
IN THE SUPREME COURT OF MISSOURI

Case No. SC85355

STATE OF MISSOURI,

Respondent,

v.

PAUL WILLIAMS,

Appellant.

APPEAL FROM JACKSON COUNTY CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT
THE HONORABLE PEGGY STEVENS McGRAW

SUBSTITUTE REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE TRIAL COURT ERRED TO APPELLANT’S PREJUDICE IN OVERRULING APPELLANT’S MOTION TO ARREST JUDGMENT ON COUNT ONE OF THE AMENDED INFORMATION, BECAUSE COUNT ONE, CHARGING DEFENDANT WITH SECOND-DEGREE ASSAULT, DID NOT CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE, AND FURTHER DID NOT APPRISE APPELLANT OF THE FACTS CONSTITUTING THE CHARGE, IN VIOLATION OF MO. SUP. CT. RULE 23.01(b)(2), AND OF APPELLANT’S RIGHTS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I, SECTIONS 10, 18(a), AND 19 OF THE MISSOURI CONSTITUTION TO DUE PROCESS OF LAW AND NOTICE OF CHARGES, IN THAT THE AMENDED INFORMATION FAILED TO ALLEGE THAT APPELLANT ENGAGED IN A “SUBSTANTIAL STEP” TOWARD THE COMMISSION OF THE ALLEGED OFFENSE, AND FURTHER DID NOT DESCRIBE THE CONDUCT BY WHICH THE ATTEMPT WAS ALLEGEDLY MADE, WHICH PREJUDICED APPELLANT’S ABILITY TO PREPARE A DEFENSE, AND TO PLEAD FORMER JEOPARDY.

Respondent concedes that under this Court’s holding in *State v. Withrow*, 8 S.W.3d 75, 78 (Mo. banc 1999), the crime of “attempt” under Missouri law has two elements, one of which is a “substantial step toward the commission of” the intended

crime. (Respondent’s Brief at 15). Respondent nonetheless argues, without citation to precedent other than MACH-CR 19.04, that “it does not necessarily follow that, to effectively charge the crime of assault in the second degree, the information or indictment must specifically allege that the defendant took a substantial step toward his attempt to cause physical injury to the victim.” (Respondent’s brief at 15).

In so stating, Respondent failed to address or distinguish the ample precedent cited by Appellant which, when harmonized, requires precisely that to effectively charge the crime of assault in the second degree, the information or indictment must specifically allege that the defendant took a “substantial step.” For example, Respondent has not refuted that, in *Withrow*, this Court held that the “substantial step” element of “attempt,” set out in Section 564.011 R.S.Mo, applies “regardless whether the attempt is under sec. 564.011 or under separate provisions proscribing attempting a specified crime.” *State v. Whalen*, 49 S.W.3d 181, 186 (Mo. banc 2001). As this Court noted in its appendix to the *Withrow* case, this includes use of the word “attempt” in Section 565.060 R.S.Mo., proscribing second-degree assault. *See, e.g., Whalen*, 49 S.W.3d at 186 (citing the enumerated statutes contained in the appendix to *Withrow* as being amongst those “separate provisions proscribing attempting a specified crime” to which the “substantial step” definition of attempt applies).¹

¹ In *Whalen*, this Court implicitly acknowledged that the “substantial step” definition of “attempt” was engrafted upon all statutes that “proscribe attempting a

specified crime,” which are set forth in the appendix to *Withrow*. *Whalen*, 49 S.W.3d at 186. This court noted that the *Withrow* holding engrafted the “substantial step” definition of “attempt” onto Section 565.050 R.S.Mo., stating that, in the wake of *Withrow*, “in order to be found guilty of first-degree assault for attempting to kill or attempting to cause serious physical injury, one must, with the purpose of committing that offense, take a substantial step toward committing it.” *Whalen*, 49 S.W.3d at 186.

Lower courts have similarly acknowledged the import of the *Withrow* holding. *See State v. Gray*, 24 S.W.3d 204, 207 (Mo. App. W.D. 2000) (holding that, under Section 565.050, the common law definition of “attempt” no longer applied, in light of *Withrow*, and that “attempt,” in the context of the first degree assault statute, required proof of a “substantial step” toward the commission of an offense). *See also State v. McCullum*, 63 S.W.3d 242, 248 (Mo. App. S.D. 2001).

