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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIAM TERRY DAVIS

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APPELLANT

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SUPREME COURT
COURT OF APPEALS**

VS.

NO. 2006-KA-2124-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On March 21-23, 2006, William Terry Davis, "Davis" was tried for deliberate design murder of Mrs. Rena Davis, his ex-wife, before an Adams County Circuit Court jury, the Honorable Forrest A. Johnson presiding. R. 1. Davis was found guilty of murder and given a life sentence in the custody of the Mississippi Department of Corrections. C.P. 68, R. 362; 364. Davis filed a motion for a New Trial or a J.N.O.V., which was denied. C.P. 72-78; 81.

From that conviction and sentence, and denial of post conviction relief, Davis appealed to the Mississippi Supreme Court. C.P. 82.

ISSUES ON APPEAL

I.

WAS DAVIS ENTITLED TO A NEW TRIAL?

II.

**WAS DAVIS ENTITLED TO A JUDGMENT
NOTWITHSTANDING THE VERDICT?**

STATEMENT OF THE FACTS

On December 27, 2005, Davis was indicted by a Adams County Grand jury for deliberate design murder of Mrs. Rena Davis, his ex-wife, on or about May 16, 1994. C.P. 1.

On March 13, 2006, the trial court heard pre-trial motions. R. 1.

On March 21-23, 2006, Davis was tried for deliberate design murder before an Adams County Circuit Court jury, the Honorable Forrest A. Johnson presiding. R. 29. Davis was represented by Mr. David Hall. R. 29.

Officer Tom McGehee, with the Natchez Police Department, testified that he went to 113 Oakland Drive in Natchez. R. 105. He went to investigate an alleged crime scene. Ms. Rena Davis was found dead on the floor of her bedroom in pool of blood. McGehee testified that the telephone lines to the house had been cut. R. 109. He testified that his photographs of the victim and the crime scene were an accurate and unaltered representations of what he observed on May 17, 1994. R. 112. See photographic exhibits 1-12 in manila envelop marked "Exhibits." Photograph exhibit 2 shows a photograph of Mrs. Rena Davis prior to her death. Photograph 3 and 4 show the cut telephone lines to Mrs. Davis' house. Photograph 5 shows the battered and bloody lifeless body of Mrs Davis lying face down near her bed as discovered by Officer McGehee.

Officer Mike Mullins, the Natchez Chief of Police, testified that he interviewed Davis. The transcription of Davis' answers to questions was admitted into evidence as State's Exhibit 15. In that statement, Davis admitted to having hit his ex-wife Rena, "a couple of times." R. 144. He admitted that at least on one of these occasions she required medical attention. R. 145.

Davis admitted he had recently learned that the victim was pregnant. R. 139. He admitted to being angry with Rena's boy friend, Mr. Sam Wilkinson, as well as Rena, his ex- wife. He was

angry over their relationship. He was also angry because she was possibly pregnant by Mr. Wilkinson. R. 139. He said of Wilkinson, "I wanted to break his neck." R. 144.

Dr. John White, a licensed medical practitioner, testified that on February 14, 1994, he examined and treated injuries received by Ms. Rena Davis. She had been involved in "an altercation" and had "received blows to the left side of her face." R. 160-161. The altercation was with Davis, her ex-husband. R. 161. Ms. Davis received a fractured zygoma, or cheek bone, as well as a cut and swollen eye. R. 162. This was within a month of her violent death.

Mr. Sam Wilkinson testified that he was Rena Davis' boyfriend. R. 171. He had been seeing her about a year. R. 173. This was after she had divorced Davis. Davis was jealous of him. Davis did not want him around his ex-wife and kids. Wilkinson went with Rena when she had a positive pregnancy test. They were planning on moving to Colorado where Rena had some family. R. 174.

