

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACKSON WILLIAMS

APPELLANT

VS.

NO. 2009-KA-0900

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

STATEMENT OF THE FACTS

Officers from the Tunica County Sheriff's Department were called to the intersection of Sears and Anderson Streets at approximately 11:40 p.m. on June 21, 2008. (Transcript p. 41). They found Edward Walls in the back of an ambulance with a stab wound to the abdomen. (Transcript p. 42). After speaking with Mr. Walls, they proceeded to the home of the Appellant, Jackson Williams where they spoke with both the Appellant and with Arthur Love. (Transcript p. 43). Prior to speaking with the Appellant, the officers conducted a pat down search and recovered a knife with red stains on the blade from his pocket. (Transcript p. 43). The Appellant gave a statement indicating that he had stabbed Mr. Walls but that he was acting in self-defense. (Transcript p. 50).

The Appellant was arrested and indicted for aggravated assault and for being a convicted felon in possession of a weapon. During trial, the Appellant stipulated that he was a convicted felon for purposes of the possession charge. (Transcript p. 66). At the conclusion of trial, the Appellant was convicted of both counts. He was sentenced to serve fifteen years in the custody of the Mississippi Department of Corrections with five years of post release supervision for the aggravated

assault conviction. He was sentenced to serve five years in the custody of the Mississippi Department of Corrections for his conviction of being a convicted felon in possession of a weapon. The sentences were ordered to be served concurrently.

SUMMARY OF THE ARGUMENT

The State of Mississippi concedes that the Appellant's conviction for being a convicted felon in possession of a weapon should be reversed as there was insufficient evidence presented at trial establishing that the knife in question was one of the enumerated weapons prohibited by Mississippi Code Annotated §97-37-5. However, his conviction and sentence for aggravated assault should be affirmed.

The Appellant is procedurally barred from arguing that the admission into evidence of his stipulation that he was a convicted felon at the time he was found in possession of the knife was improper. Not only did he agree to the admission of the stipulation, but he did not argue the issue raised on appeal before the trial court either during trial or in his post-trial motions. Procedural bar notwithstanding, the stipulation was properly admitted in accordance with Mississippi law. Furthermore, the Appellant suffered no prejudice by the admission of the stipulation.

ARGUMENT

I. THE STATE OF MISSISSIPPI CONCEDES THAT THE APPELLANT'S CONVICTION FOR BEING A CONVICTED FELON IN POSSESSION OF A WEAPON SHOULD BE REVERSED AS THERE WAS INSUFFICIENT EVIDENCE PRESENTED AT TRIAL ESTABLISHING THAT THE KNIFE IN QUESTION WAS ONE OF THE ENUMERATED WEAPONS PROHIBITED BY MISSISSIPPI CODE ANNOTATED §97-37-5.

The Appellant was convicted of being a felon in possession of a weapon pursuant to Mississippi Code Annotated §97-37-5 which reads in pertinent part as follows:

(1) It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or

any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm unless such person has received a pardon for such felony, has received a relief from disability pursuant to Section 925(c) of Title 18 of the United States Code, or has received a certificate of rehabilitation pursuant to subsection (3) of this section.

(*emphasis added*). This statute only criminalizes the possession of the following knives by a convicted felon: bowie knife, dirk knife, butcher knife, or switchblade knife. The testimony given at trial regarding the pocket knife found in the possession of the Appellant does not establish that it is one of these forbidden knives. As such, the State of Mississippi concedes that the Appellant's conviction for being a convicted felon in possession of a weapon should be reversed.

II. THE APPELLANT IS PROCEDURALLY BARRED FROM ARGUING THAT THE ADMISSION INTO EVIDENCE OF HIS STIPULATION THAT HE WAS A CONVICTED FELON AT THE TIME HE WAS FOUND IN POSSESSION OF THE KNIFE WAS IMPROPER; HOWEVER, PROCEDURAL BAR NOTWITHSTANDING, THE STIPULATION WAS PROPERLY ADMITTED.

