

v.

STATE OF MISSISSIPPI

**FILED**

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SUPREME COURT  
COURT OF APPEALS

2007-16A 1070-COA

NO. 07-CR-0016-NS-G

Appeal from Circuit Court of Neshoba County, Mississippi

**BRIEF FOR APPELLANT**

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**COUNSEL FOR APPELLANT**

Oral Argument **IS** Requested.

**PAUL M. NEESE**

**v.**

**STATE OF MISSISSIPPI**

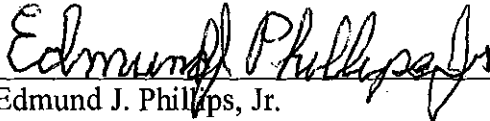
**NO. 07-CR-0016-NS-G**

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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

PAUL NEESE  
Appellant

Hon. Jim Hood  
Attorney General  
State of Mississippi

Hon. Mark Duncan  
District Attorney

  
Edmund J. Phillips, Jr.  
Attorney of record for Paul Neese

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2) The Trial Court erred in denying Appellant's request for peremptory instructions, motion for a new trial or other relief (Judgment notwithstanding the verdict) where the Appellant was the only eye witness and his testimony established a case of self defense and his testimony was not substantially contradicted by other evidence or other physical facts surrounding the alleged offense.

3) The Court erred in failing to grant Appellant's request for manslaughter instructions.

Neshoba County, Mississippi, of two counts of murder and two sentences of life imprisonment in the custody of the Mississippi Department of Corrections.

Paul M. Neese was indicted for the murder of Jamal Peelbes and Lakendrick Boyd.

Appellant is, and at the time of the alleged crime herein was disabled. He has little use of his right arm and limited use of his right arm and limited use of his lower left leg (T-164).

He was the only surviving witness to the deaths of Jamal Peebles and Lakendrick Boyd.

About three weeks prior to their deaths he permitted an acquaintance of his, Peebles' and Boyd's known as "Buckwheat" to use his 1994 Grand Am automobile (T-155) to take his girlfriend home on the promise by Buckwheat that he would repair the vehicle's transmission. On the day of the deaths, he went in his sister's late model Ford Explorer automobile to a home where he thought Buckwheat lived in the town of Philadelphia, Mississippi to try to recover the Grand Am automobile. When he could not find Buckwheat (T-156), he was flagged down by Peebles and Boyd at their nearby mobile home who suggested that Buckwheat would return soon and that Appellant wait at their location for Buckwheat to return. He waited parked in their driveway for more than two hours. (Appellant owed them money for contraband drug purchases he had

trailer and wait. When he went inside the tall man offered to sell him contraband drugs (T-158). He bought some and one of the men borrowed the vehicle he was in to go to a store. He consumed the drugs while he was waiting in the mobile home. Other persons came and bought drugs and after a long while the one who borrowed the vehicle returned.

Appellant tried to leave and they refused to let him and beat him because of the unpaid drug debts (T-159, 160). They took what money he had after kicking and beating him. One of them hit him on the head with a pistol and another kicked and beat him again. Appellant testified (T-161, 162).

He said, what - - he said - - he said, what we going to do with this son-of-a-gun, because - - uh - - he didn't say son-of-a-gun, he said "mf" - - you know - - I don't want to cuss in the courtroom. And - - uh - - he said, he's going to go straight to the police. He said - - he said, what we going to do with him, you know? He said, I don't know.

BY THE COURT: Speak up.

A. He - -he - - he said, he was going to go straight to the police, so they said - - you know, and the other one said, he ain't going nowhere if we don't want him to.

Q. Okay. How many - - how many guns did they have on them that you could see?

A. Well, before they sit down on the couch to play dice, there was a rifle laying in front of the couch. There was a - - you know, like - - and - - and the one on the couch had a - - a white handled revolver, that's the one that got hit - - I got hit on the head with, and - - uh - - the other one had a - - you know, a black - - black gun. It was the gun I ended up shooting them with.

Appellant had been forced to sit in a chair. The tall man left the room. One of the young men was on a mattress on the floor with a pistol sticking out of his pocket. The other man was lying on a couch with a pistol on his chest.

Appellant testified (T-164, 165):

You're - - you're disabled aren't you?