On three occasions, Wilkinson testified of being physically attacked by Davis. They engaged in a "fist fight." R. 175. On two of these occasions, Davis "kicked the back door down" to gain access to the apartment where Wilkinson and Rena were visiting. R. 176-177. These attacks were within a few weeks of Rena being violently murdered. Wilkinson also testified that Davis kicked Rena with his cow boy boots as well as hit her directly in the eye. R. 179. This required medical attention and stitches to her eye.

Mr. Wilkinson saw Rena's battered lifeless body through a window on May 17, 1994 and called the Natchez police for assistance. R. 172.

Mr. Ricky Lee testified that he was a friend of Davis. He had known him for a long time. Davis came to Lee's logging job site where he was working. This was late at night the day after the violent murder of Rena Davis. R. 185. Lee went to speak to him. Davis told Lee that "I really messed up this time. I beat her bad this time." R. 187. After saying this, Davis became upset, started

crying and left without explanation. Lee admitted to being afraid of Davis. R. 168. For this reason he did not reveal what Davis said to law enforcement investigating the murder of Ms. Davis.

A few weeks later, Davis came to visit Lee again. Davis wanted to know if Lee had told police investigators anything. After being assured that he had not revealed anything, Davis gave Lee a wooden tent stake. He wanted Lee to get rid of it. He told him that "it might get mistaken as the murder weapon." R. 189. Lee kept the stake (Exhibit 19) in a storage room and gave it to investigators in 2005.

Dr. Hayne found the injuries to the victim consistent with the type of injuries that would be inflicted by one beaten with an object like exhibit 19, the wooden tent stake admitted into evidence. R. 248. It was given to Mr Lee by Davis shortly after the murder.

Mr. Charles Sullivan testified that he was also a friend of Davis. He saw him unexpectedly at a Domino's Pizza in Natchez. While waiting for his pizza, Davis told him that he was "having trouble" with his ex-wife. R. 212. He stated that Rena had a boyfriend and she was planing a move to Colorado with his kids. Davis told Sullivan, "she's not taking my kids away from me and said I'll kill her, you know." R. 212. He also said "I will kill the bitch." R. 212. Mr. Sullivan believed he learned of Ms Rena Davis violent death "a couple of months lager. R. 213.

Ms. Wanda Lambert's testimony was read into the record. R. 158. Ms. Lambert had previously testified with cross examination by Davis. Lambert was deceased at the time of trial. Lambert testified that she was "a good friend" of Ms. Rena Davis. R.7. She testified to seeing Davis hit Rena Davis during an argument. R.14. She also testified that she heard him threaten to kill her. R. 12. Lambert also heard Rena asking Davis "please don't hit me." R. 14. See Plaintiff's Exhibit B in manila envelop marked Exhibits.

At the conclusion of the prosecution's case in chief, the trial court denied a motion for a

directed verdict. R. 253-262.

After being advised of his right to testify, Davis chose not to do so. R. 324. Davis' mother, father and sister testified in his behalf. Although they claimed that Davis was home at their trailer the evening of May 16, 1994, on cross examination, they admitted that they were not sure about where Davis was late that night of May 16, 1994 or early in the morning of May 17, 1994. R. 269-320.

Davis was found guilty and given a life sentence in the custody of the Mississippi Department of Corrections. C.P. 68, R. 362; 364.

Davis' appeal counsel filed a Motion for a New Trial or a J.N.O.V.. C.P.72-76; 81. A hearing was held on these motions before the trial court. After hearing argument by counsel, the trial court denied relief. R. 368-388.

Davis filed notice of appeal to the Mississippi Supreme Court. C.P. 82.

SUMMARY OF THE ARGUMENT

1. The trial court correctly denied a motion for a new trial. R. 387. There was sufficient, credible partially corroborated evidence for the trial court to determine that there was no “injustice” involved in denying that motion. **Jones v. State**, 635 So. 2d 884, 887 (Miss. 1994). There was a strong combination of circumstantial and forensic evidence along with “admissions against interest” by Davis in support of allowing the jury to resolve the factual issues presented before them in the instant cause..

