IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2008-KA-01995-COA

MARY LEWIS — APPELLANT

VERSUS

STATE OF MISSISSIPPI — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BRIEF ON THE MERITS BY APPELLANT

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

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STATEMENT OF THE ISSUES

I. The trial court not only erred when it refused to permit the jury to consider the defense of manslaughter, as the evidence was insufficient to sustain a conviction for murder, the trial court compounded its error as it failed to use the proper legal standard in evaluating the request for jury instructions on manslaughter;

II. The trial court abused its discretion, resulting in manifest injustice, when it denied the request for mistrial upon revelation of the state's failure to comply with rules regarding reciprocal discovery as to statements by Roy Fleming, which inured to the fatal prejudice of Ms. Lewis and

III. The trial court erred when it permitted the testimony of Colette Robinson, which was more prejudicial than probative, in violation of MISSISSIPPI RULE OF EVIDENCE 403.

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS IN TRIAL COURT

Mary Lewis was arrested and indicted for the June 23, 2007 shooting of Arthur Lee Patterson by a grand jury of the First Judicial District of Hinds County Mississippi in the September 2007 term, Cause No. 07-1-113, for violation of MISS.CODE ANN. § 97-3-19(1) (1972). CP 3.

The cause of Ms. Lewis came on for trial before a jury of her peers on October 7, 2008 and on October 9, 2008, the jury found her guilty. CP 42; RE 4; T. 398. Upon conviction, the trial court sentenced her to life imprisonment in the custody of the Mississippi Department of Corrections. CP 41; RE 5; T. 399.

Upon the filing and prosecution of post-trial motions, all of which were denied, Ms. Lewis sought appeal of her conviction and sentence, now before this honorable Court for review. CP 43-51; RE 6.

B. STATEMENT OF FACTS

Mary Lee Lewis and Arthur Patterson had been living together ten years or more by the time their relationship bloomed into a violent confrontation that left Arthur Patterson dead of a gunshot wound. T. 175.

Around 11 to 11:30 P.M. the night of June 22, 2007, Ms. Lewis, caring for the baby of her niece, took the Cadillac the couple shared to ride the infant and calm her, according to her statement to police, admitted into evidence and read aloud to the jury by investigating Detective Christopher Watkins. T. 171 – 173; *Exhibit 2* [Statement of Mary Lewis] The car seems to have been titled in the name of Patterson, but Ms. Lewis said in her statement both she and Patterson paid for the vehicle and both used it. T. 175. Apparently, Patterson had placed some time limit on the use by Ms. Lewis of the Cadillac and as Ms. Lewis said, she "stayed out past my limit"

until Saturday. T. 171. That morning, June 23, 2007, Patterson set out hunting for Ms. Lewis in a white Oldsmobile 88 which belonged to his mother. T. 171; 268. Ms. Lewis admitted she should have returned home with the car, but did not and was driving down Eminence Row when Patterson, driving the Oldsmobile spotted her and blocked her way. T. 172; 256; 264. Another relative, identified in the statement of Ms. Lewis and elsewhere solely as Kurt or Lookum Up, blocked Ms. Lewis from behind. T. 175; 256.

Patterson got out of his car and threw a beer bottle through the car window, smashing it, "screaming, hollering" at Ms. Lewis, known by the nickname of "Black." Witnesses Bernice Henry and Robia Womack clearly testified that Patterson was hitting the seated Ms. Lewis with his fists. According to her statement, Patterson said "Bitch, get out the car, and I told him, this is our car. We share everything. I was trying to pull off, and then I stopped the car." Ms. Lewis told police in her statement that a .22 caliber pistol rolled from beneath the driver's seat as she braked to avoid hitting Patterson in the Oldsmobile. "I grabbed it and started shooting." Patterson had tried to grab her from the car; the car door was open. *Exhibit 2.*

After she realized she shot Patterson, Ms. Lewis turned the car around and headed back down Eminence Row; she said in her statement that she told Patterson's companion, Johnny Hawkins, to call 911. *Exhibit 2.* Ms. Lewis said she went over to where Patterson had fallen on the south side of Eminence Row and checked his pulse, "and I thought he was going to be all right." Ms. Lewis then left the scene in the Cadillac and as she did so, threw the gun in the grass, according to her statement. Ms. Lewis went to the home of her aunt, married to Roy Fleming, on Erie Street. Ms. Lewis said in her statement that she told Fleming "I think I killed somebody" and sought Fleming's permission to park the Cadillac there. Ms. Lewis then summoned her brother and sister to Fleming's home; her brother James told her later on Saturday that Patterson died. She accompanied her brother to his home that night and the next morning, Jackson police

were waiting outside to take her down to police headquarters for questioning. Ms. Lewis told police in a question-and-answer section of her statement that she shot Patterson accidentally. In response to police questions, Ms. Lewis stated she was too "confused" and "panicked" to call law enforcement officers after the shooting. T. 174-176.

Predictably, testimony from others who witnessed some or all of the events differed. Virtually all, however, described a physical confrontation initiated by Patterson, who stood six feet and weighed 180 lbs, against Lewis, including smashing the Cadillac car window with a bottle. T. 207.

Police interviewed only two witnesses, Johnny Hawkins and Parker Young, on the day of the shooting, although Young did not testify. T. 135

Hawkins, who is visually impaired but not totally blind, testified he was riding with his friend, Patterson, as they normally did on Saturday mornings in an Oldsmobile. T. 266; 267. Their purpose that morning, however, was to find Ms. Lewis in the Cadillac. T. 281. Hawkins, and his companion, Colette Robinson, lived next door to Patterson and Ms. Lewis on Beaverbrook Drive in Jackson; Hawkins described Patterson as "like a brother to me." T. 267; 283.

When Patterson met Ms. Lewis that morning on Eminence Row, he parked the car across the street trying to block her in from going anywhere," according to the statement Hawkins gave to police. T. 277. Hawkins also acknowledged he told police that Patterson opened Ms. Lewis's driver side door and tried to reach in for the keys but Ms. Lewis put the window up. Hawkins was also forced to admit on cross-examination that he did not tell police Ms. Lewis closed the door after Patterson opened it, trying to retrieve his keys from her. T. 279-280. Hawkins testified that after she got the window up, Ms. Lewis fired twice through the car window, hitting Patterson, who ran to the south side of Eminence Row and fell down. T. 271; 279. It was

Hawkins who telephoned for an ambulance and police; and Hawkins who had someone move the white Oldsmobile out of the street since he is unable to drive. T. 274.

Bernice Henry was present that morning, but gave no statement to police until August 7, more than two months after the shooting. T. 248. Ms. Henry was stopped at the intersection of Sears Street and Eminence Row at a Stop sign and saw two cars stopped in front of Morrison Elementary School on Eminence Row, as the cars were blocking the Cadillac. T. 239. Ms. Henry, who said she knew Patterson for years, saw that Patterson was "tussling" with a woman, whom Ms. Henry could not see or identify. T. 243. Ms. Henry testified she heard a shot, saw Patterson move away from the Cadillac, stumble across the street and fall. T. 243. Ms. Henry testified she was unable to see if anyone broke glass in the windows of the Cadillac, but she also told the jury she saw nothing in the hands of Patterson. T. 246.

Robia Womack, who described Patterson as one of her best friends, testified that she was on her way to purchase more beer and first saw Patterson come down Eminence Row as did Ms. Lewis. T. 253. Patterson blocked Ms. Lewis's path from the front with his Oldsmobile across Eminence Row, while "Kurt" blocked her from behind. T. 256; 258; 264. Ms. Lewis tried to leave; Kurt left his vehicle and warned Ms. Lewis not to hit his car. T. 258.

Patterson then got out of the Oldsmobile and hit Ms. Lewis with his fist once or twice, Womack testified. T. 258; 265. Patterson tried to reach in to take the keys; Ms. Lewis tried to get the windows up. T.259; 260. While Patterson held onto the windows, Womack testified Ms. Lewis shot twice hitting Patterson both times, despite testimony from pathologist Steven Hayne that Patterson suffered only one gunshot. T.260; 202. Womack also insisted that she was the only one who summoned an ambulance and police to the scene. T. 260. Womack further testified that Ms. Lewis drove away then came back to the scene and that Ms. Lewis did not initially realize "that she had hurt that bad or whatever." T. 265.

