IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO.: NO. 2007-KA-1177

MONTRELL JORDAN,
APPELLANT

VS.

STATE OF MISSISSIPPI,
APPELLEE

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

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The Appellant respectfully disagrees with the conclusions reached by the State of Mississippi in its brief.

ARGUMENT

1. **Defendant's Constitutional Rights to a Fair Trial were Violated Materially and Continuously from the Qualification of the Jury, Voir Dire Examination, and the Seating of a Panel of Twelve to Try the Case in that the Court, the Prosecution and Defense Counsel Failed to make a Proper Inquiry as to the Opinions, Biases, or Prejudicial Feeling Toward the Defendant Arising out of the Homicide of a Freshman Football Player at Holmes Community College.**

2. **Defendant's Constitutional Rights to a Fair Trial were Violated and the Jury was Forced to Reach a Verdict not Supported by the Evidence in that the Trial Panel was not Qualified as to Their Opinions brought about by Prejudicial Pretrial Publicity and Community Involvement Arising from a Notorious Homicide at a Public Tax-Supported Community College.**

3. **Defendant was denied a fair trial when the court failed to grant a mistrial upon observing four (4) jurors among the twelve accepted for the trial who were emotionally or otherwise unable to fairly and impartially consider the evidence.**

The Constitution, both State and Federal, guarantees a right of trial by a jury. That right implies that the jury panel consisting of twelve citizens will start and end the trial with no impediments whether biased, for or against the defendant, and whether outside factors such as publicity have so influenced them that they were not impartial or willing to consider the evidence as presented.

Likewise, the jury panel should not have been so emotional as to exhibit signs of weeping and emotional distractions during the course of the trial. Furthermore, an ex-police juror who had a civil controversy with the Defendant's family should have been disqualified by the trial court. Altogether, the record is replete with evidence that this was not a fair, impartial and competent jury.

The notoriety of a college homicide, as exhibited by pretrial publicity in all forms of media-

newspaper, television, radio, and including the college newspaper in a county which is sparsely populated and which has but one higher educational institution, using local tax support, served to disqualify this jury.

"When the proceedings surrounding the investigation and prosecution of a particular crime are highly publicized, courts must inquire as to whether the defendant has been denied an impartial jury that will render a verdict based upon the evidence presented at trial rather than on information received from an outside source." *U.S. v. Parker*, 877 F.2d 327 (5th Cir. 1989)(internal citations omitted). Further, a defendant is not required to show that community prejudice permeated the jury box. The Court in *U.S. v. Parker*, 877 F.2d 327 (5th Cir. 1989) held that a defendant can show that "prejudicial, inflammatory publicity about his case so saturated the community from which his jury was drawn as to render it virtually impossible to obtain an impartial jury... proof of such poisonous publicity raises a presumption that appellant's jury was prejudiced, relieving him of the obligation to establish actual prejudice by a juror in his case."

The trial court has an obligation to insure that an impartial verdict can be rendered by the jury impaneled. *Puckett v. State*, 737 So.2d 322, 332 (Miss. 1999). This obligation is at the heart of the Defendant's right to a fair jury under the Sixth and Fourteenth Amendments of the Constitution of the United States.

The Defendant is innocent and his conviction was a gross miscarriage of justice. The Court is compelled to reverse the case using all or any of the 14 assignments of error.

The Appellant respectfully submits that the Court should reverse and remand for a new trial on these three issues.

4. There was no Evidence Identifying the Defendant as the Shooter and it was Error for the Court to Deny the Motion for Directed Verdict and it was Error for the Court to Admit Evidence Regarding In-Court Identification of the Defendant.

The State argues that the trial court properly allowed the jury to decide this issue and correctly refused to disturb it. The Appellant respectfully disagrees with the State.

There is absolutely no proof that the Defendant is guilty of any crime, specifically "depraved heart murder by firing a deadly weapon willfully indiscriminately into a crowd of people" as asserted by the State. The State did not meet its burden of proof of proving the Defendant guilty beyond a reasonable doubt. Again, Appellant points out that there was no positive identification of the defendant as the shooter and the trial court erred in denying the Defendant's Motion for Directed Verdict. (Tr. 589-590, R.E. 581-582). Further, the procedure for in-court identification was not followed and it was error for the trial court to have allowed the witnesses to identify the Defendant. Where there is no confession and no positive identification, the evidence is only very vague circumstantial and not legally sufficient to support a verdict in a criminal case. The evidence which was presented was structured and staged to the level that it was inadmissible. Unilateral, self-serving written statements of key witnesses, Simpson, Wade, Netherland, and Brown were read to the jury in an attempt to bolster or corroborate each witnesses' testimony. This was grossly prejudicial to the Defendant and constitutes reversible errors. Thus, the Court should reverse and grant a new trial based on the errors presented in Appellant's Brief.

