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

**JOHN R. GREEN** — **APPELLANT**

**V.** — **NO. 2006-KA-01984-COA**

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

# BRIEF OF APPELLANT

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## STATEMENT OF CASE

Appellant John R. Green was indicted on October 10, 2005 by the Grand Jury of the First Judicial District of Panola County, Mississippi for the murder of Ricky Taylor who dies on July 23, 2005 in the First Judicial District of Panola County, Mississippi.

This cause was tried before a jury in the First Judicial District of the Circuit Court of Panola County, Mississippi on September 19, 2006. Following the State resting it's case in chief in this matter, Defendant made a motion for a directed verdict, which Motion was denied by the Court . When the State rested, the Defendant also made a motion that alternatively that the case be submitted to the jury on matter on the issue of manslaughter, not murder based on the evidence produced by the State. This Motion was also denied by the Court. Once the Defendant rested and the State rested after it's rebuttal, the case was submitted to the jury. The jury, after deliberation, returned a verdict wherein John R. Green was found guilty of the crime of murder. Following the return of the verdict by the jury, the Court sentenced John R. Green to a term of life imprisonment. Subsequent to the trial of this matter, John R. Green by and through his attorneys, filed a Motion for a New Trial on October 2, 2006. The Court however, entered an Order Denying Defendant's Motion for a New Trial.

Thereafter, Defendant filed a Motion for Appeal appealing his conviction by the Jury and the sentence of the Court , and the denial of the Judgment Notwithstanding the Verdict or Alternatively a Motion for New Trial.

## SUMMARY OF ARGUMENT

It is the contention of John R. Green that the Court erred in not granting his Motion to Suppress Statements. Further, it the contention of John R. Green that the State wholly failed to meet its requisite burden of proof of proving beyond a reasonable doubt that John R. Green was guilty of the crime of murder. For this reason, the lower court erred in not granting Green's Motion for a Directed Verdict, and alternatively erred in not granting Green's Motion for to submit the case to the jury on the charge of manslaughter, not murder. The Court erred in denying Green's peremptory jury instruction (Jury Instruction D-1). The Court erred in not Granting Jury Instructions numbered D- 8, 10, 11, and 12 in that Green had evidence of his theory of the case which the jury was not allowed to consider by not being properly instructed. Further for this reason the verdict of the jury cannot stand because it was against the weight of the evidence.

The lower Court erred in not granting Green's Motion for A New Trial.

## STATEMENT OF ISSUES:

ISSUE I. THE COURT ERRED IN NOT GRANTING DEFENDANT'S MOTION TO SUPPRESS STATEMENT OF DEFENDANT.

ISSUE III.: THE LOWER COURT ERRED IN ADMITTING THE STATEMENT OF JOHN R. GREEN TAKEN ON JULY 23, 2005 AT 6:45 P.M. IN TO EVIDENCE AT THE TRIAL OF THIS MATTER.

ISSUE III: THE LOWER COURT ERRED IN NOT GRANTING JOHN R. GREEN'S MOTION FOR A DIRECTED VERDICT

ISSUE IV.: THE COURT ERRED IN DENYING DEFENDANT'S MOTION AT THE CLOSE OF THE STATE'S CASE IN CHIEF TO SUBMIT THE CASE TO THE JURY ON THE ISSUE OF MANSLAUGHTER, NOT MURDER.

ISSUE V. :THE COURT ERRED IN NOT GRANTING JOHN R. GREEN'S JURY INSTRUCTION NUMBER D-1.

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## ARGUMENT AND AUTHORITIES

**ISSUE I. THE COURT ERRED IN NOT GRANTING APPELLANT JOHN R. GREEN'S MOTION TO SUPPRESS STATEMENT.**

Prior to the trial in this matter, John R. Green made a Motion to Suppress Statement, moving the Court for an Order to suppress any custodial statements made by Green since such statements were the result of coercion, promises, or other inducements. (CP 35, 36;58-62 RE 4) This matter was brought on for hearing on August 25, 2006. (CP 37)

At the hearing in this matter, Craig Sheley, Deputy for the Panola County Sheriff's Department testified on behalf of the State. (CP 50) On July 23, 2005, Deputy Sheley was one of the investigating officers who investigated the death of Ricky Taylor on July 23, 2005 which occurred near Sardis, Mississippi which is located in the First Judicial District of Panola County, Mississippi. (CP 51, 52) During the investigation of the death of Ricky Taylor, Deputy Sheley located Green. (CP 50) Green was located in Sardis, Mississippi near the drug store where his wife and daughter worked. (CP 50) He was getting out of his truck, and Deputy Sheley approached him. (CP 51) Sheley informed Green that he needed to come with him down to his office to talk. (CP 114) Green was then taken into custody and was transported to the Panola County Sheriff's Department. (CP 51) During the transport, Green asked Sheley if he needed to call his attorney, and Sheley told him that he did not need to call his attorney at that time. (CP 113)

Deputy Sheley and John Green were acquaintances prior to July 23, 2005; Deputy Sheley was a lifelong resident of Sardis, Mississippi. (CP51 ) Sheley had known John Green for

approximately twenty years, and he had in fact grown up three doors down from Green. (CP51 ). Sheley had grown up with Green's children. (CP51 )

Once Green and Sheley arrived at the Panola County Jail, Green and Sheley went into the interrogation room at the Panola County Sheriff's Department. (CP 51, 114, 120) At that time, Green had had no sleep for at least eighteen hours. (CP82) According to Deputy Sheley he advised Green of his Miranda rights. (CP 53) Subsequent to that, Green gave a statement to Sheley,. (CP61) The substance of that statement was that Green was with Ricky Taylor on the morning of July 23, 2005, and that Green saw an individual by the name of Ricky Nelson shoot and kill Ricky Taylor. (CP66 ) While Green was giving that statement, Deputy Sheley told Green "I know Ricky Taylor." (CP114) Sheley went further to say... "if something happened and you had to defend yourself, that is what I need to know, Johnny; don't make this any worse than it is going to be ." (CP 74; 114-121) Following his giving that statement, Green was arrested, placed into custody and no bond was set for him. (TR 66)

Approximately eight (8) hours after his first statement was given, Deputy Sheley got Green out of his cell and took another statement from him. (CP 67) Nothing had changed in the course of that investigation during that eight hour period of time between the time that Green gave his statement and the time that Deputy Sheley pulled Green out of his cell. (CP 73, 74) At that point, Green had no more sleep, and thus, at that point, he had had no sleep for at least twenty-six hours. (CP74, 8F2) Green was not allowed to make any phone calls during that eight hour or so period of time. ( CP116 ) Green had also made several inquiries as to getting a bond set and getting before a judge in order to get a bond set. (CP 114, 119) Green was also aware that even though he had told Sheley that he had seen Ricky Nelson shoot and kill Ricky

Taylor that Nelson had not been brought to the Panola County Jail. (CP 119)

When Green went back into the interrogation room for the second time, Sheley began to pat Green on the arm, and he began talk to Green about what good friends they were. (CP 114) At that point, Sheley told Green that he could "poke holes in the Ricky Nelson story. (CP 114) Green again asked Sheley if he should consult an attorney. (CP 114) Sheley began to pat Green on his arm and told Green to be straight with him, and "we'll get through this." (CP 114) Sheley again told Green that he did not believe the Ricky Nelson story, i.e. he (Sheley) did not believe Green's statement that Green had seen Ricky Nelson shoot and kill Ricky Taylor. (CP 114) At that point, Green told Sheley that was the truth. (CP 114) Sheley then pulled his chair over to Green and told Green to just be straight with him, and "we'll get through this." (CP 114) Sheley again told Green that he did not believe the Ricky Nelson story." (CP 114)

Sheley then told Green that they could "get through this thing." (CP 114) Sheley went further and told Green that he knew Ricky Taylor, and that what he (Sheley ) thought had happened is that Green and Taylor had gotten "into it" and had started scuffling and that Green had to shoot Taylor. (CP 114) Sheley further explained to Green that if he had shot Taylor under those circumstances then that would have been self defense. (CP 114) Sheley told Green that he would have done the same thing under the circumstances. (CP 114) Sheley told Green that he believed that a cut on Green's face was a result of the scuffle between Green and Taylor. (CP 119) Green told Sheley that he had cut his face shaving. (CP 117) Sheley told Green that he was going to take a picture of the cut on Green's face to show that the two had been struggling. (CP 117) Sheley told Green that the picture would help Green's case, and the picture would hurt Sheley's (the Sate's) case. (CP 117) Sheley told Green that he was making it hard on himself

by not going ahead and telling him that he shot Ricky Taylor in self defense. (CP 118) Green again asked Sheley about getting a bond. (CP 119) Green also asked Sheley if it was self defense would he be going home. (CP 119) In response, Sheley again said tell him the truth and they would work through "this thing." (CP 118)

Green placed his trust in Deputy Craig Sheley. (CP 120) Sheley was a long time acquaintance of Green's who had grown up with Green's children just three doors down from Green. (CP 72, 120) Based on his trust in Sheley and Sheley's continued references to the matter of self defense, Green had developed the understanding from Sheley that if Green would tell him that he had shot Ricky Taylor was shot in self defense that that the matter would be over and he could go home or that he would have a bond set and be able to go home. (CP 120, 121) Sheley took a second statement from Green at approximately 6:45 P.M. on July 23, 2005. (CP 120) Green would not have made that statement had Sheley not made the representations to Green that this matter would be resolved by him going home or he would have a bond set if he would just state that he shot Taylor in self defense. (CP 120, 121) Based on his trust in Sheley and Sheley's representations to him, Green made a second statement to Sheley in which he stated that he shot Ricky Taylor and killed Ricky Taylor while acting in self defense. (CP118-120 ; RE 16) The statement was taped, and the tape was ultimately transcribed. (RE16 ) It is this statement that Green sought to suppress in the Defendant's Motion to Suppress Statement. (RE16)