It is not necessary to have DNA or blood in support of a conviction. It is only necessary to have credible, substantial corroborated evidence beyond a reasonable doubt in support of a conviction.

Dr. Hayne found the injuries to the victim consistent with the type of injuries that would be inflicted by one beaten with an object like exhibit 19. R. 248. Exhibit 19, a foot and a half hard piece of wood , was given to Mr. Lee for destruction by Davis. R. 189. Davis also told Lee the day after the murder that he “had really messed up this time”; that he had “beat her bad this time.” R. 187.

Mr. Wanda Lambert testified to seeing Davis hit Rena. He did so while she was pleading with him not to beat her. Lambert also heard Davis threaten to kill the victim. Plaintiff’s B, page 12-14.

Dr. John White, a medical doctor, testified to treating the victim for a broken cheek bone. This was the result of being hit in the face by Davis. This was a month before her death. R. 161. Mr. Sam Wilkinson testified that the victim told him that Davis kicked her and “put stitches”in her eye by striking her with his fist. R. 179. Davis also “kicked down” a door to gain access to the house where Wilkinson and Rena were seeing each other. Davis then fought with Davis. Bridget,

the victims daughter, testified to a history of fights between Davis and her mother. R. 233. Bridget also testified to seeing the physical injuries to her mother as a result.

Charles Sullivan testified that he heard Davis threaten to kill the victim. This was at a Domino's Pizza in Natchez. He said, "I will kill the bitch." R. 212. This was because she was planning to move to Colorado with his children.

When this evidence was taken as true with reasonable inferences, there was sufficient evidence for denying a motion for a New trial or a J. N. O. V.

2. When the evidence presented to the jury and described above was taken as true with reasonable inferences, there was more than sufficient credible, substantial evidence in support of the trial court's denial of all peremptory instructions. R. 262.

In short, there was sufficient evidence for inferring all the elements of "deliberate design murder" had been presented to the jury. See M. C. A. §97-3-19(1)(a). Ms. Rena Davis was a human being. Her injuries were consistent with what would occur if one was beaten to death with a hard object like the tent stake admitted into evidence. Ms. Rena Davis was beaten to death after her telephone lines were cut, all of which indicated "deliberate actions" on the part of the murderer. R. 109. This murder occurred in Natchez, Adams County.

There was evidence of a history of violence directed at the victim and her friends by Davis. There was also evidence of a motive, and opportunity, There was also "a threat" to kill Rena Davis shortly before her death and an admission of having "beaten her badly this time" the day after the murder. R. 187; 212. This constituted credible, partially corroborated substantial evidence in support of the denial of all peremptory motions, as well as in support of the jury's guilty verdict.

ARGUMENT

PROPOSITION I

THE TRIAL COURT CORRECTLY DENIED A MOTION FOR A NEW TRIAL

Davis' appeal counsel believes there was insufficient evidence for the trial court to have denied him a motion for a new trial. He believes there was a lack of any physical evidence connecting him to the victim or the crime scene. Without fingerprints, DNA or blood connecting him to the victim, Davis feels the evidence was weak enough to require a new trial.

Davis also believes his inculpatory statements as related by witnesses Ricky Lee and Charles Sullivan were not corroborated sufficiently to connect him directly to the murder. Davis believes that based on this evidence, the trial court should have granted him a new trial. Appellant's brief page 8-15 .

