

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PAUL DAVID GRAVES

APPELLANT

V.

NO. 2009-KA-0282-COA

STATE OF MISSISSIPPI

APPELLEE

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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Paul David Graves, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Roger T. Clark, Circuit Court Judge

This the 15th day of June, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


ERIN E. PRIDGEN
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39205
Telephone: 601-576-4200

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE CASE	4
ARGUMENTS	5
I. THE TRIAL COURT ERRED IN FAILING TO GRANT A MISTRIAL FOLLOWING DWANINIA SPANN’S EMOTIONAL TESTIMONY. 	5
II. THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION FOR A NEW TRIAL.	4
III. THE TRIAL COURT DEPRIVED GRAVES OF HIS CONSTITUTIONAL RIGHT TO A FUNDAMENTALLY FAIR TRIAL BY EXCLUDING TESTIMONY OF AC’S PRIOR INCARCERATION, AS THE DEFENSE WAS UNABLE TO FULLY DEVELOP ITS THEORY OF DEFENSE. ..	10
CONCLUSION	13
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

STATE CASES

<i>Allison v. State</i> , 724 So.2d 1014, 1018	10
<i>Black v. Stone Lumber Co.</i> , 63 So.2d 405, 407 (Miss. 1953)	8
<i>Carpenter v. State</i> , 910 So.2d 528, 534(.....	5
<i>Chase v. State</i> , 645 So.2d 829, 848 (Miss. 1994)	3
<i>Commodore v. State</i> , 994 So.2d 864, 870-71(Miss. Ct. App. 2008	4
<i>Crawford v. State</i> , 867 So.2d 196, 204	10
<i>Denham v. State</i> , 966 So.2d 894, 898 (Miss. Ct. App. 2007)	12
<i>Fuselier v. State</i> , 468 So.2d 45, 53 (Miss. 1985)	2, 3
<i>Golleher v. Robertson</i> , 830 So.2d 694, 698	8
<i>Gossett v. State</i> , 660 So.2d 1285, 1290-91 (Miss. 1995)	5
<i>Howell v. State</i> , 354 So.2d 1124, 1127 (Miss. 1978)	4
<i>Hunt v. State</i> , 877 So.2d 503, 512-13	9
<i>Johnson v. State</i> , 477 So.2d 196, 210 (Miss. 1985)	5
<i>Ladner v. State</i> , 584 So.2d 743, 753 (Miss. 1991)	3
<i>Lee v. State</i> , 910 So. 2d 1123, 1125-26	4
<i>Lockett v. State</i> , 459 So. 2d 246, 253 (Miss. 1984)	12
<i>McNeal v. State</i> , 757 So.2d 1096, 1097-98 (Miss. App. 2000)	4
<i>Meeks v. State</i> , 781 So.2d 109, 112	8
<i>McClendon v. State</i> , 539 So.2d 1375, 1377 (Miss. 1989)	8
<i>Moore v. State</i> , 508 So.2d 666, 668-69 (Miss. 1987)	8
<i>Roundtree v. State</i> , 568 So.2d 1173, 1178 (Miss. 1990)	5

<i>Smith v. State</i> , 492 So.2d 260, 263 (Miss. 1986)	4
<i>Tate v. State</i> , 912 So.2d 919, 932	5
<i>Thomas v. Mississippi Dept. of Public Safety</i> , 882 So.2d 789, 792 (Miss. Ct. App. 2004)	4
<i>Townsel v. State</i> , 87 So.2d 481, 485 (Miss. 1956)	4
<i>Williams v. State</i> , 669 So.2d 44, 54 (Miss. 1996)	8
<i>Williams v. State</i> , 763 So.2d 186, 187-88 (Miss. Ct. App. 2000)	4
<i>Williams v. State</i> , 991 So.2d 593, 606 (Miss. 2008)	12
<i>Witherspoon v. State</i> , 767 So.2d 1065, 1067	8
<i>Wright v. State</i> , 797 So.2d 1028, 1030 (Miss. Ct. App. 2001)	12

STATE STATUTES

Mississippi 39201	1, 14
Mississippi 39205	I

COURT RULES

Mississippi Rules of Evidence	10,11
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V.

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APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

I. THE TRIAL COURT ERRED IN FAILING TO GRANT A MISTRIAL FOLLOWING DWANINIA SPANN'S EMOTIONAL TESTIMONY.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION FOR A NEW TRIAL.

