

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**JENNIFER WEATHERSPOON**

**APPELLANT**

**V.**

**NO. 2010-KA-0221-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**On Appeal from the Circuit Court of Bolivar County, Mississippi  
Second Judicial District**

**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**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.

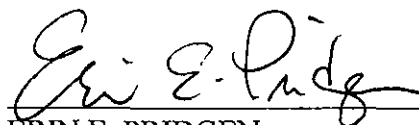
1. State of Mississippi
2. Jennifer Weatherspoon, Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Albert B. Smith, III, Circuit Court Judge

This the 18<sup>th</sup> day of June, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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**STATEMENT OF THE ISSUE**

**WEATHERSPOON IS ENTITLED TO A NEW TRIAL BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT HER MOTION FOR A NEW TRIAL.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Second Judicial District Circuit Court of Bolivar County, Mississippi. In 2006, Jennifer Weatherspoon was indicted on one count of aggravated assault for the shooting of Segrain Bacardi Foster, and one count of murder for the killing of Derrick McKinney.[R.17] Following the trial, the jury was unable to reach a verdict and the court granted a mistrial on both charges. [R.E. 9]

Weatherspoon was re-indicted on the charges in the Honorable Albert B. Smith, III presided over the second trial. At the conclusion, the jury rendered guilty verdicts on both counts. [R.E.13] The court sentenced Weatherspoon to serve twenty (20) years for the aggravated assault charge, and to

serve a life sentence for the murder charge. [R.E. 20] Weatherspoon is currently serving her sentence the custody of the Mississippi Department of Corrections.

Aggrieved, Weatherspoon filed a motion for JNOV, or in the alternative, a motion for a new trial, which the court denied. [R.E.17] Seeking further relief, Weatherspoon petitions this Court and has timely noticed this appeal.[R.E. 23]

### **STATEMENT OF THE FACTS**

One Friday night, several people were hanging out at the Hurricane nightclub in Cleveland, Mississippi. Carlos White (also known as “Primos”) was one of the club’s patrons. [Tr. 82] He arrived at the club and met his long-time friend, Derrick McKinney (also known as “Rell”). [Tr. 82-83] The men were standing at a table when Jennifer Weatherspoon entered and began talking to the men. [Tr. 83] White and Weatherspoon had dated about seven or eight years prior. [Tr. 84] While Weatherspoon and the men were flirting, Weatherspoon’s mother approached and warned her against such behavior since her boyfriend was just outside of the club. About this time, Weatherspoon’s boyfriend, Damien Johnson, entered the club and began cursing and grabbed Weatherspoon by the neck. He did not say anything to White or McKinney at this time. [Tr. 85]

Once White and McKinney stepped outside of the club, Johnson began arguing with the men. McKinney walked away but White remained in the confrontation. Before long, Johnson punched White and Johnson began fighting in the club’s parking lot.

There were several people standing outside of the club on this dark night. [tr. 207] According to several witnesses, the only light that shown in the parking lot was the light radiating out of the opened front door of the club, as well as the light coming from behind the building. [Tr. 116]

Despite the dark conditions, White's brother, Segram Bacardi Foster, was not too far from the men, and headed toward the fight to assist his brother. [Tr. 123-24] McKinney told White earlier that he was headed home, but after seeing the altercation, he ran back across the street to attempt to break up the fight between the men. [Tr. 227] Shortly after Foster joined the fight, several witnesses claimed Weatherspoon reached into her purse and pulled out a small handgun. [Tr. 107,179, 196, 229] According to them, Weatherspoon was the only person in the parking lot with a weapon at the time and she began firing at the men. A bullet hit Foster in the back. [Tr. 127] Hearing the shots, McKinney retreated from the group, however, he was struck in his chest and back with a .22 caliber bullet. [Tr. 311-12] McKinney later died from the gunshot wound to his chest. [Tr. 320]

The police were unable to locate the gun that was used in the shootings. [Tr. 264] Dr. Steven Hayne, the pathologist that performed the autopsy on McKinney's body, testified that he could not determine if the first gunshot wound was caused by the same gun as McKinney's fatal gunshot wound. [Tr. 322] According to Jessie Robinson, White's and Foster's mother, Jennifer told her several months after the incident that she shot Foster, but that she was not responsible for shooting McKinney. [Tr. 157] Police received a report that Henry Taylor was also responsible for pulling out a gun and firing it that evening. [Tr. 270]. Police found Taylor several months after the shooting. [Tr. 271] They tested and excluded his weapon as the gun that was used to kill McKinney. [Tr. 272] However, police were not certain if this tested weapon was the same gun that Taylor had on the night of the shooting. [Tr. 271]

Weatherspoon did not testify at trial. [Tr. 327] Following the trial, Weatherspoon was sentenced to serve a life sentence for McKinney's death and twenty (20) years for Foster's shooting injury. [R.E. ]

## **SUMMARY OF THE CASE**

There was a tragic shooting at the Hurricane Club in Cleveland, Mississippi, and as a result, three lives have been changed forever. Seagram Bacardi Foster was injured by a bullet and Derrick McKinney was fatally wounded. However, perhaps the greatest tragedy is that the jury was allowed to convict Jennifer Weatherspoon of murder when the State based its case on weak and tenuous evidence.

