

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**PAUL DAVID GRAVES**

**APPELLANT**

**V.**

**NO. 2009-KA-0282-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**REPLY BRIEF OF THE APPELLANT**

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**ORAL ARGUMENT NOT REQUESTED**

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**REPLY ARGUMENT**

**GRAVES IS NOT PROCEDURALLY BARRED FROM ARGUING THAT THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE OF A.C. GRAVES' PRIOR INCARCERATION.**

In Issue III of the Appellee's Brief, the State argues that Graves is procedurally barred from asserting that the trial court erred in excluding testimony of A.C. Graves' previous incarceration. [Appellee's Brief, 9]. Graves is not procedurally barred from arguing this issue for the following reason.

As the State points out in its brief, Rule 404(b) of the Mississippi Rules of Evidence allows the introduction of character evidence if the evidence is admitted to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. *Carter v. State*, 450 So. 2d 67, 69 (Miss. 1984). In this case, Graves sought to introduce A.C.'s prior convictions to explain his lack of opportunity to walk out of his mother's house with a weapon, as

was claimed by the State's witnesses.

If evidence of A.C.'s prior incarceration had been admitted to trial, Graves would have been able to show that Minnie Grave's did not have a gun in the house because A.C. was a convicted felon. [Tr. 449-50] Whether or not Graves' left his mother's house carrying a gun was a crucial issue to be decided by the jury. The jury should have been allowed to consider this information.

In addition, the State asserts that the defense's argument that Minnie Graves would not keep a gun in the house of a convicted felon was "disingenuous". [Appellee's Brief, 10]. Minnie Graves never denied owning the gun that was discovered at the scene. [Tr. 270]. Right before A.C. moved back into her house, the gun came up missing. There was no testimony that another gun was ever kept in the house after A.C. returned to live with his mother, following his incarceration. She simply did not want to keep the gun around her son, a convicted felon, because that would have been a crime. [Tr. 450]

The State points to Minnie Graves' testimony that she brought the gun in the house after A.C. was shot outside as somehow evidence that Minnie Graves kept a gun in the house. This is a far stretch at best. First, Minnie was not aware of the gun's location until she saw it by her sons. [Tr. 278] At the time Minnie Graves brought the gun in the house, A.C. Graves was no longer in danger of violating the law as a convicted felon in possession of a firearm. Instead, he was grasping for life, and dying in the front yard.

### CONCLUSION

Based on the foregoing, as well as the issues and arguments raised in his initial brief, the Appellant, Paul Graves, contends that the trial court committed reversible error by denying his right to a fair trial and that these issues are not procedurally barred. Graves prays that this Court reverse the trial court's decision and render the trial court's decision.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Erin E. Pridgen, Counsel for Paul David Graves, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF THE APPELLANT** to the following:

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 21<sup>st</sup> day of July, 2009.

  
ERIN E. PRIDGEN  
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