IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

THOMAS LAVIRL SLADE — APPELLANT

VS. — NO. 2007-KA-1844-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On August 15-21, 2007 , Thomas Lavirl Slade, "Slade" was tried for possession of a fire arm, eluding law enforcement and various burglaries as an habitual offender before a Forrest County Circuit Court jury, the Honorable Robert Helfrich presiding. R. 1. Slade was found guilty of possession of firearm and eluding police officers. R. 340-341.

After a hearing with testimony and documentation of Slade's numerous prior felonies, he was given a life sentence as a M. C.A. § 99-19-83 habitual offender in the custody of the Mississippi Department of Corrections. R. 341; 345. From that conviction, he appealed to the Mississippi Supreme Court. C.P. 84.

ISSUES ON APPEAL

I.
WAS SLADE ENTITLED TO A CHANGE OF VENUE?

II.

WAS SLADE ENTITLED TO A RECUSAL FROM THE COURT?

III.

WAS THERE CORROBORATED, SUBSTANTIAL EVIDENCE IN SUPPORT OF SLADE'S CONVICTIONS AND THE DENIAL OF ALL PEREMPTORY INSTRUCTIONS?

STATEMENT OF THE FACTS

On May 2, 2007 Slade was indicted for several counts of burglary of a dwelling as well as possession of a firearm by a convicted felon, and recklessly eluding law enforcement as a M. C. A. § 99-19-83 habitual offender by a Forrest County Grand Jury. C.P. 8-11.

On August 15-21, 2007, Slade was tried for possession of a fire arm, eluding law enforcement and various house burglaries as an habitual offender before a Forrest County Circuit Court jury, the Honorable Robert Helfrich presiding. R. 1. Slade was represented by Mr. Ivan Burghard. R. 1.

Mr. Slade filed a motion for a change of venue. C.P. 20-21. The motion mentioned on line articles from the Hattiesburg American as indicating prejudicial pre-trial publicity. C.P. 20-21. The prosecution responded. They pointed out there were no affidavits and no evidence of wide spread pre-trial publicity sufficient for concluding that an impartial jury could not be found. C.P. 22-25. On the date of the hearing on the motion, Slade amended his motion. He included some four affidavits of persons claiming to have been exposed to the pre-trial publicity in the Forrest County area. The only article mentioned was an article taken from the on line edition of the Hattiesburg American. C.P. 28-41.

The prosecution opposed the motion. The trial court allowed the state to question randomly selected members of the jury pool. R. 7-31; C.P. 47. None of them had heard anything prejudicial to Slade's defense to the charge. Only one juror remembered hearing anything about Slade or the charges against him in the media. R. 7-31. After hearing the testimony with cross examination, the trial court found a lack of evidence of any extensive pre-trial publicity likely to interfere with Slade's right to a fair trial. R. 31.

Slade filed a motion for recusal of the trial court. C.P.15-19. This was based upon Mr.

Slade's claim that there might be grounds for doubting his impartiality. C.P.16-18. The prosecution filed a response indicating no knowledge of any reason for recusal based upon alleged lack of impartiality by the trial court. C.P. 26.

Although Slade initially claimed there was some "animosity" involved in his relationship with Mr. Helfrich in the past, he admitted upon being questioned that there was none. R. 32-33.

While the trial court admitted to having been involved in both prosecuting as well as defending Slade in the past, the trial court found no basis for recusal based upon anything he might have said to Slade while he was representing him. Slade claimed that Helfrich had in the past said he "if left up to me, I would throw you away." R. 33. Helfrich denied having made the statement. He believed that he might have said "he should be a man about it and stand up and take the max."R. 33. However, this was in response to Slade telling Helfrich, his defense attorney at the time, that he was not going to return to a life of crime. R. 33-34. The trial court denied the motion for recusal. R. 34.

Deputy Clifford Rudder with the Forrest County Sheriff's Office testified that he was on patrol. Rudder was driving in his officially identified Forrest County Sheriff's vehicle. State's photographic evidence 1-3 show the police issued Crown Victoria which Deputy Rudder was using at that time. The photographs also show "the blue lights" which he "activated" along with his loud siren. R. 124-128.

Rudder was in the southern portion of Forrest County. This was on March 13, 2007. R. 122. Based upon information reported to him, he was searching for a black Mustang driven by Mr. Slade. This was in connection with recent residential burglaries in the area. R. 126. Deputy Rudder located Mr. Slade driving at an excessive rate of speed near new highway 49. He recognized him in his car. He pursued the Ford Mustang in his police car. He turned on his flashing lights and siren. Rudder

confirmed the license plate number on the car, which was "896 JNS."

He confirmed that Slade's car was traveling at a speed of over a hundred miles per hour. R. 141. He did this by checking his calibrated speedometer Rudder testified to seeing Slade run through stop signs, run a truck and a car off the road, and drive through the center of several populated areas along the highway at a dangerous and life threatening speed.. R. 128-141.

Deputy Rudder identified Mr. Slade in the court room as the person he encountered in the fleeing black Mustang. R. 128.

State's photographic exhibit 1-3 shows the officially marked Forrest County cars used in the chase of Slade's Mustang. It shows the blue lights for use in stopping erring motorist on the highways of the county. Photographic exhibit 4 is a copy of a photograph of the license plate of the black Mustang It was "896-JNS." Rudder only saw one person in the car. He recognized Slade who was driving. R. 128.

Exhibit 6 is a map showing the place where Slade's car was located, on Carnes Road, as well as the roads used in the ensuring chase. The chase ended on old 49 near Horne Road when spikes on the highway blew out Slades's tires. Photographic evidence 7,8 and 9 show the flat tires on the Mustang after they had been punctured by a shot and spikes in the road. Photographic exhibit 12 and 13 show the .22 caliber rifle with scope taken from the burglarized home of Mr. Vic Clepper. It was found lying beside Slade when he was captured and handcuffed. All photographic evidence and maps are found in manila envelop marked "Exhibits."

At the conclusion of the prosecution's case in chief, Slade's motion for a directed verdict was denied. R. 290-291.

Mr. Slade testified in his own behalf. R. 293-313. Slade admitted that he was addicted to drugs. Slade admitted to having some firearms but claimed he was trying to pawn them for someone

else. However, he admitted that he was involved in "a car chase" that he testified was "a lot of fun." R. 298.

On cross examination, Slade admitted that he was a convicted felon. R. 304. He admitted that he was in possession of a firearm when he was apprehended in the woods. It was exhibit 15, which was a .22 caliber rifle. R. 304. The rifle was found near Slade ,who was lying on the ground in the woods. Law enforcement believed that Slade had fired the weapon in their direction previously. Officer Riels testified to seeing the weapon in Slade's hands in the woods. Slade pointed it in his direction and threatened him. R. 207-208.

Slade admitted that he was driving the car. R. 309-310. He admitted that he was trying to elude the police cars. However, he claimed he was not aware of how fast he was driving during the chase which included going through Brooklyn.

On redirect, Slade claimed to have fled from law enforcement because he thought they were going to try and kill him. R. 313.

Slade was found guilty of possession of a weapon by a convicted felon, and recklessly eluding law enforcement. The jury did not reach a decision on the burglaries. R. 341.

After a hearing with testimony and documentation from official penitentiary records, Slade was given a life sentence as a M. C. A. § 99-19-83 previously convicted felon in the custody of the Mississippi Department of Corrections. R. 345. Slade admitted that he had the prior convictions, including a felony for armed robbery. R. 344.

The trial court pointed out that under M. C.A. § 99-19-83, he had no discretion in sentencing Mr. Slade. The only sentence available by statute was "life imprisonment." R. 341; 345.

A motion for a new trial was denied. It was found not only untimely filed, but also lacking in merit. R. 350.

From that conviction, Mr. Slade appealed to the Mississippi Supreme Court. C.P. 84.

SUMMARY OF THE ARGUMENT

1. The record reflects that the prosecution rebutted any claim of extensive pre-trial publicity. R. 7-31. In **Grayson v. State** , 806 So.2d 241, 250 -251 (Miss. 2001), the Supreme Court found that the prosecution could rebut any alleged excessive publicity that would taint a potential jury at the venue hearing.

The record reflects testimony from five randomly selected members of the proposed jury. The testimony from the panel indicated there was little, if any, pre-trial evidence to which they had been exposed.. R. 7-31; C.P. 47. In addition, there was initially insufficient compliance with the statutory requirements for filing a motion for a change of venue. See M. C. A. § 99-15-35. C.P. 20-21; R. 31. While affidavits were submitted the day of the hearing on the motion, the trial court found based upon testimony with cross examination of the five randomly selected members of the jury panel that there was a lack of evidence that any media coverage would interfere with Slade receiving a fair trial. R. 31.

