

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2006-KA-02009-COA**

**NATHANIEL WALDEN**

**FILED**

**APPELLANT**

**VERSUS**

**OCT 10 2007**

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SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**Appeal from the Circuit Court of  
Holmes County, Mississippi  
Criminal Action No. 11,570**

**BRIEF OF APPELLANT**

**(Oral Argument is Requested)**

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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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**NATHANIEL WALDEN**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

**CIRCUIT JUDGE PRESIDING:**

The Honorable Mike Smith  
Senior Circuit Court Judge  
Post Office Box 549  
McComb, MS 39649-0549

**FOR THE APPELLANT:**

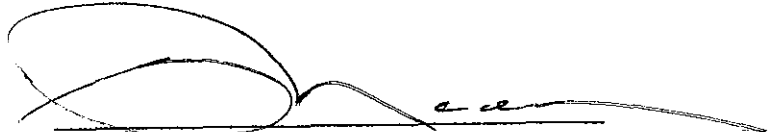
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GEORGE S. SHADDOCK

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## **STATEMENT OF THE ISSUES**

1. Whether the trial court erred in allowing into evidence the hearsay statements of the Defendant through Chief Deputy Sheriff Roosevelt March, over objection.
2. Whether the Senior Circuit Judge erred in criticizing Defendant's counsel in the presence of the Jury.
3. Whether the trial court erred in denying the Defendant's proffered Jury Instruction D-2.
4. Whether the Jury Verdict is the result of bias and passion on the part of the Jury and contrary to the credible evidence adduced at trial and the law of this State.
5. Whether the cumulative errors at trial resulted in a basically unfair trial of the Defendant in this case.

## **STATEMENT OF THE CASE**

### **PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW**

This case stemmed from what was basically a family fracas over a truck battery resulting in the death of Mary Walden, ("Mary"), wife of James Walden, ("James"), the older brother of the Defendant, Nathaniel Walden, ("Nathaniel"), your Appellant. During the argument, both James and Nathaniel began shooting on April 28, 2005, and a bullet from Nathaniel's pistol entered the home of James and Mary, killing Mary. Officers from the Holmes County Sheriff's Department were on the scene almost immediately in the mid-afternoon occurrence, and finding Nathaniel nearby at another relative's home on Beulah Grove Road, arrested Nathaniel, and continued their investigation.

The Grand Jury of Holmes County returned its Indictment, (CP-5), on July 27, 2005, charging Nathaniel with the murder of Mary, under **Miss. Code 1972, Ann, Sec. 97-3-19(1) (Amend.)**, and shooting into an occupied dwelling, under **Miss. Code 1972, Ann., Sec. 97-37-29**. After appointment of counsel, his Motion for Discovery was filed, (CP-9), and discovery was exchanged between the State and Nathaniel.

Trial commenced on October 10, 2006 in Holmes County and continued for two days. At trial, the State called a total of 9 witnesses, including two experts, and Nathaniel took the stand in his own defense as the only defense witness. After submission of Jury Instructions, and deliberation, the Jury found Nathaniel guilty on both Counts of the Indictment. (CP-65) The trial court moved immediately to sentencing, and Nathaniel was Sentenced, (CP-73), to a term of life on the murder Count, and 10 years on the shooting Count, 5 years suspended and 5 years of probation. Restitution to the Crime Victims' Compensation Fund in the amount of \$4,500.00 plus court costs and payment of Public Defender costs were also a part of the Sentence.

Nathaniel then filed his Motion for Judgement Notwithstanding the Verdict and/or New Trial, (CP-67), alleging 8 specific areas for the trial court's review. His Motion was summarily denied by the trial court, (CP-74), on November 15, 2006. From these adverse decisions, Nathaniel timely perfected his appeal to this Court. (CP-75, 94, 107, 110). The Appellant been incarcerated since April 28, 2005.

### **FACTUAL STATEMENT OF THE CASE**

The case of the State of Mississippi versus Nathaniel Walden is an extremely unfortunate set of circumstances that resulted in the death of Mary Walden, Nathaniel's



sister-in-law. What makes the case increasingly unfortunate is the fact such occurrences are becoming almost endemic in today's society.

The genesis of the case occurred approximately two weeks before April 28, 2005 when, Nathaniel after returning from the woods after foresting found his truck battery missing. (T-21) Seeing it at his brother, James Walden's home, Nathaniel spoke with his brother about this, and it became apparent James' son had taken the battery to charge equipment at his father's home. After James had punished his son, he and Nathaniel had an argument with James ordering Nathaniel off his property. (T-188)

Though Nathaniel lived on Pecan Grove Road in Holmes County, he kept most of his logging equipment on the extended Beulah Grove Road property that was the home place of Nathaniel and James' father, and jointly owned by their father's heirs, (T-178), including Nathaniel. After this initial occurrence, Nathaniel then moved his logging equipment to near his father and sister, Mattie's home.

The acute trigger to the April 28<sup>th</sup> afternoon occurrence was, while James and his brother Benjamin were working on James' equipment, Nathaniel came from Mattie's home asking about a missing saw. Finding his saw, an argument began between Nathaniel and James, and James forced Nathaniel off the property with an unloaded shotgun. (T-24) Nathaniel then returned to his sister's home for a few minutes, and retrieved a pistol he kept in his pickup truck. Nathaniel then returned to James' home to get his saw, and the argument escalated, with James firing two shots from the now loaded shotgun, and Nathaniel emptying the chamber of his pistol, five shots, into the air, ground and James' home while departing back to Mattie's home. (T-205-06) Nathaniel then

remained at Mattie's.

James, then entering his home, found his wife Mary apparently dead. It seems that neighbors to the Waldens' lands reported the shooting to Holmes County authorities, and upon arriving on Beulah Grove Road, the Sheriff's Department began taking statements, and, finding Nathaniel nearby, took him into custody. After the investigation, the Indictment, (CP-5), was returned and at trial, Nathaniel was convicted and sentenced on both Counts. (CP-73).

## **SUMMARY OF THE ARGUMENT**

This is a tragic case. It is one of two brothers, living and working in close proximity to each other who just cannot seem to get along together. The particular chain of events that lead to this case concerned James Walden's borrowing of tools and equipment from Nathaniel Walden that culminated in a shooting argument between the two brothers that resulted in the death of Mary Walden on April 28, 2005.

Nathaniel was charged with murder and shooting into an occupied dwelling in this case. The investigation was quick and decisive, Nathaniel was guilty. The argument below will follow this case, both prosecution and trial, and examine several errors that demonstrate both an unfair overreaching on the part of the State, and a rush to judgement that resulted in a basically unfair trial and suspect verdict and sentence that only compounded this tragedy.

This Court's reversal of the verdict and sentence of the Circuit Court of Holmes County, Mississippi, will begin the healing process from this tragedy.

## **ARGUMENT AND CITATION OF AUTHORITIES**

### **1. Whether the trial court erred in allowing into evidence the hearsay statements of the Defendant through Chief Deputy Sheriff Roosevelt March, over objection.**

The record shows that during the investigation of the April 28, 2005, the Defendant, Nathaniel Walden allegedly gave three statements to Holmes County authorities. This issue will cover the State's Exhibits S-18 and S-19, statements taken by Chief Deputy Roosevelt March from Nathaniel shortly after the April 28<sup>th</sup> shooting, and while Nathaniel was in custody.

When, at trial, the State sought to introduce these statements through Deputy March, it brought an immediate objection from Nathaniel. (T-92) From this, an extensive colloquy was had, particularly as to the issues of dating and the lack of a signing of the statements. The State then offered Nathaniel's *Miranda* waiver, (T-93), and this was admitted with S-18. The State primarily justified these admissions as an admission against interest by Nathaniel. His counsel countered with the argument that the Chief Deputy engaged in a lot of leading Nathaniel into the alleged admissions. The trial court then overruled Nathaniel's objections under **Miss.R.Evid., Rule 801(d)**. (T-95) For the reasons below, Nathaniel will show this was in error.

### **STANDARD OF REVIEW**

The issue of hearsay is always tricky, and to be sure, trial judges are given wide discretion in the allowance of hearsay testimony. Two principal factors are important in this discretion, (1) is the testimony and/or statement/document an exception to the hearsay rule; and (2) is the evidence proffered to prove the truth of an accusation.

Statements to prove the truth are properly not allowed. *Moore v. State*, 859 So.2d 379 (Miss. 2003). This limitation applies equally to the State and the defendant. *Davidson v. Mississippi Dep't of Human Services*, 938 So.2d 912 (Miss.App. 2006). **Miss.R. Evid., Rule 801** specifically prohibits hearsay evidence when the evidence presented is not corroborated, and such corroboration is available. *Brown v. State*, 944 So.2d 103 (Miss.App. 2007).

### LEGAL PRINCIPLES

It is to be remembered at this point that Nathaniel, at the time of the occurrence, was a 38 year old (T-175) successful logging contractor, who could not read. It is also important to note that prior to April 28, 2005, Nathaniel had no criminal record, felony or misdemeanor, whatsoever. Then, all heck broke loose on Buelah Grove Road over a dispute on yet another instance of James' "borrowing" Nathaniel's equipment, and, at the end, Mary Walden ended up dead.

There is little wonder then, after being taken into custody by Holmes County authorities, learning of his sister-in-law's death, Nathaniel was both confused and certainly concerned. These factors alone would make his statements, (S Ex. 18 and 19), suspect. The methods used in securing them is certainly suspect. And the State's preemptive use of the statements at trial, over Nathaniel's objection, is reversible.

The alleged "admissions against interest" justification relied upon by the trial court in admitting the statements is also equally suspect. (T-95). It is stretching **Miss.R.Evid., Rule 801(d)(2)** to impermissible limits. *Balfour v. State*, 598 So.2d 731 (Miss. 1992). Further, the record shows that the State in Nathaniel's trial did not even

make an attempt to lay a predicate foundation for Deputy Marsh's testimony from the statements. *Jolly v. State*, 269 So.2d 650 (Miss. 1972).

To be sure, evidence of a series of acts leading up to an occurrence are helpful to achieve a correct understanding of the main transaction. *McCormick v. State*, 132 So. 757 (Miss. 1931). However, when such evidence is introduced in a one-sided manner to admit the truth of the accusation, it is inadmissible. *Hillard v. State*, 950 So.2d 224 (Miss.App. 2007). This is particularly true when, it becomes apparent to the accused hearsay is involved, and a contemporaneous objection is made and overruled, *Sumner v. State*, 316 So.2d 926 (Miss. 1975).

To summarize, the sole purpose of using Deputy Marsh to introduce the suspect statements of Nathaniel in the Deputy's testimony was to pre-impeach Nathaniel, if Nathaniel chose to testify. Though maybe brilliant trial strategy on the part of the State, it should not have been allowed.

**2. Whether the Senior Circuit Judge erred in criticizing the Defendant's counsel in the presence of the Jury.**

Admittedly, this is a very subjective issue. However, certain repeated instances of the Senior Circuit Judge's criticism of Nathaniel's counsel bear review. This criticism started early in the trial when counsel, in response to a request to speak loudly to the State's witness, Luther Cowan, due to Cowen's hearing difficulty, was told by the Judge, "to not speak to those in the café next door." (T-55). This was also present, when the Senior Circuit Judge, in counsel's cross-examination of the State's witness, Mattie Brown, as to her reluctance to testify, strictly limited counsel's cross-examination of the

witness on this issue. (T-132 to 134).

The issue became acute when, during the cross-examination of Nathaniel by the State, repeatedly denied his counsel's objections, with comments, as to the State's abusive questions to his client. (T-190, 198 and 201). The Senior Circuit Judge's grant of a continuing objection did little to correct this seeming hostility.

