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### **STATUTES**

none

### **OTHER AUTHORITIES**

none

## **REPLY ARGUMENT**

### **ISSUE NO. 1:        *DIRECTED VERDICT ON THE ARMED ROBBERY CHARGE***

The state relies on *Williams v. State*, 317 So. 2d 425 (Miss. 1975) where the defendant forcefully took money from a cash register while holding the clerk at bay with a gun stuck in his face, all to force a refund for an unsatisfactory pair of sneakers which the clerk was unwilling to initially give. The facts in *Williams* are distinguishable from the present case. Primarily, in *Williams*, there was a simultaneous display of a weapon and a demand for money, hence a direct connection between the weapon, the threat of force and the demand for money. In the present case, accepting all of the state's evidence as true, there was no evidence of any weapon being used or displayed until after the demand for money portion of the alleged offense was complete, and the retaliation portion began.

The state misdirects the court to think that the appellant's argument hinges on the fact that nothing was taken, and that the case here is one of attempted armed robbery. However, the fact that nothing was taken in the present case is a mere result that there was never any attempt to take anything from Halbert even though the two alleged assailants had every opportunity to duck down a dark alley or to have their way with Halbert's belongings while he was unconscious.

Moreover, *Houston v. State*, 811 So. 2d 371 (Miss. App. 2001), cited by the state, is not like the present case at all. In *Houston*, but for the liquor store clerk's fighting

back, the intended robbery would have been completed. There was an overt act, in other words, which had been thwarted. *Id.* In the present case, there was no overt act of a robbery. There was a demand for payment of a debt, a refusal, and alleged retaliation.

Otherwise the issue was preserved and the appellant's initial arguments hereunder fully authoritative and controlling.

**ISSUE NO. 2:      *LESSER INCLUDED OFFENSE SIMPLE ASSAULT JURY INSTRUCTION***

First the state argues that the issue was not preserved. This argument has no merit as the state's offered authority is mere aberrational dicta.

In *Rubenstein v. State*, 941 So.2d 735, 788-89 (¶ 247) (Miss. 2006), the Supreme Court made it abundantly clear that, "the refusal of instructions offered by the defendant need not be objected to in order to preserve the issue for appeal." [Citing *Green v. State*, 884 So.2d 733, 736 (Miss. 2004)]. A claimed error for refusal of an offered jury instruction is preserved by "the mere tendering" of the requested instruction. 941 So.2d 789.

In *Duplantis v. State*, 708 So.2d 1327, 1339 (Miss.1998), the Court said, "[a]lthough in dicta [in *Nicholson ex rel. Gollott v. State*, 672 So.2d 744, 752 (Miss.1996)] we indicated that we could impose a procedural bar, we did not intend to overrule existing case law and therefore require litigants to object to the denial of instructions they themselves have offered." The Court of Appeals has followed the same

route. *Starks v. State*, 798 So.2d 562, 565, (¶¶ 8-9), (Miss. App. 2001) .

Otherwise, the state does not distinguish the facts in the present case from the authorities offered by the Appellant.

**ISSUE NO. 3:**      *LIMITED THE CROSS EXAMINATION*

There is no rule requiring a party to object to a trial court's sustaining an opposing parties' objection. The subject sought to be explored by cross-examination was not commutative and was very relevant, and well within the scope of full and fair cross-examination.

**ISSUE NO. 4:**      *LIMITED THEORY OF DEFENSE EVIDENCE*

There is no rule requiring a party to object to a trial court's sustaining an opposing parties' objection.

**ISSUE NO. 5:**      *AMES TRIED IN JAIL CLOTHES*

Appellant relies on its initial argument here.

**ISSUE NO. 6:**      *IMPROPER IMPEACHMENT OF DEFENSE WITNESS WITH PRIOR TESTIMONY*

The record is replete with error preserving objections on this issue. The state does not distinguish the facts from Appellant's authority, and offers nothing more persuasive.

### CONCLUSION

Tony Ames is entitled to have his convictions reversed with remand for a new trial.

Respectfully submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Tony Ames, Appellant

By: George T. Holmes  
George T. Holmes, Staff Attorney

### CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 23 day of September, 2008, mailed a true and correct copy of the above and foregoing Reply Brief to Hon. James T. Kitchens, Jr., Circuit Judge, P. O. Box 1387, Columbus MS 39703 , and to Hon. Forrest Allgood, Dist. Atty. , P. O. Box 1044, Columbus MS 39703, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.

George T. Holmes  
George T. Holmes

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
George T. Holmes, MSB No. [REDACTED]  
301 N. Lamar St., Ste 210  
Jackson MS 39201  
601 576-4200