23 (1824)(The Supremacy Clause commands that state laws that “interfere with, or are contrary to the laws of Congress . . . must yield” to federal laws); *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 443 (7th Cir.2003)(“A conflict between state and federal law, even if not over goals but merely over methods of achieving a common goal, is a clear case for invoking

When a statute defines a “dwelling house” as including structures “attached to it,” and when the burglary at issue is of a structure attached to a dwelling house, the accused has been given notice that it is an unlawful act to burglarize the structure. On the other hand, Decker had no notice that utilizing her money for the benefit of her son and with the grandmother’s consent is “illegal” or “improper.” Many people would believe that such a use of one’s money is “proper” and “legal,” and such a use here on earth will lay up treasures in heaven.<sup>2</sup>

The Defendant takes solace in the fact that a Delaware trial court (*State v. Sailar*, 684 At. 2d 1247 (Del. Super 1995)) upheld the constitutionality of a statute which contained similar language making it a crime to make an “illegal” or “improper” use or management of the funds of a disabled person.

However, there is a dramatic difference, both in the facts of *Sailar* and the statutory language. As to the facts, *Sailar* was not a case, as is this one, where an adult was, with the consent of the vulnerable adult, using the vulnerable adult’s money for the benefit for the vulnerable adult’s severely-injured grandson. Rather, in *Sailar*, the criminal defendant had intentionally used his influence over the

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the [Supremacy Clause] to resolve the conflict in favor of federal law”).

<sup>2</sup>“But lay up for yourselves treasures in heaven, where neither moth nor rust doth corrupt, and where thieves do not break through nor steal.” Matthew 6:20.

vulnerable adult to cause the vulnerable adult to make a will for the benefit of the criminal defendant. Furthermore, the State relied upon statutory language, which required as an element of offense that there be an “intentional” exploitation of adult for the benefit of the criminal defendant.

Here, since the Court permitted the prosecution to delete at trial any requirement that the offense be committed without the consent of the vulnerable adult, the prosecution eliminated a *mens rea* requirement, which the Delaware trial court held to be an important part of its analysis. It is one thing to uphold a criminal conviction where one has used his influence to cause a vulnerable adult to make a will in his favor. It is an altogether different thing, to hold one guilty of a criminal offense when the vulnerable adult gives her consent and agrees to utilize her money to pay medical expenses of a beloved grandchild. Decker, as the vulnerable adult’s loving child, is far more committed to her best interests than is any prosecutor.

Of course, absent the State’s amendment of the indictment at trial, there would be no constitutional infirmity. Anyone would reasonably know that a statute which makes it a crime to use a vulnerable adult’s money without her consent is perfectly constitutional and fair. However, the State amended the indictment at trial to delete the requirement that the use of the money be without the vulnerable adult’s consent and, by doing so, left the jury without meaningful guidelines as to what was

“illegal” or “improper.”

Accordingly, under the facts of this case, the charge is unconstitutionally vague because of the State’s eleventh-hour amendment of the indictment. By allowing the jury to convict if it found Decker’s acts were “illegal” or “improper,” the prosecutor left room for a conviction, even if the jury did not agree on what acts of defendant were “illegal” or “improper.” See *U.S. v. Gipson*, 553 F.2d 453, 458-459 (5th Cir. 1977)(“Thus, under the instruction, the jury was permitted to convict Gipson even though there may have been significant disagreement among the jurors as to what he did. The instruction was therefore violative of Gipson's right to a unanimous jury verdict”).

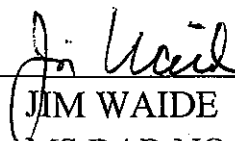
### **CONCLUSION**

This case should be reversed and the indictment dismissed.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

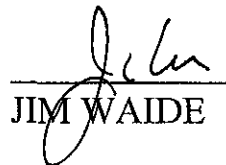
I, Jim Waide, attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing, as well as a PDF-formatted CD, to the following:

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THIS the 18<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
JIM WAIDE

**MISSISSIPPI SUPREME COURT  
MISSISSIPPI COURT OF APPEALS**

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**NO. 2008-KA-01621-COA**

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**VANESSA FRANCES DECKER**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**CERTIFICATE OF COMPLIANCE**

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Pursuant to Miss. R. Civ. P. 32, the undersigned certifies this brief complies with the type-volume limitations of Rule 32.

1. Exclusive of the exempted portions in Rule 32(c), the brief contains:

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4. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Rule 32, may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

This, the 28 day of January, 2010.

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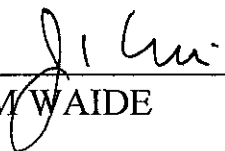
I, Jim Waide, attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing, as well as a PDF-formatted CD, to the following:

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