

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JULIAN C. WILLIAMS**

**APPELLANT**

**V.**

**NO. 2007-KA-2030-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**JULIAN C. WILLIAMS**

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**CERTIFICATE OF INTERESTED PERSONS**

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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Julian C. Williams, Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable David Strong, Circuit Court Judge

This the 9<sup>th</sup> day of April, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
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## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUE .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF THE ARGUMENT .....	3
I.    WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT THE REQUESTED “HEAT OF PASSION” JURY INSTRUCTION .....	3
CONCLUSION .....	7
CERTIFICATE OF SERVICE .....	8

## TABLE OF AUTHORITIES

### CASES

<i>Chinn v. State</i> , 958 So. 2d 1223, 1225 (¶13) (Miss. 2007) .....	4
<i>Heidel v. State</i> , 587 So. 2d 835, 842 (Miss. 1991) .....	3
<i>Malone v. State</i> , 486 So. 2d 360, 365 (Miss. 1986) .....	3
<i>Mullins v. State</i> , 493 So. 2d 971, 974 (Miss. 1986) .....	4
<i>Murphy v. State</i> , 566 So. 2d 1201, 1206 (Miss. 1990) .....	3
<i>Phillipson v. State</i> , 943 So. 2d 670, 671-72 (¶6) (Miss. 2006) .....	6
<i>Satcher v. State</i> , 852 So. 2d 595, 599 (¶14) (Miss. Ct. App. 2002) .....	4

## **STATEMENT OF ISSUE**

WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT THE REQUESTED  
“HEAT OF PASSION” JURY INSTRUCTION

## **STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Lincoln County, Mississippi, where Julian C. Williams was convicted of murder. A jury trial was held on October 17-18, 2007, with the Honorable David H. Strong, Jr., Circuit Judge, presiding. Following the trial, Williams was sentenced to life imprisonment under the supervision of the Mississippi Department of Corrections and ordered to pay court costs and attorney fees. Williams is presently incarcerated with the Mississippi Department of Corrections.

## **FACTS**

In the early morning of July 15, 2006, the Lincoln County Sheriff’s Department received a 911 call that a young woman, Rhonda M. Mullins a/k/a Rhonda M. Mullen a/k/a/ Michelle Mullen [hereinafter referred to as “Michelle”], was unresponsive and appeared to be dead at the Louise Blades’ trailer park, in Lincoln County, Mississippi, . [T. 144, 150, R.E. 911 call] Michelle’s body was found under Thomas Black’s bed in his one-bedroom trailer. [T. 138]. The events leading up the discovery of the body are detailed below.

Louise Blades’ trailer park is an area known from heavy drinking and rampant drug activity. [T. 171]. Odessia Humpries, Beulah Ward and Tom Black were all residents of the trailer park and Williams and Michelle were visitors. [T. 104, 106, 119, 130]. On the night of July 14, 2006, all of the parties were at Ward’s trailer, getting high and drinking. [T. 124] Williams and Michelle had just met that evening at the trailer park. At some point during the night, Williams asked Black if he could take Michelle to Black’s trailer.[T. 133] Williams and Michelle went to Black’s trailer to

engage in consensual sex. [R.E. 24-25] [T. 187-88, 209] The two left the gathering at Ward's house and headed to Black's trailer. [T. 122-123]

Leonard Porter, Jr. testified that he arrived at Black's trailer earlier that night because he was heavily intoxicated.[T. 100] When he entered the trailer, no one was there. [*Id.* ] Later on, he woke up when he saw an arm opening the door but he went back to sleep. [ T. 101] He could not identify the person opening the door. [*Id.*] Porter testified that he stayed on the couch until the next morning, when his ride arrived to take him to his job. [*Id.*]

