IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PEDRO LIMA — APPELLANT

VS. — NO. 2008-KA-0714

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: JOHN R. HENRY
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

STATE STATUTES

STATE RULES

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PEDRO LIMA **APPELLANT**

vs. **CAUSE No. 2008-KA-00714-SCT**

THE STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Tate County, Mississippi in which the Appellant was convicted and sentenced for his felony of **CAPITAL MURDER**.

STATEMENT OF FACTS

Marcelo Mendez lived in a barn by Danny Houck's house. He worked for Houck on a part time basis. Mendez knew the Appellant; the Appellant was also in the employ of Houck though Houck was not particularly pleased with the Appellant's work habits. The Appellant and his girlfriend lived in a house provided by Houck

On the Saturday before Houck's body was found, Mendez, Houck and another person were working at Houck's restaurant. The Appellant was not there. At about nine o'clock or so in the evening, the group called it a day. Prior to that time, the Appellant rang Houck to say that

he needed toilet paper. So, after leaving the restaurant, Houck and Mendez went to purchase toilet paper. After making that purchase, Houck drove Mendez back to his barn. He intended from there to give the toilet paper to the Appellant. On the way, Houck told Mendez that he wanted the Appellant to leave the residence if the Appellant would not work. Houck might have been somewhat frustrated with the Appellant. Mendez went to the barn and saw or heard nothing more that evening.

Houck and Mendez were to resume work the following morning. Houck, however, did not come to pick Mendez up. Mendez rang Houck twice but Houck did not answer the calls. Mendez did not see Houck's automobile outside the house. Law enforcement came to see Mendez at about noon. (R. Vol. 2, pp. 17 - 27).

Mr. Houck's daughter and his former wife went to the house on Sunday, 26 March 2006 in order to retrieve some cookbooks. When they arrived, the doors were locked and no vehicle other than a work truck was present. Curiously, there was a milk jug set upon the back of the truck. Houck's daughter had a key to the house, though, so she let herself in.

When she entered the house, she saw that a light was burning in one of the rooms. Houck's daughter wanted to go through the house; when she entered the living room, she saw someone lying on the floor. She could not at that time tell who it was. She ran to her mother and told her about the man lying on the floor. They both returned to the living room; at that point they saw blood.

They ran out of the house. Houck's daughter tried to call her father, but to no avail. Her mother rang for assistance. She was asked to check for a pulse. This she did. Houck's daughter then went back into the house. As she was looking at the body, she noticed the man's shoes and then realized that they belonged to her father. She ran out of the house, in an hysterical state, and

collapsed on the ground.

Houck always had his wallet in his green automobile. He always carried a money clip in his top left hand pocket. The clip contained cash, cards and his identification. He kept his cell phone with him. (R. Vol. 2, pp. 27 - 41).

Deputy David Freeman of the Tate County Sheriff's Department arrived at the house. When he entered the house and reach the living room, he Houck's body and blood splattered on a wall. There was also a large amount of blood on the floor. There was a shoe print in the blood. Suspecting homicide, he summoned the sheriff and chief deputy and an investigator. (R. Vol. 2, pp. 44 - 52).

Ashley Bridges, nineteen years of age at the time of trial, lived in the victim's house with the Appellant and their two children. The Appellant was to work for Houck. In return for his labor, Houck permitted the Appellant and Bridges and their children to live in his house at no cost. Houck also bought food and diapers and household necessities for them. Houck gave them no trouble, and Bridges thought him to be a nice man.

This arrangement was not enough for the Appellant, though. The Appellant thought he should be paid in addition to having his family's and his living expenses paid. On 25 March 2006, the Appellant was angry about the arrangement. Bridges and he got into an argument about it. So, on 26 March 2006, the Appellant did not go to work for Houck. Instead, he began drinking beer, tequila and perhaps some rum.

