

BEFORE THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMIE ORLANDO ROBERSON

APPELLANT

VS.

NO.: 2007-TS-01413-COA


STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. The undersigned counsel provides the representations in order that Justices of the Mississippi Supreme Court and/or the judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

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**BEFORE THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

JAMIE ORLANDO ROBERSON

APPELLANT

VS.

NO.: 2007-TS-01412-COA

STATE OF MISSISSIPPI

APPELLEE

STATEMENT OF THE ISSUES

ISSUE ONE:

THE COURT ERRED IN THE REFUSAL OF DEFENSE INSTRUCTIONS TO THE JURY, WHICH PRESENTED THE DEFENSE'S THEORY OF THE CASE.

ISSUE TWO:

THE TRIAL COURT ERRED IN FAILING TO SUSTAIN THE DEFENSE'S MOTION FOR A NEW TRIAL, OR IN THE ALTERNATIVE, JUDGMENT NOTWITHSTANDING THE VERDICT, AS THE WEIGHT OF THE EVIDENCE DID NOT SUPPORT THE JURY'S VERDICTS.

STATEMENT OF INCARCERATION

Jamie Orlando Roberson is presently incarcerated at the Mississippi State Penitentiary, an Institution of the Mississippi Department of Corrections.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction of this case pursuant to Article 6, Section 146 of the Mississippi Constitution and Miss. Code Ann. 99-35-101 (Supp. 2001).

STATEMENT OF THE CASE

On January 16, 2006, Jamie Orlando Roberson (also referred to hereinafter as "Appellant" and "Roberson") and Marcus Ward (referred to hereinafter as "Marcus") went to a club known as Moe D's.

After being at the club for approximately an hour, Roberson decided to step outside. As Roberson walked toward the exit, Richard Conard (also referred to hereinafter as "Richard" and "Conard") began walking toward him. Roberson became concerned by Richard's actions, because just prior to this night, the Appellant was shot by Richard Conard. As Richard approached the Appellant, Richard exhibited a gun in a threatening manner. Though fearful, the Appellant was able to wrestle the gun away from Richard and managed to fire several shots toward him. After the shooting, the Appellant dropped the gun on the floor of the club, and exited the building. On the next day, Roberson surrendered himself to the Tate County Sheriff Department. Shortly thereafter, Deputies from the Tunica County Sheriff Department came and transported him to the Tunica County Sheriff Department, where he gave a written and recorded statement concerning the shooting. (T.I. 77-79) Jamie told Detective Dwight Woods (hereinafter referred to as "Det. Woods") that he arrived at Club Moe D's around 11:25 p. m. Roberson stated that approximately an hour after arriving at the club, he developed a headache. He then stated that as he was exiting the club he crossed paths with Richard Conard, who at the time exhibited a weapon. Although, the Appellant admitted that he fired two to three shots in self defense, there remain unanswered questions surrounding these shootings. As the police investigation was incomplete at best, it remains unclear how many shots were fired, how many different shooters fired shots, and who fired the shots that struck Richard Conard, James Dawson, Christopher Eason, Tammy Pickett and Cedric Newson.

Based on the investigation, Jamie Roberson was thereafter indicted on August 14, 2006, by the Tunica County Grand Jury on two (2) counts of deliberate design

murder, pursuant to **MISS. CODE ANN. § 97-3-19 (Supp 2001)**, three (3) counts of Aggravated Assault, pursuant to **MISS. CODE ANN. §97-3-7 (2) (b) (Supp. 2001)** and Possession of Firearm by convicted Felon, pursuant to **MISS. CODE ANN. §97-37-5 (Supp 2001)** (RE. 7-8)

At trial Officer Art Little (hereinafter referred to as "Officer Little") testified that he was one of the first officers at the scene. That when he arrived at Moe D's a young lady came out saying "somebody was shooting in the club". He then went into the club and noticed an unresponsive gentleman lying on the floor at the entry and another male lying on the floor about three feet away. Further testimony by officer Little revealed that a young lady in the club had been shot in the buttocks. At the conclusion of his testimony, Officer Little acknowledged that he was uncertain as to how many shots had been fired during the shooting or how many shooters involved.

