IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACKSON WILLIAMS, JR. — APPELLANT

V. — NO. 2009-KA-0900-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
W. Daniel Hinchcliff, MS Bar No. [redacted]
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200

Counsel for Jackson Williams, Jr.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACKSON WILLIAMS, JR.	**APPELLANT**
V.	**NO. 2009-KA-0900-COA**
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. Jackson Williams, Jr., Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Albert B. Smith, III, Circuit Court Judge

This the 21st day of September, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

W. DANIEL HINCHCLIFF
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39205
Telephone: 601-576-4200

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

RULES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JACKSON WILLIAMS, JR.	APPELLANT
V.	NO. 2009-KA-0900-COA
STATE OF MISSISSIPPI	APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO 1: WHETHER THE EVIDENCE OF POSSESSION OF A "LITTLE POCKET KNIFE" WAS SUFFICIENT TO SUSTAIN THE VERDICT OF A FELON IN POSSESSION OF A PROHIBITED WEAPON.

ISSUE NO. 2 : WHETHER ADMISSION INTO EVIDENCE OF WILLIAM'S PRIOR FELONY WAS IMPROPER AND WAS PREJUDICIAL.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Tunica County, Mississippi, and a judgment of conviction for the crimes of Aggravated Assault and possession of a weapon by a convicted felon against Jackson Williams, Jr., following a jury trial commenced on April 20, 2009, Honorable Albert B. Smith III, Circuit Judge, presiding. Mr. Williams was subsequently sentenced for the crime of aggravated assault to a term of fifteen years with five years post release supervision, and a term of five years for the crime of felon in possession of a weapon, said sentence to run concurrent with the sentence in count one. Jackson Williams, Jr., is currently incarcerated in an institution under the supervision of the Mississippi Department of Corrections.

FACTS

Detective William Mullen, ["Mullen'}, was dispatched from the Tunica County Sheriff's Department to the scene of an alleged aggravated assault. At the scene he spoke with the purported victim, an individual with a stab wound. That conversation led him to Jackson Williams, Jr.'s, ["Williams"], residence. He encountered Williams and another man, Arthur Love. Mullen conducted a "pat-down" search of Williams and recovered a small pocket knife with red stains on it. Williams informed Mullen he had "used it...against Edward Walls." The knife was taken into evidence and submitted to the crime lab. (T. 41-46)

Williams gave a written statement, which the jury viewed. It was also read to the jury. Williams said Wall accosted him with a "black jack", hitting him on the hand. To defend himself, Williams "had to stick him to get him off me." (T. 50-51) The officer related that two additional witnesses supported Williams' statement, saying Walls had attacked Williams. They did not indicate Walls had used a "slap stick"or "black jack". Mullen looked for the "slapstick" unsuccessfully. However, the next day the 'slapstick' was produced by Arthur Love. (T. 52) Due to a defense objection, the 'slapstick' was not admitted into evidence. Mullen did not observe any injuries on Williams. (T. 53-54)

The parties then stipulated that Williams was a convicted felon. (T. 65-66)

After the State proved that the pocket knife was stained with blood, the purported victim, Edward Walls, took the stand. He related that "Williams had been picking at me, saying I was kickin' his doors in, kickin' his windows in, just lyin'." (T. 73) According to Walls, Williams then stabbed him with the pocket knife. He was in the hospital for a week, during which time the doctors apparently "reconstruct[ed]" his liver and his intestine. (T. 74-75) The knife introduced into evidence appeared to be the knife, but Walls could not be sure.

Walls agreed with the capable defense counsel that there was no reason for Williams to have stabbed him, and further agreed that it was he, Walls, that approached Williams and initiated the confrontation. Walls denied knowledge of the slapstick. (T. 78-79)

Thereupon, the State rested. The ensuing motion for directed verdict argued that the knife admitted into evidence failed the statutory definition of a weapon as required by the felon in possession statute. While the trial judge agreed it was "the smallest pocket knife I've ever seen" the trial judge ultimately did not grant a directed verdict, nor recognize that the knife was clearly not one of the specific knifes defined in the statute.

The defense called eyewitness Arthur Love. (T. 82) Love was with Williams that evening. While difficult to follow exactly, Love's account of the event was that Walls came after Williams with a "blackjack"and "was whoopin' on him." (T. 83-84) During cross examination by the State, Love identified the "slapstick"/ "blackjack", which he found in his van the next day. (T. 92) He observed that Walls struck Williams several times on the shoulder, hands, and on the back.(T 88) Walls also picked up a "block" to throw at Love's van. He agreed that he had not specified a "blackjack" in his statement to police, offering only that Walls was beating on Williams.

Jackson Williams, Jr., took the stand in his own defense. (T. 95) He told the jury that he was 64 years old, and was being treated for cancer. (T. 95-96) The problem between he and Walls stemmed from a woman that aided him in his convalescence. (T. 96) He told the jury that he had been harassed by Walls for some time.

On the night in question, Williams was walking to the store when he saw Walls. Although alarmed he proceeded onward. When Walls came at him and began to strike him with the "blackjack" he stuck him with his little pocket knife and jumped into Love's van. He also saw Walls attempting to throw a building block at the van. Love took him home, where he was arrested a short

time later. Williams explained that he feared Walls, a much bigger man. (T. 99)

The State cross examined Williams on the lack of observable wounds to his hands. Williams concurred that Walls had not been convicted on tearing down Walls' fence. The picture of his hand did not appear to show the "blue" marks he claimed, but Williams explained the picture as being the wrong side of his hand.(T. 108)

After the defense rested, the State recalled officer Mullen, who once again indicated that his picture of Williams' hand did not show any obvious injury, nor did he observe any injuries. He conceded to the defense he had only taken the one picture.

A recess was taken. Jury instructions were decided with the defense instruction for a directed verdict being refused. Defense counsel attempted to show the court that the little pocket knife introduced into evidence was not among the weapons enumerated in the statute for a felon in possession of a weapon. The State argued that the little pocket knife could be a bowie knife or a dirk knife (T. 120) The trial judge did not know what a dirk knife was but agreed the pocket knife was certainly not a bowie knife. The defense attorney offered that the pocket knife could not be a butcher knife, nor a switchblade.(T. 119-120) The defense correctly argued that the knife admitted was not enumerated in the statute. The trial court, found the knife could potentially be a deadly weapon, even while acknowledging the knife's blade to be "two-and-a half-inches." (T. 122) However, the issue of whether the knife was one of those knifes specifically enumerated in M.C.A. § 97-37-5 was simply denied without further explanation. (T. 120-122)

The State, in its closing argument, argued that the little pocket knife was a deadly weapon and argued to the jury that the jury could convict Williams for possession of a deadly weapon. (T. 134, 149-150)

Williams was found guilty on both counts and later sentenced to a term of 15 years with 5 years post release supervision on the charge of aggravated assault with 5 years for the charge of felon in possession.

SUMMARY OF THE ARGUMENT

The Mississippi Code specifically articulates those certain knifes (and other weapons) that a convicted felon cannot possess for any reason. The knives so proscribed are expressly limited to a "bowie knife, dirk knife, butcher knife, [or a] switchblade knife..." Clearly, the smallest pocket knife the court had ever seen, was not such a prohibited weapon.

An element of the crime of felon in possession of a prohibited weapon is, of course, the existence of a felony conviction. Because the weapon charged herein was clearly not among the explicitly defined knives, the charge of felon in possession was improper. But, its existence permitted admission into evidence of the fact that the defendant was a convicted criminal. Such evidence, when otherwise irrelevant and improper, is poisonous and clearly could have contributed to the verdict.

ISSUE NO 1: WHETHER THE EVIDENCE OF POSSESSION OF A "LITTLE POCKET KNIFE" WAS SUFFICIENT TO SUSTAIN THE VERDICT OF A FELON IN POSSESSION OF A PROHIBITED WEAPON.

Appellant Williams was indicted under and convicted of a violation of Mississippi Code Annotated § 97-37-5 (1) which prohibits a convicted felon from possessing any one of four explicitly cataloged knives. The statute individually describes and list four particularized knives; thereby excluding all other knives. Those four expressly designated prohibited knives are a "bowie knife, dirk knife, butcher knife [and a] switchblade knife."

> (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.

Miss. Code Ann. § 97-37-5 (1) The statute does not define the four proscribed knives and thus they must be interpreted according to law and given their meaning either according to their "common and ordinary" meaning, or given their more precise "technical" interpretation.[1] A dirk is a kind of dagger[2], a bowie knife is long bladed weapon carried by frontiersmen, a butcher knife is a large fixed blade knife and a switchblade is self explanatory. The statute simply does not by any honest and rational interpretation include a small pocket knife with a two and one half inch blade as one of the above weapons.

