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CRIMINAL

Gilbert v. State, 2025 Ark. App. 345 **[speedy trial; arrest]** Appellant was convicted of first-degree battery. On appeal, the appellant argued that the circuit court erred in denying his motion to dismiss for lack of speedy trial. Arkansas Rule of Criminal Procedure 28.1 establishes that there is a twelve-month limitation period for bringing a defendant to trial. Arkansas Rule of Criminal Procedure 28.2(a) provides that the time for trial shall commence running from the date of arrest or service of summons. Here, in November of 2018, a Pine Bluff Police detective shackled and questioned the appellant at the detective's office about a shooting that had occurred, but ultimately released him. On January 31, 2019, the State filed a criminal information charging appellant with first-degree battery and as a habitual offender. On October 21, 2022, appellant was served an arrest warrant for first-degree battery. On July 21, 2023, appellant moved to dismiss for lack of speedy trial. The State asserted on appeal that appellant's speedy-trial rights attached on October 21, 2022, when he was served with an arrest warrant and taken into custody, and that the speedy-trial period had therefore not expired when appellant filed the motion on July 21, 2023. In construing the rule just as it reads and giving "arrest" its ordinary and usually accepted meaning, the appellate court found that appellant was arrested on November 18, 2018. The detective put appellant in a separate room and shackled him to a chair. Additionally, the detective Mirandized and interrogated

appellant, and he testified that appellant was in custody and not free to leave. Thus, the appellant was arrested on November 18, 2018, for purposes of commencing the time for speedy trial. Accordingly, the time from November 18, 2018, the date of appellant's arrest, to July 21, 2023, the filing of appellant's motion to dismiss, exceeded the requisite 365-day period, and the State did not argue that excusable periods brought the time within 365 days. (Guynn, A.; 35CR-19-50; 6-4-25; Abramson, R.)

Rice v. State, 2025 Ark. App. 364 **[inconsistent conviction]** Appellant was convicted by a jury of committing a terroristic act causing serious injury or death in violation of Ark. Code Ann. § 5-13-310(a)(1) and manslaughter, Ark. Code Ann. § 5-10-104(a)(3), with a firearm enhancement for both. The jury acquitted him of second-degree murder. On appeal, appellant argued that the jury's finding that he committed a terroristic act by shooting at a conveyance which is being operated or which is occupied by another person with the purpose to cause injury to another person was inconsistent with its finding that he committed manslaughter by recklessly causing the death of the victim. Arkansas Code Annotated § 5-1-110(a)(3) prohibits inconsistent verdicts of conviction when the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. However, the defendant may not be convicted of more than one offense if inconsistent findings of fact are required to establish the commission of the offenses. The general rule in shooting cases is one shot, one crime. Where there is a single impulse, only one charge lies, but if there are separate impulses, separate charges lie, even if all are part of a common stream of action. Here, the appellant was convicted of committing a terroristic act and manslaughter for shooting at and killing the victim during a shootout at a gas station. The appellant and his friends shot at the victim while he was in his car, and continued shooting at the victim as he exited his car. The victim was hit by three bullets, two of which were consistent with the .40-caliber rounds appellant was firing. The evidence did not conclusively show whether any bullets hit the victim while he was inside his car or after he exited and ran away. The possibility that the jury convicted the appellant of one offense as an accomplice (which the verdict forms would not reflect) was also relevant in review for inconsistency. The jury might have concluded that the appellant caused serious physical injury to the victim when he was in the car, Ark. Code Ann. § 5-13-310(b)(2), but fired the fatal shot after he got out. Each shot that injured the victim could ground a separate conviction, with no consistency in mens rea required, even if they all hit when he was inside the car. The appellant's convictions were not necessarily for the "same conduct" under Ark. Code Ann. § 5-1-110(a), so the statute's prohibition on inconsistent findings would not apply. Even if Ark. Code Ann. § 5-1-110(a)(3) applied, appellant's convictions did not require inconsistent findings because proof of purposeful conduct was sufficient to sustain a conviction for reckless manslaughter under Ark. Code Ann. § 5-2-203(c)(2). (Whatley, K.; 60CR-21-992; 6-4-25; Harrison, B.)