A. Yes, sir.

Q. Okay. And what's your disability?

A. My upper right extremity and lower left extremity are disabled. I don't have full function of my right arm and my lower left leg.

Q. Okay. All right. Have you had problems with your back also?

A. Yes, sir.

Q. So it would be difficult for you to fight - - uh?

A. Oh, impossible. I - - I've never been able to fight period. I've never - - I've never been an aggressive person.

Q. Uh - - okay. So, he rolled over and was punching his - - his phone?

A. Yeah. He - - he rolled over and he - - he was facing away from me at that time.

Q. Okay. Then what happened?

A. I seen the butt of that gun and I convinced myself if I could get hold of that gun, I could walk out of there.

Q. Okay. And what did you do then?

A. I reached and grabbed the gun.

Q. Okay.

A. In one motion, I just reached over there and got it. When I went to stand up, I stumbled and fell back and I fell across the front of the chair I was sitting in.

Q. Okay. So you were - - were you sitting on the ground or were you - - were you leaning?

A. I was leaning - - my arm was into the - - sitting in the chair. I left - - I fell down in front of the chair.

Q. Okay. What did he do?



- over and reached toward the couch. Well I knowed he was going for a gun, you know. I mean, I ain't stupid.
- Q. You - - you knew a gun was there?
- A. Yes, sir.
- Q. Okay.
- A. They knew it was there too. They pushed it back up under there with their feet when they was rolling dice.
- Q. What happened then?
- A. Well, I - - I knew he was going - - I knew there was going to be shooting going on, you know. I mean, I just - - I didn't really have time to think that much because I knew - - I knew he was going - - they was going - - I was going to get shot.
- Q. So you shot at that one?
- A. So I shot him.
- Q. Okay. Then what did the other guy do?
- A. Immediately , he - - he - - he looked over across his should like this and seen - - and seen me, and then he reached - - and the gun that was on his shoulder - - on his chest, I guess it fell off because he reached and started giggling beside - - beside the couch and - - to get that - - to get the gun, and I shot him too.
- Q. Okay.
- A. I was certain they was going to shoot me. There's no doubt about it.

The tall man had taken Appellant's sister's car and returned at that time.

Appellant escaped, went to a brick house nearby and asked the occupants to call the police.

They came and arrested him.

on its voluntariness.

2) Where a defendant and his witnesses are the only witnesses to a homicide, his version of what happened must be accepted as true unless substantially contradicted in material particulars by credible evidence, physical facts or facts of common knowledge.

3) Denial of an accused's request for a manslaughter instructions in a murder case where defendant's testimony is sufficient to justify verdict of manslaughter, is reversible error.

**HEARING ON THE VOLUNTARINESS OF  
APPELLANT'S FIRST CONFESSION**

The prosecution's first witness was Philadelphia, Mississippi police officer John

Holland. During his direct examination the following colloquy occurred (T-52-53):

- A. When I pulled up I observed a - - a white male wearing a camouflage jacket and blue jeans walking towards me down the driveway. Uh - - I stopped my car and got out and - - uh - - as he approached, I asked him what was going on.
- Q. Okay. That white male, was it the defendant here, Paul Neese?
- A. It was.
- Q. Uh - - you say you asked him what was going on?
- A. I did.
- Q. Uh - - this was about 6:00 in the morning?
- A. Shortly after. Yes, sir.
- Q. Okay. Was - - was it daylight yet?
- A. Almost.
- Q. Uh - - when you asked him what was going on, how did he respond, or did he respond?
- A. He did. Uh - - the - - uh - - the response didn't make much sense, but he responded, if I take my jacket off - -

BY MR. MANGUM: Your Honor, I object to what the defendant said.

BY THE COURT: Beg your pardon?

BY MR. MANGUM: I'm going to object as to what Mr. Neese said.

BY THE COURT: Overruled.

shot two people and the gun is in my back pocket.

Q. What did you do then?

A. I then - -

BY THE COURT: Wait just a minute. I need to make a record of this. I'm going to let this jury, and I regret to, but have you excused for just a moment. Don't get settled because I'm going to bring you right back in. I must make some rulings out of your presence.