Therefore, because *Withrow* and its progeny unambiguously state that “substantial step” is an element of any alleged “attempt” under Missouri law – including “attempted” second-degree assault as it may be charged under Section 565.060 R.S.Mo, it must be concluded that both the MACH-CR 19.04 in effect at the time of the charge in this case, and the recently revised MACH-CR 19.04 – which advises, in Note on Use 4 that “substantial step” need not be included – is, simply put, incorrect. The MACH-CR 19.04 and its note on use require revision, to harmonize it with the express holdings of *Withrow* and subsequent cases.

And, as emphasized in Appellant’s principal brief, despite the language contained in Rule 23.01(e), stating that “all . . . informations which are substantially consistent with the forms . . . which have been approved by this Court shall . . . comply with the requirements of this Rule,” the omission of the “substantial step” element of attempt-based second-degree assault from the information in this case constitutes reversible error of constitutional dimension. This Court has held that when an approved pattern instruction conflicts with the substantive law, a court should decline to follow the pattern instruction and its notes on use, and instead rely upon the substantive law. *See State v. Carson*, 941 S.W.2d 518, 520 (Mo. banc 1997). By analogy, it is clear that the same doctrine applies to the approved charges, or MACH-CR’s. Therefore, despite Rule 23.02(e)’s admonitions, MACH-CR 19.04’s conflict with the substantive law – i.e.,

Withdraw and its progeny – require that the MACH-CR be disregarded, and *Withdraw* accorded the weight it deserves.

Furthermore, under Appellant’s constitutional rights to due process and notice of charges, a charging document may be deemed constitutionally insufficient, even though it tracks the language of a statute or a pattern charge, when it omits an element that is implied, but not expressly mentioned, in the statutory language. *See, e.g., State v. Allen*, 905 S.W.2d 874, 879 (Mo. banc 1995) (requiring, for sufficiency, charging document to set forth all constituent elements of the offense); *United States v. Jackson*, 72 F.3d 1370, 1380 (9th Cir. 1995) (“An indictment that tracks the words of the statute violated is generally sufficient, but implied, necessary elements, not present in the statutory language, must be included in an indictment.”); *United States v. Kufrovich*, 997 F. Supp. 246, 255 (D. Conn. 1997) (indictment which tracks the language of a statute is usually sufficient unless it omits an element which is implied, but not expressly mentioned, in the statutory language). The language of Rule 23.01(e) cannot serve to abridge these federal and state constitutional rights of the Appellant.

Therefore, it was error to omit the “substantial step” language from the second-degree assault charge. But, as acknowledged in Appellant’s principal brief, **the prejudicial effect of such error must be determined, under *State v. Parkhurst*, 845 S.W.2d 31 (Mo. banc 1992). Respondent argues that Appellant suffered no prejudice, sufficient to satisfy the**

burden imposed by *Parkhurst* and its progeny. But, Appellant articulated several forms of prejudice in his principal brief, which merit re-examination here.

First, Mr. Williams' ability to prepare a defense to the charges was impaired, in that Count One failed to specify the conduct for which he was being charged, i.e., to identify the facts constituting the "substantial step" toward commission of the underlying offense. As such, Mr. Williams could not know the allegations or evidence, precisely, against which he should be prepared to defend. Even under the stringent standards of *Parkhurst*, if the substantial rights of the defendant to prepare a defense are affected, the defendant may be afforded relief from an insufficient indictment. *See Parkhurst*, 845 S.W.2d at 35; *State v. Pride*, 1 S.W.3d 494, 502-03 (Mo. App. W.D. 1999). **Further, the State's neglect, in Count One, to describe in any particularized detail the conduct for which Mr. Williams was being charged could impact his ability to plea former jeopardy. "Although an information or indictment contains all the essential elements of an offense identified in the statute, it must clearly apprise a defendant of the facts constituting the offense . . . to bar future prosecution for the same offense." *State v. Larson*, 941 S.W.2d 847, 851 (Mo. App. W.D. 1997). To this end, the charging instrument should be "sufficiently specific that there would be no difficulty in determining what evidence would be admissible under the allegations, and so the court and jury may know what they are to try and for what they are to acquit or convict." *State v. Hasler*, 449 S.W.2d 881, 885 (Mo. App. 1969). Here, the information did not state any facts detailing Mr. Williams' purported commission of a "substantial step" toward the completion of the offense, and as such, he could not**

prepare for what evidence would be adduced by the State, and further, there existed no internal safeguards in the charging instrument against multiple prosecutions of Mr. Williams for the same offense.

