IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMIE ORLANDO ROBERSON — APPELLANT

VS. — NO. 2007-KA-1412-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO[redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMIE ORLANDO ROBERSON **APPELLANT**

VS. **NO. 2007-KA-1412-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

The grand jury of Tunica County indicted defendant, Jamie Orlando Roberson for two Counts of Murder, three counts of Aggravated Assault and one count of Felon in Possession of a Firearm, all in violation of *Miss. Code Ann.* §§ 97-3-7, 97-3-19 & 97-37-5. (Indictment, cp.8-9). After a trial by jury, Judge Albert B. Smith, III, presiding, the jury found defendant guilty on all counts of the indictment. (C.p.152-157.). Defendant was sentenced to two life sentences for the murders, three sentences of twenty years for the aggravated assaults and one sentence of three years for the felon in possession of firearm. All sentences, essentially, are to run consecutive to each other and consecutive to any previously imposed sentences.

(Sentence order, cp. 162-166)(Previous sentence, life sentence, followed by 63 years, concluding with his second life sentence).

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Defendant, a previously convicted felon, went to a bar. After about an hour or so he got a headache and went to leave. According to defendant on the way to the door he bumped into a man who exhibited a firearm. Defendant grabbed the gun disarmed the man shooting, then shot repeated throughout the club, killing two and injuring three. The next morning defendant turned himself in to the Sheriff's department and gave his statement of the above facts.

The jury heard testimony over two days, deliberated 42 minutes and found defendant guilty of all charges. The evidence was overwhelming.

SUMMARY OF THE ARGUMENT

I.
THE JURY WAS PROPERLY INSTRUCTED.

Issue II.
THE WEIGHT OF THE EVIDENCE AMPLY SUPPORTS THE MULTIPLE JURY VERDICTS AGAINST THIS DEFENDANT.

ARGUMENT

I.

THE JURY WAS PROPERLY INSTRUCTED.

Within this initial allegation of trial court error defendant asserts the trial court erred in the denial of five proffered instructions. Specifically D-5, D-6, D-9, D-19 & D-23.

The State will take them in numerical order.

Proffered instruction D-5 was offered as to Count I of the indictment the killing of Richard Conrad. (C.p.12, instruction marked refused). (Tr. 218-20).

The proffered instruction was a heat of passion manslaughter instruction. It was essentially denied because the fact showed defendant disarmed the man, then shot him and four others killing two injuring three.

It is the succinct position of the State the granting of the manslaughter instruction was not supported by the facts. This is sufficient to deny a manslaughter instruction. *McCain v. State*, 971 So.2d 608, 613 (¶19)(Miss.App. 2007).

As to proffered instruction D-6 (c.p.124) was a manslaughter by culpable negligence directed to the killing of James Dawson in Count 11 of the indictment. Quite clearly, and the State maintains correctly, the trial court found that the shooting into a crowd was not a factual situation that would support such an instruction. Not being supported by the facts the trial court was correct in denying the proffered

instruction. *Chandler v. State*, 946 So.2d 355(¶23)(Miss. 2006).

Instruction D-9 was a general self-defense instruction and the trial court had already heard argument and applied the law to the evidence and determined the facts did not support a self-defense instruction. *McCain, supra.*

Instruction D-19 was refused, Tr. 223-24, because there being no factual basis for self-defense there can be no factual basis supporting the 'accidental' shooting of the bystanders hit during the fracas. (Such actions would not totally excuse an ensuing homicide that occurred when the attempts went awry.) *Carr v. State*, 774 So.2d 469 (¶13)(dicta)(Miss.App.,2000).

Lastly, instruction D-2323 was withdrawn and/or refused. This was an instruction that was a defense to Count VI of the indictment the felon in possession of a firearm. Again, the facts just didn't support the instruction.

> ¶ 21. This Court set forth the standard of review for the grant or denial of jury instructions in Ladnier v. State, 878 So.2d 926, 931 (Miss.2004):
>
> > Jury instructions are to be read together and taken as a whole with no one instruction taken out of context. A defendant is entitled to have jury instructions given which present his theory of the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence.

Chandler v. State, 946 So.2d 355(Miss. 2006).

Accordingly, the trial court was correct in the denial of all the proffered

instructions as applicable to each specific of the indictment to which they were directed. The State would ask that no relief be granted on this allegation of error.

Issue II.

THE WEIGHT OF THE EVIDENCE AMPLY SUPPORTS THE MULTIPLE JURY VERDICTS AGAINST THIS DEFENDANT.

Lastly, defendant narrows his claim to the general weight and credibility of the evidence. He details a lengthy list of inconsistencies, inaccuracies and inexact incantations.

Well, the jury heard them and was inclined to convict on all counts. As the reviewing courts have oft seen and heard before:

> ¶ 9. As to Vaughn's challenge to the weight of the evidence, this Court "will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." Bush, 895 So.2d at 844(¶ 18) (citing Herring v. State, 691 So.2d 948, 957 (Miss.1997)). Once again, the jury was entitled to weigh the credibility of each witness. The court in Bush noted:
>
> > We have stated that on a motion for a new trial, the court sits as a thirteenth juror. The motion however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.
>
> Id. Vaughn has failed to overcome this burden. Specifically, the State provided ample evidence that Vaughn's attack was not in self-defense. Vaughn has not established that her evidence "preponderates heavily against the verdict." Id. As such, this issue is without merit.
>
> *Vaughn v. State*, 926 So.2d 269 (Miss.App. 2006).

Again, in summary, looking to the evidence, there was ample evidence that

defendant entered the bar disarmed a man and began intentionally shooting. There was no evidence of his victim's being the initial aggressors, or any other fact, legally sufficient, to support provocation, heat of passion, or culpable negligence.

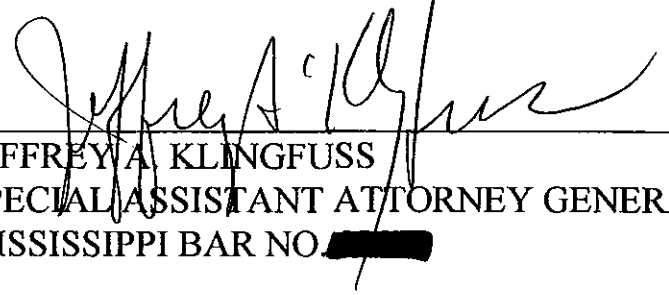
The jury got it right. And, the State would ask that no relief be granted on this allegation of trial court error.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdicts of the jury and the sentencing by the trial court.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

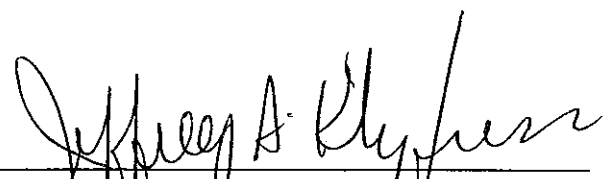
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Albert B. Smith, III
Circuit Court Judge
Post Office Drawer 478
Cleveland, MS 38732

Honorable Laurence Mellen
District Attorney
Post Office Box 848
Cleveland, MS 38732

David L. Tisdell, Esquire
Attorney At Law
Post Office Box 2459
Tunica, MS 38676

This the 6th day of June, 2008.



JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680