IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN ROBERT GREEN — APPELLANT

VS. — NO. 2006-KA-1984

STATE OF MISSISSIPPI — APPELLEE



# BRIEF FOR THE APPELLEE

## APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**JOHN ROBERT GREEN** **APPELLANT**

**VS.** **NO. 2006-KA-1984**

**STATE OF MISSISSIPPI** **APPELLEE**

## BRIEF FOR THE APPELLEE

## STATEMENT OF THE ISSUES

Defendant, John Robert Green ["Green"], raised ten separate issues on appeal. In order to simplify its Brief, the State has combined many of these issues and will address them accordingly. They are as follows:

I. THE TRIAL COURT DID NOT ERR IN DENYING GREEN'S MOTION TO SUPPRESS AND THEREBY ALLOWING INTO EVIDENCE GREEN'S JULY 23, 2005 STATEMENT. (GREEN'S ISSUES I AND II).

II. GREEN IS PROCEDURALLY BARRED FROM RAISING THE ISSUE OF THE COURT'S DENIAL OF HIS MOTION FOR DIRECTED VERDICT; HOWEVER, NOTWITHSTANDING THE PROCEDURAL BAR, THE COURT DID NOT ERR IN DENYING THE MOTION IN THAT THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION. (GREEN'S ISSUE III).

III. THE COURT PROPERLY REFUSED GREEN'S MOTION TO SUBMIT THE CASE TO THE JURY ON THE ISSUE OF MANSLAUGHTER AND NOT MURDER. (GREEN'S ISSUE IV)

IV. THE TRIAL COURT PROPERLY REFUSED PROPOSED JURY INSTRUCTIONS D-1, D-8, D-10, D-11, D-12, AND D-13. (GREEN'S ISSUES V, VI, VII, AND VIII).

V. THE TRIAL COURT PROPERLY DENIED GREEN'S MOTION FOR JNOV OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL AS THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE VERDICT AND AS THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE. (GREEN'S ISSUES IX AND X).

## STATEMENT OF FACTS

Shortly before 6:30 a.m. on July 23, 2005, Ricky Taylor was found dead of a gunshot wound near the intersection of Old Panola Road and Highway 315. (Transcript p. 131). Local authorities began looking for the defendant, Green, as he was the last person seen with Mr. Taylor. (Transcript p. 175-76). Green was found on Back Street in Sardis near the drug store where his daughter worked at approximately 10:15 a.m. (Transcript p. 154). Green was asked if he knew why he was being picked up and he responded that he did. (Transcript p. 176). He was given his Miranda rights at the scene. (Transcript p. 155 and 163).

Green relayed a total of four different stories about how the murder of Ricky Taylor occurred. First, he told the authorities that he dropped Mr. Taylor off at the intersection of Old Panola Road and Highway 315 and that was the last he saw of him. (Transcript p. 176). Green later told authorities that he saw Ricky Nelson shoot Ricky Taylor. (Transcript p. 189 and 210). Green was questioned again about the murder and told officers that "Ricky Taylor was making a move like he was going to get something and that [he] acted in self defense and shot and killed him." (Transcript p. 212). Green then went to the restroom, came back, and said that "Ricky Taylor had removed one of [his] guns from the truck and was trying to load it and that [he] shot and killed him." (Transcript p. 214).

Green was subsequently indicted and tried for the murder of Ricky Taylor. At trial, he testified that he lied to the authorities about killing Mr. Taylor in self defense. (Transcript p. 375). He further testified that he did, in fact, see Ricky Nelson shoot Mr. Taylor. (Transcript p. 352). However, the jury convicted Green of murder and he was sentenced to life in prison.

## SUMMARY OF THE ARGUMENT

The trial court did not err in denying Green's Motion to Suppress his July 23, 2005 statement in that the trial court followed the proper procedure, applied the correct standard, and did not commit manifest error.

Green is procedurally barred from arguing that the trial court erred in denying his Motion for Directed Verdict as he did not renew his motion after presenting his defense. Regardless of the bar, Green was not entitled to a directed verdict as there was sufficient evidence to sustain the verdict. Further, the trial court did not err in refusing to allow the case to go to the jury on manslaughter as Green specifically testified that he did not murder the victim.

The trial court did not err in refusing defendant's proposed jury instructions as there was no basis in the evidence to support the proposed instructions and/or the proposed instructions were adequately covered elsewhere in the instructions given.

The trial court properly denied Green's Motion for JNOV or in the Alternative Motion for New Trial as there was sufficient evidence to sustain the verdict and as the verdict was not against the overwhelming weight of the evidence.

## ARGUMENT

### I. THE TRIAL COURT DID NOT ERR IN DENYING GREEN'S MOTION TO SUPPRESS AND THEREBY ALLOWING INTO EVIDENCE GREEN'S JULY 23, 2005 STATEMENT. (GREEN'S ISSUES I AND II).

Green claims that his July 23, 2005 statement "was not a voluntary statement in that the statement would not have been given by Green except for Deputy Sheley's representations which gave Green the impression that a bond would be set for him or that he would go home if he just tell the truth and just tell Deputy Sheley that he shot Ricky Taylor in self defense." (Appellant's Brief p. 8). The standard for determining whether a defendant's statement or confession is voluntary is

"whether, taking into consideration the totality of the circumstances, the statement is the product of the accused's free and rational choice." *Cork v. State*, 851 So.2d 430, 433 (Miss. Ct. App. 2003) (quoting *Porter v. State*, 616 So.2d 899, 908 (Miss. 1993)). "Determining whether a confession [or statement] is admissible is a finding of fact which is not disturbed unless the trial judge applied an incorrect legal standard, committed manifest error, or the decision was contrary to the overwhelming weight of the evidence." *Hicks v. State*, 812 So.2d 179, 191 (Miss. 2002) (quoting *Balfour v. State*, 598 So.2d 731, 742 (Miss. 1992)). Further, the Mississippi Supreme Court has held that it will not reverse a trial court's "finding that a confession [or statement] was voluntary and admissible as long as the trial judge applies the correct principles of law and the finding is factually supported by the evidence." *Id.* (quoting *Palm v. State*, 748 So.2d 135, 142 (Miss. 1999)). "Where, on conflicting evidence, the court makes such findings, [the appellate court] must affirm." *Id.* (quoting *Lesley v. State*, 606 So.2d 1084, 1091 (Miss. 1992)).

This Court, relying on *Agee v. State*, 185 So.2d 671 (Miss. 1966), set forth the procedure the trial court must follow to determine whether a confession or statement was coerced and involuntary:

> When the defendant objects to the introduction of a confession, the defendant is entitled to a hearing in absence of the jury to determine its admissibility. The State has the burden of proving the voluntariness of a confession beyond a reasonable doubt. The State makes a *prima facie* case of voluntariness when an officer, or other person having knowledge of the facts, testifies that the confession was voluntarily made without any threats, coercion, or offer of reward. Then, the defendant may attack the State's *prima facie* case by offering testimony that violence, threats of violence, or offers of reward induced the confession. This creates a rebuttable presumption that the confession was involuntary. To rebut the presumption, the State must offer all the officers who were present when the defendant was questioned and when the confession was signed, or give an adequate reason for the absence of any such witness. However, in rebutting the presumption, the State is not required to recall officers to reiterate their testimony from the State's *prima facie* case.

*Cork*, 851 So.2d at 433. (*citations omitted*). This procedure was followed perfectly by the trial court. A hearing was held outside the presence of the jury to determine the admissibility of Green's July

23, 2005 statement. (Record p. 46 - 158). The State made a *prima facie* case in that Chief Deputy Craig Sheley of the Panola County Sheriff's Department and Master Sergeant John Marsh of the Mississippi Highway Patrol Bureau of Investigations testified that 1) Green was given his Miranda rights; 2) Green was awake, paying attention, alert, and understood his rights; 3) Green waived his Miranda rights and signed a Miranda form; 4) Green was not threatened in any way; 4) Green was not promised any reward of any type; 5) Green was not coerced; and 6) Green was not offered any inducements of leniency. (Record p. 61, 62, 64, 96, 97, and 98). Green then attacked the State's case; however, the State rebutted any presumption created by Green in that both Deputy Sheley and Master Sergeant Marsh were recalled and testified that 1) Green never asked for an attorney; 2) No one patted Green on the arm and told him it would be okay; 3) No one told Green that he did not need an attorney; 4) No one told Green to claim self defense; 4) Green never asked for bond and never asked to call his wife; 5) No one told Green that if he offered a story of self defense, he could go home; and 6) No one told Green that he should claim that the scratch on his face was obtained in a scuffle. (Record p. 139 - 141 and 149 - 151). The trial court then concluded that Green understood his rights, was not threatened or coerced, and voluntarily waived his rights. (Record p. 154 - 157).

Thus, the trial court followed the proper procedure and applied the correct standard. The State presented a *prima facie* case and effectively rebutted the defendant's attack of their *prima facie* case. There was no manifest error and the finding is not against the overwhelming weight of the evidence. As such, the trial court properly denied Green's Motion to Suppress. Thus, Green's first and second issues are without merit.

## II. GREEN IS PROCEDURALLY BARRED FROM RAISING THE ISSUE OF THE COURT'S DENIAL OF HIS MOTION FOR DIRECTED VERDICT; HOWEVER, NOTWITHSTANDING THE PROCEDURAL BAR, THE COURT DID NOT ERR IN DENYING THE MOTION IN THAT THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION. (GREEN'S ISSUE III).

Green contends that the lower court erred in denying his Motion for Directed Verdict. (Appellant's Brief p. 10). However, Green is procedurally barred from raising this issue on appeal as he did not preserve the issue for appeal by renewing his motion at the close of all the evidence. The Mississippi Supreme Court has held that:

> It is elemental that after a motion for directed verdict is overruled at the conclusion of the State's evidence and the appellant proceeds to introduce evidence in his own behalf, the point is waived. In order to preserve it, the appellant must renew his motion for a directed verdict at the conclusion of all the evidence." *Wright v. State*, 540 So.2d 1, 3 (Miss.1989) (quoting *Harris v. State*, 413 So.2d 1016, 1018 (Miss.1982)); *State v. Russell*, 358 So.2d 409, 413 (Miss.1978).

*Warren v. State,* 709 So.2d 415, 418-19 (Miss.1998). Accordingly, Green is procedurally barred from raising the issue on appeal.

Notwithstanding the bar, the court did not err in denying Green's Motion for Directed Verdict. A motion for directed verdict challenges the "legal sufficiency of the evidence." *Murrell v. State*, 955 So.2d 975, 978 (Miss. Ct. App. 2007). Evidence is sufficient to sustain a conviction where "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Cridiso v. State,* 956 So.2d 281, 290 (Miss. Ct. App. 2006) (quoting *Bush v. State*, 895 So.2d 836, 843 (Miss.2005)). "In reviewing such motions, the trial court considers all of the credible evidence consistent with the defendant's guilt, giving the prosecution the benefit of all favorable inferences that may be reasonable drawn from this evidence." *Smith v. State,* 839 So.2d 489, 495 (Miss.2003) (citing *McClain v. State*, 625 So.2d 774, 778 (Miss.1993)). Basically, "once the jury has returned a verdict of guilty in a criminal case, [the court is] not at liberty to direct that

the defendant be discharged short of a conclusion on [its] part that the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty." *Phinisee v. State*, 864 So.2d 988, 992 (Miss. Ct. App. 2004) (citing *Fairchild v. State,* 459 So.2d 793, 798 (Miss.1984); *Pearson v. State,* 428 So.2d 1361, 1364 (Miss.1983)). With this standard in mind, there is sufficient evidence in the case at hand to prove that Green is guilty of the murder of Ricky Taylor.

Green was convicted of murder as defined by Mississippi Code Annotated §97-3-19(1)(a) which defines murder as "[t]he killing of a human being without the authority of law by any means or in any manner . . . [w]hen done with deliberate design to effect the death of the person killed, or of any human being." Thus, the State had the burden of proving that Green killed Ricky Taylor, a human being, with deliberate design. The evidence presented at trial illustrates that the State of Mississippi met this burden:

a. The victim owed Green, his bail bonds man, money. (Transcript p. 120).
b. Green was at the victim's house the night before the murder. (Transcript p. 112 and 113).
c. Green came to the victim's house to pick up the victim at approximately 5:30 a.m. on the morning of the murder. The victim got in the truck with Green and they drove off. (Transcript p. 116 and 117).
d. A local man heard gunshots at approximately 6:00 a.m. near the area where the victim's body was later found. (Transcript p. 121 and 122).
e. The body of the victim was found at approximately 6:15 a.m. at the intersection of Old Panola Road and Highway 315. (Transcript p. 126).
f. Green drove by the murder scene after the authorities arrived and told them, without seeing the body, that the body was that of Ricky Taylor. (Transcript p. 135).
g. Green told four different versions of what happened on the day of the murder. (*See* Transcript generally).
h. In Green's statement in which he claimed that he killed the victim in self defense, Green stated that he shot the victim two times with a .40 caliber Smith & Wesson. (Transcript p. 182).
I. In this same statement, Green stated that he was "pretty much standing right over him" when he shot him. (Transcript p. 184).
j. The victim's death was caused by a gunshot wound which entered the body

at the right ear. The wound was a near-contact wound with an estimated distance between the shooter and the victim of six to nine inches. (Transcript p. 257 - 258).

k. A hull or cartridge case was found approximately 11 feet from the victim's head at the murder scene. (Transcript p. 148).

l. A .40 caliber weapon was found in Green's vehicle along with a magazine containing ten live rounds. .40 caliber ammunition was found inside Green's home. (Transcript p. 215, 219, 220, and 389).

m. The cartridge case found at the scene bears class characteristics that are consistent with those of the gun found in Green's truck. (Transcript p. 245 and 246).

n. Green admitted that he was with the victim on the morning of the murder. (Transcript p. 208 and 347).

o. Green previously made threats about killing the victim. (Transcript p. 269 and 277).

p. Even though Green testified at trial that Ricky Nelson shot the victim, he never called to report the murder and did not immediately tell police that Ricky Nelson shot the victim after he was detained by police. (Transcript p. 176 and 211).

As such, there is sufficient evidence to sustain Green's conviction. Thus, Green's third issue is without merit.

## III. THE COURT PROPERLY REFUSED GREEN'S MOTION TO SUBMIT THE CASE TO THE JURY ON THE ISSUE OF MANSLAUGHTER AND NOT MURDER. (GREEN'S ISSUE IV).

Green also argues that the trial court erred in refusing to grant a directed verdict as to murder and submit the case to the jury on manslaughter. (Appellant's Brief p. 13). In support thereof, Green basically argues that if he "was acting under the belief that he was in danger of death or danger of great bodily harm, and if he shot Ricky Taylor while acting under that belief, but that belief was unfounded, then he would have been acting in imperfect defense." (Appellant's Brief p. 14). However, there are two problems with this argument.

First, as set forth in detail above, there was sufficient evidence to sustain Green's conviction for murder. This Court has previously held that "once the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion

on our part that given the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty." *Phinisee v. State*, 864 So.2d 988, 992 (Miss. Ct. App. 2004) (citing *May v. State*, 460 So.2d 778, 781 (Miss. 1984)).

Second, Green relies on the very statement he argues is inadmissible to show that there was evidence of imperfect self defense. (Appellant's Brief p. 13). Green not only claims that this statement was coerced and involuntary, but further admitted during the trial that it was a lie. (Transcript p. 375). Moreover, Green, himself, specifically testified that Ricky Nelson killed the victim, Ricky Taylor. (Transcript p. 352). He further testified, "I didn't shoot Ricky Taylor." (Transcript p. 390). This Court has previously held that a defendant cannot claim that he had nothing to do with the killing and then argue that he was entitled to have the case presented to the jury on the charge of manslaughter. *Turner v. State*, 773 So.2d 952 (Miss. Ct. App. 2000). Thus, the trial court correctly denied Green's motion to submit the case to the jury on the issue of manslaughter and not murder. Green's fourth issue is without merit.

## IV. THE TRIAL COURT PROPERLY REFUSED PROPOSED JURY INSTRUCTIONS D-1, D-8, D-10, D-11, D-12, AND D-13. (GREEN'S ISSUES V, VI, VII, AND VIII).

Jury instructions are within the sound discretion of the trial court. *Shumpert v. State,* 935 So.2d 962 (Miss. 2006) (citing *Goodin v. State,* 787 So.2d 639, 657 (Miss. 2001)). Mississippi law is "well-settled that jury instructions are not given unless there is an evidentiary basis in the record for such." *Fairchild v. State*, 459 So.2d 793, 800 (Miss.1984) (citing *Colburn v. State,* 431 So.2d 1111, 1114 (Miss.1983) and *Johnson v. State,* 416 So.2d 383, 388 (Miss.1982)). Further, it has been held with regard to jury instructions:

> The standard of review is "whether an issue should be submitted to the jury is determined by whether there is evidence, which, if believed by the jury, could result

> in resolution of the issue in favor of the party requesting the instruction. Conversely, only where the evidence is so one-sided that no reasonable juror could find for the requesting party on the issue at hand may the trial court deny an instruction on a material issue."

*Gill v. State*, 924 So.2d 554, 556 (Miss Ct. App. 2005) (quoting *Walls v. State*, 672 So.2d 1227, 1230 (Miss. 1996)).

**A. Proposed Instruction D-1 (Peremptory Instruction)**

Green contends that the court should have granted his peremptory instruction. (Appellant's Brief p. 15). The standard of review for the trial court's denial of peremptory instructions is the same as that for directed verdicts and Motions for JNOV. *Taggart v. State*, 957 So.2d 981 (Miss. 2007). As set forth in detail above, there was sufficient evidence to support Green's conviction and therefore, the trial court did not err in refusing his peremptory instruction.

**B. Proposed Instruction D-8**

Green also contends that the trial court should have granted his proposed instruction D-8 and argues that "with this instruction not being granted, then the jury was not informed of its function of determining the weight and credibility of the confessed statement with the other testimony and physical evidence." (Appellant's Brief p. 18). However, the jury was instructed as to its function of determining the weight and credibility of the evidence in Jury Instruction 1 which was given and states in pertinent part as follows:

> . . . it is your exclusive domain to determine the facts in this case and to consider and weigh the evidence for that purpose. . . . The State of Mississippi and the defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case and that you will reach a just verdict. . . . It is your duty to determine the facts and to determine them from the evidence produced in open court. . . . You are the sole judges of the facts. Your exclusive domain is to determine what weight and what credibility will be assigned the testimony and supporting evidence of each witness in this case. . . .

(Record p. 159-60). Further, as the trial judge pointed out "D-8 tries to single out certain parts of

the trial and urging the Court to comment on testimony of the defendant or the defendant's statements." (Transcript p. 437-38).

In support of his argument, Green relies on, *inter alia*, *Anderson v. State*, 241 So.2d 677 (Miss. 1970) and *Cork v. State*, 851 So.2d 430 (Miss. 2003). However, his reliance is misplaced. While the Court in *Anderson* did hold, as Green contends, that "the defendant may offer proof to show that the confession or statement is not true and explain why he made the untrue statement," (Appellant's Brief p. 17), the *Anderson* Court said nothing about the defendant being entitled to a jury instruction regarding the jury's role in determining the weight and credibility of the statement. Further, the requirements of *Anderson* were met in that Green was allowed to testify about the statement and explain it. *See generally* Transcript p. 338 - 421.

Further, the Court in *Cork* specifically held that "the court may refuse an instruction that is ... covered fairly elsewhere in the instructions...." *Cork*, 851 So.2d at 435 (quoting *Heidel v. State*, 587 So.2d 835, 842 (Miss.1991)). The *Cork* Court also noted that in *Simon v. State,* "the supreme court held that the trial court properly refused an instruction informing the jury that it was not bound to consider the defendant's confession as true based on its admission into evidence" and further noted that the "court found that an instruction specific to the confession was unnecessary because the jury had been generally instructed on determining the weight and credibility of the evidence." *Id.* (quoting *Simon v. State*, 688 So.2d 791, 809-10 (Miss.1997)). Thus, the Court's holding in *Cork* actually supports the State's position that the trial court did not err in refusing Green's proposed instruction D-8.

As the jury in the case at hand was sufficiently instructed regarding its duty to determine the weight and sufficiency of the evidence, proposed instruction D-8 was unnecessary. Accordingly, Green's sixth issue is without merit.

### C. Proposed Instruction D-10

Green argues that the trial court improperly refused his proposed instruction regarding imperfect self defense/manslaughter. (Appellant's Brief p. 19). As set forth in detail above, Green was not entitled to an imperfect self defense/manslaughter instruction as it was not supported by the evidence in that he testified that he did not kill Ricky Taylor. *See Fairchild,* 459 So.2d at 800 (holding that there has to be an evidentiary basis in the record to support the jury instruction) and *Turner v. State*, 773 So.2d 952 (Miss. Ct. App. 2000) (holding that a defendant cannot claim that he had nothing to do with the killing and then argue that he was entitled to have the case presented to the jury on the charge of manslaughter). Accordingly, the trial court did not err in refusing Green's proposed instruction D-10. As such, Green's seventh issue is without merit.

### D. Proposed Instructions D-11, D-12, and D-13

Green also argues that the jury should have been instructed with regard to self defense. (Appellant's Brief p. 20). In support thereof, Green argues that he was entitled "to have the jury instructed on his theory of the case." (Appellant's Brief p. 21). Green further argues that the evidentiary basis for these instructions is his July 23, 2005 statement. (Appellant's Brief p. 20). However, as discussed above, Green's theory of the case was that Ricky Nelson shot Ricky Taylor, not that Green shot Ricky Taylor in self defense. (Transcript p. 352). Moreover, Green admitted that he lied in the July 23, 2005 statement about shooting Ricky Taylor in self defense. (Transcript p. 375). He further testified that he had nothing to do with killing Ricky Taylor. (Transcript p. 390). As the trial court noted during the conference on jury instructions, "self defense is not being claimed before the jury." (Transcript p. 441). As such, the trial court properly refused proposed instructions D-11, D-12, and D-13 and thus, Green's eighth issue is without merit.

## V. THE TRIAL COURT PROPERLY DENIED GREEN'S MOTION FOR JNOV OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL AS THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE VERDICT AND AS THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE. (GREEN'S ISSUES IX and X).

A motion for a judgment notwithstanding the verdict, like a motion for directed verdict, tests the legal sufficiency of the evidence. *Jones v. State*, 920 So.2d 465, 469 (Miss. 2006). As set forth above, there was sufficient evidence to sustain the verdict. Therefore, the trial court did not err in denying Green's Motion for JNOV.

A motion for a new trial simply challenges the weight of the evidence. *Jones*, 920 So.2d at 471. The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

> [This court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an "unconscionable injustice."

*Pierce v. State*, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86 (Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993). Furthermore, "[i]t is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief." *House v. State*, 735 So.2d 1128 (Miss. Ct. App.1999).

In support of his contention that the verdict was against the overwhelming weight of the evidence, Green simply relies on the arguments he presented with regard to his other issues. (Appellant's Brief p. 21 - 22). He provides no basis from the record or from legal authority whatsoever to support his argument. *See Walker v. State*, 913 So.2d 198, 222 (Miss. 2005) (citing *Pulphus v. State*, 782 So.2d 1220, 1224 (Miss.2001) ("Issues cannot be decided based on assertions

from the briefs alone. The issues must be supported and proved by the record."); *Williams v. State,* 708 So.2d 1358, 1362-63 (Miss.1998) (failure to cite relevant authority obviates the appellate court's obligation to review such issues)).

There was sufficient evidence sustain the verdict and the verdict was not against the overwhelming weight of the evidence. Accordingly, Green's ninth and tenth issues are without merit.

## CONCLUSION

The trial court did not err in denying Green's Motion to Suppress or in refusing the proposed jury instructions discussed above. Further, there was sufficient evidence to sustain the verdict and the verdict was not against the overwhelming weight of the evidence. Accordingly, the State of Mississippi respectfully requests that this Honorable Court affirm Green's conviction and sentence.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Stephanie B. Wood, 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 26th day of July, 2007.

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