IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KENNETH READUS — APPELLANT

VS. — NO. 2005-KA-1618-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On April 7, 2004, Kenneth Readus, "Readus" was tried for murder of his wife, Mrs. Sherry Readus, and aggravated assault of his stepson, Mr. Marlow Jackson, before a Madison County Circuit Court jury, the Honorable William E. Coleman presiding R.1. Readus was found guilty on both counts and given a life and a twenty year concurrent sentence in the custody of the Mississippi Department of Corrections. R. 252; C.P.32-33. From that conviction, he appealed to this Court. C.P. 40.

ISSUES ON APPEAL

I.

WAS THE JURY PROPERLY INSTRUCTED ON THE ELEMENTS OF THE MURDER CHARGE?

II.

WAS THERE CREDIBLE, SUBSTANTIAL EVIDENCE IN SUPPORT OF READUS' CONVICTION FOR MURDER?

III.

WAS THERE CREDIBLE, SUBSTANTIAL EVIDENCE IN SUPPORT OF READUS' CONVICTION FOR AGGRAVATED ASSAULT?

STATEMENT OF THE FACTS

On June 10, 2002 , Mr. Kenneth Readus was indicted for the murder of Ms. Sherry Readus under M. C. A. § 97-3-19(1) and aggravated assault of Mr. Marlow Jackson under M. C. A. § 97-3-7 (2)(b) on March 30, 2002 in Canton, Madison County, Mississippi. C.P. 3.

On April 7, 2004, Kenneth Readus was tried for murder and aggravated assault before a Madison County Circuit Court jury, the Honorable William E. Coleman presiding R.1. Readus was represented by Mr. Mike Ward, and Mr. Tommy Savant. R. 1.

Ms. Doris Lewis testified that she was a next door neighbor of Mrs. Readus. R. 55. She heard shots coming from the Readus' apartment. R. 62. She saw Readus leave. R. 56. She went to investigate. She found Mrs. Readus "laying in the floor" with a gun shot wound. Lewis also saw blood coming "from the back of her head." R. 60. She saw that Marlow Jackson had also been shot in his upper chest. She "saw blood coming down, and he was holding it." R. 63. He was sitting up in a corner when she arrived. R. 56. She could see small children present in the apartment. R. 58-59. She called the police for assistance. She stayed until an ambulance arrived. R. 60.

Ms. Yuvonda Jackson was Readus' stepdaughter. She was fifteen years old at the time of the incident. R. 72. She was present as an eye witness when her brother, Marlow Jackson, was shot and seriously wounded. R. 71. She also heard the shot that killed her mother. R. 71.

While Readus was angrily arguing with her mother, Sherry Readus asked her daughter, Yuvonda, to call the police. R. 70. Yuvonda heard her brother Marlow tell Readus, "to get up off his mother." R. 87. Yuvonda had seen Readus' hand gun in their apartment "in his coat" or "in the top of the closet." R. 71.

She testified that she "saw" Readus shoot her brother. R. 89. When she ran to avoid also being shot, she heard another shot fired. R. 71. After Readus left in his car, Yuvonda tried to help her mother who she knew was seriously injured. R. 72. She was on the floor unconscious and having trouble breathing. R. 72.

Mr. Marlow Jackson, Readus' stepson, was seventeen at the time he was shot in the chest. R. 95. He was working for Job Corp at the time. Marlow testified that Readus was angry with his mother. She was not at home when he arrived home from work. He testified to hearing him say, "I'm tired of this shit." R. 96. When Marlow was taking a bath, he heard his mother call for help. He ran to her aid in his shorts. He found his mother "on the ground holding her face" Readus was "standing on top of her "with his fist balled up." R. 97-98.

Although Marlow picked up a nearby broom to defend his mother, he never hit Readus. R. 108. He merely told him to go up off his his mother to prevent any additional harm. Readus went to the door and opened it. He "slammed" it.

Marlow was checking on his mother who was laying on the floor. When the door opened, Readus was holding a hand gun. It was pointed at Marlow's chest. R. 98. Marlow testified that this was when Readus shot him in the chest. Marlow fell down on the floor from the impact. He heard

a second shot which was directed at his mother. R. 99. He saw Readus leave in his car. R. 100.

Marlow denied that he either tried to take the gun away from Readus or struggled with him, when he was shot. R. 107-108.

Marlow knew that Readus kept a hand gun in "his coat" or in "the back room." He had seen it that morning out "on the radio." R. 97. Neither Marlow or his mother were armed. R. 100. Marlow was in the hospital for two weeks, and still had the bullet in his chest at the time of trial. R. 100. At the time of trial, Marlow was serving in the Navy in Yokosuka, Japan. R. 94.

Dr. Stephen Hayne, a medical pathologist, testified to doing an autopsy on Mrs. Sherry Readus. Hayne testified that the cause of death was a gun shot wound to her abdomen. R. 154. See State's Exhibit 10 for photograph of entrance wound on the upper abdomen of the victim. Dr. Hayne testified that the angle of the path of the bullet was down "at 30 to 35 degrees." R. 158. This would be consistent with the shooter being above the victim "on the ground." R. 158. Dr. Hayne removed a projectile from the stomach of the victim, State's exhibit 11. R. 157.

State's photographic exhibit 4 shows a brass casing from a .25 caliber handgun found on a pair of blue jeans in the apartment. State's photographic exhibit 5 shows blood droppings on the floor just inside the door to the apartment. State's exhibit 6 shows blood splattering on the floor in another location near a towel. State's exhibit 7 shows the victim, Mrs. Readus, on the floor in the presence of an EMT trying to provide her with medical assistance.

Two .25 caliber shell casings were found in the apartment. R.113-115.. They were introduced into evidence. R. 113.

In a stipulation the parties agreed that one of the cartridge shells and the projectile introduced in evidence were fired from the .25 handgun, shown in the photographic copy of the actual handgun, state's exhibit 3. This was the .25 caliber hand gun Readus concealed in his mother's shed after

the shootings. R. 163. State's exhibit 1 was one of the two .25 caliber shell casings found in the apartment, and state's exhibit 11 was the .25 caliber projectile removed from the stomach of the decedent, Mrs. Sherry Readus, by Dr. Hayne. R. 114;157.

At the conclusion of the prosecution's case, the trial court denied a motion for a directed verdict. R. 164-165.

