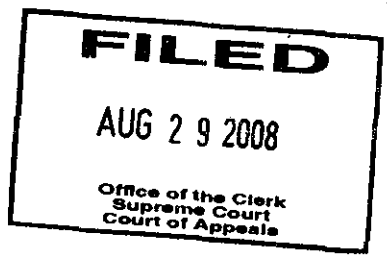
IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOEL SCOTT SPIRES — APPELLANT

V. — NO. 2008-KA-00794-SCT



STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

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JOEL SCOTT SPIRES **APPELLANT**

V. **NO. 2008-KA-00794-SCT**

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. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Joel Scott Spires, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Roger T. Clark, Circuit Court Judge

This the 29th day of August, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

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JOEL SCOTT SPIRES — APPELLANT

V. — NO. 2008-KA-00794-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE ONE:

WHETHER THE TRIAL COURT ERRED WHEN IT DISMISSED A POTENTIAL JUROR DUE TO THE FACT THAT SHE HAD SERVED ON A JURY IN A CRIMINAL TRIAL IN THE PREVIOUS TWO YEARS.

ISSUE TWO:

WHETHER THE APPELLANT WAS DENIED HIS FUNDAMENTAL RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT REFUSED THE APPELLANT'S "STAND YOUR GROUND" JURY INSTRUCTION.

STATEMENT OF INCARCERATION

Joel Scott Spires, the Appellant in this case, is presently incarcerated in 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.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Harrison County, Mississippi, and a judgment of conviction on one count of capital murder against Joel Scott Spires, following a trial on March 24-27, 2008, honorable Roger T. Clark, Circuit Judge, presiding. Spires was subsequently sentenced to life imprisonment in the custody of the Mississippi Department of Corrections.

FACTS

According to the testimony presented at trial, on December 27, 2005, Kenny Ladner ("Ladner"), along with his wife and friends were hunting in an area off Kiln Delisle Road in Harrison County, Mississippi. (T. 207). There, they discovered what they believed to be a body and subsequently notified the police. (T. 209).

The State then called Denita Fairconeture (Faireconeture). According to her testimony, in the evening on December 25, 2005, Fairconeture pulled into the yard of her home and noticed a burgundy Cadillac (T 213). When she entered the house her fiancee, Cedric Page ("Page"), and Joel Spires (Spires), the Appellant, were in the home. (T. 215). There, Fairconeture overheard Spires attempting to sell the vehicle to Page, to which Page declined. (T. 215).

Spires then mentioned that he had been in a fight. (T. 215). Fairconeture noticed that Spires' knuckles were bleeding. (T. 215). When Spires smiled, he was missing some of his teeth. (215-16). Spires told Fairconeture and Page that he and the victim, Rodney Saucier ("Saucier"), had gotten into an argument over drugs and that Spires had killed him. (T. 217).

Alphonse Dedeaux ("Dedeaux") testified that, during the time period of the crime, Spires was living with him. (T. 225). On December 26, 2005, Dedeaux saw Spires somewhere between 5:00 and 6:00 in the morning. (T. 226). Spires knocked on Dedeaux's door and Dedeaux

noticed Spires was missing his two front teeth. (T. 227). During the course of conversation, Spires admitted to getting into a fight with Saucier and eventually killing him. (T. 227). After their discussion, Dedeaux told Spires "he had to go." (T. 229).

According to Cedric Page ("Page"), on the night of December 25, 2005, Spires came over to his trailer and attempted to sell him a Cadillac. (T. 235-236). After Page inquired further about the vehicle, Spires admitted to having an altercation with the owner of the vehicle which ended in a stabbing (T. 237). Page testified that Spires told him he had to do what he had to do, meaning Spires had no choice in the matter. (T. 237,246). Consequently, Page refused to purchase the vehicle and told Spires he needed to get rid of the car. (T. 237,245).

Page stated he did not believe Spires story until he saw the vehicle days later. (T. 241-242). Moreover, after knowing Spires for several months, Page could not believe that Spires was capable of committing a murder. (T. 249). Regardless, Page decided to make a statement to the police after seeing the vehicle days later and after contemplating that it might help him with his pending drug charges. (T. 242).