According to Williams' statement to police, after Williams and Michelle completed the sexual intercourse, Michelle became very violent and loud.[ State Exhibit 7, R.E. 24-25] At the same time, Williams heard noises outside of the trailer's bedroom.[*Id.*] Fearing the Michelle was assisting in an attempted robbery, Williams grabbed Michelle around the neck to keep her quite. [*Id.*] He left her to investigate the noise outside and, when he returned, Michelle was unconscious.[*Id.*] Not knowing what to do, Williams's statement indicates that he placed Michelle underneath the bed where she fell.[*Id.*] Williams returned to the gathering at Ward's trailer. [ T. 109, 123, 134]

Later, Black returned to his trailer and testified that he attempted to go to sleep in the bed but he was repeatedly interrupted by visitors. [T. 135-36] Unable to sleep, he went back to Ward's trailer.[T. 136] Close to daybreak, Black went back to his trailer to sleep. [T. 138] According to his testimony, as he reached over the bed to toss out the ashes of his cigar, he noticed Michelle's hair underneath the bed. [T. 138] Michelle's discovery was made difficult by the fact that Black only had one working light, located in the bathroom. [T. 135]

Black went to Ward's house to inform Ward and Humpries about the discovery and the ladies called the police. [T. 138]

At trial, Dr. Steven Hayne of the Medical Examiner's Office, testified that an autopsy of the

victim was conducted on July 16, 2006. [T. 179] A toxicology report was also produced. [T. 186-87] At the time of her death, Michelle's body tested positive for the presence of cocaine, cocaethylene (present when one consumes drinking alcohol over a short period of time with cocaine in the blood), nordiazepam (break down of the drug Valium) and morphine. [T. 186-87] Dr. Hayne concluded, however, that these drugs were not the cause of Michelle's death, rather her death was the result of manual strangulation. [T. 187, 182]

### **SUMMARY OF THE ARGUMENT**

The trial court erred in refusing to grant the "heat of passion" jury instruction. Williams was denied his fundamental right to have the jury instructed on his defense theory. The trial court should have determined that the jury could have drawn a reasonable inference from the specific facts of this case.

### **ARGUMENT**

#### **WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT THE REQUESTED "HEAT OF PASSION" JURY INSTRUCTION**

An accused is entitled to have a jury instruction that presents the theory of his case. *Murphy v. State*, 566 So. 2d 1201, 1206 (Miss. 1990). The trial court may refuse an instruction, however, if it incorrectly states the law, is adequately covered elsewhere in the instructions, or is not supported by the evidence. *Heidel v. State*, 587 So. 2d 835, 842 (Miss. 1991). In order to determine if the jury has been properly instructed, the jury instructions should be considered as a whole and no one instruction should be taken out of context. *Malone v. State*, 486 So. 2d 360, 365 (Miss. 1986).

The trial court erred in refusing to grant the requested "heat of passion" jury instructions D-9 and D-10, finding they were not supported by the facts of the case. D-9 listed the elements of manslaughter and D-10 defined the "heat of passion." [R.E. 22-23] In rejecting the proposed jury

instructions, the trial court determined the following,

“ . . . the defendant states on the tape that he was in fear of being robbed, but there is just no evidence to indicate that the person who he allegedly killed was the potential robber. She was, obviously, based on the evidence, she was in the room with him and didn’t have any clothes on. So if he had killed someone who he reasonably thought might have been part of a robbery, then maybe [Mr. Sermos] would be right. But in this case, I just don’t think the facts support that instruction.”

[T. 221]

The defense counsel then informed the court that jury instructions were needed to allow the jury to draw an inference that Michelle may have been guilty of a conspiracy to rob Williams. [T. 221] The trial court simply found that the inference was unreasonable and refused to proceed further. [*Id.*]

The Mississippi Supreme Court has held that “every accused has a fundamental right to have [his] theory of the case presented to the jury, even if the evidence is minimal.” *Chinn v. State*, 958 So. 2d 1223, 1225 (¶13) (Miss. 2007). The Court went on to state that the accused has an absolute right to have the jury properly instructed on every lawful defense he chooses to assert, even if the defense is based on “meager evidence and highly unlikely.” *Id.* ; *Satcher v. State*, 852 So. 2d 595, 599 (¶14) (Miss. Ct. App. 2002).

In refusing the “heat of passion” jury instructions, the trial court denied Williams’ fundamental right to present an essential defense theory of the case. “Heat of passion” has been defined by Mississippi courts as:

“ . . . a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.”

*Mullins v. State*, 493 So. 2d 971, 974 (Miss. 1986).



In both Williams written confession and the taped confession, he consistently informed the police that he was afraid for his life that Michelle had set him up to rob him. [State Exhibit 7, R.E. 25-26] After Williams and Michelle had consensual sex, Williams said he heard a noise outside. [*Id.*] Williams began to put on his clothes to leave, but after Michelle attempted to retain him, he became “very afraid and feared for his life.” [R.E. 25-26] It was at this time that Williams began choking Michelle, only trying to silence her and to stop the robbery attempt before he could be hurt. [State Exhibit 7, R.E. 25-26] He eventually left Michelle to see who was outside and, after being unable to determine who was outside, he immediately came back in the bedroom to check on her. [*Id.*] It was at this time he realized that she was non-responsive. [*Id.*]

Given Williams admitted use of crack cocaine on the night in question, it is quite reasonable that he would believe that Michelle’s actions, couple with the apparent noises from outside would put him in the “emotion state of mind characterized by anger, rage, hatred, furious resentment or terror.” After Williams’ initially heard the noise coming from outside, Michelle became agitated, loud, and violent toward him. [*Id.*] When he tried to leave the room to investigate the noise, her suspicious behavior became more apparent in that she tried to detain him in the bedroom. [R.E. 25-26]

Not only was it reasonable that Williams feared for his life due to Michelle’s unusual and violent behavior, it was also reasonable that someone would attempt to rob Williams. The Louise Blades’ trailer park had a reputation for being a place of a lot of drug activities and heavy drinking. [T. 172]. According to Investigator John Hall, Jr. of the Lincoln County Sheriff’s Department, the trailer park had heavy foot traffic, mostly on the weekends, and one could expect drug users to walk back and forth throughout the trailer park most of the night. [T. 172].

The trial court reasoned that since Michelle was unarmed and unclothed, one could not draw

a reasonable inference that she conspired to partake in a scheme to rob Williams. [T. 221] However, there was a factual basis to support Williams defense and the trial court erred in denying Williams of this fundamental right to have the jury properly consider the “heat of passion” instruction. The Court has held that, “where the defendant’s proffered instruction has an evidentiary basis, properly states the law, and is the only instruction presenting his theory of the case, refusal to grant it constitutes reversible error.” *Phillipson v. State*, 943 So. 2d 670, 671-72 (¶6) (Miss. 2006).

### CONCLUSION

The trial court erred in denying the “heat of passion” jury instruction as it was necessary to support William’s defense. The facts of the case give way for the jury to make a reasonable inference that Michelle Mullin was involved in an attempt to rob the defendant. Due to the trial court’s denial of Williams’ fundamental right, Williams is entitled to have his conviction reversed and remanded to the trial court for a new trial. If the Court should, however, discover any plain error not set forth in this brief, the defendant request that this Court reverse and remand the case for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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## CERTIFICATE OF SERVICE

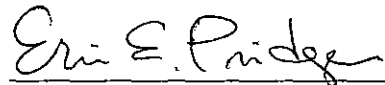
I, Erin E. Pridgen, Counsel for Julian C. Williams, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable David Strong  
Circuit Court Judge  
Post Office Box 1269  
McComb, MS 39649

Honorable Dewitt (Dee) T. Bates, Jr.  
District Attorney, District 14  
284 East Bay Street  
Magnolia, MS 39652

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 9<sup>th</sup> day of April, 2008.



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