5. Defendant's Unsigned Statements Violate his Miranda Rights and are Inadmissible Because he was Interrogated on Three Different Occasions by Different Investigators over a Period of Approximately 3 hours after he was Arrested and at a time when he Repeatedly Requested the Assistance of Counsel and Declined to Sign the Miranda Rights Certificates.

There was no confession to any crime in the Defendant's statements. Defendant's statements were inadmissible by the violation of the Defendant's constitutional rights and the statements should not have been admitted into evidence and they should have been suppressed at the hearing.

At the suppression hearing, the trial court did not make a detailed findings of fact and conclusions of law as is required by the law. (Tr. 81TTT, R.E. 392). The trial court's ruling was simply that Defendant had been advised of *Miranda* rights and the Motion to Suppress was denied.

It would be difficult for the trial court to make the conclusion that the Defendant was advised of his rights when those portions of the recorded tape did not exist. It is an unfortunate fact that an officer is not going to admit that he did not mirandize a defendant, even under oath. However, and even so, waiver of rights is a two prong event. First, the Defendant must be advised of his rights, and secondly, he must expressly and overtly waive such rights. The record shows that the Defendant continuously requested service of a lawyer and that he did not want to speak. That contradicts any waiver on his part.

Even if it were true that the officers did mirandize the Defendant, Defendant never voluntarily gave up his rights, and requested counsel numerous times, thus making his statements inadmissible. Even when Defendant stated that he was not going to talk anymore and that he wanted to go back to his cell, the officers continued to interrogate him and forced him to continue talking to them. Under *Miranda v. Arizona*, 384 U.S. 436, 475 (1996), since Defendant refused to sign a waiver of rights, the conduct of the accused should have been examined and the State had the burden

of proving that the Defendant did something to waive his rights. The making of an exculpatory statement alone cannot indicate waiver.

As referred to in Appellant's Brief, the Fifth Circuit has held that the mere answering of questions is insufficient to show a waiver; there must be some affirmative act demonstrating a waiver of *Miranda* rights. *United States v. Collins*, 40 F.3d 95, 99 (5th Cir. 1994)(*cert. denied*).

The State did not meets it burden at the suppression hearing and the trial court committed manifest error in denying the Motion to Suppress. This error warrants reversal and a new trial.

6. It was Error for the Court to Admit Evidence Found from Searching Defendant's Automobile on Two Grounds: (1) The search was illegal; and (2) The evidence was irrelevant and highly prejudicial.

The trial court was correct in its first ruling, suppressing the evidence. It was error for the trial court to allow the admission of illegally obtained, irrelevant, and highly prejudicial evidence at the trial and the Appellant respectfully submits that the Court should reverse and remand for a new trial on this issue.

Warrantless searches of private property are *per se* unreasonable. *Cady v. Donbrosky*, 413 U.S. 433 (1973). At the time of the search of the automobile there existed no probable cause and no exigent circumstances. The evidence seized after an illegal arrest and/or illegal search must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Furthermore, it is undisputed that Defendant **did not** give officers permission to search his vehicle.

The *McNeal* case used to persuade the court to reverse its original ruling and admit such evidence is completely off point because the probable cause to search arose directly and proximately from a valid search warrant and no search warrant for any search was even issued in this case. The vehicle was parked at a private, single family residence less than 30 minutes from the courthouse,

and was easily secured until a search warrant could be issued.

The Court should find that the trial court was correct in its original ruling suppressing the evidence found in the vehicle and that the trial court erred in reconsidering the suppression and finding that the evidence should be admitted. There is absolutely no authority, State or Federal, for such a search as this to be valid or for objects obtained thereby to be admitted into evidence.

One point which is made in many search and seizure cases, there were no exigent circumstances since the Defendant had been arrested and the vehicle was parked on private property- - not driven by a fleeing individual on a public road. Likewise, as in *Walker v. State*, 962 So.2d 39 (Miss. App. 2006), no officer looked inside or witnessed suspicious circumstances to make the search warranted or legal.

