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STATEMENT OF THE CASE

The State concedes that at trial Blunt's attorney, Richard Burdine, argued that any injuries inflicted by Blunt in the altercation with Michael Taylor, the deceased, were not the cause of his death several hours later. Likewise, the State concedes that Burdine also argued that

even if the blows caused Taylor's death, they were inflicted in self-defense. Blunt will discuss additional facts in his argument

SUMMARY OF THE ARGUMENT

In its response to Blunt's initial brief, the state does no more than copy the memorandum the State filed in the lower court. That memorandum does so little to respond to Blunt's brief in this Court that there is little for Blunt to respond to.

ARGUMENT

I. BURDINE RENDERED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE AT TRIAL.

The State does not dispute that this Court reviews this claim *do novo.*

A. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE THE CASE AGAINST EDWARD BLUNT AND TO UTILIZE READILY AVAILABLE EXCULPATORY EVIDENCE AND/OR TO OBTAIN AN EXPERT TO TESTIFY THAT ANY BLOWS STRUCK BY EDWARD WERE NOT THE CAUSE OF MICHAEL TAYLOR'S DEATH.

In this assignment of error, Blunt claimed that his trial counsel, Richard Burdine, currently suspended from practice, did little to offer readily available evidence to counter the state's theory that any blow from Blunt caused Taylor's death some hours later.

At the evidentiary hearing on his post-conviction motion, Blunt called Dr. Rodrigo Galvez who disputed the claim of Dr. Steven Hayne, the state's expert witness at trial, that Blunt's injuries were caused by a blow from an object similar to the tire tool found at Blunt's house. At the hearing, Dr. Galvez, relying on Dr. Hayne's autopsy report, noted that the injury to Blunt's skull claimed by Hayne to be the cause of death, was a non-depressed linear skull fracture. Dr. Galvez explained that a fracture from a blow causes a depressed area in the skull; whereas, the force from a fall will generally cause the fracture to be non-depressed because the force from a fall causes the pressure to be dispersed throughout the area. Although Dr. Hayne

disagreed with Dr. Galvez, not only did he refuse to say Galvez's opinion was wrong, he admitted that a reasonable pathologist could reach the same conclusion Galvez had. EH/114.

The state responds that Dr. Galvez's "opinion leaves open the possibility that the injuries inflicted upon Taylor by Blunt did, in fact, cause the fall and resulting death."[1] State's Brief, p. 5. Of course, Taylor did not die until several hours after any blows inflicted by Blunt. Moreover, the evidence at trial was uncontrovered that Taylor suffered other blows and falls over the course of the evening. He was dragged by a car at one point earlier in the evening. He was struck by Scottie Williams only moments prior to being struck by Blunt. No witness testified that Taylor lost consciousness at the time of Blunt's blow, even momentarily. Two hours after attacking Blunt, Taylor knocked on the door of the radio station where the earlier altercation with Blunt had occurred and was refused admittance. At that time, he appeared to have been in a subsequent altercation because the manager of the station offered to call an ambulance because of his injures. T. 263-73.

Significantly Dr. Hayne disagreed with Dr. Galvez's theory that the injury was caused by a fall because there were no abrasions on Taylor's ears that he said would "usually" be caused when the person slid to the floor. EH/103. Dr. Hayne's theory, however, is seriously flawed in at least two respects. First of all, a fall does not necessarily cause a person to "slide" to the floor. Secondly, and most significantly, the evidence is undisputed that at the time Taylor was found at his home, he had fallen against the bathroom tub. Therefore, clearly Taylor had fallen prior to his death without

[1] At trial, the state argued that Blunt struck Taylor with a tire tool later found at his mother's house. Significantly, however, forensic testing of the tire took revealed no evidence of blood which would surely have been there had Blunt inflicted the injury so severe that Taylor's skull could be seen through the cut on his head. EH/109. However, that no blood was recovered was never made known to the jury. Furthermore, the state performed no CT scans as part of the autopsy; nor was the body examined for trace elements to match to the tire tool or any other instrument. EH/111.

scraping his ears. Certainly a reasonably logical juror could find that Hayne was wrong about the significance of the lack of abrasions.

