

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

Archie Bruce

APPELLANT


Vs.

Action No.2008-TS-01748-COA

State of Mississippi

APPELLEE

APPELLANT'S BRIEF

Filed by
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Certificate of Interested Persons in

No.2008-TS-01748-COA

Archie Bruce

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 the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Cheryl Ann Webster, Attorney of record for Archie Bruce

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Rules:

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character Evidence Generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: (1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same; (2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution to rebut evidence that the victim was the first aggressor; (3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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RULE 405. METHODS OF PROVING CHARACTER

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. (b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

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APPELLEE

Statement of Issues

- 1) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts which are more prejudicial than probative with regards to Archie Bruce concerning a wreck which happened some time after the shooting thereby causing him undue prejudice and a denial of a fair trial?
- 2) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1A which were evidence of a wreck and not the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?
- 3) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1b which were evidence of alleged bullet holes made sometime, but not proved to be the night of the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?

4) Whether or not the Circuit Court of Coahoma County, Ms. Erred when it allowed into evidence a statement, Exhibit S-4, purportedly made by Archie Bruce which was incomplete due to the lack of questions related to Bruce during the interrogation thereby causing Bruce undue prejudice and a denial of a fair trial?

5) Whether or not the Circuit Court of Coahoma County, Ms. erred when it denied the Defendant Bruce, who was charged with two counts of drive by shooting, two violent crimes, to call as a witness his grandmother who would have testified that he had a peaceful reputation in the community after allowing evidence of the following wreck wherein the Court did an on the record balancing of probative vs. prejudicial and found the facts concerning the wreck was not more prejudicial than probative caused him undue prejudice and a denial of a fair trial?

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
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Statement of the Case

On or about December 6, 2005, Bruce drove his Ford Explorer, down a main thoroughfare in Clarksdale, Ms. His was to collect some money from Tracy. Bruce saw his long time girlfriend and fiance, Tracy Wide, riding in the front passenger seat of a Taurus. (T. 97) Bruce was alarmed to see Tracy with her head down . Bruce thought she had passed out. Bruce did not know the driver. Believing Tracy and her unborn child in grave and imminent danger, he took immediate action (T. 98) Bruce fired away from the passengers in the car in order to save her and her child from his perceived threat on her life, and protect her from whatever harm he believed to have befallen her. (T. 98) He maintains his actions were done solely in defense of Tracy and their unborn child. (T. 99)

Bruce followed the Taurus, and once being followed, Allen, driver of the vehicle, eased off of the accelerator. (T. 35) Bruce ran into the back of the car and then in an attempt to avoid crashing into the car wrecked his Explorer and the Taurus wrecked. (T.100)

Law Enforcement arrested Bruce that night.(T. 100) and took him to the police department where Investigator Matthews interrogated him without benefit of a tape recording, and Bruce signed a statement that did not include any questions which he was asked and therefore his answers were taken out of context. (T. 121) This statement was admitted into evidence in error . (T.70)

One of the investigators, Matthews, took pictures of the car including the wreck damage done to the car. (T.49) These were admitted into evidence. One of the investigators, Williams testified about matters that were solely related to the wreck and not the shooting. (T. 49) Williams took pictures of two presumed bullet holes in the side of the car that no one testified was place in it on the night of the shooting.(T.57) There was pictures of the busted windshield which was wreck and not shooting related. (T.55).

The State indicted Bruce on May 30th, 2006, in a two count indictment, charging him with for drive by shooting. (CP 3) July 14th, 2008, Jury selection began for Bruce's trial. (CP 1) July 15th, 2008, The Jury found Bruce guilty on both counts and the Court deferred sentencing to a later date. (CP 1) On September 10, 2008, the Court sentenced Bruce.

Feeling aggrieved by the decision of the jury, Bruce appeals this case.

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Summary of the Argument

- 1) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts which are more prejudicial than probative with regards to Archie Bruce concerning a wreck which happened some time after the shooting thereby causing him undue prejudice and a denial of a fair trial?

Bruce contends that to introduce facts concerning a wreck which no one complains was caused by the crime committed in the indictment or that he was charged with criminally caused him undue prejudice and denied him a fair trial. To go outside of the charges with which he was charged violates the Rules of evidence and there was nothing probative about incompetent evidence.

- 2) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1A which were evidence of a wreck and not the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?

This is virtually the same argument as Issue number one, in that the Court allowed pictures that had nothing to do with the charges with which Bruce was charged. Therefore they were incompetent proof and to allow the Court to do

this is error and prejudicial to the Defendant denying him a fair trial.

3) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1b which were evidence of a bullet holes made sometime but not proved to be the night of the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?

Bruce maintains that there is no proof that the alleged bullet holes claimed to be in the side of the car were placed there by his gun. To the contrary the only eyewitness the state placed on the stand said Bruce fired into the back window and not the frame of the car. And yet the Court allowed evidence of the alleged two bullet holes along with pictures of the "bullet holes" into evidence which directly contradicts the testimony of the defendant thereby giving the jury cause to believe he lied when he said he shot away from the persons in the car and into the back window. This incompetent evidence was highly prejudicial to the defendant and denied him a fair trial.

4) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence a statement, Exhibit S-4, purportedly made by Archie Bruce which was incomplete due to the lack of questions related to Bruce during the interrogation thereby causing Bruce undue prejudice and a denial of a fair trial? This statement should be excluded from the jury room since it was incomplete. There was no recording of it. The jury got to hear the Officer testify to taking it and then was presented with a summary of the statement. There were parts admittedly left out of the statement although it was the officer's

questions still it was left out and not complete. Because the statement was not complete it was prejudicial to Bruce and denied him a fair trial.

5)) Whether or not the Circuit Court of Coahoma County, Ms. erred when it denied the Defendant Bruce, who was charged with two counts of drive by shooting, two violent crimes, to call as a witness his grandmother who would have testified that he had a peaceful reputation in the community after allowing evidence of the following wreck wherein the Court did an on the record balancing of probative vs. prejudicial and found the facts concerning the wreck was not more prejudicial than probative caused him undue prejudice and a denial of a fair trial?

Bruce maintains that the Government in opening argument and brought out in later testimony, said in two different versions of describing the wreck that Bruce slammed and then smashed in the vehicle and in doing so began trying him for an assault with which he was not charged. It opened the door for his character to be placed squarely into the trial. His Grandmother who knew him should have been able to say that he was a peaceful person. The State put on an officer whose sole testimony concerned wreck because he had no knowledge of the shooting. Once his character had been impugned Bruce was surely allowed to rebut it.

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Argument

Issue One:

Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts which are more prejudicial than probative with regards to Archie Bruce concerning a wreck which happened some time after the shooting thereby causing him undue prejudice and a denial of a fair trial?

Issue Two: Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1A which were evidence of a wreck and not the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?

Bruce contends that to introduce facts and/ or photographs concerning a wreck which has nothing to do with the shooting of which he is charged caused him undue prejudice and denied him a fair trial. (T.3)(R.E.7)The District attorney admits that he considers the wreck a criminal act. (T.3) (R.E.7)

To go outside of the charges with which he was charged violates the Rules of evidence and there was nothing probative about incompetent evidence. Issue two is

virtually the same argument as Issue number one, in that the Court allowed pictures that had nothing to do with the charges with which Bruce was charged. Therefore they were incompetent proof and to allow the Court to do this is error and prejudicial to the Defendant denying him a fair trial.

Bruce argues that in accordance with Flowers v. State, 773 so2d 309, (Ms. 2000):while these (evidence) rules "guide the admission of relevant evidence," even relevant evidence may not be admissible "if its probative value is substantially outweighed by the **danger of unfair prejudice.**" Miss. R. Evid. 403.(emphasis added) One area in which relevant evidence may be excluded is in the admission of evidence of other crimes, wrongs or acts. Miss. R. Evid. 404(b). However, an exception to the inadmissibility of evidence of other crimes may occur when the purpose of admission is for the purpose of establishing "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Miss. R. Evid. 404(b).

"Even when other-crimes evidence is admissible under M.R.E. 404(b), it must pass through the 'ultimate filter' of M.R.E. 403." Smith v. State, 656 So. 2d 95, 99 (Miss. 1995) (citing Jenkins v. State, 507 So.2d 89, 93 (Miss. 1987)).

"Furthermore, the jury must be informed as to the limited purpose for which they are allowed to consider the other-crimes evidence. This cannot be accomplished if 'its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" Id. (quoting Jenkins, 507 So. 2d at 93).

Bruce as in Flowers states the same concerns ie. " Flowers recognizes the exceptions to the rules of evidence, but he argues the State "engaged in tactical

overkill" by their total disregard for whether the evidence introduced was relevant, or even necessary, to prove the elements of the Stewart indictment." The State in this the Bruce case did the same. Once the elements of drive by shooting had been proven or his testimony had been exhausted by the only eyewitness subpoenaed, the state went into the assault of the Taurus, the allegations that the act was intentional by smashing into the car which is a crime.

As in the Flowers case, Bruce contends that "Evidence of prior offenses committed by a defendant, not resulting in a conviction, is generally inadmissible either for impeachment purposes or as a part of the State's case in chief." Neal v. State, 451 So. 2d 743, 758 (Miss. 1984) (citing Mason v. State, 429 So.2d 569, 572-73 (Miss. 1983); Gray v. State, 351 So.2d 1342 (Miss. 1977); Mills v. State, 304 So.2d 651 (Miss. 1974); Allison v. State, 274 So.2d 678 (Miss. 1973)) .

Quoting further from Flowers, "On the other hand, our law recognizes certain exceptions to the rule. Proof of another crime is admissible where the offense charged and that offered to be proved are so interrelated

as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences." *Id.* at 759. As stated above, Miss. R. Evid. 404(b) provides that "evidence of other crimes may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." This was not the case in the Bruce Case. Bruce was never charged with assault or with aggravated assault due to the slamming of his Explorer into the Taurus. The only evidence gleamed from the wrecked vehicles were the guns. They belonged to Bruce.

Bruce further contends that this court should rule as in the Brown case. The Court in Brown v. State, 483 So.2d 328 (Miss. 1986),

stated: This state has long adhered to the rule that the issue on a criminal trial should be single and that the evidence should be limited to what is relevant to the 'single' issue. Evidence of a prior criminal activity on the part of one criminally accused is inadmissible where the prior offense has not resulted in a conviction. We have held, however, that the State has a 'legitimate interest in telling a rational and coherent story of what happened....' Where substantially necessary to present to the jury 'the complete story of the crime' evidence or testimony may be given even though it may reveal or suggest other crimes."

See also Davis v. State, 530 So.2d 694 (Miss. 1988); McFee v. State, 511 So.2d 130 (Miss. 1987); Robinson v. State, 497 So.2d 440 (Miss. 1986); Davis v. State, 476 So.2d 608 (Miss. 1985).

There is no need to complete a story. The D.A.'s story was that there was a drive by shooting. The shooting didn't cause the wreck. The shooting had nothing to do with the wreck. It was two distinct and separate incidents. The wreck information was included to prejudice the jury against Bruce and in doing so , the state squarely put Bruce's character on the table. The State's first witness, Officer Milton Williams when asked if he knew anything about the shooting said no. (T. 30) (R.E.13) And yet the government went on for seven pages (T.23-27) (R.E.8-12) about a wreck that had no relevance to this trial.

"The Mississippi Supreme Court has held that Rule 404(b) "exists to prevent the State from suggesting that, since a defendant has committed other crimes previously,

the probability is greater that he is also guilty of the offense for which he is presently charged." Jasper v. State, 759 So. 2d 1136, 1141 (Miss. 1999). "[E]ven when other-crimes evidence is admissible under M.R.E. 404(b), it must pass through the 'ultimate filter' of M.R.E. 403." *Id.*

Bruce contends that there was an erroneous balancing by the Circuit Judge who reached the wrong conclusion. (T. 25) (R.E.10) The State was able to put in evidence of other crimes. At this point The State had put Archie Bruce's character was before the jury.

Regarding a limiting instruction, Bruce further sites this Courts ruling:

"In the event that '404(b) evidence is offered and there was an objection which is overruled, the objection shall be deemed an invocation of the right to [an] M.R.E. 403 balancing analysis and a limiting instruction....The court shall conduct [a Rule 403 balancing test] and, if the evidence passes that hurdle, give a limiting instruction unless the party objecting to the evidence objects to giving the limiting instruction." Jasper v. State, 759 So. 2d 1136, 1141 (Miss. 1999). Bruce contends that he was tried for not only drive by shooting but also for the assault by his Explorer and the subsequent wreck.

Bruce submits that his case should be reversed and a new trial ordered so that he may be tried on only the two count drive-by shooting alone and not prejudiced by the illegal evidence of the alleged subsequent assault by his vehicle on the Taurus and the subsequent events of the wreck. "The trial court ruled that evidence of an identical prior bad act was admissible in direct violation of M.R.E. 404(b)." McCullough v. State, 750 So2d 1212 (Miss. 99) Prior acts are treated the same as subsequent

acts. When the Judge allowed the District attorney to admit into evidence the testimony of the assault by the car in the wreck that followed the shooting, Bruce was then prejudiced since it was an assault. A Drive-by Shooting is an assault. Quoting further from the McCullough case, “

In addition to the fact that the evidence should have been excluded under Rule 404(b), it is also readily apparent that the trial court committed error by not subjecting the evidence to scrutiny under Rule 403. Rule 403 states that:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....

