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

CERTIFICATE OF INTERESTED PERSONS

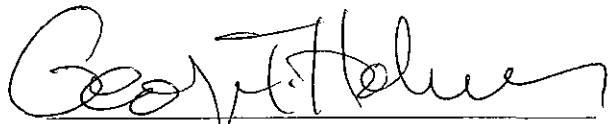
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Steadman Davis

THIS 18th day of February, 2009.

Respectfully submitted,

STEADMAN DAVIS

By: 

George T. Holmes,
Mississippi Office of Indigent Appeals

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of the First Judicial District of Hinds County, Mississippi where Steadman Davis was convicted of motor vehicle theft and of being a convicted felon in possession of a firearm. The convictions resulted from a jury trial conducted March 10, 2008, over which the Honorable W. Swan Yerger, Circuit Judge, presided. Davis was sentenced to five (5) years for the theft charge and three (3) consecutive years on the gun charge and is presently incarcerated with the Mississippi Department of Corrections.

FACTS

There was a Sunday afternoon shoot-out at 233 Redwood Avenue in Jackson on August 21, 2006 between the Appellant, Steadman Davis, and his former girlfriend, Deborah Wright. [T. 117, 195-96, 215-16, 248-49, 363-70]. What led up to this event was disputed with evidence from both sides. [T. 182-88, 356-63]. The incident resulted in Steadman being shot in the buttocks and convicted of theft of an automobile and of being a felon in possession of a firearm, but being acquitted of shooting into an occupied dwelling and acquitted of kidnapping. [R. 4, 46-49, 54-57; T. 195-96, 215, 301, 249, 368, 489-95].

Steadman and Deborah had dated and lived together at 214 Queen Anne Lane, in Jackson for several months. [T. 185-86, 356-61]. There were physical fights between them. [T. 187,

358]. Earlier in August 2006, Deborah had moved in with her daughter at the nearby 233 Redwood Street address where the shooting incident occurred [T. 188-90, 367]. Steadman said he remained at the Queen Anne Lane house, but was in the process of moving out. [T. 363].

Steadman was in the tree cutting business and was based out of Raymond. [T. 358-62]. Two of Deborah's relatives worked with Steadman. [*Id.* at 362]. Steadman said that when his relationship with Deborah turned violent, these relatives sought to tame the situation by a show of muscle and threats of physical harm. [T. 365-66].

The state presented testimony that on the day of the shooting, Deborah received a phone call from her brother, Cornelius Wells, that Steadman had him at gunpoint and was threatening to kill him if he did not bring Steadman to where Deborah was staying. [T. 194-95]. Moments later, Cornelius and Steadman arrived in Cornelius's Kia Sportage. *Id.* Upon arrival, Cornelius reportedly bailed out of the vehicle running to hide behind a tree. [T. 248]. Steadman was described as approaching the house with a weapon which he allegedly fired three or four times, before being hit in the buttock with return fire from Deborah. [T. 248-49].

Steadman was then said to have gotten back into the Kia and driven off only to pass back by a few moments later after police arrived. [T. 118, 197, 249-50]. Steadman was arrested near Jackson State and taken in for medical treatment then to the jail. [T. 298-301]. Deborah said that the responding police were "all women" and when Steadman passed back by the house, they were the female officers were the first to duck back into the house. [T. 197-98].

Steadman presented testimony from Irene Sheppard a Hinds County Deputy who worked at Detention Center as a booking officer. [T. 409-14]. Deputy Sheppard testified that Steadman had done work for her and had borrowed her car. *Id.* Sheppard said that on the day of the

shooting, she was on the phone talking to Steadman who was planning on returning her vehicle. *Id.* During the telephone conversation, Steadman said hold on my "ex-brother-in-law is here." *Id.* Deputy Sheppard then described how she stayed on the line and overheard muffled conversations and then heard someone yelling "kill him", then the sound of several gunshots, "pow, pow, pow." *Id.*

This testimony corroborated Steadman's who said that he was over at the Queen Anne Lane house, retrieving some clothing after the breakup when Cornelius Wells arrived on the scene and forced Steadman to go to Deborah to either resolve things or break up. [T. 363-68]. Steadman said that when he arrived, the situation was an ambush, with Cornelius jumping out of the Kia and yelling to Deborah "kill him, kill him". *Id.* Steadman said if Deborah's gun had not jammed, he would probably have been killed under the pretext of allegations of him stalking Deborah. [T. 369-72]. Steadman admitted returning fire against Deborah whom he said fired first, and in the process hit the house with gunfire. *Id.*

The indictment charged Steadman with kidnapping Cornelius, shooting into an occupied dwelling, stealing Cornelius' Kia and being a felon in possession of a firearm. [R. 4]. The jury must have believed the defense testimony, but since Steadman admitted having the gun and driving the Kia away, convicted him of those two charges.

SUMMARY OF THE ARGUMENT

The jury was not instructed properly and the weight of the evidence is not supportive of the verdicts.

ARGUMENT

ISSUE NO. 1: WHETHER DAVIS WAS DENIED CRUCIAL JURY INSTRUCTIONS?

Steadman Davis' position is that if the jury had been properly instructed as requested, he would not have been found guilty of the two remaining charges in this case. The jury should have been informed that Steadman's evasive actions inured to his benefit on the auto theft and felon in possession charges.

In proposed jury instruction D-9, Davis requested an instruction on the defense of duress, while in D-11 he asked for an instruction on the defense of necessity. [R. E. 14-15; R. 39-40, T. 461-66].