During that day, the Appellant had Bridges ring Houck twice. In the first call, at about two in the afternoon, Bridges asked Houck whether he was coming to the house that day. During this call, Bridges asked Houck whether he was angry with the Appellant. Houck indicated that he was and that the Appellant and he would have to have a talk before the Appellant could return

to work. In the second call, at about seven in the evening, at the Appellant's request, Bridges asked Houck to bring toilet paper. Bridges thought it a queer request given the fact that there was toilet paper in the house. The Appellant was still angry, and he was still drinking beer and tequila.

Houck arrived at the house at about eleven that night. At the time Houck arrived, Bridges was in a bedroom with her daughter and was not initially aware that Houck had arrived. At some point, though, she heard something hitting a wall. She heard the Appellant shout Houck's name; she heard Houck scream, "Please, God, help me!".

Bridges walked toward the living room. As she approached it, she saw the Appellant. The side of his arm was bloody. She walked back to the bedroom and locked the door. The Appellant knocked on the door and told her that if she did not come out he would break the door in. When she finally opened the door, the Appellant grabbed her by the hair and made her go to the living room.

When she entered the living room, she saw Houck lying in a corner of the room, covered in blood. She could hear blood pouring from his body. Houck was still alive but having difficulty breathing. There was a vile smell in the room. The Appellant then began throwing things at Houck, including some ornaments and an iron. The Appellant struck Houck with the iron at least twice, once in the head and once in the lower part of his body. The Appellant then went through Houck's pockets, taking credit cards and papers and the keys to his car. The Appellant picked up Houck's cell telephone.

After all this, the Appellant got his daughter and took her to Houck's car. He also put their bags of things into the car. Houck's telephone was put into the car. There was a silver pocket knife and a yellow knife. Bridges and the Appellant got into the car, with no money so far

as Bridges knew at the time, and headed toward Holley Springs. The Appellant's clothes and boots were covered in blood. Along the way, the Appellant threw Houck's telephone and the yellow knife out of the car. When they arrived in Holly Springs, at Houck's house there, the Appellant changed his clothes. The Appellant then drove to Missouri, where he picked up a check for about fifty dollars from one of Houck's restaurants. From there he drove to Mexico. They drove straight through, stopping only for gasoline and, once, to stay at a motel.

Upon reaching Utah or Arizona, Bridges saw the Appellant was in possession of a lot of money. She did not know how he had come by it, but she did know that, before the Appellant killed Houck, he was complaining of having no money.

Once inside Mexico, at Tijuana, the Appellant went to a cousin's house. The Appellant bragged about what he had done and how he had done it. The Appellant asked Bridges whether she would remain with him. She refused. He left her there, telling her that she would regret that day. She and the child went to a church. She did not know how to ask for help, did not approach the police, did not have the means with which to contact her family in Mississippi for some time, and had no means with which to support the child and herself. She was apparently out from a large town, there was nothing but houses, mud and dirt. She and her child were apparently cared for by a woman in that area. At last she was able to contact her mother in Ripley; her mother and other family members went to Mexico and brought her back to Mississippi. Upon her return to Mississippi, Bridges told law enforcement of what the Appellant had done.

At some point later, the Appellant returned to the United States and contacted Bridges. She met him at the end of a road. He threatened to kill the child and herself, so she let him in her car and they drove to Memphis, staying at a motel. Some six days later, Bridges left the motel and went to a church. She told a minister there of her situation, and he called the federal bureau

of investigation. The Appellant was then arrested.

The Appellant had been drinking all through the day of 26 March 2006 and was angry with his victim because he would not pay the Appellant in addition to providing house and board for the Appellant, Bridges and the child or children. Houck was upset with the Appellant because the Appellant would not work. It was the Appellant, on the evening of 26 March 2006, who caused Bridges to call Houck and request that he bring toilet paper to the house, even though there was toilet paper in the house. When Bridges was forced to enter the living room, Houck was still alive though mortally wounded. (R. Vol. 2, pp. 54 - 81).

When Bridges first talked to law enforcement officers, she told them some lie about someone named Shorty. The Appellant told her to tell them that story. (R. Vol. 2, pp. 104 - 105).

After his apprehension, the Appellant, after having been advised of his rights and having waived same, gave statements. In the first statement, the Appellant stated that a man named Marcelo had killed Houck. The Appellant claimed that Marcelo made him go to Mexico with him after killing Houck. The Appellant stated that Marcelo killed Houck with a knife and a iron.

The officer to whom the Appellant told this tale informed the Appellant that Marcelo had been spoken to on the day after Houck was killed, that he knew that the Appellant's account was false. The Appellant did not respond to that comment. So the Appellant was then confronted with Bridges' statement to the sheriff's department, in which she identified the Appellant as the killer and described what she saw and heard at the time of the murder and afterwards. After hearing Bridges' tape-recorded statement, the Appellant retracted his false statement and stated that everything Bridges said in her statement was true. The Appellant admitted having killed Houck, and admitted using a knife and an iron to do so. The Appellant went on to explain his

disposition of the knife and to explain his movements after the murder. The Appellant also admitted having gone through Houck's pockets. The Appellant admitted that he had been drinking during the day of the killing, and admitted that he was angry with Houck because Houck would not pay him money in addition to the provision of a place to live, food and necessities for the child.

The Appellant did not assert that he killed Houck in self - defense. He did not assert that Houck had attacked him. He did not claim that Houck was in possession of a weapon. He was asked about these matters while giving his confession. (R. Vol. 2, pp. 120 - 134; Vol. 3, pp. 150). The Appellant later stated that Bridges had nothing to do with the murder. (R. Vol. 3, pp. 168 - 169). The Appellant later gave another statement in which he claimed that Houck had attacked him with a knife. (R. Vol. 3, pg. 182)

The victim suffered a number of injuries. There were several contusions and abrasions to his face. He had several lacerations. One was across the right cheek, which was non - lethal. There were two lacerations across the left side of the face. There were two large lacerations some seven inches in length across the left throat. These wounds were the cause of death. There were slight wounds to the back of the victim's head and a superficial wound to the right back of the neck. All in all, the victim suffered thirteen slash wounds. The abraded lacerations were produced by a blunt object consistent with a heating iron. The victim had multiple slash wounds over the fingers, the back of the right hand and wrist, the back of the left knee and the right calf. The victim also suffered five stab wounds to the chest and abdomen, though these did not produce death. Death was caused by the slash wounds to the neck, which severed the right and left carotid arteries. (R. Vol. 3, pp. 207 - 219).

In the course of examining the scene of the murder, technicians found an unopened

package of toilet paper upon island in the kitchen. There was no blood on the packaging. (R. Vol. 3, pg. 231). The blood stains observed on the wall of the living room were consistent with arterial spurting. (R. Vol. 3, pg. 234). Next to the body were found a package of cigarettes, a lighter and some paper. An old-fashioned iron was found next to the head of the victim. (R. Vol. 3, pg. 235).

The Appellant testified. He stated that he was twenty years of age, did construction work, and came to Tate County to work for the victim. In payment, the victim provided a house for his girlfriend, children and he to live in.

According to the Appellant, on 25 or 26 March 2006 Houck failed to come by the house to pick him up and carry him to work. The Appellant said that Houck did not pick him up for work because Houck was angry with him. He claimed that his Bridges and he were arguing because Houck did not carry the Appellant back to the house from work until midnight or later. Bridges was said to have been uncomfortable being by herself at the house at night.

In any event, Houck was said to have paid the Appellant a visit at night to talk to him. According to the Appellant, Houck told him that he would have to leave the house if he would not work late. The Appellant said he told Houck he could only work until five or six. The Appellant denied having had Bridges call Houck and ask him to bring toilet paper to the house.

Houck arrived at about midnight. He came into the house and went into the living room. Bridges was said to have been in the living room at the time but left after Houck and the Appellant began talking. Houck told the Appellant that he would have to leave the house if he would not work late; the Appellant said he would not. The Appellant stated that at that point Houck got up, said he had something for the him, and got a big, long knife, one that was a foot in length. The Appellant then said that Houck tried to stab him. The Appellant claimed he ran past

the laundry machine, grabbed an iron and threw it at Houck. Houck was struck and apparently knocked down. The Appellant at that point had the knife; he then stabbed Houck with it. He cut Houck's throat because he was scared of him. He ran from the house because he was an illegal immigrant and did not think his account would be believed.

The Appellant denied having been drunk that day. He though Houck was about a foot taller than he. (R. Vol. 3, pp. 257 - 266).

The Appellant denied having been without money. He said that he had about two thousand dollars when he began working for Houck. He claimed that Bridges was lying when she testified that they had no money. He admitted that he did not tell the police about the source of the disagreement he had with Houck. Then he claimed that he had but had forgotten about that. He decided that maybe he and Houck did argue about money.

The Appellant admitted that he lied when he first claimed that Marcelo killed Houck. He claimed that he told law enforcement that Bridges' statement to them about what he had done was true only in order to protect Bridges. He claimed that he told law enforcement that Bridges was lying.

The Appellant admitted that he did not tell the officers that he acting in self defense in his first and second statements. He said he did not tell them of that because he did not think they would believe him. He said he was going to call law enforcement after killing Houck but did not get around to it because he did not think they would believe his tale.

The Appellant then volunteered that he did not go to court on a charge of having shot into Bridge's mother's trailer because he was scared of that too. He was also scared of being sent back to Mexico.

The Appellant grudgingly admitted that Houck had been a good man. But then he stated

that Houck had once threatened Bridge's life. He admitted that he never told anyone of that before trial. He thought there were people in Holly Springs who thought ill of Houck on account of Houck's mistreatment of them, but he did not know where they were. He admitted that he did not tell the sheriff and his deputies how bad a man Houck was.

The Appellant said he slashed Houck as many times as he did because he was scared of Houck. He thought Bridges was lying, that Marcelo lied about having been paid in cash, and that law enforcement lied. (R. Vol. 4, pp. 267 - 302).

STATEMENT OF ISSUES

1. DID THE TRIAL COURT ERR IN PERMITTING DR. STEVEN HAYNE TO TESTIFY AS AN EXPERT WITNESS?

2. WAS THE EVIDENCE SUFFICIENT TO PERMIT THE VERDICT OF GUILTY; WAS THE VERDICT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE?

SUMMARY OF ARGUMENT

1. THAT THE TRIAL COURT DID NOT ERR IN PERMITTING DR. HAYNE TO TESTIFY IN THE FIELD OF FORENSIC PATHOLOGY

2. THAT THE VERDICT WAS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

ARGUMENT

1. THAT THE TRIAL COURT DID NOT ERR IN PERMITTING DR. HAYNE TO TESTIFY IN THE FIELD OF FORENSIC PATHOLOGY

Preliminarily, we note that the Appellant has attempted to allege the existence of facts not supported by the record in his argument concerning Dr. Steven Hayne. Specifically, he alleges that Dr. Hayne was removed from the list of State designated pathologists and that county coroners have been barred from utilizing Dr. Hayne's services. (Brief for the Appellant, at 15). These allegations of fact, unsupported by this record, are to be ignored. *Mason v. State*, 440

So.2d 318 (Miss. 1983).

Secondly, to the extent that the Appellant bases part of his argument on a theory that Dr. Hayne was not qualified to testify as a forensic examiner on account of any alleged failure on Dr. Haynes' part to comply with any requirement relating to pathologists in Miss. Code Ann. Section 41-61-51 *et seq* (Rev. 2005), we submit that the Appellant has no standing to complain of any such alleged failure on the part of Dr. Hayne to comply with the technical requirements of the Mississippi Medical Examiner Act of 1986. *Evans v. State*, 725 So.2d 613, 657 (Miss. 1997). In determining whether Dr. Hayne was qualified to testify as a forensic pathologist under M.R.E 702, the enquiry in the trial court was whether the testimony was based upon sufficient facts or data, whether the testimony was the product of reliable principles and methods, and whether the witness applied the principles and methods reliably to the facts of the case. None of these considerations necessarily requires specific and strict compliance with the Medical Examiner Act. To have been qualified as an expert in forensic pathology, it was necessary only to show that Dr. Hayne met these requirements of the rule just set out. The various provisions of the Medical Examiner Act are collateral to the question of whether Dr. Hayne was qualified to testify as a forensic pathologist.

Prior to the testimony of Dr. Steven Hayne, the prosecution moved *in limine*, to prohibit the defense from attempting to impeach Dr. Hayne with articles appearing in various publications throughout the country concerning Dr. Hayne. In response, the defense indicated that it wished to challenge the reliability of Dr. Hayne's testimony under M.R.E. 702. The State then noted that Dr. Hayne had been qualified in the field of forensic pathology in many, many criminal cases and never been found unqualified to so testify. The trial court then allowed *voir dire* of Dr. Hayne by the defense. (R. Vol. 3, pp. 185 - 192).

In the course of its examination of Dr. Hayne, the defense brought out that he was, by his characterization, the chief state pathologist in Mississippi's medical examiner's office. His work involved post - mortem examinations as requested by the coroners of the State. He then went on to describe what that work entailed. His medical training, he said, included pathology training at Letterman Army Medical Center, rotations at Children's Hospital, Union Memorial Blood Bank, the Sixth Army Medical Laboratory, the University of California, Moffet Hospital, the Medical Examiner's Office for the City and County of San Francisco, as well as others. His first duty station was as chief of pathology and consultant for preventative medicine and chief of infections disease at Munson Army Hospital. For the last twenty years, Dr. Hayne worked at different institutions continuously essentially in the medical examiner's office.

Dr. Hayne further testified that he had testified in the State of Mississippi in some 3,500 to 4,000 cases and had never been found unqualified to testify as an expert in forensic pathology.

He stated that he was placed in the position of acting State medical examiner by Governor Bill Allain but left that position and returned to a state pathologist position after the Allain administration. His current title at the time of trial was chief state pathologist. This position is different from chief medical examiner.

He stated that he had been certified as a forensic pathologist by the American Board of Forensic Pathology, but not the American Board of Pathology. He was also certified by the American Board of Forensic Examiners. He stated that he was certified by the American Board of Pathology in anatomic anc clinical pathology.

Dr. Hayne further stated that he believed that he had performed some1,500 autopsies from March of 2005 to March of 2006 and that it would be typical for him to perform that number of autopsies a year. He thought that the author or authors of a book entitled *Forensic*

Pathology recommended that a forensic pathologist should perform 250 to 350 autopsies a year. He explained his ability to perform so many more a year by the facts that he did not take vacations, that he worked seven days a week, taking only Christmas, Thanksgiving and Easter as holidays, and that he worked sixteen to seventeen hours a day. He noted no diminution of his intellectual or physical vigor. He cited to one Botten, who, Hayne said, thought that a pathologist ought to perform a thousand autopsies a year to remain competent.

Dr. Hayne stated that he took a written and oral examination from the American Board of Forensic Pathology in order to become certified by that organization. He was "grand fathered in" by the American Academy of Forensic Examiners.

Dr. Hayne's autopsies have been peer - reviewed. However, the autopsy in the case at bar was not.

Upon this testimony, the defense asserted that Dr. Hayne should not be accepted as an expert witness in the field of forensic pathology, his work allegedly not being the product of reliable principles and methods. The trial court overruled the Appellant's objection to the qualification of Dr. Hayne.(R. Vol. 3, pp. 193 - 204).

