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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

REGINALD VERNELL ROGERS

APPELLANT

FILED

VS.

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NO. 2006-KA-0064

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COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

STATEMENT OF THE CASE	1
STATEMENT OF ISSUES	22
SUMMARY OF THE ARGUMENT	23
ARGUMENT	24
PROPOSITION ONE	24
PROPOSITION TWO	25
PROPOSITION THREE	26
PROPOSITION FOUR	31
PROPOSITION FIVE	32
CONCLUSION	35
CERTIFICATE OF SERVICE	36

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STATEMENT OF THE CASE

Procedural History

Reginald Rogers was indicted on one count of manslaughter and two counts of aggravated assault by a Warren County Grand Jury for the death of Danny Woodland and the gunshot wounds of Lakeia Green and Chris Henderson. The case was tried September 26 -29, 2005 in the Warren County Circuit Court. The jury was instructed on the right of self defense and the lesser included charge of simple assault as to Green and Henderson and well as on the three counts contained in the indictment. The jury returned a verdict of guilty for one count of manslaughter and two counts of aggravated assault by a Warren County Grand Jury for the death of Danny Woodland and the gunshot wounds of Lakeia Green and Chris Henderson. The Defense moved for a directed verdict which the Court correctly denied.

Testimony of Tamela Strong

Tamela Strong is one of two sisters who were present at the Hilltop Lounge during the early morning hours of August 2, 2004. She and her sister LaShanta were standing at the back of the club

by the entrance door when Reginald Rogers came into the club. (T. 213-214) When Rogers entered the club he bumped into Tamela. From there he went toward the front of the club at the bar where the victim, Woodland, was standing. (T. 214-215) Rogers bumped into Woodland and they exchanged words at that time and then appeared to part ways. Ms. Strong made her way to make sure that anything wasn't going on and heard Woodland say "Man, I don't have anything with you. You know we are going to leave this stuff alone." (T. 215-216) More words were exchanged and Ms. Strong continued on her way to the bathroom. (T. 216)

Ms. Strong testified that Rogers and Woodland appeared to have an attitude and had animosity towards one another after a series of small conflicts. (T. 216) Friends separated the two and got between them to move them out of the way of each other. (T. 217) When Ms. Strong returned to her place by the front door the conflict between Rogers and Woodland had resumed. (T. 217) Rogers lifted his shirt to show Woodland his gun and Woodland lifted his shirt to show that "Well, I got mine, too." (T. 217) Ms. Strong was able to see both men and could see a black object at Roger's side when he lifted his shirt. Woodland then did the same thing. (T. 218) Woodland turned to walk out and as he turned he took 5 or 10 steps and then turned around and fired twice at Rogers. (T. 218-219) Ms. Strong was unable to tell whether Rogers had been hit. (T. 219) After Woodland fired twice, Rogers began firing back and was moving toward the door, crouched down, looking for Woodland. (T. 224) Woodland was bent down and moving backwards toward the door from the bar area and did not fire anymore shots. (T. 219, 224) Everyone was running toward the door, but Tamela remained in the corner with her sister. There were still shots being fired. Woodland was hit in the leg and when he turned to run his leg gave out on him. (T. 220) Tamela and her sister moved out of the door way to some tables by the side along the wall. Tamela could not see whether Woodland had gotten out of the club, but they could see Rogers coming toward the

door. She and her sister were knocked down. Tamela heard three shots right near her ears and could see the fire coming off the gun. Tamela believed that Woodland had gotten out the door and that Rogers was firing out the door at him. (T. 221) She then realized that Rogers was walking out the door and felt something on her foot and saw that it was Woodland's hand. (T. 221) Woodland's head was to her leg and his hair was on her foot. Ms. Rogers tried to take his pulse and said "Somebody call an ambulance. Somebody call the police." (T. 222) She could see brain matter coming out the back of his head, so she knew that he was dead. (T. 222) Ms. Rogers glanced up and saw Rogers through the window walking toward the Washington Street sidewalk. (T. 222) He had his hand on his chest or side and appeared to have been shot. (T. 222) She did not see Rogers any more after that. (T. 222)

Testimony of Lashanta Strong

LaShanta Strong is Tamela Strong's sister. She was in the Hilltop Lounge with her sister during the early morning hours of August 2, 2004. (T. 246) LaShanta did not speak to Rogers when he came into the club that night and did not think that he saw them. They bumped into him as they turned around after deciding not to go to the restroom. (T. 247) They apologized and Rogers responded "My bad. My bad.", but seemed very focused. He never looked down or paid attention. He just kept going straight towards the bar. (T. 247-248) Rogers got to the bar area and he and Woodland got close together. Rogers then bumped into Woodland and the two had words. (T. 248) Lashanta could not hear what they said, they appeared to be about to fight but others around them broke it up. (T. 248) LaShanta saw Michael Tyler and "Wolf" and a few other people separate the two. (T. 248) Rogers and Woodland then had more words and were about to fight again. (T. 248) Woodland wanted to "leave it alone" saying "Let's squash this. I'm tired of this." (T. 272)

After the second encounter, LaShanta and Tamela were standing there watching. The music

was off and this point and the sisters were concerned. (T. 249) Rogers and Woodland had words again and Reginald pulled his gun from his hip. Woodland raised his shirt to show that he had a gun, too and turned to walk off. (T. 249) He took maybe two or three steps and then turned and shot twice. As he shot he was backing up. After firing the two shots, he did not shoot anymore. (T. 251) Rogers then started coming towards him and began firing his gun. Woodland was moving toward the door and Rogers was following him. LaShanta and Tames ducked down because Rogers was coming toward where they were and they were scared. (T. 252) After LaShanta ducked down she hear the last three shots. They were very close and hurt her ears They did not know that Woodland was so close to them. (T. 251) Immediately prior to the last three shots, Rogers was the person shooting a gun. (T. 253) After the last three shots were fired, Rogers left the club. LaShanta saw him through the window walking away from the club. (T. 254)

Lashanta heard her sister saying "That's Danny. That's Danny." LaShanta picked up Woodland's hat and they went over toward the body and began removing the chairs that were on his body. (T. 254)

When Rogers initially began shooting he was firing at Woodland. Rogers was moving toward Lashanta and Tamela where Woodland had fallen. (T. 255)

Testimony of Tonya Williams

Tonya Williams testified that she was in the Hilltop Lounge in the early morning hours of August 2, 2004. Tonya saw Rogers over by the dance floor. Woodland had come in and they had passed a few words. (T. 274) Perry Jones and Michael Tyler spoke to Woodland. Woodland walked off and went to the end of the bar towards the entrance of the club. (T. 274, 281) Rogers was still standing by the dance floor. (T. 274)

Tonya saw Woodland fire at Rogers. She fell on the floor as soon as the shooting began and

did not pay attention to Woodland or Rogers. (T. 275) She thought she heard a third gun being shot, but did not see anyone else with a gun. (T. 284) When Tonya thought the shooting was over she got up off the floor to go out the door. At that time she saw Rogers run toward the front of the club. He stood over Woodland and shot him. Rogers then went out the door. Tonya later saw him walking down the street holding his chest. A young woman was holding him up. (T. 277)

