

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHRISTOPHER JOHNSON

APPELLANT

V.

NO. 2008-KA-1542-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

On Direct Appeal from the Circuit Court of Warren County, Mississippi

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF INTERESTED PERSONS

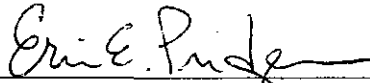
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Christopher Johnson, Appellant
3. Honorable Dewayne Richardson, District Attorney
4. Honorable Ashley Hines, Circuit Court Judge

This the 21st day of April, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 
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STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUE

THE TRIAL COURT ERRED IN FAILING TO GRANT JOHNSON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION OF FELON IN POSSESSION OF A FIREARM.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Washington County, Mississippi, where the Appellant, Christopher Johnson, was convicted of possession of a firearm by a convicted felon. Mr. Johnson was also charged with one count of aggravated assault, but the jury acquitted him of this charge. Honorable Ashley Hines, Circuit Judge, presided over the jury trial on August 19, 2008. Mr. Johnson was subsequently sentenced to ten (10) years in the custody of the Mississippi Department of Corrections.

FACTS

On August 25, 2007, Vickie Carter ("Carter") went to pick up her son, Christopher (CJ) who was at her sister, Angela Ford's house. (Tr. 85). Before Carter left to pick up CJ, CJ's father, Christopher Johnson ("Johnson"), approached her vehicle calmly and started up a conversation. (Tr.

86). Eventually, the conversation ended and Carter headed over to her sister's house. (Tr. 86-87).

Once Carter arrived at her sister's house, she told her son to get in the car. (Tr. 87-88). Before CJ got into the car, Johnson pulled up in his truck, got out, and approached Carter's vehicle. (Tr. 88). According to Carter, Johnson reached into her car through the open driver's side window and tried to grab her cell phone. *Id.* Johnson was not able to get Carter's phone and after he tried to open the door, Carter put the car in reverse. (Tr. 89). Carter testified that as she reversed down the street, Johnson chased after her and pulled a pistol. *Id.* Carter heard a "pow . . . like the fire from the gun." (Tr. 90). Johnson was not very far from her vehicle when she heard the shot. (Tr. 100). Neither Carter nor her vehicle were struck. *Id.*

Carter put the car in drive and drove off, leaving her son. (Tr. 91). Moments later, Carter noticed that Johnson was following her and that he had their son in the truck with him. (Tr. 91-92). Officer Juan Overton ("Officer Overton") and Officer Gerald Evans ("Officer Evans") noticed the two vehicles moving at a high rate of speed, but could not pursue due to car trouble. (Tr. 104-105). The two officers received a dispatch concerning the two vehicles and made their way to Ford's house to investigate. (Tr. 107-108, 116). Once they arrived, the officers spoke with Angela and Levi Ford, Carter's sister and brother-in-law (Tr. 108). Levi Ford told the police he heard something that, ". . . sounded like a shot," while his wife Angela told the police she saw a gun. (Tr. 142, 150). After speaking with Angela and Levi, the police searched the scene for evidence. (Tr. 108).

Officer Evans and Officer Overton combed the scene for evidence and found one (1) shell casing. (Tr. 109). Officer Overton testified that it was not unusual to find shell casings in the street in that area. (Tr. 111). The shell casing found at the scene was sent to the Mississippi Crime Lab and analyzed for fingerprints. (Tr. 125-126). No fingerprints were found on the shell casing. (Tr. 131,133). Afterwards, Officer Evans and Officer Overton went to Johnson's residence and asked

to search his vehicle. (Tr. 111,120). The search did not turn up a weapon or any ammunition. *Id.* Furthermore, the police never located a firearm and the State did not produce one at trial. (Tr. 121).

