IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY SNEED, et al — APPELLANT

VS. — NO. 2007-KA-0381-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE
THOMAS GERMAN

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY SNEED, et al **APPELLANT**

VS. **NO. 2007-KA-0381-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE THOMAS GERMAN

STATEMENT OF ISSUES

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING GERMAN'S MOTION FOR SEVERANCE.

II. BECAUSE GERMAN FAILED TO OBJECT TO INSTRUCTION C-12 AT TRIAL, HE IS PROCEDURALLY BARRED FROM ARGUING FOR THE FIRST TIME ON APPEAL THAT THE INSTRUCTION WAS ERRONEOUSLY GRANTED.

III. THE INSTRUCTIONS EXPLICITLY INFORMED THE JURY THAT THE STATE WAS REQUIRED TO PROVE THAT EACH DEFENDANT INTENDED TO KILL FAIR.

IV. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT. ADDITIONALLY, THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

V. GERMAN IS NOT ENTITLED TO A NEW TRIAL BASED ON CUMULATIVE ERROR, WHERE HE HAS FAILED TO SHOW EVEN A SINGLE ERROR WAS COMMITTED BY THE TRIAL COURT.

STATEMENT OF FACTS

On August 11, 2006, Leanna Smith and her boyfriend Herman Fair had an altercation. T. 307. Ms. Smith's niece, Rotandria Foster, witnessed the altercation and would later testify that she saw Ms. Smith choking Fair, but did not see Fair "do anything" to Ms. Smith. T. 325-26. Foster then called her cousin, Anthony Smith, to tell him that his mother and Fair "had got into it." T. 307.

Anthony Smith and Jamario Brady were drinking at Johnny Bickham's house when Smith received Foster's telephone call. T. 389, 415. Smith went to check on his mother who told him to "leave it alone" and not confront Fair. T. 327, 389. Smith ignored his mother's advice and proceeded to Fair's apartment with Brady, Bickham, Thomas German, and Anthony Sneed. T. 308. Foster and Terinesia Burton also followed the group to Fair's apartment. T. 308. The gang waited at the bottom of a stairwell for Fair to emerge from his upstairs apartment. T. 311, 389. When Fair emerged from his apartment and descended the staircase, Smith punched Fair in the face, knocking Fair to the ground. T. 311, 389. All five defendants then kicked or stomped Fair as Brady proceeded to beat him with a golf club. T. 311-312,332. Fair died from blunt force trauma to the chest when his lungs were lacerated, causing them to bleed more than three quarts of blood into the chest cavity. T. 471. In addition to the lethal wounds, Fair also suffered a broken rib and multiple cuts and abrasions to the head, nose, ear, shoulder, and chest. T. 460, 471. Smith, Brady, Sneed, Bickham, and German were ultimately convicted by a Coahoma County Circuit Court jury for Fair's murder.

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying German's motion to sever. The trial court carefully considered the *Duckworth* factors and found that neither weighed in favor of severance. Each defendant gave a statement to police admitting involvement in the fatal beating. No defendant's testimony was exculpatory, much less exculpatory at the expense of another defendant. The evidence also did not weigh more heavily against one defendant than another. Finally, German was not prejudiced by the trial court's denial of his motion to sever.

German is procedurally barred from attacking instructions C-11, C-12, and C-16, as he failed to object to said instructions at trial. Additionally, German's claims that instructions misled the jury to believe that it must convict all or none of the defendants and that the instructions failed to inform the jury that each defendant must have intended to kill Fair are without merit. When read as a whole, the instructions clearly informed the jury it must consider the evidence against each defendant, and the instructions explained what elements the State was required to prove in order to secure murder convictions.

German claims that the State failed to prove the element of deliberate design. Contrary to this assertion, the State provided legally sufficient evidence on the element of intent. Further, the State's evidence is sufficient to support a finding that either German inflicted one of the fatal blows, making him guilty as a principal, or that he was guilty of murder by aiding and abetting. German's claim that the verdict is against the weight of the evidence must also fail. Where the jury is presented with conflicting evidence, their resolution of such conflicts cannot be disturbed on appeal.

Finally, German is not entitled to a new trial based on cumulative error because he failed to show error in any of his individual assignments of error.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING GERMAN'S MOTION FOR SEVERANCE.

Prior to trial, Smith, Sneed, and German each moved the court to sever their trials. The court denied the motions and entered an order with a thorough and well-reasoned analysis for its decision. C.P. 22A.

The decision to grant or deny a motion to sever lies within the sound discretion of the trial court judge. *Sanders v. State*, 942 So.2d 156, 158 (¶10) (Miss. 2006) (citing URCCCP 9.03). Reviewing courts will not reverse a conviction based on the denial of motion for severance unless the trial court clearly abused its discretion. *Id.* Both the United States Supreme Court and the Mississippi Supreme Court have expressed a preference for joint trials, as "joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability-advantages which sometimes operate to the defendant's benefit." Id. at (¶11) (quoting *Cavett v. State*, 717 So.2d 722, 727 (Miss. 1998)). The two factors, the *Duckworth* factors[1], that the trial court must consider when ruling on a motion to sever are (1) whether the testimony of one defendant tends to exculpate that defendant at the expense of another defendant and (2) whether the evidence of guilt preponderates more heavily against one defendant than another. *Id.* (citing *Hawkins v. State*, 538 So.2d 1204, 1207 (Miss. 1989)). Additionally, "the overarching consideration when evaluating these factors is whether the defendants would be prejudiced by a joint trial." *Id.* at 159 (¶15) (citing *Duckworth v. State*, 477 So.2d 935, 937 (Miss. 1985)).

Starting with the second *Duckworth* factor, German claims that the balance of the evidence tended to implicate Brady over the other defendants. However, his claim that Foster "told the jury

---

[1]*Duckworth v. State*, 477 So.2d 935, 937 (Miss. 1985).

that she saw each of the defendants kick Fair in the side as though to prompt him to get up," is contrary to the record. Foster specifically testified that she did not know what part of Fair's body the defendants kicked. T. 318. She was, however, certain that all kicked him together. 332, 354. German's characterization of the defendants kicking Fair "to prompt him to get up," was not a statement made by Foster, but a statement made by defense counsel for Sneed. T. 340. More importantly, German's attempt to show that the evidence preponderated against Brady more than the other defendants is contrary to medical evidence presented at trial. It does appear from the record that Brady hit the victim more times with the golf club than the defendants kicked him. However, Foster testified that she only saw Brady hit Fair in the head and face with the golf club. T. 333, 338. Dr. Hayne testified that the lacerations on Fair's head could have been inflicted with a golf club, but that the lethal blows to Fair's chest would not be consistent with being beaten with a golf club. T. 469, 475. The lethal injuries to the chest, Hayne opined, were consistent with being kicked or stomped with a soft soled shoe. T. 473, 475.

The *Sanders* court explained that the second *Duckworth* factor weighs in favor of the moveant where defendants have inconsistent defenses. 942 So. 2d at 160 (¶20). The defendants in the case *sub judice* did not have inconsistent defenses. Rather, Brady's codefendants merely attempted to shift more of the blame to Brady, while at the same time acknowledging in their statements to police that they did participate in the fatal beating. The *Sanders* court noted that in only one case, *Patyon v. State*, 785 So.2d 267, 269-70 (Miss.1999), has a reviewing court determined that mere blame-shifting necessitated severance. *Id.* at (¶21). *Payton*, however, is easily distinguishable because the *Payton* court found that Payton was prejudiced because his codefendant shifted most of the blame to him, thereby interfering with his defense of general denial of the allegations. Here, German and other codefendants attempted to shift all of the blame to Brady, so

German was certainly not prejudiced in the way Payton was. Further, German admitted in his statement to police that he participated in the beating, whereas Payton's defense was a general denial of the charges against him. Accordingly, German has failed to show that the second *Duckworth* factor supported his motion for severance.

As to the first *Duckworth* factor, none of the defendants testified at trial, so no defendant's testimony could exculpate himself at the expense of another defendant. The only portions of the defendants' statements to police that were introduced at trial reflected nothing more than each defendant's admission that he participated in the fatal beating. As such, the only statements from the defendants were strictly inculpatory. German's claim that the joint trial prevented him from introducing exculpatory evidence is both contrary to the record and unpersuasive. He claims that the trial court prevented him from eliciting from Office Magsby his prior statement in which he claimed that he ran after Brady started beating Fair. However, German's defense counsel elicited that very statement from Magsby on the stand. T. 434. But there is nothing exculpatory about the fact that German ran after inflicting one of the fatal blows to Fair's chest and after Brady started beating Fair in the head with the golf club.

The trial court did not abuse its discretion in denying German's motion to sever. Neither *Duckworth* factor weighed in favor of severance. Additionally, German failed to show any prejudice from the trial court's denial of the motion to sever.

II. BECAUSE GERMAN FAILED TO OBJECT TO INSTRUCTION C-12 AT TRIAL, HE IS PROCEDURALLY BARRED FROM ARGUING FOR THE FIRST TIME ON APPEAL THAT THE INSTRUCTION WAS ERRONEOUSLY GRANTED.

German claims that instruction C-12 erroneously instructed the jury that it must find all of the defendants guilty or none of the defendants guilty. German failed to object to instruction C-12 at trial, and is therefore procedurally barred from attacking the instruction for the fist time on appeal. *Bynum v. State*, 929 So.2d 324, 333 (¶25) (Miss. Ct. App. 2005). Without abandoning its position that German's second assignment of error is procedurally barred, the State would also show that his argument is without merit.

Jury instructions are to be read as a whole with no one instruction taken out of context. *Collins v. State*, 691 So.2d 918, 922 (Miss. 1997). No reversible error will be found to exist if, when read together, the instructions correctly state the law and effectuate no injustice. *Id.* Not only does instruction C-12 not instruct the jury that it must convict all or none of the defendants, German impermissibly asks this Court to view instruction C-12 in isolation and ignore other instructions which explicitly stated that the State must prove each defendant's guilt beyond a reasonable doubt. Instruction C-3 stated in part that "the verdicts of the jury must represent the considered judgments of each juror as to each defendant." C.P. 100. Instruction C-5 explained that the State must prove that each defendant committed every element of the crime charged. C.P. 102. Instruction C-15 instructed that if the jury found any of the defendants not guilty of murder, "then as to such defendants" it could consider the lesser crime of manslaughter. C.P. 112. Because each defendant was charged with murder as either a principal or an aider and abettor, the jury was necessarily instructed that the acts of one were the acts of all. However, instruction C-16 instructed the jury that each defendant must have intended to kill Fair. C.P. 113. When read as a whole, the instructions properly state the law and effectuate no injustice. Accordingly, German's second assignment of error

must fail.

III. THE INSTRUCTIONS EXPLICITLY INFORMED THE JURY THAT THE STATE WAS REQUIRED TO PROVE THAT EACH DEFENDANT INTENDED TO KILL FAIR.

In his third assignment of error, German attacks instructions C-11 and C-16. However, he is again procedurally barred from attacking these instructions since he failed to object to either at trial. T. 545, 549-51. Without abandoning the procedural bar argument, the State would also show that the substance of German's claim also lacks merit.

As shown in the previous issue, the instructions clearly informed the jury that it must find that each defendant committed each element of the crime charged. C.P. 102. The elements instruction listed deliberate design as element the State must prove in a charge of murder. C.P. 108. Instruction C-13 then defined "deliberate design" for the jury. C.P. 110. There can be doubt that when instructions C-5, C-12, and C-13 are read together, the jury was informed that it must find that each defendant intended to kill Fair before returning murder convictions against each defendant.

Instruction C-11

German claims that instruction C-11 allows a defendant to be found guilty as an aider and abettor regardless of whether he shared the intent of the person committing the actual crime. First, the instruction clearly states in part, "Before any defendant may be held criminally responsible for the acts of others[,] it is necessary that the defendant deliberately associate himself in some way with the crime and participate with the intent to bring about the crime." C.P. 107. Clearly, the quoted language explains that each defendant must have intended to kill Fair in order to be convicted of the crime charged.

Second, German's argument was explicitly rejected by the supreme court in *Milano v. State*, 790 So. 2d179 (Miss. 2001). In *Milano*, the appellant argued that the aiding and abetting instruction granted at trial allowed the jury to convict if it found that he committed any act which is an element

of the crime charged. *Id.* at 184 (¶16). The supreme court recognized the confusion generated by the type of aiding and abetting instruction which had been granted in Milano's trial, and adopted the Fifth Circuit's model jury instruction on aiding and abetting to cure the problem. *Id.* at 185 (¶21). The *Milano* court further found that although the granted aiding and abetting instruction was erroneous, other instructions informed the jury that it must find that the State proved each element of the crime charged beyond a reasonable doubt. *Id.* at (¶20). As such, the supreme court found that the granting of the erroneous aiding and abetting instruction was harmless error. *Id.* In the case *sub judice*, instruction C-11 is substantially similar to the aiding and abetting instruction adopted by the *Milano* court, and therefore fully advises the jury that the defendant must possess the requisite intent to kill in order to be found of murder by aiding and abetting. Additionally, the defendants received further protection against any misapprehension regarding the requisite intent from instructions C-3, C-5, C-12, C-13, and C-16 which define deliberate design and state that it must be proven beyond a reasonable doubt.

Finally, German also claims that the last paragraph of instruction C-11 also confused the jury. That paragraph states, "In other words, you may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that a defendant voluntarily participated in its commission with the intent to violate the law." C.P. 107. German claims that phrase "intent to violate the law" could lead the jury to believe that even if German only intended to assault Fair, he could be found guilty of murder. However, the last paragraph specifically references "every element of the offense as defined in these instructions," the offense being murder. Additionally, German's contention was expressly rejected by this honorable Court in *Davis v. State*, 980 So. 2d 951 (Miss. Ct. App. 2007). In *Davis*, the appellant attacked the same language in the same instruction which German now

attacks, claiming "the wording in jury instruction No. 6 constituted error in that it did not confine the jury to a finding that Davis intended to commit the specific crime of murder but rather if he intended to violate any law." Id. at 957 (¶12). This Court rejected the argument finding that the complained of instruction was adopted by the supreme court in *Milano*, and that "intent to violate the law" clearly referenced "the crime," that is the crime charged, in the preceding paragraph. In accordance with *Milano* and *Davis*, German's argument regarding instruction C-11 necessarily fails.

Instruction C-16

German also claims that instruction C-16, a community of intent instruction, did not make clear that he must have intended to kill Fair in order to be convicted of murder as an aider and abettor. This is a curious claim, since the instruction twice states that before finding a particular defendant guilty of murder as an aider and abettor, the jury must find that that defendant shared the intent of the principal who committed the murder. Again, the elements instruction states the requisite intent for murder, and deliberate design was defined for the jury. More than one instruction explained the concept of principals and aiders and abettors. Read as a whole, there was no shortage of instructions explaining exactly what was required to be found guilty as an aider and abettor. Instruction C-16 further crystalized the requisite intent of an aider and abettor.

A claim similar to German's present claim was rejected out of hand in *Caston v. State*, where the supreme court stated the following.

> As for instructions 10 and 11 allegedly allowing a jury to find a defendant guilty without finding that a defendant intended to aid and abet each element of the crime, we are unpersuaded. When viewing instructions 10 and 11 in conjunction with instructions 2-4, which define the elements of murder, it is clear that the jury cannot convict without first determining that the elements of the "crime," murder, have been proven by the State beyond a reasonable doubt. Therefore, the jury cannot reach any of the other requirements in the instructions without first determining that the elements of murder are satisfied, and the defendant intended to aid and abet "said elements of said crime." In the alternative a manslaughter instruction was given to

the jury to consider.

823 So.2d 473, 508 (¶124) (Miss. 2002). The same is true in the case *sub judice*. Accordingly, German's claim regarding instruction C-16 must fail.

IV. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT. ADDITIONALLY, THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In determining whether the State presented legally sufficient evidence to support the jury's verdict, the reviewing court must determine whether, when viewing the evidence in the light most favorable to the State, any rational juror could have found that the State proved each element of the crime charged beyond a reasonable doubt. *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005). This Court will not disturb a jury's verdict based on a claim that it was against the overwhelming weight of the evidence unless allowing the verdict to stand would sanction an unconscionable injustice. *Id.* at 844 (¶18). Additionally, the duties of assessing witness credibility and resolving conflicts in the evidence lie within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). Further,

> Who the jury believes and what conclusions it reaches are solely for its determination. As the reviewing court, we cannot and need not determine with exactitude which witness(es) 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.

Id. (quoting *Stephens v. State*, 911 So.2d 424, 436(¶38) (Miss. 2005)).

German claims on appeal that the State failed to prove the element of intent. He claims that his act of kicking Fair once evidenced only a desire to hurt, not kill, Fair. Unless a defendant explicitly states his intent at the time of the crime, intent can only be proven by the defendant's actions and the surrounding circumstances. *Boyd v. State* , 977 So.2d 329, 335 (¶23) (Miss. 2008) (citing *Thompson v. State*, 258 So.2d 448 (Miss.1972)). Additionally, the question of a defendant's intent is a jury question, and the jury's determination will not be disturbed by reviewing courts so long as record evidence supports the jury's finding of fact. *Id.* at 336. The State provided the following evidence to establish German's intent to kill Herman Fair. German and the other four

defendants came together after Smith received notice that his mother and Fair had an altercation. The group then went to Fair's apartment complex where they waited together underneath a stairway for Fair to emerge from his apartment. T. 312, 330. When Fair emerged from his apartment and descended the stairway, Smith hit him in the face, knocking him to the ground. T. 311,331. Everyone in the group then began kicking Fair as he lay on the ground. T. 332. Brady then proceeded to beat Fair with a golf club. T. 312,332. According to Foster, the beating lasted five or ten minutes. T. 317. Fair was unable to get up off of the ground after the defendants began kicking him. T. 318. Despite each defendant's best effort at trial and on appeal to characterize the brutal beating of Fair as consisting of five light kicks, the medical evidence proved otherwise. Fair's external injuries consisted of lacerations on the scalp, bridge of the nose, back of the head, left side of the head, and the left ear, and several contusions on the chest wall that each measured up to 6.5 inches. T. 460. Dr. Hayne testified that the lacerations were consistent with being hit with a golf club or similar object. T. 469. Dr. Hayne stated that prior to the internal examination, he believed that the head injuries would prove to be the cause of death. T. 484. However, the cause of death was determined to be blunt force trauma to the chest. T. 473. The surface of Fair's right and left lungs were bruised and lacerated, causing him to bleed out more than three quarts of blood into his chest cavity. T. 471. Fair had also suffered a broken rib. T. 471. Dr. Hayne opined that the lethal chest injuries were consistent with being kicked or stomped with great force, as it would take a significant amount of force to compress the chest wall to the point of lacerating the lungs. T. 474. The aforementioned evidence of the defendants' acts and the surrounding circumstances is sufficient to support the jury's finding that each defendant intended to kill Fair.

This Court has stated the following regarding the accomplice liability concept of aiding and abetting.

> [O]ur supreme court [has] ruled that in order to be held criminally liable as an aider and abetter in the commission of a felony, one must "do something that will incite, encourage, or assist the actual perpetrator in the commission of the crime." And it has been further stated that "[i]f two or more persons enter into a combination or confederation to accomplish some unlawful object, any act done by any of the participants in pursuance of the original plan and with reference to the common object is, in contemplation of law, the act of all."

Scarborough v. State, 956 So.2d 382, 386 (¶21) (Miss. Ct. App. 2007) (internal citations omitted). Accordingly, the jury could have determined from the evidence that German caused one of the fatal lacerations to Fair's lungs, making him guilty as a principal, or that he was guilty of murder under the theory of aiding and abetting.

German makes much of the fact that he only kicked Fair once. However, this Court has affirmed murder convictions on the theory of aiding and abetting where a defendant did not even participate in the lethal beating. In *McDowell v. State*, 984 So.2d 1003, 1008 (¶2) (Miss.Ct.App. 2007) Barbara Lynn Chapman claimed that her boyfriend, Marlon Maurice Davis, would beat her when he was drunk. The beatings led to the couple's eventual break-up. *Id.* On the day of Davis's murder, Chapman was attempting to remove her belongings from Davis's apartment when he cut her with a knife on the neck and face in the process of trying to cut off her ear. *Id.* at (¶3). Later that night, Chapman brought her seventeen-year-old son, Eric McDowell, to Davis's apartment. *Id.* at (¶5). Chapman parked her car down the street while McDowell banged Davis's door. *Id.* at (¶6). McDowell and Chapman waited for Davis to come home. Approximately thirty minutes later, Davis approached and Chapman yelled to McDowell, "There's Maurice. Here he come." *Id.* at 1009 (¶9). McDowell beat Davis with a stick and stomped on him as Chapman looked on. *Id.* An unidentified male also approached and began kicking Davis repeatedly. *Id.* at (¶10). Davis died from a combination of blunt force trauma to the head and a lacerated liver. *Id.* at (¶11). Chapman admitted to police "that she had put her son up to it, but Davis was not supposed to die." *Id.* at 1011 (¶21).

Chapman were convicted for Davis's murder. On appeal, Chapman claimed that the State failed to prove that she intended to kill Davis. *Id.* at 1010 (¶20). This honorable Court found that the above-referenced facts were sufficient to support the jury's verdict on a theory of aiding and abetting. *Id.* 1011 (¶22).

The case of *Shumpert v. State*, 935 So. 2d 962 (Miss. 2006), is also instructive. In *Shumpert*, the victim approached Shumpert wanting to purchase cocaine. *Id.* at 965 (¶2). Shumpert told the victim to leave because too many police officers were around. *Id.* As the victim was walking away, Shumpert shouted to one of his friends to hit the victim. *Id.* at (¶3). The friend complied and the victim was ultimately beaten to death. *Id.* at (¶5). Shumpert would later testify that his involvement in the victim's beating was limited to hitting him one time, while another witness testified that Shumpert also kicked the victim in the head. *Id.* at 969 (¶22). The supreme court found that even if Shumpert had not participated in kicking the victim in the head, he was still guilty of murder for aiding and abetting in bringing about the victim's death. *Id.* In light of *McDowell* and *Shumpert*, German's claim that the State failed to provide legally sufficient evidence to support a murder conviction must fail.

It must also be noted that had the State failed to provide sufficient evidence that German intended to kill Fair, the jury was instructed on manslaughter, which requires no intent to kill. C.P. 112. The fact that the jury declined the opportunity to convict German of manslaughter is further evidence that the State proved the element of intent to kill beyond a reasonable doubt.

The State provided legally sufficient evidence to support each element of the crime charged beyond a reasonable doubt. As to German's weight of the evidence argument, any conflicting evidence presented a factual dispute for jury resolution. Accordingly, German's weight and sufficiency arguments must fail.

V. GERMAN IS NOT ENTITLED TO A NEW TRIAL BASED ON CUMULATIVE ERROR, WHERE HE HAS FAILED TO SHOW EVEN A SINGLE ERROR WAS COMMITTED BY THE TRIAL COURT.

"Where there is no error in any one of the alleged assignment of errors, there can be no error cumulatively." *Hughes v. State*, 892 So.2d 203, 213 (¶29) (Miss. 2004). Because German failed to show error in any of his individual assignments of error, his final issue necessarily fails.

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm German's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: La Donna C. Holland

LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

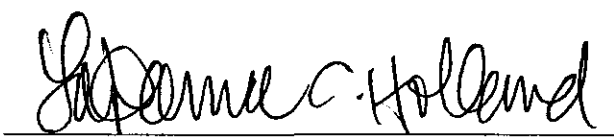
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Charles E. Webster
Circuit Court Judge
Post Office Drawer 998
Clarksdale, MS 38614

Honorable Laurence Y. Mellen
District Attorney
Post Office Box 848
Cleveland, MS 38732

Jane E. Tucker, Esquire
Attorney At Law
235 Melbourne Rd.
Jackson, MS 39206

This the 17th day of November, 2008.



LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680