Patterson died from extensive internal bleeding due to the one abdominal gunshot he sustained, according to Dr. Steven Hayne. T. 204. Upon autopsy, Hayne removed a bullet, which was later found to be consistent with those fired by a .22 caliber pistol. T. 234; *Exhibit 5.*

Det. Christopher Watkins testified he was the lead detective on the case and interviewed Parker Young before going out to the scene on the day of the shooting. T. 155-157. There, Watkins saw what appeared to be broken car window glass on the side of the street on Eminence Row, about ten (10) feet from the intersection with Sears street. Watkins testified he personally took no samples of the glass, but did not notice any colored glass such as might be from a beer bottle, although he admitted on cross-examination if the beer bottle did not break it would not be among the glass shards he observed on the roadside. T. 186. Also, apparently Watkins is unaware that some beer beverages, as are other beverages, are sold and consumed in clear glass bottles. Watkins was also forced to admit that he did not feel it was important to compare the class later collected from the roadside to make sure it came from the Cadillac Ms. Lewis was driving. T. 189-190. Crime scene investigator Eneke Williams testified that she collected samples of glass from the roadside which appeared to be auto safety glass, designed to resist shattering. T. 217. Williams also testified she took samples of glass from inside the car, but could not say where in the car she collected the glass fragments. T. 225. [need to make point somewhere here that some beer bottles are clear, aren't they? Like some Schlitz bottles? And some are green?

SUMMARY OF THE ARGUMENT

Ms. Lewis asserts two errors which she believes require reversal of this cause. The first error concerns not only the denial of manslaughter instructions, but the sufficiency of the evidence adduced at trial and the trial court's failure to use to the appropriate standard in consideration of jury instructions sought by the accused.

Counsel for Ms. Lewis argues that there was plentiful evidence to support the giving of manslaughter instructions, based on testimony that Patterson was striking her with his fists and that he had the car she was driving completely blocked in. The trial court did not use the proper legal standard in reviewing her jury instructions which requires the court to view the evidence in a light most favorable to the accused, among other criteria. Ms. Lewis also challenges the sufficiency of the evidence, contending it does not rise to the level required to support a verdict of deliberate design murder. On the contrary, Ms. Lewis believes case law supports her argument that this case is ripe for application of the "direct remand" rule, whereby this Court may remand for re-sentencing for the crime of manslaughter due to the insufficiency of the evidence.

Ms. Lewis alleges it was fatal prejudice for the prosecution to fail to timely supplement discovery with notice to defense counsel of significant changes in the testimony of Roy Fleming. The trial court abused its discretion, resulting in manifest injustice to Ms. Lewis, by failing to declare a mistrial upon the request of Ms. Lewis.

Finally, Ms. Lewis challenges the admission of testimony of Colette Robinson as it was clearly biased and incredible, not produced until six weeks *after* the shooting and far more prejudicial than probative.

ARGUMENT

I. The trial court not only erred when it refused to permit the jury to consider the defense of manslaughter, as the evidence was insufficient to sustain a conviction for murder, the trial court compounded its error as it failed to use the proper legal standard in evaluating the request for jury instructions on manslaughter and

Not only did the trial court err in refusing the request of Ms. Lewis for Instructions D-7; D-10; D-13 regarding the lesser included offense of manslaughter, the judge also failed to use the proper legal standard in consideration of the instructions proffered by Ms. Lewis. T. 355-356; RE 10-12; CP 33; 35; 36; 38.

The United States Supreme Court bars imposition of the death penalty so long as the jury has not had the opportunity to consider a lesser included offense or lesser offense, if there is any supporting evidence for the lesser crime. *Beck v. Alabama*, 447 U.S. 625 (1980). And while the Supreme Court has stopped just shy of declaring that it is a denial of due process under the Fifth and Fourteenth Amendments to the U.S. Constitution to reject lesser included offense instructions in non-capital cases, "it is nevertheless clear that a construction" precluding jury consideration of lesser included offenses "would raise difficult Constitutional questions." *Keeble v. United States*, 412 U.S. 205, 208 (1973) (reversing conviction for assault with intent to commit serious bodily injury due to trial court's refusal to permit jury to consider lesser included offense of simple assault). *See also Stevenson v. United States*, 162 U.S. 313, 315 (1896) (Reversible error to refuse request for jury instruction as to manslaughter; "so long as there was some evidence relevant to the issue of manslaughter, the credibility and force of such evidence must be for the jury, and cannot be matter of law for the decision of the court." *Id.*).

In *Mease v. State*, 539 So.2d 1324 (Miss. 1989), the Mississippi Supreme Court reversed the capital murder conviction of Bart Mease for the shooting of Marshall County Sheriff Osborne Bell for refusal of the trial court to instruct the jury as to the lesser offense of manslaughter.