SUMMARY OF THE CASE

On August 25, 2007, an altercation occurred between Christopher Johnson and Vickie Carter outside the home of Angela and Levi Ford, Vickie's sister and brother-in-law. Carter alleged that Johnson committed an aggravated assault during the altercation by shooting at her. The jury correctly found there was insufficient evidence to sustain Vickie's allegations that Johnson shot at her. The jury, however, convicted Johnson of being a felon in possession of a deadly weapon. This conviction resulted in a grave injustice as the evidence presented at trial was insufficient to find that Johnson indeed possessed a weapon on the day in question.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO GRANT JOHNSON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION OF FELON IN POSSESSION OF A FIREARM.

i. Standard of Review

The Court reviews challenges to the legal sufficiency of evidence in the light most favorable to the verdict. *Bell v. State*, 910 So. 2d 640, 646 (Miss. Ct. App. 2005). The Court accepts the evidence supporting the guilty verdict as true and gives deference to the State for all reasonable inferences that could be drawn from the evidence. *Reed v. State*, 956 So. 2d 1110, 1111 (¶ 6) (Miss. Ct. App. 2007). However, the Court must reverse the jury's guilty verdict when, in respect to one of more of the elements of the charged offense, reasonable and fair-minded jurors could have only

found the accused not guilty. *McClain v. State*. 625 So. 2d 774, 778 (Miss. 1993).

ii. The sole “evidence” that Johnson had a weapon came from the testimonies of biased witnesses.

There was insufficient evidence presented to the jury to find Johnson guilty of being a felon in possession of a weapon. The State never presented any physical evidence that Johnson ever possessed a weapon. (Tr. 121) The police never found any weapons when they searched Johnson or his automobile. Furthermore, the shell casing that was found in front of the Fords’ home was thoroughly tested by the Mississippi State Crime Lab and Johnson’s fingerprints were not found anywhere on the casing. (Tr. 126-26) The sole “evidence” that the State offered to prove Johnson possessed a weapon came from the complainant - Carter, her sister and her brother-in-law, all interested and biased witnesses.

In order to sustain in conviction in Count II of the indictment, the State was required to prove that (1) Johnson was a convicted felon and, (2) Johnson possessed a firearm. (RE 4) Mississippi Code Annotated Section 97-35-5 (Supp. 2008). Prior to trial, the defense stipulated that Johnson was a convicted felon. (Tr. 2) The State was then only required to prove that, on August 25, 2007, Johnson possessed a firearm. Possession may be proven by showing actual or constructive possession of the firearm. *Short v. State*, 929 So. 2d 420, 427 (¶21) (Miss. Ct. App. 2006). At trial, the State attempted to show that Johnson had actual possession of a firearm on the date in question.

In cases where the Court has sustained convictions based on alleged actual possession of the deadly weapon by a felon, the police have either recovered the deadly weapon and/or there are disinterested witnesses available to testify about the weapon possession. One such example is *Jones v. State*, 920 So. 2d 465, 473 (¶¶ 23-24) (Miss. 2006). Jones argued that the State did not prove he possessed a firearm on the day in question. According to the complaining witness, Jones placed a

gun to her head and forced her into a van. *Jones*, 920 So. 2d at 468 (¶4). After she attempted to escape, Jones swung the van around and hit the young lady with the hood of the car. *Id.* at 468-69 (¶6). A passerby came to assist the young lady and witnessed Jones standing over the young lady with a gun in his hand. *Id.* at (¶7). Jones was arrested for aggravated assault, kidnaping and possession of a firearm by a convicted felon. *Id.* at (¶11). The Court found there was sufficient evidence to sustain the felony possession of the firearm, based on two eyewitness' testimonies, the actual gun produced as evidence, and the proof that the weapon was recovered when Jones was later arrested at another location. *Id.* at 473 (¶24).

Likewise, in *Griffin v. State*, 883 So. 2d 1201, 1203 (¶7) (Miss. Ct. App. 2004), Griffin's conviction of being a felon in possession of a weapon was affirmed based, in part, on the actual gun presented at trial and the available witnesses that identified the gun used by Griffin on the day of the shooting. Griffin was arrested for aggravated assault and possession of a firearm by a convicted felon for shooting several times at his live-in girlfriend. *Griffin*, 883 So. 2d at 1202 (¶¶1-2). The police responded to the shooting and were able to recover the handgun approximately fifteen to twenty feet directly behind Griffin's house. *Id.* at (¶3).