Testimony of Lakeia Green

Lakeia Green testified that she was at the Hilltop Lounge during the early morning hours of August 2, 2004. (T. 294) She got there a little after 10:30 p.m. (T. 295) At the time she saw Rogers and Woodland they were arguing. Michael Tyler broke up the argument. Tyler asked the DJ to play a song called "Run and Tell That" again, patted Woodland on his back and went to the dance floor. (T. 295) They started the song over and didn't want to dance to it again so she went back to her table which was at the front entrance at the end of the walkway by the bar. (T. 297) Lakeia did not see Rogers and Woodland resume their argument. She thought Woodland was leaving because he had turned his back. He turned around and had a gun aimed at Rogers. Lakeia then heard shots. Woodland got 2 or 3 shots off. Lakeia got down. (T. 298) She then heard another gun louder than the first. Rogers was firing at Woodland. Lakeia was shot after Woodland was shot, while she was standing in the walkway. She ended up down at the end of the bar closest to Washington Street and facing the window. (T. 299) Lakeia was shot in the hand. (T. 300) Lakeia does not have full use of her hand and will require reconstructive surgery. (T. 300)

Lakeia was not able to see Rogers after that, but she heard more gunfire. (T. 302) Lakeia went to look for help and saw someone going in Woodland's pockets. More boys came in and were fighting over Woodland's body. She thought they might start shooting again, so she got down under a table and laid there until someone came and got her. She was taken to the hospital that night. (T.

302)

At the time Lakeia was shot Reginald Rogers was coming toward her and she could hear him shooting. Woodland had been shot and was on the floor. (T. 319, 320)

Testimony of Chris Henderson

Chris Henderson testified that he was in the Hilltop Lounge in the early morning hours of August 2, 2004. He arrived at the club between 10:30 and 11:15 p.m. (T. 322) Henderson went to the club with James Watts. (T. 323) He sat outside and entered the club after he saw Woodland go in. (T. 347)

Henderson was standing in the door and saw Rogers pass by. He turned to talk to Watts and when he turned back around Woodland and Rogers were arguing. Henderson went over and told him "Leave that alone, man. Forget that. Come on let's go. I'll be at the door." Woodland replied, "I'm alright, I'm alright, I'm alright." Henderson walked back to the door and the crowd was dispersed. (T. 323-324) Henderson was talking to Watts again and turned back around and Woodland was coming towards him. Henderson thought Woodland was leaving and turned again towards Watts. When he turned back they were shooting. He saw Rogers slump. Henderson saw fire coming from Roger's gun, told Watts he'd been hit, and pulled Watts down. (T. 325, 331) Henderson was unable to tell who fired first. (T. 338) He never saw Woodland's gun, but only assumed he had one that night. (T. 345) He heard four or five more shots and then he pulled Woodland down. Woodland was leaning towards him "like a lump", already shot, and Henderson was able to pull him down with one arm. Rogers was coming down the aisle shooting. Henderson pulled Woodland all the way down on the ground. He saw Rogers white Jordan's coming up the aisle. He stopped right over them. Henderson heard a shot and covered his ears. The shot was so close his ears were ringing and he couldn't hear anything else. Woodland was hit by the last shot.

When he looked up again Rogers was walking over him going out of the club. (325-326)

Henderson jumped up and tried to pick up Woodland. Woodland didn't move. Henderson saw his hat fall off and saw the little blood spot on the back of his head and left the club. During the altercation, Rogers shot Henderson in the upper thigh. The bullet fragmented and has not been removed. (T. 327)

Henderson testified that there had been other prior altercations between Rogers and Woodland. In particular, there had been a prior confrontation at the Elks Lodge and another three to four weeks prior at the same club. (327-329, 370) He testified that there was no significance to the G-Unit urban style clothing Woodland was wearing that night.

Testimony of Latoya Reed

Latoya Reed was at the Hilltop Lounge with friends on the evening of August 2, 2004. She arrived at about midnight. Latoya saw Woodland and Rogers arguing and saw them being separated. She saw Woodland walk back towards the table, went under his shirt, drew his weapon and shot Rogers. Latoya dropped to the floor at that time. She didn't see who was shooting back, but heard gunfire. When she looked up, she saw Rogers. (T. 373) Latoya saw Woodland and Rogers running toward the door. When Woodland fell, Rogers was right there upon him and shot him in the head. Woodland was on the ground when Rogers shot him in the head. The only two people she saw shooting that night were Rogers and Woodland. She saw Rogers leave the club after shooting Woodland in the head. He went out the door and was going down the street. (T. 374-375)

Testimony of Eric Lewis

Eric Lewis was at the Hilltop Lounge in the early morning hours of August 2, 2004. Woodland was standing in front of him listening to the song "Run and Tell That." Lewis saw a flash of blue behind Woodland and looked up to see Rogers. Rogers said something to Woodland who

looked back and said "What?" Woodland then asked Rogers, "Man, why you keep fucking with me? I don't fuck with you. Why don't you let me make it?" He said something else to Rogers, who replied, "Nigger, its whatever." Rogers then pulled his shirt up and he had a gun stick in his pants. Lewis told Woodland "Please let's go. Let it go." Lewis did not know whether Rogers pulled the gun before he looked up. Lewis told Woodland "Danny, let's go. Let it go." Woodland replied, "I'm alright, I'm alright." Lewis had his arms around Woodland then released him. Lewis went to the door. That is when he heard shooting and everyone was trying to get out of the place. (T. 393, 394)

Lewis was 8 or 9 steps away from the bar when he heard the shooting and was hit on the leg and knocked down but made it out the door. He heard shooting and then some more shooting, then a pause for a few seconds and three more shots in a row. He saw Rogers come out of the club supported by a woman. He had the gun in his hand. They walked down Washington Street straight across to Fred's. (T. 396)

Lewis heard a woman say "Oh, he shot him in the head." when she came out of the club. Lewis went back into the club and saw Woodland on the floor. He told Woodland to get up and he didn't move. He saw the bullet wound in Woodland's head and knew that he was dead. He reached in Woodland's left pocket to get the keys because he didn't have any other way home.