The Court has stated:

Evidence admissible under Rule 404(b) is subject to the prejudice test of Rule 403, *and a trial court is required to consider whether the probative value of the questionable evidence is outweighed by undue prejudice*. Rule 403 is an ultimate filter through which all otherwise admissible evidence must pass.

Jenkins v. State, 507 So.2d 89, 93 (Miss. 1987) (emphasis added).

¶ In the case sub judice, the record does not disclose that the trial court judge considered whether the probative value of the prior shooting was substantially outweighed by the undue prejudice that might result if it were introduced. Therefore, we can only assume that the evidence was not filtered through Rule 403 before being ruled admissible. Since the evidence should not have been allowed under Rule 404(b) in the first place, it is an elementary conclusion that the evidence would not have been permitted under Rule 403. **Therefore, the introduction of the evidence was reversible error.**

There was a brief mention of a balancing test however, to allow introduction of a subsequent assault violates the Rules of evidence and Bruce should be given a new trial.

3) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence facts certain photographs State's exhibit S-1b which were evidence of a bullet holes made sometime but not proved to be the night of the shooting with which Archie Bruce was charged with thereby causing him undue prejudice and a denial of a fair trial?

Having previously objected the pictures and any facts being related to the jury with regards to the accident, Bruce maintains that there is no proof that the alleged bullet holes claimed to be in the side of the car were placed there by his gun. There was a picture exhibited to the jury indicating the bullets holes in the car in one of the wreck photographs. To the contrary the only eyewitness the state placed on the stand said Bruce fired into the back window and not the frame of the car. (T.33) (R.E. 14) And yet the Court allowed evidence of the alleged two bullet holes along with pictures of the "bullet holes" into evidence which directly contradicts the testimony of the defendant thereby giving the jury cause to believe he lied when he said he shot away from the persons in the car and into the back window. This incompetent evidence was highly prejudicial to the defendant and denied him a fair trial. Officer Matthews testified that he was not sure when the bullet holes were put in the side of the car. (T.81)

"In all events, if a conviction is overturned because of improperly admitted evidence, it is not correct to then review the remaining evidence tending to establish guilt and, upon finding that evidence insufficient, to render a verdict of not guilty. Rather, the proper procedure is to reverse and remand for a new trial where the evidence improperly admitted is not presented to the jury for consideration. As the Mississippi

Supreme Court has stated in a similar situation:

The record simply presents a case wherein a fact necessary to support the judgment rendered was proven or made to appear by incompetent evidence, and in such a case the Supreme Court on appeal thereto should not decide the case as if no evidence of the fact had been introduced, but should remand the case for a new trial so that the fact may be made to appear by competent evidence. This, in so far as we are aware, is the universal rule...." Witherspoon v. State, ex rel. West, 138 Miss. 310, 103 So. 134, 139 (1925). Triplett v. State, 814 So.2d 158 (Miss. 2002).

Bruce submits that his case should be reversed and a new trial ordered because of the introduction of the picture showing two bullet holes in the side panel of the car which were incompetent evidence since no one knew when they were placed on the vehicle.

4) Whether or not the Circuit Court of Coahoma County, Ms. erred when it allowed into evidence a statement, Exhibit S-4, purportedly made by Archie Bruce which was incomplete due to the lack of questions related to Bruce during the interrogation thereby causing Bruce undue prejudice and a denial of a fair trial? This statement should be excluded from the jury room since it was incomplete. There was no recording of it. (T.67) (R.E. 20) The jury got to hear the Officer testify to taking it and then was presented with a summary of the statement. There were parts admittedly left out of the statement although it was the officer's questions still it was left out and not complete. (T.68)(R.E.21) Because the statement was not complete, it was prejudicial to Bruce and denied him a fair trial.