To the contrary, the record reflects that the trial court, Judge Forrest A. Johnson, found there was sufficient credible, partially corroborated evidence for allowing the jury to resolve the factual issues presented to them. R. 261-262. He believed that the prosecution had presented sufficient credible evidence, through its many witnesses, for establishing all the elements of deliberate design murder of Ms. Rena Davis on May 16, 1994 in Adams County. See M. C. A.. §97-3-19(1)(a)

As stated in the Judge's Order denying a motion for a new trial after a hearing:

It's the Court's recollection this defendant received a completely fair and impartial trial. It's submitted to the jury. It's up to the a jury to resolve. They were properly instructed on all these issues and the fact remains that this jury of men and women, selected, voir dired who sat and heard this case resolved all of these factual issues against the defendant in this case, and for these reasons, the Court finds that clearly there is sufficient evidence that was presented from which this jury could and did find this defendant guilty of murder beyond a reasonable doubt. So for that reason and for all those reasons set out by the Court, the Court is going to deny the motion for a judgment notwithstanding the verdict or in the alternative for a new trial. All the other issues brought out by the initial motion and the supplemental motion that

were not specifically addressed here are resolved against the defendant in this case.
R. 387.

In *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that the trial court “should view all the evidence presented in a manner consistent with the jury’s verdict.” Motions challenging the weight of the evidence should then be denied unless doing so would result in “an unconscionable injustice.”

The record reflects that the Adams county District Attorney’s office presented many witnesses in support of its case. This included Officer McGehee, who investigated and photographed the crime scene. Chief of Police Mike Mullins investigated the murder and took Davis’ statement. Dr. John White testified that he treated the victim for a broken cheek bone as a result of being hit in the face by Davis. This was a month before her death. Mr. Sam Wilkinson testified that he had been physically attacked more than once by Davis when he was with the victim. Ricky Lee testified that Davis admitted that “I really messed up this time. I beat her bad this time..” R. 187. Charles Sullivan testified that he heard Davis say he was having trouble with his ex-wife and “would kill the bitch.” This was to prevent her from moving his kids with her and her boy friend to Colorado.
R. 212.

Dr. Hayne testified that the victim died of “blunt force trauma.” R. 244. Dr. Hayne found the injuries received by the victim to be consistent with those that would be received by one beaten with a hard object, such as the wooden stake given to Mr. Lee by Davis. The record reflects that Davis wanted Mr Lee to destroy it because as he said “it might be mistaken for the murder weapon.”
R. 248.

Officer Mike Mullins, Natchez Chief of Police, testified to interviewing Davis. This was after Ms. Rena Davis was found dead at her house on the morning of May 17, 1994. Davis’

transcribed statement was admitted into evidence as Exhibit 15. R. 135. Davis admitted to having a "bad temper." He admitted that he wanted "to break the neck" of Ms. Rena Davis' boy friend. R. 144. He admitted to having hit Rena Davis more than once in the past. R. 144. He admitted that she had to have medical treatment as a result. He also admitted that he knew that Rena was pregnant. R. 150. He was angry because she did not know if he or her current boy friend, Mr. Sam Wilkinson, was the father of the embryo. He was also angry because she wanted to move to Colorado.

Q. How many times have you ever hit Rena?

A. Oh, a couple of times. One time that I can really tell you about we went to the hospital.

Q. What happened?

A. She had gone for two weeks with him.

Q. With who?

A. Sam.

Q. Okay.

A. Laid up in a hotel room with my kids there. Then it was my birthday and she'd gone and come over there and bring me flowers and a card and everything, and come up there and give me a happy birthday kiss like nothing happened, and it was—and it was intentionally. It just trouble, you know. **Get away from me, and I slung her around and docked her in the eye.** R. 144-145. (Emphasis by Appellee)

Ms. Wanda Lambert's testimony was read into the record. R. 158. Ms. Lambert had previously testified with cross examination by Davis. At the time of trial, she was deceased. Lambert testified that she was "a good friend" of Rena Davis. R.7. She testified to seeing Davis hit Rena Davis during an argument. R.14. She testified that he heard him threaten to kill her. R. 12. She also testified to hearing Rena pleading with Davis not to hit her. R.14. See Plaintiff's Exhibit B in manila envelop marked Exhibits.