Dr. Galvez supported his fall theory with learned journals supporting the notion that non-depressed linear skull fractures were likely caused by falls. Dr. Hayne totally failed to dispute any of these treatises.

The problem with the State's theory that Blunt has to negate all possibilities that he might be guilty in order to be entitled to relief is that it misstates the law. Moreover, the State later misstates Blunt's burden by claiming that Blunt must show that "but for the alleged errors, the result would have been different." State's Brief, p. 4. This is not the standard established by *Strickland v. Washington*, 466 U.S. 668 (1984) That test is that a defendant is entitled to relief if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Therefore, Blunt need not show that the errors more likely than not would have produced a different outcome as the State claims. The level of prejudice that Blunt must show in order to demonstrate that his attorney was constitutionally ineffective such that confidence in the outcome is undermined "lies between prejudice that had 'some conceivable effect' and prejudice 'that more likely than not altered the outcome in the case.' " *Cox v. Donnelly,* 387 F.3d 193, 199 (2nd Cir. 2004) [quoting *Lindstadt v. Keane*, 239 F.3d 191, 204 (2nd Cir. 2001) (quoting *Strickland*, 466 U.S. at 693, 104 S.Ct. 2052); *Goodman v. Bertrand,* 467 F.3d 1022, 1029 (7th Cir. 2006) [State court erred in requiring defendant to demonstrate that his trial was "fundamentally unfair"]; *Williams*, 529 U.S. at 405-06, 120 S.Ct. 1495 (hypothesizing that a state court which held that the *Strickland* standard for ineffective assistance of counsel required prisoner to establish by a preponderance of the evidence, as opposed to a reasonable probability, that result of proceedings

would have been different would be contrary to clearly established Supreme Court precedent); *see also Rose v. Lee*, 252 F.3d 676, 689 (4th Cir. 2001) [noting that it was "contrary to" clearly established Supreme Court precedent for state habeas court to require petitioner to prove prejudice under Strickland by a preponderance of the evidence]; *Mask v. McGinnis*, 233 F.3d 132, 140 (2nd Cir. 2000) [concluding that state trial court which failed to employ "reasonable probability" standard when evaluating claim of ineffective assistance of counsel during plea negotiation unreasonably applied clearly established Supreme Court precedent]; *Magana v. Hofbauer*, 263 F.3d 542, 551 (6th Cir. 2001); *Harrison v. Quarterman*, 496 F.3d 419, 427 (5th Cir. 2007) [defendant is not required to prove by a preponderance of the evidence that the result of the proceedings would have been different]; *DiLosa v. Cain*, 279 F.3d 259, 264 (5th Cir. 2002).

This Court in accordance with United States Supreme Court precedent has adopted the *Stickland* standard that in order to overcome the presumption that counsel is competent, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *** This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable [citations and internal citations omitted]." *Johns v. State*, 926 So.2d 188, 195 (Miss. 2006).

In his initial brief, *Blunt* cited numerous cases holding that an attorney is constitutionally ineffective when he fails to investigate and discover all readily available sources of evidence that might benefit their clients. *Brown v. Sternes*, 304 F.3d 677, 694 (7th Cir. 2002) ["Attorneys have an obligation to explore all readily available sources of evidence that might benefit their clients"]. Courts do not defer to an attorney's decisions to limit investigation or a defense "that are uninformed by an adequate investigation into the controlling facts and law." *United States v.*

Drones, 218 F.3d 496, 500 (5th Cir.2000). Even Burdine testified that his failure to consult or call an expert was not made after investigation. In short, his decision to limit the defense was uninformed. EH/36-50.

As even the State concedes, one of Burdine's defenses at trial was that Blunt did not strike the death blow. Notwithstanding, Burdine admitted that he totally failed to explore the possibility of obtaining an expert to substantiate this theory and that his failure was not part of a trial strategy. EH/36-50. *Gersten v. Senkowski*, 426 F.3d 588, 610-611 (2nd Cir. 2005) [failure to investigate potential challenges to state's medical evidence was ineffective].

The State argues, however, that if Blunt contributed in **any** way to the Taylor's death, he is legally held responsible. In support of that argument, the State cites *Holland v. State,* 418 So.2d 69, 71 (Miss. 1982) to the effect that

> The unlawful act or omission of accused need not be the sole cause of death. The test of responsibility is whether the act of accused contributed to the death, and, if it did, he is not relieved of responsibility by the fact that other causes also contributed. Moreover, responsibility also attaches where the injury materially accelerates the death, although the death is proximately occasioned by a preexisting cause. [citations omitted].

The State then reads that quote to mean that "any" contribution will do. That is not what *Holland* held. Specifically, the holding was that the jury was justified in determining the gunshot wounds were a **substantial** contributing cause of death [emphasis added]." In *Holland,* the victim died from complications resulting from treatment for a gunshot wound.

Here, the problem is that the cause of death was the non-depressed skull fracture. What Dr. Galvez's testimony shows is that it is unlikely that any blow struck by Blunt caused that injury because it was caused by a fall, not a blow. Dr. Galvez further opined that the lethal blow would have caused Taylor to lose consciousness, and there is no evidence that Taylor lost consciousness from any blow struck by Blunt. In short, Dr. Galvez's testimony provides considerable scientific validity to the theory that the lethal head injury was not caused by Blunt.

Although the issue here is not whether a jury could have found Blunt guilty even with Galvez's testimony,[2] the case of *Pitts v. State,* 2 Morr.St.Cas. 1655, 1870 WL 6677, *9 (Miss. 1870), involving the sufficiency of the evidence is instructive. In that case, on the medical evidence, where it was just as reasonable to suppose that the deceased came to his death from natural causes as from the effect of poison, the Court held that the conviction could not "be sustained upon any principle of humanity or of sound law." In Blunt's case, Dr. Galvez's testimony casts substantial doubt on the notion that Blunt caused Taylor's death, and a reasonable juror could well have found that it was just as reasonable to suppose his death came from a fall as from any blow inflicted by Blunt.

Burdine's failure to support the defense that Blunt was not responsible for Taylor's death by calling an expert or at least consulting one in order to effectively cross-examine Dr. Hayne as to the cause of death,[3] was so constitutionally deficient that Blunt should be granted relief. "The effect of counsel's inadequate performance must be evaluated in light of the totality of the evidence at trial: 'a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.'" *Rolan v. Vaughn,* 445 F.3d 671, 681 (3rd Cir. 2006) (quoting *Strickland,* 466 U.S. at 696, 104 S.Ct. 2052). Blunt has shown he was prejudiced by his attorney's failures to investigate and utilize available exculpatory evidence.

B. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO THE SUBSTANTIVE JURY INSTRUCTIONS; THOSE INSTRUCTIONS, INDIVIDUALLY OR CUMULATIVELY, PREVENTED THE JURY

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[2] The issue is whether or not confidence in the outcome is undermined either as to the conviction for murder or a lesser offense.

[3] *Knott v. Mabry,* 671 F.2d at 1212-13 [noting that counsel may be found to be ineffective for failing to consult an expert where "there is substantial contradiction in a given area of expertise," **or where counsel is not sufficiently "versed in a technical subject matter ... to conduct effective cross-examination** [emphasis added]"];

FROM CONSIDERING BLUNT'S DEFENSES OF MANSLAUGHTER AND SELF-DEFENSE.[4]

Part of Burdine's trial strategy was to argue self-defense and heat of passion manslaughter and manslaughter in resisting an unlawful act. However, the instructions in this case are hopelessly misleading, abstract and confusing and prevented the jury from considering Blunt's defenses of heat of manslaughter and self-defense. The jury was given several options:

(1) "Depraved Heart" Murder:

> Instruction S-2 instructed the jury that it could find Blunt guilty of "depraved heart" murder if it found that he killed Taylor "when in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual without authority of law and not in necessary self defense." CP 112.

(2) Malice Murder:

> Instruction S-7 instructed the jury it could find Blunt guilty of malice murder if it found that he killed Taylor with "malice aforethought . . . by striking him repeatedly with a blunt object, without authority of law and not in necessary self defense" CP 116.

(3) Self-Defense:

> Instruction D-1, the instruction discussed in Proposition C(iv) below, the "Robinson" instruction, which has been condemned as giving the jury an incorrect view of self defense. CP 118-19.