In order for a confession or statement of any Defendant to be admissible at trial, that statement must be voluntarily and must not be the product of promises, threats or inducements. Johnson v. State of Mississippi 721 So. 2d 960 (Miss. 1998) In Johnson, the Demarcus Johnson was charged arrested and charge with aggravated assault in regards to an incident which

occurred at a local pool hall in Houston, Mississippi. Johnson, 721 So. 2d at 657. During the investigation, the Defendant was interviewed by two police officers, Officer Robertson and Officer Blue, of the Houston, Mississippi Police Department. *Id.* Johnson made a pretrial motion to suppress the statement that he gave to Officer Robertson and Officer Blue. *Id.* The trial court denied the Motion, and the statements were ultimately admitted at the trial of this matter. Id. Johnson had made several inquiries regarding bond. *Id.*

Though a bond had been set for Johnson, he was not able to make bond without the assistance of relatives. *Id.* In fact, Johnson had called several relatives during the few days that he had been incarcerated, and he had not been able to find anyone who could assist him in making bond. *Id.* Johnson also wanted to be transferred from the small city jail located in Houston, Mississippi to the larger Chickasaw County Jail. *Id* at 658. Johnson had made several inquiries to Officer Blue regarding how to be transferred to the county jail. *Id.* At 658. Officer Robertson had informed Johnson that if he would quit telling stories and tell the truth that he would see what he could do about getting Johnson up with his family members to get him out of jail. *Id* at 657. Officer Blue stated though Johnson had asked if he gave a statement could he be moved to the county jail, that he would have been moved to the county jail even if he had made no statement. *Id.* at 658.

However, In Johnson, the Court of Appeals found in that matter that though both officers testified that no promises had been made to Johnson to induce his statement, that Johnson was given the impression that he would have assistance from the officers in making bond and that he would be transferred to the county jail. *Id.* At 650. The Johnson court therefore found that the trial court had been in error in not granting the Motion to Suppress the

Staement. *Id.* The Court in Johnson was of the opinion that the statement of the Defendant Johnson was the result of an improper inducement, and it was therefore not a voluntary statement on Johnson's part. *Id.* Though both officers testified that no promises had been made to the Defendant (Johonson), he had been left with the impression that he would have assistance in getting out on bond or that he would be moved to the county jail. *Id.* The court thus found that the statement had been obtained as a result of improper inducement. *Id.* The Johnson court found that the trial court was in error in not granting the Motion to Suppress the statement , and the action was reversed and remanded for a new trial. *Id.*

The well established law in Mississippi is that any confession obtained as a result of promises, threats, or any other inducement is inadmissible at trial. Chase v. State, 645 SO. 2d 829, 837, 838 (Miss. 1994); Johnson, Supra . It is also well established law in Mississippi that any statement obtained as a result of a promise to have a bond set or to have a lower bond set is not admissible. Johnson, *Supra.* In Blalock v. State, 79 Miss. 517, 522, 31 So. 105, 106 (Miss. 1902), the Mississippi Supreme Court ruled that the defendant's statement which was given in response to the officer telling the defendant that he was his friend and that he would go on his bond if necessary was not admissible at trial. In Clash v. State, 146 Miss. 811, 112, So. 370 (Miss. 1927), the Mississippi Supreme Court found that a statement of a defendant charged with stealing a sum of money from a store was not admissible. In Clash, the defendant had given a confession to the store owner that he had stolen money from the store in response to the store owner's informing him that if the defendant would tell him he had taken his money and give the money back that the defendant would be released on bond. *Id.* Immediately following giving his statement to the store owner, the defendant was taken to the Sheriff's Department where he gave

the same statement. Id. The Mississippi Supreme Court ruled in that instance that the statement was not voluntary but was made in reliance on the promise of making bond and was therefore not admissible. *Id.* In Barnes v. State, 199 Miss. 86, 23 SO. 2d 405 (Miss. 1945) the Mississippi Supreme Court held that a statement given in response to the Sheriff's promise to the defendant that his son and daughter would be released from jail if he would make a statement and given in response to the promise that the law would be lighter on him and he would go on the defendant's bond if the law allowed was not admissible. In Harper v. State, 722 So. 2d 1267 (Miss. 1998), the Mississippi Court of Appeals held that the Defendant's statement given in response to the promise of narcotics agents that they would help the Defendant if he gave a statement was not a voluntary statement and therefore not admissible.

In Dunn v. State, 547 So. 2d 42 (Miss. 1989), a confession taken from the Defendant was held to be involuntary and inadmissible at trial. In Dunn, the police chief was a good friend with the defendant, and the defendant trusted him. *Id.* Dunn was told by the police chief who was his good friend and in whom he had confidence that it would be in his best interest to tell the truth. *Id.* The defendant in Dunn testified that the statements made by the police chief that he would do what he could to help and that it would be in his best interest to tell the truth induced him to make the statement, just as Sheley's statements set forth above in this case induced Green to make this statement. *Id.* Thus, following the court's ruling in Dunn, the statement in the case at hand should be ruled inadmissible since it was not a voluntary statement.

Further, any coercion or promises of leniency to a defendant by a law enforcement agent is forbidden. Johnson , 721 So. 2d 1t 650. It is forbidden for any law enforcement agent to give any defendant even the impression that cooperation by the suspect might of some benefit. Abram

v. State, 606 SO. 2d 1015, 1031 (Miss. 1992)

In the case at hand, the statement of John R. Green which was taken at approximately 6:45 P. M. On July 23, 2005 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. When the statement was given, it was the second statement given by Green. He had not slept in many hours. He had known Deputy Sheley for many years; Sheley had grown up three doors down from Green. Sheley had grown up with Green's children. Sheley told Green what good friends they were. Sheley told Green a number of times that he did not believe Green's version of the events that Green had seen Ricky Nelson shoot and kill Ricky Taylor. Sheley continued to tell Green that Green should tell the truth and that they would get through this. Green continued to ask Sheley if he should get an attorney and asked about bond. Green trusted Sheley. Sheley told Green on a number of occasions that Green should just go ahead and tell him the truth and make it easier, and Sheley told Green that he told Sheley that he thought the truth was that Green had shot and killed Ricky Taylor while acting in self defense. Green was thus left with the impression that if he told Sheley that he told Sheley if he shot Ricky Taylor while acting in self defense that the whole matter would be over and that he would be going home or e a bond would be set for him. ) Sheley continued to tell Green that he did not believe that he had seen Ricky Nelson shoot Ricky Taylor; Green knew that Ricky Nelson had not been brought to the Panola County Sheriff's Department. Sheley even went so far as to take a picture which he informed Green would help him in his case for self defense. It is unrefuted that Green was under the impression that if he

gave the statement to Sheley that he was acting in self defense and he shot Ricky Taylor that Green that either the whole matter would be over, or a bond would be set for him. Thus, Deputy Sheley acted in a manner which has been forbidden by the Mississippi Supreme Court by giving Green this impression. (See Abrams, 606 So. 2d at 1031) Thus, the statement is the product of a forbidden action of a law enforcement officer. (*See* Johnson 721 S0. 2d at 650; Abrams 606 SO. 2d at 1031) With that being the case, then the statement is not a voluntary statement; it is al. The second statement of John Green taken at 6:45 P.M. on July 23, 2005 was then an improperly induced statement, just as the statement was in Johnson v. State, *supra*. The statement therefore is not admissible in court. The State failed to prove beyond a reasonable doubt that the statement of the Defendant which was the subject of the Motion to Suppress was voluntary and failed to prove beyond a reasonable doubt that the statement was not the result of the impression that Green's by making the statement might be of some benefit to Green.. (RE 16 ; See also, Morgan v. State, 681 So. 2d 82, 87 ( Miss. 1996); Abrams v. State, 606 So. 2d , 1015, 1031 (Miss. 1921) ) When considering the totality of the circumstances and the facts set forth above, Green has made an unrefuted showing that he was of the impression that if he made the statement that he shot Ricky Taylor while acting in self defense, in exchange the whole matter would be over, and he would be released, or a bond would be set for him. In following with the well established law in Mississippi, as set forth above, this is not an admissible statement.

The lower court was therefore in error in denying Defendant's Motion to Suppress Statement for the reasons set forth above. The conviction of John R. Green should be reversed and/or reversed and remanded for reasons set forth above.

## II.

## ISSUE II: THE LOWER COURT ERRED IN ADMITTING THE STATEMENT OF JOHN R. GREEN TAKEN ON JULY 23, 2005 AT 6:45 P.M. INTO EVIDENCE AT THE TRIAL OF THIS MATTER.

For purposes of his argument as to Isssue II, John R. Green incorporates herein by reference all of the facts and authorities set forth above in support of Issue I.

At the trial of this matter, the State introduced into evidence the statement of John R. Green which was taken on July 23, 2005 at 6:45 P. M. (TR 178, 179; Exh 16T; Ehxibit 17T) Prior to the introduction of the Statement, an objection was made to the introduction of the tape of the statement and the transcript of the statement, based on the reasons argued on behalf of Green at the hearing on the Motion to Suppress Statement. (TR 178, 179) The Court overruled the objection and admitted the tape of the statement as well as the transcript of the statement into evidence. (TR 178, 179; Exh. 16T, Exh. 17T).

The trial court was in error in admitting this statement into evidence for all of the reasons set forth as to Issue I above, which are supported by all facts and authorities set forth and cited as to Issue I. above. Since the lower court was in error in admitting this statement of Defendant into evidence at the trial of this matter, this conviction should be reversed and/or reversed and remanded.

## III.

## ISSUE III: THE LOWER COURT ERRED IN NOT GRANTING JOHN R. GREEN'S MOTION FOR A DIRECTED VERDICT.

When the State rested, the Defendant made a Motion for a Directed Verdict based on the fact that the State had wholly failed to establish a prima facie showing based on the evidence at

that time for the case to be submitted to the jury. (TR 283) The Court denied that motion. (TR 284) It is the contention of John R. Green that the lower court was in error in denying his Motion for reasons set forth below.

John R. Green was indicted by the Grand Jury of the First Judicial District of Panola County, Mississippi for willfully, unlawfully, and feloniously shooting and killing Ricky Taylor1717 with a firearm while acting with a deliberate design to kill Ricky Taylor in violation of Mississippi Code Annotated Section 97-3-19(1) (1972), as annotated and amended. (CP 6; RE 3)

On July 23, 2005, John R. Green came to the home of Ricky Taylor and picked up Ricky Taylor. (TR TR 116, 117) Ricky Taylor left his home with Green in Green's truck at approximately 5: 30 A. M. (TR 116, 117) It was not unusual for Green to come pick up Ricky Taylor from his home. (TR 119) Green was in the bail/bond business, and he had bonded Ricky Taylor out of jail on six or seven occasions. (TR 119) Normally, Green would bond Ricky Taylor out of jail, and Taylor would pay for the bond over time. (TR 119) There was a long standing relationship between Green and Taylor. (TR 119) At approximately 6:00 A. M. on that date, Jimmy Jenkins heard three gun shots at his home located at the intersection of Road 315 and Old Panola Road. (TR 121) At approximately 6:15 that same morning, Moses Dean was driving to work and noticed a white male lying in the road on Old Panola Road just South of Road 315. (TR 124) Mr. Dean called 911. (TR 126) Deputy John Lantern was the first law enforcement officer to arrive at the scene, and he discovered that the white male was dead apparently from a gunshot, and that the victim was Ricky Taylor. (TR131-133 )

Panola County Sheriff's Deputy Barry Thompson next arrived at the scene and began to investigate. (TR 146-148) One .40 caliber hull was retrieved from the scene; no projectile was

recovered. (TR 153 ) A knife was discovered at the scene. (TR 187) Taylor's cause of death was determined to be gunshot wound. (TR240) John R. Green was brought into the Panola County Sheriff's Department for questioning during the investigation. (CP51) Green gave a statement that he had seen an individual by the name of Ricky Nelson Shoot and kill Ricky Taylor. (CP62, 63) Ricky Taylor had been used by law enforcement as a confidential informant. (TR167) Ricky Taylor had bought drugs from Ricky Nelson. (TR167, 168) Ricky Taylor had also been involved in seventeen to eighteen other transactions as a confidential informant. (TR179)

The State failed to prove beyond a reasonable doubt that John R. Green shot and Killed Ricky Taylor while acting with a deliberate design in violation of Mississippi Code Annotated Section 97-3-19(1)(a). There is no eye witness who saw John R. Green shoot and kill Ricky Taylor. There is no physical or latent evidence that links Green to any physical evidence located at the scene. There is no physical or latent evidence which links Green to the firearm which ultimately caused the death of Ricky Taylor and John R. Green. Green initially gave a statement that he had seen Ricky Nelson shoot and kill Ricky Taylor. (TR351) Ricky Taylor was a confidential informant who worked with law enforcement agents in regards to drug transactions. (T167, 168R) While working as a confidential informant, Ricky Taylor was involved in a Drug transaction with Ricky Nelson . (TR167, 168, 179)

As stated above and for reasons set forth above, Green gave a statement that he shot Ricky Taylor while he was acting in self defense. (CP 114-121; RE16) Even if this statement is accepted as to the version of the events that occurred that resulted in Taylor's death, there is no physical evidence to refute the fact that Green was acting in self defense. (TR188) There was in fact another weapon at the scene. (TR 187)

For all of the reasons set forth herein above, it is clear that the Lower Court was in error

in denying Defendant's Motion for a Directed Verdict. The State failed to make a prima facie showing by failing to prove beyond a reasonable doubt that John R. Green was guilty of shooting and killing Ricky Taylor with a firearm while acting with a deliberate design in violation of Mississippi Code Annotated Section 97-3-19 (1972). For this reason, the conviction of John R. Green should be reversed.

**IV.**

**ISSUE IV.: THE COURT ERRED IN DENYING DEFENDANT'S MOTION AT THE CLOSE OF THE STATE'S CASE IN CHIEF TO SUBMIT THE CASE TO THE JURY ON THE ISSUE OF MANSLAUGHTER, NOT MURDER.**

All of the facts, arguments, and authorities which were set forth in Section III under the heading Issue III under the Argument and Authorities Section of Appellant's Brief are hereby incorporated by reference, as if fully copied in Section IV herein, and the same are hereby set forth in support of Issue IV.

At the close of the State's case in chief, Defendant made a motion for a directed verdict o moving that the jury only consider the charge of manslaughter, not murder, based on the evidence presented by the State. (TR 283) The Court denied the Defendant's motion. (TR 284 ) It is the position of John R. Green that this was an error on the part of the lower court for the reasons set forth below.

It is the contention of Green that the State failed to prove beyond a reasonable doubt that he was guilty of murder in violation of Mississippi Code Annotated 97-3-19 . As set forth above, Green gave a statement in which he stated that he shot Ricky Taylor while acting in self defense.( Exh. 16T) If the jury were to consider that version of events, and the jury were to find any criminal culpability on Green's part, then the jury would have to be that Green was acting in

imperfect self defense; thus, if he were to be found guilty of any charge, then the appropriate charge would be the charge of manslaughter.

The Mississippi Supreme Court has recognized the theory of imperfect self defense. Imperfect self-defense occurs when a killing is intentional, but it is done without malice but under a bona fide but unfounded belief that it was necessary to prevent great bodily harm. Moore v. State of Mississippi, 859 So. 2d 379, 383 (Miss. 2003); Wade v. State, 724 So. 2d 1007, 1011 (Miss. 1998); Lanier v. State, 684 So. 2d 93, 97 (Miss. 1993) .

There is no physical or other evidence to refute that if Green shot Ricky Taylor, that he was acting in self- defense.(TR) If Green 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. (See Moore, 859 SO. 2d at 383; Wade, 724 SO. 2d at 1011; Lanier, 684 So. 2d at 97.) Then the appropriate charge for the jury to consider would be manslaughter, not murder. *Id.* In the case at hand, when considering the evidence presented in the State's case in chief (See Issue III above) in the light most favorable to the State, giving the State the benefit of all favorable inferences that may be reasonable drawn from the verdict, the facts in this case point overwhelmingly in favor of Green. Moore, 859 So. 2d at 383; Coleman v. State, 697 So. 2d 777, 787 (Miss. 1997) Thus, this court should reverse the judgment of the lower court for the reasons set forth above.

## V.

## ISSUE V.: THE LOWER COURT ERRED IN NOT GRANTING JOHN R. GREEN'S JURY INSTRUCTION NUMBERED D-1.

At the conclusion of the trial after all of the evidence had been presented, John R. Green submitted Jury Instruction Numbered D-1, a peremptory Instruction. (TR 436; RE 5; CP178); The Court refused Jury Instruction Numbered D-1. (TR 436) It is the contention of John R. Green that the lower court was in error in refusing his Jury Instruction Numbered D-1.

For purposes of argument and authorities in support of this issue, in addition to the argument and authorities of this issue which will follow, all of the facts, arguments, and authorities which were set forth in Sections III and IV under the heading Issued III and IV under the Argument and Authorities Section of Appellant's Brief are hereby incorporated by reference as if fully copied in Sections III and IV, and the same are hereby set forth in support of Issue V.

John Jay West, Jr. testified that he had known Ricky Nelson for some time, and that Ricky Nelson had worked on his farm *for h*im from time to time through the years. (TR 305, 306) A week or so before July 23, 2005, the date of the death of Ricky Taylor, Ricky Nelson Ricky Nelson had a conversation with West. (TR 306)Nelson told West that he had been "busted," and that Ricky Taylor had set him up. (305, 306, 307) Nelson stated that Ricky Taylor had also set up several other people.(TR 306, 307) Nelson further stated to West that he was not worried about his arrest because Ricky Taylor would be dead within a week. (R 306) Green testified that he was Ricky Nelson shoot and kill Ricky Taylor. (TR 351)Melvin Polk, Jr. testified that he is a cousin of Ricky Nelson. (TR 424) Melvin Polk, Jr. had been with Ricky Nelson on the night of July 22, 2005. (TR 424, 425) Ricky Nelson got out of the car with Polk late in the evening on July 22, 2005. (TR 425) When Polk last saw Nelson late in the evening of July 22, 2005 a few

hours prior to the death of Ricky Taylor, Nelson had a gun in his hand. (TR 425) Green testified that he saw Ricky Nelson shoot and kill Ricky Taylor. (TR 351) Consistent with that testimony is the testimony of the law enforcement officers who testified that Ricky Taylor was utilized as a confidential informant by law enforcement, and that while working as a confidential informant, Ricky Taylor had been involved in a transaction with Ricky Nelson. (TR305-307) A week prior to the death of Taylor, Ricky Nelson told John West that he had been busted, and that he had been set up by Ricky Taylor. (TR 305-307) Nelson also told West that he was not worried because Taylor would be dead within a week. (TR305-307) Nelson was seen late on the evening of July 22, 2005 with a gun in his hand. (TR425)

When considering all of the evidence adduced at trial, it is clear that the State failed to prove beyond a reasonable doubt that John R. Green did shoot and kill Ricky Taylor while acting with a deliberate design in violation of Mississippi Code Annotated Section 97-3-19. Thus, the lower court was in error in not granting the peremptory instruction numbered D-1. (CP178; RE5) For all of the above and foregoing reasons, the conviction of John R. Green should be reversed.

## VI.

## ISSUE VI: THE LOWER COURT ERRED IN NOT GRANTING DEFENDANT'S JURY INSTRUCTION NUMBERED D-8.

At the close of the case following the Defense resting its case, Defendant submitted Jury Instruction Numbered D-8, which reads as follows:

"You are the sole judges of the facts in this case. Your exclusive province is to determine what weight and credibility will be assigned to the testimony and supporting evidence of each witness in this case. You are required and expected to use your good common sense and sound

judgment in considering and weighing the testimony of each witness in this case. You are required and expected to use your good common sense and sound judgment in considering and weighing the testimony of each witness who has testified in this case.

You may consider the alleged admission in the light of the manner by which you find it was obtained, and give it such weight and credibility as you think it is entitled. Unless you believe from the evidence beyond a reasonable doubt that the alleged admission made by the defendant was truthful, was accurately repeated; that the defendant understood what was said; and that such admission was made by the defendant of his own free will and was not extorted by threat of harm or promise of benefit; then you mst disregard the alleged admission to the extent these facts tend to discredit it. "

The Court refused to grant this instruction. ( RE17; CP186 ) The Court's refusal to grant Jury Instruction numbered D-8 was error.

A jury is to disregard a confession or admission unless it is believed by the jury beyond a reasonable doubt that the alleged confession or admission was truthful and made of the Defendant's own free will and was not extorted by threat of harm or promise of benefit. McCall v. State , 771 So. 2d 904, 907 (Miss. 2000). It is for the jury to determine whether to believe the confessions put into evidence. Id. ; Lee v. State , 457 So. 2d 920, 922 (Miss. 1984)

Once the trial court has determined that a confession or statement of a defendant is admissible at trial, the jury is then to consider the statement in the "light of the evidence by which it was obtained and give it such weight and credibility as they think it entitled." Anderson v. State, 241 So. 2d 677, 678 (Miss. 1970); Brooks v. State, 178 Miss. 575, 282; 173 So. 409, 411 (Miss. 1930); Cork v. State, 851 So. 2d 430, 343 (Miss. 2003) The Defendant may offer proof to show that the confession or statement is not true and explain why he made the untrue

statement. Anderson, 241 So. 2d at 677; Wilson v. State, 258 So. 2d 756. Once the rebuttal or impeachment testimony is offered, then the jury may conclude that the confession, though found by the court to be voluntary, is untrue and not entitled to any weight. *Id.*

In Wilson , the court had determined at a suppression hearing that the statement of the defendant was admissible, and the state did admit the statement at trial over the objection of the defendant. Wilson, 258 So. 2d 756, 757, 758. It is the function of the jury to determine the credibility of a confession or statement of defendant. *Id.* However, with this instruction not being granted, then the jury was not informed of its function of determining the weight and credibility of the confession or statement with the other testimony and physical evidence. *Id.*

For purposes of argument, all facts and authorities set forth in Issue I under the heading Argument and Authorities in this matter are hereby set forth as if fully copied herein and are set forth in support of this issue. In the case at hand, Green gave a statement with law enforcement officers, and he testified consistently with that statement. Subsequent to giving that statement, the Green gave another statement in reliance on the impression that he had been given from Deputy Craig Sheley that he would be released or a bond would be set for him if he gave that statement. Since the second statement of Green was admitted into evidence at trial, it is the function of the juty to determine the credibility of a statement of a defendant. However, with the jury not being instructed on the fact that it was the function of the jury to determine the weight and credibility of the statement with the other testimony and physical evidence, the jury was not properly instructed as to its function.

For the above and foregoing reasons, the lower court was in error in denying Jury Instruction Numbered D-8. For all of the reasons set forth above and as a result of this error of the lower court, the conviction of John R. Green should be reversed.

## VII.

**ISSUE VII.: THE LOWER COURT WAS IN ERROR IN NOT GRANTING JURY INSTRUCTION NUMBERED D-10.**

Green submitted Jury Instruction Numbered D-10 which was the jury instruction asking the jury to deliberate as to imperfect self-defense. (CP 184; RE6 ; TR 435-440) The Court refused this instruction. (TR435-440) It is the contention of John R. Green that the lower court erred in not granting Jury Instruction Numbered D-10.

In support of this argument, all facts and authorities set forth in Issue IV. under the hearing Arguments and Authorities are hereby set forth as if fully copied in words and figures herein.

A defendant is entitled to have his theory of his case presented to the jury when there is evidence of such theory. In the case at hand, the statement of John R. Green was admitted into evidence. (RE 16) In that statement, Green stated that he had shot and killed Ricky Taylor while acting in self defense. Since that statement was admitted at trial, then the jury had before it evidence of self defense. The jury has the function of determining how weight it gives that statement. Wilson, 258 So. 2d at 756. If the jury were to give that statement much weight and if the jury were to accept that statement as the version of the events that occurred, the jury then had before it evidence that Green may have been acting in self defense, and could have considered imperfect self defense. By the Court refusing Instruction numbered D-10, then the jury was not allowed to consider one of the defendant's theories. The jury was therefore not properly instructed as to the law as it related to the evidence presented at the trial of the matter.

A defendant is entitled to have jury instructions given that present his theory of the case; in fact, the Mississippi Supreme court has stated that it values the right of a defendant to present his theory of the case as long as there is an evidentiary basis for the instruction. Phillipson v. State, 943 Sol 2d 670 (Miss. 2006) Refusal to grant such an instruction is reversible error. *Id. A* defendant is entitled to have any legal defense asserted by him even though evidence supporting it may be meager. Tripplett v. State, 672 So. 2d 1184 (Miss. 1996)

For all of the above and foregoing reasons, the conviction of John R. Green should be reversed or it should be reversed and remanded.

## VIII.

**ISSUE VIII: THE LOWER COURT ERRED IN NOT GRANTING JURY INSTRUCTIONS NUMBERED D-11, D-12, AND D-13.**

John R. Green submitted Jury Instructions numbered D-11, D-12, and D-13. (CP 185, 186, 187; RE) The Court refused these instructions. (TR 434-440) It is the contention of John R. Green that the lower court was in error in not granting these instructions. In support of this argument, all of the facts and authorities set forth in Issue III and IV and VII under the heading Argument and Authorities are set forth as if fully copied herein, and they are all offered in support of the argument in support of this issue.

The State admitted into evidence a statement in which Green stated that he shot and killed Ricky Taylor while acting in self-defense. As set forth above, the jury had the function of determining how much weight and credibility to give this statement. Wilson, 258 So. 2d at 756. Assuming how much weight the jury gave this statement, the jury may have accepted this statement as true. Self defense is a defense to murder. Had the jury accepted the version of

events described in the statement, then the jury could have found that Green was acting in self defense. This could have resulted in a not guilty verdict for Green. However, even though once the statement was admitted into evidence there was evidence before the jury that Green was acting in self defense, the jury was not instructed in any way as to self defense. A defendant is entitled to have the jury instructed on his theory of the case when there is evidence to support that instruction. Phillipson v. State, 943 Sol. 2d 670. The Court's refusal to grant such an instruction is reversible error. *Id.* Once the statement was admitted, then there was evidence of self-defense. However, the lower court's refusal to grant instructions numbered D-11, D-12, and D-13 kept the jury from being informed as to the defense of self defense even though the statement in which Green stated he was acting in self-defense was admitted at the trial of this matter. Thus, there was evidence of self-defense before the jury, but the jury had no instructions as to self-defense.

For all of the above and foregoing reasons, the lower court committed reversible error in not granting these jury instructions, and the conviction of John R. Green should be reversed, or it should be reversed and remanded.

## IX.

**ISSUE IX. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

The jury returned a verdict find John R. Green guilty of murder. (TR475, 476 ; CP 198, 199) For purposes of this argument, all facts, arguments, and authorities set forth in Issues III, IV, and V under the heading Argument and Authorities are incorporated herein by reference as if fully copied herein, and they are set forth in support of this argument.

For all of the above and foregoing reasons, John R. Green submits that the jury's verdict finding him guilty of murder was against the overwhelming weight of the evidence, and therefore, the conviction of John R. Green should be reversed..

## X.

## ISSUE V.: THE LOWER COURT ERRED IN NOT GRANTING JOHN R. GREEN'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OR ALTERNATIVELY A NEW TRIAL.

On October 2, 2006, a Motion for Judgment Notwithstanding the Verdict, or in the Alternatively a New Trial. (CP 195, 196; RE ; TR 470-482.) This matter was brought on for hearing on October 20, 2006. (TR 479-482) The Court denied the Motion. (481, 482)The basis of the Motion is the issues set forth above in Issues I, II, III, IV, V, VI, VII, VIII, and IX set forth above.

In support of this issue, all of the facts and authorities set forth and cited in Issues I, II, III, IV, V, VI, VII, VIII, and IX under the heading Argument and Authorities hereinabove are hereby incorporated herein by reference as if fully copied herein. Further, the facts and authorities cited and set forth herein above are set forth and cited in support of this issue.

For all of the above and foregoing reasons, the lower court was in error in denying John R. Green's Motion for a Judgment Notwithstanding the Judgment or Alternatively Notwithstanding the Judgment . The conviction of John R. Green should therefore be dismissed or alternatively, a New Trial should be granted in this matter.

## CONCLUSION

For all of the above and foregoing reasons, the judgment and the verdict rendered in the lower court must be reversed, or in the alternative, the matter must be reversed and remanded, and a new trial granted.

## CERTIFICATE OF SERVICE

I, M. KEVIN HORAN, hereby certify that I have this day

( X ) Mailed, U.S. postage prepaid,
( ) Faxed, or
( ) Hand Delivered

a true and correct copy of the above and foregoing *Brief Of Appellant* to the following, to wit:

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