

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

**MICHAEL D. LEGGETT**

**APPELLANT**

**V.**

**NO. 2009-KA-1713-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.

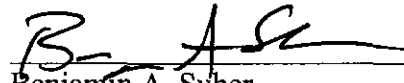
1. State of Mississippi
2. Michael D. Leggett, Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable Michael M. Taylor, Circuit Court Judge

This the 10 day of February, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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

**MICHAEL D. LEGGETT**

**APPELLANT**

**V.**

**NO. 2009-KA-01713-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE ISSUE**

**ISSUE**

**THE WEIGHT OF THE EVIDENCE SUPPORTS A MANSLAUGHTER  
CONVICTION RATHER THAN MURDER**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Lincoln County, Mississippi, and a judgment of conviction for the crime of murder against the appellant, Michael D. Leggett. The trial judge subsequently sentenced the Appellant as a Habitual Offender pursuant to Mississippi Code Annotated Section 99-19-81 to life imprisonment without the possibility

of probation or parole. The conviction and sentence followed a jury trial on February 17-20, 2009 Honorable Michael M. Taylor, Circuit Court Judge, presiding.

Leggett was previously convicted of murder on February 29, 2008. On March 31, 2008, Circuit Court Judge Taylor granted Leggett a new trial. Leggett is currently in the custody of the Mississippi Department of Corrections.

### **FACTS**

On or about October 11, 2006, Michael D. Leggett (Leggett) and Jewel Duane Douglas (Duane) were both working for Ard's Tree Service and living off of Douglas Trail near Brookhaven, Mississippi. Tr. 753-54. Duane had a camper and a trailer off of Douglas Trail. Tr. 753. Duane stayed in the camper and Leggett stayed in the trailer. *Id.* Leggett had known Duane around seven (7) weeks and lived with him around three (3) weeks. Tr. 754.

On the morning of October 11, 2006, Leggett, Duane, and Jason Ard (Ard) drove to Jackson, Mississippi, to find part for a broken truck. Tr. 756. With no luck in finding the part, all three men returned to Brookhaven. *Id.* Upon returning to Brookhaven, Duane and Leggett went to Baton Rouge, Louisiana, to get the part that they needed. *Id.*

After picking up the part in Baton Rouge, Duane and Leggett decided to stop and get some snacks and a twelve pack of beer. Tr. 757. Once they got to Hammond, Louisiana, they stopped and picked up two (2) daiquiris. Tr. 757-58. By the time they got back to Brookhaven, Duane and Leggett had consumed all the beer and both daiquiris. Tr. 758.

359 Highway 583<sup>1</sup>. *Id.* During the ride to the house, the trooper inquired with Leggett about his hand. *Id.* Leggett indicated that even though his hand was bleeding profusely, he did not need any assistance. *Id.*

When Leggett arrived at the house, no one was home. Tr. 764. Leggett sat in the swing on the front of the house until Jennifer<sup>2</sup> and Tina arrived at the house. *Id.* Tina assisted Leggett with bandaging his hand. Tr. 765. Leggett decided to call Duane. *Id.* Leggett stated that his conversation with Duane was heated. *Id.* Leggett was asking Duane for his wallet, because he was missing his wallet. *Id.* Duane was claiming that he did not have Leggett's wallet and the exchange continued. *Id.*

About the time the Leggett got off the phone with Duane, Mark Culbertson (Mark) arrived at the house with Randi Odom. Tr. 766. Leggett told the court that he talked Mark into giving him a ride over to Duane's house on Douglas Trail. *Id.* Prior to leaving the house, Leggett took three (3) steak knives with him. *Id.* He placed the knives in his waistband of his pants under his shirt. Tr. 766-67.

Leggett testified that when he and Mark pulled up in front of Duane's camper, Leggett got out and walked up to the camper. Tr. 768. Duane let Leggett in and they began to talk. *Id.* The conversation between Duane and Leggett was calm for a few minutes, however, the conversation then escalated. Tr. 768-69. Leggett began to ask where his wallet was and Duane was adamant that he did not have it. Tr. 769.

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<sup>1</sup> 359 Highway 583 is where Leggett's daughter had been earlier on October 11, 2006. Ray Odom owns the home located at 359 Highway 583.

<sup>2</sup> Jennifer is Leggett's daughter's mother.

