NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2014-KA-0666**
VERSUS	*	
		COURT OF APPEAL
ATRESS WILLIAMS	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 513-541, SECTION "A"
Honorable Laurie A. White, Judge
* * * * * *

Judge Rosemary Ledet
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Paul A. Bonin, Judge Rosemary Ledet)

BONIN, J., DISSENTS WITH REASONS.

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AFFIRMED
OCTOBER 15, 2014

In this criminal appeal, the defendant, Atress Williams, seeks review of his conviction and sentence for possession of a firearm by a convicted felon. For the reasons that follow, we affirm.

STATEMENT OF THE CASE

On September 28, 2012, Mr. Williams was charged by bill of information with one count of possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1, and one count of stalking, in violation of La. R.S. 14:40.2. On October 1, 2012, Mr. Williams was arraigned and entered a plea of not guilty to both counts. After a motion hearing on November 19, 2012, the district court denied Mr. Williams' motion to suppress evidence, found probable cause as to his charge for possession of a firearm by a convicted felon, and found no probable cause as to his charge for stalking. On June 10, 2013, Mr. Williams filed a motion for a psychiatric evaluation. On June 18, 2013, a competency hearing was held; and Mr. Williams was found competent to stand trial. On July 9, 2013, Mr. Williams filed a motion to sever offenses, which the district court denied on July 26, 2013. On October 2, 2013, Mr. Williams filed a motion for speedy trial, which

the court granted. A jury trial was held on January 30, 2014, and February 3, 2014, as to the weapon charge only. The jury found Mr. Williams guilty as charged.

On February 25, 2014, Mr. Williams filed a motion for judgment notwithstanding the verdict, and in the alternative, a motion for new trial. On the same date, the district court denied the motions. Mr. Williams waived delays, and the district court sentenced him to serve fifteen years at hard labor, without benefit of parole, probation or suspension of sentence, with credit for time served. The district court imposed a fine for $1,000.00 and court costs for $276.50. This appeal followed.

STATEMENT OF THE FACTS

Cordae Hankton, a former police officer with the New Orleans Police Department ("NOPD"), testified that on January 24, 2012, he was patrolling in his NOPD uniform in an identifiable police vehicle. He responded to a call for service in the 700 block of Convention Center Boulevard in reference to a "domestic disturbance, possible wanted subject." When he approached the area, he was flagged down by a person who directed him to the subject, later identified as Mr. Williams, in another location. Officer Hankton testified that he stopped Mr. Williams, asked him his name, and proceeded to explain to him why he was being stopped. Mr. Williams was leaning on the police vehicle with his hands on the top of the vehicle; however, he kept trying to turn around and look over his right shoulder. Because he was continually trying to turn around, Officer Hankton decided to detain him. Mr. Williams pushed Officer Hankton away and attempted to run. Officer Hankton tackled Mr. Williams, and they scuffled on the ground. Mr. Williams kept rolling on to his right side and pushing Officer Hankton's hands away from his right rear pants pocket. After Officer Hankton was able to subdue

Mr. Williams, he performed a pat down search. He testified that he felt a hard object in Mr. Williams' right rear pocket. Upon removing the object, he noted that it was a gun.[1] Officer Hankton advised Mr. Williams of his *Miranda*[2] rights and arrested him for illegal concealment of a weapon.

Mr. Williams was taken to the police station. Officer Hankton searched Mr. Williams' name on the NOPD's system and learned that he was a convicted felon. Thus, Mr. Williams was charged with possession of a firearm by a convicted felon. Because Mr. Williams had a small laceration to the head, Officer Hankton had an Emergency Medical Services ("EMS") unit sent to the police station. Mr. Williams, however, refused medical treatment. Officer Hankton requested a firearms trace and a fingerprint analysis. The firearms trace revealed that the weapon belonged to a Mississippi resident.

On the morning of trial, Joseph Pollard, a latent print examiner with the NOPD Criminal Records Department, took Mr. Williams' fingerprints. Officer Pollard compared Mr. Williams' fingerprints with the fingerprints on exhibit 2, a certified copy of an arrest register reflecting the arrest of Atress Williams for simple burglary on November 7, 2000. He determined that they were the fingerprints of the same person.[3] Officer Pollard identified the other documents in the certified pack: the bill of information; the docket master; the minute entries of March 20, 2001 and April 10, 2001; and the screening action form. These

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[1] At trial, Officer Hankton identified the weapon he found on Mr. Williams and the five rounds found in the weapon.

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[3] Officer Pollard testified that exhibits 2 and 3 were the same arrest register, except that exhibit 2 had fingerprints on the back. The front page of both arrest registers stated the offender's name, Atress Williams; the date of the offense, November 7, 2000; the location, 7000 block of Crowder Boulevard; the item number, K-1063900; and the offense, simple burglary.

documents reflected that Mr. Williams was charged by bill of information on December 5, 2000, with committing the offense of simple burglary on November 7, 2000, and was found guilty as charged after a jury trial on March 20, 2001.[4]

Bobbie Thomas, Mr. Williams' cousin, testified on Mr. Williams' behalf. Ms. Thomas testified that she was very close to Mr. Williams and has known him since he was a child. She has never known him to own or possess a weapon. She testified that she was unaware of his prior arrests and convictions. She did not know that he had two convictions for burglary in Louisiana and convictions for narcotics possession in Mississippi.

Mr. Williams testified on his own behalf. He denied that he was in possession of a weapon on the evening he was arrested by Officer Hankton. He further testified that Officer Hankton approached him as he was walking on Canal Street and asked him to approach the car. As he approached the car, he testified that Officer Hankton exited his vehicle and asked Mr. Williams for his identification. According to Mr. Williams, Officer Hankton did not tell him why he was being stopped. Mr. Williams testified that he was attempting to take his wallet out of his rear pants pocket when Officer Hankton tackled him. Mr. Williams testified that he was caught off guard and that his wallet fell into the street. After Officer Hankton tackled him, Officer Hankton handcuffed him and placed him into a police vehicle. Mr. Williams testified that Officer Hankton never searched him. Mr. Williams also testified that he did not know where the weapon came from, that he did not carry a gun, and that he did not own a gun. He testified

[4] On April 10, 2001, the district court sentenced Mr. Williams to serve two years at hard labor with credit for time served. The State then filed a multiple bill of information alleging that Mr. Williams was a triple offender. Mr. Williams pled guilty to the multiple bill. The district court

that the first time he saw the gun was when he was in the back of the police car, and Officer Hankton told him he "got the gun off of [him]." He denied pushing on Officer Hankton and attempting to run away. He also denied refusing medical treatment. Rather, Mr. Williams stated that the EMS technician refused to treat him because he could not sign the treatment form. He explained that he could not sign the form because his hands were swollen and the officers would not take the handcuffs off of him. On cross-examination, Mr. Williams acknowledged prior convictions for possession of cocaine and burglary.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

Assignment of Error Number 1

In his first assignment of error, Mr. Williams contends that the State failed to produce sufficient evidence to support his conviction for possession of a weapon by a convicted felon. Specifically, Mr. Williams contends that the State failed to prove that less than ten years had elapsed from the completion of his sentence on the predicate conviction to the date of the offense of the present charge.[5]

When reviewing the sufficiency of the evidence to support a conviction, Louisiana appellate courts are controlled by the standard enunciated in *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Under this standard, the appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that

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vacated the prior sentence, adjudicated Mr. Williams to be a third felony offender, and sentenced him to eight years at hard labor.

[5] Throughout this opinion, we refer to this period as the "ten-year cleansing period."

all of the elements of the crime had been proved beyond a reasonable doubt." *State v. Neal,* 00–0674, p. 9 (La. 6/29/01) 796 So.2d 649, 657 (citing *State v. Captville,* 448 So.2d 676, 678 (La. 1984)).

When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 requires that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Neal,* 00-0674 at p.9, 796 So.2d at 657. Ultimately, all evidence, both direct and circumstantial, must be sufficient under *Jackson* to prove guilt beyond a reasonable doubt to a rational jury. *Id*. (citing *State v. Rosiere,* 488 So.2d 965, 968 (La. 1986)); *see also State v. Brown*, 03-0897, p. 21 (La. 4/12/05), 907 So.2d 1, 18.

To sustain a conviction under La. R.S. 14:95.1, the State must prove the following four elements: (1) possession of a firearm, (2) prior conviction of an enumerated felony, (3) absence of the ten-year statutory limitation (cleansing) period, and (4) the general intent to commit the crime. *State v. Husband,* 437 So.2d 269, 271 (La. 1983). Mr. Williams contends that the evidence was insufficient to establish one of the elements of the crime for which he was tried—the absence of the ten-year cleansing period.

As to the ten-year cleansing period, La. R.S. 14:95.1(C) provides:

> The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies shall not apply to any person who has not been convicted of any felony for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

Thus, the State must prove that less than ten years have elapsed from the date the defendant completes his sentence on the predicate offense to the date the defendant is charged with felon in possession of a firearm. In determining whether the State

has met this burden of proof, the Louisiana Supreme Court has stated that it is important to consider "[t]he comparative ease with which the state can prove the date of termination of defendant's sentence," or the date from which the ten-year cleansing period begins to run. *State v. Williams,* 366 So.2d 1369, 1375 (La. 1978). The Louisiana Supreme Court further stated that the prosecution is accorded easy access to such information, while an indigent defendant seeking to prove a negative (that he is not within a class of felons prohibited from possessing weapons) might face a difficult task of obtaining documentary evidence from distant states. *Id*.

In *State v. McKnight*, 09-1186, p. 6 (La. App. 4 Cir. 4/14/10), 37 So.3d 1050, 1053, this court addressed whether the State's evidence was sufficient to establish the absence of the ten-year cleansing period under La. R.S. 14:95.1. This court stated that the only evidence of the defendant's predicate offense was a stipulation that the State could establish through a fingerprint expert that the defendant was the same person who pled guilty to simple burglary of inhabited dwelling on February 14, 1998. The court reversed the defendant's conviction, finding that the stipulation failed to address the ten-year cleansing period, and because the conviction occurred more than ten years prior to defendant's possession of the weapon, the State failed to establish "possession of the weapon within less than ten years from the date of completion of sentence, probation, parole, or suspension of sentence of the felony conviction." *Id*.

The instant case is distinguishable from *McKnight*. While Mr. Williams' predicate conviction also occurred more than ten years prior to his possession of the weapon, the State in this case offered more evidence proving the absence of the ten-year cleansing period than the State did in *McKnight*. Unlike in *McKnight*, the

State in this case introduced evidence of the actual sentence term that Mr. Williams received—eight years in the department of corrections as a triple offender.[6] Based on this sentence, Mr. Williams would not have been released from jail until November 2008, and thus the ten-year cleansing period would not have started to run until November 2008. Mr. Williams was arrested as a felon in possession of a firearm on January 24, 2012, just over three years from when the cleansing period started to run.

Nevertheless, the Louisiana Supreme Court has held that "'[d]ischarge from supervision can take place earlier than the theoretical date on which the initial sentence would have terminated, because of a pardon, commutation, or good time credit. Or it can take place later because of parole revocation.'" *Id.*[7] However, at the time of Mr. Williams' arrest for simple burglary on November 7, 2000, La.

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[6] The State introduced into evidence a certified pack from Mr. Williams' prior conviction in Case No. 418-434 for simple burglary. The exhibits reveal that Mr. Williams was arrested for the offense on November 7, 2000. Mr. Williams was found guilty as charged after a jury trial on March 20, 2001. On April 10, 2001, the district court sentenced Mr. Williams to serve two years at hard labor. On the same date, Mr. Williams pled guilty to a multiple bill of information alleging him to be a third time offender. The district court accepted the plea and adjudicated Mr. Williams to be a third offender. The district court vacated the prior sentence and re-sentenced Mr. Williams to eight years at hard labor, with credit for time served from the date of the arrest.