In these case where the Court has sustain convictions of actual possession of a weapon by a convicted felon, there was direct proof that the felon possessed the gun. Even in cases where the actual weapon was not recovered, there has still existed some additional evidence linking the felon to weapon possession, aside from the mere testimony of biased witnesses.

In *Fort v. State*, 752 So. 2d 458 (Miss. At. App. 1999), the defendant was charged with possession of a deadly weapon by a convicted felon after being arrested for his involvement in a neighborhood drive-by shooting. Although several witnesses testified to having observed Fort shoot at the house, the police were unable to find any bullet holes or shell casings. *Fort*, 752 So. 2d at 460

(¶6). However, prior to trial, Fort confessed to police that he committed the shootings. *Id.* at (¶9). He later recanted the confession. Nonetheless, the Court affirmed Fort's conviction based, in part, to his alleged confession. *Fort*, 752 So. 2d at 463 (¶21).

Hope v. State, 840 So. 2d 747, 748-49 (¶¶2-5) (Miss. Ct. App. 2003), is yet another example of a case that required more than mere biased witness testimony in order to convict the felon defendant of being in possession of a weapon. Hope was arrested for shooting an innocent bystander during an altercation with another man. *Id.* at 749(¶4). On appeal, Hope argued that the shell casing was not properly admitted into evidence because the gun was never recovered. *Id.* at (¶7). Although addressed in a weight argument and not regarding the sufficiency of the evidence, the Court affirmed Hope's conviction based on the following reasons: (1) Hope admitted in his brief that he had a gun at the time of the shooting, (2) a bullet of the same caliber as the shell casing was removed from the victim, (3) a person was shot with a bullet that matched a shell casing that was found at the crime scene in the location where the defendant stood and displayed a weapon. *Id.* at (¶8).

In all of these cases, there was some evidence presented, in addition to mere witness testimony, to corroborate the witnesses' claims that the defendant possessed a weapon. Johnson's case is completely void of such evidence. First, there was Carter's testimony that she witnessed a gun as she reversed her car in the direction away from Johnson. (Tr. 89) In acquitting Johnson of the aggravated assault charge, the jury correctly found that there was not sufficient evidence to sustain Carter's claims that Johnson fired a weapon at her car. There were no bullet holes found in Carter's vehicle, the police never discovered any weapon and there were no shell casings found with Johnson's fingerprints. (Tr. 100, 125-26).

In addition to Carter's biased testimony, the only other evidence that Johnson possessed a weapon came from the testimonies of Carter's sister and brother-in-law, Angela and Levi Ford. Levi

was busy working on an automobile at the time of the alleged incident and admitted that he did not see Johnson possess any weapon . (Tr. 142) He testified that he heard what sounded like a “shot” and then saw Johnson head toward his direction to pick up his son. Arguably, if Johnson had a weapon in his hand moments before walking from the street to the house to pick up his son, Levi would have seen the weapon.

The testimonies of two sisters, Vickie Carter and Angela Ford, should not have been sufficient evidence to fulfill the second element of the charged offense - felon in possession of a deadly weapon. Carter obviously had a previously volatile relationship with Johnson, as evidenced by Carter and Johnson’s disagreement prior to Carter arriving at Ford’s house to pick up her son on August 25th. Ford was a very interested and biased witness. Her testimony, in addition to her sister’s testimony, essentially sent Johnson to prison for ten years. No reasonable juror should have found that there was sufficient evidence to prove Johnson possessed a deadly weapon on August 25, 2007.

CONCLUSION

Based on the insufficient evidence presented at trial, Johnson requests this Honorable Court to reverse and render the trial court’s decision in this case. In the alternative, Johnson requests that this Court reverse the trial court’s decision and remand this case to the trial court for a new trial.

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CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Christopher Johnson, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Ashley Hines
Circuit Court Judge
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This the 21st day of April , 2009.



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