It should also be remembered that the chain of possession was broken and a serious question of admissibility arose there.

Even if the search was legal, the evidence is not admissible since the objects are extraneous to the campus shooting episode- - - making them highly inflammable and grossly misleading to the jury.

Had the trial court not changed its ruling and allowed the items illegally obtained from the vehicle into evidence, then the State would not have been allowed to present **false and misleading** evidence such as the false restatement by the prosecutor that the bullet was the same caliber as was found in the victim; and the false testimony given by Officer Wilson when he purposefully incorrectly identified the type of bullet. (Tr. 292, line 27; 293, line 18; 294; 502; R.E. 468, 469, 470, 557).

What are the exceptions to the mandate of Amendment IV "the right of the people to be

secure in their... effects... against unreasonable searches and seizures shall not be violated...." Those exceptions which would apply to a warrantless, private search of a vehicle include:

(1) Exigent circumstances did not exist as the searched automobile was parked on private property at his place of abode with his father having possession of the keys at a time when the Defendant was in the Holmes County jail.

(2) Suspicious circumstances did not exist since no objects or contraband was seen before the search.

(3) Probable cause to make a private search did not exist because it was not incident to an arrest; the vehicle was not involved in the pedestrian brawl where the homicide occurred; and an indefinite statement regarding the vehicle seen leaving the scene did not satisfy the probable cause rule.

(4) Reasonable expectation of privacy is reflected by the fact that the vehicle was parked and locked on private property at his place of residence with his father having the keys in his possession.

(5) Waiver of right of privacy was not given by anyone prior to the search nor was the Defendant present at the time of the search.

Private searches without a warrant and without exigent circumstances are in a limited unique category of reported cases. As stated, we cannot find a Mississippi case on point, that is, on point allowing a private search of this nature.

Allowing the jury to hear testimony regarding the illegal, irrelevant and highly prejudicial evidence and to see the evidence, was error and a new trial should be granted.

7. The Verdict of Murder is Contrary to Overwhelming Weight of the Credible Evidence and It was Error to Deny the Defendant's Motion for New Trial.

There was no credible proof presented by the State. There is no positive identification that Jordan was the shooter. Even the State's key witness, Simpson, repeatedly stated that she did not see and could not identify the shooter. As stated in Appellant's Brief, the prosecution used inadmissible evidence to orchestrate a courtroom drama after first using the illegal search of his automobile and the illegal admission of the pawn shop records to prove he owned a pistol at sometime in the past.

Additionally, this issue is related to Issue numbers 4 and 10 "Errors Regarding Admissibility of Evidence, Witnesses and Exhibits." There are clear errors in the admissibility of evidence and testimony as exhibited in Issues 4 and 10 which go to the verdict being against the overwhelming weight of the credible evidence.

8. The Indictment Charges the wrong Crime and is Fatally Defective. It was error for the Court not to Require the State to Amend the Indictment to Charge only Manslaughter before the Trial Started or after the State Rested.

When referring to matters pertaining to the Indictment and any collateral attack, we are forced to admit that defense counsel did not make timely objections, motions or any effort before, during, or after the trial to bring in to focus the correct charge which is that of manslaughter. However, their failure to object did not waive flaws in the Indictment, including the *corpus delicti* of the crime which was presented by the State during the course of the trial. There is absolutely no evidence to support the crime of murder. All of the facts favorably construed for the State prove beyond a reasonable doubt that the shooting was in the heat of passion and we would ask the Court to bear with us while we review that evidence.

First, we would point out that there were a number of pretrial proceedings in which the facts were exhibited to the trial court in relative detail prior to commencement of the trial. At all levels the general circumstances surrounding this unfortunate event points to manslaughter and excludes murder.