### (JURY OUT)

BY THE COURT: Officer - - the officer was about to make a statement - - uh - - objection was made and, of course, Mr. Mangum did not state the reason for his objection, but I - - I recognize that it was because of the Miranda case. Uh - - this is not a case where first, there must be a - - a hearing conducted out of the presence of the jury because he was not in custody. It was not custodial interrogation. It was - - us - - your onsite statement, unsolicited - - that statement being unsolicited by Officer Holland,'s so your objection's overruled.

For confessions and other admissions to be admissible into evidence, the trial court must first submit the issue of the voluntariness of the confession to the court out of the presence of the jury by way of an evidentiary hearing. *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964). In Mississippi, the procedure and applicable burden of proof of the voluntariness of a confessions was set out in *Agee v. State*, 185 So. 2d 671, 673 (Miss. 1984):

**The State has the burden of proving the voluntariness of a confession. This burden is met by the testimony of an officer, or other person having knowledge of the facts, that the confession was voluntarily made without any threats, coercion, or offer of reward. This makes out a prima facie case for the State on the question of voluntariness. When objection is made to the introduction of the confession, the accused is entitled to a preliminary**

or offers of reward induced the confession, then the State must offer all the officers who were present when the accused was questioned and when the confession was signed, or give an adequate reason for the absence of any such witness.

No such hearing was held in this case. The verdict should be overturned.

## II.

**THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR PEREMPTORY INSTRUCTIONS, MOTION FOR A NEW TRIAL OR OTHER RELIEF (JUDGMENT NOT WITHSTANDING THE VERDICT) WHERE THE APPELLANT WAS THE ONLY EYE WITNESS AND HIS TESTIMONY ESTABLISHED A CASE OF SELF DEFENSE AND HIS TESTIMONY WAS NOT SUBSTANTIALLY CONTRADICTED BY OTHER EVIDENCE OR OTHER PHYSICAL FACTS SURROUNDING THE ALLEGED OFFENSE.**

Appellant produced a case of self-defense for consideration by the jury.

The Weathersby rule (*Weathersby v. State*, 165 Miss. 2007, 209, 147 So. 481, 482 (1933)) provides that in cases where a defendant and his witnesses are the only eyewitnesses to a homicide, his or her version of what happened must be accepted as true, unless substantially contradicted in material particulars by credible evidence, physical facts, or facts of common knowledge. In the case before the court, Appellant's testimony was consistent with his prior statements and the physical facts at the scene of the occurrence.

In the case before the Court, the Trial Court refused a request for a peremptory instruction (C.P. 17). Because Appellant was the only eye witness to the homicide,

Accord: *Blanks v. State*, 547 So. 2d 29, 33 (Miss. 1989); *Lanier v. State* 533 So. 2d 473, 490 (Miss. 1988); *Jordan v. State*, 513 So. 2d 574, 579 (Miss. 1987); *Reyer v. Pearl River Tung Co.*, 219 Miss. 211, 68 So. 2d 442 (1953); *Westbrook v. State*, 202 Miss. 426, 32 So. 2d 251 (1947).

The request for a peremptory instruction was the vehicle presenting to the Trial Court the consideration of whether to invoke the Weathersby Rule. *Pritchett v. State*, 560 So. 1017, 1020 (Miss. 1990). The Trial Court erred in failing to direct a verdict for Appellant or in failing to grant the request for peremptory instructions (C.P. 24, 25).

### III.

#### **THE COURT ERRED IN FAILING TO GRANT APPELLANT'S REQUESTS FOR MANSLAUGHTER INSTRUCTIONS.**

In the case before the court, Appellant, a man physically unable to defend himself, was kicked and beaten by the two young men he shot. They restrained him when he attempted to leave the premises. These circumstances entitled him to a manslaughter instruction. *Grace v. State*, 379 So. 2d 540 (Miss. 1980); *Jones v. State*, 773 So. 2d 964 (Miss. App. 2000); *Ruffin v. State*, 444 So. 2d 839 (Miss. 1984); *Dase v. State*, 356 So. 2d 1179 (Miss. 1978).


The trial court erred in refusing Appellant's request for a manslaughter instruction (C.P. 27). *Kolbert v. State*, 704 So. 2d 1307 (Miss. 1974); *Lee v. State*, 130 Miss. 852,

CONCLUSION

The Court's refusal to apply the Weathersby Rule to this case was reversible error.


The verdict should be overturned.

RESPECTFULLY SUBMITTED,

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: September 24, 2007.

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant