

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**EDDIE RAY JONES**

**APPELLANT**

**VS.**

**NO. 2010-KA-0202-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LA DONNA C. HOLLAND  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF FACTS .....	2
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	4
I.    NO ERROR RESULTED FROM THE TRIAL COURT'S READING OF THE INDICTMENT DURING VOIRE DIRE. ....	4
II.   JONES FAILS TO MAKE OUT A CASE OF RETROACTIVE MISJOINDER. ....	7
III.  THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT JONES' AGGRAVATED ASSAULT CONVICTION. ....	10
CONCLUSION .....	14
CERTIFICATE OF SERVICE .....	15

## TABLE OF AUTHORITIES

### FEDERAL CASES

<b>Old Chief v. United States, 519 U.S. 172 (1997)</b> .....	<b>5</b>
<b>United States v. Powell, 469 U.S. 57, 63-65 (1984)</b> .....	<b>10</b>

### STATE CASES

<b>Bush v. State, 895 So.2d 836, 843 (Miss. 2005)</b> .....	<b>11</b>
<b>Edwards v. State, 797 So. 2d 1049, 1058 (Miss. Ct. App. 2001)</b> .....	<b>10</b>
<b>Gibson v. State, 731 So.2d 1087, 1094 (Miss. 1998)</b> .....	<b>11</b>
<b>Sawyer v. State, 2 So.3d 655, 659-61 (¶¶18-28) (Miss. Ct. App. 2008)</b> .....	<b>5</b>
<b>Wash v. State, 931 So.2d 672, 673 (Miss. Ct. App. 2006)</b> .....	<b>11</b>
<b>Williams v. State, 37 So. 3d 717 (Miss. Ct. App. 2010)</b> .....	<b>7</b>

### STATE STATUTES

<b>Mississippi Code Annotated §97-3-7(2)(a)</b> .....	<b>11, 12</b>
<b>Mississippi Code Annotated §97-37-5(1). <i>Id.</i> at 719-20 (¶5)</b> .....	<b>7</b>

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**EDDIE RAY JONES**

**APPELLANT**

**VS.**

**NO. 2010-KA-0202-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF ISSUES**

- I. NO ERROR RESULTED FROM THE TRIAL COURT'S READING OF THE INDICTMENT DURING *VOIRE DIRE*.
- II. JONES FAILS TO MAKE OUT A CASE OF RETROACTIVE MISJOINDER.
- III. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT JONES' AGGRAVATED ASSAULT CONVICTION.

## STATEMENT OF FACTS

A disagreement existed between “the Johnson Street group” and “the Bay Area folks,” in Cleveland, Mississippi. T. 134. The aforementioned “are just two groups, [with] no faces, no names.” 134. Eddie Ray Jones lived on Johnson Street in Cleveland. T. 134, 262, 292. On March 22, 2007, a large group of people were gathered near the Double Quick at the intersection of White Street and Highway 61 where Jones and Henry “Main” Taylor “was into it” with some of the Hampton cousins of the Bay Area. T. 99, 100, 105, 135, 144. During this disagreement, Latoya Sellers and her passenger, Maurice Williams, turned east onto White Street from Highway 61 and had just passed the crowd near Double Quick when someone in the crowd said, “There goes that weak ----- right there.” T. 144, 146, 173. Williams jumped out of the car and asked Jones what he said. T. 165. Jones had a gun in his hand and was pointing it east, toward the rear of Sellers’ car. T. 152, 155, 176. Taylor, who was standing right next to Jones at the time, also had a gun in his hand, and both men were on White Street facing east, toward Highway 61. T. 102, 104, 115, 116, 237, 238. Camisha Cleveland was in her automobile driving west on White Street toward Highway 61 and Double Quick. T. 193. Shots were fired and Cleveland was struck in the face by a bullet that came through her windshield. T. 194-95. The back of Sellers’ car was also struck by a bullet. T. 147, 149.

