

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

vs.

CASE NO. CC18-3238 DSP

WILLIAM DARBY,

DEFENDANT.

MOTION FOR NEW TRIAL

Comes now the Defendant, by and through undersigned Counsel and moves this Honorable Court for a New Trial. As grounds Defendant states as follows:

1. The Trial court erred by excluding spectators from the courtroom thus violating the Defendant's constitutional rights to a public trial.

2. The Trial Court erred by confining spectators to a video viewing room to watch the trial by video but turning off the video feed each time there was an objection, argument or controversial issue raised thus violating the Defendant's right to a public trial.

3. The Trial Court erred by violating the Defendant's constitutional right to present a defense by excluding evidence that the Defendant followed established procedures and protocol on the scene of the shooting.

4. The Trial Court erred in excluding evidence that Officer Pegues violated the procedures and protocol on the scene of the shooting thus denying the Defendant the right to present a defense.

5. The Trial Court erred in excluding evidence that the other two officers on the scene of the shooting were ordered to attend retraining on officer survival and threat assessment in confronting a person with a gun thus denying the Defendant the right to present a defense.

6. The Trial Court erred by excluding testimony by a neighbor of the deceased that the deceased had expressed a plan to lure a police officer into his house and kill them thus violating the Defendant the right to present a defense.

7. The Trial Court erred by excluding testimony of a Huntsville Police Academy Training Officer and a video of a police involved shooting used to teach Officer Survival and Threat assessment to the Defendant in the Police Academy.

8. The Trial Court erred by excluding a video offered as a demonstrative aid to illustrate action - reaction timing by witness Ron Kiker.

9. The Trial Court erred by allowing Officer Pegues to testify that she did not break protocol or established procedures in confronting a person with a gun.

10. The trial Court erred by allowing Officer Pegues to testify that she did not feel she was in danger thus allowing the jury to apply the incorrect standard of review. The jury should have only considered the Defendant's objectively reasonableness in realizing that Officer Pegues was in fact in imminent danger in confronting a person with a gun who refused to drop the weapon.

11. The Trial Court erred by failing, over numerous objections, to properly instruct the jury on the applicable law by denying Defense requested jury charges 33, 34 and 35 regarding objective reasonableness, imminent threat and police commands to drop a weapon.

12. The State failed to prove a Prima Facie case of Intentional Murder in that the shooting was the result of an on duty police action by the Defendant.

13. The trial Court erred in that the sentence imposed is unnecessarily excessive.

14. The Trial Court erred by incorrectly sentencing the Defendant.

15. The Trial Court erred by not granting the Defendant's numerous motions for acquittal.

16. The verdict is contrary to the great weight of evidence.

17. The verdict is contrary to law.

18. The conviction is contrary to law and evidence.

19. The evidence produced at trial is insufficient to support a finding of defendant's guilt beyond a reasonable doubt.

20. The evidence produced at trial is insufficient to support a verdict.

21. The judgment of the Court is contrary to the law.

22. The Court erred by overruling the separate and several objections of defendant during the trial.

23. The Court erred by sustaining the separate and several objections of the State made during trial.

24. The Court erred in its rulings as to the admissibility of testimony at trial.

25. The Court erred in its ruling on the admissibility of evidence presented at the trial of this case.

26. The Court erred by overruling Defendant's motions to suppress evidence presented at trial.

27. The Court erred by failing to sustain each and every objection made by the defendant during the course of the trial.

28. The Court erred by failing to sustain each and every motion made by defendant before, during and after trial.

29. The Court erred by denying defendant's motions for mistrial.

30. The Court erred by refusing to give each and every jury instruction requested by the defendant.

31. Defendant's sentence is in violation of State and Federal constitutional provisions.

32. The cumulative effect of the multiple errors in trial adversely affected the Defendant's substantial rights and seriously affected the fairness and integrity of the trial. No single error among multiple errors may be sufficiently prejudicial to require reversal under Rule 45, if the accumulated errors have probably injuriously affected substantial rights of the parties, then the cumulative effect of the errors may require reversal. See Rule 45, Ala. R. App. P.; see also *Ex parte Tomlin*, 540 So. 2d 668, 672 (Ala.1988). The cumulative effect of several incidents of improper argument or misconduct may require reversal, even though no single one of the incidents, considered alone, would warrant such a result. *Ex parte Johnson*, 820 So.2d 883, 88

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order for hearing for Motion for New Trial due to all aforementioned stipulated bases.

Dated this 31st day of August, 2021.

/s/ Robert B. Tuten
ROBERT B. TUTEN (TUT002)



CERTIFICATE OF SERVICE

This document has been filed electronically and served upon opposing counsel pursuant to the Administrative Procedure for Filing Signing and Verifying Documents by Electronic Means in the Alabama Judicial System. For any opposing counsel or unrepresented parties who are not registered to file electronically, a copy of this pleading shall be served via the U.S. mail, postage pre-paid, to the litigant's address as maintained in the office of the Circuit Clerk.

Done this 31st day of August, 2021.

/s/ Robert B. Tuten
ROBERT B. TUTEN