

IN THE SUPREME COURT OF MISSISSIPPI

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NO. 2008-KA-01977-COA

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SUPREME COURT
COURT OF APPEALS**

RAY THOMAS GORE

VS.

STATE OF MISSISSIPPI

Appeal from Circuit Court of Leake County, Mississippi

BRIEF FOR APPELLANT

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Oral Argument IS Requested

CERTIFICATE OF INTERESTED PERSON

RAY THOMAS GORE

v.

STATE OF MISSISSIPPI

NO. 2008-KA-01977-COA

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 the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan
District Attorney
P.O. Box 603
Philadelphia, MS 39350**

**Honorable Marcus D. Gordon
Circuit Court Judge
P.O. Box 220
Decatur, MS 39327**

**Honorable Jim Hood
Attorney General of MS
P.O. Box 220
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**Ray Thomas Gore
APPELLANT**


Edmund J. Phillips, Jr.

Attorney of Record for Ray Thomas Gore

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STATEMENT OF THE ISSUES

1. The Court erred in denying jury instruction S-4.
2. The Court erred in denying jury instruction D-5.

STATEMENT OF THE CASE

Ray Thomas Gore appeals his conviction from the Circuit Court of Scott County, Mississippi of the crime of willfully, unlawfully, feloniously, without authority of law and with deliberate design to effect the death of the person killed, or of any human being, did kill and murder one Jacqueline Ford, a human being, contrary to and in violation of Section 97-3-19(1)(a), Miss. Code of 1972, as amended and sentence of life imprisonment in the custody of the Mississippi Department of Corrections.

Jacqueline Ford who lived in an apartment in the same apartment complex as Appellant, left her five year old son, Sonny, with Appellant in his apartment and went out with a friend named Freddy. About 3:40 a.m. Appellant (T-112) went to Jacqueline Ford's apartment to tell her to come retrieve her son. She and Freddy were there and she told Appellant, "we ain't doin nothing." About 4:00 a.m. she came to his apartment, and began arguing with Appellant. Appellant stated to police that she went to his kitchen to get a knife and he went to a closet to get a very old, partially defective rifle. They met in the living room where Appellant shot Jacqueline Ford. Appellant stated that he pointed the rifle at her, "hit the safety, and the gun went off" (T-113).

SUMMARY OF THE ARGUMENT

1. In determining whether a lesser included offense instruction should be granted, the defendant should be granted the benefit of all doubt about the evidence.

In a trial for murder, if there are any elements of manslaughter under any evidence in a case, it is error to refuse an instruction submitting to the jury the issue of manslaughter.

2. A statement to the police that is not a confession does not preclude a defendant's right to a circumstantial evidence jury instruction.

ARGUMENT

I.

THE COURT ERRED IN DENYING JURY INSTRUCTION S-4

Jury Instruction S-4, submitted by the State and agreed to by Appellant, read as follows (c.p. 16):

The Court instructs the Jury that if you fail to find the defendant guilty of the felony crime of murder, then you should continue your deliberations to consider the elements of the felony crime of manslaughter.

If you find from the evidence in this case beyond a reasonable doubt that the Defendant, Ray Thomas Gore, did kill Jacqueline Ford, a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon not in necessary self-defense and without authority of law, then you shall find the Defendant guilty of manslaughter.

The Court refused this instruction. There was evidence that Appellant had had a relationship with the victim and that the victim was with another man late the night

before her death and in the very early morning just before her death and the prosecution argued that Appellant was “mad” and “jealous” (T-145). In addition, Appellant claimed in his statement that the victim had a knife and that the killing was an accident.

Section 97-3-35, Miss. Code of 1972 describes manslaughter as homicide “in the heat of passion”.

In a trial for murder, if there are any elements of manslaughter under any evidence in a case, it is error to refuse an instruction submitting to the jury the issue of manslaughter. *Lee v. State*, 130 Miss. 852, 94 So. 889 (1923); *Roberts v. State*, 458 So. 2d. 719 (Miss. 1984).

In determining whether a lesser included offense instruction should be granted, the defendant should be granted the benefit of all doubt about the evidence. *Lee v. State*, 469 So. 2d. 1225 (Miss. 1985).

In the case before the Court, there was evidence from which it could be concluded that the killing of Jacqueline Ford was done in the heat of passion. Thus the refusal of a manslaughter instruction was reversible error.

II.

THE COURT ERRED IN DENYING JURY INSTRUCTION D-5

The Court refused jury instruction D-5, which read as follows (c.p. 15):

The Court instructs the jury that if there is any fact or circumstance in this case susceptible to two interpretations, one favorable and the other unfavorable to the accused, that, when the jury has considered such fact or circumstance with all the other evidence, there is reasonable doubt as to the correct interpretation, the jury must resolve such doubt in the interpretation favorable to the accused.

The Court explained the refusal as follows (T-132):

Whenever there's a confession, its not a circumstantial evidence case.

Appellant had admitted that he had shot Jacqueline Ford.


Appellant's statement to the police claimed that his shooting Jacqueline Ford was an accident (T-113). Because this statement was therefore not a confession, such a circumstantial evidence instruction was appropriate and the Court's failure to give it was reversible error. *Stringfellow v. State*, 595 So. 2d. 1320 (Miss. 1992).

A statement to the police that is not a confession does not preclude a defendant's right to a circumstantial evidence jury instruction.

CONCLUSION

The verdict should be overturned.


RESPECTFULLY SUBMITTED,


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, Mississippi 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, Mississippi 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, Mississippi 39205, Attorney General for the State of Mississippi.

DATED: June 14, 2009.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant