

● ORIGINAL ●

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD ANTHONY BUDD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

NO. 46977

FILED

AUG 22 2006

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APPELLANT'S OPENING BRIEF

(Appeal from Judgment of Conviction)

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TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES	ii
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
ARGUMENT	9
I. THE EVIDENCE AT TRIAL FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT GLENFORD BUDD KILLED THE THREE MEN WHO DIED IN THIS CASE, AND A CONVICTION NOT SUPPORTED BY THE EVIDENCE VIOLATES FEDERAL AND STATE DUE PROCESS GUARANTEES. 9	
CONCLUSION	11
CERTIFICATE OF COMPLIANCE	13
CERTIFICATE OF MAILING	14

TABLE OF AUTHORITIES

PAGE NO.

Cases

<u>Ewish v. State</u> , 110 Nev 221, 871 P.2d 306 (1994)	9
<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979)	10
<u>Kazalyn v. State</u> , 108 Nev. 67, 825 P.2d 578 (1992),	9
<u>Nix v. State</u> , 91 Nev. 613, 541 P.2d 1 (1975)	9
<u>Origel-Candido v. State</u> , 114 Nev. 378, 956 P.2d 1378 (1998) ...	10

Statutes

NRS 175.191	9
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GLENFORD ANTHONY BUDD,) NO. 46977
)
 Appellant,)
)
 vs.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)

APPELLANT'S OPENING BRIEF

ISSUE PRESENTED FOR REVIEW

I. THE EVIDENCE AT TRIAL FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT GLENFORD BUDD KILLED THE THREE VICTIMS IN THIS CASE, AND THREE FIRST DEGREE MURDER CONVICTIONS NOT SUPPORTED BY PROOF BEYOND A REASONABLE DOUBT VIOLATES FEDERAL AND STATE DUE PROCESS GUARANTEES.

STATEMENT OF THE CASE

The State charged Glenford Budd, on May 29, 2003, with three counts of Murder with Use of a Deadly Weapon. (App. I: 1-2).¹ After a preliminary hearing, a magistrate ordered Budd to answer the charges in District Court. (App. I: 10, 12-82).

The State filed an Information (App. I: 7-9) and Budd plead not guilty to the charges. (App. VII: 1973).

¹ References to the Appendix are to the volume number, then page number. The Appendix includes seven volumes. Unfortunately, mistakes were made in the preparation of the Appendix which make use of the Appendix difficult. To assist the Court in using the Appendix, please understand that the Appendix is not in chronological order. Volume I includes: certain pleadings; the preliminary hearing transcript; certain pre-trial motions; Volume II includes: certain pre-trial motions and a transcript of proceedings for Monday, December 5, 2005; Volume III includes: certain pleadings; transcript, December 6, 2006 afternoon and December 8, 2005 afternoon; Volume IV includes: transcript, December 8, 2005 morning and December 9, 2005 morning ; Volume V includes: transcript, December 12, 2005 afternoon; Volume VI includes: transcript, December 13, 2005 afternoon, December 14, 2005 afternoon; Volume VII includes: transcript, December 16, 2005, December 15, 2005.

1 On July 25, 2003, the State filed a Notice of Intent to
2 Seek the Death Penalty alleging the killings were aggravated
3 because Budd was "convicted of more than one offense of murder
4 in the first or second degree" in this case and the killings
5 "were committed to avoid or prevent a lawful arrest or to effect
6 an escape from custody." (App. I: 83-84).

8 The State filed an Amended Notice of Intent to Seek Death
9 Penalty on October 8, 2004 in which the State deleted the
10 "lawful arrest" aggravator, relying solely on the "more than one
11 offense of murder" aggravator. (App. II: 336-37).

13 The trial commenced December 5, 2005 (App. VII: 1979) and
14 the jury returned three guilty verdicts of First Degree Murder
15 with Use of a Deadly Weapon on December 13, 2005. (App. VII:
16 1983).

18 A penalty proceeding pursuant to NRS 175.552 commenced
19 December 14, 2005 (App. VII: 1984), and the jury returned a
20 Special Verdict on December 16, 2005 concluding the State had
21 proved beyond a reasonable doubt the one alleged aggravating
22 circumstance, that "[t]he murder was committed by a person who
23 has, in the immediate proceeding, been convicted of more than
24 one offense of murder in the first or second degree." (App. VII:
25 1715).