Knox v. State, 2025 Ark. App. 386 **[evidence; purpose to deliver]** A jury found appellant guilty of possession of drug paraphernalia. On appeal, the appellant argued that evidence of a prior drug-related conviction from 2014 was impermissibly admitted, prejudicing her. Arkansas Code Annotated § 5-64-420(a)(2) provides that purpose to deliver may be shown by a person possessing "a record indicating a drug-related transaction." "Record" is not defined for purposes of this statute; therefore, the appellate courts give it its plain and ordinary meaning. "Record" is defined in Black's Law dictionary as "[a] documentary account of past events, [usually] designed to memorialize those events"; and as "information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form." Here, the circuit court admitted the evidence of the prior conviction, reasoning that the evidence was admissible under Ark. Code Ann. § 5-64-420(a)(2). The circuit court reasoned that "record" meant "criminal record," as indicated by its statement that the "prior record" meant the "prior conviction." However, when interpreting a statute, the courts will not read into it language that was not included by the legislature. Moreover, in Black's Law Dictionary, a "criminal record" is "[a]n official record kept by the police of any crimes a person has committed." Accordingly, the circuit court erred when it admitted evidence of appellant's past conviction under Ark. Code Ann. § 5-64-420(a)(2). (Petro, K.; 26CR-22-603; 6-4-25; Murphy, M.)

DOMESTIC RELATIONS

Evans v. Evans, 2025 Ark. App. 362 **[motion to modify]** The circuit court entered an order denying appellant's motion to modify. On appeal, appellant argued that the circuit erred. Here, the parties originally lived in Bryant, with the children attending private school in Little Rock. Appellant moved to Hot Springs, while appellee moved to Maumelle after the divorce decree was entered. During the school year, appellant had the children every Wednesday overnight, Thursdays after school until 8:30 p.m., and every other weekend from Friday after school until Sunday at 6:00 p.m. Appellant argued that the parties' schedule should be modified to be less disruptive for the minor children having them consistently with one parent for five consecutive days at a time rather than back and forth along I-430, I-30, and Highway 70 on Thursday and Sunday nights. The circuit court reviewed the evidence before it, noting that appellant had moved farther away from the children's school, while appellee moved closer to the children's school. The appellate court found the facts here to be distinguishable from *Nalley v. Adams*, 2021 Ark. 191, because in *Nalley,* the parent seeking more time had moved closer rather than farther away from the child. Here, the appellant moved farther away, but not so far away that it would be impossible for his time with the children to be exercised under the parties' agreement and prior orders of the court. The evidence before the appellate court supported that the circuit court considered the evidence before it in making a best-interest determination, even though the circuit court did not utilize the exact words. The appellate courts do not require a circuit court to use "magic words" if it is obvious that the circuit court considered the child's best interest. Finally, the circuit court concluded, "I think they

made an agreement that was in the best interest of the children," thus demonstrating that it did consider the best interest of the children in its ruling. Because the circuit court weighed the evidence before it, assessed the credibility of the witnesses, and evaluated the best interest of the children in its ruling, the circuit court did not err in denying appellant's motion to modify. (Casady, K.; 63DR-18-270; 6-4-25; Gladwin, R.)

JUVENILE

Burns, Jr. v. Ark. Dep't of Human Servs., 2025 Ark. App. 367 **[TPR – best interest; adoptability; potential harm]** Appellant appealed the termination of his parental rights to his 13-year-old daughter, M.C., arguing the circuit court erred in finding termination was in her best interest. While he did not challenge the statutory grounds for termination, he asserted that M.C.'s complex behavioral history rendered her unadoptable and that Appellee failed to prove otherwise. The circuit court heard credible testimony from M.C.'s long-time caseworker, who detailed the child's significant progress, emotional stability, and adoptability despite her trauma history. Conversely, Appellant had participated in the case for only six of its thirty-one months, had recent positive drug and alcohol screens, and admitted he was not ready to assume custody. The court also found his testimony lacked credibility. The appellate court affirmed, holding that the circuit court properly considered both the likelihood of adoption and potential harm in returning the child to Appellant's custody and did not clearly err in determining that termination was in M.C.'s best interest. (Layton, S.; CV-25-83; 6-4-25; Harrison, B.)

Huggler v. Ark. Dep't of Human Servs., 2025 Ark. App. 379 **[TPR – best interest; relative placement; preservation]** Appellants appealed the termination of their parental rights to their daughter, arguing that termination was not in her best interest because she had been placed with relatives and maintaining family ties was preferred. Neither parent challenged the statutory grounds for termination on appeal. Appellant mother asserted that continued placement with relatives was a less restrictive alternative, but the appellate court found the argument unpreserved and unsupported, as no relative had intervened or offered long-term placement. Appellant father, who was incarcerated and absent from the termination hearing, raised a similar best-interest argument for the first time on appeal, rendering it unpreserved. The court noted both parents' persistent issues with drug use, domestic violence, and noncompliance with court orders. The circuit court's findings that the child was adoptable and faced potential harm if returned to either parent were supported by the record. (Johnson, S.; CV-25-59; 6-4-25; Thyer, C.)