The State called Nancy Kurowski ("Kurowski"), an evidence and crime scene technician for the Harrison County Sheriff's Office, as its next witness. Kurowski processed the crime scene and the vehicle that was later collected. (T. 259,265-266). There was no weapon or vehicle recovered from the crime scene. (T. 261). There was also no weapon recovered from the Cadillac, however, there was what appeared to be blood present. (T. 265-266). Also present in the vehicle were beer bottles and what appeared to be a controlled substance. (T. 267-268).

Dr. Paul McGarry ("Dr. McGarry"), a forensic pathologist, was called to testify on behalf of the State and was accepted as an expert without objection. (T. 286-287). Dr. McGarry performed the autopsy on the victim, Rodney Saucier. (T. 288). He found forty nine (49) stab

wounds on the victim located from the top of the head down to the lower extremities. (T. 289). The stab wounds were located predominately on the left side of the victim's body in different directions with no repeating pattern present. (T. 292). Dr. McGarry testified that the stab wounds were consistent with the two individuals being in close proximity to each other, and that the two were in motion during the stabbing. (T. 292)

Joey Tracy ("Tracy"), a former criminal investigator, was called as the State's final witness. Tracy was the lead investigator on the homicide of Rodney Saucier. He noticed at the scene that it looked as if the victim's pockets had been gone through. (T. 298). Tracy did find a pipe traditionally used for the consumption of crack cocaine inside the victim's pocket. (T. 308). Later when the vehicle was recovered, he ran the tags and discovered that the vehicle belonged to Clifton Saucier. (T. 301). After speaking with Clifton Saucier, however, he learned that the vehicle in fact belonged to the victim. (T. 301)

It was not until Page and his fiancee Fairconeture gave statements that Tracy turned the focus of the investigation on Spires. (T. 302-303). An arrest warrant was eventually obtained for Spires, but the police were unable to locate him. (T. 304). Spires warrant was placed on a national database and he was eventually detained in Texas. (T. 305). The State rested after Tracy's testimony was complete. (T. 315). The defense then moved for a directed verdict which was denied. (T. 316-323).

Spires took the stand to testify in his own defense. The majority of his testimony corroborated the testimony presented in the State's case-in-chief. Spires testified that he and Saucier went into a field and Saucier began to smoke crack. (T. 325). Saucier asked Spires if he wanted some, and the two began to smoke together. (T. 325).

According to Spires' testimony, at some point Saucier began "tripping on his dope" and

rummaged through the car. (T. 325). Spires then pulled the car deeper into the field so as to attract less attention. (T. 325). Spires and Saucier smoked more crack, and Saucier began to rummage through the vehicle again. (T. 327).

Saucier then began cursing and, "in a mad rage" told Spires that someone had been taking his money. (T. 327). Saucier then accused Spires of taking his money, an accusation which Spires denied. (T. 327). According to Spires' testimony, Saucier began to poke Spires in the chest, repeatedly accusing Spires of taking his money. (T. 327). Spires testified that he thought they were going to fight. (T. 327).

Saucier then pushed Spires and the two went down to the ground. (T. 328). While they were fighting on the ground, Spires "felt [Saucier] snatch something from [Spires'] side." (T. 328). Spires admitted to carrying a knife at the time for his own protection. (T. 328). Spires testified that Saucier had the knife in his hand and stated that he wanted to stab Spires in the face with it. (T. 328).

Spires attempted to get off of the ground, but Saucier pushed him down and kicked him in the face. (T. 328). The kick knocked Spires' two front teeth out of his mouth. (T. 329). When spires got up, he saw Saucier draw the knife back again. (T. 329). According to his testimony, Spires threw his hands up and was able to take the knife away from Saucier. (T. 329).

The two then fought with one another, holding onto each other's jackets. (T. 330). Spires tried to push Saucier away from him, but Saucier would not allow him to. (T. 331). During the course of the altercation, the two fell to ground and were "tussling." (T. 331). Eventually they stopped fighting and Spires got up while Saucier was lying on the ground. (T. 331).

Spires did not know that Saucier was dead. (T. 331). Spires testified that he went to the car, leaned against the trunk, wiped the sweat and blood from himself and started cussing at

Saucier. (T. 331). Spires testified that he went back and kicked Saucier in the leg, attempting to get his attention. (T. 331). Spires then picked him up by the leg and "jerked him," in and attempt "to get him to get up." (T. 331-32).