Dr. John White, a licensed medical doctor, testified that he treated Ms. Davis for injuries to the left side of her face. R. 160-161. She had a fractured cheek bone. She had been involved in an altercation with her ex-husband, Davis. He had caused her injuries by hitting her with his fist. This was in February 14, 1994, a month before her violent death. R. 160.

Q. All right, sir. Tell the jury what you saw with respect to Mrs. Davis and what you did?

A. On examination, we noted that she had ecchymosis around the eye on the left side. Basically bruising of the eye and swelling of that area around the eye. She also had a laceration below that eye that had been repaired in the emergency department, and she—the rest of her examination demonstrated no evidence of any other injuries, and at the time, we were concerned about the possibility of a fracture that involved the zygoma or cheek bone of the face. R. 161.

Q. So there was a fracture involved?

A. Correct. R. 162. (Emphasis by Appellee).

Ms. Tammy Johnston, a nurse who was married to Davis' brother at the time, testified that she was called by Davis. Davis wanted her to come to his aid. He was upset over a fight he had with Rena. Rena was in the bed with "ice on her." Johnston found out that Rena was injured because Davis had "hit her." R. 167. She estimated that this occurred about a year before Rena was murdered.

Q. Okay. Would you tell the jury what you found when you got to her house. Just tell us what you found and what happened when you got there.

A. We arrived and went into the home. William was upset. **They had been in a fight, and he told me that she was in the bedroom and that she had—he had put ice on her, and she was in the bed with-you know-ice on her, and she was verbally upset.** They were arguing between each other which lead to an argument between he and Lee at the moment. Nothing was going to get accomplished by us continuing to argue. So Lee and I left. R. 165-166. (Emphasis by Appellee).

Mr. Sam Wilkinson testified that he was Rena Davis' boyfriend. R. 171. He had been seeing her for more than a year. R. 173. This was after she had divorced Davis. Davis was jealous toward him. Davis did not want him around his ex-wife and kids. Wilkinson went with Rena when she had

a positive pregnancy test. R. 173. They were planning on moving to Colorado where Rena had some family. R. 174.

On three occasions, Wilkinson was physically attacked by Davis. They engaged in a "fist fight." R. 175. On two of those occasions, Davis "kicked the back door down" to gain access to the apartment where Wilkinson and Rena were visiting. R. 176-177.

These attacks were within a few weeks of Rena being violently murdered. Wilkinson also testified that Davis kicked Rena with his cow boy boots as well as hit her eye. R. 179. Mr. Wilkinson saw Rena's battered lifeless body through a window on May 17, 1994 and called the Natchez police. R. 172.

Q. Tell the jury whether or not you know of any instances during the time that you had this relationship with Rena Jean Davis of violence between Mr. William Terry Davis and Mrs. Rena Jean Davis?

A. Yes, sir. He kicked her with some cowboy boots one time and put stitches in R. 179.

...

Q. Tell the jury about him jumping on you over there on McNeely Road.

A. **He kicked the door down and come in on us and was fighting with him. I got out of the house and called the police.** R. 176. (Emphasis by Appellee).

Mr. Ricky Lee who worked for a logging company, testified to talking with Davis. This was the day after Rena Davis' violent murder. R. 185. Davis came to the machine where Lee was working. Davis was upset. He told Lee that "he beat her bad." and that "I really messed up this time." R. 187. He started crying and left. Lee admitted to being afraid of Davis. As a result, he did not reveal what he had learned to investigators at that time.

Q. And you go down there and he says what?

A. He was upset, and he tells me that he beat her bad, and I said, "What are you saying, Slim?" He said, **"I really messed up this time. I beat her bad this time."**

And he started crying and spun around and left. Couldn't get no more out of him. R. 187. (Emphasis by Appellee)

A few weeks after Lee had spoken with Davis, he came to Lee's house. R. 188-189. After reassuring Davis that he had not revealed anything to investigators, Davis gave him a wooden tent peg. He told him to get rid of it for him. Davis said, "it might get mistaken as the murder weapon." However, Lee did not do so. He put the tent peg in his utility room. It remained there for "eleven" years. Lee gave it to investigators in 2005. R. 192.

Q. Okay. Tell me about that.

A. And I told him that I had been questioned about the murder, and they was—and he said, well, what did you tell them. I said I ain't told them nothing. I didn't know nothing you know, and he said, well—he give me a wooden stake at that time at my house and told me to get rid of it. It might get mistaken as the murder weapon. R. 189. (Emphasis by Appellee).

Ms. Bridget Davis, one of Davis' children, testified that she heard her mother fighting with her father more than once. She also saw physical injuries to her mother's eye after their fights. Bridget also testified that when her mother was hurt seriously enough to need medical attention, she heard her father telling her what to tell the medical personnel. She was to tell them she was hurt from an accident rather than from being beaten by Davis. R. 234. She also remembered that the day her mother was killed, she heard her father "hollering" at her mother. She admitted that she had been threatened by him, and was afraid of him. R. 235.

Q. They were arguing there at the parking lot of the store?

A. Yes, sir.

...

Q. Hollering at each other?

A. Yes, sir. R. 231.

Q. Now, you said you were there when they got a call. Do you know what that call was about?

A. My mom had been killed.

...

Q. **Heard them fighting and actually physically fighting?**

A. Yes, sir.

Q. **Did you ever see your mother with injuries?**

A. Yes, sir.

Q. When did you see-how many times do you think you ever saw your mother with injuries?

A. **I can recall one time when she had stitches on her eye. She had a patch on her eye.**

Q. Was this one time when she went to the doctor about it?

A. The hospital emergency room. R. 232-233. (Emphasis by Appellee).

...

Q. Okay.

A. And I remember them waking me up and telling me we had to go to the hospital, and I remember on the way to the hospital they were saying how they were saying it was going to happen. That just to say that it was—he got—he accidentally elbowed her in the eye.

Q. **They were making up a story about how she got hurt?**

A. Yes, sir. R. 234. (Emphasis by Appellee).

Dr. Stephen Hayne, a medical pathologist, testified to reviewing the original autopsy performed by Dr. Emily Ward. She was previously with the Mississippi state medical examiner and now with the Alabama medical examiners office. Dr. Hayne found, as had Dr. Ward, that the cause of death was “blunt force trauma” to the right side of her head. There was also evidence of injuries

to the victim's right hand, including a broken thumb. This showed evidence of defensive behavior by the victim in trying to avoid blows to her head. See photographs of victim showing severe and bloody injuries to the victim's face and head in manila envelop marked "Exhibits."

Q. On your review of Dr. Ward's work and the photographs, what, if any, conclusion did you reach as to the cause of death?

A. Cause of death, I think, was quite obvious from the post mortem examination and the photographs. **This individual had received multiple blunt force trauma. This is injury from a blunt object striking her predominantly on the right side of the head but also the face, producing what's called cranial cerebral trauma. That is that there were fractures of the skull.** R. 244.

...

Q. Okay, sir. Would you tell us what, if any, opinion you formed based on that examination of the stake (Exhibit 19) along with the autopsy.

A. I had one opinion and several comments. An object such as this would certainly be a weapon that could inflict the type of injuries. It has weight or mass to it. It has density. It's hard and delivered with force, could produce those injuries. **The one thing that I noticed that there were no blood stains on it. I was subsequently told that this had been weathered in the outside for some nine to ten years, and given that fact, I would not expect to see blood on it. However, the object itself would be consistent with the weapon that would inflict those injuries.**

Q. You made that opinion based on your observation of the photograph, the report itself, and the stake.

A. Yes, sir. And the experience I have had with other—multiple other deaths inflicted by similar type objects. R. 247-248. (Emphasis by Appellee).

Mr. Charles Sullivan testified that he was a friend of Davis. Sullivan testified that he unexpectedly met Davis at a Domino's Pizza. While waiting for service, Davis told him angrily that he was not going to allow his ex-wife to take his kids to Colorado. He said, "I will kill the bitch." R. 212. Sullivan estimated he heard Davis make this statement about two months before he learned about Rena Davis' violent murder. R. 213.

Q. Tell them exactly what you know?

A. He came into Domino's Pizza on 61 North one day.....I had heard through my wife who is now my ex-wife that her and him were having problems—you know—and that she had found a new boyfriend, and he said that yeah. Said she's supposed to move to Colorado, but she's not going to move to Colorado with my kids. **Said she's not taking my kids away from me and said I'll kill her, you know. And his exact words was "I will kill the bitch,"** and I said no. You don't want to do that, you know.

Q. Okay. Did you remember that some time later that Mrs. Davis died a violent death?

A. Yes, I do.

Q. How long was it prior to your learning of the death of Rena Davis that this conversation with Mr William Terry Davis took place at the Domino's out there by Morgantown?

A. Well, probably a couple of months. R. 213. (Emphasis by Appellee).

In *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that motions challenging the weight of the evidence were to be denied unless doing so would result in "an unconscionable injustice." The trial court should view all the evidence presented in a manner consistent with the jury's verdict.

Our scope of review is well established regarding challenges to the weight of the evidence issue. Procedurally, such challenges contend that defendant's motion for new trial should have been granted. Miss. Unif. Crim. R. of Cir. Ct. Prac. 5.16. The decision to grant a new trial rests in the sound discretion of the trial court, and the motion should not be granted except to prevent "an unconscionable injustice." *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987). We must consider all the evidence, not just that supporting the case for the prosecution, in the light most consistent with the verdict." *Jackson v. State*, 580 So. 2d 1217, 1219 (Miss. 1991), and then reverse only on the basis of abuse of discretion.

The Appellee would submit that we have cited record evidence for showing that there was an abundance of credible, substantial corroborated evidence in support of the trial court's denial of a motion for a new trial. This evidence included not only admissions against penal interest by Davis, but also forensic evidence. R. 187; 212. There was evidence that the victim's injuries were

consistent with the injuries that would have been produced by a hard wooden instrument such as the tent stake Davis gave to Lee to be destroyed. R. 247-248.

It also included corroborated evidence concerning Davis' "pattern of physical and mental abuse" of his ex-spouse and her friends. There was evidence that Davis kicked down doors and fought with Rena's new friend, Mr. Wilkinson. There was evidence of a "motive" since Davis admitted his anger over Rena being pregnant, and her desire to move with their children to Colorado. There was evidence of "opportunity" since Davis admitted to being with Rena and angry with her the day she died. Exhibit 15, page 108. There was evidence of a threat to kill Rena Davis rather than to have her take Davis' kids with her to Colorado. R. 212-213.

While Davis' family members attempted to establish an alibi for him, on cross examination, they admitted they did not know for a fact where he was or what he did late in the night of May 16 and the early morning hours of May 17, 1994.

Bridget Davis, Davis' daughter, testified that she went to sleep with him on a couch. This was at the trailer where Davis was staying with his father. When she woke up, he was not there. R. 232. This would indicate that the person closest to him in his parent's trailer knew he had left the couch where he was initially sleeping.

Q. And do you remember whether he was there with you on the couch when you woke up?

A. No, sir.

Mr. Boyce Davis, Davis' father admitted on cross examination that he did not know where Davis was from around nine on May 16, 1994 when he went to bed until quarter to five when he got up.

Q. Okay. So you don't know what happened—you don't know whether he was in there until quarter till five then. He was in there until quarter to five I believe you said.