## **ARGUMENT**

**WEATHERSPOON IS ENTITLED TO A NEW TRIAL BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT HER MOTION FOR A NEW TRIAL.**

### ***i. Standard of Review***

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

### ***ii. Weatherspoon's murder conviction is based on extremely weak and tenuous evidence.***

Weatherspoon voluntarily spoke with police and informed them that she was involved in the



shooting at the nightclub. [Tr. 250] She even told Foster's mom, Jessie Robinson that she was the person that shot Foster. [Tr. 157] However, the jury's verdict finding her guilty of shooting and killing Derrick McKinney is based on extremely weak and tenuous evidence.

Given the total circumstances of the events, it was very likely that someone else fired the fatal shot into McKinney. There is only extremely weak evidence that suggests Weatherspoon was the person that shot and killed him. Police did not have murder weapon and the bullet found in McKinney could not be traced back to a particular gun. [Tr. 264] The MS Crime Lab determined that McKinney was shot with a .22mm bullet, but it could not determine the source of that bullet. [Tr. 296]

According to Lab Technicians, .22 revolvers are very common weapons. [Tr. 303] Anyone at the club could have pulled out the weapon in the midst of the melee. In fact, police received a report that Henry Taylor, a patron of the club, pulled out his weapon and fired it that evening. [Tr. 270] Following the shooting, the police were unable to locate Taylor. However, several months later, police were about to cross-reference the gun Taylor had confiscated in another matter with this case. Taylor's weapon was excluded from being the murder weapon. [Tr. 271] However, there is little proof that the gun that was used in the cross-reference was the same gun that Taylor had in his possession on the night of the shooting.

Also, while there were many witnesses that said Weatherspoon was the only person in the parking lot with a gun, Foster admitted during trial that he also retrieved a gun after he was shot. [Tr. 134] He went to his car and pulled out his TEC-9, questioning the crowd about the identity of the shooter. [Tr. 135]

All of the witnesses agree that they saw Weatherspoon with a gun and that she was shooting in the direction of the fight. Many saw that she was the only person with a gun. However, none of the witnesses were in a position to see when McKinney was actually shot.

First, White and Foster admitted that they ran behind the club as soon as they heard gunshots. [Tr. 87] They did not see McKinney during this time and he did not even know McKinney had been shot until he arrived at the hospital. [Tr. 87-88] White admitted that he did not see the gun that shot McKinney and he had no idea whether McKinney was shot before or after Foster. [Tr. 104]

Romayel Patton went to the club that night with his cousin, Reggie Brown. [Tr. 174-75] Patton saw McKinney at the club while Patton was sitting in his car. [Tr. 176] He saw McKinney run after the shots rang out and he saw Weatherspoon shooting. [Tr. 176-77] When the shooting began, however, he ducked down in the car for his own safety. [Tr. 192] Likewise, Patton acknowledged that there were a lot of people standing outside at the time. [T. 179]

Rodya Nicks came to the club with McKinney that night. [Tr. 224] When the shooting occurred, he and McKinney started running back across the street to the car. [Tr. 228] While he testified that he did not see anyone else shooting, his eyes were most likely concentrating on what was in front of him as he ran. [Tr. 230] He was headed to his car - out of harms way.

In addition to the many witnesses who did not see the shot that killed McKinney, the police found several caliber shell casings outside of the club. [Tr. 242] While the murder weapon was never recovered, the multiple shell casings, along with the fact that there were no eyewitnesses to McKinney's shooting provide enough reasonable doubt that no reasonable jury should have convicted Weatherspoon of murder.

### CONCLUSION

The jury should have resolved the conflicting evidence in this case in favor of a not guilty verdict. Because the jury refused to do this, its guilty verdict was based on weak and tenuous evidence. The trial court should have granted Weatherspoon's motion for a new trial. Since the trial court erred in denying this motion, Weatherspoon prays that this Court will take the correct action and reverse this case and remand for a new trial.

RESPECTFULLY SUBMITTED,

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For JENNIFER WEATHERSPOON, Appellant

By:



ERIN E. PRIDGEN, MISS. BAR NO [REDACTED]  
STAFF ATTORNEY

**CERTIFICATE OF SERVICE**

I, Erin E. Pridgen, Counsel for Jennifer Weatherspoon, 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 Albert B. Smith, III  
Circuit Court Judge  
Cleveland, MS 38732

Honorable Laurence Y. Mellen  
District Attorney, District 11  
Post Office Box 848  
Cleveland, MS 38732

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

This the 18<sup>th</sup> day of June, 2010.

  
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