At this time a shoe came off in his hand, and Spires threw it at Saucier, the shoe landing by Saucier's head. (T. 332). Spires then went to get a cigarette out of his pocket, taking the flashlight out of his pocket and throwing it at Saucier. (T. 332). After some time, Spires, upon realizing that Saucier was dead, went to get the keys from Saucier's body. (T. 333). Spires testified that he had no intention of killing Saucier when they went to the field. (T. 335).

Spires testified that he then went to Page's house. (T. 334). Spires told Page that he had killed Saucier, and testified that he was scared. (T. 343). According to Spires' testimony, Page told him that he needed to get rid of the car. (T. 343). There was a suggestion to Spires that he sell the vehicle. (T. 343). Spires testified that he offered the vehicle to Page. (T. 343). Eventually, Spires was told of a place where he could park the car, which he did on December 26th. (T. 346). Spires then hitchhiked to Texas, where he was arrested. (T. 349).

The defense also called Stephen Haas, a bar owner, who testified that Saucier had gotten in a bar fight the day before the incident in question. (T. 373). Saucier had been hit in the head with a beer bottle. (T. 373).

At the end of the defense's case both parties stipulated that if the Harrison County coroner were called to testify, he would testify that Saucier tested positive for the presence of cocaine and alcohol at the time of his death. (T. 381).

After deliberation, a jury found Spires guilty of capital murder. (C.P. 157, R.E.14). After the jury was unable to unanimously agree as to the imposition of the death penalty, the Appellant was sentenced to life imprisonment in custody of the Mississippi Department Corrections

without the eligibility of parole. (C.P. 160, R.E. 15).

On March 31, 2008, the Appellant filed a Motion for a New Trial and for Acquittal Not Withstanding the Verdict. (C.P. 161-62, R.E.16-17). The motion was denied by the trial court on May 5, 2008. (C.P. 165, R.E. 18). On May 6, 2008, feeling aggrieved by the verdict of the jury and the sentence of the trial court, the Appellant filed a notice of appeal. (C.P. 166, R.E. 19).

SUMMARY OF THE ARGUMENT

The trial court erred when, in determining which members of the venire were competent to serve on a jury, excused a potential juror on the basis that the juror had previously served on a jury in the last two (2) years. The trial court's conclusion was contrary to the laws of the State of Mississippi.

Secondly, the Appellant was deprived of his fundamental right to a fair trial when the trial court refused the Appellant's "stand your ground" jury instruction. The self-defense instructions given to the jury were inadequate in fully describing the nature of the defense of self-defense under Mississippi law; therefore, the Appellant was unable to fully present his theory of the case to the jury.

ARGUMENT

ISSUE ONE: WHETHER THE TRIAL COURT ERRED WHEN IT DISMISSED A POTENTIAL JUROR DUE TO THE FACT THAT SHE HAD SERVED ON A JURY IN A CRIMINAL TRIAL IN THE PREVIOUS TWO YEARS.

In the instant case, the trial court dismissed a potential juror for having served on a jury in the last two years that reached a verdict;

> THE COURT: You may not have served on a jury in the last two years in this court that heard a case and actually went to a decision. Has anybody been a juror in this court in the last two years? Yes, ma'am.
>
> POTENTIAL JUROR: In October of 2006 I was on the jury.

THE COURT: And did the jury reach a verdict in the case you sat in?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Ma'am, you may be excused...

(T. 42-43).

Mississippi Code Annotated § 13-5-1 sets forth the standards for who are competent to serve as jurors in Mississippi. It provides;

> Every citizen not under the age of twenty-one years, who is either a qualified elector, or a resident freeholder of the county for more than one year, is able to read and write, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror. No person who is or has been within twelve months the overseer of a public road or road contractor shall, however, be competent to serve as a grand juror. The lack of any such qualifications on the part of one or more jurors shall not, however, vitiate an indictment or verdict. Moreover, no talesman or tales juror shall be qualified who has served as such talesman or talesjuror in the last preceding two years, and no juror shall serve on any jury who has served as such for the last preceding two years.

Miss. Code Ann. § 13-5-1.

Mississippi Code Annotated § 13-5-25 provides what individuals are exempt from jury service as a personal privilege. It says;

> Every citizen over sixty-five (65) years of age, and everyone who has served on the regular panel as a juror in the actual trial of one or more litigated cases within two (2) years, shall be exempt from service if he claims the privilege; but the latter cases shall serve as talesmen, and on special venire , and on the regular panel, if there be a deficiency of jurors. No qualified juror shall be excluded because of any such reasons, but the same shall be a personal privilege to be claimed by any person selected for jury duty. Any citizen over sixty-five (65) years of age may claim this personal privilege outside of open court by providing the clerk of court with information that allows the clerk to determine the validity of the claim.

Miss. Code Ann. § 13-5-25.

Taking into consideration the statutes noted above, the Mississippi Supreme Court has interpreted;

> **Miss. Code Ann. § 13-5-1** states the requirements to judge the competency of potential jurors. Competent jurors must be over the age of 21, able to read and write, and either a qualified elector or a landowner for more than a year. They must not have been convicted of an infamous crime and must not be a habitual drunkard or common gambler. **Miss. Code Ann. § 13-5-25** provides for two exemptions from jury service. One exemption is for persons over the age of 65, and the other is for person who have served on a jury during the past two years. These exemptions are not mandatory and must be asserted by the individual.

Davis v. State, 767 So. 2d 986, 1000 (Miss. 2000)(internal citations omitted).

The Appellant concedes that "[a] party who fails to object to the jury's composition before it is empaneled waives any right to complain thereafter." ***Myers v. State***, 564 So. 2d 554, 557 (Miss. 1990).

However, in certain limited circumstances, the appellate court may set aside the procedural bar and reverse when it is clear that a juror who would be disqualified under **Miss. Code Ann. § 13-5-67** was not removed before the jury retired to consider its verdict. *See* ***Caldwell v. State***, 381 So. 2d 591, 594 (Miss. 1980). In the instant case, a juror who was qualified under **§ 13-5-67** was prohibited to sit on a jury. The Appellant would respectfully contend that this error is sufficiently analogous to the error in ***Caldwell*** and warrants the lifting of the procedural bar.

The Appellant further concedes, that the jury laws outlined in Section 13 of Title 15 are directional in nature. *See* ***Posey v. State***, 38 So. 324, 326 (1905). *See also* **Miss. Code Ann. § 13-5-87** (stating that the provisions for listing, drawing summoning and empaneling jurors are merely directional). However, in the instant case there is a radical departure from the requirements outlined in the statutes that warrants reversal. The Mississippi Supreme Court has

reversed civil judgments because of the failure of the circuit clerk to follow the rules outlined in the code. In ***Page v. Siemens Energy and Automation, Inc.*** , the court reversed a civil judgment when the circuit clerk admitted to directing the computer programmer to exclude from jury lists all those on the wheel who had been summoned to jury duty in either circuit or county courts within the preceding two years. ***Page v. Siemens Energy and Automation, Inc.*** , 728 So. 2d 1075, 1082 (Miss. 1998). The ***Page*** Court held;

> "Even if the clerk's office claims expediency as a purpose, this does nothing to change the fact that citizens who were entitled, and who may want, to serve on juries have been intentionally excluded."[1]

Id. at 1080.

In ***Adams v. State***, the deputy clerk unilaterally struck from the jury list all persons over sixty-five years in age as well as those who had served on a jury in the preceding two years. ***Adams v. State***, 537 So. 2d 891 (Miss. 1989). The Mississippi Supreme Court recognized that it had "never condoned a venire selection process completely contrary to [the statutes] wherein the clerk did that which the law expressly prohibits." ***Id.*** at 895.

The effect of the clerk's actions in ***Page*** and ***Adams*** is identical to the practical effect of the trial court's actions in the instant case. If the clerk were to not allow those who could claim exemptions on the venire panels, they would never be afforded the opportunity to be seated on a jury. If the trial court, during the course of qualifying the jury, excluded those who, absent any other valid reason or their own personal exemption, could serve on a jury, they would never be afforded the opportunity to be seated on a jury.

The Appellant respectfully contends that the trial court's actions in the case *sub judice* are

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1. In the case *sub judice*, there is nothing in the record to indicate any reason behind the trial court's determination.

completely contrary to the statutes outlined in the Mississippi Code and are exactly what the law expressly prohibits. The trial court was without authority to excuse the potential juror from serving on the jury. It is every juror's right to exercise his or her own exemption. By placing the that right in the hands of the trial court is to run afoul of the rights of Mississippi citizens.