During direct examination, Detective Darryl Linzy (hereinafter referred to as "Detective Linzy") testified that when he entered the club on the night in questioned he noticed two unresponsive males lying on the floor within 19 feet of each other. (T.I. 46-47) Detective Linzy also testified that he found two (2) casing lying near Conard's body, one (1) casing lying near Dawson's body and another casing in a common area in the club. Further testimony during direct examination revealed that a .25 caliber handgun and a 44 Smith and Wesson revolver were recovered at the scene (T.I. 50)

According to Marcus Ward 's (hereinafter referred to as "Ward") testimony, he and Jamie was inside the club sitting in the corner to left side of the dance floor. Later, Jamie began walking toward the exit and the next thing he saw was Jamie shooting towards the door. He also testified that he heard about four shots. Subsequently,

Roberson was indicted in a six (6) count indictment, during the October, 2006 term of the Grand Jury for the Eleventh Circuit Court District, Tunica County, Mississippi, for the felony offenses of two counts of Murder in direct violation of §97-3-19, Mississippi Code 1972 Annotated, as amended, three counts of Aggravated Assault in direct violation of §97-3-7 (2)(b), Mississippi Code 1972 Annotated, as amended and Possession of Firearm by Convicted Felon in direct violation of §97-37-5, Mississippi Code Annotated, as amended, all being contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Mississippi. (R.E. 7-8)

A trial by jury was commenced on June 18, 2007, in Tunica, Tunica County, Mississippi, before the Honorable Albert B. Smith, III, Circuit Court Judge, resulting in jury verdicts of guilty on all counts. (R.E. 39) Subsequently, the trial court sentenced Appellant in Counts I, Murder, § 97-3-19 to a term of Life imprisonment under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count I to be served consecutive to the sentence imposed in Count, II, III, IV, V, and VI. In count II, Murder, § 97-3-19, the Court sentenced the Appellant to a term of Life imprisonment under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count II to be served consecutive to the sentence imposed in counts I, III, IV, V and VI. In Count III, Aggravated Assault §97-3-7 (2)(b) 2, the trial court sentence Appellant to serve a term of twenty (20) years in an institution under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count III to be served consecutive to the sentence imposed in Counts I, II, IV, V and VI. In Count IV, Aggravated Assault §97-3-7 (2)(b) 2, the trial court sentence Appellant to serve a term

of twenty (20) years in an institution under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count IV to be served consecutive to the sentence imposed in Counts I, II, III, V and VI. In count V, Aggravated Assault §97-3-7 (2)(b) 2, the trial court sentence Appellant to serve a term of twenty (20) years in an institution under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count VI to be served consecutive to the sentence imposed in Counts I, II, III, IV, and VI. In count VI, Possession of Firearm by convicted Felon, §97-37-5, the court sentence the Appellant to serve a term three (3) years in an institution under the supervision and control of the Mississippi Department of Corrections, with the sentence imposed in Count VI to be served consecutive to the sentence imposed in Count I, II, III, IV and V. (R.E. 40-41)

Following his sentencing and denial of his Motion for New Trial or in the alternative, Motion for J.N.O.V the Appellant being aggrieved, appeals his convictions and sentences to this Honorable Court. (R.E 48-49)

SUMMARY OF THE ARGUMENT

Jamie Orlando Roberson's convictions on two (2) counts of Murder, three (3) counts of Aggravated Assault, Possession of Firearm by Convicted Felon and sentences of life for each count of Murder, twenty (20) years for each count of Aggravated Assault, three (3) years for Possession of Firearm by Convicted Felon was the result of actions taken by Roberson being in fear for his life. Roberson visited the Club as he and his friends sometimes do to have fun and relax. Sadly, his hopes were extinguished that night when he was forced to defend himself by taking the gun from

Conard and firing in self-defense. What remains unclear is whether Roberson is responsible for the deaths and injuries to the alleged victims.