[7] In *State v. Tatten*, this court held that the State met its burden of proving the ten-year cleansing period had not elapsed under the multiple offender statute, despite the fact that the State did not affirmatively prove the defendant's release date. In so finding, this court stated:

> Under the multiple offender statute, La. R.S. 15:529.1(G), the sentence was imposed without benefit of probation or suspension of sentence. Further, as a multiple offender, the defendant was not entitled to good time, i.e., diminution of sentence, La. R.S. 15:571.3(C)(1), and would not have been eligible for parole until he had served at least one-half of his sentence. La. R.S. 15:574.4. While the defendant's actual discharge date is not known, even assuming that the defendant was in jail from the time of his arrest on December 7, 1994, he would not have been discharged, at the earliest, until sometime in August or September, 1997. The defendant was arrested for possession of cocaine on December 23, 2006, within the ten year period. Just as the Supreme Court noted in *Turner,* while the record did not affirmatively establish that the time period had or had not elapsed the showing indicates that more probably than not it had not elapsed between the crimes.

Tatten, 12-0443 at pp. 10-11, 116 So.3d at 850.

R.S. 15:571.3(C)[8] did not allow a person adjudicated a multiple offender, in which one of his convictions was for simple burglary, to obtain diminution of sentence through good time. Further, under La. R.S. 15:574.4,[9] as a third time felony offender, Mr. Williams would not have been eligible for parole, and thus it is unnecessary to consider parole revocation. Albeit the unreasonable and unlikely chance of a pardon, Mr. Williams would have had to serve his entire eight-year sentence before he was discharged from the State's custody.

We, thus, find that this evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that the State proved beyond a reasonable doubt that ten years had not elapsed since Mr. Williams completed his sentence for the predicate offense and he was charged with being a felon in possession of a firearm. This assignment of error is without merit.

Assignment of Error Number 2

In his second and final assignment of error, Mr. Williams contends that the district court erred when it denied his motion for a mistrial after Officer Hankton testified that he responded to a call for service in reference to a "domestic disturbance, possible wanted subject." Mr. Williams contends that the statement

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[8] At the time of Mr. Williams's arrest in 2000 for simple burglary, the pertinent parts of La. R.S. 15:571.3(C) provided as follows:

> C. Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if:
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> (1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:
>
> …
>
> (j) Simple burglary.

[9] In both the 2000 version and in its current form, La. R.S. 15:574.4 A.(1)(a) states that a person convicted of a third or subsequent felony shall not be eligible for parole.

improperly referenced another crime and that as a result of the statement he was entitled to a mistrial under La. C.Cr.P. art. 771.[10] La. C.Cr.P. art. 771 provides:

> In the following cases, upon the request of the defendant or the state, the court shall promptly admonish the jury to disregard a remark or comment made during the trial, or in argument within the hearing of the jury, when the remark is irrelevant or immaterial and of such a nature that it might create prejudice against the defendant, or the state, in the mind of the jury:
>
> (1) When the remark or comment is made by the judge, the district attorney, or a court official, and the remark is not within the scope of Article 770; or
>
> (2) When the remark or comment is made by a witness or person other than the judge, district attorney, or a court official, regardless of whether the remark or comment is within the scope of Article 770.
>
> In such cases, on motion of the defendant, the court may grant a mistrial if it is satisfied that an admonition is not sufficient to assure the defendant a fair trial.

