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

**REGINALD VERNELL ROGERS**

**APPELLANT**

**VS.**

**NO.: 2006-KA-0064**

**STATE OF MISSISSIPPI**

**FILED**

**APPELLEE**

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**REPLY BRIEF FOR THE APPELLANT**

**APPELLANT DOES NOT REQUEST ORAL ARGUMENT**

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**ARGUMENT**

Woodland produced a handgun as he walked away from Rogers. Woodland turned, aimed the firearm at Rogers and fired two or three times, hitting Rogers in the chest, as well as other people (R218, 250, 289, 290, 298). Woodland was always the aggressor in this horrible incident. Counsel opposite harps on the fact Rogers armed himself prior to going to the club. She missed the fact that Woodland was armed and showed his weapon during prior confrontations. (R215-217)

Roger did what any American has a right to do. That is, he protected his person from further harm. The State's expert testified that Woodland received a lethal wound to the mid-section. (R464, 466) According to Dr. Hayne's testimony, Woodland was already dead and the shot to the head had no significance in the entire scheme, but to stop Woodland from shooting again. Rogers' primary motive was to disable the threat that had caused a bullet to pass through his chest cavity. (R643)

The theme of the State's brief is that Rogers was the aggressor because he carried a weapon into the club. Rogers' actions were all in defense of himself, after being wounded by Woodland. Everyone thought Woodland was leaving and that nothing further was going to happen. (R323 - 324) Woodland brought about his own demise. Rogers reacted to the threat and did in fact neutralize the threat.

Rogers is well aware that self-defense is a question for the jury. In this case the State muddied the waters so much that the jury could not see clearly. Rogers should be afforded an opportunity to present his case to a jury that has not been tainted. The State's persistence on the issue that the shot to the head was the killing blow goes against their own expert. Dr. Hayne admitted the shot to the head could have occurred while Woodland was still standing. (R462 - 463) The angle of Woodland's head on the floor, described by the State and as some witnesses, as being face down, was refuted. Henderson had Woodland on the floor facing toward the bar area or to his left (R335) That angle would not have produced the bullet path described by Dr. Hayne if Rogers had stood over him and fired. (R459) The prosecutor continually advised the jury, through testimony and argument, that Woodland was face down on the floor when shot. A type of execution scenario. The proof clearly showed that he was faced to his left. The prosecutor's misstatement of the facts and evidence was highly prejudicial to Rogers creating a case of murder.

It is clear that Woodland was not directly face down on the floor in the club. (R341, 244) The prosecutor misstated evidence as well as misquoted witnesses at and during the trial, as relates to this matter. The angle of Woodland's head on the floor was and is a serious issue to Rogers because Dr. Hayne gave testimony refuting the fact that Woodland was face down. (R459) The head angle would corroborate Dr. Hayne's testimony that Woodland was shot in the head while he was standing and not on the floor. On top of this Rogers would again state that Woodland was dead at the time or place when any bullet entered his head. Chris Henderson, a witness and victim,

stated that he and another were on the floor with Woodland as Rogers left the club. (R335 - 336) No one testified they were stepped on by Rogers. How could he have stood over Woodland and fired?

The State cites Cohen v. State, 732 So 2d 867 (Miss 1998), stating that if one properly exercises his right to self-defense he is not criminally liable for purely accidental injury. Cohen was fired upon and returned fire hitting another accidentally. Rogers' case parrots Cohen. Woodland fired and struck Rogers in the chest. Rogers returned fire to stop Woodland from killing him.

The State, in its brief, attempts the same maneuver employed by the prosecution at trial. For arguments sake the State grants self-defense to Rogers as to Woodland, then states he should still be guilty of the aggravated assault charges. (State's Brief at Page 32) This lends credence to Rogers contention that he was prejudiced by the aggravated assault charges affecting the self-defense issue presented at trial.

Appellee's brief reveals only one, continuous argument that can be gleaned from the unusual format employed. Rogers was the aggressor from the time he placed a weapon on his person and left his house, whether or not he met up with Woodland. The State relies on this premise with no basis in law. The fact that all witnesses observed Woodland walk away, pull a .45 automatic pistol, turn and fire, hitting Rogers in the chest seems to have been completely overlooked by the State. (R218, 250, 289, 290, 298)

The unintentional harming of a third party, while acting in justifiable self-defense, is excusable. The aggravated assault charge allowed the prosecution two bites of the

apple, in stating that while Rogers may have acted in self-defense, as to Woodland, he was reckless, as to the other wounded individuals. Though the prosecutor's comments in opening and closing are not evidence, said comments tend to lead or mislead the jury as to the State's version of the facts. In opening the district attorney stated Rogers acted in a reckless manner. (R194) While in closing it was stated that Rogers was justified in defending himself after being shot by Woodland. (R711) Such statements, heard by the jury, were highly prejudicial to Rogers and confusing to the jury. The State's expert, Dr. Hayne, revealed Woodland was already dying due to the shot in the mid-section. (R436 - 437) Woodland was facing Rogers when he received this lethal gunshot. Dr. Hayne stated Woodland was alive by a heart criteria at the time of the head shot. (R445) However, his previous testimony revealed Woodland was dying. Further, the wound to the head had no tattooing. (R442-445) The wound to the left arm was a near contact gunshot with tattooing, or unburned fragments of powder around the wound. (R435) Dr. Hayne testified that tattooing can carry out approximately two to two and a half feet. (R436) The prosecution alleged that the arm shot was made while Rogers stood over Woodland. The same period of time when the State told the jury Woodland was shot in the head by Rogers. The physical evidence refutes this assumption as there was no tattooing at the site of the head wound and Rogers would have been the same distance from Woodland for both shots.


### **CONCLUSION**

The physical evidence flies in the face of the State basis for the charges of manslaughter, and aggravated assault, The misstatements and misleading

presentation of evidence by the district attorney served to confuse the jury. Appellee's brief, sketchy in its argument, asks this Court to rely on the jury and not disturb the verdict. This would be a disservice to Rogers as the errors committed served to deny him a fair trial.

Rogers acted in justifiable self-defense in protecting his person from death or more serious bodily harm than he had received. The evidence and facts support Roger's position and this Court should allow him, at worst, an opportunity to present his case to a jury that has not been tainted.

**RESPECTFULLY SUBMITTED  
REGINALD VERNELL ROGERS**

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**CERTIFICATE OF SERVICE**

I, James L. Penley, Jr., do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant, to the following:

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\_\_\_\_\_  
JAMES L. PENLEY, JR.