Further, Appellant submits to the court that the trial court erred in refusing to grant the Defense's jury instructions in this case. The denial of the Appellant's proposed jury instructions violated his constitutional right to present his theory of the case which constitutes reversible error. As a result of the above listed errors, Appellant requests this Honorable Court to reverse the verdicts of the trial court, and remand this case for a new trial.

The Appellant also asks this court to reconsider the trial court's denial of his request for a New Trial or J.N.O.V, based on the weight of the evidence. Appellant asserts that the jury's verdicts are not support by credible evidence and asks that this Court reverse the case and remand it for a new trial.

ARGUMENT

ISSUE ONE:

THE COURT ERRED IN THE REFUSAL OF DEFENSE INSTRUCTIONS TO THE JURY, WHICH PRESENTED THE DEFENSE'S THEORY OF THE CASE.

A defendant is entitled to have jury instructions given which present the theory of the case, 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. *Florence v. State*, 786 So. 2d. 409, 412 (Miss. Ct. App. 2000); *Heidel v. State*, 587 So. 2d 835, 842 (Miss. 1991). When a defendant's jury instruction has an evidentiary basis, properly states the law, and is the only instruction

on his theory of the case, it would be reversible error to refuse it. ***Florence v. State***, 786 So.2d at 412; ***Hester v. State***, 602 So.2d 869, 872 (Miss.1992)."

In cases of homicide, failure by the trial court to grant an instruction which presents the defendant's theories of justification, self-defense or excuse is reversible error so long as there is some evidence to support the theory.

At trial Roberson proffered the following jury instructions as to the deceased Richard Conard:

"The Court instructs the Jury that if, after reviewing all the evidence, the jury believe that the shot was fired by Jamie Roberson, defendant when he had reasonable cause to believe and did believe that he was in imminent and immediate danger of being killed by Richard Conard, or of receiving great bodily harm at the hands of Richard Conard, then the jury will find for the defendant, even though it may now appear that the defendant was not at the time in immediate danger of being killed by Richard Conard, or receiving great bodily harm at the hands of Richard Conard, then the jury will find for the defendant, even though it may now appear that the defendant was not at the time in immediate danger of being killed by Richard Conard, or receiving great bodily harm at his hands." **D-9, Self Defense. *Scott v. State***, 42 So. 184 (Miss.1906) (R. E. 20)

" The Court instructs the Jury that if you find beyond a reasonable doubt from the credible evidence that the defendant did kill the deceased but that same was not done with premeditation or malice aforethought but was done in a sudden heat of passion, then you may find the defendant guilty of manslaughter and the form of your verdict may be:

"We, the jury, find the defendant guilty of manslaughter." **D-5, Manslaughter. *Ruffin v. State***, 444 So.2d 839 (Miss.1984) (R.E 18)

"You are instructed that under the law a man is justified in carrying a weapon if his life has been threatened or he has been threatened with great bodily harm and he has good and sufficient reason to apprehend an attack from any enemy, and if you believe from the testimony in this case that the defendant's life had been threatened with great bodily harm, and therefore had reason to apprehend a serious attack, the defendant was justified in carrying a pistol." **D-23, Right to Carry a Firearm, *Austin v. State***, 324 So.2d 245 (Miss. 1975) (R.E. 25)

Bench conference regarding jury instructions D-9, Self-Defense went as follows:

MR. MALLETT: "May I submit a case to you for the break?"

THE COURT: "Sure."

MR. MALLETT: "I'll just put it in the record. It is Porter v. State, which is (T.I. 225) 2003 - - 1003-00432, date October 5, 2004."

THE COURT: "Okay. That stands for the proposition of?"

MR. MALLETT: "That the defendant's testimony, unsupported by other evidence creating a mild situation that might tend to appear to be self-defense is not enough to provide that instruction. If you will look at the last, the bottom of the left hand column or the right hand column."

THE COURT: "Yeah. The mere statement by defendant that his actions were a part of self-defense is incapable by itself of raising a factual question requiring submission to the jury."

MR. MALLETT: "I believe the situation in that case is analogous to what we have here. Somebody had gotten into a situation with the defendant earlier. I want to say it was not even as close in time - - it was closer in time than what we have. And he used that as a basis to testify about things that he said caused him to be in self-defense. The court said that that did not support the giving of an instruction towards that theory.
(Court exams documents.)
(Court recessed at 2:37 p. m.)
(Court convened at 2:41 p. m.)"

THE COURT: Y' all approach the bench. (T.I. 226)
All right, I've looked at the case and I've listened to the theories and the Court believes that the self-defense argument or theory in this state is strong, very strong. However, I think that once you disarm someone, that - - assuming the facts are exactly as the theory suggests, that the guy bumped him and had a gun under his shirt, and whether he faced him or turned away, he took that gun away, disarmed the man, and then started shooting into the crowd, killing him and another, and wounding three. So I'm going to refuse D-5. I'm refusing D-9. I'm refusing D-23.

MR. TISDELL: "Your Honor, on D-23, the gun - -"

THE COURT: "I don't - - I'm not going to - - look, I believe in self-defense. I believe you ought to be able to tote a gun if you are legally allowed to do so. But he disarmed this man. He disarmed him.

MR. TISDELL: "Right, but - -"

THE COURT: "It's not like he sees the other guy with this gun and he has his gun and he shoots him. Then your theory may hold more water."

MR. TISDELL: "Yeah, but the - - the argument I'm going to have was just on the (T.I. 227) gun part.

THE COURT: "I understand."

MR. TISDELL: "There's a federal case that says that if one is in fear for his life and has a gun temporarily, then he has not violated. And in this case, if you don't find the other part of the argument, he did say that once he got the gun and did the shooting, he laid it down. So, I mean - -"

MR. MALLETT: "The big important fact in between is he fired it multiple times."

THE COURT: "I just - - I can't see taking this - - taking a man's gun and then just start shooting."
As a result, the c-18 that does not have manslaughter but it's strictly murder is the one that will be given." (T.I 228)

Roberson argues that the proposed jury instructions have an evidentiary basis, properly states the law, and are the only instructions presenting his theory of the case as to the death of Richard Conard. During direct examination Detective Woods testified that Roberson told him during his interview that he had gone to club Moe D's on the night in question. That he entered the club remained about an hour or so before developing a headache. Roberson advised Det. Woods that as he was exiting the club, he came in contact with Conard, who raised his shirt and exhibited a weapon. In fear for his life, Roberson then took the weapon from Conard and fired two (2) to three (3)

shoots. Detective Woods further testified that Roberson informed him that Conard previously shot him. (T. I. 80-81) Detective Woods testimony is consistent with the handwritten statement made by Roberson. (R.E. 30-31)

Roberson's defense of self-defense is based on the fact that the deceased Richard Conard shot him prior to this night. As a result of this prior shooting, Roberson had reasonable cause to believe and did believe that he was in imminent and immediate danger of being killed by Richard Conard.

Roberson's Right to carry a firearm instruction was proper based on the same contentions as the self-defense instruction. Mainly, that his life had been threatened with great bodily harm, and therefore had reason to apprehend a serious attack.

Finally the manslaughter instruction was proper because the shooting occurred during a sudden heat of passion, and not with premeditation or malice aforethought.

Roberson proffered the following jury instructions as it relates to the deceased James Dawson:

"The Court instructs the Jury that the killing of a human being by culpable negligence of another, without authority of law, is manslaughter, and the Court further instructs the jury that culpable negligence is defined as negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of a human life.

If you believe from the evidence beyond a reasonable doubt that the death of James Dawson was caused by the culpable negligence of the defendant Jamie Roberson, then you shall find the defendant guilty of the crime of manslaughter." (R.E.) **D-6, Culpable Negligence. *Cutchens v. State*, 310 So.2d 273 (Miss. 1975) (R.E. 19)**

"The Court instructs the Jury that the killing of any human being by the act, procurement or omission of another shall be excusable when committed by accident and misfortune, in the heat of passion upon any sudden and sufficient provocation.