According to Leggett, during the heated conversation Mark walked up to the camper and was standing in the threshold. Tr. 770. Duane then told Leggett that he believed Leggett's wallet was in his truck. *Id.*

Leggett testified that as Duane walked outside to find Leggett's wallet, Leggett stayed inside to gather some clothes. Tr. 771. Leggett then stepped outside of the camper and Mark had hit Duane with an object that appeared to be a tire iron. Tr. 771-72. Duane fell head first into the gravel. Tr. 771.

Leggett then stated that Mark took off for his car and he took off toward Duane. Tr. 773. After standing by Duane for a few seconds, Leggett went and got into car with Mark. Tr. 774. Leggett continued to state that he left because Mark was leaving and that he saw head lights from a truck coming down the driveway. *Id.* Leggett said that he immediately questioned Mark about what he had done to Duane. *Id.*

While driving back to 359 Highway 583, a vehicle followed them back to the house. Tr. 775. Upon arriving at the house on Highway 583, Leggett stated that he went into the woods. Tr. 776. Leggett stayed in the woods until he saw blue lights pull in the driveway. *Id.* At that point Leggett thought it was safe enough to go back into the house, and met the arresting officer at the front door. *Id.*

Leggett's co-defendant, Mark, claims a slightly different version of the events on the evening of October 11, 2006. Mark stated that upon arriving at the camper of Duane, he heard Leggett and Duane yelling and cussing. Tr. 704. Mark continued to testify that

after a short period of time, he walked up to the camper and told Leggett that they needed to go, let's get out of here and leave him alone. *Id.*

Mark claimed that Leggett was arguing with someone and waiving a knife around in the air. Tr. 704-05. Then Leggett came out of the trailer holding Duane by his arm and continuing to waive the knife in the air. Tr. 705. Mark stated at that point, he told Leggett, "let's go". *Id.* Mark then went to the car. *Id.*

Duane got loose from Leggett and began to run towards a truck. *Id.* Mark claims that Leggett said "get him". Tr. 705-06. Mark by his own admission threw a tire tool at Duane. Tr. 706. The tire tool hit Duane in the back. Tr. 707. Duane stumbled on his knees. *Id.* Mark continued to testify that Leggett then ran upon Duane and with the tire tool began swinging at Duane. *Id.* Mark stated that Leggett then threw the tire tool toward a truck and went to the car. Tr. 709.

Mark told the court that once they got back to the car, they drove straight back out of the driveway passing a truck along the way. Tr. 711. Mark and Leggett proceed back down to 359 Highway 583.

Mark and Leggett were both ultimately arrested at the house located at 359 Highway 583. Mark previously pled guilty to manslaughter and testified against Leggett at trial. Leggett is currently incarcerated with the Mississippi Department of Corrections.

### **SUMMARY OF THE ARGUMENT**

Taking the state's case in the best light against Leggett, the weight of the evidence supported a manslaughter conviction rather than murder.



## ARGUMENT

### **THE WEIGHT OF THE EVIDENCE SUPPORTS A MANSLAUGHTER CONVICTION RATHER THAN MURDER**

Looking at the state's case in the best possible light, the verdict in this case should have been for manslaughter, not murder. "Ordinarily, whether such a slaying is indeed murder or manslaughter is a question for the jury." *Windham v. State*, 520 So. 2d 123, 127 (Miss. 1988). The Supreme Court has reversed jury verdicts of murder on more than one occasion remanding for sentencing only for manslaughter. Leggett is asking that the Court reverse and grant him a new trial or simply render a manslaughter conviction.

Manslaughter is defined in **Mississippi Code Annotated Section 97-3-35** (1972):

The 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.

Murder requires premeditation or deliberate design. **Mississippi Code Annotated Section 97-3-19(1)** (1972):

Although our law has never prescribed any particular *ex ante* time requirement, the essence of the required intent is that the accused must have had some appreciable time for reflection and consideration before pulling the trigger. *Blanks v. State*, 542 So. 2d 222, 226-227 (Miss 1989).

This Court has defined "heat of passion" as:

... a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of

one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.

*Mullins v. State*, 493 So. 2d 971, 974 (Miss. 1986). See also *Graham v. State*, 582 So.2d 1014, 1017-18 (Miss.1991).

In addition to “passion and anger” there must also be “such circumstances as would indicate that a normal mind would be roused to the extent that reason is overthrown and that passion usurps the mind destroying judgment.” *Parker v. State*, 736 So.2d 521, 525(¶ 17) (Miss. Ct. App.1999) (quoting *Calvin v. State*, 175 Miss. 699, 168 So. 75, 76 (1936)).

In this case, under either version of the homicide, all of the evidence shows that Leggett acted on impulse without premeditation. There is no proof of premeditation to commit a murder. Leggett and Duane had been in arguments throughout the day. Leggett was visible upset after he was let go by Ard. However, Leggett hit the window of the trailer and did not attempt to hit Ard or Duane. Tr. 761.

Leggett never mentioned to anyone that he had intentions of killing Duane. He only wanted to get his wallet. Furthermore, upon Leggett and Mark arriving at Duane’s camper, Leggett when inside the camper and asked Duane for his wallet. Tr. 769.

Leggett even testified that Duane was going outside to getting his wallet. Tr. 770. Leggett did not go to Duane’s camper to kill him, there was never premeditation or deliberate design.

Even if the version of events told by Mark is true, the evidence does not show that Leggett had any intention of killing Duane. Mark stated to the court that as Leggett and Duane were coming outside, Duane got loose from Leggett. Tr. 705. Leggett told Mark to get him. Tr. 705-06. Mark by his own admission stated that he threw the tire iron and hit Duane in the back. Tr. 706.

The mere fact that Leggett said get him does not imply that Leggett was ordering Mark to kill him. Leggett could have very well indicated to Mark to merely catch Duane in order to get his wallet. The premeditation or deliberate design is missing in this case.

In *Dedeaux v. State*, 630 So. 2d 30, 31-33, (Miss. 1993) the Court reviewed the facts of a barroom shooting where the Defendant was charged and convicted of murder for shooting his girlfriend's husband. Similar to this case, there was evidence of animosity. *Id.* The defendant Dedeaux shot the victim three times, twice while the victim was moving toward him, and a third time as the victim lay on the ground. *Id.* In the present case, Mark indicated that he thinking that Duane had a gun or was going to get a gun. Tr. 709.

Even though the defense did not request a manslaughter instruction in the *Dedeaux* case, the Supreme Court found that the facts only supported a conviction for manslaughter because “this clearly was a killing in the heat of passion” even though a “greater amount of force than necessary under the circumstances” was used. *Id.* The *Dedeaux* court reversed the murder conviction and remanded the case for re-sentencing for the crime of manslaughter. 630 So. 2d 31-33.

In *Clemons v. State*, 473 So. 2d 943 (Miss. 1985), the Court pointed out that there was “such contradictory testimony that it is virtually impossible to reconstruct what actually happened”. 473 So. 2d at 944. The *Clemons* case involved a barroom stabbing. The *Clemons* court pointed out “there is more than enough conflicting evidence to cast at least a reasonable doubt as to murder”, then, reversed the murder conviction and remanded for sentencing for manslaughter. *Id* at 945.

In the case at bar, we see a similar factual scenario as in *Dedeaux* and *Clemons*. Namely, there is some sort of argument throughout the day between Leggett and Duane with provocation by the victim and reaction by the accused involving more than reasonable force, resulting in the unfortunate and unnecessary death of the victim. Leggett respectfully asks this court to review the facts of this case with the guidance of the *Dedeaux*, and *Clemons*, decisions, and to reverse the murder conviction and remand the case for a new trial or sentencing for manslaughter.

In an evaluation of sufficiency of evidence the reviewing court must decide whether any of the evidence “point[s] in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty.” *Edwards v. State*, 469 So.2d 68, 70 (Miss.1985) (citing *May v. State*, 460 So.2d 778, 781 (Miss.1984)) (emphasis added). If different conclusions could have been reached by reasonable jurors with respect to every element of the offense, the evidence is sufficient. *Bush v. State*, 895 So.2d 836, 843(¶ 16)

(Miss.2005) (citing Edwards, 469 So.2d at 70). *See also Smith v. State*, 839 So.2d 489, 495(¶ 12) (Miss.2003).

Here, different conclusions could not have been reached. No reasonable juror could have found murder; because, under either version of what happened Duane died as a result of an impulse brought on by sufficient provocation.

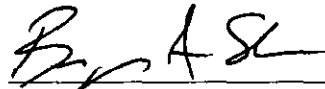
The verdict was against the overwhelming weight of the evidence. Leggett therefore respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and the Court should reverse the murder conviction and remand the case for a new trial or sentencing for manslaughter.

**CONCLUSION**

Michael D. Leggett is entitled to have his conviction reversed with remand for a new trial or at least a rendering of a manslaughter conviction with remand for resentencing.

Respectfully submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Michael D. Leggett, Appellant

BY:



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**CERTIFICATE OF SERVICE**


I, Benjamin A. Suber, Counsel for Michael D. Leggett, 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:

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This the 10 day of February, 2010.

  
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