Evidence was admitted, however, showing that Mease could have fired reflexively due to his drug intoxication and not acted deliberately to shoot the sheriff. A lesser, non-included offense instruction must be given when "there is evidentiary support that a defendant is guilty of a lesser charge arising from the same nucleus of operative fact," noting that the principle evolved at common law when plainly, the accused had committed some crime. *Id.*

Jury instructions are to be read together and taken as a whole with no one instruction taken out of context," the Court wrote in *Heidel v. State*, 587 So.2d 835, 842 (Miss. 1991). "A defendant is entitled to have jury instructions which present his theory of the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is fairly covered elsewhere in the instructions, or is without foundation in evidence." *Id.*

In considering the request of a party for jury instructions, binding Mississippi precedent requires the trial court to view the evidence in the light most favorable to the accused, considering in the defendant's favor all favorable inferences flowing therefrom and considering also that the jury may not be required to believe *any* of the State's evidence. *Fairchild v. State*, 459 So.2d 793, 801 (Miss. 1984), citing *Ruffin v. State*, 444 So.2d 839, 840 (Miss. 1984). When in doubt about giving an instruction, the trial court is to resolve any such doubts in favor of the accused. *Wadford v. State*, 385 So.2d 951 (Miss. 1980). Lesser offense or lesser-included offense instructions should be refused *only* when, viewing the evidence in the light most favorable to the defendant, the evidence could justify nothing other than conviction on the principal charge. *Hester v. State*, 602 So.2d 869, 872-873 (Miss. 1992).

In refusing the proffered jury instructions on manslaughter, the trial judge said the submitted defense jury instructions on self-defense and manslaughter were "inconsistent defenses." T. 355.

Mississippi case law, however, gives the defendant that right. "Even though based on meager evidence and highly unlikely, a defendant is entitled to have *every* legal defense he asserts to be submitted as a factual issue for determination by the jury under proper instruction of the court." *Hester*, 602 So.2d at 872.

"Litigants in all cases are entitled to assert alternative theories, even inconsistent alternative theories," the Mississippi Supreme Court wrote in *Love v. State*, 441 So.2d 1353, 1356 (Miss. 1983). "This is no less true of defendants in criminal prosecutions." (conviction for possession of marijuana reversed in part due to refusal of trial judge to permit independent chemical analysis of substance purporting to be marijuana as a denial of due process under Miss. Const., art. 3, § 14). In the case of *Russell v. State*, 729 So.2d 781 (Miss. 1997), the Mississippi Supreme Court affirmed this Court's reversal of a murder conviction due to failure to instruct the jury as to two, seemingly 'inconsistent' theories of defense, those of manslaughter and insanity. With an evidentiary showing that is "meager, highly unlikely," Russell, who suffered from a brain tumor when he killed his estranged wife, met the requirements of *Hester* and its progeny to present both defenses and let the jury, the finder of fact, decide.

Ms. Lewis acknowledges no "imperfect self defense" instruction was offered, as recognized in *Lanier v. State*, 684 So.2d 93, 97 (Miss. 1996). "The imperfect self-defense theory is: "that [the defendant] killed the deceased without malice, under the bona fide belief, but without reasonable cause therefor, that it was necessary for him so to do in order to prevent the appellant from inflicting death or great bodily harm upon him;...." *Cook v. State,* 467 So.2d 203, 207 (Miss.1985) (quoting *Williams v. State,* 127 Miss. 851, 854, 90 So. 705, 706 (1921)). *Id.* Nonetheless, the Court is aware of the evidence showing Patterson was striking Ms. Lewis with his fists, after having spent the morning hunting for her throughout the Jackson metropolitan area, according to the testimony of Johnny Hawkins. T.268. Both Robia Womack and Bernice

Henry testified as to the fact that Patterson, standing outside the car, was beating her with his fists; Ms. Lewis could not escape as Patterson had orchestrated hemming her in from both the front and the rear. T. 241; 264-265. The gun was Patterson's gun, which slid from beneath the seat of the car he habitually used when Ms. Lewis braked to avoid hitting the Oldsmobile. *Exhibit 2.*

