

**COPY**

**IN THE SUPREME COURT OF MISSISSIPPI**

**LASHARIS ALFORD**

**APPELLANT**

**VS.**

**FILED**

**NO. 2007-<sup>KA</sup>TS-00241 COA**

**STATE OF MISSISSIPPI**

**AUG 21 2007**

**APPELLEE**

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SUPREME COURT  
COURT OF APPEALS**

**APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY, MISSISSIPPI UPON  
DEFENDANT'S CONVICTION OF MURDER AND POSSESSION OF A WEAPON  
BY A PRIOR CONVICTED FELON**

**BRIEF OF APPELLANT  
(Oral Argument not Requested)**

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**LASHARIS ALFORD**

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**VS.**

**NO. 2007-TS-00241 COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

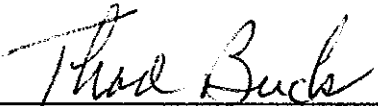
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

Hon. Frank Clark  
Assistant District Attorney  
P. O. Box 1044  
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Judge James T. Kitchens  
Circuit Judge  
P. O. Box 1387  
Columbus, MS 39703

Hon. Thad Buck  
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West Point, MS 39773

**SIGNED:**

  
Thad Buck, Attorney for Appellant

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APPELLEE

PROCEDURAL HISTORY

Lasharis Alford was indicted in a two-count indictment charging him with Murder in Count One and Possession of a weapon by a prior convicted felon in Count Two. The Defendant filed a Motion to Sever the counts but the Court overruled the Motion and the State proceeded to try the Defendant on both counts. The Defendant was convicted on both counts and was sentenced on Count One to Life in prison as a Habitual Offender and in Count Two the Defendant was sentenced to serve 10 years as a Habitual Offender, said sentence to run consecutively to Count One. The Defendant appeals his conviction and sentence.

**ISSUES ON APPEAL**

**I.**

**DID THE TRIAL COURT COMMIT ERROR IN OVERRULING MOTION FOR  
SEVERANCE OF COUNTS**

**II**

**DID THE TRIAL COURT COMMIT ERROR FOR REFUSING THE LESSER  
INCLUDED MANSLAUGHTER INSTRUCTION**

## STATEMENT OF THE CASE

This case began at Cockrell's store in Clay County and ended at Mosely's Grocery in Mantee, Mississippi, also located in Clay County, Mississippi. The State's first witness, Joshua Harry Lyons, testified that he and the victim, Demarcus Johnson, were together at Cockrell's store when the Defendant drove up "spinning" T150. "Just driving crazy" Lyons testified. T150. Lyons testified that his attitude was "real angry, like something or someone had pissed him off." T150. Demarcus Johnson, the victim, also known as "Sonny Jack" and Lyons left Cockrell's to get away from the defendant and drove 300 yards down the road to Mosley's grocery. Lyons testified that the Defendant followed them shortly thereafter to Mosley's grocery and was "real upset." T155. Witnesses testified that they saw the Defendant exit his truck and reach back into the truck and pull a pistol out and put behind his back. Witnesses testified that he walked up to "Sonny Jack" while Sonny Jack was sitting on the hood of his car smoking a cigarette. According to the witnesses, it was late in the day but still daylight. Lyons testified that the Defendant made the statement "You know I'm the kind of dude that would shoot you in your face." T. 156. According to witnesses, the victim took off his hat and said M-F, go ahead and shoot me... At that moment, according to the witnesses, the defendant pulled a pistol from behind his back and shot the victim 4 times. Dr. Haynes testified that the cause of death was a fatal shot to the left side of the head.



## SUMMARY OF THE ARGUMENT

1. The Defendant, by and through his counsel, filed a Motion for a Severance of the Counts. The court overruled the Motion and the Defendant was tried on both counts. The Defendant argues that count two was a separate and distinct offense from count one and the Motion to Sever should have been sustained. Further, the fact that count two was a charge of possession of a firearm by a prior convicted felon, prejudiced the Defendant's right to a fair trial by the fact the jury knew he was a prior convicted felon and that the conviction was Aggravated Assault.

2. The defense requested a Manslaughter Instruction which was refused by the Court. The Defendant argues that the Jury may have found a provocation existed from the evidence and returned a Manslaughter conviction, rather than Murder.