Current procedural rules allow amendments to the Indictment at all phases of the proceedings. Unfortunately, no such motions and/or objections were made relative to the Indictment. We find no such reference to the form or content of the Indictment in the record, but relying on the line of cases recited in *Carroll v. State*, 755 So.2d 483 (Miss. App. 1999), we acknowledge the rule of law that matters related to the indictment may be raised for the first time on appeal. *See also Birchfield v. State*, 277 So.2d 623, 625 (Miss. 1973). The Court will then look at matters related to the indictment *de novo*. *Id.*

The evidence to support a murder charge must include a "motive" and such was not presented directly or circumstantially in the trial of this cause. It is uncontradicted and undisputed that the unfortunate homicide arose out of a brawl among college students and non-students at the campus of Holmes Community College occurring in the nighttime. According to the State's witness, including its very key, star witness, Simpson, the football team for this college took it on itself to exclude or run off all non-students and they collectively engaged in a violent altercation with non-students and this Defendant was a non-student. The fight started inside the building called the "can" and extended to the outside. While the brawl was continuing in the darkness on irregular ground, some participants being on the hill and others not on the hill, a shooting transpired with no one identifying the person that did the shooting, including the State's star witness, who testified that she could not identify the shooter except that he had on pants and a shirt. The key point in this argument

is that the victim was a member of the football team, who were the admitted aggressors in the fight. There is no evidence disputing this conclusory statement.

Members of this panel will probably raise the question as to the dragnet clause in the statute wherein manslaughter can be considered a relative component of a murder indictment, however, that carries us back to the inadequate instructions including number 5, which compounded the faulty Indictment as set forth in the Appellant's Brief, page 33. Since the jury from voir dire through closing arguments never heard or read a correct and succinct definition of manslaughter, it means the case was tried on the solitary charge of murder. The jury was forced into a corner and had no alternative but to convict the Defendant of murder. The intent of the statute, Miss. Code Ann. § 97-3-19(3), is that a constituent or ancillary crime such as manslaughter can be included in the indictment, but it strictly implies that crime will be described in the indictment which was not done here. U.C.C.C.R. 7.06 sets out the requirements of any indictment, including "a plain, precise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation against him." *Gatlin v. State*, 724 So.2d 359 (Miss. 1998). Notice to the Defendant is essential, but notice to the Defendant goes also to and includes notice to the jury through indictment, instructions, oral argument, comments from the lawyers, the bench, and closing arguments. If the Indictment is flawed, as it was here, then the Defendant did not receive a fair trial, and his conviction should be reversed.

9. Arguments by the Prosecution including Closing Statements in which the Jury was Instructed that If Convicted the Defendant would only Serve a Short Time in Jail before being Released, Obscuring and Secreting the Mandatory, Statutory Provision that he Receive Life in the Penitentiary if Convicted of Murder.

Appellant argues that the trial court did not correct the errors in the State's closing argument

which was an abuse of discretion. The record shows that the jury was not properly instructed that the closing arguments were not evidence. (Tr. 204, 626-627). Therefore, the jury had the right to take the prosecutor's comments as facts because they were not instructed otherwise. Thus, the comments made by the State that the Defendant would just get "some" time in prison and that his family would be able to visit him for whatever time he was in there, were taken by the jury as factual and given considerable weight by the jury in its verdict. (Tr. 685, lines 14-20; 27-29; 686, lines 1-3; R.E. 598, 599). It is reasonable to assume that these statements were taken to heart by the jury and were persuasive for a guilty verdict. Moreover, the Court is reminded that this was a highly sensitive and emotional event- a freshman college student was killed on school grounds.

Further, the Supreme Court has consistently held that it disapproves of arguments which make reference to the potential sentence in a case. *Marks v. State*, 532 So.2d 976, 983 (Miss. 1988)(citing *Williams v. State*, 445 So.2d 798, 813 (Miss. 1984); *Smith v. State*, 220 So.2d 313, 317 (Miss. 1969); *Hartfield v. State*, 186 Miss. 75, 91, 189 So. 530, 533 (1939); *Abney v. State*, 123 Miss. 546, 550, 86 So. 341 (1920); *Minor v. State*, 101 Miss. 107, 107-108, 57 So. 548 (1911); *Windham v. State*, 91 Miss. 845, 851, 45 So. 861, 862 (1907))(internal citations omitted).

The Court in *Marks* stated: "The problem with arguments such as these is that they invite the jury to convict with regard to the punishment, not with regard to the evidence before them, and the jury should have no concern with the quantum of punishment to be imposed." *Id.* at 983.

Tactics which are inflammatory, highly prejudicial and reasonably calculated to unduly influence the jury are not permissible. *Hiter v. State*, 660 So.2d 961, 966 (Miss. 1995).