27 The jury also returned a Special Verdict finding that
28 certain mitigating circumstances had been established: No
significant history of prior criminal activity by Budd; killing

1 committed while Budd was under the influence of extreme mental
2 or emotional disturbance; Budd's youth; Budd's diminished
3 intelligence; the impact of Budd's proposed execution on his
4 family members; the impact of his proposed execution on his
5 friends; and "the apology of the defendant." (App. VII: 1716-
6 17).

8 After finding that the mitigating circumstances did not
9 outweigh the aggravating circumstances, the jury sentenced Budd
10 to three sentences of life imprisonment without the possibility
11 of parole. (App. VII: 1712-14; see generally 1725-27).

13 The Honorable Nancy Saitta, District Court Judge, sentenced
14 Budd, on February 22, 2006, to serve the three life sentences
15 consecutively. (App. VII: 1966-67). The State filed the
16 Judgment of Conviction on March 1, 2006 and Budd filed a timely
17 Notice of Appeal. (App. VII: 1966-67, 1970-71).

20 STATEMENT OF THE FACTS

21 The May 26, 2003 Discovery

22 During the evening of May 26, 2003, two Las Vegas
23 Metropolitan Police officers in an unmarked car patrolled an
24 apartment complex in Las Vegas called the Saratoga Palms at 2895
25 East Charleston Boulevard. The apartment had a reputation for a
26 high level of narcotics and gang activity. (App. IV: 1072-75).
27 As the officers drove through the complex, they heard what they
28 believed to be gunshots. (App. IV: 1079-81). They also saw a

1 group of people gathered outside an apartment. They were
2 "frantically running around, talking to each other, and pointing
3 upstairs." (App. IV: 1082).

4 The police exited the car and approached the apartment.
5 One bystander told the police someone had been shot. The police
6 noticed that some members of the group walked away as the
7 officers approached the scene. (App. IV: 1146).

9 The two officers approached Apartment 2068 and found a dead
10 man lying outside on the balcony. (App. IV: 1086; 1125).

12 Believing the assailant might still be inside Apartment
13 2068, the officers entered the apartment. Smoke from a recently
14 fired gun hung in the air.

15 They found another body inside with a gunshot wound to the
16 back of the head. This person was also dead. (App. IV: 1126).

18 Further exploration of the apartment lead to the discovery
19 of a third body in the back hallway. The third person could be
20 heard breathing. (App. IV: 1086-88, 1127).

21 Emergency personnel appeared at the scene and evacuated the
22 one living person. The police encountered no one else inside
23 the apartment. (App. IV: 1088-89).

25 The man taken to the hospital died. The three victims were
26 ultimately identified as Dajon Jones, Derrick Jones, and Jason
27 Moore. (App. III: 844). All three died as a result of gunshot
28 wounds. (App. III: 905-25).

1 **Two Witnesses & Two Stories**

2 The police ultimately contacted Lazon Jones, brother of
3 Dajon Jones. (App. III: 897). Lazon and Dajon lived in
4 Apartment 2068 with their friends, Derrick Jones and Jason
5 Moore, and other family members. (App. III: 844).
6

7 Lazon Jones told the police he believed a friend of his
8 known as "A.I." or Glenford Budd killed his brother and the two
9 friends.

10 Lazon described Budd as a friend who played basketball with
11 this group of friends. They had all known each other for at
12 least a month. (App. III: 845-50, 875).
13

14 Lazon claimed the group played basketball the afternoon of
15 May 26, 2003, and A.I. claimed that Derrick had stolen his
16 marijuana. (App. III: 849, 877, 878).
17

18 Lazon also claimed that confrontations occurred during the
19 basketball game, and A.I. made threats about "putting slugs"
20 into them. (App. III: 850).
21

22 After basketball, the group retired to Apartment 2068 where
23 they spent the evening "Just rapping, kicking it, watching TV."
24 (App. III: 852, 881). Lazon testified at trial that nobody was
25 at the apartment except himself, Dajon, Derrick, Jason, and A.I.
26 They had all been drinking beer, about three beers each. (App.
27 III: 884, 886). Lazon admitted he and A.I. were both
28 intoxicated. (App. III: 886).

1 A.I. left the apartment to get some beer, and when he
2 returned, Lazon claimed A.I. went into a room where Dajon was
3 and asked, "Where's my stuff at?" Lazon claimed he heard
4 gunshots. Lazon admitted he did not see A.I. shoot Dajon
5 because these events occurred in a different room. (App. III:
6 883, 890-93).