Jones and Taylor were each indicted for aggravated assault and for being previously convicted felons in the possession of firearms. Taylor was convicted on both counts, while Jones was found guilty of aggravated assault but not guilty of being a felon in possession of a firearm.

## **SUMMARY OF ARGUMENT**

Jones cites no applicable legal authority to support the proposition that the trial court erred by merely reading the indictment during voir dire to ensure that no potential juror had previously learned of the facts of the case.

Jones fails to make out a case of retroactive misjoinder because he can not show that he suffered clear and compelling prejudice as a result of evidence of a prior conviction for sale of a controlled substance coming before the jury.

The evidence is legally sufficient to support the jury's verdict of guilty of aggravated assault. The State's evidence supported a finding that Jones was either principally liable or guilty of aiding and abetting Taylor in the aggravated assault.

## ARGUMENT

### **I. NO ERROR RESULTED FROM THE TRIAL COURT'S READING OF THE INDICTMENT DURING VOIRE DIRE.**

The trial court began *voir dire* by explaining to the veniremen that they must be fair and impartial and put aside any bias or prejudice they may have. T. 11-13. The trial court then asked the veniremen whether they knew anyone involved in the case, and if so, would that affect their ability to be fair and impartial. T. 14-46. After this lengthy inquiry, the trial court judge informed the veniremen that he was going to read the indictment for the purpose of determining whether any potential juror had previously heard about the facts of the case. T. 47. In reading Count II Possession of a Firearm by a Convicted Felon aloud, the trial court stated that it was alleged that Jones had been previously convicted of the felony crime of sale of cocaine. T. 47-48. Defense counsel for Jones then approached the bench and asked for a mistrial, claiming that he had stipulated that his client had a prior felony conviction, and that it was prejudicial for the jury to know the specific felony for which he had been previously convicted. T. 49. An examination of the subsequent exchange between defense counsel, the trial court, and the prosecutor reveals that no such stipulation had even been discussed at that point. T. 49-51. In fact, the record shows that there was no mention of defense counsel stipulating to Jones's prior felony conviction until the close of the State's case in chief. T. 247, 316. In any event, the trial court denied Jones's motion for mistrial. T. 51.

Jones claims that the trial court committed reversible error during *voir dire* by reading the indictment, which necessarily included Jones's prior felony conviction, to the jury. Jones relies exclusively on Rule 11.03 of the Uniform Circuit and County Court Rules to support his contention that the trial court erred in revealing the details of his prior conviction. However, Rule 11.03 deals with enhancements and has nothing at all to do with crimes which require the State to prove a prior

conviction as an element of the offense charged. In *Williams v. State*, the appellant, relying on URCCCP 11.03, argued that the trial court erred in allowing evidence of his two underlying misdemeanor DUIs to be published and argued to the jury in his trial for felony DUI. 708 So. 2d 1358, 1362-63 (¶¶19-23) (Miss. 1998). The supreme court in *Williams* made clear that URCCCP 11.03 pertains to bifurcation of a principal charge from habitual offender enhancement sentencing. *Id.* The *Williams* court further found that the requirements of URCCCP 11.03 had no bearing on trials for felony DUI because the prior DUI convictions are elements which the State must prove to secure a conviction for felony DUI. *Id.* Similarly, a defendant's prior felony conviction is an element the State must prove, absent a stipulation, to secure a conviction for felon in possession of a firearm. Accordingly, URCCCP 11.03 has no bearing on the present case.