There is a high probability that the jury verdict was influenced by the improper and irrelevant comments of the State. Where the jury has not been properly instructed as to the role of the closing

argument, there is no question that the State's remarks were taken as evidence and as factually correct which resulted in the conviction of an innocent man.

In its brief, the State argues that because trial counsel only made a general objection to the statements of the prosecution, the issue was waived.

However, failure to object to questions which were violative of a constitutional right will not act as a procedural bar to consideration. *Ross v. State*, 954 So.2d 968, 1002 (Miss. 2007)(citing *Wood v. State*, 257 So.2d 193, 200 (Miss. 1972)).

Also, in *Mickell v. State*, 735 So.2d 1031, 1035 (Miss. 1999), the Court held: "In cases of prosecutorial misconduct we have held this Court is not constrained from considering the merits of the alleged prejudice by the fact that objections were made and sustained, or that no objections were made."

In *Tudor v. State*, 299 So.2d 682, 685 (Miss. 1974), reversing and remanding the case stated:

> Appellant's counsel failed to object to some of the above matters, objected to others with the objection being sustained, and in some instances that court instructed the jury to disregard the testimony. In other instances, the objection was overruled and the evidence was admitted. Some of the errors were more serious than others and although some of them may not alone constitute reversible error, we have no hesitancy in finding that a combination of all of the above deprived the appellant of his due process right to a fair and impartial trial. Incompetent evidence, inflammatory in character, when presented to a jury carries with it a presumption that it was harmful. (Internal citations omitted).

Id.

Additionally, Defendant submits that it was plain error. "The plain error doctrine requires that there be an error and that the error must have resulted in a manifest miscarriage of justice." *Williams v. State*, 794 So.2d 181, 187 (Miss. 2001) (citing *Gray v. State*, 549 So.2d 1316, 1321 (Miss.1989)). The Court only applies plain error when "it affects a defendant's

substantive/fundamental rights." *Williams v. State*, 794 So.2d 181, 187 (Miss. 2001)(citing *Grubb v. State*, 584 So.2d 786, 789 (Miss.1991)).

It was therefore plain error to allow the prosecution to mislead the jury with its highly inflammatory remarks concerning the Defendant's guilt and the sentence for murder. The error was plain, and **anything but harmless**, especially since the prosecution's comments told the jury that the Defendant was guilty of murder and that, in essence, he would not receive a life sentence. These highly improper and inflammatory remarks are clear in the State's Opening and Closing Statements. Therefore, the Appellant respectfully submits that the Court should reverse and remand for a new trial on this issue.

The State's argument that the Appellant waived the issue is without merit. The State goes on to argue that even if the Appellant had not waived the issue, the issue is lacking in merit. More specifically, the State argues that there was no impropriety in the State's arguments. Once again, however, the Appellant respectfully disagrees with the State.

There is not a reported case which approves the language used in the closing argument. The common sense meaning of the words spoken assured the jury that he would receive a light sentence- - - "serve a short time." Life imprisonment is certainly not a short time.

10. Errors Regarding Admissibility of Evidence, Witnesses and Exhibits.

Appellant has covered this issue in great detail consisting of 24 pages in his Brief. There were numerous errors committed regarding the admissibility of certain evidence, witness testimony and exhibits.

Defendant asserts that it was error to allow the statements of Simpson, Wade, Netherland, and Defendant because they were not being used to refresh memory and were only used to bolster

and improperly corroborate the witnesses' testimony. Where it is inadmissible, the witness can only use it to refresh memory, **not to put the content of an inadmissible document into evidence.** *Livingston v. State*, 525 So.2d 1300, 1304 (Miss. 1988) (emphasis added).

It was error to admit the photographs of the decedent and of the Defendant's vehicle. Prior to trial, the Defendant objected to and sought to have the photographs of the decedent excluded at a pretrial hearing on February 7, 2007. Again, there was no probative value in admitting the photographs into evidence and they were highly inflammatory and prejudicial and outweighed the probative value of the evidence. Admissibility of photographs is governed by whether the proof is absolute or in doubt as to the identity of the guilty and whether the photos are necessary evidence or only a ploy to arouse the passion of the jury. *McNeal v. State*, 617 So.2d 999 (Miss. 1993).

Photographs of the Defendant's truck were the subject of a Motion *in Limine* filed prior to trial. (R.E. 28). There was no authentication or qualification by the witness of the photographs depicting the vehicle. These photographs were highly prejudicial to the Defendant and it was error for the trial court to allow them to be allowed into evidence.