(4) "Heat of Passion" Manslaughter, pursuant to §97-3-35:[5]

Instructions S-3 and S-4 purported to instruct on "heat of passion" manslaughter. Instruction S-3 stated that if the jury could not agree on murder, they could consider manslaughter and could find Blunt guilty of manslaughter if he killed Taylor, "without malice, in

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[4] Again, this issue warrants relief as a substantive issue because the failure to properly define the elements of the offense and Blunt's defenses constitutes fundamental error which denied Blunt a fair trial. For brevity's sake, Blunt will not rebrief this issue.

[5] Section 97-3-35 states that "[t]he killing of 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, without authority of law, and not in necessary self-defense, shall be manslaughter."

the heat of passion, by striking Michael Taylor with a blunt object, without authority of law and not in necessary self defense." CP 113.

Instruction S-4 defined "heat of passion" as

> "a sudden, violent passion which temporarily suspends or overthrows the judgment of the defendant. However, this high degree of sudden and resentful feeling will not alone reduce an act of homicide committed under its influence to manslaughter. There must be such circumstances as would indicate that a normal mind would be aroused to the extent that reason was overthrown and that passion overtook the mind, thus destroying judgment. Therefore, **if you find from the evidence beyond a reasonable doubt that the defendant was induced by some provocation which would naturally and instantly produce in the mind of a normal person, a sudden impulse of violent passion**, and further than in such state of mind the defendant struck Michael Taylor, resulting in his death, then the blow was struck in the 'heat of passion [emphasis added].'" CP 114.

> (5) Manslaughter pursuant to §97-3-31, "Killing unnecessarily, while resisting effort of slain to commit felony or do unlawful act."[6]

> Instruction S-5 told the jury that "every person who shall unnecessarily kill another, either while resisting an attempt by that other person to commit any felony, or to do any unlawful act, or after such attempt shall have failed, is guilt of manslaughter. Therefore, if you find from the evidence in this case beyond a reasonable doubt that the Defendant, EDWARD LAMON BLUNT, unnecessarily killed Michael Taylor while he was resisting an attempt by Michael Taylor to choke him by striking him repeatedly with a metal bar without authority of law and not in necessary self-defense, then you shall find the Defendant guilty of manslaughter." CP 115.

i. FAILURE TO DISTINGUISH BETWEEN MALICE MURDER AND MANSLAUGHTER:

The State does not address this claim. Consequently, Blunt will rely on his initial brief as there is nothing to reply to.

ii. FAILURE TO DISTINGUISH BETWEEN DEPRAVED HEART MURDER AND MANSLAUGHTER:

The State does not address this claim; therefore, Blunt will rely on his initial brief.

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[6] Section 97-3-31, states that "[e]very person who shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any unlawful act, or after such attempt shall have failed, shall be guilty of manslaughter."

iii. FAILURE TO INSTRUCT THAT BLUNT HAD NO DUTY TO RETREAT:

Burdine requested no instruction on Blunt's duty to retreat. The State does not address this claim; therefore, again, Blunt will rely on his initial brief where he argued that Blunt should have retreated rather than defendant himself.

iv. ERRONEOUS INSTRUCTION ON SELF-DEFENSE OFFERED BY DEFENSE COUNSEL:

Burdine requested a self-defense instruction which has been universally condemned. *See, e.g., Johnson v. State,* 908 So.2d 758 (Miss. 2005) where the Court found reversible error because of an instruction virtually identical to the one here which told the jury that a defendant who acts in self defense "acts at his own peril." *Id.* at 764. Chief Justice Smith in his opinion criticized the language for being confusing and misleading, quoting from *Scott v. State,* 446 So.2d 580, 583-84 (Miss. 1984): "'A party acting upon this principle does not "*act at his peril.*" Of course, it is for the jury to determine the reasonableness of the ground upon which the defendant acts but if the defendant's apprehension is reasonable, *there is no peril.*'" *Johnson, supra* at 764.

The State counters only with a citation to *Montana v. State,* 822 So.2d 954, 959 (Miss. 2002) where the Court held that an instruction finding the jury to find that the act was not done in self-defense cured a deficient self-defense instruction. Appellee's Brief, p. 6. In *Montana*, the issue was whether or not the instructions sufficiently instructed the jury that it was required to acquit if the state failed to prove self-defense. *Id.* [Accordingly, we find that the jury was properly instructed as to the State's burden to disprove Montana's claim of self-defense as well as its obligation should it find Montana acted in self-defense"]. In Montana's case, however, the instruction did not tell the jury that a person who acts in self-defense acts at his own peril. *Montana,* therefore is inapposite.