III. THE TRIAL COURT DEPRIVED GRAVES OF HIS CONSTITUTIONAL RIGHT TO A FUNDAMENTALLY FAIR TRIAL BY EXCLUDING TESTIMONY OF AC'S PRIOR INCARCERATION, AS THE DEFENSE WAS UNABLE TO FULLY DEVELOP ITS THEORY OF DEFENSE.

STATEMENT OF THE CASE

This appeal proceeds from the First Judicial District of Harrison County Circuit Court in Harrison County, Mississippi. A Harrison County Grand Jury indicted Paul David Graves, Jr. in a two-count indictment for the death of A.C. Graves. The Honorable Roger T. Clark, Circuit Court Judge, presided over the jury trial that was held July 21-23, 2008. The jury rendered a guilty verdict as to the manslaughter charge. The Court sentenced Graves to serve fourteen (14) years in the

Mississippi Department of Corrections. Graves is currently incarcerated with the Mississippi Department of Corrections.

On July 25, 2008, Graves filed his motion for new trial, or in the alternative, motion for JNOV. The court denied this motion and Graves timely files this appeal.

STATEMENT OF THE FACTS

In late November 2003, several groups of friends traveled from Gulfport, Mississippi to New Orleans, Louisiana, for a night of partying in the city. [Tr. 114] Brothers, Paul and AC Graves, lived with their mother at the same home in Gulfport. [Tr. 144] On that day, however, the brothers traveled separately to New Orleans. [Tr. 114, 238]. Paul Graves, Fred Thompson and Kevin Preston (also referred to as "Fat Fat") traveled to New Orleans together in one vehicle. [Tr. 238] Paul's brother - AC Graves, AC's girlfriend - Dwaninia Spann, AC's son, and several others traveled in a separated entourage. [Tr. 114]

Paul and AC, along with their friends, met each in New Orleans some time that night. [Tr. 238] After AC and Paul's parties met, the group took their partying to a friend's hotel room. [Tr. 115]

Like many of the party- goers, AC consumed a significant amount of alcohol that evening. [Tr. 244, 249-50, 255, 323]. At some point during the night, AC became very angry and belligerent. [Tr. 240, 251, 273]. Eyewitness testimonies varied as to the cause of AC's agitation. [Tr. 123-24, 239-40, 250, 273, 325] Regardless of the cause of AC's anger, AC's fury led him to waive a gun at his brother, Paul, and other men at the gathering in the hotel room. [Tr. 241, 325] Paul did not have a gun. [Tr. 242] According to AC's girlfriend, Spann, AC even put the gun up to Paul's neck and called him a coward. [Tr. 124] Paul and Fred, however, attempted to calm AC down but to no avail.

[Tr. 240, 251, 324].

Seeking to avoid a confrontation with AC, Paul decided to leave New Orleans earlier than expected. [Tr. 241] Paul and Fred left the hotel and headed back home to Gulfport, Mississippi. [Tr. 324] Paul and Fred left Kevin in New Orleans with the rest of the party. [Tr. 251]

Kevin, Spann, and AC left New Orleans later on and headed for Gulfport. On the way back home, Kevin provoked AC's anger by reminding him of his earlier confrontation with Paul. [Tr. 126] AC, already heavily intoxicated, rode back to Gulfport with a gun on his lap. [Tr. 252] Although there were gallons of alcohol consumed between the friends in New Orleans, Spann stopped the car on the way to Gulfport so that the men could purchase more alcohol. [Tr. 252]

While on the road, Spann called AC and Paul's mother, Minnie Graves, to alert her that they were on the way back to the house. [Tr. 130, 273] Having arrived earlier, Paul had already informed his mother about AC's behavior in New Orleans. [Tr. 272] Minnie decided to stay awake until AC came home to talk with him. [Tr. 274]

When AC and his companions arrived at the house, Paul could hear the commotion his brother and friends were making from his bedroom. [Tr. 326] While Minnie put on her shoes inside, Paul walked outside to address AC. Paul did not want the brothers' confrontation to disturb their mother. Minnie noticed that Paul did not have a weapon as he walked out of the house. [Tr. 274] Although the prosecution's witnesses testified that Paul walked out of the house angrily, Paul testified that he was calm when he approached AC in the yard. [Tr. 337]