If you believe from the evidence that Jamie Roberson killed James Dawson by act committed by accident and misfortune, in the heat of passion upon sudden and sufficient provocation then you shall find Jamie Roberson not guilty." (R.E. ____) D-19, **Accident and Misfortune. *Miller v. State*, 677 So.2d 726 (Miss. 1996) (R.E. 21)**

Discussion regarding jury instruction D-7, Culpable Negligence and D-21 & D-22, Accident and Misfortune went as follows:

MR. MALLETT: "Culpable negligence?"
Isn't that what that is, David?"

MR. TISDELL: "Yeah."

MR. MALLETT: "What was the negligent act?"

MR. TISDELL: "Well, the fact that if he - - if his bullet caused the death, he wasn't shooting at the guy, and didn't have any beef with him. Again, he was shooting because - -

THE COURT: "I'm going to refuse that one." I'm still holding the heat of passion for the first, and we'll think about them again.

MR. MALLETT: "Six and seven are the same theory." (T.I. 220)

THE COURT: "Yeah, I'm going to - - I'm not going on - - if the Supreme Court wants to shooting into a crowd culpable negligence, they can do it, not me." (T.I. 221)

In this case, the jury was instructed on depraved heart murder as to James Dawson. Roberson contends that the State did not prove he acted with a depraved heart and evidence was at best sufficient to support a culpable negligence manslaughter conviction. Culpable negligence manslaughter is provided for in Mississippi Code Annotated 97-3-47 (Rev. 2006), which states the "[e]very other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title shall be manslaughter. " Culpable negligence has been defined as "negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter

indifference to, the safety of human life." **Clayton v. State**, 602 So.2d 798, 801 (Miss. 1992). "[D]epraved heart murder requires a higher degree of recklessness from which malice or deliberate design might be implied." *Id.*

Murder is defined by Mississippi Code Annotated 97-3-19(1) (Rev. 2006). Under this statute, to obtain a murder conviction, the State had to prove that Roberson killed Dawson with deliberate design to affect his death or killed him "in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual." The difference between culpable negligence manslaughter and depraved heart murder is the degree of mental state of culpability. **Windham v. State**, 602 So.2d 798, 901 (Miss. 1992). "[D]epraved heart murder requires a higher degree of recklessness from which malice or deliberate design might be implied." *Id.*

Roberson submits that he lacked the requisite malice to sustain a murder conviction. Based on the record it cannot be said that no reasonable jury could not have convicted the Appellant of the lesser charge or found him not guilty. In fact, the Appellant contends that a reasonable jury, if given the opportunity to hear his theory of the case could only have convicted the Appellant of the lesser charge or found him not guilty.

It is well established law in this jurisdiction that the accused is entitled to have the defense theory of the case submitted to the jury under proffered instruction when supported by the evidence. **McGee v. State**, 820 So.2d 700 (Miss. App. 2000) A party has the right to have his theory of the case presented to the jury by instruction provided there is credible evidence that support that theory. The lower Court enjoys

considerable discretion in regarding the form and substance of the jury verdict. **Alley v. Praschak Mach. Co.**, 366 So.2d 661, 665 (Miss. 1979) The principle concern is that the jury was fairly instructed and that they understood each party's theory of the case. *Id.* A jury instruction may be improper if it incorrectly states that law, is without foundation in the evidence or, is stated elsewhere in the instructions. **Murphy v. State**, 566 So. 2d 1201, 1206 (Miss. 1990) Here, the jury was not given the opportunity to hear and understand the Appellant's theory of the case.

Roberson proffered the following instructions as it relates to the Tammie Picket Jones (hereinafter referred to as "Jones", Cedric Newson (hereinafter referred to as "Newson, and Christopher Eason (hereinafter referred to as "Eason"):

"The Court instructs the Jury that the injury of any human being by the act, procurement or omission of another shall be excusable when committed by accident and misfortune, in the heat of passion upon any sudden and sufficient provocation.

If you believe from the evidence that Jamie Roberson injured (alleged victim's name) by act committed by accident and misfortune, in the heat of passion upon sudden and sufficient provocation then you shall find Jamie Roberson not guilty." **Accident and Misfortune. Miller v. State**, 677 So.2d 726 (Miss. 1996) (R.E 23-24)

Discussion concerning the accident and misfortune jury instructions went as follows:

MR. MALLETT: "The remaining instructions are accident instructions."