It was error for the trial court to allow the hearsay testimony of Kenny Wilson, John Newton, A.C. Hankins, and Lararius Oliver. These statements did not meet the exceptions to the hearsay rule. Miss. R. Evid. 803. Each of these witnesses were allowed to testify about searches that they did not participate in, statements made by the Defendant, forensic evidence, bullistics, the Defendant's guilt, photo line-up, and other issues that are fully discussed in Appellant's Brief. All of this erroneous testimony was highly prejudicial, inflammatory and biased. In *West v. State*, 249 So.2d 650 (Miss. 1971), this Court recognized the danger of allowing a jury to be presented with what appears to be the 'official' opinion of the police department that the defendant is guilty."

It was error to allow the testimony and documents associated with witness William Meredith. The form which was identified by this witness and admitted into evidence was not prepared by the witness, and the witness was neither present, nor otherwise had any knowledge of the form or the purchase of the weapon. The transcript of his testimony is rife with hearsay evidence and self-serving statements. There is no identification that the purchaser was the Defendant, or whether or not it was an imposter. This testimony is not admissible under the exceptions to the hearsay rule. Miss. R. Evid. 801, 802, 803.

The testimony by David Whitehead was improper and should not have been allowed. He was allowed to testify as to hypothetical situations which was highly inflammatory and prejudicial. *Chapman v. Carlson*, 240 So.2d 263, 268 (Miss. 1970); *Strickland v. M.H. McMath Gin Inc.*, 457 So.2d 925, 928 (Miss. 1984).

All of these issues regarding the admissibility of the evidence, witnesses and exhibits are so grossly erroneous as to not allow the Defendant to have a fair and impartial trial by jury. All of the evidence and witnesses so presented were done in such a manner to inflame the jury and excite passions and prejudices. The Court should reverse and grant a new trial.

11. Error in Granting Jury Instructions.

As in most appeals, the State uses the rule that an error in granting instructions cannot be raised for the first time on appeal. That rule should also have some exceptions when considering that the trial court has s duty to police errors in statements of law even in the face of an oversight by defense counsel. Instructions 3, 4, and 5 are patently erroneous, and somewhat misleading when read and argued to the jury.

The Court should not allow a miscarriage of justice on a mere technicality. The acts of police

and prosecutors are liberally construed by the Court, so should the acts and omissions of defense counsel.

As recited on page 62 of Appellant's Brief no correct and competent definition of the crime of manslaughter was submitted, therefore, the Court should take notice of the incomplete instructions on the law.

Aside from precedent set rules of procedure, the Court is urged to look at the gross misstatement of the law when all instructions are considered together and, at least apply that to Appellant's claim of ineffective counsel.

12. Verdicts of Either Manslaughter or Not Guilty would have Resulted if the Defendant had received Effective and Competent Assistance of Counsel.

In Appellant's Brief, the Defendant cited eighteen errors under this one issue, plus numerous other errors regarding counsel's ineffectiveness throughout the other 14 issues in his Brief.

Defendant's trial counsel committed professional errors, and there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Mohr v. State*, 584 So.2d 426, 430 (Miss.1991).

When the appellate court determines that defendant's counsel was constitutionally ineffective, the correct remedy is to reverse and remand for a new trial. *Colenburg v. State*, 735 So.2d 1099, 1102 (Miss. App. 1999).

Defendant's counsel was grossly ineffective and the Court should reverse and grant a new trial.

13. Error for State to Withhold Pretrial Discovery of Evidence including Witness Statements Unfavorable to the State.

It was error to allow the State to choose from a number of witnesses who were at the scene

of the shooting and to fail to disclose those that were favorable to the Defendant or gave exculpatory evidence. The State failed to provide the Defendant with all of the statements made by Shagunda Simpson and Randy Scott. This was a violation of the discovery rule. The Uniform Circuit and County Court Rules require that this information be disclosed. U.C.C.C.R. 9.04. This implies or alleges that there are contradictions or conflicts in the statements that could be helpful to the Defendant.

Defense counsel objected to Simpson's testimony regarding eight statements made by her because Defendant had not seen eight statements. (Tr. 281). The objection was overruled by the trial court. (Tr. 282). Defendant respectfully disagrees with the State that this issue is not properly before the Court.