## ARGUMENT I

The Defendant relies on Rule 403 of the Mississippi Rules of Evidence which reads as follows: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by the considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The defendant also relies on Gray vs. State, 549 So.2d 1316, 1322 where the Court stated “The Mississippi Rules of Evidence also support the view that certain evidence, despite its arguable relevancy, may not be introduced at trial due to its prejudicial effect.” The court further citing Gray stated that “The views expressed under Rule 403 concerning the possible prejudicial effect of evidence at trial have been used by courts in the context of defendants charged with multiple offenses.” The court stated in Gray that “Both legal commentators and the case law of various jurisdictions have addressed the proper circumstances for the joinder of multiple offenses under one indictment. One commentator has written that although two or more offenses may be joined under one indictment, the practice should not be allowed when to do so would prejudice the defendant.” 3 C. Torcia, Wharton’s Criminal Procedure Sec. 297 at 141-142. (12<sup>th</sup> ed. 1975).

The defendant argues that placing before the jury that he is a prior convicted felon and that the felony was Aggravated Assault denied him the fundamental right to a fair trial on the murder charge.

Murder, a capital crime carries a term of Life Imprisonment and allowing count two which carries only a ten year sentence was too prejudicial and unnecessary to the Defendant's constitutional right to a fair trial.

The Defendant also relies on Corley vs. State, 584 So.2d. 769 (1991), where the Court stated that once the defendant raises the issue of severance, the State has the burden of making a prima facie case showing that the offenses charged fall within the language of the statute allowing for multi-count indictments. The Defendant contends that the State did not meet its burden of making a prima facie case and that the Court should have granted Defendant's motion to sever the counts.

## ARGUMENT II

The defendant argues that the Court should have granted the Defendant and instructed the jury on the lesser included charge of Manslaughter. Although the testimony elicited at trial was only "words" between the two men, the defendant argues that the jury could infer that there was some previous or earlier altercation which aroused the "heat of passion" in the defendant. In Ruffin vs. State, 444 So.2d. 839, 840, the Court ruled that a requested Manslaughter instruction should be refused only in cases where the evidence could only justify a murder verdict. In making such a determination as to whether or not a lesser offense instruction should be given, a defendant must again be afforded the benefit of all doubt about the evidence presented at trial. Lee vs. State, 469 So.2d. 1225 (Miss. 1985).

The Defendant submitted a Manslaughter instruction which was D-6 and was refused by the Court. The defendant relies on Graham vs. State, 582 So.2d., 1014, 1017 (Miss. 1991) citing the Heat of passion has been defined as : “(a) state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.”

“The passion felt by the person committing the act should be super induced by some insult, provocation or injury, which would naturally and instantly produce, in the minds of ordinarily constituted men, the highest degree of exasperation.” Citing Graham vs. State.

A defendant is entitled to have instructions given which present his theory of the case.... Guillen vs. State, 825 So.2d. (Miss Ct. App. 2002).

The Defendant argues that a Manslaughter instruction should have been given because it was out of provocation and the emotional state of mind of the Defendant that he shot and killed “Sonny Jack.” In support of this argument, the testimony from the State’s own witness, Joshua Harry Lyons, an eye witness to the first confrontation and the second, was that the Defendant was “Real angry, like something or someone pissed him off.” T150.

In the second confrontation which occurred at Mosley's grocery, Lyons testified that the Defendant "came to his store, got out of his truck in tyrant, still in angry rage mode."

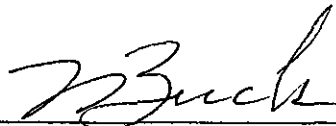
T154. Lyons testified that the victim and Defendant "exchanged words." T156. The defendant submits that the Court committed reversible error in not granting the Manslaughter instruction for the trial jury to consider during their deliberations.

The cumulative effect of the denial of the lesser offense instruction of Manslaughter, together with the granting of the State's instruction from the indictment was to unfairly prejudice defendant and deny him a fundamentally fair trial.

#### CONCLUSION

The Defendant respectfully requests the Court to consider the issues appealed and any other errors the Court may find and order a new trial in favor of the Defendant.

Respectfully Submitted,



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Counsel for Appellant

## CERTIFICATE OF SERVICE


I, Thad Buck, Counsel for Lasharis Alford, do hereby certify that I have this day caused to be mailed via United States Postal Service, First class postage prepaid, a true and correct copy of the above and foregoing BRIEF OF APPELLANT to the following:

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Hon. Forrest Allgood  
District Attorney  
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This the 21<sup>st</sup> day of <sup>AUGUST</sup>~~July~~, 2007.

  
\_\_\_\_\_  
Thad Buck  
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