The trial court appeared confused, aided by the State, in the type of knife required by the statute. Opening argument by the State misinforms the jury and the court that Williams was charged as "a convicted felon in possession of a deadly weapon." (T. 39) At the close of the State's case in chief, the defense moved for a directed verdict, arguing that the weapons proscribed by the statute were specifically enumerated within the statute and did not include the generic catchall, "deadly weapon." The State argued that the pocket knife was a deadly weapon, ignoring the precise language of the statute. The court, while withholding it's ruling stated into the record that the knife in question

---

1

All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning. Miss. Code Ann. § 1-3-65

2

Garcia v. State, 789 So. 2d 1059, 1060 (Fla. 4th DCA 2001), *People v. Forrest,* 432 P. 2d 374, 375 (Cal. 1967), *Thompson v. Com.*, 673 S.E. 2d 469, 473-474 (Va. 2009), *State v. McJunkins*, 15 P.3d 1010, 1011-1012 (Or. App. 2000)

was " the smallest pocket knife I've ever seen." (T. 80) The statute does not assert that a convicted felon may not possess a "deadly weapon", and rightfully so, as virtually any object can constitute a deadly weapon. The benchmark case of *Duckworth v. State*, 477 So. 2d 935 (Miss. 1985) made it clear that defining a "deadly weapon" was a jury question to be determined not by the object in question, but by the manner in which the object is used. In that case a "blank starter pistol", but which could have been used to produce death or serious bodily harm, was deemed to be a deadly weapon , as it could have been used as a club. Thus it seems clear that the Mississippi Legislature purposely did not include the generic catchall, "deadly weapon" in the statute proscribing things a felon may not even possess. This is logically understandable, where the mere possession of the object is prohibited. Imagine the potential mischief and unfairness of barring the possession of any object that can theoretically cause serious bodily injury from simply being possessed by a felon. A hammer or saw is potentially a deadly weapon, depending on how it is used. A baseball bat, even the ball itself, is potentially a deadly weapon. A table knife, as well as the fork or spoon, is potentially deadly weapons. Thus if M.C.A §97-37-5 were misconstrued to include "deadly weapons", a person convicted of a felony could not work as a tradesman, could not eat dinner (except perhaps a sandwich) nor play ball with his children. Carried to it's logical extension, a convicted felon would be required to sit naked in an empty room. Virtually any object that can be possessed can be a used as a deadly weapon. As the crime is in the mere possession of the object, the statute clearly defined the weapons it was intended to cover.

Accordingly, it would seem inarguable that the legislature carefully enumerated the weapons, the mere possession of which, would constitute a felony. Four kinds of knives, and only four kinds, were deemed to be of such a nature that no felon could be allowed to simply possess them. The statute is silent as to how the weapons are used. A felon cannot possess a rifle to hunt, nor be a

collector of dirk knives. There can be no legitimate reason for a felon to possess brass knuckles or a silencer. Conversely, the legislature clearly did not intend to criminalize the mere possession a small pocket knife nor other such objects.

The sagacious attorney for Williams continued to try to explain to the court that the evidence was wholly insufficient to sustain a conviction under M.C.A. § 97-37-5. At the close of his case, he renewed his motion for a directed verdict. The trial court found that the case could go to the jury, illustrating in it's ruling, the absurdity of banning the mere possession of an object because it can possibly be used to cause serious injury. As the trial judge pointed out:

> THE COURT: Anything can be a deadly weapon, and I don't think there's an argument with that. But to– it would seem unconstitutional to say that any – you know, some little knife like that's a deadly weapon: that if a convicted felon has it, that would be subject to ten years. (T. 119)

The trial court and the state continued to use "deadly weapon" as if the phrase was included in the statute, while Williams' attorney continued to explain that the statute was very specific. Again, the trial court illuminated the error of interposing "deadly weapon" on the felon in possession crime.

> THE COURT : . . . The size of that knife doesn't look like a deadly weapon to me. Now, but I don't know how -- I mean, what is that, like two-and-a-half inch blade.(T. 121-122)

However, the trial judge, despite recognizing the absurdity of criminalizing such an innocuous little pocket knife, continued to rule based on the idea of "deadly weapon", even as he ventured that even a sharp stick can potentially be a deadly weapon. (T. 122) The court left the defense to make it's argument to the jury, rather than grant a directed verdict.

The defense appropriately, made articulate and express argument on this issue in it's motion for judgement-notwithstanding-the-verdict.(C.P. 89) The issue was carefully preserved. Thus it is now incumbent upon this court to look at the evidence for sufficiency. Did the state prove that

Williams possessed an enumerated weapon? The test is whether a fair minded juror could only find the defendant not guilty. "Motions for directed verdict and motions for JNOV challenge the sufficiency of the evidence. In reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in the light most favorable to sustaining the conviction. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993). We may not reverse unless the State's proof as to one or more of the elements of the offense charged is so deficient that a reasonable and fair-minded juror could only find the accused not guilty." *Mauldin v. State*, 750 So.2d 564, 565 (Miss. App. 1999)

The statute herein did not proscribe all potential weapons, only specifically enumerated weapons. Williams' little pocket knife is not among the forbidden weapons. Thus a fairminded juror could not have found that Williams possessed one of the four designated knives.

Accordingly, the judgment against Williams for possession of certain enumerated weapons by a convicted felon should be reversed and rendered

ISSUE NO. 2 : WHETHER ADMISSION INTO EVIDENCE OF WILLIAMS' PRIOR FELONY WAS IMPROPER AND WAS PREJUDICIAL.

As set forth above in Appellant's first argument, the charge of felon in possession of certain prohibited weapons was improper as the knife possessed was not one enumerated in the statute. The fact of Williams' prior felony was an element of that crime without this charge, it would normally be improper to introduce evidence of prior convictions against Williams, at least without a balancing test. The admission of other crimes of a defendant has long been enjoined barring certain exceptions, and then such evidence is till subject to a balancing test and subject to a test of relevance. Mississippi Rules of Evidence 404(b) forbids evidence of other crimes to prove character:

> *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity,

> intent, preparation, plan, knowledge, identity, or absence of mistake or accident. M.R.E. 404(b)

Even when the evidence is admissible under one of the exceptions, before the jury can hear that a defendant has a prior felony, the trial court must conduct a balancing test. This is due to the inherently prejudicial nature of evidence of other crimes. "However, all evidence must be filtered through M.R.E. 403, to ensure its probative value outweighs its prejudicial harm. *Johnson v. State*, 655 So.2d 37, 42 (Miss.1995). Specifically, this Court has held that evidence which is admissible under Rule 404(b) **must** be tested under Rule 403." *Tate v. State,* 912 So.2d 919, 925 (Miss. 2005) citing *Jenkins v. State*, 507 So.2d 89, 93 (Miss.1987). (emphasis added)

In the instant matter, because the prior crime was an element of an improperly charged crime, it was admitted and stipulated as an element. But, as that charge was not supported by adequate evidence, then evidence of another crime is of doubtful relevance and is certainly put before the jury without a balancing test. The test of relevance and probative value weighed against the prejudice are "dual" tests. They must both be satisfied. Failure to do so may certainly deprive Williams of a fundamentally fair trial. *Kelly v. State*, 735 So.2d 1071, 1087 (Miss. App. 1999) Evidence of other crimes is presumptively prejudicial. *Ballenger v. State*, 667 So. 2d 1242 (Miss. 1995), *Duplantis v. State*, 644 So. 2d 1235 (Miss. 1994) It is impossible to say that William's' jury was not influenced by the knowledge that he was a convicted felon. Williams presented a valid defense in which his credibility competed with the credibility of the complaining witness.

Accordingly, Williams is entitled to have the judgement for aggravated assault reversed and remanded.

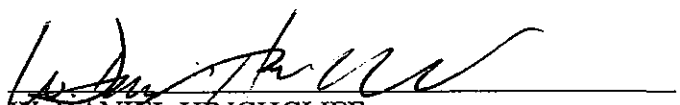
CONCLUSION

As Williams was entitled to a directed verdict or judgment not withstanding the verdict on

the charge of felon in possession of a "knife" the judgment and sentence of the trial court in Count II should be reversed and rendered. As said count allowed otherwise impermissible evidence of a prejudicial nature to be admitted against him, the judgment and sentence of the lower court in Count I of the indictment should be reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

W. DANIEL HINCHCLIFF
MISSISSIPPI BAR NO. 2470

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 **BRIEF OF THE APPELLANT** to the following:

Honorable Albert B. Smith, III
Circuit Court Judge
1556 Edwards Avenue, Suite #2
Cleveland, MS 38732

Honorable Laurence Y. Mellen
District Attorney, District 11
Post Office Box 848
Cleveland, MS 38732

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 21st day of September, 2009.

W. DANIEL HINCHCLIFF
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200