ISSUE TWO: WHETHER THE APPELLANT WAS DENIED HIS FUNDAMENTAL RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT REFUSED THE APPELLANT'S "STAND YOUR GROUND" JURY INSTRUCTION.

i. Standard of Review

"[I]f the [jury] instructions fairly announce the law of the case and create no injustice, no reversible error will be found." ***Williams v. State***, 803 So. 2d 1159, 1161 (Miss. 2001) (citing ***Hickombottom v. State***, 409 So. 2d 1337, 1339 (Miss. 1982)). "If all instructions taken as a whole fairly, but not necessarily perfectly, announce the applicable rules of law, no error results." ***Milano v. State***, 790 So. 2d 179, 1984 (Miss. 2001).

"A defendant is entitled to have jury instructions given which present his theory of a case, however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, or is without foundation in evidence." ***Howell v. State***, 860 So. 2d 704, 745 (Miss. 2003) (citing ***Heidel v. State***, 587 So. 2d 835, 842 (Miss. 1991)).

ii. The right of a defendant to present his theory of the case to the jury is a fundamental right.

The Mississippi Supreme Court has long held that, no matter how minimal the evidence, a defendant is entitled to present its theory of the case to the jury. "Every accused has a fundamental right to have her theory of the case presented to a jury, even if the evidence is minimal. ***Chinn v. State*** 958 So. 2d 1223, (Miss. 2007). This "certainly is so" in cases where the defendant is alleging justification by self-defense. ***Anderson v. State***, 571 So. 2d 961, 964 (Miss. 1990).

This Court has further held that;

> "[i]t is, of course, an absolute right of an accused to have every lawful defense he asserts, even though based upon meager evidence and highly unlikely, to be submitted as a factual issue to be determined by the jury under proper instruction of the court."

Chinn, 958 So. 2d at 1225 (citations omitted).

It is important to note that the right of a defendant to present its his theory of the case is a fundamental right, because, as the Mississippi Supreme Court has held, "This court will never permit an accused to be denied this fundamental right." ***O'Bryant v. State***, 530 S0. 2d 129, 133 (Miss. 1998); *See also* ***Lancaster v. State***, 472 So. 2d 363 (Miss. 1985); *Pierce v. State*, 289 So. 2d 901 (Miss. 1974).

iii. The Appellant was entitled to his "stand your ground" instruction.

Jury Instruction 11A, provided;

> The Court instructs the jury that a person claiming the right to self-defense is not required to retreat or to consider whether he could safely retreat. If he is honestly and reasonably in fear of death or serious bodily harm he may stand his ground and use whatever force is reasonably necessary under the circumstances, even to the extent of taking the life of the attacker.

(C.P. 146, R.E. 13).

The trial court refused the instruction, concluding that instruction 11A was already covered in the other jury instructions. (T. 410) The Appellant respectfully contends that is not the case. None of the other jury instructions regarding self-defense contain any reference to a defendant's right to "stand his ground."[2]

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2. Jury Instruction S-101 Provided;

> "The Court instructs the Jury that to make a killing justifiable on the grounds of self defense, the danger to the Defendant must be either actual, present and urgent, or the Defendant must have reasonable grounds to apprehend a design on the part

The Mississippi Supreme Court has long held that a person is entitled to "stand his ground and resist force by force," but the person must "tak[e] care that his resistance be not disproportionate to the attack." ***Long v. State***, 52 Miss 23, 34 (1876). There must, however, be evidence to support this instruction. ***Skinner v. State***, 751 So. 2d 1060, 1074 (Miss. Ct. App. 1999).

> of the victim to kill him or to do him some great bodily harm, and in addition to this he must have reasonable grounds to apprehend that there is imminent danger of such design being accomplished. It is for the jury to determine the reasonableness of the ground upon which the Defendant acts."

(C.P. 83).

Jury instruction S-2B was merely the elements instruction for capital murder which contained the element "not in necessary self-defense." (C.P. 73).

