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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00758-COA

COLT ALLEN CHRISTIAN

APPELLANT

VERSUS

STATE OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

APPELLEE

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

BRIEF OF APPELLANT

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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 disqualification or recusal.

CIRCUIT JUDGE PRESIDING:

The Honorable Dale Harkey
Circuit Court Judge
Pascagoula, Mississippi 39567

FOR THE APPELLANT:

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FOR THE APPELLEE:

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The Honorable Robert Knochel, Assistant District Attorney
Pascagoula, Mississippi 39567


GEORGE S. SHADDOCK

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STATEMENT OF THE ISSUES

1. Whether the trial court erred in sustaining the State's objection to the Defendant's designation of Jim Bowman as an expert witness as a shooting reconstructionist.
2. Whether the Jury Verdict in this case is contrary to the credible evidence adduced at trial and contrary to the law of this State.
3. Whether the cumulative errors in the investigation of this case, and at trial resulted in a basically unfair trial of the Defendant in this case.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW

The procedural history of Criminal Action No. 2006-10,444(3), State of Mississippi versus Colt Allen Christian, is extensive, and at times highly contested. The basic facts that formed the genesis of the case are simple. After a late afternoon truck chase between the Defendant, Colt Allen Christian, ("Christian"), and the alleged victim, Ellis Eugene, "Gene", Roberts, ("Roberts"), through Eastern Jackson County, and the confrontation between the parties on June 19, 2005, Christian's pistol discharged after being struck by the door of Roberts' truck shooting Roberts in the head. Roberts was taken for emergency care in Mobile, Alabama, and Christian was arrested.

From this occurrence, Christian was indicted, (CP-5), by the Jackson County Grand Jury on or about August 2, 2006, for the crime of aggravated assault in violation

of Miss. Code 1972, Ann., Sec. 97-3-7(2)(Amend.). After pleading Not Guilty, (CP-6), to the charge, Christian then commenced his discovery with the State on December 14, 2006. (CP-11, 14 and 16).

The State immediately countered with its Motion to Strike Christian's Expert Witness on February 2, 2007. (CP-18) Christian further issued his requests for particularized discovery, (CP-34), as granted, (CP-37), and agreed to produce his DNA samples to the State. (CP-32) During this period, it seems that the State was experiencing problems with its medical experts, forcing the State to use compulsory process for their appearance. (CP-41 and 43) This created certain problems for the defense, (CP-47), forcing a last minute interview by the defense of these witnesses. The State then renewed its Motion to Strike Christian's Expert, (CP-49), just prior to trial, alleging discovery violations on the part of Christian.

Trial commenced in this action on April 24, 2007 and continued through April 26, 2007. During the course of the trial, the State called seven witnesses, including its expert, Dr. Quinlan and the alleged victim, Gene Roberts. Christian called four witnesses, including himself and his expert, Jim Bowman. At the conclusion of trial, the Jury returned a Verdict of Guilty of Aggravated Assault. (CP-76) The trial court then went immediately to sentencing Christian, and pronounced a Sentence of twenty (20) years, eighteen (18) years to serve and two years under post-release supervision, along with a \$5,000.00 fine. (CP-77)

Christian then filed his Motion for a New Trial on April 27, 2007, (CP-79), along with his Motion for an Appeal Bond. (CP-82). Both Motions were denied by the trial

court on May 3, 2007, and from these adverse decisions. Christian has timely perfected his appeal to this Court. (CP-84, 86, 88, 90).

His appeal bond being denied, Christian has remained in State custody since his conviction.

FACTUAL STATEMENT OF THE CASE

What started out as a pleasant drive home after a day on the water on Sunday, June 19, 2005, for Colt Christian and his girlfriend, Amanda Roberts, became a nightmare when Gene Roberts began following them on Shingle Mill Landing Road, South of Highway 90 in Jackson County. This “chase” continued North through Jackson County until Christian and Amanda stopped at Fort Lake Road, above Moss Point, where Roberts rammed the trailer holding the jet skis of the couple at the stop sign.

At this time, Christian turned onto Chatsworth Road to return to his and Amanda’s home but stopped prior to reaching his home with Roberts remaining behind him. Christian then took his 45 caliber pistol from his truck and approached Robert’s truck to see who this was, and why the chase. It was Christian’s testimony that when Roberts opened the door to his truck, Christian’s hand was hit by the door causing the pistol to fire and apparently hitting Roberts in the head. Returning to his truck after Roberts has seemingly backed up, Christian and Amanda returned to their home where the couple was arrested by Jackson County authorities.

It was then that Christian and Amanda learned of the injury to Roberts.

SUMMARY OF THE ARGUMENT

Irrespective of the extensive record in this case, it boils down to one determination: was the shooting of Gene Roberts intentional or accidental?

Colt Christian will argue below, as he did at trial, the shooting was accidental. Christian, in his first collision with the Mississippi criminal judicial system quite frankly found that if the State makes up its mind you are guilty, you are in real trouble. This was demonstrated in the investigation of this alleged crime, and at his trial.

And, this is what this appeal is about. Can the State with its control of the charging process, and the ultimate timing of the service of the charge, and control of the docket and trial process, once an accused has been charged, “stack the deck” against the accused?

Christian urges this is precisely what happened in his case. The record in this will show that a concerted process occurred to undercut his basic defense of an accidental shooting. It resulted in a basically unfair trial. Something is terribly wrong here.

ARGUMENT AND CITATION OF AUTHORITIES

1. Whether the trial court erred in sustaining the State's objection to the Defendant's designation of Jim Bowman as an expert witness as a shooting reconstructionist.

To say this was a contested issue is a bit of an understatement. The record will reflect that the State, if not keeping Christian's designated expert, Jim Bowman, ("Bowman"), off the stand altogether, then, to so emasculate the areas of his testimony such that it was of minimal effect, to cut out an essential element of Christian's defense. What makes this so reprehensible is that the trial court bought into this lock, stock and barrel.

Bowman was initially designated as an expert witness on February 1, 2007 by Christian. (CP-16) The State immediately moved to exclude Bowman, citing the usual pabulum authorities in an effort to keep the witness from testifying. (CP-18) After the State apparently could not figure out its experts, and the trial was continued, (CP-30), a great deal of discovery and a full inspection of the pistol were conducted by Bowman, with the State present, and the results and comments furnished to the State.

Thus must have scared the State as it refilled its Motion to Exclude Bowman, four days prior to trial, (CP-49), this time alleging discovery violations. Yet, the State, as to its medical experts, who were never officially noticed to Christian, and as of April 9, 2007, (CP-41), had not been summoned to appear, Dr. Quinlan's report and viate finally being produced to Christian one week before trial, making the State's position on violations appear to be a case of the "pot calling the kettle black". (T-17) Christian was finally allowed to interview Dr. Quinlan the day of trial. (T-23)

Then, when finally allowed to the stand at trial, came the voir dire of the State. When one looks to the argument of the State at its base, Bowman, who for many years, has been known and accepted as an accident reconstructionist, has had limited experience as a shooting reconstructionist. This, irrespective of a resume produced showing 48 years of training, experience and service in the Navy, as a police officer, and since 1991, a well recognized private investigator and forensic reconstructionist. (RE-80). The State took semantics to new heights in denying a critical element of Christian's defense.

STANDARD OF REVIEW

As an initial statement, the requirements of **Miss.R.Evid., Rule 702** are known and established as to the qualifications of an expert witness, and the admission of the expert's opinion testimony. In this case, one must look at the testimony that is proffered: (1) based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and, (3) the witness has applied the principles and methods reliably to the facts of the case.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, (Cal. 1993), changed the landscape of expert testimony somewhat, when the Court ruled that rigid "general acceptance" requirement for the admission of scientific evidence would be at odds with the "liberal thrust" of the Federal Rules of Evidence and their general approach of relaxing traditional barriers to "opinion" testimony. **Fed.R.Evid., Rule 702**. Our Courts have apparently adopted this standard when, in *General Motors Corp. v. Pegues*, 724 So.2d 489 (Miss.App. 1998), a mechanic with a high school education was allowed to give his opinion as to a ball joint failure as a primary cause

of a fatal accident, and in *Logan v. State*, 773 So.2d 338 (Miss. 2000), an investigator, employed by private insurers was allowed to give expert opinions as to fraud. What is important as a standard of review is the question, if there is an erroneous admission or exclusion of evidence, will this error adversely affect a substantial right of a party. *Walls v. State*, 928 So.2d 922 (Miss.App. 2006).

LEGAL PRINCIPLES

Christian submits that when the entire record of this case is examined , one cannot escape the conclusion that the limiting of Jim Bowman's opinions was a concerted effort to eliminate his core defense theory: the shooting of Gene Roberts was accidental. To be sure, matters concerning discovery and expert testimony are left to the discretion of the trial court, and the exercise of this discretion will not be set aside in the absence of abuse of that discretion. *Gray v. State*, 799 So.2d 53 (Miss. 2001) When the State, after its initial effort to exclude Bowman's testimony in the voir dire announced its acceptance of Bowman as a firearms expert, (T-334), this should have ended this question.

The thrust of Bowman's testimony in summary was that Christian's pistol, if fired correctly, would not have caused the injury to Christian's right hand. (T-309, 358-59) This is basically testimony as to how the pistol works, and has been found to be acceptable expert testimony. *Fairley v. State*, 871 So.2d 1282 (Miss. 2003) The trial court's narrow limitations placed upon the extent of Bowman's testimony, (T-360), would be an undue restriction under *Daubert*, Ante at U.S. 588.

When the history of Bowman's 48 years of working experience is examined, it is graphically apparent he has expertise in several fields of forensic examination of

law enforcement activities, including firearms. *Cowart v. State*, 910 So.2d 726 (Miss. App. 2005) When all of the smoke screens of the State are examined, there were no willful discovery violations on the part of Christian. The trial court's sustaining of these objections on the part of the State moved its discretion to an abuse of this authority. *Cotton v. State*, 675 So.2d 308 (Miss. 1996)

2. Whether the Jury Verdict in this case is contrary to the credible evidence adduced at trial and contrary to the law of this State.

To simplify this issue somewhat, there is no question that on June 19, 2005, Roberts was shot while in his truck on Chatsworth Road, and the bullet came from Christian's pistol. The sole question here is was the shooting intentional or accidental?

Christian strongly contends the shooting was accidental, and further states the evidence at trial, if not exculpatory outright, leaves a large measure of reasonable doubt. He points to three areas that were not rebutted by the State, and can be considered dispositive and supported by trial testimony:

1. The damage to Christian's jet skis;
2. The injury to Christian's hand; and,
3. The Bowman testimony and exhibits as to how the pistol misfired.

There were three (3) eyewitnesses to this occurrence, Roberts, Christian and Amanda. Roberts was called by the State, but, due to his injury, remembered nothing of the day. Amanda, called by Christian, and due to her Indictment, (Def.Ex. -11), being served on her two or three days prior to the trial, on the advice of her counsel and the Court, was precluded from testifying excepting her identity and the fact she was not

related to Roberts or any member of his family. (T-298) Christian admitted to the pistol misfiring, (T-309-10), but at the scene of the occurrence, that he had no knowledge of Robert's injury. (T-309) He continued his insistence that the shooting was accidental. (T-321) Bowman's testimony and exhibits have been discussed above.

STANDARD OF REVIEW

It is well established that matters regarding the weight and credibility accorded to evidence are to be resolved by the jury. *McIntosh v. State*, 917 So.2d 78 (Miss. 2005). Further, when considering a questioned jury verdict, the appellate court will not reverse a jury verdict unless failure to do so would sanction an unconscionable injustice. *Swan v. State*, 806 So.2d 1111 (Miss. 2002). Finally, when the legal sufficiency of the evidence is challenged on appeal, the appellate court's review authority is limited. *Manning v. State*, 765 So.2d 516 (Miss. 1999), other citations omitted.

In spite of this exceeding high burden of persuasion on his part, Christian submits his case is one that requires this review.

LEGAL PRINCIPLES

Was the shooting of Gene Roberts intentional or accidental? This is the core question throughout this trial. The State's Jury Instruction S-2, (CP-66), though properly setting for the base elements of aggravated assault, was lacking in fact specific elements in this occurrence Christian submits, *United States v. Young*, 464 F.2d 160 (5th Cir., Miss. 1972). The State took the position this was either aggravated assault or nothing. *Ducksworth v. State*, 46 So.2d 787 (Miss. 1950). But did the State prove this beyond a reasonable doubt?

A review of the State's fact witnesses, who with the exception of Mrs. Doris Moorman, who more or less corroborated the later testimony of Christian as to the travel of the two trucks in the latter portion of their trip through Eastern Jackson County on June 19th, was primarily the after effects of Roberts' injury. There is no dispute on this issue.

Dr. Eugene Quinlan, the State's expert, was much the same. His extensive testimony, both on direct and cross-examination, covered not only Roberts' immediate surgical procedures, but also a large part of subsequent procedures that Roberts had completed at the time of trial. Again, here there is no dispute. However, Dr. Quinlan could not opine a determination to rebut an accidental discharge of Christian's pistol.

The burden of proof in a criminal case never shifts from the State to the defendant. Rather, the State is required to prove every material element of the indictment beyond reasonable doubt. A defendant is not required to prove that he acted in self-defense or accident, and, if a reasonable doubt of his guilt arises from the evidence, including evidence of self-defense or accident, he then must be acquitted. *Smith v. State*, 754 So.2d 1159 (Miss. 2000).

In this case, there were no threats and/or insulting language between the parties that would serve as justification for provocation. *Baker v. State*, 6 So.2d 315 (Miss. 1942). Only the unrebutted testimony that, at the start of the sojourn through Jackson County, when the two trucks were side-by-side, Roberts appeared "upset about something." (T-305) There was no fight over a gun here, *Anthony v. State*, 936 So.2d 471 (Miss.App. 2006), Christian's pistol accidentally discharged and in firing, injured

Christian's hand.

There was corroboration of Christian's injury and how the accidental firing caused the injury. (T-352) The injury at the scene of the accident was even corroborated by the State's witnesses, Tracy Wilson as to Christian's blood on the Roberts' truck. (T-218), and Ken McClenic as to the injury to Christian's hand. (T-250) There was equally corroboration of the jet skis behind Christian's truck, (T-195), and of the damage to the jet skis. (T-301-02). And, finally, even within the limitations placed upon Bowman by the trial court, Bowman's testimony supported the theory of an accidental discharge of the pistol. (T-365-66) *Chinn v. State*, 958 So.2d 1223 (Miss. 2007).

Christian was, at trial, the only individual capable to discuss this entire story with direct knowledge. Objectively, Christian contends his theory of the accidental discharge of his pistol was never rebutted. There is a long-standing principle in Mississippi law that when a defendant or his witnesses are the only eyewitnesses to a crime, their version of the crime must be accepted unless substantially contradicted in material elements by credible witnesses, physical facts, or facts commonly known. *Weathersby v. State*, 147 So. 481 (Miss. 1933); Accord. *Houston v. State*, 149 So.2d 331 (Miss. 1963). This would be particularly true when any hearsay statement proffered, could not be considered a dying declaration, and on its face is self serving and prejudicial. (S-21, T-145) *Clark v. State*, 398 So.2d 229 (Miss. 1981).

In the final analysis, Christian submits that the State failed to prove every essential element of aggravated assault, particularly intent, beyond a reasonable doubt. Christian also submits that his proof of an accidental shooting was not contradicted

effectively by the State. His Motion for a directed verdict at the conclusion of trial, (T-376), should have been sustained. *Reddix v. State*, 731 So.2d 581 (Miss. 1999).

4. Whether the cumulative errors in the investigation of this case, and at trial, resulted in a basically unfair trial of the Defendant in this case.

This is a judgement call, and one of perception. As a rule, if it appears to a reasonable person that the accused at trial did not have a real defense to his charge, and the conduct of the trial was such to demonstrate this, the question of fairness is raised.