In such cases, this Court has the authority under the so-called "direct remand rule" of *Shields v. State*, 722 So.2d 584, 585 (¶ 7) (1998) to find that the evidence insufficient to support a verdict of deliberate design murder, but rising to the level of manslaughter. "In a series of cases, this Court has stated that when the jury convicts of a greater offense, which is invalidated on appeal for want of sufficiency of the evidence, no new trial is required and the defendant may be remanded for sentencing upon the lesser included offense where the proof establishes proof of the lesser offense," wrote Justice Waller in *Shields*. The rule is "grounded on the fact that guilt of a true lesser included offense is implicitly found in the jury's verdict of guilt on the greater offense." *Id.* As this Court is well aware, an indictment for murder includes the lesser offense of manslaughter under MISS. CODE ANN. § 97-3-19(3) (1972).

As noted in the preceding analysis and viewing the evidence in the light most favorable to the verdict, the state's witnesses clearly establish (1) that Arthur Patterson had spent the morning hunting for Ms. Lewis to retrieve the car he habitually used (2) that he had the car in which Ms. Lewis was riding completely cornered, so that she could not move and (3) he was hitting her with his fists, as she sat there unable to flee, blocked in as she was. It was only at this point that she fired the pistol at Patterson. Ms. Lewis would submit this is insufficient to rise to the level of deliberate design murder, which requires a degree of calculation and deliberation totally absent here.

Under *Wade v. State*, 748 So.2d 771, 773, (1999) Ms. Lewis submits that this Court has the authority on appeal to resort to the direct remand rule, finding the evidence insufficient to sustain a murder conviction and therefore, vacate her conviction and remand the case of Ms. Lewis for re-sentencing as manslaughter.

II. The trial court abused its discretion, resulting in manifest injustice, when it denied the request for mistrial upon revelation of the state's failure to comply with rules regarding reciprocal discovery as to statements by Roy Fleming, which inured to the fatal prejudice of Ms. Lewis.

Crucial to corroboration of the version of events contained in the statement of Ms. Lewis and her own state of mind at the time was the testimony of Roy Fleming, uncle by marriage to Ms. Lewis, who by the prosecutor's own admission, met with the State several times before trial. T.286; 315. Yet, nothing beyond the initial statement Fleming made to police June 24, 2007 was ever disclosed to counsel for Ms. Lewis. T. 317; 330; RE 9.

On direct examination by the prosecution, Fleming testified that Ms. Lewis came to the house and asked to leave the car there. Fleming testified he acquiesced; Ms. Lewis pulled the car in and Fleming left. T. 288. This corroborates the statement Ms. Lewis gave to police on June 24, 2007. *Exhibit 2.*

On cross-examination, however, Fleming was forced to acknowledge that his statement to police was that he did not know who brought the car to his home and further, that Fleming did not know to whom the Cadillac belonged. Fleming, admittedly a difficult witness, was forced to admit on cross-examination that he knew Ms. Lewis and was aware of to whom the Cadillac belonged. T. 2290-292.

Counsel for Ms. Lewis was also unaware of the fact that Fleming could corroborate that the brother and sister of Ms. Lewis came to the home of Fleming that Saturday after the shooting and that they talked to Ms. Lewis. T. 313; 333. Fleming also testified that Ms. Lewis looked

"strange like" as though something might have happened to her. T. 332-333. Given that the defense of Ms. Lewis that the shooting was accidental or, at most heat of passion manslaughter, information regarding her state of mind immediately after the incident was crucial for the jury in determining whether the requisite degree of malice or deliberation existed.

UNIFORM RULE OF CIRCUIT AND COUNTY COURT PRACTICE 9.04 places on the State the obligation to timely supplement discovery. *Brady v. Maryland*, 373 U.S. 83 (1963) and the due process provisions of the Fifth and Fourteenth amendments to the U.S. Constitution also require timely disclosure of information that could be exculpatory in nature. The radical change in testimony by Fleming and the prosecution's admitted failure to timely supplement the changes deprived counsel for Ms. Lewis of a full and complete cross-examination, as well as the ability to demonstrate the cohesiveness of the version of events related by Ms. Lewis in her statement. Counsel for Ms. Lewis submits this is more than sufficient to satisfy the "substantial and irreparable prejudice" she suffered due to the prosecution failure to timely supplement discovery on a crucial point and the trial court thereby abused his discretion in denial of the mistrial motion. URCCC 3.12.