As long ago as 1984, the Court in 1984 in *Scott v. State, supra*, condemned the instruction given in Blunt's case. *See also,* cases cited in Blunt's initial brief. *Accord, Johnson v. State, supra.* No reasonably effective counsel would have requested an instruction which this Court has repeatedly condemned. The Court's confusing and contradictory instructions on whether or not Blunt could act on reasonable appearances was prejudicial as Blunt has discussed in his initial brief. Because the case is so close as to Blunt's guilt, counsel rendered constitutionally ineffective assistance of counsel in requesting an instruction which destroyed his client's chances of prevailing on the issue of self-defense. *See Kubat v. Thieret,* 867 F.2d 351, 370 (7th Cir.1989) [finding that defense counsel's failure to object to jury instructions that misstated Illinois law was deficient performance under *Strickland*]; *Reagan v. Norris,* 365 F.3d 616, 621-622 (8th Cir. 2004) [failure to object to instruction omitting essential element was ineffective assistance resulting in prejudice to defendant where jury could have believed defense]; *Lucas v. O'Dea,* 179 F.3d 412, 419 (6th Cir.1999) [counsel's failure to object to erroneous jury instructions "rendered his defense ... meaningless" and was prejudicial under *Strickland*].

In *Triplett v. State, supra,* the Court found similar conduct by Burdine to constitute ineffective assistance where the evidence supporting Triplett's innocence was far less than in Blunt's case. Triplett's trial testimony was weak, disputed, and also contradicted by his statement to the sheriff. The Court held, however, that he was entitled to have an instruction specifically embracing the facts which he and his witnesses had testified occurred which would have made the killing an excusable accident. *Id.*, 1362.

Instead, Burdine offered no instruction "**factually embracing** his client's defense, namely: that he had fired a pistol shot into the air to scare the group away from him, and had no

intention of firing another, but the second shot was caused solely because Bray unexpectedly grabbed him and was wrestling with him [emphasis added]."[7]

Here, too, the only instruction requested by Burdine on Blunt's defense of self-defense was the universally condemned general instruction on self-defense which neither factually embraced the defense nor accurately stated the law on self-defense. This failure, as it did in *Triplett*, constitutes ineffective assistance. Blunt was entitled to have the jury given a correct instruction on his self-defense theory. Trial counsel requested an erroneous instruction thereby depriving Edward Blunt of a defense that was central to his case.

v. TRIAL COUNSEL WAS INEFFECTIVE IN OBJECTING TO THE STATE'S PROFFERED INSTRUCTION ON IMPERFECT SELF-DEFENSE:

Burdine objected to a manslaughter instruction on "imperfect self defense." S-6, CP. 117. Under the theory of "imperfect self-defense," an intentional killing may be considered manslaughter if it is done without malice but under the bona fide, but unfounded, belief that it was necessary to prevent death or great bodily harm. *Wade v. State*, 748 So.2d 771, 775 (Miss. 1999); *Lanier v. State*, 684 So.2d 93, 97 (Miss. 1996); *Cook v. State*, 467 So.2d 203, 207 (Miss.1985); *Williams v. State*, 127 Miss. 851, 854, 90 So. 705, 706 (1921)). This Court has held that where the facts justify the instruction, it should be given. *Lanier v. State*, 684 So.2d at 97.

Neither Burdine nor the State offer any reason why a reasonably effective attorney would have removed a manslaughter defense which is as consistent with the evidence as the defense of heat of passion manslaughter offered by Burdine. Plainly, the jury could have concluded that Blunt was unreasonable in his belief that Taylor did not pose a great threat of bodily harm, but

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[7] Counsel was granted the following abstract instruction:
The killing of any human being by the act of another is excusable homicide when committed by accident while doing any lawful act by lawful means with usual and ordinary caution and without any unlawful intent. If you find from the evidence that Michael Triplett shot and killed Wayne Arterberry while doing any other lawful act by lawful means with usual and ordinary caution and without any unlawful intent, then you shall find the Defendant not guilty.

was nevertheless sincere in his belief that Taylor did constitute such a threat. Absent a cogent strategic reason for objecting, trial counsel's objection to the imperfect self defense instruction amounted to ineffective assistance of counsel because it deprived Blunt of a potential manslaughter defense. *Banks v. Reynolds*, 54 F.3d 1508, 1515 (10th Cir. 1995).

C. BLUNT'S COUNSEL WAS INEFFECTIVE IN NOT OBJECTING EITHER AT TRIAL OR ON APPEAL TO THE PROSECUTION'S IMPROPER ARGUMENT WHICH IMPERMISSIBLY VOUCHED FOR THE CREDIBILITY OF HIS WITNESSES AND IMPROPERLY APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY.[8]

The State does not address this argument in its brief; therefore, Blunt will rely on his initial brief. Unquestionably, it is improper for the state to vouch for the credibility of its witnesses and make the other arguments Blunt cites in his initial brief.

D. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO THE PROSECUTION'S CLOSING ARGUMENT THAT THE JURY NEED NOT BE UNANIMOUS.

The prosecution erroneously told the jury that it could convict Edward Blunt of murder even though the jury could not agree as to whether the killing was malice murder or depraved heart murder. Blunt addressed this in his initial brief. The State counters wrongly that "Blunt asserts that [it was improper for the] State to argue that the Jury could unanimously agree to either deliberate design murder or depraved heart murder." Appellee's Brief, p. 6. The State misunderstands Blunt's argument. The State did not tell the jury it had to agree unanimously either to deliberate design murder or depraved heart murder. What the State told the jury was just the opposite:

> **Now, these are your two murder instructions. These are separate. Six of you can say that he had malice aforethought. Six of you can say that it was by depraved heart.** These do not intertwine. **One of you can say malice aforethought. Eleven of you can say depraved heart. We don't have to prove both, ladies and gentlemen.**

[8] Again, Blunt claims that this error substantively deprived him of a right to a fair trial. *See,* cases finding such arguments to be plain fundamental error cited within this proposition.

R.2/148-49 (emphasis added).

Since the State cites to no cases holding that the jury does not have to unanimously agree, Blunt will rely on his initial argument.

II. BURDINE RENDERED INEFFECTIVE ASSISTANCE ON APPEAL.

The State did not address this argument, so Blunt will rely on his initial brief.

CONCLUSION

The errors in this case were substantial and were the kind that impair confidence in the reliability of the jury's verdict. Between the written instructions and the prosecutor's argument concerning the instructions, the jury was given not only erroneous directions as to the law but was wholly prevented from considering the defendant's theories of manslaughter and self-defense.

At most, even under the prosecution's version of the evidence, the case should have resulted in no more than a manslaughter conviction. Blunt did not know Taylor, and there is no doubt that Taylor provoked an altercation between the two. Blunt was a young man with no prior history of violent behavior.

Had trial counsel investigated the case against Edward Blunt, he could have put before the jury expert testimony that the blows attributed to Edward were not the probable cause of Taylor's death. The errors, either singly or cumulatively, are sufficient to raise doubt as to the outcome of this case. As a matter of law, Blunt is entitled to a reversal. If the reversal is based on the absence of evidence to support murder and/or manslaughter, then he is entitled to have the case dismissed. Otherwise, he should be granted a new trial.

RESPECTFULLY SUBMITTED,
EDWARD BLUNT, APPELLANT

BY: *Julie Ann Epps*
ATTORNEY FOR APPELLANT

CERTIFICATE

I, Julie Ann Epps, Attorney for Appellant, do hereby certify that I have mailed the original and three copies of the foregoing to the Clerk of this Court at PO Box 249, Jackson, MS 39205-0249 and have mailed a true and correct copy to the Honorable Lee J. Howard, Circuit Judge, at P.O. Box 1387, Columbus, Mississippi 39703, Jim Hood, Attorney General, P.O. Box 220, Jackson, Mississippi 39205 and Forrest Allgood, District Attorney, P.O. Box 1044, Columbus, Mississippi 39703.

This, the 8th day of June, 2010.

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