Additionally, although not argued by Jones, the State would also briefly note that the limitations on the admission of evidence of a defendant's prior convictions considered by the United States Supreme Court in *Old Chief v. United States*, 519 U.S. 172 (1997), are not at issue in the present case. Where a defendant is tried for possession of a firearm by a convicted felon and an additional count(s), error can result from the trial court allowing the to State present evidence of the prior conviction if the defendant offered to stipulate to the prior conviction and if the prior conviction is for a crime which is the same or similar to a crime for which the defendant is being currently tried. *Sawyer v. State*, 2 So.3d 655, 659-61 (¶¶18-28) (Miss. Ct. App. 2008). In the present case, the State did not introduce evidence of the prior conviction, there was no offer to stipulate to the prior conviction before the prior conviction was mentioned during *voir dire*, and the prior conviction (sale of a controlled substance) is not similar to the crime of aggravated assault for which Jones was being prosecuted. Accordingly, Jones simply has no legal basis for claiming that the trial court committed



reversible error by merely reading the indictment during *voir dire* to ensure that no potential juror had been previously exposed to the facts of the case.

## II. JONES FAILS TO MAKE OUT A CASE OF RETROACTIVE MISJOINDER.

Jones claims that the theory of retroactive misjoinder requires that his conviction for aggravated assault be reversed and remanded for a new trial. This Court recently adopted the doctrine of retroactive misjoinder in the case of *Williams v. State*, 37 So. 3d 717 (Miss. Ct. App. 2010). In doing so, the Court explained that, “retroactive misjoinder occurs when joinder of multiple counts was initially proper but, through later developments such as an appellate court’s reversal of less than all convictions, joinder has been rendered improper.” *Id.* at 720 (¶7) (internal quotations omitted). “If the defendant can show that he suffered clear and compelling prejudice as a result of the evidence introduced to support the vacated count, he is entitled to a new trial on the remaining count(s).” *Id.* at 721 (¶9).

In *Williams*, the defendant had been convicted of aggravated assault and possession of a weapon by a convicted felon. At trial, Williams stipulated that he was a convicted felon, so no details of his prior conviction for second-degree murder came before the jury. *Id.* at 724 (¶23). On appeal, this Court reversed and rendered the latter conviction after the State conceded that there was legally insufficient evidence to support the jury’s verdict of possession of a weapon by a convicted felon because the pocket knife that Williams possessed was not one of the knives specifically listed in Mississippi Code Annotated §97-37-5(1). *Id.* at 719-20 (¶5). After reversing and rendering the latter count, the Court was left to determine whether the admission into evidence of Williams’ prior felony conviction was improper. In making this determination, The Court announced the following two-part test for determining whether a defendant has been prejudiced by the admission into evidence of a prior conviction: “(1) was evidence admitted at trial on the vacated count that would not have otherwise been admissible on the remaining count and, if so, (2) can the defendant demonstrate clear prejudice as a result of the inadmissible evidence that was presented to the jury.” *Id.* at (¶10). This

Court found that both prongs were met, and explained that the following supported a finding that Williams was clearly prejudiced by the admission of his prior felony conviction. As it was undisputed that Williams stabbed the victim, the issue left for the jury to determine was whether Williams acted in necessary self-defense. *Id.* at 722 (¶13). Both Williams and the victim testified regarding the circumstances surrounding the stabbing. “Given that the evidence presented to the jury did not amount to much more than a swearing match between Williams and [the victim] the credibility of both individuals was of the utmost importance to Williams’ defense.” *Id.* at 727 (¶31). In other words, the Court found that “the jury’s decision of [Williams’] guilt or innocence hinged on his credibility,” which, according to the Court, was likely affected by the jury’s knowledge that Williams was a convicted felon. *Id.* Accordingly, the trial court reversed and remanded Williams’ aggravated assault conviction.