In *Hatten v. State*, 938 So.2d 365, 369 (Miss. App. 2006), Hatten was charged with being a felon in possession of a firearm. Hatten challenged the weight of the evidence against him, but the court found that since the jury was properly instructed, the verdict should stand. Hatten's jury was instructed as follows:

> The Court instructs the jury that where a convicted felon, reacting out of reasonable fear for his life or safety of himself, in the actual, physical course of a conflict that he did not provoke, takes temporary possession of a deadly weapon for the purpose or in the course of defending himself, he is not guilty of being a convicted felon in possession of a deadly weapon. However, the possession of a deadly weapon by the convicted felon either before the danger or for any significant period after it, remains a violation.

The same instruction had been ruled an accurate statement of the law in *Lenard v. State*, 828 So.2d 232, 237 (¶¶ 24-25) (Miss. App.2002). In *Lenard,* however, the

instruction had been denied which the court found to be harmless because the important factors were covered by other instructions. Here, in the present case, Davis was apparently granted a self-defense instruction pertaining to the shooting into the occupied dwelling, but no other instruction explained defenses to the two counts under which Davis was convicted. [T. 451].

In the case *Ruffin v. State*, 992 So.2d 1165, 1177-78 (Miss. 2008), the court discussed the defense of duress, stating the general rule that "where a person reasonably believes that he is in danger of physical harm he may be excused for some conduct which ordinarily would be criminal." [Citations omitted.]. The "components of duress" are:

> (1) the defendant was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) that he had not recklessly or negligently placed himself in the situation; (3) that he had no reasonable legal alternative to violating the law; (4) that a direct causal relationship may be reasonably anticipated between the criminal action and the avoidance of harm.

Duress is a recognized defense to kidnapping. *Milano v. State*, 790 So.2d 179, 191-92 (Miss.2001); *Brooks v. State*, 236 So.2d 751, 754 (Miss.1970); *Watson v. State*, 212 Miss. 788, 792-93, 55 So.2d 441, 443 (1951).

According to *Smith v. State*, 948 So.2d 474, (Miss. App. 2007) the defense of duress is synonymous with the defense of necessity and is classified as a "justification" defense, citing *Bain v. State*, 67 Miss. 557, 560, 7 So. 408, 409 (1890), and *Powe v. State,* 176 Miss. 455, 461, 169 So. 763, 765 (1936), and *Brown v. State*, 252 So.2d 885

(Miss.1971) where the court said "[i]n the final analysis the most that can be said relative to the appellant's testimony as to duress is that it presented a question for the jury to determine."

Since D-9 and D-11 properly stated the law and were not covered by other instructions, Davis is entitled to a new trial. *Green v. State*, 884 So.2d 733, 735-38 (Miss. 2004).

ISSUE NO. 2: WHETHER THE EVIDENCE SUPPORTS THE VERDICTS?

Davis filed a motion for a new trial challenging the weight of the evidence adduced at trial. The appellate courts of Mississippi will not reverse a conviction for being against the weight of the evidence unless "to allow it [the conviction] to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So.2d 836, 844 (¶ 18) (Miss.2005).

Since the jury found Davis not guilty of kidnapping and not guilty of shooting into an occupied dwelling, the logical conclusion was that Davis was justified in returning fire against Deborah, and was justified in driving the Kia away as his only means of regress because his life was in danger.

Ultimately, under Count 3, the evidence, at best, supports only a verdict of trespass in a vehicle under Miss. Code Ann §97-17-87 (1972); and, under Count 4 the evidence supports no conviction at all.

In *Lyle v. State*, 8 So. 2d 459, 460 (Miss. 1942), the court recognized:

> the rule that where, upon the entire record, it is manifest that sound and reasonable men engaged in a search for the truth, uninfluenced by bias or other improper motives or considerations, could not safely accept and act upon the evidence I support of an issue as true, a jury will not be permitted to consider it.

In *Lyle*, the Supreme Court reversed and rendered an arson conviction based on weak improbable testimony of the state's key witness. *Id.* Here, because the evidence is even weaker than in *Lyle*, Steadman Davis is requesting the same relief, or alternatively, a new trial; because, reasonable jurors could not "safely accept and act upon" the testimony of the state witnesses as presented in the trial of this case.

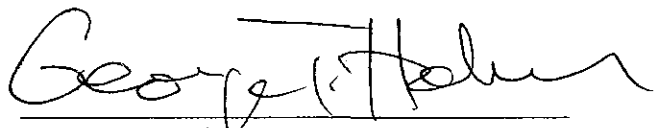
It follows that the verdicts of guilty under Counts 3 and 4 were not supported by the credible evidence and Davis' conviction, should be reversed, even viewing the state's evidence in the best possible light. *Edwards v. State*, 736 So. 2d 475, 477-79 (Miss. Ct. App.1999).

CONCLUSION

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

Respectfully submitted,

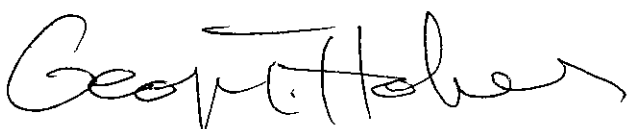
STEADMAN DAVIS

By: 

George T. Holmes,
Mississippi Office of Indigent Appeals

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 18th day of February, 2009, mailed a true and correct copy of the above and foregoing Brief Of Appellant 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. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.



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