8 Lazon testified he fled the apartment after hearing the
9 gunshots, and so was not present to see what happened to Derrick
10 or Jason. (App. III: 894).

12 Lazon testified he fled north, to Charleston Boulevard, and
13 he called 911 from a phone at a convenience store there. While
14 in the vicinity of the store, he saw A.I. on Charleston near the
15 store. A.I. had apparently fled north, too. Lazon believed he
16 saw A.I. with a gun. (App. III: 860-65, 870-71, 896).

18 The most compelling and important part of Lazon's testimony
19 was that he did not see A.I. shoot anybody inside the apartment.
20 And he was not present when two of the three killings occurred.
21 He was not present because he fled. Also, he testified no one
22 else was present at the apartment. And he testified the group
23 had been drinking beer, but not doing drugs. He also claimed
24 A.I. fled north, toward Charleston, and he saw A.I. at
25 Charleston with a gun. These key elements of Lazon's story were
26 contradicted by other witnesses.

28 One other person claimed to be an eyewitness to the
shooting. A neighbor, Celeste Palau, lived in an apartment 218

1 feet to the north and west of Apartment 2068. (App. V: 1260).
2 She told police she was sitting on the balcony in front of her
3 apartment during that dark night when she heard gunshots. (App.
4 IV: 1203). She looked in the direction of Apartment 2068 and
5 saw two people, one male, one female, running out of the
6 apartment. (App. IV: 1188-92, 1203). She believed the two
7 people were playing with firecrackers. (App. IV: 1204). She
8 believed the two people were Lazon Jones and a woman called
9 Chrissy. (App. IV: 1205).

10
11 Then she saw A.I. come out of the apartment and shoot a man
12 on the patio. (App. IV: 1192-93). She saw the shooter flee to
13 the west, not the north, as reported by Lazon. (App. IV: 1216).

14 Palau's testimony is important because she contradicted
15 Lazon's claim that no one else was at the apartment. Palau
16 clearly identified Lazon fleeing the apartment with a woman
17 named Chrissy. Lazon repeatedly denied that anyone else was
18 with him at the apartment. (App. IV: 880-87). She also
19 described the shooter fleeing due west, but Lazon testified he
20 saw A.I. a few moments after the shooting north of the apartment
21 on Charleston.

22 Lazon's testimony was also contradicted by the coroner who
23 testified that toxicology reports showed marijuana in the bodies
24 of the three dead men. There was no evidence of alcohol in
25 their bodies. (App. IV: 923).

1 **The Man Who Wasn't There: Winston Budd's Prior Testimony**

2 At trial, the State introduced the preliminary hearing
3 testimony of Winston Budd, Glenford's uncle. Budd testified at
4 the preliminary hearing that Glenford told him he shot some
5 people because they stole his marijuana. (App. V: 1384-95).
6 Budd was not present to testify at the trial because he lived in
7 Belize. The jury was not able to assess his credibility.
8

9
10 **Selling A Soul For The Chance of Parole: Greg Lewis**

11 The State also introduced at trial the testimony of
12 convicted felon Greg Lewis, an inmate from prison who testified
13 he did not like serving time in prison and desired to go home to
14 his wife and children. (App. V: 1267). He hoped to obtain
15 parole with the help of the district attorney who wrote a letter
16 to the Parole Board on his behalf. (App. V: 1272-777).
17

18 Lewis testified he knew Budd at the Clark County Detention
19 Center, and Budd told him he shot some kids at the Saratoga
20 Apartments because they took his marijuana. (App. V: 1267-69).
21 Lewis also produced a letter he claimed to have received from
22 Budd in which Budd allegedly wrote the following:
23

24
25 Blew these niggas off the earth. That's the way it
26 had to go. I only killed three, but I should have
27 killed four. Left them dead on the floor, but just
28 right before they was crying and pleading, screaming
for Jesus. Ya'll can keep the weed, because you can't
smoke it now, because your ass is in the ground. Cross
me, I blow like a bomb, took three niggas from their
Moms, I'm a thrilla killa. Ask Saratoga Palms. (App.
V: 1288).