The Mississippi Supreme Court on July 23, 2009 in the case of *Fulks v. State*, 2007-KA-01572-SCT reversed the armed robbery and aggravated assault of Tomarcus Monte Fulks due to the deliberate failure of the State to timely inform defense counsel that a key witness who initially told police Fulks sat with him in a car while others carried out the crimes testified at trial that Fulks led the way inside the house and that the witness observed Fulks emerge with items from the home in his arms. Prosecutors informed counsel for Fulks of this dramatic change in statements the day before trial. The judge denied the request of counsel for Fulks for a continuance. The Supreme Court subsequently reversed for an abuse of discretion resulting in manifest injustice for failure to grant the continuance and permitting "trial by ambush" of

defense counsel. *Id.*, at ¶ 9. In *Tanner v. State*, 556 So.2d 681, 683-684 (Miss. 1990), the Supreme Court reversed a receipt of stolen property conviction because prosecutors deliberately withheld exculpatory information that defense counsel inadvertently discovered during cross-examination of a state witness, a police officer.

Ms. Lewis submits that she thereby suffered fatal prejudice due to the failure of the prosecution to timely supplement discovery with the change in Fleming's testimony, necessitating reversal.

III. The trial court erred when it permitted the testimony of Colette Robinson, which was more prejudicial than probative, in violation of Mississippi Rule of Evidence 403.

Finally, Ms. Lewis challenges the admission of the testimony of Colette Robinson that Ms. Lewis threatened to kill Patterson the night before the event as its probative value was substantially outweighed by the danger of unfair prejudice. T. 311. Clearly, under MISS.R.EVID. 103, the testimony was prejudicial, as it is the *only* evidence which provides any semblance of calculation and plan by Ms. Lewis to kill Patterson.

Consider that Robinson lived with Johnny Hawkins, best friend to Patterson, neighbors for several years. T. 267. Hawkins, nearly blind, clearly relied on Patterson as a friend for many things, including the Saturday morning rides. T. 267; 275. Robinson did not come forward with her statement until six weeks *after* the shootings. T. 309; 326. Hawkins relayed Robinson's "recollections" to a family member of Patterson who telephoned police with the information, but not until August 2, 2007. T. 325-326. Robinson testified she stood in her driveway, talking with a friend "Faye," when Ms. Lewis allegedly walked up to her and began repeating that she would kill Patterson that night. T. 322. Robinson herself remarked that it was odd that Ms. Lewis would talk to her; that normally, Ms. Lewis spoke primarily to Hawkins. T. 327. Robinson also was not sufficiently alarmed to warn either Patterson or telephone police. T. 324.

Although this is not a hearsay issue, counsel for Ms. Lewis would argue by analogy that the testimony of Ms. Robinson lacked the "equivalent circumstantial guarantees of trustworthiness" necessary before admitting such evidence. MISS.R.EVID. 803(24); 804(b)(5) and official *Comments*.

Considering that this testimony was developed so after the fact, that Robinson was so clearly biased by her relationship with Patterson, that the prosecution never brought the mysterious "Faye" in to corroborate the testimony and its highly suspect and prejudicial nature, Ms. Lewis would respectfully submit that prejudice far outweighed probative value and that the trial court erred in admission of Robinson's testimony.

CONCLUSION

Counsel for Ms. Lewis respectfully submits the errors presented herein demonstrate the necessity for reversal. Mississippi case law provides for the giving of alternative theories of defense through jury instructions, which the trial court failed to do. Additionally, the trial court failed to employ the proper legal standard in consideration of jury instructions, a continuing problem among jurists of the Seventh Circuit Court District. Ms. Lewis would humbly contend that this case lacks evidence of sufficient weight to rise to the level of murder; that the Court should use the "direct remand" rule and remand this cause for re-sentencing as a manslaughter case. Ms. Lewis also argues that it was an abuse of discretion, innuring to her fatal prejudice, to deny her request for a mistrial, based on the failure of the prosecution to timely supplement discovery with the changes in statements by Roy Fleming, uncle to Ms. Lewis. Finally, Ms. Lewis challenges the admission of the highly suspect testimony of former neighbor Colette Robinson, as it was far more prejudicial than probative and lacked any sort of trustworthiness guarantees.

Based on the authority recited above, Ms. Lewis humbly asks this honorable Court to vacate this conviction and either remand for re-sentencing for manslaughter or remand for a new trial.

Respectfully submitted,

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