At some point while Paul spoke with AC, the two brothers began to fight. [Tr. 148-49] AC produced a gun and the brothers began to tussle for control of the gun. [Tr. 254] Paul feared that his brother would have to go back to prison if he were caught with the gun. [Tr. 327] AC had been released from prison only weeks before this incident. In addition to fearing his brother's return to

prison, Paul also feared that AC would use the weapon to shoot him. AC previously shot Paul in the leg during a prior altercation between the brothers. [Tr. 308] The bullet remained lodged in Paul's leg, even at the time of trial. [Tr. 340]

There were several witnesses present during the brothers' struggle in front of their mother's home. Clyzell Smith, the Graves' next door neighbor, Dwaninia and Kevin all testified that, at the time of the fighting, they were outside near or in the Graves' front yard. At trial, each witness provided varying accounts of what occurred in the moments prior to and after the brothers started fighting.

According to Paul, as he wrestled with AC for the gun, the gun went off. [Tr. 328] AC received one fatal gunshot wound to the neck. [Tr. 203] After the gun went off, Minnie Graves came outside of the house to investigate the commotion. [Tr. 275] Paul handed his mother the gun. [Tr. 276] Paul informed his mother the shooting was an accident. AC died in the hospital four days later from the single gunshot wound. [Tr. 204]

SUMMARY OF THE CASE

On November 30, 2003, Minnie Graves lost two sons. AC Graves was fatally wounded by one bullet to his neck. Paul Graves was later arrested and convicted of manslaughter in AC's death. Witnesses' testimonies and the evidence presented at trial all suggest that this death was nothing more than an accident. The trial court's verdict was against the overwhelming weight of the evidence.

In addition to this error, several trial court errors also compromised the jury's verdict. At trial, Dwaninia Spann's provided highly emotional testimony. Her outburst could have easily led the jury to base its verdict on her emotional display, rather than the evidence presented at trial.

Finally, the trial court deprived Graves of his fundamental right to a fair trial by limiting his attorney's ability to present his full theory of defense. These errors substantially prejudiced Graves' defense, likewise, the Court should reverse.

ARGUMENTS

I. THE TRIAL COURT ERRED IN FAILING TO GRANT A MISTRIAL FOLLOWING DWANINIA SPANN'S EMOTIONAL TESTIMONY.

Dwaninia Spann offered testimony during which Paul Graves' attorney said that she was, "boohooing and crying like a baby." [Tr. 142]. This testimony had the potential to lead the jury to base its verdict on the passion of her testimony rather than the facts that were offered. The trial judge is to declare a mistrial when an error has caused irreparable and substantial damage to the defendant's case. *Tate v. State*, 912 So.2d 919, 932 (¶41) (Miss. 2005); *See also Gossett v. State*, 660 So.2d 1285, 1290-91 (Miss. 1995). When the error is not sufficient to warrant the granting of a mistrial, but is still an error nonetheless, it is the duty of the judge to instruct the jury to disregard the impropriety. *Carpenter v. State*, 910 So.2d 528, 534(¶23) (Miss. 2005); *See also Johnson v. State*, 477 So.2d 196, 210 (Miss. 1985); *Roundtree v. State*, 568 So.2d 1173, 1178 (Miss. 1990).

The right to a fair trial includes the right to a verdict not based on anything other than evidence of the crime. *Fuselier v. State*, 468 So.2d 45, 53 (Miss. 1985). It is the duty of the court to eliminate or, at the least, minimize outside influences. *Id.* A verdict that is based on anything other than evidence of the alleged crime is tainted and, where it is the result of bias, passion or prejudice, it cannot be allowed to stand. *Id.*

During her testimony, the defense attorney sought to have a mistrial granted because she was so emotional. [Tr. 141-42]. However, at the time that the attorney made the motion, the judge did

nothing. The judge specifically told the attorney to wait until the next break to make his motion. [Tr. 142] The judge ignored his duty to contemporaneously instruct the jury to disregard Spann's emotional testimony. When the issue was actually argued before the judge, the jury had already left the courtroom. [Tr. 141] Even if the testimony was not enough to warrant a mistrial, the judge still had a duty to instruct the jury to disregard the overly emotional testimony so as to avoid any chance that something other than the evidence could influence the jury's verdict. However, there was no such warning.