2. The record reflects a lack of evidence for finding any grounds for recusal by the trial court. The record reflects that the trial court had in the past been involved in both defending as well as in prosecuting Slade. There is a lack of evidence that the trial court abused its discretion in denying a motion for recusal. R. 34.

In **Beckum v. State**, 917 So 2d 808, 816-817 (¶ 30-¶ 32) (Miss. App. 2005), the court of appeals found the trial court did not abuse its discretion. It did not abuse its discretion when it did not recuse itself. The judge had been involved both in defending as well as prosecuting the defendant. Those prior cases were not related to the charges in the case before the trial court.

In addition, the record reflects that after the jury found Slade guilty, not of burglary but of possession of a weapon and eluding law enforcement, the trial court had no discretion in sentencing.

Mr. Slade admitted to having prior felonies, including a crime of violence, armed robbery. R. 344-345..

There was record evidence and testimony indicating that Slade qualified for enhanced punishment as a M. C. A. § 99-19-83 habitual offender. R. 344-345. M. C. A. § 99-19-83 requires "a life sentence" for one with two prior felonies separately brought where one of the two was for "a crime of violence."

3. The record reflects sufficient credible, corroborated evidence in support of Slade's convictions. The trial court denied a motion for a directed verdict. R. 291. Slade admitted to being a convicted felon in possession of a weapon. R. 304. He admitted the weapon he had in his possession was exhibit 15, a .22 caliber rifle. R. 304. He admitting to fleeing from a Forrest County police patrol car in a black Mustang. R. 309. He was seen with the firearm in his hands when he abandoned his car and fled into the woods. He used it to threaten law enforcement. R. 207-208.

While Slade denied knowing how fast he was driving at the time, Deputy Rudder testified that he was driving in excess of one hundred miles per hour. R. 141.

When the testimony, and other evidence presented by the prosecution was taken as true with reasonable inferences, the appellee would submit that there was more than sufficient credible, corroborated evidence in support of Slade's convictions. This would be for possession of a fire arm by a convicted felon and reckless and dangerously eluding law enforcement. R.340-341. **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993).

ARGUMENT

PROPOSITION I

THERE WAS INSUFFICIENT GROUNDS FOR A CHANGE OF VENUE.

Mr. Slade believes that the trial court erred in denying his motion for a change of venue. Since he filed four affidavits with his motion, and he supposedly had committed numerous serial felonies, he thinks there was grounds for granting his motion. Slade believes that because of this alleged extensive publicity in the Forrest County area an impartial jury could not be selected for his trial. Appellant's brief page 8-9.

The record reflects that Slade filed a motion for a change of venue with no affidavits attached on June 29, 2007. C.P. 20-21. The prosecution filed a response, noting the lack of compliance with M C A § 99-15- 35 (Rev. 2000). This statute requires affidavits to be filed with the motion. C.P. 22-25.

On the day of the hearing on the motion, Slade filed an amended motion with included four affidavits. The claim of pre-trial publicity was limited to mentioning two newspaper articles about the charges against Slade. The attached articles were from the on line edition of The Hattiesburg American. C.P. 28-41.

The prosecution opposed the motion. There was the mention of only two on line newspaper articles from August 10, 2007 that dealt with events related to the charges against Mr. Slade. It also mentioned his apprehension after a high speed chase. This did not indicate any "inordinate amount of media coverage."C.P. 30-31.

The prosecution was given permission by the trial court to voir dire members of the jury pool as to their exposure to any pre trial publicity about Mr. Slade. They were randomly selected from the jury pool. R. 7-31; C.P. 47.

After hearing from some five jurors, none of whom remembered any thing specific about any news articles about Mr. Slade, the trial court found there was a lack of evidence of any publicity that would affect potential jurors in the instant cause. One juror, Mr. Muli remembered having heard Slade's name in connection with the media, but admitted to knowing nothing specific about the charges, and stated that he could be impartial if chosen for jury duty. R.12-17. The dialogue over the change of venue was as follows:

> Weathers: Yes, sir. The State of Mississippi has filed a response, which I'm sure Your Honor has read, so I'll not go into that. **Basically, it's the state's position that there has not been excessive publicity in this case. There are, I believe, two articles attached to the amended motion and the four affidavits. I don't know where the individuals on the affidavit got their information, but it's the State's position that Mr. Slade can get a fair trial in Forrest County and he's not entitled to it.** R. 5-6. (Emphasis by appellee).

See response to motion to change of venue contained in the record excerpts. C.P. 22-25;

The record reflects that the state questioned randomly selected jury venire members. They were questioned as to whether they had been exposed to information either about Slade, or the charges against him. Seven jurors were selected at random to be questioned under oath. R. 7-31. Of the five that were questioned only one juror remembered hearing Slade's name on the news but remembered nothing about the burglaries in the media. R. 12-17.

However, this juror had not been exposed to any specifics as to Slade's involvement in these alleged burglaries. After hearing from five jurors, the final two jurors were not questioned. The defense admitted that this was sufficient for determining that there was a lack of evidence of wide spread publicity about Slade in the community. R. 7-31.

The trial court found from that examination that there was a lack of evidence that Slade's trial was a topic of significant media coverage or that anyone had formed any opinions about the cases

against Slade. R. 7-31.

> Court: **I think it's obvious from the random individuals that testified that while one person may have heard something about it, that nobody has heard any–it is certainly not a topic of general discussion in the community, and nobody has formed opinions one way or the other. So as it appears at this time, I'm going to deny this motion for change of venue.** R. 31. (Emphasis by Appellee).

The record reflects that the proposed jury panel was questioned about their exposure to the charges on the local news. They were questioned by the trial court about any exposure to any factual information involving the burglaries and other charges in the indictment. No juror responded. R. 63-64.

> Court: **Do you know anything about the alleged facts of this case?**
>
> **(No response).** R. 64. (Emphasis by appellee).

In fact, Mr. Slade's counsel, during voir dire questioned the jury panel as to whether they had been exposed to any pre-trial publicity on the local news. Not one juror responded.

> **Is there anybody that recalls hearing about this on the news?** I don't think that was specifically asked, but my understanding is that it did make local news. Is there anybody that can recall some of those events? Maybe it's not real clear, but you have kind of a fuzzy recollection of hearing something about it on the radio on the evening news?
>
> **(No response).** R. 91. (Emphasis by appellee).

The record reflects that the trial court denied a challenge for cause against jurors who had previously been victims of a burglary. The record reflects there were ten such jurors out a total of forty one. Those who were so previously identified stated that they could put aside their previous past experience and serve impartially on the jury if chosen to serve.

> Mr. Weathers: Your Honor, we've got a jury panel of 41 people, and by my notes there were 1,2, 3,4,5,6,7,8,9,10 victims of burglary. **They all said they could put that aside and a very large majority of the burglaries, as I recall, were from years ago. They all said they could put that aside and base their decision on the evidence in this case.** They answered the court's questions. Most of the individuals

that identified themselves as victims of burglary, I don't think there's any way we're going to reach them any way by the numbers I've got down, so...

Court: I'm going to deny that generic motion. Are there any more challenges for cause? R. 102.(Emphasis by Appellee).

In **Grayson v. State**, 806 So.2d 241, 250 -251 (¶ 21-¶ 23) (Miss. 2001), the Supreme Court found that the prosecution can rebut any evidence of alleged excessive publicity. This would be publicity that allegedly could taint a potential jury at the venue hearing. In that case, as in the instant cause, there was testimony from potential jurors indicating a lack of any knowledge about the charges against Grayson or any facts related to the charges against him.

> ¶ 21. The record reflects that Grayson failed to procure the affidavits required by § 99-15-35, but the prosecution waived the necessity of the affidavits. Grayson also presented four local newspaper articles about the murder which were published approximately ten months before the trial began. In response, the State called ten George County residents as witnesses, each of whom had already been subpoenaed to appear as jurors. The ten witnesses were apparently chosen at random through the same procedures by which George County selected veniremen for jury pools. The witnesses were then asked questions by both the prosecutor and the defense counsel regarding their knowledge of the parties and of the case.
>
> ¶ 22. Grayson asserts that the testimony of those witnesses reveals that a majority of them either believed that he could not get a fair trial or else had already determined his guilt. The record reflects, however, that only one juror (who knew the victim personally) believed that Grayson would be unable to get a fair trial while another admitted to hearing pro-death penalty comments in connection with the case. Most of the witnesses were unable to recall details of the crime, and none *251 (Cite as: 806 So.2d 241, *251)were able to recall significant details of any media coverage of the crime.
>
> ¶ 23. At the conclusion of the voir dire, the trial court again denied Grayson's motion to change venue and commented on the relatively small number of veniremen (most of whom knew either the victim or the defendant) who expressed any knowledge of the crime. While this case is a capital case based on consideration of a heightened standard of review, that is the only Evans factor implicated in this case. In light of that fact, and the absence of any persuasive proof of overly prejudicial pretrial publicity, the trial court did not abuse its discretion in denying Grayson's motion to change venue.