#### STANDARD OF REVIEW

There are numerous ways to approach this issue. In this contentious trial, guidance can be found in *In re Blake*, 912 So.2d 907 (Miss. 2005). In examining the presumption that a judge, sworn to administer impartial justice, is qualified and unbiased our Court established specific examples of demonstrated animosity to a counsel before the court. The critical area of concern should be that the trial judge does not allow his/her personal opinions to dominate the trial. *Clark v. State*, 409 So.2d 1325 (Miss. 1982)

#### LEGAL PRINCIPLES

This narrow issue is based upon the perception of the jury in Nathaniel's case, and begs the question, "is the judge in favor of a conviction?" It is submitted that an examination of the entire record would demonstrate a reasonable presumption of this disposition on the part of the Senior Circuit Judge in this case. This goes to the various rulings on the admission of evidence, particularly Nathaniel's statements without counsel, the criticism of counsel, and the trial court's allowance of abusive conduct on the part of the State at trial. *Kelly v. State*, 735 So.2d 1071 (Miss.App. 1999). In short, a perception was established that Nathaniel's counsel was wrong in his defense of the accused.

This should not have happened. It turned what was a tragic accident during a family dispute into an even greater tragedy in Nathaniel's conviction for murder.

*McGee v. State*, 820 So.2d 700 (Miss.App. 2000).

**3. Whether the trial court erred in denying the Defendant's proffered Jury Instruction D-2.**

This issue is fundamental to Nathaniel's defense. The proffered Jury Instruction D-2, (CP-64), was a merger of the defenses of lack of specific intent or design to murder, and the accidental nature of Mary Walden's death. The transcript in the record reflects no transcription of the jury instruction arguments between counsel; however, the notes of the Senior Circuit Judge on the denied Instruction were as follows"

"Gun is not fired accidentally,  
No evidence of any struggle,  
James Walden admitted design" (CP-64)

Nathaniel submits this is in error on two points of the above in that there was abundant evidence at trial of a very real struggle between James and Nathaniel on the date of Mary's death, in fact a dispute that had been festering between the two brothers for two weeks. Further, the evidence is undisputed that James was the initial aggressor. Secondly, the back and forth actions between the brothers do show an intent to scare each other, and notwithstanding Mattie Brown's testimony, to only do that. In denying this Instruction, the trial court effectively denied Nathaniel the ability to present to the Jury the underlying basis of his defense.

**STANDARD OF REVIEW**

As a general standard, jury instructions should fairly state the law, be supported



by the facts and other evidence at trial, and not be duplicative of each other. *Wells v. State*, 913 So.2d 1053 (Miss.App. 2005). The instructions should also be considered as a whole. A defendant is entitled to have proper jury instructions which present his theory of the case, limited only by an incorrect statement of the law, or the absence of a factual or evidentiary basis for said instruction. *Walker v. State*, 913 So.2d 198 (Miss. 2005). Thus, when a defendant's only instruction that meets these requirements and presents his defense, the improper denial of the proffered instruction is reversible error. *Hester v. State*, 602 So.2d 869 (Miss. 1992).

#### LEGAL PRINCIPLES

The alleged murder of Mary Walden was an unfortunate result of an on-going argument between two brother who just could not get along together, pure and simple. Even taking the State's case in its best light, excepting only Mattie Brown's confusing testimony of an excited utterance by Nathaniel, there is no credible evidence of any deliberate design by either brother. As such, the requirements of *Wortham v. State*, 883 So.2d 599 (Miss.App. 2004), are not met to support the trial court's denial of D-2. This conflict alone should have given pause to the trial court in apparently summarily denying the proffered D-2. In addition to outlining the elements of the case from the evidence adduced at trial, D-2 gave the Jury empaneled a "cautionary flag" that could give rise to a reasonable doubt as to murder. *Moore v. State*, 787 So.2d 1282 (Miss. 2001).

It is critical to remember that the undisputed evidence in the case showed that James did not know Mary was dead until after he reentered his home, and that

Nathaniel did not even know that Mary was in her home as he fired the five shots while departing from James' property. Nathaniel only knew of Mary's death when he was taken into custody. This was not covered by any other instruction granted in the trial, and in denying Nathaniel's proposed instruction that did properly cover this theory, his fate was doomed. This is reversible error. *Chinn v. State*, 958 So.2d 1223 (Miss. 2007).

**4. Whether the Jury Verdict is the result of bias and passion on the part of the Jury and contrary to the credible evidence adduced at trial and the law of this State.**

Nathaniel at the close of the State's case timely made his motion for a directed verdict as to both counts in the Indictment as presented against him. (T-171 to 172). After response by the State, the motions was denied. (T-173). After presenting his defense, Nathaniel then moved for a directed verdict on the murder count only. (T-213) In a novel response to the motion, the State then urged that the alleged intent to kill James by Nathaniel could be "transferred" to Mary by Nathaniel. (T-214) This theory apparently was persuasive, and the trial court again denied Nathaniel's motion. (T-214) This is a bit of a stretch of intent Nathaniel submits.

But for the pressured testimony of Matties Brown, who, at the time of the trial was medicated for health reasons, the word intent or deliberate design would not have been mentioned in this trial. Witness upon witness, including Nathaniel, testified there was a dispute between James and Nathaniel, shots were fired by both men, and Mary Walden was discovered dead after everything quieted down. There is no question that some of Nathaniel's shots entered the home of James and Mary, these being fired

by Nathaniel while he was leaving James' property. Beyond this, the record reflects nothing else other than the lack of any alternate instructing of the Jury of any other options but manslaughter. This does not equate to proof of murder beyond a reasonable doubt.

#### STANDARD OF REVIEW

It is well established that matters regarding the weight and credibility accorded to evidence are to be resolved by the jury. *McIntosh v. State*, 917 So.2d 78 (Miss. 2005). Further, when considering a questioned jury verdict, the appellate court will not reverse a jury verdict unless failure to do so would sanction an unconscionable injustice. *Swan v. State*, 806 So.2d 1111 (Miss. 2002). Finally, when the legal sufficiency of the evidence is challenged on appeal, the appellate court's review authority is limited. *Manning v. State*, 765 So.2d 516 (Miss. 1999), other citations omitted.

In spite of this exceeding high burden of persuasion on his part, Nathaniel submits his case is one that requires this review. In the argument below, he will discuss two main areas in the course of his trial that demonstrate his assertion that the Jury in his case was guided more by its instincts and passion than reason.

#### LEGAL PRINCIPLES

The issue of the fragile proof of any intent on Nathaniel's part has been discussed above. Other than the technical testimony from the State's experts, Nathaniel submits the testimonial evidence as offered by the State by its other witness was rife with contradictions and inconsistencies. Though Chief Deputy Marsh and his colleagues did an admirable job of securing witnesses and statements quickly after the crime, after a period

of time and reflection, and after cross-examination at trial, many gaps appeared in this well-scripted theory of intent on the part of Nathaniel to James or anyone else. What came out in the end was a scene of chaos and confusion on Buelah Grove Road on April 28, 2005 that resulted in the tragic death of Mary Walden.

Though the State at the last minute offered the manslaughter option, (State's Instruction No. 6, RE-29), its entire approach was murder or else. This was not proven beyond a reasonable doubt. *Ross v. State*, 954 So.2d 968 (Miss. 2007). Even in the face of animosity between James and Nathaniel, which was proven, no true elements of intent or deliberate design to murder anyone were demonstrated at trial. *Oswalt v. State*, 855 So.2d 720 (Miss.App. 2004).

In addition to the evidentiary questions above, Nathaniel submits when the jury instructions submitted to the jury in his case are taken as a whole, they are so defective as to effectively deny him of any fair or impartial consideration by his Jury. The denial of his proffered theory of defense Instruction D-2 was discussed fully above. But when one looks at a set of instructions that include but a general instruction, two elements instruction and two verdict instructions, this begs the questions, where is the law of the case? It is just not there. What was left in Nathaniel's case was a Jury faced with conflicting evidence and guided by inadequate instructions as to the law, and left to make its decision guided only by its instincts, passion and bias. This is reversible. *Edwards v. State*, 755 So.2d 443 (Miss.App. 1999).

**5. Whether the cumulative errors at trial resulted in a basically unfair trial of the Defendant in this case.**

This is a judgement call, and one of perception. As a rule, if it appeared to a reasonable person that the accused at trial did not have a real defense to his charges, and the conduct of the trial was such to demonstrate this, the question of fairness is raised. Nathaniel asserts this was very evident in his case.

**STANDARD OF REVIEW**

A defendant cannot expect a perfect trial, but he is guaranteed a fair and impartial trial. These guarantees have long been established. The trial requires fair, impartial and unbiased jurors who are willing to be guided by the testimony and other evidence as presented at trial, together with the law as announced by the court. It also requires that the defendant be tried in an atmosphere that is free from bias, hatred or prejudice against the defendant and his theory of defense, if reasonable. *Seals v. State*, 44 So.2d 61 (Miss. 1950); *U.S.C., Const.Amend. 6*; *Const. 1890, Sec. 26*.

**LEGAL PRINCIPLES**

This did not happen in Nathaniel's prosecution and trial. Perhaps the unfairness began on April 28, 2005, in the taking of Nathaniel's uncounseled statements by authorities. Though belatedly produced by the State, when the voluntarily nature of Nathaniel's *Miranda* waiver was questioned by his counsel, no examination was made. Nathaniel's objections were denied. (T-92) This started the downhill process in this trial. *United States v. Jennings*, 491 F.Supp.2d 1072 (M.D. Ala. 2007).

This continued through trial in the criticism of counsel, and the seemingly repeat denials of timely objections to testimonial questioning of witness by the State, (T-132),

and abusive examinations by the State of witnesses. (T-134, 198, 201). In allowing the State almost unfettered latitude in its presentation of its murder theory, a fair trial went out the window. **Kelley v. State**, 735 So.2d 1071 (Miss.App. 1999). This extended even to closing arguments, particularly in the presentation of the State's "transferred intent" theory. **Griffin v. State**, 557 So.2d 542 (Miss. 1990).

When the sum of these errors are added up, including jury instructions, **Edwards**, Ante at Page 447, Nathaniel submits a reasonable person would have to conclude that he was denied a fair and impartial trial. **McGee v. State**, 820 So.2d 700 (Miss.App. 2000); Accord: **Ross**, Ante.

## CONCLUSION

Though it is well established that an accused is not guaranteed a perfect trial, the accused is guaranteed to a fair and impartial trial. As has been demonstrated above, when the trial court basically did not allow Nathaniel Walden to fully present his theory of his defense, fairness in this trial, and the lessening of the State's burden of proof were the direct cause of an incorrect verdict on the Jury's part.

Nathaniel Walden submits that in the argument above, he has presented abundant grounds for this Court's reversal of the Jury Verdict and Sentence of the Holmes County Circuit Court. He respectfully requests this Court's decision to that effect.

Respectfully submitted this, the 10<sup>th</sup> day of October, 2007.

NATHANIEL WALDEN,  
Appellant

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**CERTIFICATE OF SERVICE**

I, George S. Shaddock, Attorney of Record for the Appellant, Nathaniel Walden, do hereby certify that I have filed the original and three (3) true and correct copies of the above and foregoing Brief of Appellant with the Honorable Betty W. Sephton, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.

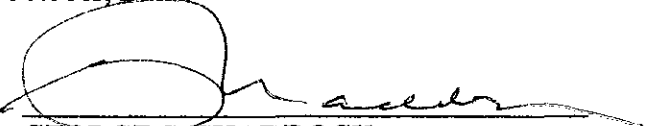
I further certify that I have delivered a true and correct copy thereof by United State Mail, postage prepaid, to:

The Honorable Jim Hood  
Attorney General of the State of Mississippi  
Post Office Box 220  
Jackson, MS 39205-0220

The Honorable Mike Smith  
Special Circuit Court Judge  
Post Office Box 549  
McComb, MS 39649-0549

The Honorable James H. Powell, III  
District Attorney  
Post Office Box 311  
Durant, MS 39063-0311

CERTIFIED this, the 10 day of October, 2007.

  
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GEORGE S. SHADDOCK