

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

**JOEL SCOTT SPIRES**

**APPELLANT**

**VS.**

**NO. 2008-KA-0794-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE CASE**

The grand jury of the First Judicial District of Harrison County indicted defendant, Joel Scott Spires with Capital Murder as a very Habitual offender in violation of *Miss. Code Ann.* §§ 97-3-19(2)(e) & 99-19-81. (Indictment, cp.10-11). After a trial by jury, Judge Robert T. Clark, presiding, the jury found defendant guilty of Murder. (C.p.158). The jury was unable to agree on a sentence so the trial court sentenced defendant to Life without possibility of parole in the Custody of the Mississippi Department of Corrections. (Sentence order, cp. 16064).

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



## **STATEMENT OF FACTS**

Defendant stabbed a man 49 times so he could rob him. Defendant claimed self-defense. The jury heard all the evidence and found defendant guilty of capital murder.

## **SUMMARY OF THE ARGUMENT**

### **I.**

**THIS ISSUE IS PROCEDURALLY BARRED AS HAVING BEEN WAIVED.**

There being no objection to the method of selection of the jury or its final composition this issue is barred as having been waived.

### **II.**

**THE JURY WAS AMPLY AND CORRECTLY INSTRUCTED AS TO THE LAW REGARDING 'SELF-DEFENSE.'**

The jury was informed in detail as to the law on self-defense. Defendant was granted his proffered instruction on self-defense.

## ARGUMENT

### I.

#### THIS ISSUE IS PROCEDURALLY BARRED AS HAVING BEEN WAIVED.

In this initial allegation of error defendant claims error in the manner by which the jury was selected. Specifically claiming the trial judge exempted a juror from service when in fact it would be the choice of the juror whether to claim the exemption.

While, on its face, it would appear the trial court, perhaps should have included the 'service on a jury in the last two years' as an exemption that was the choice of the juror – as done for the over 65 age exemption – such is not reversible error here. The age exemption and the exemption for previous recent jury service are personal exemptions that may, or may not, be exercised at the choice of the juror.

Be that as it may, there was no objection to the seating of the jury, the process, or method. Consequently, this issue (as so noted by counsel for defendant) is procedurally barred as having been waived. *Archer v. State*, 986 So.2d 951 (Miss. 2008).

While there is an exception to this procedural bar (the seating of a felon) such is not the case here and no relief should be granted on this claim of error.



II.  
THE JURY WAS AMPLY AND CORRECTLY INSTRUCTED AS TO  
THE LAW REGARDING 'SELF-DEFENSE.'

Lastly, defendant claims error in that he was denied a 'stand your ground' self-defense instruction. It must be noted that self-defense was mentioned in the State's instructions and that defendant had his own self-defense instruction granted and given. (Instruction D-6A, c.p. 98).\

The law is clear:

¶ 9. The State argues that the trial court properly refused the jury instructions requested by Dobbs because they were repetitive. We agree. Although a defendant is entitled to jury instructions which present his theory of the case, "this entitlement is limited to instructions that correctly state the law, are not covered fairly elsewhere in the instructions, and have a foundation in the evidence." *Sproles v. State*, 815 So.2d 451, 454(¶ 9) (Miss.Ct.App.2002) (citing *Heidel v. State*, 587 So.2d 835, 842 (Miss.1991)). Furthermore, "the trial court is not required to grant several instructions on the same question in different verbiage.

*Dobbs v. State*, 936 So.2d 322 (Miss. 2006).

Looking to the record defendant was not denied his 'self-defense' claim. Counsel mentioned self-defense a dozen times in closing argument alone. The jury was amply instructed on self-defense as it fit into the law. It was informed the State had the burden of proving defendant's killing was not in necessary self-defense. Counsel argued same.

The trial court was correct and the jury was amply and correctly instructed on

self-defense as the law applicable to the facts of this case.

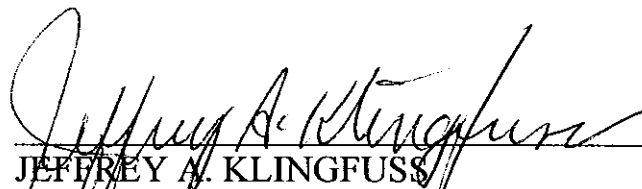

There being no error no relief should be granted.

## CONCLUSION

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

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

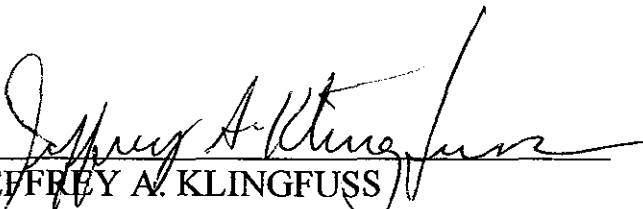
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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Circuit Court Judge  
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This the 5th day of December, 2008.

  
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