The judge did not even allow for time for Spann to gain control of her emotions. In prior cases where emotional testimony was given and a motion was made for mistrial, the judge recessed the court so that the witnesses could compose themselves. *Chase v. State*, 645 So.2d 829, 848 (Miss. 1994); *See also Ladner v. State*, 584 So.2d 743, 753 (Miss. 1991) However, here the witness was allowed to continue to cry. The judge did not put the court in recess or give the witness time to compose herself but just continued to let her testify emotionally in front of the jury.

A fair trial cannot occur when the jury bases its verdict on anything besides the evidence presented. *Fuselier*, 468 So. 2d at 53. It is the duty of the judge to insure that such testimony is not presented to the jury without some form of immediate admonition, instructing the jury to not consider the witnesses' emotional display. The judge may even give the witness time to compose his or herself when there is emotional testimony. However in this case, the judge failed to give such admonition. The judge made no effort to ensure appropriate consideration of this case by the jury. Likewise, this court should reverse the trial court's verdict.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION FOR A NEW TRIAL.

In a criminal trial, the court may grant a new trial when the verdict is against the weight of the evidence. *Lee v. State*, 910 So. 2d 1123, 1125-26 (¶7) (Miss. Ct. App., 2005). A new trial is also warranted if new and material evidence has been recently discovered which would have produced a different result at the trial and the attorney would not have discovered the evidence with reasonable diligence. Miss. Unif. Rules of Cir. & Cty. Ct. Prac., Rule 10.05. In a motion for new trial, the court views the evidence in the light most favorable to upholding the jury's verdict, and the motion for new trial will only be granted when such a viewing reveals a manifest injustice to the defendant. *McNeal v. State*, 757 So.2d 1096, 1097-98 (Miss. App. 2000); *See also Williams v. State*, 763 So.2d 186, 187-88 (Miss. Ct. App. 2000), *Commodore v. State*, 994 So.2d 864, 870-71 (Miss. Ct. App. 2008)

Whether or not a new trial should be granted is made on a case-by-case basis, taking into account all relevant factors and circumstances of the situation. *Thomas v. Mississippi Dept. of Public Safety*, 882 So.2d 789, 792 (Miss. Ct. App. 2004). The trial court is responsible for determining if the evidence would change the result of a new trial. *Id.* *See also Townsel v. State*, 87 So.2d 481, 485 (Miss. 1956); *Smith v. State*, 492 So.2d 260, 263 (Miss. 1986). The scope of inquiry on appeal is simply whether or not the trial court abused its discretion when making its determination and determining whether the allegations were sufficiently proven. *Howell v. State*, 354 So.2d 1124, 1127 (Miss. 1978).

Overwhelming Weight of the Evidence

Grave's guilty verdict in this case was contrary to the overwhelming weight of the evidence. Although there were several people present during the altercation between the brothers, the witnesses all provided various testimonies. The following chart is a synopsis of the trial testimonies.

Witnesses Statements		
	<i>Location when gun fired:</i>	<i>What witness saw:</i>
Kevin Preston <i>Defense's Witness</i>	<p>Despite prior statements to police, Kevin testified at trial that he was outside the Graves' house - standing near the brothers - at the time of the gun fired.</p>	<p>Kevin saw Paul come out of the house, without a gun, and walk toward AC. AC had a gun in his hand. The brothers started tussling and AC fell to the ground. The gun went off and shot AC. Kevin never saw Paul pull out a gun.</p>
Minnie Graves <i>Defense's Witness</i>	<p>Minnie was in her house, putting on her shoes at the time the gun fired. She was preparing to walk out of the front door of her house to meet AC and Paul.</p>	<p>Minnie sat on her couch, preparing to go outside, when Paul walked passed her and told her he would talk to AC. Paul did not have a weapon in his hand as he left. As Minnie put on her shoes, she heard two gunshots and ran outside. When she reached her front yard, Minnie witnessed AC laying on the ground.</p>
Paul Graves <i>Defendant</i>	<p>Paul was on the side of Minnie Graves' truck at the time the gun fired. The truck was located in the Grave's driveway - in the front yard of the home.</p>	<p>As Paul approached AC in the front yard, AC pushed Paul and the two brothers began tussling beside their mother's truck in the front yard. Paul testified at trial that he did not have a gun but AC had a gun in his hand. Paul struggled for control of the gun. Paul tried to get the gun away from AC when the gun fired.</p>