This court has held that "[a]n admonishment under Art. 771 is not necessary unless the remark constitutes an unambiguous reference to another crime." *State v. Lewis*, 95–0769, p. 7 (La. App. 4 Cir. 1/10/97), 687 So.2d 1056, 1060. The granting of a mistrial under La. C.Cr.P. art. 771 is at the sole discretion of the trial court and should be granted only where the prejudicial remarks of the witness make it impossible for the defendant to obtain a fair trial. *State v. Smith,* 418 So.2d 515, 522 (La. 1982); *State v. Allen,* 94–1895, p. 9 (La. App. 4 Cir. 9/15/95), 661 So.2d 1078, 1085. A mistrial is a drastic remedy that is only authorized where substantial prejudice will otherwise result to the defendant. *Id.* Moreover, absent a showing of unresponsive answers or improper intent by the police officer, a

[10] Mr. Williams concedes that La. C.Cr.P. art. 770 does not apply. Under La. C.Cr.P. art. 770, a mistrial is mandated when a judge, district attorney or a court official during trial or in argument refers to another crime committed or alleged to have been committed by the defendant as to

mistrial is not warranted. *State v. Lee,* 618 So. 2d 551, 553 (La. App. 4th Cir. 1993); *State v. Tatum*, 506 So.2d 584, 588 (La. App. 4th Cir. 1987).

A trial court's ruling on whether or not to grant a mistrial because of comments by a police officer referring to other crimes evidence should not be disturbed absent a clear abuse of discretion. *State v. Nicholson,* 96–2110, p. 13 (La. App. 4 Cir. 11/26/97), 703 So.2d 173, 180. Further, this court has held that "[e]rrors are harmless unless the reviewing court is thoroughly convinced that the remarks inflamed the jury and contributed to the verdict." *Nicholson,* 96–2110 at p. 13, 703 So.2d at 180.

In *State v. Tillman*, 10-1717 (La. App. 4 Cir. 9/28/11), 74 So.3d 761, the defendant argued that the police officer's statement was an impermissible reference to other crimes. The officer stated, "[y]ou know with the nickname Greedy [the defendant], that helped, I know Central City people that have been arrested before." This court found that this statement was not an unambiguous reference to another crime committed or alleged to have been committed by the defendant and thus did not warrant a mistrial. In support, this court cited several cases holding that a police officer's mentioning of a defendant's criminal history, arrest warrant, or rap sheet did not merit granting of a mistrial. *State v. Bonnee*, 02-0637, pp. 6-8 (La. App. 4 Cir. 8/28/02), 826 So.2d 1187, 1191; *State v. Adams,* 07-0977, pp. 3-6 (La. App. 4 Cir. 1/23/08), 976 So.2d 757, 759-61; and *State v. Holmes,* 02–2263, pp.6-7 (La. App. 4 Cir. 2/26/03), 841 So.2d 80, 84.

In *Lee*, *supra*, the defendant argued that the trial court erred in denying a mistrial after the officer testified, "[w]e relocated to the station where we ran the

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which evidence is not admissible. A state witness, such as a police officer, is not a "court official" under La. C.Cr.P. art. 770. *State v. Perry*, 420 So.2d 139, 146 (La. 1982).

gun through the computer, and we checked our reports and bulletins, because we was [sic] informed by the victim that the subject was also wanted for a prior offense." This court held that the officer's statement was general and brief and did not indicate a "pattern" of unresponsive answers or an improper intent on the part of the officer or the prosecutor. Thus, this court held that the district court did not abuse its discretion in denying the motion for mistrial.

In the instant case, Officer Hankton's statement that he responded to a dispatch call concerning a "domestic disturbance, possible wanted subject" is not an unambiguous reference to another crime committed by Mr. Williams. Nothing in the statement references either Mr. Williams or a specific crime. Further, Officer Hankton's statement does not indicate a pattern of unresponsive answers or an improper intent. Officer Hankton only made the comment once and was responding to the question of how he became involved in the investigation. While the State agreed not to introduce any evidence concerning the stalking charge, this one statement by Officer Hankton did not prejudice Mr. Williams such as to make it impossible for a fair trial. Regardless, Officer Hankton's statement is admissible as *res gestae* under La. C.E. article 404B(1).[11] The district court did not abuse its discretion when it denied Mr. Williams' motion for mistrial. This assignment of error is without merit.

DECREE

[11] La. C.E. art. 404B(1) provides in pertinent part:

> Except as provided in Article 412, 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, absence of mistake or accident, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED