ZACHARISE PAGE APPELLANT

VS. NO. 2007-KA-0427

STATE OF MISSISSIPPI APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATE STATUTES

ZACHARISE PAGE **APPELLANT**

VS. **NO. 2007-KA-0427**

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STATEMENT OF THE ISSUES

I. THE DEFENDANT IS PROCEDURALLY BARRED FROM RAISING BOTH ISSUES ON APPEAL; HOWEVER, NOTWITHSTANDING THE BAR, THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTION.

STATEMENT OF THE FACTS

Antoine Clanton was killed during a drive-by shooting that occurred on December 14, 2004 on South Fourth Avenue in Laurel, Mississippi. The Defendant, Zacharise Page, was charged and convicted of conspiracy to commit a drive-by shooting, drive-by shooting, and murder. He was sentenced to serve five years for the conspiracy count, five years for the drive-by shooting count, and life for the murder count with each of the sentences to run consecutively.

SUMMARY OF ARGUMENT

Page is procedurally barred from raising either of his issues on appeal as he failed to renew his motion for directed verdict with regard to both counts at issue after the defense rested. Further, the record does not contain his Motion for J.N.O.V. and/or Motion for New Trial or any indication that post-trial motions were filed. However, notwithstanding the bars, there was sufficient evidence to support the Defendant's conviction.

the charge of murder to let the jury deliberate the charge of manslaughter" and that "the lower court erred in failing to direct an acquittal on the charge of conspiracy." (Appellant's Brief p. 12 and 16). However, the Defendant is procedurally barred from raising both of these issues on appeal. First, the Defendant failed to renew his motions for directed verdict at the close of his case or request a peremptory instruction. The Mississippi Court of Appeals has previously held that "[i]n order to preserve for appeal the trial court's denial of a directed verdict, the motion must be renewed at the end of the defense's case, or a peremptory instruction should be requested." *Sacus v. State,* 956 So.2d 329, 335 (Miss. Ct. App. 2007) (citing *Green v. State*, 631 So.2d 167, 171 (Miss.1994)). Second, the record does not contain a Motion for J.N.O.V. and/or Motion for New Trial or any indication that post-trial motions were filed. Mississippi law is clear that "[t]he failure to preserve a matter by motion for new trial or JNOV may also serve as a procedural bar to its consideration by an appellate court." *Alonso v. State,* 838 So.2d 309, 313 (Miss. Ct. App. 2002) (citing *Seals v. State*, 767 So.2d 261(¶ 6) (Miss. Ct. App. 2000)). If post-trial motions were filed and ruled upon, it was the Defendant's duty to ensure that they were made part of the record. *See Ballenger v. State,* 667 So.2d 1242, 1252 (Miss.1995); *Lambert v. State,* 574 So.2d 573, 577 (Miss.1990); and *Winters v. State,* 473 So.2d 452, 457 (Miss.1985). Thus, the Defendant is procedurally barred from raising either issue on appeal.

Notwithstanding the bar, the evidence was sufficient to support the Defendant's conviction on both the murder charge and the conspiracy charge. The Court of Appeals has previously noted that "[w]hen on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, [the court's] authority to interfere with the jury's verdict is quite limited." *Phinisee v.*

State, 463 So.2d 1064, 1067 (Miss.1984); *Spikes v. State,* 302 So.2d 250, 251 (Miss.1974)). The State must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* (citing *Glass v. State,* 278 So.2d 384, 386 (Miss.1973)). Basically, "once the jury has returned a verdict of guilty in a criminal case, [the court is] not at liberty to direct that the defendant be discharged short of a conclusion on [its] part that the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty." *Id.* (citing *Fairchild v. State,* 459 So.2d 793, 798 (Miss.1984); *Pearson v. State,* 428 So.2d 1361, 1364 (Miss.1983)). With this standard in mind, there was sufficient evidence in the case at hand to prove each and every required element of both the charge of murder and the charge of conspiracy.

The Defendant was convicted of murder under Mississippi Code Annotated §97-3-19(1)(b) which states as follows:

> The killing of a human being without the authority of law by any means or in any manner shall be murder . . . when done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual.

Thus, the State had the burden of proving that the Defendant killed a human being while engaged in an act eminently dangerous to others. The State of Mississippi met this burden. The evidence presented at trial establishes the following facts in this regard:

a. The Defendant was seated in the passenger seat of a black car driven by Johnny White. The vehicle was the first in a line of four or five cars driving down South Fourth Avenue on December 18, 2004. (Exhibit 43).
b. On December 18, 2004, the victim was found dead from a gunshot wound to the right side of his chest on South Fourth Avenue. There were bullet holes in a nearby vehicle and shell casings found down the street from the body of

recovered by police from the Defendant's residence. (Transcript p. 122 and 143).

d. The Defendant admitted to police that he shot a .380 out the window of the vehicle while on South Fourth Street. (Exhibit 43).

e. Johnny White testified that the Defendant shot a .380 pistol out of the window of the vehicle and that he "tried" to aim. (Transcript p. 180 - 184).

f. The victim's friend, Dennis Page, testified that "the dudes from Laurel" "rolled up and started shooting." (Transcript p. 100).

g. Neither the victim or his friend Dennis Page had a gun at the time of the drive-by shooting and did not fire any shots. (Transcript p. 101).

h. No weapon was found on or near the victim. (Transcript p. 93 and 136).

I. There were no bullet holes in the vehicle in which the Defendant was a passenger and no one in the vehicle was shot. (Transcript p. 183).

j. The victim's manner of death was ruled a homicide. (Transcript p. 128).

Clearly, the victim was killed by the Defendant while he was engaged in the eminently dangerous act of shooting from a moving vehicle. *See Wheeler v. State*, 536 So.2d 1341, 1344 (Miss.1988) (holding that firing a gun "recklessly and at random" is certainly "the type of conduct contemplated by § 97-3-19(1)(b).") and *Jackson v. State*, 755 So.2d 45 (Miss. Ct. App. 1999) (holding that there was sufficient evidence to sustain a conviction of murder where the defendant shot in the general direction of the victim and the victim later died as a result of a gun shot wound). Accordingly, there was sufficient evidence to support the Defendant's conviction of murder.

The Defendant was also convicted of conspiracy to commit a drive by shooting. This Court previously held the following with regard to conspiracy:

> There must be recognition on the part of the conspirators that they are entering into a common plan and knowingly intend to further its common purpose. *McDonald v. State*, 454 So.2d 488 (Miss.1984). If there is an agreement, then knowledge of that agreement follows. The agreement need not be formal or express, but may be inferred from the circumstances, particularly by declarations, acts, and conduct of the alleged conspirators. The principle is stated in 16 Am.Jur.2d Conspiracy § 42 (1979), as follows:
>
> > The trial court is allowed great discretion in the reception of circumstantial evidence, for conspiracy generally must be proved by

part and the other performing another part so as to complete it or the view to its attainment, the jury will be justified in concluding that they were engaged in a conspiracy to effect that object.

Griffin v. State, 480 So.2d 1124, 1126 (Miss. 1985) (*emphasis added*). In the case at hand, Johnny White testified that at some point during the night, the Defendant and Orlando Seals, the other man riding in the car with them, obtained guns. (Transcript p. 178 - 180). He further testified that they drove "down to South Fourth." (Transcript p. 181). Then the following exchange took place:

Q: But you got your guns, you got somebody else's car, and went down there?
A: Yes, sir.
* * *
Q: Two, three o'clock in the morning?
A: About a quarter after two, 2:30 a.m.
* * *
Q: Now, when y'all got to South Fourth Avenue where this incident occurred, how many other carloads of people was there?
A: I say three, four.
* * *
Q: Y'all just down there sightseeing that time of the morning?
A: No, sir. We had plans.

(Transcript p. 181 - 182). Mr. White then testified that the window was half way down, the Defendant tried to aim, and the Defendant shot out the window. (Transcript p. 183 - 184). He also testified that Mr. Seals stepped out of the car and "was just shooting." (Transcript p. 184).

Moreover, the Defendant admitted to police that a group of guys from the neighborhood were talking and were upset about what happened earlier in Queensboro. (Exhibit 43). Someone in the group said they were "going to ride" and asked the Defendant, "what's up." (Exhibit 43). The Defendant then stated that he jumped in the car as it was pulling off. (Exhibit 43). He further

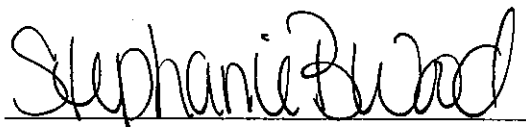
window of the front passenger side of the vehicle. (Exhibit 43).

Accordingly, both the testimony of Johnny White, the driver of the vehicle in question, and the Defendant's statement to police evidence that there was an agreement to commit a crime. Mr. White stated that they were on South Fourth Avenue because they had plans and the Defendant informed police that someone said they were going "to ride" and while riding down South Fourth Avenue, Mr. Seals said "there they go" just before gun shots were fired. Furthermore, "what the defendants actually did is evidence of what they intended to do." *Griffin*, 480 So.2d at 1126 (citing *King v. State*, 123 Miss. 532, 86 So. 339 (1920)). Thus, there was sufficient evidence to support the Defendant's conspiracy conviction.

court's conviction and sentence of the Defendant as he is procedurally barred from raising the issues of sufficiency of the evidence on appeal and as there was sufficient evidence to support his conviction.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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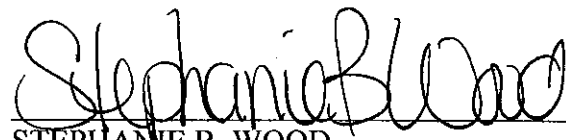
This the 3rd day of January, 2008.



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