As the Appellant notes, the admission of evidence is a matter left to the discretion of a trial court. *Bishop v. State*, 982 So.2d 371, 380 - 381 (Miss. 2008). The trial court did not abuse its discretion in permitting Dr. Hayne to testify as an expert in the field of forensic pathology.

The Appellant does not maintain that there is no area of expertise known as forensic pathology. His position here, as it was in the trial court, is that Dr. Hayne was not qualified to testify in that field.

As best as we can tell, this position of the Appellants rest upon Dr. Hayne's lack of certification by the American Board of Pathology and the number of autopsies performed per

year by him. However, the Appellant showed nothing in the trial court that would have given the trial court reason to believe that Dr. Hayne was not sufficiently educated or trained in the field of forensic pathology to qualify as an expert in that field. Nor did the Appellant in any fashion demonstrate that the autopsy in the case at bar was not conducted properly.

This Court has held that Dr. Hayne is qualified as an expert witness in the field of forensic pathology. *Edmonds v. State*, 955 So.2d 787, 792 (Miss. 2007)(Dr. Hayne qualified to proffer expert opinions in forensic pathology); *Duplantis v. State*, 708 So.2d 1327, 1339 (Miss. 1998)(Dr. Hayne is unquestionably qualified to testify in our courts as a forensic pathologist.)

Dr. Hayne has testified in the criminal courts of this State for years – some 3,500 to 4,000 times, by his count. Our search on Westlaw with respect to Dr. Hayne resulted in some 172 reported decisions in cases in which he testified. As against these facts, the Appellant simply states that number of autopsies performed per year by Dr. Hayne and his lack of certification by the American Board of Pathology "raises doubt about the reliability of the results of autopsies performed [by him]".

As for Dr. Hayne's certification, it is true that he stated that he was not certified by the American Board of Pathology. While it may be that the State Medical Examiner is required to be so certified, Miss. Code Ann. Section 41-61-55 (Rev. 2005), pathologists appointed or employed by him under the supervision of the Commissioner of Public Safety are not required to be so certified. Miss. Code Ann. Section 41-61-77(3) (Rev. 2005). Dr. Hayne was not required to possess certification by the American Board of Pathology in order to perform autopsies for the State of Mississippi. He was not and never claimed to be the current State Medical Examiner.

As for the claim that the reliability of Dr. Hayne's work could be in doubt, the Appellant has not demonstrated specifically, in the case at bar, or more generally, why this should be so.

There is nothing shown to indicate that Dr. Hayne's opinions in the case at bar were the consequence of faulty forensic medicine. It is merely the Appellant's opinion or supposition, utterly unsupported by fact, that there might be something amiss about autopsies performed by Hayne. The very most that may be said of the Appellant's opinion is that it would be a matter for juries to consider when considering the weight and credibility of Dr. Hayne's testimony. There is no basis to find abuse of discretion on the part of the trial court in finding Hayne qualified to testify as a forensic pathologist.

In the event, however, that this Court should find that the trial court abused its discretion in admitting the expert opinion of Dr. Hayne, any such error should be regarded as harmless error. The Appellant gave a confession or a statement in which he admitted having killed Houck and the manner in which he did so. Bridges' testimony also established what the Appellant did. Houck died as a result of having his throat slashed. The testimony and photographs surely made that fact plain. An ordinary person would not have required expert testimony to know that having one's throat slashed can easily result in death. An erroneous admission of expert testimony is susceptible to a harmless error analysis. *Young v. State*, 981 So.2d 308 (Miss. Ct. App. 2007). Should the Court find that Dr. Hayne's testimony was erroneously admitted in the case at bar, any such error was harmless. There was no issue in the case at bar concerning the cause of death, and whether the death caused was homicide.

The first assignment of error is without merit.

2. THAT THE VERDICT WAS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

In considering the allegations of the Second Assignment of Error, we bear in mind the standards of review applicable to them. *May v. State*, 460 So.2d 778 (Miss. 1984).