Christian respectfully submits the record in his case shows a concerted plan to eliminate his defense of an accidental shooting. This concert began late on June 19, 2005, when, upon Christian's arrest, law enforcement officials felt they had an open and shut case. Yet, when Christian, approximately three months prior to trial, disclosed his core defense of accident, and the witnesses and proof he would use to support this defense, and the State's rush to judgement started falling apart, that is when the concert became a conspiracy on the part of the State. The result was a travesty of a trial that resulted in an unfair verdict.

STANDARD OF REVIEW

A defendant cannot expect a perfect trial, but he is guaranteed a fair and impartial trial. This guarantee has long been established. The trial requires fair, impartial and unbiased jurors who are willing to be guided by the testimony and other evidence as presented at trial, together with the law announced by the court. It also requires that the defendant be tried in an atmosphere that is free from bias, hatred or prejudice against

the defendant and his theory of defense, if reasonable. *Seals v. State*, 44 So.2d 61 (Miss. 1950); *U.S.C., Const. Amend. 6; Const. 1890, Sec. 26*. Further, the plain error doctrine requires that there be an error, or errors, and that these resulted in a manifest miscarriage of justice. *Garlotte v. State*, 915 So.2d 460 (Miss.App. 2005).

LEGAL PRINCIPLES

Christian's case presents a classic example of how not to prosecute a criminal case. *Kelly v. State*, 735 So.2d 1071 (Miss.App. 1999). Even the withering cross-examination of Christian, and allegations of alleged actions during the occurrence could not break Christian's insistence on the accidental nature of the shooting. (T-321) Where was the emergency room doctor to when Christian allegedly told of all of these events of June 19, 2005. (T-321) *Kelly*, Ante at Page 1075. And, to be sure, it is very hard to rebut a 911 transcription, (State's Exs. – 21 & 22, T-145-46), when the alleged maker is only brought in for sympathy and prejudice due to his disability.

There is then the literal castration of Bowman's testimony. This was discussed in detail in Issue 1., however, it is instructive to note that in the equally withering voir dire of Bowman, in the critical question of Bowman reconstructing the shooting, it is apparent the trial judge, in the Court's questioning of Bowman, assumed the position of the State, and excluded this aspect of Bowman's testimony before the Jury. (T-352 to 355) It was at this point, the trial judge fully stepped over the line of impartiality *McGee v. State*, 820 So.2d 700 (Miss.App. 2000).

Finally, there is the Amanda Roberts question. It is undisputed there were three eyewitnesses to the entire occurrence: Christian, Roberts and Amanda. Amanda was

was noticed early as a witness for Christian, (CP-16), and why she would be called. This notice was repeated along with its reason, and then her Indictment, (Def.Ex.-11, T-286), is served two or three days prior to trial, almost nine months after its issuance by the Grand Jury. This was for one purpose, and one purpose only, to shut Amanda up. And, this was accomplished. (T-297) We have a classic case of action by a prosecutor designed to penalize a defendant for invoking a legally protected right available to him during a criminal trial. *Garlotte v. State*, 915 So.2d 460, 467 (Miss.App. 2005); *Blackledge v. Perry*, 417 U.S. 21, 94 S.Ct. 2098 (1974).

This case was not the situation as found in *McGruder v. State*, 454 So.2d 1310 (Miss. 1984). Christian's trial was a travesty, a basically unfair rush to judgement that the trial court endorsed. *Ross v. State*, 954 So.2d 968 (Miss. 2007). The Verdict and Sentence in this travesty require reversal.

CONCLUSION

There is something fundamentally wrong when an accused is stripped of all possibility of a defense to his charge. Christian respectfully submits a review of the entire record in this case shows this is precisely what occurred in his prosecution and trial. Christian further submits in the argument he has presented abundant facts, reasons and authorities for reversal of his conviction. Colt Allen Christian respectfully requests this Court's reversal of the Jury Verdict and Sentence of the Circuit Court of Jackson County, Mississippi.

COLT ALLEN CHRISTIAN,
Appellant

By: 

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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 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
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The Honorable Dale Harkey
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The Honorable Anthony Lawrence, III
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CERTIFIED this, the 19th day of December, 2007.


GEORGE S. SHADDOCK