Lewis came to the club with Woodland and Perry. Lewis is sometimes called "Wolf" as a nickname and Perry is called "PD". Lewis knew that Woodland had a gun that night. Lewis was present at several prior conflicts between Rogers and Woodland Woodland at the Hilltop Lounge, at a flag football game and at the Elks Lodge. (T. 398-402) The root of the difficulty between the two was a woman named Bonita Branson. Rogers would not let go of the dispute. (T. 402) Lewis saw Ms. Branson in the club that night. (T. 407) Lewis did not see Woodland flash a gun or draw

a gun that night. He did not know that Woodland had a gun, but did not know whether Woodland had it that night. (T. 415)

Testimony of Dr. Stephen Timothy Haynes

Dr. Haynes testified as an expert witness in the field of terminal ballistics, forensic pathology. (T. 427-428). Dr. Haynes performed an autopsy on Woodland Woodland at the request of the County Court and the Medical Examiner Investigator of Warren County, John Thompson, and the examination was in compliance with the Coroner Reorganization Act of 1986 (as amended) of the State of Mississippi. (T. 430) Haynes identified a total of six gunshot wounds two of which were lethal and four were non lethal. (T. 434)

The first lethal gunshot wound was a gunshot wound to the abdomen. It went through the abdominal wall, perforated the small bowel at three locations and also the mesentery , the fat tissue the carries blood vessels to and from the bowel at three locations. (T. 436) Then it struck the side of the second lumbar vertebra where it came to rest. It did not injure the spinal cord. (T. 437) Death from this wound would have taken tens of minutes to produce death. (T. 437) Dr. Haynes was able to recover the large caliber bullet from the gun shot wound. (T. 437)

The second lethal gunshot wound was located on the left back of the head at a point of five inches below the top of the head and three inches to the left. That gun shot wound was trapped. It went through the skull, traveling from back to front. The bullet went through the brain to the left and then the right cerebral hemisphere. The wound was approximately two inches in diameter and produced a mass of injuries through the brain. The bullet struck the frontal bone and came to rest at that point.

Danny Woodland was alive when the this lethal gunshot wound to the back of the head occurred. He was alive by a cardiovascular criteria since the heart was still pumping blood because

there was blood in the wound track involving an injury to the head. Based on the hemorrhage that Dr. Haynes observed to the brain, Danny Woodland was alive when he was shot in back of the head.

(T. 445) Four complete projectiles and one jacket were recovered from Woodland's body. (T. 446)

Three of the wounds to Woodland's body would have been inflicted while Woodland was on the floor, face down, legs extended. The gunshot to the back of the head, the gunshot to the back of the left arm and the gunshot wound to the left buttock were potentially inflicted when Woodland was in the prone position while Rogers stood over him. (T. 458)

Mr. Woodland died of two gunshot wounds. The gunshot wound to the back of the head and a gunshot wound to the abdomen. The cause of death is homicide. (T. 459) Given facts that Woodland was facing his assailant in an upright position, backing away from him as he was being shot, the gun shot wounds to the back of the head, the back of the left arm and the left buttock could not have been inflicted at that time. (T. 474) The gunshot wound to the abdomen could have incapacitated Woodland. (T. 474) The gunshot wound to the abdomen could have been inflicted while Woodland was upright, facing his assailant and backing away. (T. 474)

Testimony of Keithen Smith

Keithen Smith was at the Hilltop Lounge in the early morning hours of August 2, 2004. He arrived there at about 12:30 a.m. (T. 478) Smith was sitting in the back of the club by the pool tables. Smith saw Rogers at about 12:53 or 12:54 when Rogers came back and put two cups on the pool table and walked toward the bathroom. He took out a gun and cocked it and looked at Smith. Smith was unsure whether Rogers was singing the song "Run Tell That" or whether he was telling Smith to "run tell that". Rogers then walked back to the front of the club. (T. 479) The gun appeared to be a 9 or a 45. (T. 479) Smith attempted to call Woodland's phone to tell him to stay

out of Roger's way, but Woodland did not answer. (T. 480) Smith made the association with Woodland when he saw Roger's gun because of the many years of bad blood between the two. (T. 481) When the actual gunfire occurred, Smith ran in the bathroom. He heard a lot of gunshots with two breaks. There were two shots, followed by a break, then three or more shots, followed by a second break and then two more shots. (T. 481)

Testimony of Virgil Woodall

Sargent Virgil Woodall is employed by the Vicksburg Police Department in the Crime Scene Division. He reported to a scene at the Hilltop Lounge on Washington Street in the early morning hours of August 2, 2004. Sargent Woodall arrived at the club between 1:10 and 1:15 a.m. When he reached the scene he was briefed by the night shift supervisor. Sargent Woodall entered the club and did a walk through. Woodland was laying on the floor partially across the doorway by a partition wall that leads from the doorway to the main body of the club. (T. 490) Woodall found eight shell casings at the scene, one outside by the front door and seven other shell casings throughout the club. (T. 493) Woodall found three shell casings by the head of Woodland Woodland to the right of his head, as well as one live 45 caliber round. (T. 496)

Woodall and the coroner, John Thompson, rolled Woodlands body over and found that he still had an automatic weapon in his left hand. The gun was in a loaded state and had three live rounds in the magazine and one in the chamber. (T. 498-500) After Woodland's body was removed, Sargent Woodall looked for other physical evidence that may have been under the body and recovered a projectile from the wood under the carpet in the wood floor. The projectile was found where Woodland's left arm had been. (T. 504) Sargent Woodall recovered another projectile from the seat cushion from the bottom of one of the chairs in the lounge that was turned over and it was at an angle above Mr. Woodland's head. (T. 505)

Sargent Woodall found blood on the floor and a shell casing in the area where Lakeia Green was shot. (T. 513) Sargent Woodall found blood in restroom consistent with Erica Smith's statement that she ran into the restroom after she was shot. (T. 513)

Testimony of Steve Byrd

Steve Byrd is employed as the Quality Manager at the Mississippi Crime Laboratory and also performs duties with the Firearm Section. Mr. Byrd testified as an expert witness in forensic science with a speciality in firearm and tool marks examinations. (T. 534) Byrd examined the 45 caliber High Point semiautomatic pistol found in Danny Woodland's hand at the scene. (T. 536)

He also examined eight shell casings found at the Hilltop Lounge, and testified that only one of those was discharged from Woodland's gun. The other seven cartridge cases and the carpet jacketed projectiles and jacket fragments were not discharged from Woodland's gun. They were all fired from another firearm completely and they were all fired from the same gun. (T. 540) The two live cartridges did not bear enough marks for him to determine whether they had been put in the chamber of Woodland's gun and removed. (T. 540) The projectiles recovered from Danny Woodland's body and submitted by the pathologist were all fired from the same gun. (T. 543) None of the projectiles submitted were fired from Woodland's gun and all of them were fired by the same 45 caliber gun. (T. 544, 547) Of the eight shell casings submitted, only one shell casing was fired from Woodland's gun. All were 45 caliber. (T. 544) Byrd was unable to determine if they were all fired from the same gun. (T. 545) The two projectiles which were recovered at the scene were 45 auto caliber and were not fired from Woodland's gun. (T. 547) The two live rounds submitted did not have sufficient marking to tell whether or not they had been placed in Woodland's gun. (T. 545, 548)

Motion for Directed Verdict

At the close of the State's case, Rogers moved for a directed verdict, arguing a lack of evidence. The Court ruled that as to the charge of manslaughter, there was testimony that Rogers did shoot Woodland and that the shot was fired while he was directly over him, making the claim of self defense an issue for the jury. (T. 567, 568) On the issue of aggravated assault as to Ms. Green, the Court ruled that Ms. Green's testimony that she saw Rogers shooting in her direction and that she was shot in the hand at that point was sufficient to make put the before the jury the questions of whether or the gunshot that was fired came from Rogers' gun. (T. 569) The Court ruled that Mr. Henderson's testimony was sufficient evidence to create a jury question as to whether Mr. Roger's gun was the one that shot Mr. Henderson. (T. 569) The State then rested its case. (T. 569)

Testimony of Bonita Branson

Ms. Bonita Branson testified that she was at the Hilltop Lounge on August 2, 2004. (T. 571) She arrived at the club sometime before midnight. Branson had a relationship with Woodland for about a year, off and on. She had also had a relationship with Rogers in the past. (T. 571-572) That night Branson saw Woodland when he arrived at the club. She saw him pull up and enter and she came in the club. Though she does not remember what time, and she did not speak with him at that time. (T. 572) Branson saw Rogers when he walked past her while she was standing by the dance floor at the end of the bar. (T. 573) Rogers went down by the DJ. There were tables in the area and people were seated. Rogers was by himself. (T. 573) Branson did not see Rogers do anything since her back was turned and she was talking. (T. 574)

Branson saw Rogers and Woodland in an argument a few steps from her as she stood at the end of the bar. She had seen Rogers for the first time just a couple of minutes before. She saw Woodland walking toward Rogers and couldn't hear anything they were saying until she walked

over. (T. 574) Branson stood behind Woodland and tried to make out what was happening. She heard Woodland say, "Stay out of my business. Let me make it." Woodland's friend broke them up and they split. Woodland turned around and started walking towards Branson. Wolf, Perry and Tyler were standing with Woodland and Rogers, but she could not see which one broke up the altercation. Branson thought that there had been another argument previous that one. (T. 575)

Branson walked back to the place she had been standing earlier. She told them to leave it alone and asked Woodland to take her home to which he replied no, that he was alright. (T. 576) Woodland walked with Branson a few steps and then told Branson to get out of the way. Branson got down and was kneeling and crawling. That is when Rogers and Woodland started shooting. Branson saw Woodland pull his gun and fire it. That was the first shot she heard. (T. 577) Branson was not sure whether Woodland had already fired when she saw Rogers' gun. Branson heard two shots and then heard a click. She only saw Woodland fire once and could not remember how many clicks she heard. (T. 578) Woodland then turned and was trying to leave. He had his gun in one hand and was facing Rogers. (T. 579)

When the altercation started, the song "Run and Tell That" was playing. Michael Tyler asked the DJ to play it again after he broke up the altercation and walked away from Woodland. (T. 580) Everybody really started jumping around the average way people act when they hear a crunch song. (T. 580)

Branson had been to the club before and had once been called to get Woodland when he got in an argument with the club. Branson had been present for a prior conflict between Woodland and Rogers at the Elks Lodge. (T. 582)

After the first shot was fired, Branson got down on her knees and started crawling toward the front of the bar and was looking back to see who was coming. She crawled all the way up to where

Woodland had fallen. She saw Rogers walking, but did not know if he was going out. She was spoke to Woodland and shook his legs. She felt like he was saying something back to her, but could not hear him. (T. 585, 586, 588) She was not sure if she heard loud gunshots at that time. (T. 588)

The first time Branson saw Rogers' gun was after Rogers and Woodland were getting ready to argue. Rogers raised up his shirt and Woodland pulled out his gun. Branson heard Woodland tell Rogers "Be a man. Let's fight." Woodland wanted a fist fight and Rogers replied "I don't have to fight and held up his shirt."

After the shooting, Branson saw Rogers leaving the club with someone helping him. She then saw him walking by the window outside the club. (T. 390)

Earlier in the evening Woodland was at another club playing pool. Branson testified that she called him from the Hilltop Lounge and told him where she was. Woodland replied that he and some others would be down there in a minute. (T. 390) She did not see Rogers until after she met up with Woodland at the bar. Branson and Woodland were talking when Rogers walked past. (T. 591)

Testimony of Melissa Williams

Williams was at the Hilltop Lounge in the early morning hours of August 2, 2004 with Rogers' brother Lash. She arrived at the club a little before 12 o'clock. She saw Rogers arrive at the club 15 or 20 minutes later. (T. 592, 593) Woodland also came in after Williams. Williams and Lash were standing by the dance floor. Williams saw Woodland approach Rogers and saw the two arguing two tables away from her. (T. 594) Michael Tyler pulled Woodland away and Woodland pulled away and went back over to Rogers where they talked some more. Williams was unable to hear what they were saying. Woodland and Branson walked off together. Woodland reached under his shirt and turned around and shot. Williams did not see Woodland pull up his shirt to show his gun. She testified people, including Perry Jones, Michael Tyler and Lash Rogers were there during

the argument trying to keep Woodland and Rogers apart. (T. 595)

Williams could not say whether Woodland was shooting at Rogers. She did know that they disliked each other. (T. 600) Williams saw one altercation where Michael Tyler pulled Woodland away. Then next confrontation she saw was when Woodland walked away with Branson.

During the gunfire, Williams was on the dance floor holding on to Lash. (T. 597) After the gunfire, Williams left with Lash, stepping over Woodland's body to get to the door. (T. 599) The next time she saw Rogers was after she left the club and he was running down the street. Williams did not know Rogers had been shot. She did not see a gun. Rogers was with Bentrissa Shelton. Williams left with Lash in his car. They went down Pearl street. Lash received phone call and they learned that Rogers had been shot. (T 597)

Testimony of Bentrissa Shelton

Bentrissa Shelton testified that she arrived at the Hilltop Lounge at 10:30 p.m. and was at the club during the early morning hours of August 2, 2004. Shelton was with her girlfriend and her sister. They were seated at a table near the juke box at the end of the bar. (T. 603)

Shelton first saw Rogers and Woodland at the same time. Rogers was standing in the walkway in front of the dance floor. (T. 605) Woodland was standing on the side at the end of the bar. She did not see either of them enter the bar. (T. 606) They appeared to be arguing and Woodland was doing a lot of talking and shaking his head. A few seconds later, she notice Michael Tyler breaking up the argument. (T. 606) Tyler then asked the DJ to play the song "Run and Tell That" again. Shelton turned to talk with her friend and when she turned around Woodland was pointing a gun. She looked at Rogers and then she got down. (T. 607) After Shelton got down, she heard shots but didn't see any guns. (T. 609)

Williams didn't get up until she didn't hear any shots. She got up and ran out the door. She

was trying to run to the left to go to her car when she saw Rogers holding his chest and bleeding. He asked her to take him to the hospital. (T. 610) Rogers went into his pocket and pulled out his keys. Shelton took the keys, but couldn't move. A few minutes later her sister drove up and Shelton was unable to help Rogers into the car, but he was able to get in on his own. Shelton got into the car on the other side and they left. (T. 611)

Shelton did not see a woman helping Rogers out of the building. When she got up the club was dead silent and not a soul was left in there. She did not see Rogers with a weapon that night. (T. 613)

Shelton was not the person who helped Rogers get out of the club that night. He was not in the club when she got up. In fact she saw no one in the club when she got up. (T. 613) She did see a body on the floor but did not know who it was. At the time she saw Rogers in the street, he did not have a gun and she and the others in the car did not help him dispose of a gun. (T. 614) She did not see Rogers dispose of a gun during the drive. (T. 616) They got on 61 North to go to the hospital and a sheriff's car put it's lights on them as soon as they got on the highway and followed them to the hospital. (T. 616)

Shelton was completely unaware of what time it was when she left the club and did not know how long it took them to get to the hospital. (T. 617) Shelton did not help Rogers get out of the club and found him outside the middle of the street when she finally came out after everything was over. (T. 617)

Testimony of Rose Williams

Williams was at the Hilltop Lounge in the early morning hours of August 2, 2004. She arrived some time before midnight with a girlfriend. (T. 619) Williams saw Rogers that night at the club beside a pool table. She did not see him pull a gun or pull up his shirt to show a gun. (T. 620)

Williams went to the back into the pool room by the bathrooms to use the restroom. After she returned from the restroom Rogers was gone. She was not in the front of the club and could not testify to the events that went on there. (T. 621) She did see Keithen Smith in the pool room but did not see Smith and Rogers speak to one another. She did not see Smith make a call on his cell phone. She had a conversation with Rogers while standing in the line for the restroom. By the time the shooting occurred, Williams had left the club and was already up by the public library. (T. 622, 623)

Testimony of Reginald Rogers

Rogers testified that he went to the Hilltop Lounge at about 12:50 a.m. on August 2, 2004. Rogers testified that he had controversy with Danny Woodland and his brother Anthony since April or May of 2003 after Rogers Bonita Branson. Rogers worried that Woodland and Branson would fool around again. He asked Branson about it and she denied that she was seeing Woodland. They continued to see each other and starting around August or September, Rogers was practically living with her. That was when Rogers started having problems. He ended his relationship with Ms. Branson on December 3, 2003. He did not keep up with Ms. Branson after that. (T. 626, 627)

Rogers testified that Woodland threatened him and would get hostile if Rogers looked at him or in his direction. Rogers testified that he ignored the hostility. He testified that Woodland displayed a weapon at the Elks Lodge. Rogers said that Woodland gave the gun to Anthony Woodland's girlfriend and was practically telling her to shoot Rogers. (T. 628) Rogers testified that he was in the Hilltop Lounge on a previous occasion and spoke to a girl who was with another girl who dated Woodland. Woodland appeared and took his girlfriend out of the club. (T. 631) Woodland did not say anything to Rogers that night.

Rogers testified that he did not know Rogers was in the club when he went to the Hilltop Lounge on August 2, 2004. He entered the club through the front door and went straight to the end

of the bar towards Washington Street. He went to get a cup of ice and had to walk through Woodland and a little crowd of people. When he went to the bar he heard the song "Run and Tell That" for the first time. When he got his cup and was about to leave, he saw Woodland. Woodland had his hand behind Rogers' head making some kind of sign language. When Rogers turned, Woodland pulled his hand down. Rogers testified that no one in the group said anything to him and he did not say anything to them. (T. 634)

Rogers saw his brother, Lash, and his brother's girlfriend, Melissa Lash, standing by the bar near the dance floor. Rogers walked up to them and spoke and then went to the back of the club to the pool room. He saw Keithen Smith in the pool room and did not speak to him or show a gun. He denied that he took a gun out of his pants leg and put it in his waist band under his shirt, saying "I'm alright now." He denied singing "Run and Tell That" to Keithen Smith. He spoke to Rose Williams and then went on to the bathroom. Rogers then went back to the area by the dance floor where his Lash and Melissa Williams were standing.

Rogers testified that Woodland came and got in his face, that he walked almost up on Rogers and was so close that their faces were almost touching. The song "Run and Tell That" was playing. Rogers testified he had never heard the song before that night. Woodland was in his face saying "Run and tell that. Run and tell that," bouncing in his face and practically spitting on Rogers. Perry Jones and Michael Tyler tried to intervene and get Woodland to move away, but Woodland kept talking. Michael Tyler whispered something in Woodland's ear and Woodland then walked away. Tyler then asked the DJ to play "Run and Tell That" again. Woodland just got more "cronk" at that point. (636, 637) Rogers testified that he and Woodland were close to each other at least twice that night and the he never responded to what Woodland told him. He testified that he never saw Woodland lift his shirt to show a gun. Rogers testified that he never pulled his shirt up to show his

gun and never displayed a weapon in the club. (T. 638) Rogers testified that he stayed in the same spot the whole time and that Woodland kept coming toward him. Rogers then testified, in contradiction to his earlier testimony that he had never responded to Woodland's taunts, that when Woodland was in his face repeating "Run and Tell That", that he told Woodland to "Run and tell that" with authority in his voice and that Woodland then walked away. (T. 639)

Rogers testified that he believed Woodland was bluffing and that he turned around and put his Sprite bottle and ice on the table and that when he turned, he saw Woodland pointing a gun at him. Woodland shot twice. Rogers testified that Woodland turned and continued to try to shoot him, but that his gun jammed. (T. 642) Rogers testified that he realized that Woodland shot him and was still trying to shoot him and drew his gun. He shot as fast as he could while Woodland was backing up trying to unjam his gun. Rogers testified that Woodland did not try to leave the club, but was still there trying to finish what he started. (T. 645) Rogers testified that he never stood over Woodland and shot him in the head. (T. 645)

When the slide on his gun came back, Rogers testified that he knew he was out of bullets and that he had to get to the hospital. He walked out of the club. Rogers testified he does not know what happened to his gun. He did not know if he dropped it inside or outside the club. He felt he was getting weaker and saw Bentrissa leaving the club and gave her his keys and asked her to drive him to the hospital. (T. 646, 647, 648) Rogers testified that he came to the club alone and that no one was with him when he left the club and that no one helped him out of the club. (T. 648) Rogers testified that he did not know anyone had died until his counsel, Travis Vance came to the hospital.

Rogers learned at Thanksgiving of 2003 that Woodland had proposed to Branson, down on his knees and asked her to marry him. At the time of the August 2, 2004 shootings at the Hilltop Lounge, Rogers was dating Bentrissa Shelton. Rogers already knew Shelton when he came out of

the club that night, although they weren't on a date that evening. (T. 652, 653)

Rogers testified that he did not know that Woodland was in the club that night. He testified that he was in the habit of carrying a 45 caliber pistol in his car. He carried with him that night because he had been threatened by them. Woodland was the only person who had threatened him and he testified that he carried the gun in because of Woodland's prior threats even though he didn't know Woodland was in the club that night. (T. 654) Rogers testified that he carried his 45 Ruger P-97 into the club that night. The clip holds 9 or 10 rounds. Rogers testified that there were seven round in the clip that night. Rogers testified that he never carried the gun with a round loaded and ready in the chamber; however, he testified that the clip held seven rounds, and one of those rounds was loaded in the chamber on the night of August 2, 2004). (T. 655, 656) Rogers testified that he carried his gun on his side where he also clipped his keys. Rogers then testified that he was searching for his keys after he left the club and that Shelton asked him where his keys were so she could drive him to the hospital. (T. 657)

Rogers testified that he did not bump into Woodlands that evening when he came in the bar and that he would go around him if he saw him. (T. 660, 661) He testified that Danny Woodland never requested to go outside to fight and that he never told Woodland that he didn't need to fight and showed Woodland his gun. (T. 663)

Rogers gave very specific testimony of his memory of the events of the shooting and leaving the club, as well as his conversation with Bentrissa Shelton. (T. 668, 669) He testified that he has no memory of what happened to his gun. (T. 671)

The defense declined to redirect and rested its case. (T. 672)

STATEMENT OF ISSUES

PROPOSITION ONE

The evidence overwhelmingly proved that the Defendant was guilty of manslaughter. There is no prejudice if the evidence proved murder and Rogers was only charged and convicted of the crime of manslaughter.

PROPOSITION TWO

A juror cannot impeach the verdict of the jury and the evidence produced by Rogers is not credible since it is not sworn and the alleged author of the note has not been found. There is no error.

PROPOSITION THREE

Whether Rogers was acting in self defense was a question of fact for the jury and the jury's verdict was overwhelming supported by the weight and sufficiency of the evidence against Rogers claim of self defense. There is no error.

PROPOSITION FOUR

The State proved all the elements of the crime of aggravated assault beyond a reasonable doubt.

PROPOSITION FIVE

The weight and sufficiency of the evidence against supported the jury's verdict which was properly upheld by the Trial Court.

SUMMARY OF THE ARGUMENT

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A juror cannot impeach the verdict of the jury and the evidence produced by Rogers is not credible since it is not sworn and the alleged author of the note has not been found. There is no error.

Whether Rogers was acting in self defense was a question of fact for the jury and the jury's verdict was overwhelming supported by the weight and sufficiency of the evidence against Rogers claim of self defense. There is no error.

The State proved all the elements of the crime of aggravated assault beyond a reasonable doubt.

The weight and sufficiency of the evidence against supported the jury's verdict which was properly upheld by the Trial Court.

ARGUMENT

PROPOSITION ONE

The evidence overwhelmingly proved that the Defendant was guilty of manslaughter. There is no prejudice if the evidence proved murder and Rogers was only charged and convicted of the crime of manslaughter. The prosecution presented as evidence only the testimony of the witnesses. If the testimony supported a verdict of murder with malice aforethought or deliberate design, then Rogers is certainly not prejudiced. He cannot be heard to complain that he was convicted of a lesser charge than the one proved at trial. The prosecution was required to rebut Rogers' claim of self defense and therefore put on evidence of Rogers' deliberate acts of instigation and aggression to rebut Rogers claim of self defense when he killed Woodland. This evidence was not adduced to prove murder, but to rebut the claim of self defense. To the extent that the prosecution may have over argued its case, there is no prejudice to Rogers, since the jury was instructed by the Trial Court to disregard any arguments by counsel which were not supported by the evidence. Jurors are presumed to follow the instructions given by the court.

PROPOSITION TWO

The record reflects a unanimous verdict. The jurors came from the jury room with a unanimous verdict. When given an opportunity to give a clear answer to the court as to whether or not the verdict read was her verdict each juror indicated that she was in agreement with the verdict.

The note produced by Rogers' family is not sworn or authenticated in any way. There is no proof of the identity of the author of the note. The note could have been written by anyone. The note does not allege any misconduct or inappropriate pressure exerted by the conduct of other jurors in the jury room as stated by Rogers in his brief. The writer of the note only says that she was afraid and confused and does not state that anyone pressured her or that any misconduct caused her fear or confusion. Even if we assume that Ms. Atkins wrote the note, perhaps she was fearful merely of the idea of being part of the process of sending a defendant to jail, perhaps she was afraid of retribution from Rogers family and wanted to distance herself from the verdict or perhaps she was confused by the process of weighing the evidence to determine whether each count was supported by the evidence. Whatever her confusion, a juror cannot impeach her own verdict. Once the Court clarified the polling of the jury so that each juror responded to the verdict on each specifically identified count every juror acknowledged that verdict as her own.

Rogers suggests in his brief that the Trial Court should have followed this Court's advice in *Morgan v. State*, 370 So.2d 231, 232 (Miss. 1979) and sent the jury back for further deliberation and suggests that the outcome might have been different. Rogers did not make a motion at trial for the Court to adopt that practice. A trial judge cannot be overruled on an matter that was that was not presented to him for decision. *McLendon v. State*, 945 So.2d 372, 383 (Miss. App. 2006). This issue is waived due to failure to timely object.

Rogers received a fair trial by an impartial jury and the trial court properly denied Rogers'

Motion for New Trial and upheld his conviction for two counts of aggravated assault and one count of manslaughter.

PROPOSITION THREE

The indictment containing the manslaughter charge for the death of Danny Woodland and the two counts of aggravated assault for gunshot injuries to Lakeia Green and Chris Henderson was proper. Rogers cites no authority for his contention that the indictment was flawed.

The Multi Count Indictment Statute, Miss. Code Ann. § 99-7-2 (1972) (as amended), provides, in pertinent part, that:

(1) Two (2) or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if: (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) Where two (2) or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.

Rogers argues that his right of self defense was “tarnished” because the two counts of aggravated assault were contained in the same indictment with the count of manslaughter. However, the multi-count indictment against Rogers was clearly proper pursuant to the Multi-Count Indictment Statute. Further, the appropriate time for such an objection would be prior to trial. Rogers made no motion to try the counts separately prior to trial. *McLendon v. State*, 945 So.2d 372, 383 (Miss. App. 2006).

Rogers makes no argument in his appeal that the indictment was in any way improper pursuant to the Multi Count Indictment Statute. He does not argue that the wounds to the bystanders were not part of the same transaction or occurrence. The evidence in the record reflects that all the counts of the indictment were part of the same transaction and thus properly charged in one

indictment and tried in one proceeding. Even if Rogers had moved to separate the charges prior to trial and each count had been tried separately, all the facts of the transaction would come into evidence at each trial and Rogers' alleged prejudice would not be alleviated.

Rogers asks this Court whether the law of the state will require a person who attempts to defend himself from bodily harm in a public place will have to take into account the strangers in harms way. (Appellant's Brief, p. 14)

Rogers was indicted pursuant to Section 97-3-7(2)(a), Miss. Code Ann. (1972), as amended, which provides, in pertinent part, that, "[a] person is guilty of aggravated assault if he causes [serious bodily] injury to another . . . recklessly under circumstances manifesting extreme indifference to the value of human life." Specifically, regarding the two counts of aggravated assault, the indictment states that Rogers:

[d]id purposely, knowingly or recklessly cause serious bodily injury to Lakeia Green under circumstances manifesting extreme indifference to human life, to-wit: by discharging a weapon in a public place wounding her in the right hand in violation of Miss. Code Ann. 1972, Ann. Sec. 97-3-7(2) (a), contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

[d]id purposely, knowingly or recklessly cause serious bodily injury to Chris Henderson under circumstances manifesting extreme indifference to human life, to-wit: by discharging a weapon in a public place wounding him in the leg in violation of Miss. Code 1972, Ann. Sec. 97-3-7(2)(a), contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

Rogers is not entitled assert the right of self-defense for any of the shots he fired that morning at the Hilltop Lounge, because the proof at trial clearly showed that Rogers was the aggressor. He came to the club looking for Woodland. Rogers testified that he carried a gun in his car because he

was afraid of Woodland. He testified that he never kept a round in the chamber of his 45. But on the early morning of August 2, 2004, Rogers testified that he entered the Hilltop Lounge with his loaded gun on his body and a live round in the chamber. The testimony of several witnesses, most notably Tamela and LaShanta Strong, prove that Rogers came into the bar and made a beeline for Woodland and immediately engaged Woodland in conflict. Their credible testimony proved that Woodland repeatedly asked to "Let it go" and that Rogers came back to confront Woodland twice after the first confrontation and that it was Rogers who first showed his gun, thus giving Woodland the necessity to protect himself. The testimony of the two experts, Dr. Haynes and Steve Byrd, and Officer Virgil Woodall, cleanly supported the specific facts of the Strong sisters' testimony and that of other eyewitnesses that Rogers fired repeatedly at Woodland as he backed away. Dr. Haynes testimony along with the testimony of the Strong sisters and other eyewitnesses proved beyond a reasonable doubt that Rogers stood over Woodland, as he lay wounded on the floor, beyond the point of offering any aggression, and pumped three more bullets into Woodland, the coup de grace, a lethal shot to Woodland's head.

In *Arrington v. State*, the Mississippi Supreme Court opined:

The appellant claimed self-defense, but at the time he shot Sumrall, appellant was the aggressor. The general rule on self-defense is stated in 40 Am.Jur.2d Homicide s 145, at 434 (1968):

"The fault in bringing on a difficulty which will deprive one of the right of self-defense is not confined to the precise time of the fatal encounter which results, but may include faults so closely connected with the difficulty in time and circumstances as to be fairly regarded as operating to bring it on. A plea of self-defense is of no avail, notwithstanding the deceased provoked the original quarrel with the accused, where, after that quarrel had ended, and there had been a cessation of the conflict, or the deceased had withdrawn therefrom, a subsequent difficulty was provoked or brought about by the accused. He is to be deemed the aggressor for bringing on or renewing the affray, even though, in so doing, he had no intention of

killing or doing serious bodily harm.”

For a homicide to be justifiable on the ground of self-defense , the danger to the slayer must either be actual, present and urgent or the slayer must have reasonable grounds to apprehend a design on the part of the deceased to kill him or do him some great bodily harm and, in addition, there must be imminent danger of such design being accomplished. *Bright v. State*, 349 So.2d 503 (Miss.1977). The general rule is that evidence of the bad character of the deceased is competent where there is doubt as to which of the parties was the aggressor.

In the present case, Sumrall had withdrawn from the affray and had walked away from Arrington a distance of approximately twenty (20) feet with his back toward Arrington, when the shooting began. Under those facts, which are undisputed, the evidence was not competent on the issue of which party was the aggressor. Furthermore, the trial judge stated to counsel for appellant in chambers that he would permit him to introduce testimony regarding the general reputation of Sumrall for peace or violence in the community in which he lived. Counsel then questioned the sheriff about same, but the sheriff replied that he did not know Sumrall's reputation. No attempt was made to prove the deceased's general reputation in the presence of the jury.

Arrington v. State, 366 So.2d 246, 247 (Miss. 1979).

Rogers relies on a hypothetical statement in the prosecutor’s closing argument for the proposition that he had a right of self defense when he fired his first shots at Woodland. However, as in the above cited case, Rogers had no right of self defense because of he initiated the confrontation that night when he came to the Hill Top Lounge that night armed with his loaded gun and immediately sought out Woodland, intentionally bumping into him and igniting hostilities. Rogers was carrying on a longstanding conflict with Woodland and was clearly “itching for a fight”. Because Rogers instigated and provoked the hostilities that lead to the gunfight, it was reasonable for the jury to find that Rogers was not entitled to self defense and that therefore his conduct from the moment he came into the club was reckless in that it was designed to provoke hostilities in a crowded bar. Further, Rogers brought his gun into the club intending and expecting to provoke a

confrontation which would result in gunfire in the middle of a mass of innocent bystanders. Rogers was reckless in his pursuit of violent conflict with Woodland. He has no right of self defense as to Woodland's death and no right to claim that he was acting in self defense when he shot Lakeia Green and Chris Henderson.

The prosecutor's comment during closing argument regarding Rogers' right to self defense at the time he shot Woodland immediately after he was shot was not supported by the evidence due to Rogers' role as the aggressor and instigator of the conflict. The evidence here does not allow Rogers to rely on self defense in the shootings of Lakeia Green and Chris Henderson as the right of self defense will not extend to the charges of aggravated assault where Rogers provoked the gunfight in a crowded bar.

704 so.2d 475

In *Cohen v. State*, 95-KA-0233 COA (1997), the majority states that the law in Mississippi is that if one is properly exercising his right to self-defense he is not criminally liable for *purely accidental* injuries. [emphasis added] In *Cohen*, the defendant was walking down one side of the street when another party shot at him from across the street. Cohen returned fire in self defense and accidentally struck a woman passerby. The scenario in *Cohen* is relevantly different from the instant facts. Here, Rogers carried his loaded gun, with a live round in the chamber, into a crowded bar, by his testimony, because he feared Woodland. This act, even if Rogers can claim self defense as to Woodland, is reckless as to Lakeia Green and Chris Henderson. Rogers was at least concerned enough that Woodland would be there that he was frightened enough to arm himself. Rogers testified that he believed that Woodland carried a gun and that Woodland had threatened him and displayed the gun to him during a previous argument. Thus, with his loaded gun with a round in the chamber, his concern that he needed to protect himself from Woodland on entering the club and his knowledge that Woodland had a gun that he was willing to use, he recklessly and with extreme

indifference for human life or safety, carried the deadly potential for a gunfight into the club that night endangering each and every innocent bystander crowded into the club.

Rogers actions were weighed by a properly instructed jury. Once the jury is properly instructed, self defense is a jury issue, not the province of appellate courts. The jury was properly instructed as to the three counts of the indictment, two lesser counts of aggravated assault and the right of self defense. They heard and weighed the evidence in this case and unanimously found that Rogers was not entitled to self defense to the two counts of aggravated assault to Lakeia Green and Chris Henderson and the charge of manslaughter as to Woodall.

Rogers right of self defense was not watered down by the indictment nor was he an innocent victim entitled to plow down anyone in front of him in order to kill his nemesis, Danny Woodall. The verdict of the jury was correct and should be affirmed by the Court.

PROPOSITION FOUR

The state proved both counts of aggravated assault committed by Rogers. Pursuant to Miss. Code Ann. 1972, § 97-3-7(2)(A) requires that the state prove that Rogers purposely, knowingly or recklessly cause serious bodily injury to Lakeia Green and Chris Henderson under circumstances manifesting extreme indifference to human life by discharging a weapon in a public place and wounding Green and Henderson.

As discussed in Proposition Three above, the evidence at trial showed beyond a reasonable doubt that Rogers was not entitled to claim a right to self defense because he was the instigator and aggressor on the night of August 2, 2004. The testimony of numerous witnesses established that Rogers entered the bar and made his way quickly to Woodland and provoked a conflict. He continued to provoke Woodland, finally displaying his gun and escalating the conflict to deadly proportions. This intentional escalation of armed conflict deprives Rogers of his right of self defense

as to Woodland and as to Green and Henderson. *Arrington* at 246, 247.

Rogers carried his loaded gun, with a live round in the chamber, into a crowded bar, by his own testimony, because he feared Woodland. This act, even if Rogers can claim self defense as to Woodland, is reckless as to Lakeia Green and Chris Henderson. Rogers was at least concerned enough that Woodland would be there that he was frightened enough to arm himself. Rogers testified that he believed that Woodland carried a gun and that Woodland had threatened him and displayed the gun to him during a previous argument. Thus, with his loaded gun with a round in the chamber, his concern that he needed to protect himself from Woodland on entering the club and his knowledge that Woodland had a gun that he was willing to use, he recklessly and with extreme indifference for human life or safety, carried the deadly potential for a gunfight into the club that night endangering each and every innocent bystander crowded into the club.

The prosecution proved that Woodland purposely, knowingly and recklessly and with extreme indifference to human life, brought a loaded gun with a live round into the chamber into a crowded bar expecting a confrontation. The state proved that he provoked that confrontation showing his gun to his enemy whom he knew also carried a gun, intentionally escalating the level of the confrontation to lethal proportions. It matters not who fired first, Rogers purposely, knowingly and recklessly endangered every life in the club at that point and acted with extreme disregard for human life by deliberately provoking a lethal gunfight in a crowded bar.

PROPOSITION FIVE

The verdict was supported by the weight and sufficiency of the evidence. The jury's verdict was consistent with and supported by the overwhelming weight of the evidence against Rogers. To prevail on the contention that he is entitled to a judgment of acquittal, Rogers faces the following formidable standard of review:

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence – not just that supporting the case for the prosecution – in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. ON the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.

Manning v. State, 735 So.2d 323, 333 (Miss. 1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss. 1987).

Furthermore,

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss. 1993) (citations omitted). It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict, it must be accepted as having been found worthy of belief.” *Williams v. State*, 427 So.2d 100, 104 (Miss. 1983).

(emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App. 1999).

See also *Jackson v. State*, 580 So.2d 1217, 1219 (Miss. 1991) (on appellate review the state “is entitled to the benefit of all favorable inferences that may reasonably be drawn from the evidence”), and *Noe*, 616 So.2d at 302 (evidence favorable to the defendant should be disregarded). Accord. *Harris v. State*, 532 So.2d 602, 603 (Miss. 1988) (appellate court “should not and cannot usurp the power of the fact-finder jury”). “When a defendant challenges the sufficiency of the evidence to

support a conviction, the evidence which supports the verdict is accepted as true by the reviewing court, and the State is given the benefit of all reasonable inferences flowing from the evidence.”

Dumas v. State, 806 So.2d 1009, 1011 (Miss. 2000).

In *Harveston v. State*, 493 So.2d 365, 372 (Miss. 1986), this Court expounded that resolution of this issue

turns not on how we see the evidence, for our institutionally mandated and self-imposed scope of review is quite limited. That limitation is premised upon our candid recognition that the jury system is at best the least imperfect way we have of determining guilt or innocence. We cannot help but be aware that a rational, fair-minded juror could well have found Harveston not guilty. Nevertheless, were we to substitute our view for the jury’s, one thing could be said with certainty: the chances of error in any findings we might make would be infinitely greater than is the case where those findings have been made by twelve citizens, peers of the defendant, who are on the trial scene and have smelled the smoke of the battle.

To the extent that Rogers has argued that he is entitled to a new trial, the state submits that Rogers must meet the stringent standard of review summarized as follows:

In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. *Dudley v. State*, 719 So.2d 180, 182 (Miss. 1998) (collecting authorities). Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal. *Id.*

Montana v. State, 822 So.2d 954, 967-68 (Miss. 2002).

As the Court of Appeals repeated in *Thomas v. State*, 812 So.2d 1010, 1014 (Miss. App. 2001)

We invite the attention of the bar to the facts that we do not reverse criminal cases where there is a straight issue of fact or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury.

quoting *Evans v. State*, 159 Miss. 561, 566, 132 So. 563, 564 (1931)

The evidence at trial overwhelming supported the jury verdict against Rogers. Despite the chaos of a gunfight in a small, dark nightclub, the testimony of the eyewitnesses was remarkably consistent and resolved to a clear picture of the actions of Rogers on the night of August 2, 2004. Combined with the physical evidence, the expert testimony of Dr. Hayes and Ballistics Expert Byrd, the Strong sisters' compelling eye witness testimony and the testimony of other eye witnesses. convincingly and overwhelmingly supports Rogers' conviction on all three counts. This evidence must be taken as true in the review the evidence which supports the verdict is accepted as true by the reviewing court, and the State is given the benefit of all reasonable inferences flowing from the evidence." *Dumas v. State*, 806 So.2d 1009, 1011 (Miss. 2000).

The testimony of these credible individuals as well as other testimony offered at trial overwhelmingly supported Rogers' conviction.

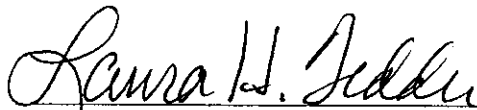
CONCLUSION

The state respectfully submits that the arguments presented by Rogers are without merit. Accordingly, the judgment entered against him should be affirmed.

Respectfully submitted,

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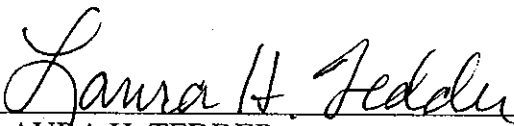
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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