Briefly restated, the evidence in support of the verdict, taken as true, together with all reasonable inferences therefrom, are these. The Appellant, annoyed with Houck because Houck had not or would not pay him money for his labor, over and above the provision of the house, food and other necessities, lured Houck to the house. The Appellant had his girlfriend call Houck to say that they were in need of toilet paper. Houck came to the house and the Appellant viscously attacked him, killing him. As Houck lay dying, the Appellant went through Houck's pockets. The Appellant and his girlfriend then loaded their belongings into Houck's car and set off for Mexico. While much of the account of Houck's murder was given by Bridges, Bridge's account was corroborated by the condition of Houck's body and the appearance of the crime scene. The Appellant admitted his guilt, and he stated that Bridge's statement to law enforcement as to what happened was true. A package of toilet paper was found in the kitchen, further corroborating Bridge's account..

After his apprehension in Tennessee some months later, the Appellant blamed another person for Houck's death, saying that he had been forced to assist that individual. However, that account was clearly shown to be untrue by the fact that the individual said to have killed Houck was present at the barn when Houck's body was found. That person did not flee, as the Appellant claimed.

The next account the Appellant gave was an admission that everything Bridges said in her statement was correct. The Appellant admitted having killed Houck, taking his possessions, and

disposing of the murder weapon.

The third account the Appellant gave, given some time after his admission, was that he killed Houck in self defense.

What we have set out here is merely an outline of the evidence of the Appellant's guilt. But suffice it to say, the State overwhelmingly established the Appellant's guilt for capital murder. The fact that the Appellant gave three different accounts of Houck's death serves further to corroborate the State's evidence.

The Appellant claims that the State did not put facts in evidence to contradict his third account of how Houck met his death. It is true that Bridges did not see the initial attack upon Houck, but she did see the Appellant throwing an iron at Houck as Houck bled to death and did see the Appellant rifling through Houck's pockets. And she likewise saw the Appellant dispose of the murder weapon as the Appellant fled to Mexico. She also heard the Appellant brag about his having killed Houck. These facts were entirely sufficient to put the Appellant's third account into question. The credibility of the Appellant was certainly in question.

The verdict cannot possibly be said to have been contrary to the great weight of the evidence, or that it constituted an unconscionable injustice. The Appellant's testimony was contradictory and unbelievable. On the other hand, the evidence against the Appellant was substantial and corroborated. It was a matter for the jury to determine, and, if anything, it would have been an unconscionable injustice had the jury acquitted the Appellant. The evidence did not come close to weighing solely in favor of the Appellant. The trial court did not abuse its discretion in refusing a new trial.

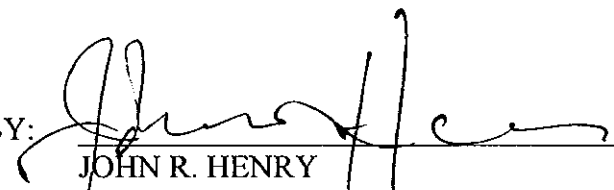
The Second Assignment of Error is wholly without merit.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

JOHN R. HENRY
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

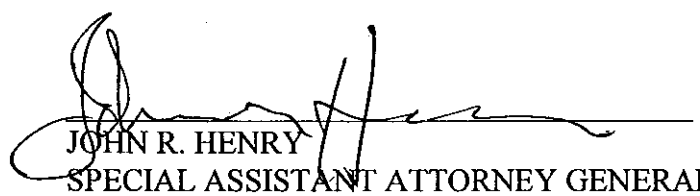
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable James McClure, III
Circuit Court Judge
P. O. Box 246
Sardis, MS 38666

Honorable John W. Champion
District Attorney
365 Losher Street, Suite 210
Hernando, MS 38632

David L. Walker, Esquire
Attorney At Law
Post Office Box 719
Batesville, MS 38606

This the 17th day of November, 2008.



JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL

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