A. That's right.

Q. But you don't know whether he was in there after 9:00 until a quarter to five.

A. That's right. R. 258. (Emphasis by Appellee).

While Jeanette Davis thought that Davis was in the trailer with her on the evening of May 16, 1994, she admitted she was not sure and that because of her age she "forgets times and stuff." R. 312. She was also contradicted by her husband about when she went to bed, and whether their dog always barks when someone comes or leaves from the trailer. R. 299-306.

When the evidence cited above was taken as true with reasonable inferences, the Appellee would submit that there was sufficient credible corroborated evidence for the trial court to deny a motion for a new trial. This issue is lacking in merit.

PROPOSITION II

THE TRIAL COURT CORRECTLY DENIED A MOTION FOR A JNOV.

Davis also thinks the trial court erred in denying him a motion for a JNOV.

He believes that without some physical evidence connecting him to the murder victim of the crime scene there was insufficient evidence for denying him a motion for a judgment notwithstanding the verdict. Appellant's brief page 1-15.

To the contrary, as shown under proposition I, there was credible, substantial evidence in support of the trial court's denial of all peremptory instructions. It is not necessary to have physical evidence directly connecting a defendant to the murder victim or the crime scene. It is only necessary that there be sufficient credible evidence for establishing all the elements of the murder beyond a reasonable doubt..

As shown under proposition I, there was credible, corroborated evidence for establishing the elements of deliberate design murder. Ms. Rena Davis, Davis' ex-wife, was a human being. She was brutally beaten to death in Adams County on May 16-17, 1994. The murderer acted with deliberate design in beating her in the head with a hard object. There was circumstantial evidence which included a history of Davis beating the victim, aa threat to kill her, along with statements against penal interest by Davis sufficient for providing a basis for inferring that Davis committed this murder. He had a motive, jealousy and anger, an opportunity, and a well documented history of physically attacking the victim's face, as well as her close friends while in a rage. He also admitted "to beating her bad this time." R. 187.

Dr. Hayne testified that any blood on the wooden stake which Ricky Lee kept in his shed would have "broken down." The record reflects that this wooden tent stake remained in his storage

room for some "eleven years" after the crime was committed.. R. 250-251.

Q. Dr. Hayne, as I understand your testimony, I'll just ask if that were wiped down or washed off and sat in a corner for twelve years, would it be consistent that if there was any blood on it, it would have broken down and be gone?

A. It would be, sir. R. 251.

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

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

As to Davis's argument about the evidence being deficient because there was no physical evidence such as fingerprints or blood, under the facts of this case, the record reflects you would not expect there to be any physical evidence, given the passage of time between the murder and the conviction eleven years later.

However, in the instant cause, there was an abundance of credible testimony and evidence

in support of the denial of all peremptory instructions. There was evidence of motive, opportunity, and a well corroborated history of physical and mental abuse of the victim. There was forensic evidence connecting the wooden stake Davis wanted destroyed to the murder victim. R. 189. The injuries to the victim were consistent with the type of injuries that would be produced by a hard physical object, such as exhibit 19. R. 248.

In **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983), the Court stated that any conflicts, or gaps in the evidence created by the defendant or his witnesses was to be resolved by the jury. What the jury believes and who the jury believes as to which piece of evidence presented is solely for their determination. As stated:

Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into finding of fact sufficient to support the verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution. **Shannon v. State**, 321 So. 2d 1 (Miss. 1975) 373 So. 2d at 1045.

The Appellee would submit that when the evidence cited under proposition I was taken as true with reasonable inferences, there was more than sufficient credible, corroborated evidence in support of the denial of all peremptory instructions.

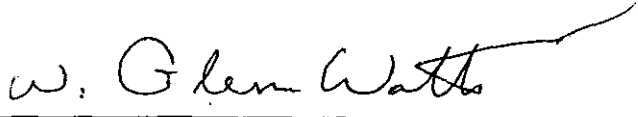
CONCLUSION

The trial court's denial of Davis' Motions for a New Trial or a JNOV should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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