IN THE SUPREME COURT OF MISSISSIPPI
NO. 2008-KA-00845-SCT

STEADMAN DAVIS
a/k/a Steadman Allen Davis — APPELLANT

V.

STATE OF MISSISSIPPI — APPELLEE

APPELLANT'S REPLY BRIEF

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

Counsel for Appellant

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TABLE OF AUTHORITIES

CASES:

STATUTES

none

OTHER AUTHORITIES

none

REPLY TO STATEMENT OF FACTS

Davis disputes the state's recitation of the facts, particularly the conclusions asserted that Davis entered the house where Deborah Wells was on the day in question. (State's Brief, pp. 3, 15). The state cites no reference in the record to support its assertion.

There is no evidence that Davis entered the house. The evidence was that Davis made it no further than the porch. [T. 125-26, 158, 185, 195-97, 215-17, 228, 248-49, 276-77, 285, 287]. According to Davis, he was shot in the yard before even making it to the porch. [T. 369-72]. To the contrary. The only person shooting inside the house was Deborah Wells. [T. 125-26, 158, 185, 195-97, 215-17, 228, 248-49, 276-77, 285, 287, 369-72].

REPLY TO ARGUMENTS

ISSUE NO. 1: *Defense Jury Instructions*

Appellant stands on his original arguments under this issue. The instructions requested were not confusing, correctly stated the law and were required by the evidence. *Hatten v. State*, 938 So.2d 365 (Miss. Ct. App. 2006), and *Lenard v. State*, 828 So.2d 232 (Miss. Ct. App.2002). All of the appellant's cited authority is applicable and controlling.

As shown in the record, Steadman Davis testified that Deborah's relatives made threats of physical harm against him prior to the incident. [T. 365-66]. Therefore, under

Ruffin v. State, 992 So.2d 1165, 1177-78 (Miss. 2008), Steadman Davis presented sufficient evidence to justify instructions D-9 and D-11 in relation to the felon in possession and auto theft charges that he "reasonably believe[d] that he is in danger of physical harm" and could, under the law, "be excused for some conduct which ordinarily would be criminal." *Id.* See also, *Smith v. State*, 948 So.2d 474 (Miss. Ct. App. 2007).

ISSUE NO. 2: *Weight*

The state argues that there is no authority for the proposition that the evidence in this case, in the best light afforded to the prosecution, only supports a conviction for trespass to a vehicle. However, Davis' position has both factual and legal support.

The record here does not show that Davis intended to permanently deprive Cornelius Wells of possession of the subject vehicle simply because he drove the vehicle from the shooting incident. In the case of *Slay v. State,* 241 So.2d 362, 364 (Miss. 1970), the Court found that, based on facts that a defendant had driven a used car dealer's automobile off the lot in the middle of the night and around town for several hours did not support a grand larceny conviction. The *Slave* court said, "there is no evidence that [Slay] intended to take the car out of the city limits," even though Slay was apprehended only when he wrecked upon pursuit by the town Marshall. *Id.* *Slay* is persuasively analogous.

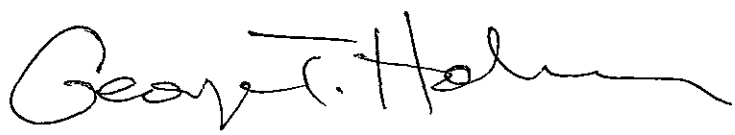
The *Slay* court relied on *Ephram v. State*, 204 Miss. 879, 35 So.2d 708 (1948), wherein Ephram was convicted of grand larceny of a truck. Ephram's defense was that

he was given permission to use the truck ,which was denied by the owner. *Id.* Even though Ephram drove the to the next town and back and around town, the Court found the grand larceny conviction unsupported by the evidence stating, "[a]t any rate, the proof in the case does not establish any higher offense than that of trespass less than larceny, there being nothing in the evidence to indicate that the appellant intended to steal the truck." *Ephram*, therefore, supports Davis' assertion that there is only enough proof in this case for the lesser charge of trespass.

CONCLUSION

Steadman Davis is entitled to have his convictions reversed and rendered or remanded for a new trial.

Respectfully submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Steadman Davis, Appellant

By: 

George T. Holmes, Staff Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 28th day of May, 2009, mailed a true and correct copy of the above and foregoing Reply Brief to Hon. W. Swan Yerger, Circuit Judge, P. O. Box 22711, Jackson MS 39225, and to Hon. Scott Rogellio, Asst. Dist. Atty. , P. O. Box 22747, Jackson MS 39225, and to Hon. John Henry, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.

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