Jury instruction D-9A provided;

> "The Court instructs the jury that the Defendant, JOEL SCOTT SPIRES, was entitled to act upon appearances. If the conduct of Rodney Wade Saucier was such as to induce in the mind of a reasonable person a fear that death or great bodily harm was about to be inflicted by Rodney Wade Saucier on Joel Scott Spires, situated as was the Defendant, JOEL SCOTT SPIRES, under all the circumstances then existing, and viewed from the standpoint of the Defendant, JOEL SCOTT SPIRES, then it does not matter if there was no such danger. If you the jury believe that the Defendant, JOEL SCOTT SPIRES, acted in self-defense from the real and honest conviction that he was in danger of death or great bodily harm, then you, the jury shall find the Defendant, JOEL SCOTT SPIRES, "Not Guilty", even though you, the jury, believe that at the time Joel Scott Spires was mistaken and was not in any great danger.

(C.P. 100).

None of these contained any language concerning a defendant's right to "stand his ground."

"A defendant is entitled to present their theory of the case to the jury as long as there is some evidentiary basis, even if the evidence is insufficient or of doubtful credibility, "and even though the sole testimony in support of the defense is the defendant's own testimony.'" ***Craig v. State***, 660 So. 2d 1298, 1301 (Miss. 1995)(citing ***Welch v. State***, 566 So. 2d 680, 681 (Miss. 1990).

There is ample evidence to support the assertion that the Appellant should have been granted his "stand your ground" instruction. Faireconeture testified to seeing blood on the Appellant's knuckles and noticed the Appellant's missing teeth. (T. 215-216). Alphonse Dedeaux also testified to the Appellant missing his front teeth. (T. 227). Furthermore, Cedric Page testified that the Appellant told him that he "had to do what he had to do," which Page took to mean that Spires had no choice in the matter. (T. 237). All of this evidence fully supports the Appellant being granted his proper self-defense jury instruction.

The Appellant's teeth were missing, his knuckles were bloody, and numerous witnesses testified, including the Appellant himself, that the Appellant said that his actions were in self-defense. Therefore, "stand your ground" instruction was supported by the evidence.

However, the simple fact that self-defense instructions were given should be dispositive as to whether the "stand your ground" instruction was supported by evidence. If there was enough evidence to support some instruction as to self-defense, there should undoubtedly be enough evidence to support an instruction of self-defense that fully and appropriately defines Mississippi Law.

While there are several instructions given to the jury regarding self-defense, not one tells the jury that an individual does not have to flee and may "stand his ground." The Appellant respectfully contends that it is more than reasonable to believe that a juror may have thought that

the actions taken by the Appellant, be they self-defense or imperfect self-defense, were, as a whole, unreasonable because of the fact that he did not flee his attacker.

Just as the jury should be instructed as to the elements of the crime, so too should they be instructed fully and sufficiently to the defenses of such a crime. The Appellant contends that the jury in the instant case failed in its analysis as to the reasonableness of the Appellant's actions due to the fact that the jury's reasonableness calculus was not properly and wholly informed by Mississippi Law.

iv. Conclusion.

Because the Appellant was entitled to present his theory of the case to the jury, the trial court erred in failing to give the Appellant's "stand your ground" instruction. The jury was not instructed that the Appellant had a right to "stand his ground," and, therefore, the defense was prejudice. Therefore, the Appellant respectfully requests that this honorable Court reverse and remand this case for further proceedings where the Appellant may be afforded his fundamental right to present the jury with his theory of defense.

CONCLUSION

The Appellant herein submits that based on the propositions cited and briefed hereinabove, 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 conviction and sentence 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 one charge of capital murder, with instructions to the lower court. In the alternative, the Appellant herein would submit that the judgment of the trial court and the conviction and sentence as aforesaid should be vacated, this matter rendered, and the Appellant discharged from custody, as set out hereinabove. The Appellant further states to the Court that

the individual and cumulative errors as cited hereinabove are fundamental in nature, and, therefore, cannot be harmless beyond a reasonable doubt.

CERTIFICATE OF SERVICE

I, Justin T. Cook, Counsel for Joel Scott Spires, 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 Roger T. Clark
Circuit Court Judge
Post Office Box 1183
Gulfport, MS 39502

Honorable Cono Caranna
District Attorney, District 2
Post Office Box 1180
Gulfport, MS 39502

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

This the 29th day of August, 2008.

Justin T. Cook
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
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