

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

**JAMAL ANTWAN PRITCHETT**

**APPELLANT**

**VS.**

**NO. 2009-KA-0325-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## BRIEF FOR THE APPELLEE

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

previously imposed sentence.

After denial of post-trial motions this instant appeal was timely noticed.  
(Notice of Appeal, c.p. 35).

## STATEMENT OF FACTS

Defendant went to a Texaco gas station and bought some items. There was only a lone, older, clerk working the gas station. Defendant went to visit some friends and they collectively decided to rob a store. The Texaco was chosen (it only had a lone clerk), a weapon was obtained, and they went to the store. Defendant had agreed with his two co-conspirators to go in first and wave if it was clear. The store surveillance shows defendant entering the store and waving. Two gunman entered and robbed the clerk at gunpoint. Defendant scooted out of the store and the two gunman followed seconds later. [State's Exhibits 2-7.]

## SUMMARY OF THE ARGUMENT

### I.

THE 'GANG' CONNECTION TO DEFENDANT WAS MINIMAL. ANY REFERENCE TO GANG MEMBERSHIP WAS HARMLESS.

While the word 'gang' was used (sparingly) there was no real connection made that defendant acted as part of a gang in committing the armed robbery. The reference to 'gang' was collateral in describing what happened as such was admissible under MRE 404(b).

### II.

THERE WAS AMPLE EVIDENCE TO SUPPORT THE JURY VERDICT OF GUILTY.

The jury heard testimony and saw videos of defendant at the Texaco station before the robbery and then later during the robbery. There was testimony of the two masked robbers implicating defendant in the planning and execution of the armed robbery. The jury heard all the evidence, conflicts and inconsistencies included, and found defendant guilty.

## ARGUMENT

### I.

THE 'GANG' CONNECTION TO DEFENDANT WAS MINIMAL.  
ANY REFERENCE TO GANG MEMBERSHIP WAS HARMLESS.

Counsel for appellant has presented a well cited argument regarding the use of

'gang' evidence at trial.

The State, predictably, views it totally differently. First, there is the claim that

gang membership was brought up on numerous occasions.

The first mention was pre-trial, the jury was out, and defense objected to the

reference to gangs in the statements of defendant. Specifically, Exhibits 4, 5, 6, 7.

A closer examination only shows that 'gangs' is mentioned in just Exhibit 7. And it

doesn't even really connect to defendant.

Question by Det. Arrington: Are all of you that you have described in  
this robbery in the same gang?

Pritchett: No sir, only two, the other two are from a different gang.  
Question by Det. Arrington: Who are in what gang?

Pritchett: I can't say what gang.

[Taken, with party names added, from Exhibit 7, page 2].

The prosecutor argued that it showed a possible gang connection and the judge

ruled it was admissible. Tr. 103-105. The four exhibits were entered as evidence and

referenced by Detective Arrington in his testimony. There was no mention of an

'gang' affiliation or attention drawn to that wording within those documents.

The next mention of 'gangs' is later in Detective Arrington's testimony when



he tells of executing a search warrant on a home. The home was NOT defendant's.

On page 121 of the transcript the word 'gang' is mentioned twice in describing the

decor of one of the rooms searched where the gun was found. Some wall graffiti

were gang symbols. (Pitchfork with six pronged star symbol). Tr. 121. Again, there

was no direct connection made to defendant.

The closest there was to making a gang connection with defendant was during

closing when the prosecutor argued defendant helped plan this crime in a room

decorated with "...pitchfork and six pronged stars on the wall." Tr. 193.

¶ 15. "Evidence of other bad acts committed by a defendant is not generally admissible as a part of the State's case-in-chief." Powell v. State, 878 So.2d 144, 149 (¶ 21) (Miss.Ct.App.2004). "The reason for the rule is to prevent the State from raising the inference that the accused has committed other crimes and is therefore likely to be guilty of the offense charged." Denham v. State, 966 So.2d 894, 898 (¶ 18) (Miss.Ct.App.2007). However, evidence of bad acts will be admitted under Mississippi Rule of Evidence 404(b) if they are introduced to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Id. at 899 (¶ 18) (quoting M.R.E. 404(b)).

*Bennett v. State*, 2009 WL 678713 (Miss.App. 2009).

Based upon the trial court ruling (tr. 105, citing MRE 404(b)) such was

probative and allowable to show motive, opportunity, intent, preparation, plan,

knowledge, identity or absence of mistake or accident – and, consequently, was not

error.

Accordingly, the State would ask this court to deny any relief based upon this claim of error.

participated in the robbery and the splitting of the cash. Tr.145, 168.

the armed robbery. He was there the jury could see the videos. Defendant

The jury heard the evidence and found defendant had helped plan and assist in

*Thomas v. State*, 14 So.3d 812, 823 (Miss.App. 2009).

“... [T]he jury was responsible for weighing this conflicting evidence, “evaluating the credibility of witnesses, and determining whose testimony should be believed.” Ford v. State, 737 So.2d 424, 425 (¶ 8) (Miss.Ct.App.1999). From the evidence presented, we find that reasonable, fair-minded jurors could have concluded that Thomas was guilty of armed robbery. This issue is without merit.

robbers immediately follow in the same direction to the vehicle.

It would also appear from the video that defendant scoots out of the store and the two

clear to come and rob the clerk. Tr.166. The video show defendant waving his hand.

was defendant was to act as a lookout and give a signal (a wave of his hand) if it was

defendant had been to the store, knew there was just one old clerk. The testimony

co-defendant's as to his involvement, planning and conspiracy. The inference being

defendant's visits to the Texaco. (Ex. 2 & 3) There was the testimony of two of his

There was an abundance of evidence. There were the videos of both of

for retrial.

Lastly, it is argued the evidence is inconsistent and defendant seeks a remand

THERE WAS AMPLE EVIDENCE TO SUPPORT THE JURY  
VERDICT OF GUILTY.

No relief should be granted on this allegation of error.

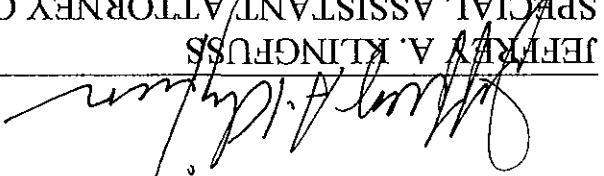
**CONCLUSION**

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict of guilty of armed robbery and the sentence of the trial court.

Respectfully submitted,

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BY:



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**CERTIFICATE OF SERVICE**

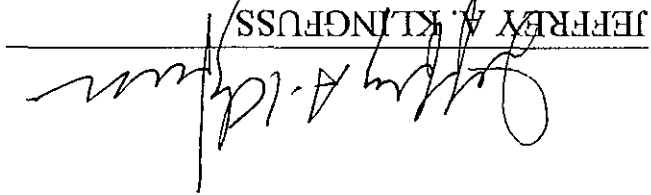
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Robert Walter Bailey  
Circuit Court Judge  
Post Office Box 1167  
Meridian, MS 39302

Honorable E. J. (Billbo) Mitchell  
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This the 1st day of October, 2009.

  
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