

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

**COPY**

**NO. 2007-KA-00758-COA**

**COLT ALLEN CHRISTIAN**

**FILED**

**APPELLANT**

**VERSUS**

**APR 07 2008**

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SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**Appeal from the Circuit Court of  
Jackson County, Mississippi  
Criminal Action No. 2006-10,444(3)**

**REPLY BRIEF OF APPELLANT**

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### **STATEMENT REGARDING ORAL ARGUMENT**

The issue of basic unfairness in the trial of Colt Allen Christian permeates this appeal. As both trial and appellate counsel, Christian's counsel is acutely aware of the various near errors and obstacles that were placed in the path of Christian's defense. This reply will cover the two main areas of this obstruction, the denial of Jim Bowman's opinion of an accidental firing of Christian's pistol, and the elimination of the testimony of the only other eye witness to the entire transaction that is this case, but the development of the aura of unfairness is critical to ensure a complete presentation of this appeal.

Therefore, Christian respectfully suggests that oral argument will be necessary and beneficial in this case. Nothing the severity of his Sentence, under the credible facts and circumstances of this case, Christian submits it would be a miscarriage of justice to compound this tragedy even further.

Christian therefore respectfully requests oral argument in his case as permitted under **Miss.R.App.P., Rule 34(b)**.

## **FACTUAL REBUTTAL**

Though the State's summary of the factual basis of this case is largely correct, there were certain errors and/or inferences drawn by the State that require correction here. Initially, there is the unspecified "report of a fight" at the location of the shooting. (State's Brief, Page 1.) To be sure, there was a report of the accident, but as to a fight, the record in this case does not reflect such a report. Secondly, there is the State's conjecture on Page 4. that, ".. as the Appellant pushed Roberts' door, the Appellant's gun fired." This does not truly reflect the testimony of Christian, (T-352), it is mere speculation. Finally, there is the introduction of the alleged statements Christian made to the emergency room physician who treated his hand injury. Christian denied these statements, and the testimony of Officer McClenic was pure hearsay, the alleged physician was not present at trial to corroborate McClenic's testimony.

The inescapable fact in this case is, Colt Christian and his girlfriend, Amanda Roberts were returning to the home they shared on June 19, 2005. Gene Roberts, for reasons known only to him, followed the couple throughout Jackson County. Irrespective of an undocumented 911 call, there is no answer to "why". Roberts continued his pursuit of the couple until the end of the tragedy that this case represents.

### **SUMMARY OF THE REPLY ARGUMENT**

The prosecution and trial of your Appellant, Colt Allen Christian, ("Christian"), was stacked against him from its inception. The case of State vs Christian represents a classic example of the overwhelming control the State has over a prosecution of an individual.

From his arrest, it was predetermined by the State that Christian was guilty, and it would not allow anything resembling fairness to get in its way of a conviction. If it required late disclosure of discovery information, so be it. If it required silencing witnesses, so be it. If it required silencing expert witnesses, so be it.

Christian was denied his opportunity to present a valid defense based upon credible evidence and valid expert conclusions that supported the theory of an accidental shooting of the victim, Gene Roberts. He requests this Court's reversal of this miscarriage of justice.

## **REPLY ARGUMENT AND CITATION OF AUTHORITIES**

### **1. The opinion testimony of Jim Bowman as to the cause of the firing of Christian's pistol should have been submitted to the Jury.**

An "expert" is sometimes loosely defined as "as individual thirty miles from home with a briefcase." Under the present rules of procedure, this is not the case in trials in Mississippi. But even these rules are subject to judicial discretion. As such, it seems quixotic that the Presiding Circuit Judge in Christian's case, though having used Jim Bowman as an expert while in the District Attorney's Office in Jackson County, and having Bowman appear before him numerous times in an expert capacity, in this case, decided to get "semantic specific" in Bowman's qualification in the "punitive" area of shooting reconstructionist. (State's Brief at Page 8.).

The State's sole authority, *White v. State*, 964 So.2d 1181 (Miss.App. 2007), correctly gives deference to judicial discretion as to expert testimony; however, this discretion is not unlimited. *Poirrier v. Degrande*, 604 So.2d 268 (Miss. 1992); *Miss. R.Evid., Rule 702*. At the very least, the Jury should have had the option to reject Bowman's conclusions if they so chose. *Jones v. State*, 918 So.2d 1220 (Miss. 2005).

But this was not allowed in this case. The way the State attacked Bowman's conclusions would almost appear to be vindictive. What makes it particularly galling in this case was the fact that the State did not provide full access to its medical expert until the day of the trial. Yet Christian had a State representative present when Bowman did his test shooting. This was only a part of Christian's full disclosure to the State. And, in the two voir dire sessions on Bowman's conclusions, though his theory of accidental

shooting was presented to the Court, the jury never heard it. When there are differing expert conclusions, it is not the function of a trial judge to exclude testimony as long as it is relevant, and is provided through some type of scientific and factual basis. *Lawrence v. State*, 931 So.2d 600 (Miss.App. 2006)

In usurping the function of the Jury in Christian's case as the trier of fact, the Circuit Judge presiding abused his discretion, and committed reversible error.

**2. The Verdict in this case is incorrect due to the emasculation of Christian's defense by the State, and the trial court's endorsement of the State's strategy.**

Initially, in its argument on the jury verdict in Christian's case, it is instructive that the State relied upon only *May v. State*, 460 So.2d 778 (Miss. 1984), as a standard and, though writing a pleasant liturgy as to its position, presented no authorities to support its argument. First, Bubba May was a minor aged defendant in a notorious murder case in Brookhaven, Mississippi, tried as an adult, and hammered by the jury in his case. Secondly, a lot of water has gone through the turbines since 1984, and the proper standards governing question of a jury verdict have been substantially enhanced, both as to the State and the accused. *May* as a standard in this case is both irrelevant and outdated.

Though maybe not necessarily etched in stone, it is well understood the State controls the prosecution of an accused. The State arrests, indicts, and largely controls the schedule and discovery leading to trial. With this authority, the State also has the determined responsibility that the burden of proof of the guilt of an accused rests with



### CONCLUSION

To emphasize this point, there is something fundamentally wrong when an accused is stripped of all possibility of a defense to his charge. For the facts, reasons and authorities as submitted above, and the entire record in this case, Colt Allen Christian submits there is abundant authority for this Court's reversal of his conviction and sentence of the Circuit Court of Jackson County, Mississippi. He therefore respectfully requests such a reversal by this Court, and a rendering of its decision in his favor, or a remand to Jackson County for a new trial.

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Appellant

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**CERTIFICATE OF SERVICE**

I, GEORGE S. SHADDOCK, Attorney of Record for the Appellant, Colt Allen Christian, do hereby certify that I have this day filed the original and three (3) true and correct copies of the above and foregoing Reply Brief of Appellant with the Honorable Betty W. Sephton, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.


I further certify that I have this day delivered a true and correct copy thereof by United States Mail, postage prepaid, to the following listed persons:

The Honorable Jim Hood, Attorney General  
The Honorable John R. Henry, Special Assistant Attorney General  
Post Office Box 220  
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The Honorable Dale Harkey  
Circuit Court Judge  
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The Honorable Anthony Lawrence, III  
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CERTIFIED this, the 7<sup>th</sup> day of April, 2008.

  
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GEORGE S. SHADDOCK