In the present case, Jones was acquitted of Count II Possession of a Firearm by a Convicted Felon. Jones meets the first prong of the two-part test announced in *Williams* because the stipulation regarding Jones’ prior conviction, while necessary for proving Count II, would not be admissible if the jury was considering only the aggravated assault charge. However, Jones simply cannot show, and did not even attempt to show, that he was clearly prejudiced by the jury learning that he had a prior felony conviction. Unlike *Williams*, the present case does not boil down to a swearing match between the defendant and the victim, thereby rendering the defendant’s credibility of the utmost importance to his defense. Rather than pursuing an affirmative defense, Jones’ employed the old “it wasn’t me” defense. Jones exercised his right to not testify. Accordingly, there was no swearing match between Jones and the victim or any State witness. There was no repeated mentioning of Jones’ prior conviction by either the State or the trial court. In fact, it was mentioned only when the trial court read the indictment to the jury, when defense counsel stipulated, and necessarily in the

elements instruction. Because Jones can show no clear prejudice from the jury learning that he had a prior felony conviction, *Williams* provides no basis for reversal of Jones' aggravated assault conviction.

### **III. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT JONES' AGGRAVATED ASSAULT CONVICTION.**

Jones' legal sufficiency argument is that he could not have been found principally liable for aggravated assault because in acquitting him on Count II, the jury found that he did not have a firearm during the incident. Therefore, he continues, the jury could only have found him guilty of aiding and abetting in the aggravated assault, and the evidence is legally insufficient to show that he aided and abetted anyone in an aggravated assault. Jones' argument ignores the well-established case law from both the United States Supreme Court and Mississippi reviewing courts on inconsistent verdicts. "Where a multi-count verdict appears inconsistent, the appellate inquiry is limited to a determination of whether the evidence is legally sufficient to support the counts on which a conviction is returned. What the jury did with the remaining counts is immaterial." *Edwards v. State*, 797 So. 2d 1049, 1058 (¶25) (Miss. Ct. App. 2001) (quoting *Ruiz v. Texas*, 641 S.W.2d 364, 366 (Tex. Ct. App. 1982)). The United States Supreme Court has given the following reason for independently reviewing the legal sufficiency of a verdict without regard to the jury's acquittal on another count, even though the verdicts may appear inconsistent.

The most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity.

....

Inconsistent verdicts present a situation where "error," in the sense that the jury has not followed the court's instructions, most certainly has occurred, but it is unclear whose ox has been gored. Given this uncertainty, and the fact that the [prosecution] is precluded from challenging the acquittal, it is hardly satisfactory to allow the defendant to receive a new trial on the conviction as a matter of course.

*United States v. Powell*, 469 U.S. 57, 63-65 (1984). Accordingly, the fact that Jones was acquitted of possession of a firearm by a convicted felon has no bearing whatsoever in a review of the legal

sufficiency of his conviction for aggravated assault.

In determining whether the State presented legally sufficient evidence to support the jury's verdict, the reviewing court must determine whether, when viewing the evidence in the light most favorable to the State, any rational juror could have found that the State proved each element of the crime charged beyond a reasonable doubt. *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005). Additionally, under this inquiry, "all evidence supporting the guilty verdict is accepted as true, and the State must be given the benefit of all reasonable inferences that can be reasonably drawn from the evidence." *Wash v. State*, 931 So.2d 672, 673 (¶5) (Miss. Ct. App. 2006).

Jones was indicted for and found guilty of violating Mississippi Code Annotated §97-3-7(2)(a). To obtain a conviction for this variety of aggravated assault, the State must show that the defendant attempted to cause or did in fact cause serious bodily injury to another "purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." Miss. Code Ann. §97-3-7(2)(a). The jury was instructed that Jones could be found guilty of aggravated assault if he acted in concert with or aided and abetted the actual perpetrator. T. 328-29; C.P. 31. Where a defendant shoots into a crowd and an unintended victim is struck, the evidence is legally sufficient to support an aggravated assault conviction. See *Roberson v. State*, 19 So.3d 95, 104 (¶23) (Miss. Ct. App. 2009); *Gibson v. State*, 731 So.2d 1087, 1094 (¶21) (Miss. 1998).