Bruce takes issue with the Judge that the oral statement , non-recorded

statement, (T. 68) (R.E.21) that he gave, which the officer admitted that he left out his questions, and that Bruce claims he left out portions of it, was allowed to go to the jury. Cobb v. State 743 so2d 182, "Having said that, we are nevertheless satisfied that it was error to introduce the officer's written version of Cobb's statement into evidence as an exhibit since it was never adopted by Cobb. The proper method of introducing Cobb's oral confession, in the absence of an actual recording in some form, would have been for the officer to relate from the stand those things that Cobb told him during the interrogation. To permit the jury, in addition to hearing such testimony from the stand, to have a written version of the statement in the jury room during its deliberations improperly permits too much emphasis to be placed on this evidence." See Scott v. State, 446 So.2d 580, 585 (Miss.1984). Bruce is not saying that he did not make the very damaging short statements, but rather that he made many statements and those were excluded. The Officer got to pick and choose which statements he made. There is no tape. It is admitted that some of Archie Bruce's comments were excluded. (T. 66) (R.E.19) Particularly the ones about his defense of others. Regretfully we will not know what he said because there was no preservation of those statements which might have exonerated him by proving his statement of mind as to the defense of others.

5) Whether or not the Circuit Court of Coahoma County, Ms. erred when it denied the Defendant Bruce, who was charged with two counts of drive by shooting, two violent crimes, to call as a witness his grandmother who would have testified that he had a peaceful reputation in the community thereby causing him undue prejudice and a denial of a fair trial after there had been a so-called 404 balancing test?

There was a erroneous balancing test made by the court (T.23-25) (R.E.8-10)

The Court ruled that the evidence of the assault by a car was to be allowed. That it was more probative than prejudicial. (The defendant Bruce believes that this was a reversible ruling.) But in the trial, the ruling had been made and Bruce had to do what he could to counter it since once the balancing test has taken place, the State had put the Bruce's character in front of the jury. Bruce called his grandmother to testify that he was a peaceable soul. (T.89) (R.E.24) This was to be a part of his self defense theory. (T.89)(R.E. 24)

Quoting this Court from Davis v. State, 660 So 2d 1228, "A criminal defendant can offer his good character into evidence; however, the prosecution can then rebut the defendant's evidence of character. See Hansen v. State, 592 So.2d 114, 148 (Miss.1991). Likewise, M.R.E. 405(a) provides: In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

I do not understand how the District attorney can go through a probative vs. prejudicial balancing test and then claim that Character Evidence was not put before the Jury. (T.89)(R.E.24) And so the witness took the stand in a proffer and stated Mr. Bruce was peaceful. (T. 92-94) (R.E.27-29)

There was testimony by the first witness, Milton who stated that Bruce hit the Tarus with his car (T.26)(R.E.11) His exact words were "when the SUV hit the rear of the sedan, the sedan spun out of control." That could reasonably be construed to be a criminal act of assault, if not criminally adjudicated then other bad acts. The

Judge must have thought so at the time of the State's Motion in limine because he did a balancing test. Was it more probative than prejudicial? (T.25) r.E.10) And he reached the wrong conclusion.

Bruce has been put to the task of proving his claim of self defense while trying basically four charges of assault against him. The first two are the ones the State indicted him for: Drive by Shooting and the second is the assault claimed by the State in the wreck.

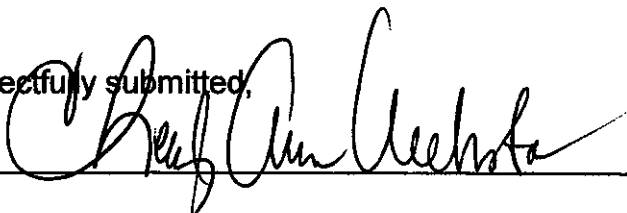
He had a witness who would help his case by stating he was a peaceful person, inferring at least that consideration should be given to the state of mind that he had at the time of the shootings. He was denied the opportunity to help his case "in defense of others" and he was denied it wrongfully.

Bruce submits that he was prejudiced by this ruling and should be granted a new trial.

Conclusion

The state should have tried Archie Bruce on the indictment. They didn't and once they let in the proof about the other assault by the wrecking of the Taurus, which was character evidence, then they Court should have let his grandmother testify. Bruce is entitled to a new trial.

Respectfully submitted,


_____, Cheryl Webster

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing :
Appellant's Brief, and Record Excerpts on Circuit Court Judge Kenneth Thomas , at
Post Office Box 548, Cleveland, Ms. 38732 and District Attorney Laurence Mellen, at
Post Office Box 848, Cleveland, Ms. 38732, and the Attorney General's Office at PO
Box 220, Jackson, Ms. 39205 by hand delivering, mailing , faxing, or otherwise
delivering electronically a copy of the same, postage prepaid, to the above stated
addresses.

On this Saturday, 13th of June, 2009.

By: 

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