Particularly instructive on this point is *State v. Hasler*, 449 S.W.2d 881 (Mo. App. 1969), in which a public official was charged under a statute making it a misdemeanor for persons in public office to engage in “willful and malicious oppression, partiality, misconduct, or abuse of authority.” *Id.* at 885. The charging instrument tracked the language of the statute, i.e., charged the official with “oppression, partiality, misconduct, and abuse of authority,” without stating specifically what conduct constituted the offense. *Id.* The court of appeals held that the charging instrument was insufficient to allow the defendant to prepare a defense, and to plead former jeopardy in the event of an acquittal, in that it constituted “no more than a conclusory statement that defendant violated a statute by some unspecified acts.” *Id.* Here, similarly, the State’s failure to include both the element of “substantial step,” and a description of conduct constituting a “substantial step,” renders Count 1 of the amended information no more than a conclusory statement that Mr. Williams violated Section 565.060 R.S.Mo..

Thus, the information in this case was prejudicially insufficient to put Mr. Williams on notice of the charges against him, and also was insufficient to allow him to plea former jeopardy, should the need arise. As such, his conviction on Count 1 should be reversed, and the case should be remanded to the trial court with instructions to dismiss the information in this

case. *See State v. Gilmore*, 650 S.W.2d 627, 628 (Mo. banc 1983). In the alternative, Mr. Williams is entitled to a new trial.²

² Appellant respectfully reminds the Court that a reversal of his conviction of assault in the second degree under Count One would also require a reversal and remand of his conviction of armed criminal action under Count Three, because a conviction of armed criminal action requires the commission of an underlying felony. *See State v. Albanese*, 920 S.W.2d 917, 924 (Mo. App. W.D. 1996). Accordingly, because Count Three, the armed criminal action count, was predicated upon the allegations of Count One, the second-degree assault count, a reversal by this Court of Mr. Williams' conviction on Count One necessarily requires a reversal on Count Three.

II. THE TRIAL COURT ERRED TO APPELLANT’S PREJUDICE IN OVERRULING APPELLANT’S MOTION TO ARREST JUDGMENT ON COUNT THREE OF THE AMENDED INFORMATION, BECAUSE COUNT THREE, CHARGING DEFENDANT WITH ARMED CRIMINAL ACTION, DID NOT CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE, AND FURTHER DID NOT APPRISE APPELLANT OF THE FACTS CONSTITUTING THE CHARGE, IN VIOLATION OF MO. SUP. CT. RULE 23.01(b)(2), AND APPELLANT’S RIGHTS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I, SECTIONS 10, 18(a), AND 19 OF THE MISSOURI CONSTITUTION TO DUE PROCESS OF LAW AND NOTICE OF CHARGES, IN THAT THE AMENDED INFORMATION FAILED TO ALLEGE THAT APPELLANT KNOWINGLY COMMITTED A FELONY BY, WITH AND THROUGH THE USE, ASSISTANCE AND AID OF A DANGEROUS INSTRUMENT, AND FURTHER DID NOT DESCRIBE THE CONDUCT BY WHICH THE OFFENSE WAS ALLEGEDLY COMMITTED, WHICH HINDERED APPELLANT’S ABILITY TO PREPARE A DEFENSE, AND TO PLEAD FORMER JEOPARDY.

Respondent appears to mischaracterize the Missouri Court of Appeals, Western District’s recent holding in *State v. Cruz*, 71 S.W.3d 612, 618-19[7-8] (Mo. App. W.D. 2002), stating that it stands for the proposition that, “notwithstanding MACH-CR 32.02, the pattern charge for armed criminal action, it is not necessary to allege that a

defendant “knowingly” committed the offense of armed criminal action where, as here, second-degree assault is the predicate felony.” (Respondent’s brief at 15). *Cruz* does not purport to address the sufficiency or insufficiency of the MACH-CR’s (Missouri Approved Charges – Criminal) pertaining to armed criminal action. Rather, *Cruz* addresses the question of whether it was violative of the defendant’s due process right to have the State prove each and every element of the crime with which he was charged beyond a reasonable doubt, when the trial court submitted the armed criminal action verdict director without hypothesizing a culpable mental state of “knowingly.” *Cruz*, 71 S.W.3d at 613. The court of appeals held that, irrespective of the language of MAI-CR 332.02, it was not.

In the case at bar, Appellant’s contentions of error deal with an entirely different aspect of due process than the requirement that the State prove all elements of the offense beyond a reasonable doubt. Rather, Appellant’s arguments implicate his right to notice of charges, which, under the precedent cited in his principal brief, was clearly violated. *Cruz* is not controlling here, and Respondent’s arguments must be rejected.

Furthermore, Respondent did nothing to refute Appellant’s allegations of prejudice, and therefore, they should be deemed conceded.

III. THE TRIAL COURT ERRED IN FAILING TO GRANT MR. WILLIAMS A NEW TRIAL, BECAUSE THE STATE FAILED TO DISCLOSE MATERIAL, EXCULPATORY EVIDENCE IN ITS POSSESSION TO MR. WILLIAMS IN VIOLATION OF MR. WILLIAMS' RIGHT TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I, SECTIONS 10 AND 18(a) OF THE MISSOURI CONSTITUTION, IN THAT THE STATE FAILED TO DISCLOSE THAT THE ALLEGED VICTIM HAD TOLD A MEMBER OF THE PROSECUTING ATTORNEY'S OFFICE, SHORTLY AFTER THE ALLEGED OFFENSE TOOK PLACE, THAT SHE HAD LIED TO POLICE CONCERNING THE ALLEGED EVENTS FOR WHICH MR. WILLIAMS WAS CHARGED.

Appellant stands on the arguments and authorities provided in his Appellant's brief concerning this issue, insofar as Respondent has failed to refute or distinguish, in its Brief, the arguments advanced by Appellant.

IV. THE TRIAL COURT ERRED IN FAILING TO SUSTAIN MR. WILLIAMS' MOTION FOR JUDGMENT OF ACQUITTAL WITH RESPECT TO COUNT THREE AT THE CLOSE OF THE STATE'S EVIDENCE AND AT THE CLOSE OF ALL THE EVIDENCE, AND IN CONVICTING MR. WILLIAMS OF ARMED CRIMINAL ACTION, IN VIOLATION OF MR. WILLIAMS' RIGHTS TO DUE PROCESS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND UNDER ARTICLE I, SECTIONS 10 AND 18(A), OF THE MISSOURI CONSTITUTION, BECAUSE THE STATE'S EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO DEMONSTRATE THAT MR. WILLIAMS EMPLOYED HIS VEHICLE AS A "DANGEROUS INSTRUMENT," AS CONTEMPLATED UNDER THE ARMED CRIMINAL ACTION STATUTE, IN THAT THERE WAS NO ALLEGATION OR EVIDENCE OF MR. WILLIAMS' INTENT OR MOTIVE TO CAUSE DEATH OR SERIOUS PHYSICAL INJURY TO THE ALLEGED VICTIM, MARVA MOSLEY.

The crux of Respondent's argument concerning this point is that the State was not required to prove – to sustain a conviction for armed criminal action – that Appellant employed his vehicle with a purpose to cause death or serious physical injury. But, as noted in Appellant's principal brief, that is precisely what the cases in this State require. It is well-settled that a "utilitarian instrument," such as an automobile, becomes a "dangerous instrument" for the purposes of Section 571.015 only under circumstances in

which it is used with an intent and motive “to cause death or serious harm to a person.” *State v. Pogue*, 851 S.W.2d 702, 706 (Mo. App. S.D. 1993) (citing Section 556.061(9)), which defines “dangerous instrument” as “any instrument . . . which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury”). Thus, a motor vehicle cannot be a “dangerous instrument” for the purposes of armed criminal action, “absent [proof of] its being used with a purpose to cause death or serious injury.” *Id.* at 707. *See also State v. Idlebird*, 896 S.W.2d 656, 664 (Mo. App. W.D. 1995) (acknowledging that, in determining whether “fire” is a “dangerous instrument,” key issue is “whether the instrument . . . is capable of causing death or serious physical injury by the manner of use, and whether the circumstances of the use demonstrate an intent and motive to cause such death or serious harm.”).

Respondent attempts to characterize these holdings as mere *dicta*, arguing that “what the court presumably meant to say was that a motor vehicle does not constitute a dangerous instrument for purposes of § 571.015 unless the defendant intentionally uses it as a weapon in such a manner that, as used, it was readily capable of causing death or serious physical injury.” (Respondent’s brief at 31-32). Respectfully, Respondent presumes too much with such an assertion. Both the *Pogue* and *Idlebird* courts artfully included, in their opinions, a statement that it is central to the determination of whether an item is a “dangerous instrument” to determine whether such instrument was employed with a purpose to cause death or serious physical injury.

For Respondent to characterize such powerful language as mere *dicta* is simply disingenuous.

As noted in Appellant’s principal brief, the distinction between “physical injury” and “serious physical injury” is not merely rhetorical; “serious physical injury” is a term of art that is defined by statute, and the degree of difference between “physical injury” and “serious physical injury” defines the difference between a first-degree and a second-degree assault charge. To illustrate, as it is defined in Section 556.061 R.S.Mo., “serious physical injury” is “physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.” Section 556.061(28) R.S.Mo. (2000). Alternatively, “physical injury” is “physical pain, illness, or any impairment of physical condition.” Section 556.061(20) R.S. Mo. (2000). If an individual can be proven to have attempted to cause “serious physical injury,” as it is defined in Section 556.061, then a conviction can be sustained for assault in the first degree under Section 565.050 R.S.Mo.. If, rather, it can only be proven that the individual intended to cause “physical injury,” then a first-degree assault charge is not appropriate, and second-degree assault is the only sustainable charge.

The same can be said of armed criminal action, when the otherwise innocuous article employed by the accused is alleged to be a “dangerous instrument.” For the article to rise to the level of a “dangerous instrument,” it must be proven that it was employed with an intent to cause “death or serious physical injury,” rather than merely “physical injury.” *See Pogue*, 851 S.W.2d at 706; *Idlebird*, 896 S.W.2d at 664. Absent such allegations or proof, a conviction

for armed criminal action cannot be sustained. As such, the evidence did not support a conclusion that Appellant employed his vehicle as a “dangerous instrument,” as defined by statute. Accordingly, his conviction of armed criminal action must be vacated, and a judgment of acquittal on Count Three should be entered.

V. THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE IN NEGLECTING TO DISMISS, *SUA SPONTE*, COUNT THREE OF THE AMENDED INFORMATION, BECAUSE COUNT THREE DID NOT, BY ANY REASONABLE CONSTRUCTION, CHARGE APPELLANT WITH ARMED CRIMINAL ACTION IN VIOLATION OF MO. SUP. CT. RULE 23.01(a)(2), AND THE APPELLANT'S DUE PROCESS RIGHTS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND UNDER ARTICLE I, SECTIONS 10, 18(a), AND 19, OF THE MISSOURI CONSTITUTION, IN THAT THE ALLEGATIONS OF THE AMENDED INFORMATION, TAKEN AS TRUE, WOULD NOT DEMONSTRATE THAT APPELLANT'S VEHICLE CONSTITUTED A "DANGEROUS INSTRUMENT" FOR PURPOSES OF THE STATUTE PROSCRIBING ARMED CRIMINAL ACTION, BECAUSE THE ALLEGATIONS OF THE AMENDED INFORMATION WOULD NOT DEMONSTRATE THAT APPELLANT USED THE VEHICLE WITH THE PURPOSE OF CAUSING DEATH OR SERIOUS PHYSICAL INJURY.

Again, Respondent quarrels with whether Missouri law requires, to sustain a conviction of armed criminal action, a showing that the defendant used an instrument with the purpose of causing death or serious physical injury. With respect to this issue, Appellant rests on the arguments advanced in his principal brief, and in Point IV of his Reply Brief, *supra*.

The balance of Respondent’s argument, however, appears to misconstrue entirely Appellant’s argument. In support of its argument, Respondent cites liberally to the evidence that was ultimately adduced at trial, which has nothing whatsoever to do with the error alleged: whether the trial court erred in failing, *sua sponte*, to dismiss Count Three of the amended information, for its failure to allege facts sufficient to sustain a conviction of armed criminal action. The evidence at trial does not inform, in any way, the Court’s consideration of this issue.

Thus, to the extent that Respondent misstated Appellant’s argument in its brief, that argument merits restatement, to some extent, here. In the case at bar, Count Three alleged, by reference to Count One, that Mr. Williams attempted to cause “physical injury” to Ms. Mosley through the use of his vehicle. This allegation, taken as true, does not allege facts sufficient to sustain a conviction of armed criminal action. As noted previously, it is well-settled that a “utilitarian instrument,” such as an automobile, becomes a “dangerous instrument” for the purposes of Section 571.015 only under circumstances in which it is used with an intent and motive “to cause death or serious harm to a person.” *See* Point IV, *supra*.

But, in the case at bar, the State did not charge, in Count One, that Mr. Williams acted with an intent to cause “death or serious physical injury” to Ms. Mosley. Instead, the second-degree assault charge against Mr. Williams, which supplied the predicate offense for the charge of armed criminal action, charged only that Mr. Williams attempted to cause “physical injury.” (L.F. at 11).

The distinction between “physical injury” and “serious physical injury” is not merely rhetorical; “serious physical injury” is a term of art that is defined by statute, and the degree of difference between “physical injury” and “serious physical injury” defines the difference between a first-degree and a second-degree assault charge. To illustrate, as it is defined in Section 556.061 R.S.Mo, “serious physical injury” is “physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.” Section 556.061(28) R.S.Mo. (2000). Alternatively, “physical injury” is “physical pain, illness, or any impairment of physical condition.” Section 556.061(20) R.S.Mo. (2000). If an individual can be proven to have attempted to cause “serious physical injury,” as it is defined in Section 556.061, then a conviction can be sustained for assault in the first degree under Section 565.050 R.S.Mo.. If, rather, it can only be proven that the individual intended to cause “physical injury,” then a first-degree assault charge is not appropriate, and second-degree assault is the only sustainable charge.

The same can be said of armed criminal action, when the otherwise innocuous article employed by the accused is alleged to be a “dangerous instrument.” For the article to rise to the level of a “dangerous instrument,” it must be proven that it was employed with an intent to cause “death or serious physical injury,” rather than merely “physical injury.” *See Pogue*, 851 S.W.2d at 706; *Idlebird*, 896 S.W.2d at 664. Absent such allegations or proof, a conviction for armed criminal action cannot be sustained.

Count Three of the amended information should have been dismissed, due to its failure to, “by any reasonable construction,” *see Parkhurst*, 845 S.W.2d at 35, allege facts sufficient

to sustain the State's burden of proving that Mr. Williams employed a "dangerous instrument" to commit the felony of second-degree assault. Accordingly, this Court should reverse Mr. Williams' conviction of armed criminal action, and remand to the trial court with instructions to dismiss Count Three of the amended information or, in the alternative, grant him a new trial.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, considered either singularly or cumulatively, Mr. Williams prays that this Court reverse his convictions for second-degree assault and armed criminal action, and remand this case to the Circuit Court of Jackson County with instructions to dismiss the information, or in the alternative grant a judgment of acquittal, or in the alternative grant him a new trial, and for such other and further relief which the Court deems proper in the circumstances of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two correct copies of the above and foregoing were sent by First Class Mail, postage prepaid, on this ____ day of August, 2003, to:

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ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

I hereby certify that the Appellant's Substitute Reply Brief in the above-captioned matter complies with Rule 84.06(b); was prepared using WordPerfect 9.0, printed in Times New Roman proportionally space type font at 13 point. I further certify that the above brief contains 4,965 words, excluding the cover page, signature block, certificate of service, and certificate pursuant to Rule 84.06(c). I further certify that the computer diskette provided herein contains two files: Williams Substitute Reply Brief (00021597.WPD) and Williams Substitute Reply Brief Title (00021603.WPD). I further certify that the computer diskette was new out of the box and that, after the brief was copied thereon, the diskette was scanned for viruses using OfficeScan NT, and no viruses were detected.

ATTORNEY FOR APPELLANT