The following evidence supports a finding that Jones was principally liable for aggravated assault. Jones and Taylor acted together in a dispute against the Hampton cousins of the Bay Area. T. 100, 135. A large crowd was gathered at the scene of the dispute. T. 144. Sellers and Williams were passing through this area at the time of the dispute. An insult was lodged, and Williams stepped out of the vehicle, believing that the insult was directed toward him. T. 146, 165. Through her rearview mirror, Sellers saw Jones with a gun which he was pointing toward the rear of her vehicle.

T. 176. Immediately after seeing Jones's gun pointing at her vehicle, shots were fired and the rear of her vehicle was struck with a bullet. T. 146-47, 176-77. During this gunfire, in which Jones and Taylor were facing and shooting east, Cleveland's vehicle was driving west, directly into the line of fire, and she was struck by a bullet in the face. T. 194-95, 207, 209. Although there was testimony that Williams returned fire, he shot west while Jones and Taylor shot east toward Cleveland's and Sellers' cars. T. 209.

Alternatively, the evidence supports a finding that Jones was guilty of aiding and abetting Taylor in the aggravated assault. In *Stevenson v. State*, this Court found that the evidence was legally sufficient to support a finding that Stevenson either personally fired the shots which injured partygoers in a crowd, or that he aided and abetted his cohort in committing aggravated assault. 738 So.2d 1248, 1251-52 (¶¶11-16) (Miss. Ct. App. 1999).<sup>1</sup> The evidence showed that Stevenson and his cohort, McAdory, arrived at a party in the same vehicle and both were armed with firearms. *Id.* at (¶13). One State witness testified that he saw McAdory fire the shot that injured the bystanders and did not see Stevenson fire a shot at all. *Id.* at 1250 (¶2). Another State witness did see Stevenson fire a shotgun at the partygoers. *Id.* The Court found that even if the jury found the State witness who did not see Stevenson fire a shot to be the more credible witness, the aforementioned facts still supported a finding that Stevenson aided and abetted McAdory in committing the aggravated assault. *Id.* at (¶13). In the present case, it was undisputed that Jones and Taylor were acting together. T. 104,

---

<sup>1</sup>This was so despite the fact that Stevenson testified that he was not present at the time of the shooting and presented three witnesses to corroborate his story. In the present case, Jones does not claim that the verdict is against the weight of the evidence, although he did present four witnesses, all of whom are related to him, who claimed he was not involved in the shooting. T. 262, 268, 280, 292. Should this Court address the weight of the evidence, it is sufficient to say that the duties of determining witness credibility and resolving conflicts in the evidence lie within the exclusive province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007).

124, 258, 263, 278, 288. Even defense witnesses, all of whom were related to Jones, placed Jones and Taylor together in the crowd. T. 258, 263-265, 278, 288, 293. Although only one witness testified that Jones was pointing a gun in the direction of Cleveland's and Sellers' cars immediately prior to the shooting, three witnesses put a gun, or a short, shiny object, in Taylor's hand immediately prior to the shooting. T. 102, 106, 119, 237-38. Another State witness initially told officers that both Jones and Taylor had guns, but changed his story at trial. T. 128-133. Under the authority of *Stevenson*, even if the jury entirely discounted Sellers' testimony, the fact that Jones and Taylor were acting together when/if only Taylor shot into the crowd, Jones is still guilty of aggravated assault for aiding and abetting.

When the State is given the benefit of all reasonable inferences which may be drawn from the evidence, it is clear that the State presented legally sufficient evidence to support the jury's verdict.



## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Jones's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



LA DONNA C. HOLLAND

SPECIAL ASSISTANT ATTORNEY GENERAL

MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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:

Honorable Albert B. Smith, III  
Circuit Court Judge  
Post Office Drawer 478  
Cleveland, MS 38732

Honorable Brenda Mitchell  
District Attorney  
Post Office Box 848  
Cleveland, MS 38732

Stan Perkins, Esquire  
Attorney at Law  
Post Office Box 291  
Greenville, MS 38702-0291

This the 8th day of November, 2010.

  
LA DONNA C. HOLLAND  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680