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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO. 2008-KA-00767-COA

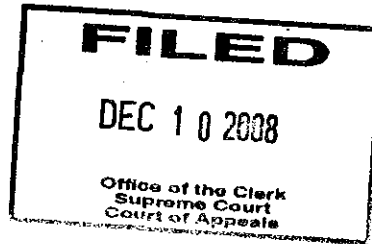
KENYOUNG FAIR

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE



**APPELLANT'S REPLY BRIEF**

**Oral Argument Requested**

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
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## **TABLE OF AUTHORITIES**

### **CASES:**

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### **STATUTES**

none

### **OTHER AUTHORITIES**

none

## **REQUEST FOR ORAL ARGUMENT**

Pursuant to M. R. A. P. Rule 34, Appellant respectfully requests oral argument because this case involves an juvenile offender, age fourteen (14) at the time of the offense, who received a life sentence for an act which the evidence shows could have been totally impulsive. The scrutiny of oral argument should be afforded this case.

## **REPLY ARGUMENT**

### **Issue No. 1: The Trial Court Should Have Granted JNOV for Manslaughter.**

The Appellant takes exception to the State's position that there was no mention of "imperfect self-defense" during Young's trial. To the contrary, imperfect self-defense is the theme of Young's entire case and the claimed basis of his action, "I was just shooting out the window" to get them to "get back" he said. [T. 231, 233-34, 236-37].

The Appellant also takes exception to the state's inaccurate representation, that Fair came to Ackerman armed with the implication that Fair was looking for trouble. The record shows that it was Samuel Lee Dotson, Jr. who brought the weapon used by Fair, not Fair. [T. 172, 176, 198, 232]. Moreover, according to Dotson, a state witness, there was no plan or intention of confronting the Ackerman teens. [T. 200, 203-04, 231]. Sam said he went to Ackerman to pick someone up for a ride, but when they went past the Friendship M. B. Church, there was a crowd blocking the road, so he pulled over. *Id.*

To say that Fair "sat detached" as though he were laying in wait is a representation

totally detached from the record. Fair's actions were totally reflex, without premeditation or contemplation. Remember, it was the Ackerman kids, Gerrodd Edwards, in particular, who said, "[g]et out of the car, we gonna whip ya'll's ass." *Id.* Justice requires a JNOV for manslaughter. *Wade v. State*, 748 So. 2d 771, 773-76 (Miss.1999).

Issue No. 2: Instruction D-5, malice must precede the perceived threat to defendant.

The state failed to distinguish Fair's case from the required application of *Russell v. State*, 789 So. 2d 779, 780 (Miss. 2001) and *Williams v. State*, 729 So. 2d 1181,1186 (Miss. 1998). Both of these cases require an explanation to the jury, when requested, that "it is possible for a deliberate design to exist and the slaying nevertheless be no greater than manslaughter." If such an instruction is requested and not granted, a new trial is required.

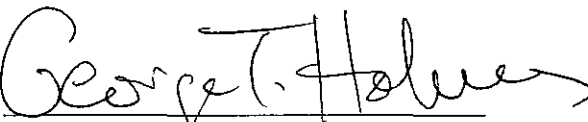
Issue No. 3: The refused a heat of passion instruction

The state's argument that there were no facts to support a heat of passion manslaughter instruction ignores the state's evidence that the defendant had been attacked, not once but twice previously. [T. 160-61, 167, 169-72, 174, 199-200, 218, 223-24, 227-28]. On the date in question, there were confrontational words exchanged between Samuel Dotson and the Ackerman mob, including the victims threats "[g]et out

of the car, we gonna whip ya'll's ass." [T. 147, 159-61, 172-76, 182-84, 198-99, 204, 208, 230-31]. State witness Samuel Dotson said one of the Ackerman kids reached for the driver's door of the Taurus, then three or four shots from a saw-off shotgun came from inside the Taurus. *Id.* The factors constituting heat of passion were met. *Mullins v. State*, 493 So. 2d 971, 974 (Miss. 1986). The requested instruction was justified, and Fair was prejudiced by its refusal.

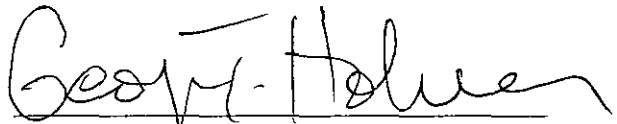
Respectfully submitted,

KENYOUNG FAIR

BY:   
GEORGE T. HOLMES,  
Mississippi Office of Indigent Appeals

**CERTIFICATE**

I, George T. Holmes, do hereby certify that I have this the 10<sup>th</sup> day of December, 2008, mailed a true and correct copy of the above and foregoing Reply Brief to Hon. Jeffrey A. Klingfuss, Assistant Attorney General, P. O. Box 220, Jackson MS 39205, Hon. C. E. Morgan, III, Circuit Judge, P. O. Box 721, Kosciusko MS 39090, and to Hon. Mike Howie, Asst. Dist. Atty., P. O. Box 1262, Grenada MS 38902 all by U. S. Mail, first class postage prepaid. all by U. S. Mail, first class postage prepaid.

  
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