In **Howell v. State** 860 So.2d 704, 720 (¶ 36) (Miss. 2003), the trial court found that the

prosecution rebutted the claim of extensive pre-trial publicity. In that case, Howell had seven affidavits claiming such publicity. The prosecution had witnesses testify to not being exposed to adverse publicity. They also testified that they believed Howell could get a fair trial. Howell presented no witnesses to rebut those witnesses.

> ¶ 36. Given the facts surrounding this issue, we find that Howell did not demonstrate an abuse of discretion by the trial court's denial of the motion for change of venue. There was no evidence offered of any threatened violence towards Howell, nor an inordinate amount of media coverage. The testimony of the State's witnesses demonstrated that Howell could receive a fair trial. Upon the conclusion of testimony from the State's witnesses, Howell offered no additional evidence to rebut the State's witnesses and support his motion.

The appellee would submit that the record reflects no extensive pre-trial publicity that would have prevented Slade from receiving a fair trial in the instant cause. R. 7-31. In addition, the record reflects that the jury indicated that they had not been exposed to facts about the charges and that they could be fair and impartial. R. 47-107.

The appellee would submit that this issue is therefore lacking in merit.

PROPOSITION II

THERE WAS INSUFFICIENT GROUNDS FOR RECUSAL.

Mr. Slade believes that the trial court erred when it refused to recuse itself. Slade believes that due to Mr. Helfrich's prior involvement with him that he was prejudiced against him and "predisposed to a maximum sentence" should he be convicted of any of the named felony offenses in the instant cause. He thinks the court's admissions in the record indicate bias against him. Appellant's brief page 11-15.

The record reflects a general request for recusal. There was no factual evidence presented initially for recusal. R. 35. The grounds of the motion for recusal was whether there was evidence of "any possible basis for disqualification in this case." C.P. 17. The state responded to that motion by stating that it "is unaware of any basis for judicial recusal in this case." C.P. 26.

During the dialogue over the motion for recusal, some of which Slade included in his brief, Slade admitted that he did not feel any animosity between himself and Mr Helfrich based upon his previous dealings with him.

Court: **No, wait a minute. Animosity–has there ever been animosity between us**?

Slade: **As far as me and you, no**. R. 32-33. (Emphasis by appellee).

The trial court also stated for the record that he had been involved in the past "in both" defending and prosecuting Slade.

> Court: **You know, I have served in different capacities over the last twety years, but–you know, that's just the fact of the matter. And I don't see how that would lead to me having to recuse myself.** Of course, everything in this case will be of record and there won't be any, necessarily, decisions by this court. If Mr. Slade is convicted by a jury, I don't think –even the sentencing is discretionary with this court, so I'm going to deny the motion to recuse. I will note that this matter is set for trial on August 15, so I'm not going to grant that motion. R. 35. (Emphasis by appellee).

The record reflects that trial court clarified what Mr. Slade believed was a prior statement made to him indicating prejudice against him.

> **Court: Let me see if I can refresh your memory. I think what was probably said was the last time–and I don't know how many times I represented you or how many times I prosecuted you. Okay? I think what was probably said was the last time you got whatever deal was, that you told me, you know, this is it. You ain't coming back. And I probably said, Well, I hope not, and if you do, you should be a man about it and stand up and take the max.** R. 33. (Emphasis by appellee).

In **Beckum v. State**, 917 So 2d 808, 816-817 (¶ 30-¶ 32) (Miss. App. 2005), the Court of Appeals found the trial court did not abuse its discretion. It did not abuse its discretion when it did not recuse itself. The trial judge, Judge Helfrich, in that case, as in the instant cause had both defended as well as prosecuted Mr. Beckum. However, his involvement in prosecuting him was in previous cases unrelated to the charges for which he was being tried.

> ¶30. Beckum argues that he "properly rebutted the presumption of impartiality and demonstrated manifest error on the part of the trial judge." To support this general claim, Beckum says that he "demonstrated that the trial judge had previously represented [him] and had also been a member of a District Attorneys [sic] administration that had sought to prosecute [him]." Beckum also states that he "demonstrated that the trial judge had previously recused himself from previous cases" that involved Beckum.
>
> [21] ¶ 31. Truly, Beckum demonstrated that the circuit court judge did defend him on a prior unrelated charge. That, without more, does not overcome the presumption of impartiality. We can also agree that Beckum demonstrated that the circuit court judge once worked as a member of a district attorney's office that prosecuted Beckum. Still, that does not overcome the presumption of impartiality, in and of itself. Finally, Beckum demonstrated that the circuit court judge recused himself from two cases against Beckum. The circuit court judge discussed why he *817 (Cite as: 917 So.2d 808, *817) felt the need to recuse himself from those two cases, but not the case at hand-those two previous cases originated during his employment with the district attorneys office. This case, unlike the two prior cases against Beckum, did not originate during the circuit court judge's employment with the district attorney's office.
>
> ¶ 32. Because Beckum failed to overcome the presumption that the circuit court judge was unbiased and impartial, we cannot conclude that the circuit court abused

his discretion when he overruled Beckum's motion for recusal. Accordingly, we affirm the circuit court's decision.

Additionally, the record at sentencing reflects that Slade and his counsel admitted that Slade had been convicted and sentenced for the numerous prior felony convictions included in his indictment. R. 343-344. One of these prior convictions was a crime of violence, armed robbery. These prior convictions qualified him, as charged by indictment, for enhanced punishment as a M. C. A. § 99-19-83 habitual offender. C.P. 8-10.

Under this statute the trial court has no discretion in sentencing. R. 344-345.

> Court: It's the court's understanding–well, I do find that you are and you acknowledge you are a habitual offender pursuant to the terms of section 99-19-83. As such, this court has absolutely no discretion in the sentencing. Having been found guilty by a jury of your peers of the crime of possession of a weapon by a convicted felon and also of the crime of eluding law enforcement and being a habitual offender pursuant to 99-19-83, the only sentence this court can hand down is that of a sentence of life in prison without the benefit of parole or early release. R. 345.

By statute, Slade's sentence as an M. C.A. § 99-19-83 habitual offender was "a life sentence" in the custody of the Mississippi Department of Corrections. See M. C. A. § 99-19-83, which states that where a prisoner's two prior felonies includes "a crime of violence" that his sentence shall be "life imprisonment."

Therefore, the trial court had no discretion at all as to his sentence.

The appellee would submit that the trial court did not abuse itself in denying a motion for recusal under the facts of this case. There was no evidence of bias against Slade in the past or present. This issue is also lacking in merit.

PROPOSITION III

THERE WAS CREDIBLE, CORROBORATED SUBSTANTIAL EVIDENCE IN SUPPORT OF SLADE'S CONVICTIONS AND THE TRIAL COURT'S DENIAL OF ALL PEREMPTORY MOTIONS.

Mr. Slade believes there was insufficient evidence in support of his convictions. He believes that his testimony about how he came to have some firearms and how he was allegedly pawning them with others was sufficient to show that he was not guilty of the numerous charges against him. Slade also testified that he needed a rifle to defend himself from police officers who he alleged were trying to kill him. Appellant's brief page 1-12.

The record reflects that the trial court denied a motion for a directed verdict at the conclusion of the prosecution's case in chief. The Court found that the prosecution had presented sufficient, credible evidence for establishing a prima facie case of burglary, possession of a firearm by a convicted felon, and eluding a police officer. R. 290-291.

On direct examination, Slade admitted that he was involved "in a car race" with Officer David Jarell which he testified was "a lot of fun." R. 298.

On cross examination, Slade admitted that he was a convicted felon. R. 304. He admitted that he was in possession of a firearm when he was apprehended in the woods. This weapon was exhibit 15, which was a .22 caliber rifle with an attached scope. R. 304. Slade and the rifle were located after officers searched the woods cautiously. This was after Slade had pointed the weapon and threatened law enforcement. In addition, a shot had been fired from the direction in which Slade had fled. Law enforcement believed it was a shot fired by Slade. There was no one else in the car he abandoned and no one else visible near him in the woods where he was captured.