The Appellant argues that it was "improper" and "prejudicial" to allow his stipulation that he was a convicted felon at the time he was found in possession of the knife into evidence. (Appellant's Brief p. 9). However, he is procedurally barred from making this argument on appeal as not only did he agree to the admission of the stipulation, but he did not argue the matter before the trial court during trial or in his post-trial motions. The stipulation was made as part of the evidence establishing that he was a convicted felon in possession of a weapon. At the close of the State's case, the Appellant argued that he should have been granted a directed verdict with regard to this charge. He later argued in his Motion for J.N.O.V. or in the Alternative Motion for New Trial that the trial court erred in failing to grant his motion for directed verdict on the charge. He did not, however, argue before the trial court that it was improper for the stipulation to be admitted if the directed verdict were to be granted. It is well-established Mississippi law that issues cannot be argued for the first time on appeal. *Foster v. State*, 639 So.2d 1263, 1301 (Miss. 1994) and *Smith*

v. State, 724 So.2d 280, 319 (Miss.1998). As such, the issue is barred.

Procedural bar notwithstanding, the stipulation was properly admitted. “The admissibility of evidence is within the discretion of the trial court, and absent abuse of that discretion, the trial court's decision on the admissibility of evidence will not be disturbed on appeal.” *Porter v. State*, 869 So.2d 414, 417(Miss. Ct. App. 2004) (citing *McCoy v. State*, 820 So.2d 25, 30 (Miss. Ct. App.2002)). “When the trial court stays within the parameters of the Rules of Evidence, the decision to exclude or admit evidence will be afforded a high degree of deference.” *Id.*

The proper method of establishing the element of “being a convicted felon” when proving that a person is guilty of violating Mississippi Code Annotated §97-37-5 is, to do just as was done in this case, stipulate to the fact that the person was a convicted felon at the time of the possession of the weapon in question. *See Williams v. State*, 991 So.2d 593, 606 (Miss. 2008). Nonetheless, the Appellant argues that “it is impossible to say that [his] jury was not influenced by the knowledge that he was a convicted felon.” However, the Fifth Circuit has rejected a similar argument. *U.S. v. Meriwether*, 486 F.2d 498, 504 (5th Cir.1973). Additionally, as this Court held in *Harris v. State*, there is no impediment to trying multiple counts even though part of the necessary proof on one count would not be admissible in the other counts. 908 So.2d 868, 875 (Miss. Ct. App. 2005).

Moreover, the record does not indicate that the Appellant was in any way prejudiced by the admission of this stipulation. This is especially true when considering that the stipulation not only contained no details regarding the prior conviction, but it also did not specify the specific crime for which the Appellant was previously convicted. Additionally, the Appellant offered no proof whatsoever that he was prejudiced by this stipulation. He only asserts that there was a possibility that the Appellant was prejudiced. Mere assertions, with no proof to support them, are not enough to establish that reversal is required. As this Court has previously held, reversal is only warranted

when a trial court's decision results in prejudice to the accused. *Armstead v. State*, 805 So.2d 592, 596 (Miss. Ct. App. 2001). Moreover, the Mississippi Supreme Court has refused to call even an error of constitutional proportions reversible where there is, like here, overwhelming evidence of guilt. *Williams v. State*, 991 So.2d 593 (Miss. 2008).

Accordingly, this issue is without merit. Therefore, the Appellant's conviction and sentence for aggravated assault should be affirmed.

CONCLUSION

The State of Mississippi concedes that the Appellant's conviction and sentence for being a convicted felon in possession of a weapon should be reversed; however, the State of Mississippi respectfully requests that this Honorable Court affirm the Appellant's conviction and sentence for aggravated assault.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in black ink, appearing to read 'Stephanie B. Wood', written over a horizontal line.

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CERTIFICATE OF SERVICE

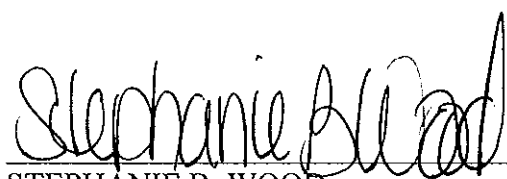
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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