THE COURT: "You mean we are all going through a crowded bar room just firing shots off and - -"

MR. TISDELL: "No, we're going through a crowded bar room - -"

THE COURT: "to generally hit one guy, and gets - -"

MR. TISDELL: "- - and somebody over here shot you and - -"

THE COURT: "- - and it's just accident (T.I. 223)

and misfortune for the ones who were killed?"

MR. MALLETTE: "They weren't tussling over this gun or anything of that nature."

THE COURT: "I'm - - okay, this one is refused. I'm not going to go that far."

MR. MALLETTE: "That one applies to every - -"

THE COURT: "I mean, self-defense is one thing, but - -"

MR. MALLETTE: "- - every instruction."

THE COURT: "That's not even a stretch."

It is clear from the facts that the injuries suffered by Jones, Newson, and Eason were committed by accident and misfortune, in the heat of passion upon sudden and sufficient provocation.

Finally, the proffered instructions presented the defense's theory of the case, they correctly stated the law, and were not covered by any other jury instruction given by the court. Based on the above facts, the court should have granted the Defense's instructions and the court's refusal to grant them is reversible error.

ISSUE TWO:

THE TRIAL COURT ERRED IN FAILING TO SUSTAIN THE DEFENSE'S MOTION FOR A NEW TRIAL, OR IN THE ALTERNATIVE, JUDGMENT NOTWITHSTANDING THE VERDICT, AS THE WEIGHT OF THE EVIDENCE DID NOT SUPPORT THE JURY'S VERDICTS.

Appellant also respectfully asks this Court to reconsider the trial court's denial of its request for a new trial or JNOV based on the weight and worth of the evidence. Appellant asserts that the many inconsistencies apparent in the testimony of the prosecution's witnesses, when viewed in connection with both the lack of forensic

evidence and its inconsistency with the forensic evidence that was available, show that the verdicts of the jury were not supported by the evidence and therefore must be vacated. Recognizing that weight and legal sufficiency of the evidence are separate issues, the Appellant will present only the weight argument under this heading.

A motion for a new trial asks this Court to vacate the jury's verdict of guilty on the grounds of weight rather than the legal sufficiency of the evidence. ***Austin v. State***, 784 So.2d 186, 196 (2001). "This Court will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand would be to sanction an unconscionable injustice." ***Id.*** [citing ***Groseclose v. State***, 440 So.2d 297, 300 (1983)]. "Any less stringent rule would denigrate the constitutional power and responsibility of the jury in our criminal justice system." ***Groseclose***, 440 So.2d at 300. The decision is left to the discretion of the court, which should exercise great 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." ***Mitchell v. State***, 803 So.2d 479, 484 (Miss. Ct. App. 2001). "No formula dictates the manner in which jurors resolve conflicting testimony into findings of fact to support their verdict. That resolution results from jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individual sworn to return a true verdict." ***Grandy v. State***, 373 So.2d 1042, 1045 (1979).

Appellant argues that since the prosecution based its case primarily on the testimony of uncorroborated eyewitnesses, the irreconcilable inconsistencies between the testimony of the witnesses and others, when combined with a closer look at the

conflicting forensic evidence, would necessitate the reversal of the jury's verdict and the granting of a new trial.

The prosecution based its case on the testimony of several witnesses, principally that of Marcus Ward, and to a lesser extent, Cedric Newson and Christopher Eason. It was Ward's testimony that formed the basis of the State's case against the Appellant, and at first blush his testimony appears damning. However, when examined more closely and in connection with the evidence the State presented, Ward's inconsistent testimony fails to corroborate the story told by the other witnesses.

These inconsistencies when viewed in isolation may seem minor, but when taken in the totality of the circumstances, they add up to major flaws in the plausibility of the prosecution's chief witness at trial.