Slade fled his car and ran into the woods after road spikes were used to incapacitate his car.

They flattened all four of the tires on his black Ford Mustang. See state's photographic exhibit 7,8 and 9 for copy of photograph of Slade's Mustang after his tires were incapacitated on Old Highway 49. See also state's exhibit 6 for scaled map showing where the pursuit of Slade's Mustang began on Carnes Road and ended after a high speed chase on old highway 49. R. 152.

Officer Rudder testified that he believed, based upon his odometer, that Slade was traveling over a hundred miles an hour in a populated area. Rudder was close enough to verify the tag number on the black Mustang. R. 128. Slade admitted in his testimony that he was driving this speeding car. There was no one else present with him in the car. R. 309-310. He admitted that he was trying to elude the police cars. However, he claimed he was not aware of how fast he was driving during the chase which included going through Brooklyn, a small town south of Hattiesburg.

> Q. All right. Now, let's take the possession of a weapon after conviction of felony charge. **You would agree that you're a convicted felon?**
>
> A. **Yes, sir.**
>
> Q. Okay. Now, on March 13, 2007, would you agree and tell these folks sitting on the jury that on a south Forrest county road, the Brooklyn to Janice Road after you got out of whatever car you were driving and whoever's car you were driving and went in the woods, **you had a firearm with you?**
>
> A. **I had a firearm. I look that firearm to survive on.**
>
> Q. **Okay. And that is the same firearm that's been introduced into evidence in this box, I believe, as exhibit 14. As a 22 caliber rifle with a scope on it. Exhibit 15. I'm sorry.**
>
> A. **Got that from this guy that was with me. I know him by June Bug.** That's what I know him by. Call him June Bug. R. 304. (Emphasis by appellee)
>
> Q. So would it be a fair statement to make to this jury that when officer Rudder got after you at the corner of Canes Road and 49, you were in the vehicle, right?
>
> A. Yes, sir.

Q. **You were driving the vehicle, (a black Mustang)right?**

A. **Yes, sir.**

Q. You heard Officer Rudder testify, didn't you?

A. Yes, sir.

Q. **You would agree that you were doing in excess of a hundred miles an hour at places through there; wouldn't you?**

A. **I never looked at the speedometer.**

Q. Take the fifth. Okay. You made a statement to the jury that you had this 22 rifle on you and took it in the woods with you because the word on the street was they was going to kill you?

A. Yes, sir.

Q. Who was going to kill you?

A. The police department. R. 309-310. (Emphasis by Appellee).

Deputy Clifford Rudder with the Forrest County Sheriff's Office testified that he was on patrol in his officially identified Sheriff's vehicle. Rudder was in the southern portion of Forrest County. This was on March 13, 2007. R. 122. Based upon information reported to him, he was searching for a black Mustang driven by Mr. Slade. This was in connection with a series of recent residential burglaries. R. 126.

Deputy Rudder located Mr. Slade driving at an excessive rate of speed near new highway 49. He pursued his car. He turned on his flashing lights and siren. R. 140. Slade's car was traveling at a speed of over a hundred miles per hour. Rudder determined this by observing his own speedometer while pursuing Slade's Mustang. This included driving through the center of a small town named Brooklyn.

Deputy Rudder identified Slade in the court room as the person he encountered in the fleeing

black Mustang. R. 128.

> Q. **All right. And do you recognize the individual that was operating that car on March 13?**
>
> A. **Yes, I did.**
>
> Q. **All right?**
>
> A. **Mr. Slade.**
>
> Q. Do you see Mr. Slade in the courtroom today?
>
> A. Yes ,sir, I do.
>
> Q. **If you would, point him out for the members of the jury.**
>
> Weathers: **Let the record reflect that he identified Mr. Slade.** R. 128. (Emphasis by Appellee).
>
> ...
>
> Q. All right. So what's happening now in this video?
>
> A. ..We're–I'm following the route he took and right now I would have already had all my emergency equipment on. **I was calling in his tag in about right here, and I was advising the sheriff's department dispatch that he was 10-94, which was our code for chase in process.** We're going down Carnes Road going toward Drag Strip Road. R. 140.
>
> ...
>
> Q. What was–did you have occasion to look at your speedometer along this time?
>
> A. **Yes, sir, when we go under the flashing lights here, this was when I looked downtown Brooklyn here, and we were doing in excess of 120 miles an hour.**
>
> Q. **All right. This is the flashing light coming up?**
>
> A. **Yes, sir, this is downtown Brooklyn.** R. 141. (Emphasis by appellee).

Deputy Michael Riels with the Forrest County Sheriff's Office testified to seeing Slade fleeing into the woods. This was after his tires had been punctured by spikes in the road. He saw him holding a firearm. He testified that Slade pointed it at him, and threatened him with it.

Q. When Mr. Slade spun around, was he holding anything or carrying anything?

A. Yes, sir, he was.

Q. **What did it appear to you that he was holding?**

A. **It appeared to be a shot gun.** He turned around, went into a defensive position with the gun at his hip. He lowered down in the thicket, and he spoke to me.

Q. **What did he say?**

A. **He said, Boy, you better get–you better back out of here.** R. 207-308. (Emphasis by appellee).

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).

The appellee would submit that when the evidence summarized above was taken as true with reasonable inferences, there was more than enough credible, substantial corroborated evidence in support of Slade's convictions. There were was credible evidence for concluding that Slade was a convicted felon. He admitted this in his testimony. R. 304. He admitted on cross examination that he was in possession of a firearm. He also admitted to having a firearm when he was arrested. This was exhibit 15, a .22 caliber rifle with an attached scope. This firearm was fired in the direction of deputy's pursuing him after Slade's tires had been deflated. They were deflated through the use of police issued spikes laid across the road. R. 304.

There was corroborated evidence for finding that Slade who was driving his black Mustang was eluding police in the official operation of their duties. He was eluding them by driving recklessly at a dangerous rate of speed on a public highway and through the town of Brooklyn. See exhibit 1 for copy of photograph showing marked Forrest County Sheriff's Office automobile with blue lights. This "reckless driving" included running stop signs, caution signs, running other motorists off the road, and speeding in areas marked for slowing down due to larger concentrations of people and intersections with other roads. This manifested "a wilful disregard for the safety of other persons and their property." M. C. A. § 97-9-72(2).

The officers pursuing him testified to having on their loud sirens and their bright blue lights. R. 130; 205.

Slade admitted that he was driving his black Mustang which was being pursued by law enforcement officers in their official patrol cars. R. 309. While Slade claimed that he did not know how fast he was driving, he admitted that he was frantic because he allegedly thought the police were trying to shot him. R. 313.

See manila envelop for photographic evidence used during the trial. These photographs

corroborate the testimony presented by the prosecution. The Forrest County police patrol vehicle with its blue lights is shown along with Slade's black Mustang with blown out tires. The .22 caliber rifle with scope taken from Mr. Vic Clepper's home in a burglary is shown on the ground where it was found. R. 211-212; 246-262.

The record also reflects that Slade's motion for a new trial was not filed "within ten days of entry of his judgment" of conviction. C.P. 80; R. 350.. See Rule 10.05.6, on "New Trials" of "The URCCC.".

In **Jones v. State** , 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that a motion challenging the weight of the evidence was in the trial court's discretion. However, it should be denied except to prevent "an unconscionable injustice."

> 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 the evidence cited above was sufficient for establishing all the elements of possession of a firearm by a convicted felon. Based on the record cited above, there was also sufficient evidence for establishing all the elements of recklessly and dangerously eluding law enforcement in the performance of their official duties.

The appellee would submit that the trial court did not err in denying a motion for a directed verdict of a new trial. R. 291; 350. Slade's motion for a new trial was not timely. And there was no "unconscionable injustice" involved in denying Slade's motion for a new trial.

The appellee would submit that this issue is also lacking in merit.

CONCLUSION

Slade's convictions and life sentence as an M. C. A. § 99-19-83 habitual offender 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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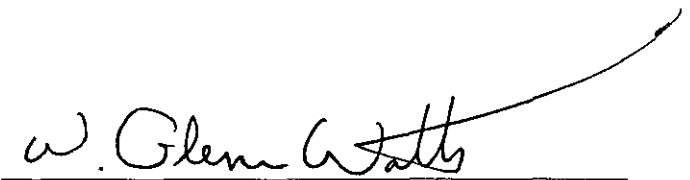
This the19th day of November, 2008.



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