

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SHAUNTELL SUMMERALL

APPELLANT

V.

NO. 2009-KA-0110-COA *hjt*

STATE OF MISSISSIPPI

APPELLEE

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. Shauntell Summerall, Appellant
3. Honorable Jon M. Weathers, District Attorney
4. Honorable Robert Helfrich, Circuit Court Judge

This the 16th day of September, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: *Justin T. Cook*

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REPLY BRIEF OF THE APPELLANT

STATEMENT REGARDING ORAL ARGUMENT

In accordance with M.R.A.P. Rule 34(b), the Appellant requests oral argument. This case involves the constitutionality of Mississippi's possession of a weapon by a convicted felon statute as it pertains to the prohibition of "dirk knives." This case centers around the definition of the term "dirk knife," which is not defined by statute. Officers testified as to their own definitions, which directly conflicted with every recognized definition (by dictionary or other reference) of the term. Ultimately, the issues this Court must decide are: (1) Whether Mississippi's statute prohibiting the possession of "dirk knives" by convicted felons is unconstitutionally vague?; (2) Whether definitional testimony wholly contradicted by all credible sources of information is sufficient evidence to establish the definition of the term "dirk knife."; (3a) if so, whether such definitional

opinion testimony, directly contradicted by the dictionary and all other credible sources, renders a guilty verdict against the overwhelming weight of the evidence; (3b) And, if not, can the statute not be unconstitutionally vague where its prohibitions are not clearly defined by statute and are contrary to all other definitions of the items prohibited? The Appellant submits that oral argument would significantly aid the resolution of these issues.

REPLY ARGUMENT

ISSUE ONE: The fact that the Supreme Court has never seen it fit to define the term “dirk knife” does not make the term recognizable and non-antiquated.

The State argues that, because the Mississippi Supreme Court has used the term “dirk knife” to describe factual situations, without defining the term, it is not an unrecognizable term. Brief for the Appellee P. 5. This assertion is flawed on multiple levels.

First, the State cites no authority for the proposition that the Mississippi Supreme Court’s failure to define a term renders it recognizable. Simply because the State asserts something does not make it so.

In a string citation, the State relies on cases which have absolutely no bearing on the issue before this Court. *Holmes v. State*, 537 So. 2d 882 (Miss. 1988), was a felon in possession of a dirk knife case. However, the Supreme Court was never asked to define a dirk knife. Rather, the Court reversed the defendant’s conviction because of improper comments by the prosecutor concerning the defendant’s failure to call a witness. *Holmes v. State*, 537 So. 2d 882, 884 (Miss. 1988). *Belina v. State*, 87 So. 2d 919, 920 (Miss. 1956) does mention the term “dirk knife,” however, there was no discussion concerning the knife’s properties or about whether the knife in question was a dirk knife, presumably, because *Belina* was a murder case; Consequently, it was irrelevant what type of knife the defendant in *Belina* possessed; it could have been a steak knife, a chef’s knife, a butcher

knife, or any other knife; conceivably, the weapon in question could have been a pencil, and the *Belina* Court's analysis would have remained the same. *Duckworth v. State*, 46 So. 2d 787 (Miss. 1950) concerned a conviction for assault with attempt to kill, in which the type of knife used is irrelevant; There, the State simply had to prove that a knife was used in his case. *Shaffer v. State*, 48 So. 2d 545 (Miss. 1950) was another murder case where the type of knife was immaterial. *Riley v. State*, 44 So. 2d 455, 456-57 (Miss. 1950) was another murder case. *White v. State*, 29 So. 2d 650 (Miss. 1947) was an armed robbery via exhibition of a pistol and a dirk knife¹; there was no need to analyze whether the knife in question was a dirk knife. *Augustine v. State*, 28 So. 2d 243 (Miss. 1946) was another robbery case where the type of knife used was immaterial. *Craig v. State*, 660 So. 2d 1298 (Miss. 1995), employed the term "dirk knife" in a quotation from *Long v. State*, 52 Miss. 23 (1876). *Craig* involved self-defense instructions, as did *Long*, and the term "dirk knife" was merely used in the quotation. Not only was it unnecessary for the *Craig* Court to define a term that had absolutely no bearing on the case before it, but the case that it cites from nearly one-hundred and fifty years earlier shows the antiquated nature of the term "dirk knife."

The State's assertion that the failure to define "dirk knife" by the Supreme Court shows that the term is recognizable is logically flawed. Just as it is not true that when the Supreme Court defines a term, that term is not recognizable, so is it not true that the Supreme Court's failure to define a term renders it recognizable. In *Robinson Property Group, L.P. v. Mitchell*, 7 So. 3d 240 (Miss. 2009), the Mississippi Supreme Court turned to the dictionary to define the term "exception." Obviously, this is not an antiquated and unused term. Simply put, the Supreme Court's failure to

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Interestingly enough, the *White* Court referred to the alleged dirk knife as a "large dirk-knife." *White*, 29 So. 2d at 650. The knife in question in the case *sub judice* can certainly not be classified as large.

define a term does not render the term constitutionally un-vague to the ordinary citizens of this State.

The State's assumption is based on an incredible and untenable leap in logic.

ISSUE TWO: The State relies on definitions not supported by any evidence besides incorrect assertions by law enforcement.

The State claims that the definition of a "dirk knife" covers a wide variety of knives. Brief of the Appellee P. 8. Respectfully, this is false. A dirk knife is a dirk knife. While there may be different types of dirk knives (according to length and other characteristics), just as there are many different types of guns, the basic distinctive characteristics of a dirk knife remain the same. As noted in pages 8-9 of the Appellant's initial brief, a dirk knife contains specific properties. A dirk is a fixed-bladed knife, with a dagger-like blade. The Appellant was not convicted of possession of a dirk. The Statute in question specifically prohibits the carrying of a "dirk knife." A "dirk knife" is defined as a clasp (or folding) knife with a dirk-like blade. The Appellant possessed a fixed-bladed knife with a single-sided blade. This does not meet any definition of a "dirk knife".

The State asserts, unconvincingly: "Each of the witnesses who testified regarding the type of knife the Appellant possessed testified that according to their understanding of the common and ordinary description of a "dirk knife," that knife in question was, in fact, a dirk knife." (Brief of the Appellee P. 6). In doing so, the State takes the liberty of assuming that the witnesses' mere opinion testimony sufficiently establishes or constitutes the definition of "dirk knife," implicitly including those offered in the "variety of knives" covered by the definition of dirk knives. (Brief of the Appellee P. 8). The State refuses to acknowledge that its witnesses' personal "definition(s)" are at odds with the common, ordinary, dictionary definition of the term. The State presents no refutation of the dictionary definitions of a dirk knife, nor does it recognize the difference between a dirk and a dirk knife. Rather, the State attempts to arguably expand the dictionary definition of a term into

a dirk knife. Rather, the State attempts to arguably expand the dictionary definition of a term into a variety of definitions. The Appellant is unaware and unable to find any instance of the courts of this State (or any other, for that matter) determining that the dictionary was incorrect or wrong when turning to it for purposes of statutory interpretation.

The State also contends that “the knife in question does not cease to become a dirk knife simply because it does not meet every single requirement of every single definition of a ‘dirk knife.’” (Brief of the Appellee P. 8.) In this assertion the State is at least partly correct. The knife in question did not cease to become a dirk knife; metaphysical questions aside, a thing cannot cease to be that which it never was. Not only does the knife that sent Shauntell Summerall to prison for ten years simply fail to meet every single requirement of “every single definition of a dirk knife,” it meets no requirements of any definition of a dirk knife.

As stated in the Appellant’s initial brief, the dictionary (in the absence of a statutory definition) is the appropriate source for this honorable Court to determine the definition of “dirk knives.” In fact, other States frequently turn to dictionaries in order to define terms that are not defined by the legislature by statute. *See, Devires v. State*, 211 P. 3d 1185, (Ariz. App. Div. 1. 2009) (holding if legislature does not define a word in a statute the court considers definitions of respected dictionaries) (citing *Urias v. PCS Health Sys., Inc.*, 118 P. 3d 29 (App. 2005); *See also Houston v. State*, 898 N. E. 2d 358 (Ind. App. 2008) (holding that claim for vagueness hinges upon how ordinary people understand statutory language so consultation of a dictionary is proper); *Dahl-Smyth, Inc. v. City of Walla Walla*, 64 P. 3d 15 (2003) (stating only where no statutory definition is provided does court refer to a words common meaning in dictionary); *People v. Atencio*, 878 P. 2d 147 (Colo. App. 1994) (rejecting vagueness challenge by referring to dictionary definition); *Bingham v. State*, 913 S. W. 2d 208 (Tex. Crim. App. 1995) (holding that courts may resort to use

of dictionary definitions in construing plain meaning of the language of statute); *Sabel v. State*, 282 S. E. 61 (Ga. 1981) (citing two dictionaries to define “deface” because term not defined in statute); *Morton v. State*, 988 So. 2d 698 (Fl. App. 1. Dist. 2008) (citing *State v. Hagan*, 387 So. 2d 943 (Fla. 1980) (holding that in absence of an internal definition in the statute, the court can consider dictionary definition to ascertain its meaning in everyday usage)

ISSUE THREE: The State’s position, if taken to its logical extent, is unworkable and contrary to the spirit of the law.

The conclusions and assertion in the State’s brief are further weakened when taken to their logical extent. Under the State’s reasoning, a dirk knife, a fixed-blade knife with a one sided four inch blade is properly considered a dirk knife based solely on the definitional opinion testimony of a law enforcement officer, notwithstanding that the term “dirk knife” is consistently defined by numerous sources of reference as a folding knife with a dirk or dagger-like blade.

Curiously, law enforcement officers testified that, under their “definition,” a dirk knife was a fixed-bladed knife approximately four inches in length. A butter or steak knife would easily fit that description. It is reasonable to assume that the majority of kitchens in this state have butter or steak knives in them. How many convicted-felons are in possession of a knife which, according to the testimony of these officers, could be construed as a dirk knife, despite every single other source indicating clearly and unequivocally that it is not? What would prevent an officer from testifying that, under his definition, a rubber band gun is a firearm?

It is understandable that certain people have different definitions for different things. However, in matters affecting the liberty of citizens of this State, justice requires that the actual definitions of terms as contained in dictionaries and other official sources, not be ignored and

replaced by subjective, unsupported and factually incorrect “definitions” based on mere opinion testimony tailored to the prosecution’s case.

The State urges this honorable Court to affirm this case based on the speculative, factually-incorrect, and ungrounded assertions by law enforcement that the knife in question is a dirk knife. Should this Court follow the State’s wishes, it would effectively put all felons on notice: butter your bread and cut your steaks with spoons.

Law enforcement agents may not “define” something as being prohibited when all other signs point elsewhere. Allowing such a thing to happen is patently unjust and endorses a grossly inappropriate system where citizens, be they felons or non-felons, are bound to definitions not found in dictionaries, case law, or any other credible source, but, rather, contrived in the subjective interpretation of police officers. The Appellant respectfully contends that the interests of justice demand more.

CONCLUSION

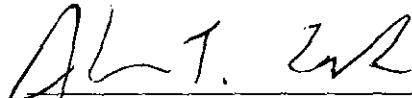
The Appellant herein submits that based on the propositions cited and briefed hereinabove and in the Appellant’s original brief, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and the Appellant’s conviction and sentence should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial on the merits of the indictment on one charge of being a felon in possession of a dirk knife with instructions to the lower court. In the alternative, the Appellant herein would submit that the judgment of the trial court and the conviction and sentence as aforesaid should be vacated, this matter rendered, and the Appellant discharged from custody, as set out hereinabove. The Appellant further states to the Court that the individual and cumulative errors as cited hereinabove are

fundamental in nature, and, therefore, cannot be harmless beyond a reasonable doubt.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

A handwritten signature in black ink, appearing to read "J. T. Cook", written over a horizontal line.

Justin T Cook

COUNSEL FOR APPELLANT