Eason's testimony also contradicts the statement he gave to the Tunica County Sheriff Department. In his statement, Eason states that he did see who shot him, "All I saw was flames coming from the gun". During his testimony on the witness stand, Eason said that he saw the Appellant in the corner and he came out of the corner shooting. (T.I. 180)

Yet another inconsistency in the case at bar is that of the number of reported shots compared to the number of victims. According to Steven T. Haynes, M.D. (hereafter referred to as "Dr. Haynes"), five gunshot wounds were identified on the body of the deceased Richard Conard. (T.I. 142) Dr. Haynes also testified that he identified two (2) gun shot wounds on the body of the deceased, James Dawson. (T.I. 147)

Evidence and testimony presented at trial revealed that Newson, received a gun shot wound to the hand (T.I. 125), Eason received two (2) gun shots to the stomach

and Jones receives a gun shot to the buttocks. According the evidence presented at trial there was a total of nine (9) gun shot wounds the night of the shooting. Appellant admitted that he fired two (2) to three (3) shots that night out of self-defense, but contends that it was not feasible that he could have fired 9 or more shots wounding several persons at different area in the club on the night in question.

In noting these inconsistencies, the Appellant asserts that the trial jury based its verdicts not on the evidence, but on bias, prejudice, and passion. In advancing this proposition, the Appellant feels it important again to note the refusal the Defense jury instructions by the trial court. When the Judge refused all but one of the Defense jury instructions, the jury was deprived of potentially substantial probative evidence exposing credibility questions and the bias, prejudice and interest the witnesses had in diverting attention from them and onto the Appellant. The numerous gun shots wounds coupled with the inconsistencies and impossibilities and the forensic evidence in the case, seems to point to glaring weaknesses in the evidentiary base on which the jury found the Appellant guilty.

"The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction."

Although, "[t]his Court does not have the task of re-weighing the facts..." for Jamie Roberson to spend the remainder of his life in prison based on this inconsistent and contradictory evidence would constitute an unconscionable injustice if the jury's verdicts were allowed to stand. **Langston v. State**, 791 So.2d 273, 280 (Miss. Ct. App. 2001). The Appellant asserts that the weight of the evidence presented at trial does not

support the jury's verdicts and to allow it to stand would constitute and unconscionable injustice.

Roberson repeatedly stated, both in his interview with Detective Woods, and his statement, that he fired at Conard in self-defense and he never intended to injure anyone. Although "the absence of physical evidence does not negate a conviction where there is testimonial evidence, "neither the physical nor the testimonial evidence at trial in this case, when taken together, supports the jury's verdict. **Graham v. State**, 812 So.2d 1150 (Miss. Ct. App. 2002). Based on the previous confrontations between Roberson and Conard, it was reasonable for Roberson to apprehend a design on the part of Conard to kill him or do him serious bodily harm. **Robinson v. State**, 434 So.2d 181, 187 (Miss. 2001) And, as Roberson also testified, that Conard, bumped into him and exhibited a gun, creating a reasonable basis for Roberson to apprehend that he was in imminent and immediate danger of being killed by Conard.

The weight of the evidence in this case clearly points that the proof does not support guilty verdicts of Depraved Heart Murders, Aggravated Assault, or Possession of a Firearm by convicted Felon.

After considering all physical evidence and testimony presented at trial, the State did not present sufficient evidence to support guilty verdicts and the trial judge should have granted the defense motion for J.N.O.V., or in the Alternative Motion for a New Trial. Therefore, the Appellant would submit that the weight of the evidence does not support the jury's verdicts, even in the light most favorable to the prosecution, and that this Court should reverse and vacate the jury verdicts of the trial court, and remand for a new trial.

CONCLUSION

The Appellant herein submits that based on the propositions cited and briefed herein above, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and the Appellant's convictions and sentences should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial on the merits of the indictment on charges, with instructions to the lower court. The Appellant further states to the Court that the individual and cumulative errors as cited herein above are fundamental in nature and therefore, cannot be harmless.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, David L. Tisdell, Attorney for Appellant herein, do hereby certify that I have this day mailed postage full pre-paid or hand delivered, a true and correct copy of the foregoing Brief of Appellant to the following interested person:

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This the 3rd day of MARCH, 2008.


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