14. The Cumulative Errors of the Trial Court Mandate Reversal.

The errors made by counsel and the trial court must be considered separately, as well as cumulatively. Defendant asserts that all of the issues considered separately have merit and warrant reversal, but certainly when considered together, the case should be reversed and a new trial granted. "This Court may reverse a conviction and sentence based upon the cumulative effect of errors that independently would not require reversal." *Coleman v. State*, 697 So.2d 777, 787 (Miss. 1997)(citing *Jenkins v. State*, 607 So.2d 1171, 1183-84 (Miss.1992); *Hansen v. State*, 592 So.2d 114, 153 (Miss.1991)).

CONCLUSION

Here stands an innocent man, convicted of murder, and given a life sentence for a crime that he did not commit and for one that he has been unjustly accused.

The Court has seen very few cases with more errors than those contained in this case, 14

assignments. The case represents a miscarriage of justice from the errors made in the pretrial motions (admission of the gun holster, cartridges, statements and photographs), to lack of proper qualification of the jury resulting in an emotionally distraught and unqualified jury panel through numerous errors in the admission of evidence, erroneous jury instructions and defective final argument, as well as the State having been allowed to try the case on a bolstered charge of murder rather than manslaughter, which error is considered *de novo* by this Court.

We are sure that the Court will be aware that the evidence does not support the crime and that some of the prosecutorial antics, as well as the testimony of police officers, could have been prompted by election year politics.

Finally, we want to repeat for purposes of emphasis, that Holmes County encompasses 764 square miles, but has only a 21,000 population. The Court, we believe, will take judicial notice that Holmes Community College is the largest and most important public service institution in the County. The fatal wounding of a freshman student by a non-student on the college campus during a social event reaches to the level of the most dastardly and emotionally wrought event in the history of the County. This tax-supported institution touched directly or indirectly every family unit in the County who had students, past, present and future, that did or intended to matriculate at the college, as well as those who are interested in sports and follow the college athletic program, football, basketball, baseball, and otherwise. This college is the pride and joy of the entire population and it will not allow the killing of a student to go unpunished.

If it was possible to select an impartial panel of 12 jurors to try the student's murder such was not accomplished in this case since absolutely no qualifications of the jurors regarding the emotional connection with the college was ever entertained. The crises arising from the jury panel connection

to the college came through jurors openly, without being questioned to do so, discussing their knowledge of the events through pretrial publicity, including the college's own, independent newspaper.

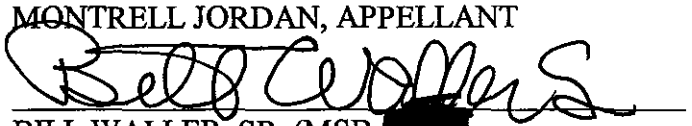
Among the off-handed and erroneous tactics used by the Prosecution was in-court identification of the Defendant, a television prompted charade, when no witness positively identified him as the culprit. Also, the attempts to corroborate the veracity of numerous witnesses by referring to written statements, having witnesses read statements to the jury, and offering statements into evidence with some being marked for identification which was an improper overture for the jury. These events clearly violate the Rules of Evidence, including Miss. R. Evid. 801(d). The only possible way to use a prior witness statement is to show inconsistency on cross-examination or impeachment, not on direct examination,

We ask the Court to look at all of the assignments of error, but the evidence is without dispute that the jury panel was not properly selected as evidenced by many factors including the emotional outbursts appearing in the record which is proof positive that the panel was not competent and qualified to give a verdict free of emotional constraints and based solely on the evidence.

This Court is the court of last resort for innocent defendants such as the Appellant in this case. We conclude our arguments by simply saying that there is no support for the Court to be convinced that the Defendant actually received a fair and impartial trial.

Respectfully submitted this 4th day of February, 2008.

MONTRELL JORDAN, APPELLANT

BY: 

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CERTIFICATE OF SERVICE

I, Bill Waller, Sr., the undersigned attorney for the Appellant, do hereby certify that I have this day mailed a true and correct copy of the Appellant's Reply Brief via United States mail, postage prepaid, to the following counsel of record:

Honorable Jannie M. Lewis
Holmes County Circuit Court Judge
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SO CERTIFIED this 4th day of February, 2008.

Bill Waller Sr.
BILL WALLER, SR.