1 The State made no effort to compare Budd's handwriting to
2 the handwriting in the letter, and no evidence suggested Budd
3 had ever had contact with the document. The only suggestion
4 that Budd wrote the letter was the word of a convicted felon who
5 traded his testimony for help in his efforts to get parole.
6

7 8 ARGUMENT

9 I. THE EVIDENCE AT TRIAL FAILED TO PROVE BEYOND A
10 REASONABLE DOUBT THAT GLENFORD BUDD KILLED THE THREE
11 MEN WHO DIED IN THIS CASE, AND A CONVICTION NOT
12 SUPPORTED BY THE EVIDENCE VIOLATES FEDERAL AND STATE
DUE PROCESS GUARANTEES.

13 Federal and State Constitutions guarantee the presumption
14 of innocence.

15 Nevada statutory law provides:

16 A defendant in a criminal action is presumed
17 innocent until the contrary is proved; and
18 in the case of a reasonable doubt whether
19 his guilt is subsequently shown, he is
entitled to be acquitted.

20 NRS 175.191. The standard of review for sufficiency of the
21 evidence upon appeal is whether the jury, acting reasonably,
22 could have been convinced of the defendant's guilt beyond a
23 reasonable doubt. Kazalyn v. State, 108 Nev. 67, 825 P.2d 578
24 (1992), Ewish v. State, 110 Nev 221, 871 P.2d 306 (1994).
25

26 Appellant recognizes the well-established rule that where
27 substantial evidence in the record supports the verdict, the
28 verdict will not be overturned by an appellate court. Nix v.
State, 91 Nev. 613, 541 P.2d 1 (1975). But a guilty verdict

1 should not be upheld merely because some evidence supporting the
2 conviction was present. The appellate court must determine if
3 there was evidence sufficient to justify a rational trier of
4 fact to find "guilt beyond a reasonable doubt." Jackson v.
5 Virginia, 443 U.S. 307 (1979).
6

7 The Due Process clause of the United States Constitution
8 protects the accused against conviction except on proof beyond a
9 reasonable doubt of every fact necessary to constitute the crime
10 alleged by the State. Origel-Candido v. State, 114 Nev. 378,
11 956 P.2d 1378 (1998).
12

13 The Appellant submits the evidence in this case does not
14 justify a rational trier of fact to find "guilt beyond a
15 reasonable doubt" for three counts of First Degree Murder.

16 While the evidence was clear that three men died from
17 gunshot wounds in this case, the evidence is murky when one
18 attempts to determine who killed the three men.
19

20 There were only two alleged eyewitnesses in this case, and
21 their testimony does not congeal into a coherent story. Lazon
22 Jones claimed he was present when the killings occurred, but he
23 did not see Budd kill anybody. He claimed nobody else was at
24 the apartment when the killings occurred except for himself, the
25 three victims, and Budd. But a witness contradicted him and
26 testified he left the apartment with a woman.
27

28 Jones also testified everyone had been drinking alcohol,
but the coroner reported no evidence of alcohol in the deceased;

1 the coroner did testify that evidence of illegal drugs were in
2 the bodies of the deceased.

3 Jones also testified he saw Budd north of the apartment
4 moments after the shooting, but another witness said the shooter
5 fled west, not north.
6

7 Celeste Palau, the other eyewitness, testified with amazing
8 precision considering she was 218 feet from the scene of the
9 shooting. Her story seems less compelling when one realizes
10 that she was there with another eyewitness, who has mysteriously
11 disappeared.
12

13 The testimony of the informants was not believable.
14 Winston Budd did not come into the courtroom and the jury could
15 not assess his credibility. Greg Lewis, a convicted felon, was
16 motivated to do what he had to do to get parole. Lying on the
17 stand was part of the price he was willing to pay.
18

19 20 CONCLUSION

21 Under these circumstances with this evidence, the State
22 failed to prove their case beyond a reasonable doubt. The
23 Appellant respectfully asks this Honorable Court to vacate the

24 / / /

25 / / /

26 / / /

1 three convictions for first degree murder and remand the case to
2 the District Court with instructions that Budd be released from
3 custody immediately.
4

5 Respectfully submitted,


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DATED this 17 day of August, 2006.

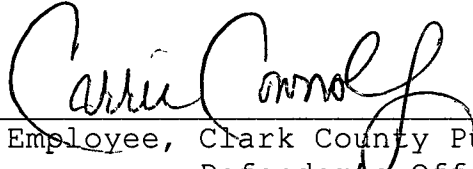
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CERTIFICATE OF MAILING

I hereby certify and affirm that I mailed a copy of
the foregoing Appellant's Opening Brief to the attorney of
record listed below on this 17th day of August, 2006.

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BY


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