

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACKSON WILLIAMS, JR.

APPELLANT

V.

NO. 2009-KA-0900-COA

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR THE APPELLANT

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REPLY ARGUMENT

ISSUE NO. 2: THE ADMISSION OF EVIDENCE OF WILLIAM'S PRIOR CONVICTION WAS IRRELEVANT AND PREJUDICIAL THEREBY CAUSING IRREPARABLE HARM BY SUGGESTING GUILT TO THE JURY.

The State has conceded that the charge of felon in possession of a deadly weapon was improper, as it concedes that the "weapon" was, in actuality" a small pocket knife. That unlawful charge was the gateway for evidence of another felony, which otherwise would have been inadmissible as irrelevant and highly prejudicial. Thus, according to the principles embodied in the Mississippi Rules of Evidence and expounded upon by the United States Supreme Court in *Old Chief vs. U.S.*, 519 U.S. 172, 117 S.Ct. 644 (1997) When the jury improperly learned Williams was a prior convicted felon, it was seduced into viewing Williams as much more probably guilty. These precepts were carefully discussed in *Old Chief, Id.* :

The term "unfair prejudice," as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged.

Such improper grounds certainly include the one that Old Chief points to here: generalizing a defendant's earlier bad act into bad character and taking that as raising the odds that he did the later bad act now charged (or, worse, as calling for preventive conviction even if he should happen to be innocent momentarily). As then-Judge Breyer put it, "Although ... 'propensity evidence' is relevant, the risk that a jury will convict for crimes other than those charged-or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment-creates a prejudicial effect that outweighs ordinary relevance." *United States v. Moccia*, 681 F.2d 61, 63 (C.A.1 1982). Justice Jackson described how the law has handled this risk:

"Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt.

Not that the law invests the defendant with a presumption of good character, *Greer v. United States*, 245 U.S. 559, 38 S.Ct. 209, 62 L.Ed. 469, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, **it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge.** (Emphasis added) The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice." *Michelson v. United States*, 335 U.S. 469, 475-476, 69 S.Ct. 213, 218-219, 93 L.Ed. 168 (1948)

Old Chief Id., at 180-181. This power to "over persuade" the jury with irrelevant and prejudicial evidence, creates an atmosphere that is toxic to a fair trial and deprives a defendant of a substantial and fundamental right. Accordingly, if Williams were otherwise procedurally barred, as the State has asserted, the admission of improper, irrelevant and highly prejudicial evidence constitutes plain error.

As argued above the rights affected are fundamental and substantial. By conceding that the charge of felon in possession of a deadly weapon was improper, as the weapon was not a deadly weapon, the error was admittedly plain, thereby compelling the trial court to recognize the error on its own. "[T]his Court should review the matter as plain error. 'The plain-error doctrine is implicated when an error occurs at trial which affects substantial rights and results in 'a manifest miscarriage of justice.' This Court held in *Baskin v. State*, 991 So.2d 179, 183(¶ 18) (Miss. Ct.

App.2008) that the ‘failure to object to an allegedly improper statement made during closing arguments will bar appellate review of the issue unless it constitutes plain error.’” *Clark v. State*, 14 So.3d 779, 782 (Miss. App. 2009)


However, an objection to admitting evidence of a prior felony would have been fruitless and nonsensical. Defendant had objected to the charge, to the little pocket knife as being considered a deadly weapon. When that objection was overruled, clearly an objection to the prior felony would have been of dubious utility. But, not so now that it is established that the charge of felon in possession of a deadly weapon was admittedly improper. Thus, it should not be considered a waiver by Defendant, his objection was made and over-ruled when he objected to the knife as a deadly weapon.

Appellant, therefore, respectfully asserts that the judgement on both counts against him be reversed and rendered.

Respectfully submitted,

OFFICE OF INDIGENT APPEALS

By:


W. DANIEL HINCHCLIFF
STAFF ATTORNEY

CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Jackson Williams, Jr., 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 **REPLY BRIEF OF THE APPELLANT** to the following:

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Circuit Court Judge
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Honorable Laurence Y. Mellen
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This the 2nd day of December, 2009.



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