Witnesses Statements		
Dwaninia Spann <i>State's Witness</i>	Contrary to several witnesses statements', Dwaninia testified that she was outside of the Graves' home, approaching the front door, at the time the gun fired.	According to Spann, Paul came out of the house after AC arrived home and started arguing with AC. AC's back was against the truck the entire time and Paul was pushing AC against the truck. As Dwaninia headed to the door to get Minnie Graves, she heard a shot. When she turned around, she saw AC lying on the ground.
Clyzell Smith <i>State's Witness</i>	Clyzell testified that, at the time the gun fired, he was standing in the yard next door to the Graves' home.	According to Clyzell, he was standing next door to the brothers, in his yard, when he noticed Paul come out of the house, cursing at AC. AC got out of the truck and brothers started fighting. Smith saw Paul raise his right arm and the gun fired at AC. AC fell to the ground and Smith ran over to help. Smith did not see how Paul got the gun in his hand.

The State greatly relied on Clyzell Smith's questionable testimony in requesting that the jury find Paul guilty of manslaughter. Clyzell testified that, from his vantage point in the yard next door, he saw Paul raise up the gun at arm's length away from AC and shoot AC in the neck. [Tr. 149]. Clyzell testified that, when the shooting occurred, the brothers were standing at the back end of Minnie Graves's truck and there was nothing obstructing his view of the brothers. [Tr. 151-52].

During cross-examination, Clyzell admitted that he could only see the driver's side and back of the truck. [Tr. 158] He testified that the shooting did not occur at the passenger side door of the truck. [Tr. 158] However, former Gulfport Police detective Charles Bodie, Jr. testified that the blood

from the shooting was found centrally located in the front yard - about three feet and nine inches north of the right rear wheel of the truck. [Tr. 173] This was a few feet away from the passenger door and more toward the rear of the truck.

Clyzell's testimony is suspicious at best. Not only does he acknowledge that there was a truck separating him from the brothers, his attention to the details of the shooting is faulty, at best. Although he testified that he saw Paul raise a gun and the gun fired, he could not tell where the gun came from. [Tr. 150] Clyzell's testimony was too weak and tenuous to support a guilty verdict.

All the remaining evidence presented before the jury suggested that AC's death could not have been anything more than an accident.

First, several witnesses testified that it was AC, and not Paul, that had a gun in New Orleans -- just the night before the shooting. [Tr. 242]. Witnesses testified that it was AC that became drunk and belligerent in New Orleans, and even held a gun to his brother, Paul. Paul did not engage in the confrontation between his brother, rather he decided to leave the hotel and head back to Gulfport.

Furthermore, when Paul arrived at his house in Gulfport, he informed his mother about AC's erratic behavior. This gesture suggests that Paul took a proactive step to diffuse any situation that may occur between he and his brother once AC returned home.

Likewise, Paul's behavior once AC arrived home was also consistent with his claims that he did not ever intend to hurt his brother. Once AC arrived at the house, Paul went outside to meet him without any weapon. [Tr. 127, 274] Had Paul intended to harm AC, he had ample opportunity to arm himself with a weapon before he went to meet AC in the front yard that morning. Paul knew that AC possessed a weapon only hours before, while in the hotel in New Orleans. Surely Paul would have anticipated that AC would still have the same weapon when he got out of the car that morning.

Finally, AC died from one fatal gunshot wound to the neck. Little evidence is more

consistent with Paul's statements that this single fact. Paul did not raise the gun and shoot AC several times in a heat of passion, as the manslaughter verdict would suggest. Instead, after the gun fired, Paul fell to the ground and began wailing. He immediately told his mother that the shooting was an accident. Even after the police were called, Paul did not run or try to hide from the police. [Tr. 101, 108].

Newly Discovered Evidence

In order to overturn a verdict based on false testimony given at trial, the party moving for a new trial has to show that the perjury was material and that the result of the new trial would be different. *Williams v. State*, 669 So.2d 44, 54 (Miss. 1996); *See also Moore v. State*, 508 So.2d 666, 668-69 (Miss. 1987).

When proving that a witness actually committed perjury based on new evidence, Mississippi courts have used the following considerations:

The evidence must be able to change the verdict at a new trial, the evidence must have been discovered since the trial, the evidence could not have been discovered before the trial by the exercise of due diligence, the evidence must be material to the issue and cannot be merely cumulative or impeaching.

Golleher v. Robertson, 830 So.2d 694, 698 (¶ 11) (Miss. Ct. App. 2002). *See also Meeks v. State*, 781 So.2d 109, 112 (¶ 8) (Miss. 2001). *McClendon v. State*, 539 So.2d 1375, 1377 (Miss. 1989)

The proponent of newly discovered evidence must satisfy all of the prerequisites from *Golleher* and *Meeks* before a reversal will be granted. *Witherspoon v. State*, 767 So.2d 1065, 1067 (¶ 6) (Miss. Ct. App. 2000). *See also Moore* at 668., *Black v. Stone Lumber Co.*, 63 So.2d 405, 407 (Miss. 1953)

The new evidence offered into the record via the affidavit of Paul Graves' sister, Waillene Jennings, would be able to change the verdict at a new trial. The version of the events that Jennings testified and swore to in her affidavit are consistent with the theory of the case that Paul Graves and

the other defense witnesses presented. [Tr. 440-41]. Jennings' affidavit and her testimony clearly present evidence that Spann said she saw A.C., and not Paul, as the aggressor and that A.C., and not Paul, had possession of a weapon. This honorable Court has previously found that when new evidence substantially supports the defendant's theory of the case, the defendant's motion for new trial should be granted. *Hunt v. State*, 877 So.2d 503, 512-13 (§ 51) (Miss. Ct. App., 2004)

During her trial testimony, Spann testified that Paul came out of the house quickly toward A.C. and that A.C. said something about Paul having a gun. [Tr. 117] This testimony obviously had some bearing on Paul's conviction. However if a new trial were to be granted where Jennings was allowed to testify as to what she was told by Spann at the hospital on the night of the incident, it is highly probable that a jury would reach a different verdict. Indeed if Spann's testimony were called into question, the state would be left with Clyzell Smith as its only "eyewitness." Smith's testimony is hardly enough to convict. Smith testified that he never saw who originally had the gun and admitted that he may not have been able to see Paul and A.C.'s entire argument. [Tr. 157, 161, 166] Furthermore, with doubt cast on Spann's testimony, Smith would have been the only witness whose testimony painted Paul as the aggressor. Smith's testimony would have to be weighed against that of Paul Graves, Kevin Preston, Waillene Jennings and Dwainina Spann. In light of the doubt cast on Spann's testimony by Waillene Jennings' affidavit and testimony, a different outcome at a new trial was highly likely, and thus, the first *Golleher* requirement is fulfilled.

Shortly after the trial ended, Paul's sister, Waillene Jennings, filed an affidavit, informing the defense attorney that Spann's trial testimony was inconsistent with her earlier statements to Paul's family. The submission of the affidavit after the trial ended meets the second *Golleher* requirement. [Tr. 446].

The evidence presented by Waillene Jennings would not have been uncovered by the due

diligence of Paul Graves' attorney. Jennings herself testified that she had no reason to believe that Spann would not offer testimony similar to the story that she had told on the night of the incident. [Tr. 446]. Consequently, since Jennings did not think Spann would offer different testimony, she had no reason to tell Graves' attorney about Spann's prior statements to her. Therefore the attorney was as diligent as he could be expected to be in such a situation, and thus the third *Golleher* prerequisite is met.

The evidence presented by Waillene Jennings was material and not cumulative or impeaching. The standard for materiality is that if the evidence were disclosed to the defense, there is a probability sufficient to undermine the outcome of the proceeding that had the evidence been disclosed, the result of the trial would have been different. *Crawford v. State*, 867 So.2d 196, 204 (¶ 10) (Miss. 2003).

III. THE TRIAL COURT DEPRIVED GRAVES OF HIS CONSTITUTIONAL RIGHT TO A FUNDAMENTALLY FAIR TRIAL BY EXCLUDING TESTIMONY OF AC'S PRIOR INCARCERATION, AS THE DEFENSE WAS UNABLE TO FULLY DEVELOP ITS THEORY OF DEFENSE.

The trial court deprived Graves of his constitutional right to a fundamentally fair trial when it prevented the defense from presenting testimony of AC Graves' previous incarceration.

The trial court erred by granting the state's motion in limine to exclude testimony regarding the prior convictions of A.C. Graves. In doing so, the trial court deprived Graves of his constitutional right to a fundamentally fair trial. "The focus of an appellate court's review of the conduct of a trial is limited to the consideration of whether the trial court, by one or more of its rulings, has committed an error of such magnitude that the appellant has been denied a fundamentally fair trial." *Allison v. State*, 724 So.2d 1014, 1018 (¶10) (Miss. Ct. App.1998)

According to the Mississippi Rules of Evidence, when a defendant claims to have acted in

self-defense, the court should allow inquiry into a victim's character to prove that the victim was the aggressor and that the defendant acted in self-defense. MRE 404 (a)(2). Furthermore, the Rules of Evidence authorize proof of specific instances of conduct when a trait of character of a person is an essential element of a charge, claim or defense. MRE 405 (b).

In this case, Paul Graves sought to show that he acted in self-defense in the altercation with his brother. In order to show that he acted in self-defense, Paul testified that he had previously been shot by his brother. However, because the state's motion in limine to exclude A.C.'s prior convictions was granted, the state was able to argue that the shooting, which occurred in the late 1990s, was too attenuated from the incident in question to be relevant. However if the motion had not been granted, Paul's lawyer's would have been able to show that within a year of Paul being shot by A.C., A.C. had gone to the federal penitentiary and that he had only returned from prison three or four weeks before the incident in question. This is hardly too attenuated of a time period when one takes into account the fact that the actual time that Paul was in contact with A.C. following the original shooting was a little over a year, due to A.C.'s time in jail. However, this defense was rendered useless by the court's granting of the motion in limine excluding A.C.'s prior bad acts.

The granting of the motion in limine also kept Paul's attorney from submitting evidence regarding why it would not have been possible for Paul to have retrieved a gun from inside his mother's house. Paul and his mother each wanted to testify that they did not keep a gun in the house because it was illegal for A.C. to be in the house with guns. [Tr. 449-50]. Exclusion of evidence of A.C.'s time in jail prevented Paul's attorney from eliciting testimony as to why Paul could not have gone into the yard to speak with A.C. armed. This was a crucial part of the defense's case that could not be presented due to the granting of the motion in limine.

A motion in limine is only to be granted when the evidence in question would be

inadmissible at trial under the rules of evidence and statements made during the trial would tend to prejudice the jury. *Williams v. State*, 991 So.2d 593, 606 (Miss. 2008) As previously stated, the Mississippi Rules of Evidence allow for testimony to be given regarding specific instances of conduct when a defendant claims to have acted in self-defense. It is indeed true that evidence of prior acts is not to be submitted to the jury as proof of commission of a similar act. *Denham v. State*, 966 So.2d 894, 898 (Miss. Ct. App. 2007) There are proper uses for evidence of prior acts, namely to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. *Lockett v. State*, 459 So. 2d 246, 253 (Miss. 1984); MRE 404 (b).


When evidence has both a proper and improper use, the solution is not to simply exclude the evidence. Indeed both case law as well as the Mississippi Rules of Evidence mandate a limiting instruction to prevent the jury's misuse of the evidence. *Wright v. State*, 797 So.2d 1028, 1030 (Miss. Ct. App. 2001), MRE 105. It was not the proper course of action for the circuit court judge to simply exclude all of the evidence of A.C. Graves' convictions via a motion in limine. Rather, the proper course of action was to tell the jury that the only issue that Evidence of his convictions was highly relevant to the proving of Paul Graves' case, namely that he acted in self-defense. However, since the judge improperly granted the state's motion to exclude such evidence, Paul was unable to fully develop his case. Therefore, since the granting of the motion in limine denied Paul Graves the right to fully develop his case, this Honorable Court should overturn the verdict of the circuit court.

CONCLUSION

Graves requests this Honorable Court to reverse the trial court's decisions and remand this case for a new trial based on the alleged errors presented above. In addition, Graves requests that the Court rule in his favor for any plain errors the Court may discover that have not been announced in the brief.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Paul Graves, Appellant

By: 
Erin E. Pridgen, Miss. Bar No. 102352
Counsel for Appellant

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 N. Lamar St., Ste 210
Jackson MS 39201
601 576-4200

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 **BRIEF OF THE APPELLANT** to the following:

Honorable Roger T. Clark
Circuit Court Judge
P.O. Box 1839
Gulfport, MS 39502

Honorable Cono Caranna
District Attorney, District 2
Post Office Box 1180
Gulfport, MS 39502

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

This the 15th day of June, 2009.


ERIN E. PRIDGEN
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200