In Readus' voluntary statement after a signed **Miranda** waiver he stated that he came from "outside" to "the inside" of his apartment, pulled out a pistol in his pocket and shot his step-son, Marlow Jackson and then his wife, Sherry Readus.

> I pushed her off me and stepped back inside, we were still tusselling and I pulled the pistol and shot Marlow Jackson and Sherry Readus. Sherry fell on the floor and my stepdaughter Vonda Jackson came in the room. See state's exhibit 9, Readus voluntary statement after a signed and witnessed **Miranda** rights waiver, State's Exhibit 8.

In Readus' testimony he admitted that he "intended" to shoot the loaded hand gun "inside" the apartment. R. 209-210. He knew his wife, children and step children were inside and not armed. He claimed that he was going to fire the weapon because he wanted to scare his wife and stepson into leaving "my house." R. 214. Readus believed that he was being "disrespected" by his wife and stepson that morning. R. 211. Readus testified that he did fire the handgun either by accident or in self defense. R. 197-198. Readus admitted to shooting both his wife and his stepson. R. 188. However, he denied wanting "to hurt them." R. 210.

Readus also admitted in his testimony that he was "outside" the door to the apartment when he decided to go back inside and fire the hand gun he had in his pocket. R. 187. He admitted no one interfered with his leaving the apartment. R. 208 .

Readus admitted to leaving in his car after the shootings. He did not either try to help the gun shot victims or seek assistance for them from any medical personnel. R. 208. He admitted that he

hid the handgun he used in a shed at his mother's house. R. 202. He admitted that he initially "lied" to investigators about where he had hidden the .25 caliber handgun. R. 203.

Readus was given jury instruction S-7 for murder, which included both (1)(a) and (1)(b) of M. C.A. § 97-3-19(1). C.P. 22. Readus was also given an instruction for manslaughter. C.P. 23.

Readus was found guilty of murder and aggravated assault and given a life sentence and a twenty year concurrent sentence in the custody of the Mississippi Department of Corrections. R. 252; C.P.32-33. From that conviction, he appealed to this Court. C.P. 40.

SUMMARY OF THE ARGUMENT

1. The record reflects that the jury was properly instructed. Readus was indicted for deliberate design murder under "M. C. A. § 97-3-19(1)." C.P. 3. He admitted in his pre-trial statement that he fired his hand gun inside an apartment containing both adults and children, striking his wife and his stepson. See state's exhibit 8. Yet he claimed in his testimony that he had no intent to kill anyone. He knew his victims were not armed. He knew small children were present in the apartment. Readus admitted he was free to leave the apartment without any interference, only to return firing his weapon at the victims in anger. R. 196; 199. Readus never mentioning any struggle with Marlow in his statement to police. R. 204. Readus did not claim he shot them in self defense or by accident. R. 197-198.

After shooting the victims, Readus drove off in his car , and hid his weapon at his mother's house. R. 202. He did not seek help for the victims. The Mississippi Supreme Court has stated, more than once, that the (a) and (b) sections of 97-3-19(1) are not mutually exclusive but "coalesce." **Schuck v. State** 865 So.2d 1111, *1119 -1120 (¶ 19-20) (Miss. 2003). The jury was also instructed that all twelve jurors must agree on the verdict. C.P. 20.

2. There was credible, corroborated substantial evidence in support of the jury's murder verdict. Readus admitted he shot his wife and stepson with a hand gun. R. 187-188. She died from that gun shot wound to her abdomen. R. 154. Readus admitted he was free to leave his apartment after a confrontation with his wife without any interference. R. 196; 199. However, he chose to go back inside with his loaded hand gun in his hand. He chose to fire shots, hitting both his wife and Marlow, his stepson. He admitted that he did not shot them by accident or in self defense. R. 197-198. While he claimed he was involved in a "struggle" with his wife, he admitted this was before he had could leave the apartment without interference from anyone. R. 196; 196.

Three eye witnesses testified to seeing "blood" on Ms. Readus head when they were attending to her. R. 60; 111; 124. And Marlow testified that his mother was laying on the floor "holding her face" with Readus "with balled up fist" standing "on top of her." R. 97-98. Yuvonda heard her brother Marlow tell Readus, "to get up off his mother." R. 87. This corroborated evidence indicating that Readus attacked Mrs. Readus prior to her being shot.

Therefore, contrary to Readus' self serving testimony of a struggle, Mrs. Sherry Readus never presented any threat to him at any time. This is also consistent with Dr. Hayne's forensic findings. Dr. Hayne testified that the angle of the path of the bullet was down at "30 to 35 degrees." R. 158. This would be consistent with the shooter being above a victim who was "on the ground." R. 158.

While Readus claimed to have struggled with Marlow over the handgun, Marlow clearly denied any struggle occurred. R. 107-108. Readus admitted he did not claim any struggle with Marlow in his statement to investigators. R. 204. And Readus has yet to claim that Marlow was armed, hit him, interfered with his leaving, harmed him or threatened him in any way. R. 130; 187. 3. There was credible, substantial corroborated evidence in support to the jury's aggravated assault verdict. In exhibit 9, Readus' statement to investigators, he never claimed that he struggled with Marlow. R. 204. Rather he stated that he was "tusselling" with Sherry. As he stated in his own words, "we were still tusseling and I pulled the pistol and shot Marlow Jackson and Sherry Readus." There was clearly no statement about any accident caused by a struggle with Marlow.

Marlow testified that he was shot by Readus. R. 99. Yuvonda, who was standing near him, testified that she "saw" Readus shoot Marlow. R. 71. Marlow testified he was not struggling with Readus when he was shot. R. 107-108. He had not struck Readus or fought with him.

When shot, Marlow was paying attention to his mother who was injured and bleeding from

her head on the floor Readus was at the apartment's front door. He opened and closed it. However, when Marlow looked back up, Readus shot him at close range and then shot his mother on the floor. R. 99. Readus admitted that he shot Marlow who was unarmed. He shot him because he came to the assistance of his mother during their quarrel. R. 187-188. Readus was angry because he felt his wife had "disrespected" him. R. 211.

The record reflects that Marlow's testimony was not contradicted or impeached, as claimed in appellant's brief. Rather the statement Marlow gave to investigators was given at the hospital after he had been shot and lost a lot of blood. R. 106. It was abbreviated given his serious and potentially life threatening gun shot to his chest. His live testimony was not contradicted by his previous statement. It was merely different. Marlow made it clear that he saw Readus "standing on top of his mother" with his fist "balled up." His mother was "holding her face." R. 109. Yuvonda heard Marlow tell Readus "to get up off his mother." R. 87. This was just prior to Marlow being shot by Readus.

ARGUMENT

PROPOSITION I

THE JURY WAS PROPERLY INSTRUCTED IN THE INSTANT CAUSE.

Mr. Readus' appeal counsel argues that the trial court erred in granting jury instruction S-7. Jury instruction S-7 was a jury instruction for murder under M C A § 97-3-19(1), which combined under section (1)(a) "deliberate design" murder, with section (1)(b) "depraved heart" murder. Appellant counsel believes that this instruction was improper because this supposedly allowed the jury to find Readus guilty of either one of these two alternative forms of murder without any assurance that they unanimously found him guilty of all of the elements of one or the other. Appellant's brief page 5-7.

To the contrary, the record reflects an evidentiary basis for the instruction. Readus admitted to firing a hand gun "inside" an apartment which he knew contained unarmed adults, as well his own vulnerable under age children. R. 187. This was while Readus was ordering his wife and stepson out of "his house." He admitted to shooting his wife and step son. R. 187-188. Yet he claimed no intent to kill or harm anyone.

The trial court found based upon precedents of the Mississippi Supreme Court that there was a basis, under the facts of this case, for providing an instruction that included deliberate design and depraved heart murder based upon M. C. A. § 97-3-19 (1) (a) and (b).

As stated by the trial court:

> Court: Well, I'll tell you, based on the footnote Mr. Rogillio read from **Windham v. State** at 602 So. 2d 798, that's an indication of this being allowed, but that case brought forward–and it appears to me, as the Supreme Court says in **Shuck v. State** at 865 So. 2d 111, it says they addressed this issue in **Mallette v. State**, 606 So. 2d 1092. And then it appears they addressed the same thing in **Sanders v. State** at 781 So. 2d 114. And the **Shuck v. State** case seems to be right on point. And I think Mr. Rogillio makes a reasoned argument, not so much, even thought I think it's appropriate as it relates to discharging a

weapon inside the apartment, but in particular to his statement that shots were fired but there was no intent to kill. You know firing a shot at somebody, I think is–I think all of those facts are sufficient to warrant this instruction. ..R. 222.

Jury instruction S-7 stated as follows:

> The Court further instructs you that if you believe from the evidence in this case, beyond a reasonable doubt that Kenneth Readus, on or about March 30, 2002, killed Sherry Readus, a human being, without authority of law, not acting in necessary self defense, and either;
>
> 1) with premeditated and deliberate design to effect the death of Sherry Readus, human being, with malice aforethought,
> 2) or, done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of Sherry Readus, then Kenneth Readus is guilty of murder as charged in count I of the indictment,

In **Catchings v. State** 684 So.2d 591, *599 (Miss. 1996), the Supreme Court pointed out that under M. C. A. § 97-3-19 (1), the (b) depraved heart murder clause. had been "subsumed" or "coalesced" with the (1)(a) deliberate design murder clause.

> The structure of the statute suggests these are mutually exclusive categories of murder. Experience belies the point. As a matter of common sense, every murder done with deliberate design to effect the death of another human being is by definition done in the commission of an act imminently dangerous to others and evincing a depraved heart, regardless of human life. **Our cases have for all practical purposes coalesced the two so that Section 97-3-19(1)(b) subsumes (1)(a).** (Emphasis by Appellee).

In **Schuck v. State** 865 So.2d 1111, *1119 -1120 (¶ 19-20) (Miss. 2003), the Mississippi Supreme Court found that the granting of jury instruction S-1 which combined deliberated design with depraved heart murder as stated in 97-3-19 (1) (a) and (b) was not error. The Court rejected Schuck's argument about the two instructions being mutually exclusive and incompatible theories.

¶19... We addressed this issue in **Mallett v. State**, 606 So.2d 1092, 1094 (Miss.1992), which provides:

There is no question that the structure of the statute suggests two different kinds of murder: deliberate design/premeditated murder and depraved heart murder. The structure of the statute suggests these are mutually exclusive categories of murder. Experience belies the point. As a matter of common sense, every murder done with deliberate design to effect the death of another human being is by definition done in the commission of an act imminently dangerous to others and evincing a depraved heart, regardless of human life. Our cases have for all practical purposes coalesced the two to the Section 97-3-19(1)(b) subsumes (1)(a).

We held that it was not error to grant both instructions. This view was reasserted in **Hurns v. State**, 616 So.2d 313, 321 (Miss.1993) and **Catchings v. State**, 684 So.2d 591 (Miss.1996). Our holdings in these cases are dispositive of this issue. This assignment of error is without merit.

Sanders v. State, 781 So.2d 114, 118-19 (Miss. 2001). See also **Catchings v. State**, 684 So.2d 591, 599 (Miss.1996) (the theory of depraved heart does not amend the indictment and that subsections (a) and (b) of section 97-3-19(1) are "coalesced").

¶ 20. In the present case, Schuck argues that the only theory of murder presented by the grand jury was one of deliberate design murder. Schuck interjects that at no point during the pre-trial, trial or post trial proceedings did the State move to amend the indictment from the grand jury to reflect the theory of depraved heart murder. Schuck's argument *1120 is that distinct and incompatible theories of murder were given in the instruction. The trial court found that the instruction incorporating both deliberate design and depraved heart murder was proper. Based on the holdings of this Court in **Sanders** and **Mallett**, we agree with the trial court and find this issue without merit.

In **Windham v. State** 602 So.2d 798, *801 -802 (Miss. 1992), the Court pointed out that malice is implied from any deliberate, cruel act against another, however sudden. Actions showing indifference to any sense of social duty for the welfare of others was sufficient for showing depraved heart murder and malice.

It has long been the case law of this state that malice aforethought, premeditated design, and deliberate design all mean the same thing. See **Dye v. State**, 127 Miss. 42, 90 So. 180 (1921), Hawthorne v. State, 58 Miss. 778 (1881), Davis v. State, 8 Smedes & M. 401 (Miss. 1847), Fulmer v. Tabor v. State, 172 Miss. 243, 159 So. 549, 551 (1935), the Court had under consideration two jury instructions, one of them being *802 in the precise language of the "depraved heart" murder statute. The Court, referring to the forerunner of § 97-3-19(1)(a) (sec. 985 subds. (a) and (b) of the Code of 1930), said the following:

> 'This statute but epitomizes the common law found.... Murder is the voluntary killing of any person of malice prepense or aforethought, either express or implied by law; FN6 the sense of which word malice is not only confined to a particular ill-will to the deceased [such as anger, hatred, and revenge], but is intended to denote ... an action flowing from a wicked and corrupt motive, a thing done malo animo, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty and fatally bent upon mischief. [And therefore malice is implied from any deliberate, cruel act against another, however sudden].'

In **Chatman v. State** 952 So.2d 945, *948 (Miss. App. 2006), the Court found that evidence that Chatman shot into a home with people present was sufficient for showing depraved heart murder. Chatman, like Readus, claimed that he intended to shoot but did not intend to harm anyone.

> ¶8. Although Chatman claimed that he did not intend to shoot anyone, he did shoot into a home where people were present, which is a textbook example of depraved heart murder. **Windham**, 602 So.2d at 802.

Hayes v. Comm. 625 S. W. 2d 583, 585 (Ky. 1981), relied upon by Readus, is of no avail. The defendant in that case was delusional, with chronic mental illness, and medically diagnosed as a paranoid schizophrenic. Likewise, the Kentucky murder statute is stated differently from M. C. A. §97-19-3(1).

The Appellee would submit the trial court correctly admitted jury instruction S-7. C.P. 22-23. The record reflects that the jury was properly instructed, given the facts of this case and the precedents of the Mississippi Supreme Court. This issue is lacking in merit.

PROPOSITION II

THERE WAS CREDIBLE, SUBSTANTIAL CORROBORATED EVIDENCE IN SUPPORT OF READUS' CONVICTION FOR MURDER.

Readus' appeal counsel believes there was insufficient evidence in support of his conviction for murder. She thinks there was neither sufficient evidence of deliberate design murder nor depraved heart murder. She does not believe there was evidence for inferring either deliberation or a depraved heart motive for Readus' actions. She thinks there was evidence indicating that the shooting of Mrs. Sherry Readus occurred during an alleged "struggle" with Marlow Jackson, Readus's step son. She believes this, in turn, was sufficient for showing a lack of "mens rea" for a murder conviction. Appellant's brief page 7-13.

To the contrary, the record reflects that there was corroborated evidence from which it could be inferred that Readus acted "deliberately" as well as in "an eminently dangerous manner." Readus admitted that he never claimed any struggle with Marlow in his statement to investigators. R. 204. In addition, Readus is contradicted by at least four eye witnesses as to what happened.

Three eye witnesses testified to seeing "blood" on Ms. Readus head when they were attending to her. R. 60; 111; 124. And Marlow testified that his mother was "laying on the ground holding her face" with Readus "with balled up fist" standing "on top of her." R. 97-98. Yuvonda heard her brother Marlow tell Readus, "to get up off his mother." R. 87.

This corroborated evidence indicated that Readus attacked Mrs. Readus prior to shooting her while she was on the floor. Therefore, contrary to Readus' self serving testimony of a struggle, she never presented any threat to him after being assaulted. She was not capable of hitting him with a broom or anything else.

Dr. Hayne testified that the angle of the path of the bullet was down "at 30 to 35 degrees".

R. 158. This would be consistent with the shooter being above the victim who could be "on the ground." R. 158.

Additionally, the record reflects that Readus admitted to deliberately firing a loaded hand gun "inside" an occupied apartment. Readus' testimony was about how he was "temporarily insane," "blacked out," "didn't remember shooting Sherry" or acted supposedly "in the heat of passion." R. 176-212. He did not claim it was an accident in the sense that he did not intend to fire a handgun in a apartment containing small children..

Q. **So now it's an accident?**

A. **You know in the passion and the heat of the battle.** R.198.

Two shells were found in the apartment. R. 113. So at least two shots were fired which is corroborated by his own statement.

The record reflects that Readus knew his apartment contained two unarmed adults and other vulnerable small children. R. 209-210. Readus admitted he was "intending more like a bluff just to get out of my house. " R. 214. He admitted that he grabbed his wife while angry. R. 185. He admitted that his firing the weapon in close contact with the victims while angry and this was neither an accident nor done in self defense. R. 187-188; 198.

The record reflects Readus claimed he was free to leave his apartment after confronting his wife over her not telling him where she had been. The record reflects that no one prevented him from leaving. R. 196.

Q. **Yeah. But there was nobody to keep you from leaving, was there, sir?**

A. **No.** 196. (Emphasis by Appellee).

Both Yuvonda and Marlow corroborated Readus' own admission. R. 93; 101. No one interfered with his leaving. No one was harming or threatening him. Yet Readus admitted he took

a loaded hand gun out of his back pocket and fired shots, which struck both his wife and his stepson, Marlow Jackson. R. 182; 187.

Ms. Yuvonda Jackson was Readus' stepdaughter. She was fifteen years old at the time her mother was shot and killed, and her brother shot and seriously wounded. R. 72. Yuvonda testified to seeing Readus draw a handgun out of his pocket. R. 70. Readus admitted that he took it out of his back pocket. R. 182. This was while he was arguing with his wife, who had called Marlow for his help. Marlow had just arrived from the bathroom in his shorts. She testified to seeing Readus shoot her brother. R. 89. When she ran from Readus, she heard another shot fired. R. 71. She was an ear witness to her mother being shot.

Yuvonda also testified that when Readus was at the door arguing with his wife, neither she nor Marlow interfered in any way with his leaving. R. 93.

> Q. **All right, so you said his hand is on the door. What did you see next?**
>
> A. **He turns around and he said he was tired of this mess, and drew his gun out of his pocket.** R. 70.
>
> ...
>
> Q. What actions did Marlow take to get the gun away from Kenneth Readus?
>
> A. He was trying to pull it out of his hand.
>
> Q. **At what point was this? Was this prior to?**
>
> A. **That's when he got shot.** R. 88
>
> ...
>
> Q. There were two shots fired, correct?
>
> A. Yes.
>
> Q. **And you only saw when Marlow was shot, correct?**
>
> A. **Yes.** R. 89.
>
> ...

Q. **Was there anything keeping Kenneth Readus from walking out of the apartment at that moment?**

A. **No.** R. 93.(Emphasis by Appellee).

Mr. Marlow Jackson, Readus' stepson, was seventeen at the time he was shot in the chest. He testified that Readus was angry with his mother. She was not at home at the time he arrived home from work. He testified to hearing Readus say, "I'm tired of this shit." R. 96. When Marlow was taking a bath, he heard his mother call for his help. He ran to her aid in his shorts. He found her on the floor "holding her face." Readus was standing "on top of her" with his fist "balled up." R. 97-98. Although Marlow picked up a broom to defend his mother, he never used it to hit Readus. R. 108. He merely told him "to get up off his mother." R. 87. Readus went to the door and opened it. He "slammed" it. R. 98.

Marlow was looking at his mother who was on the floor. When the door opened, Readus was holding a hand gun. It was pointed at Marlow's chest. Readus shot him. Marlow fell down on the floor from the impact. R. 99. He heard a second shot which was directed at his mother. . Marlow was another ear witness, hearing the shot directed at his mother.

In the past, Marlow had seen Readus with a hand gun either in the house and in his car. He had seen it that morning out "on the radio." R. 97. Neither Marlow nor his mother were armed. R. 100. After being shot, Marlow was in the hospital for two weeks. He still had the bullet in his chest at the time of trial. R. 100.

Q. He slams the door or whatever, that must have gotten your attention. You look back at him and you said the gun was what now?

A. It was placed on my chest.

Q. **What happened then?**

A. **He shot me and then shot at my mother and then shot into the kitchen.** R. 99.

Q. You said that your mother got shot?

A. Yes.

Q. Did you actually see your mother get shot?

A. No.

Q. **Did you hear another shot after you got shot?**

A. **Yes.**

Q. And you said that there might have been three shots?

A. Yes.

Q If you know, where was the other shot directed toward?

A. The kitchen.

Q. Did you have a gun that morning?

A. No.

Q. Did your mother have a gun?

A. No.

Q. **Who was the only person in that apartment who had a gun that morning?**

A. **Kenneth Readus.** R. 100. (Emphasis by Appellee).

Readus' voluntary statement after a signed **Miranda** waiver stated that he pulled out a pistol and shot his step-son, Marlow and his wife.

> I pushed her off me and stepped back inside, we were still tusselling and I pulled the pistol and shot Marlow Jackson and Sherry Readus. Sherry fell on the floor and my stepdaughter Vonda Jackson came in the room. State's Exhibit 9, Readus voluntary statement after a signed and witnessed **Miranda** rights waiver, State's Exhibit 8.

In Readus' testimony he admitted that he "was intending" to shoot the loaded .25 caliber hand gun inside the apartment. R. 214. Readus believed that he had been "disrespected" by his wife

and step son that morning. R. 211. He knew his wife, children and step children were inside and were not armed. He claimed that he was going to fire the weapon because he wanted to make them leave "my house." R. 214-215.

Readus admitted that he intended to fire the handgun. And he testified that it was not fired either by accident or in any self defense. R. 197-198. Readus admitted th victims were shot while he was "ordering them out (of my house) now." R. 211.

> Q. **You testified earlier that you took the gun out, and your intention was to shoot it up in the air?**
>
> A. **Yes, sir.**
>
> Q. **Was that outside the apartment or inside–**
>
> A. **Inside the apartment.**
>
> Q. Inside the apartment. And what prompted you to start shooting the people instead of it going into the air?
>
> A. Well, that's when I had the gun; that's when Marlow grabbed it. R. 210
>
> ...
>
> Q. I'm just holding the gun up here, I'm not going to hurt anybody?
>
> A. **When I had the gun out, I was making the statement, "Get out now."**
>
> Q. Get out now?
>
> A. Yeah.
>
> Q. **You were ordering them out now?**
>
> A. **Yeah, it was my house.**
>
> Q. So that's really what his is about, isn't it?
>
> A. No, it's not really about no house. It's about, it's about– R. 211.
>
> ...

Q. **Okay, and they weren't respecting you. They weren't respecting you?**

A. **Not that morning.** R. 211. (Emphasis by Appellee).

Readus also admitted that he initially lied about where he put the handgun he used to shoot his wife and step son. R. 203. Readus told an investigator that it was "around King Ranch Road," where as it was actually concealed in his mother's shed. That was where he hid it. R. 202.

> Q. You just told us that you didn't give the police a hard time, that you cooperated with them, **but you lied to Nate Johnson about where you put the gun?**
>
> A. **Yes, I did.** R. 203 (Emphasis by Appellee).

Dr. Stephen Hayne, a medical pathologist, testified to doing an autopsy on Mrs. Sherry Readus. Hayne testified that the cause of death was a gun shot wound to her abdomen. Dr. Hayne removed a projectile from the stomach of the victim, State's exhibit 11.

> The gunshot wound, because of the loss of blood, was a lethal injury, producing medically what's called acute internal ex-sanguination. **That is, Sherry Readus died from internal bleeding from a gunshot wound to the abdomen, ultimately going through the inferior vena cava, allowing for the displacement of blood into the abdominal cavity, resulting in death.** R. 154. (Emphasis by Appellee).
>
> Q. Would you please tell the ladies and gentlemen of the jury what that is?
>
> A. It is a circular round hole on the upper part of the abdominal wall. And that is the entrance gunshot wound. See State's Exhibit 10 showing gun shot wound to the victim's upper stomach.. (Emphasis by Appellee).

In a stipulation the parties agreed that the shell found in the apartment where Marlow and Sherry Readus were shot and the projectile removed from Sherry's stomach were fired from state's exhibit 3, which was the .25 caliber hand gun Readus concealed in his mother's shed after the shootings.

Harrris: Thank you, your Honor. The stipulation is that the parties agree and stipulate

that the shell casings introduced in State's exhibit one and the projectile introduced in State's exhibit eleven were fired from the gun introduced as State's exhibit three. R. 163.

In **Fuqua v. State** 938 So.2d 277, *286 (Miss. App. 2006), the Court of Appeals affirmed Fuqua's conviction for depraved heart murder. The Court rejected Fugua's argument that he lacked "the requisite malice" for a murder conviction. The Court found "the degree of recklessness" exhibited by an individual using a deadly weapon to harm another was the controlling issue. This included supplementary evidence indicating that the reckless actions were not accidental.

> ¶ 35. In **Steele v. State**, the defendant was convicted of depraved heart murder for shooting into an unoccupied vehicle. **Steele v. State**, 852 So.2d 78, 79 (¶ 1) (Miss. Ct. App.2003). Steele argued on appeal, as does Fuqua, that he lacked the requisite malice to sustain a murder conviction. **Steele**, 852 So.2d at 80(¶ 9). The defendant in Steele argued, again as does Fuqua, that **Tait** provided the controlling law. The court distinguished **Tait** as follows:
>
> **Tait** is distinguishable from Steele's circumstances on several fronts, most notably the absence of accident. Indeed, under **Windham**, the proper guiding principle is not whether the killing was unintentional or accidental; rather, it is the degree of recklessness employed by the defendant. See Michael J. Hoffheimer, "Murder and Manslaughter in Mississippi: Unintentional Killings," 71 Miss. L. J. 35, 117 (2001). That degree of recklessness can be reconciled in the cases by resolving the question of the defendant's intent as to the underlying act (i.e., the shooting), rather than the intent as to the killing. In each of the previously cited cases, the killing was unintentional. **However, in cases involving shootings, the courts have consistently upheld convictions of depraved heart murder where the evidence suggested that the firing of a weapon was intentional, not accidental.** See, e.g., **Turner v. State**, 796 So.2d 998 (Miss. 2001); **Evans v. State**, 797 So.2d 811 (Miss. 2000); **Clark v. State**, 693 So.2d 927 (Miss.1997).
>
> Steele, 852 So.2d at 80-81 (citing **Windham v. State**, 602 So.2d 798, 801 (Miss.1992)). After reviewing the evidence, the court ruled that there was no evidence that Steele did not intend to shoot; accordingly, the court found that murder was an appropriate verdict. Id. at 81.
>
> ¶ 36. After reviewing the evidence in the record before us, it is manifest that Fuqua intended to beat Ainsworth just as the defendant in **Steele** intended to shoot at an occupied vehicle. We observe that Fuqua's reliance on Tait is ironic because Tait itself directs the Court to distinguish facts such as those sub judice from those in Tait.

> The Tait court, in holding that the evidence supported manslaughter by culpable negligence, distinguished the facts of the case before it from those in Blanks, where the defendant moved and then dumped the victim's body. The facts sub judice, in which Fuqua intended to severely beat Ainsworth, then moved and burned his body, are analogous to the facts in Blanks. This issue is without merit.

Neither **Dedeaux v. State**, 630 So. 2d 30 (Miss. 1993) or **Wade v. State**, 748 So. 2d 771 (Miss. 2000) relied upon by appeal counsel, are of avail for Readus. As shown with cites to the record, Readus admitted that he was free to leave his apartment without any interference from anyone. R. 196; 199. He chose to pull his firearm out of his pocket. He admitting he intended to fire a hand gun in the presence of unarmed adults and children. R. 214-215. He admitted he shot them when he was ordering his wife and step son to "get out now." R. 211. He admitted he wanted them "to leave my house now." R. 196.

While Readus mentioned a struggle with his wife and step son, he did not mention anyone hitting him except his wife "with the broom." R. 130; 187. He admitted that he left the apartment with no injuries to himself. R.200-201 . No one saw him with any injury to his head or any where else. R. 131. He admitted he did not shot his wife or stepson by accident or in self defense. R. 197-198. He also admitted to having a handgun in his pocket when he grabbed his wife and started arguing with her. R. 130. This was prior to him leaving the apartment only to return with the handgun draw ready to be fired inside a small apartment.

In **Coffield v. State**, 749 So. 2d 215, 218 (¶10-¶11) (Miss. App. 1999), relied upon by Readus, the Court found that the prosecution did not have to prove that Coffield formed the "deliberate design to kill" his estranged wife prior to his conversation with her at the post office. It was sufficient to show "from the circumstance" that he formed the intent to murder during an angry conversation. The conversation was over her refusal to take him to work. There was evidence that Coffield stabbed her with a steak knife at this time. The court relied upon the Supreme Court in

finding that "the objective facts of the incident itself"was best for making inferences as to "deliberate design". These objective facts came from "the credibility of the witnesses" who testified about what they saw, heard and remembered occurred.

> ¶10. The Mississippi Supreme Court has observed that evidence of premeditation,*218 as contemplated by the phrase "deliberate design" in our present murder statute, is often not capable of direct proof. See e.g., **Higgins v. State**, 725 So. 2d 220 (¶ 26) (Miss.1998)(stating malice may be inferred from use of a deadly weapon); **Strong v. State**, 600 So.2d 199, 202 (Miss.1992) (finding reasonable inferences that flow from facts of killing established "deliberate design"); **Porter v. State**, 57 Miss. 300, 302 (1879)(stating proof by circumstances is often the only proof accessible and is "frequently of the highest credibility"). It is, thus, entirely proper that "deliberate design" be proven by the inferences reasonably drawn from the objective facts of the incident itself. Id.

Marlow Jackson testified to seeing his mother on the ground "holding her face." There were other eye witnesses who saw that Ms. Readus had "blood" or a "wound"on her head when they saw her on the floor. R. 60; 97; 111. Yuvonda heard her brother Marlow tell Readus, "to get up off his mother." R. 87. This would indicate that Readus struck his wife with his fist or something sufficiently hard to knock her down and draw blood. This was prior to his admitting to shooting her in the stomach with his .25 caliber handgun.

Dr. Hayne testified that the fatal bullet in the victim's stomach was fired from an angle that made it consistent with the path of a bullet fired from someone standing above the victim. R. 158.

In **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993), the Court stated that when the sufficiency of the evidence is challenged, the prosecution was entitled to have the evidence in support of its case taken as true together with all reasonable inferences. Any issue related to credibility or the weight of the evidence was for the jury to decide, not this court.

> The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the

> trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. **Wetz v. State**, 503 So. 2d 803, 807-08 (Miss. 1987). In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. **Esparaza v. State**, 595 So. 2d 418, 426 (Miss. 1992); *Wetz* at 808; **Harveston v. State**, 493 So. 2d 365, 370 (Miss. 1986);...The credible evidence consistent with McClain's guilt must be accepted as true. **Spikes v. State**, 302 So. 2d 250, 251 (Miss. 1974). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wetz*, at 808 , **Hammond v. State**, 465 So. 2d 1031, 1035 (Miss. 1985); *May* at 781. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. **Neal v. State**, 451 So. 2d 743, 758 (Miss. 1984);..We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty. **Wetz** at 808; **Harveston** at 370; **Fisher v. State**, 481 So. 2d 203, 212 (Miss. 1985).

When the evidence presented above was taken as true together with reasonable inferences there was more than sufficient, credible evidence in support of the jury's verdict. The record indicates that neither Sherry or Marlow were armed. R. 100. Readus confronted Sherry. He was angry with her for not being at home, or explaining to him where she had been. He grabbed her.

Readus admitted to being free to leave his apartment. While holding the gun, he threatened his stepson to "get out now." R. 211. He knew young children were present in the apartment at that time. R. 68-69. This included Yuvonda, who was fifteen at the time, as well as Kentrell, a nine year old boy, and Aurelia, a seven year old girl. R. 66-67.

Readus testified that he intended to shot his gun while "ordering" his wife and step-son to leave "my house." R.214 . He believed they had "disrespected" him. R. 211. His wife disrespected him by not telling him where she had been after she left from work. His step son disrespected him by coming to his mother's after Readus hit her. He also disrespected him by telling him "to get up off of his mother." R. 87.

There was corroborated evidence in the record for holding that Readus shot the victim while she was on the floor. This was after he had assaulted her. She was not struggling with him and posed

not threat to him in any way. R. 60; 97-98; 111; 138.

In **Smith v. State** 907 So.2d 389, *395 (¶16) (Miss. App. 2005), the Court pointed out that the fact that witnesses do not agree on every detail is to the credit rather than the discredit of the witnesses. They are testifying based upon their particular visual perception, memory and sincerity.

> ¶ 16. Smith complains that the jury verdict was against the weight of the evidence because the testimony of the girls was not believable. However, the credibility of the witnesses is one for the jury to resolve. "The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity." **Noe v. State**, 616 So.2d 298, 303 (Miss.1993). "Seldom do witnesses agree on every detail. Indeed, their failure to do so is often strong evidence each is trying to portray the situation as he saw it, and that is to the credit, rather than the discredit of the witnesses." Id. at 302.

The Appellee would submit that this was sufficient evidence for denying all peremptory instructions and allowing the jury to resolve any factual conflicts in their deliberations. There was sufficient evidence for inferring that Sherry Readus was a human being who was shot and killed on March 30, 2002 by Mr. Readus. And contrary, to Readus argument on appeal, there was sufficient evidence for inferring from "the totality of the facts" cited above that Readus acted "deliberately" and with "reckless disregard" for the welfare and sanctity of the lives of others residing in his own home.

The Appellee would submit that this issue is lacking in merit.

PROPOSITION III

THERE WAS CREDIBLE SUBSTANTIAL EVIDENCE IN SUPPORT OF THE AGGRAVATED ASSAULT CONVICTION.

Counsel for Readus believes that there was insufficient credible, evidence in support of Readus' conviction for aggravated assault. She believes that there was insufficient evidence of any attempt on Readus' part to cause serious bodily injury to his step son, Marlow Jackson. Rather there was supposedly evidence for inferring that Marlow was shot during an unfortunate struggle over the gun he was holding. Appellant's brief page 13-14.

To the contrary, the record reflects there was credible, substantial corroborated evidence in support to the jury's aggravated assault verdict under M. C. A. § 97-3-7 (2)(b). In exhibit 9, Readus' statement to investigators, he never claimed that he struggled with Marlow. Rather he stated that he was struggled with Sherry. As he stated in his own words, "we were still tusseling and I pulled the pistol and shot Marlow Jackson and Sherry Readus." There was clearly no statement about any accident caused by a struggle with Marlow, as now being claimed on appeal. He also testified that he shot Marlow Jackson first. R. 188. This was corroborated by eye and ear witnesses, Marlow and Yuvonda. R. 71; 99.

The record also reflects that Marlow's testimony was not contradicted or impeached, as claimed in appellant's brief. Rather the statement Marlow gave to investigators was given at the hospital. This was after he had been shot and lost a lot of blood. R. 106. It was abbreviated given the serious, potentially life threatening injury to his chest. His live testimony was not contradicted by his previous statement. It was merely different in specificity. R. 105-110. Marlow made it clear that he saw Readus "standing on top of his mother" with his fist "balled up." His mother was "holding her face." R. 109. He also testified clearly that he was not struggling with Readus, when

Readus shot him. R. 106-107.

Marlow Jackson testified that neither he nor his mother were armed. R. 100. Marlow testified that when his mother called him, he went to see what had happened to her. R. 97. He had been in the bathroom. When he reached her, he saw Readus "standing on top of" his mother with "balled up" fists. His mother was on the floor "holding her face." R. 97-98. Likewise, Marlow testified that when he was shot by Readus, he was not struggling with Readus over the gun. Rather the gun Readus was inside the apartment door holding a handgun near his chest. R. 98- 99. That was when Marlow was shot and incapacitated.

Likewise, Marlow testified that although he picked up a broom after seeing Readus standing angrily "on top of his mother," that he did strike him with it. R. 98.

Mr. Marlow Jackson who was serving with the Navy in Japan at the time of trial testified as follows:

> Q. And why did you feel like it was necessary for you to swing this at him?
>
> A. Because the way it was looking, that my mom was on the ground holding her face, and she never hold her face on the ground, and he had his hands balled up, it looked as if he had hit her.
>
> Q. **What happened after you stopped before you hit him? What happened then?**
>
> A. **What happened then? I told him to get out. He turned away and walked towards the door, holding the door, about to open it. As I turned around to look at my mom, he slammed the door. I turned back around, and the next thing I know, I had the gun on my chest.** R. 98.
>
> Q. He slams the door or whatever, that must have gotten your attention. You look back at him and you said the gun was what now?
>
> A. It was placed on my chest.
>
> Q. **What happened then?**

A. **He shot me and then shot a my mother and then shot into the kitchen.** R. 99. (Emphasis by Appellee).

On cross examination, Marlow Jackson testified clearly and unequivocally that he did not try to take the gun from Readus, and he did not fight with him before he was shot.

Q. Did you try and take the gun away from him?

A. No.

Q. Y'all never fought over it?

A. No. R. 107.

Ms. Doris Lewis, a next door neighbor, arrived shortly after she heard shots fired. She testified to seeing "blood coming down" from Marlow's upper chest area. R. 63.

While Yuvonda Jackson testified that Marlow tried to take the gun away from Readus, she testified that he did this "so he wouldn't do anything with it." R. 87. She explained that he thought that Marlow was trying to pull it out of his hand. R. 88. She corroborated Marlow in testifying that their mother called Marlow for his assistance when he was taking a bath.. R. 89. Her testimony also corroborated Marlow about Readus angrily arguing with their mother, Sherry Readus. R. 88. Yuvonda heard her brother Marlow tell Readus, "to get up off his mother." R. 87. She corroborated him in testifying that after shooting the victims, Readus drove off in his car without seeking any help for them. R.72; 100.

Readus admitted to having shot Marlow. He admitted he intended to fire the weapon in the apartment and denied it was done by accident or in self defense. R. 197-198; 209-210.

While Readus testified that he and Marlow struggled with the gun when Marlow was shot, he never testified that he was hit or hurt in any way by Marlow. R. 176-214. Rather his testimony was that the only person who hit him was Sherry who allegedly hit him "with the broom" prior to

her being shot. R. 187.

Q. What happened then, Kenny? What did you do?

A. I told him, I said, "All of y'all going to get out of my house today." I said, "Y'all can get out of the house today." Marlow said, "You're going to get out." **I said, "No, y'all are getting out of my house today."**

Q. What did you do then?

A. I was at the door, and I had my hand on the door, and Sherry swung at me. She swung at me, and I pushed her back and I stepped out. **And I actually went out the door,** and Sherry came back outside. And that's when she hit me across the head with the broom. **And when I came back in, I pulled my gun out as I was going to shoot in the air. Marlow grabbed the gun, and me and him was struggling and struggling with the gun. And he was shot then. And in between us somewhere, I lost, I just snapped. Everything was just black. I couldn't–I can't explain what happened. I don't even remember shooting Sherry.**

Q. **But you did shoot Sherry, correct?**

A. **Yeah.** And when I come to myself, when I come to myself, I said, "Lord, Lord, what done happened?"

Q. What did you do with the gun?

A. I put it out in the storage room. R. 188. (Emphasis by Appellee).

When this evidence was taken as true together with reasonable inferences, there was sufficient evidence for denying a directed verdict on the aggravated assault charge. It is uncontested that Marlow Jackson was shot. Readus admitted this in his testimony. R. 187-188. The only dispute was about "the circumstances" under which he was shot. Readus did not claim that Marlow was armed or threatening him in anyway. He admitted that Marlow did not prevent him from leaving the apartment after his argument with his wife. R.196. He admitted that the did not tell police about any struggle with Marlow. R. 204.

Readus did not claim that Marlow hit him or did anything to harm him. R. 187. He admitted that he did not think his life was in danger by any actions by either Sherry or Marlow. R. 187.

Marlow testified that he neither fought or struggled with Readus over the gun. R. 107. While Yuvonda testified that Marlow tried to take the gun away from Readus, she did not describe any fighting or a struggle between the two. R. 87-88.

In **Biggers v. State**, 741 So.2d 1003, *1007 (Miss. App.1999), relied upon by appellant counsel, the court found that Biggers was not entitled to a lesser included instruction for simple assault, and there was sufficient evidence for affirming Bigger's conviction for aggravated assault.

> ¶18. In the case at bar, the State showed that Margaret was physically assaulted by Biggers and that she was seriously injured. Furthermore, the evidence showed that Biggers was either not guilty (since he argued that Margaret's injuries were caused accidentally), or that he was guilty of aggravated assault as he caused injury under circumstances manifesting extreme indifference to the value of human life using a means of producing serious bodily harm. The evidence did not show that Biggers was guilty of simple assault. The lesser-offense instruction of simple assault was properly refused by the trial court.

In **Noe v. State**, 616 So. 2d 298, 302 (Miss. 1993), this Court stated that when the sufficiency of the evidence is challenged that the evidence favorable to the State must be accepted as true with all reasonable inferences. Evidence favorable to the defense must be "disregarded."

> In judging the sufficiency of the evidence on a motion for a directed verdict, or request for peremptory instruction, the trial judge is required to accept as true all of the evidence that is favorable to the state, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. **Clemons v. State**, 460 So. 2d 835 (Miss. 1984)

In **Thomas v. State**, 247 Miss 704, 159 So. 2d 77, 80 (1963), the Mississippi Supreme Court stated that "this court" should give "all reasonable presumptions in favor of the rulings of the court below."

> In reference to any doubts as to whether a fair trial was obtained by the appellant in the court below, it should be noted that in **Gordon v. State**, (Miss.)149 So. 2d 475, this Court concluded that in reviewing a conviction of a crime, **any doubts should be resolved in favor of the integrity, competence and proper performance of the official duties of the judge and prosecuting attorney, and this Court should give**

effect to all reasonable presumptions in favor of the rulings of the court below. (Emphasis by Appellee)

The jury was properly instructed to determine whether Readus feloniously caused bodily injury to Marlow by shooting him with a gun, and not acting in self defense. C.P. 25. They were also instructed to consider whether the prosecution had failed to prove all the elements of aggravated assault. C.P. 25.

The Appellant is not entitled to give himself the benefit of inferences favorable to his innocence based upon conflicts or ambiguities in the evidence on a motion for a peremptory instruction. **Noe, supra**. Rather it is the State that is entitled to favorable inferences from the evidence in support of the conviction. It was the jury's responsibility to resolve any conflicts in the factual accounts of what occurred at the crime scene based upon observing the demeanor, and listening to the testimony of all the witnesses, including Marlow Jackson, Yuvonda Jackson and Mr Readus..

The Appellee would submit that we have cited credible, substantial partially corroborated evidence in support of the jury's verdict.

CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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:

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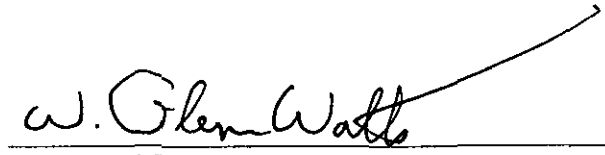
This the 14th day of September, 2007.



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