IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STEADMAN DAVIS — APPELLANT

VS. — NO. 2008-KA-0845-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STEADMAN DAVIS **APPELLANT**

VS. **CAUSE No. 2008-KA-00845-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 Hinds County, Mississippi, First Judicial District, in which the Appellant was convicted and sentenced for his felony of **MOTOR VEHICLE THEFT** and **FELON IN POSSESSION OF A FIREARM**..

STATEMENT OF FACTS

Carolyn Kirkland, an officer with the Jackson Police Department on 21 May 2006, testified that she and other officers were despatched on that day to investigate a domestic disturbance report made by a Deborah Wells.[1] Upon arrival, she noticed a bullet hole in the front door. She also noticed that Deborah's boyfriend kept driving by the house. Because Kirkland and the other officers had been informed that the Appellant was armed, she and the others ducked for cover as he drove by. Deborah informed Kirkland that the Appellant had earlier "shot up in the house". There were a number of bullet holes in the front door, bedroom and in walls of the house. While Kirkland was

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[1] This witness stated that she was unsure about this person's last name, and, as it turned out, she was incorrect in referring to Deborah Wright as Deborah Wells.

investigating the report, the Appellant kept driving by the house and ringing a person's cellphone. The Appellant was Deborah's erstwhile boyfriend.

Kirkland also took statements from other persons in the house or in the immediate area as to the Appellant's act of shooting in the house. She also took a statement from someone's brother, who said that the Appellant kidnaped him at gunpoint. This person also stated that the Appellant shot into the house from a motor vehicle. The Appellant also got out of the motor vehicle and went into the house and fired a number of rounds within the house. Kirkland did not consider the case to be one of a "drive by shooting". (R. Vol. 2, pp. 115 - 128).

One Eneke Smith was called to testify. She stated that she was a crime scene investigator. She investigated the shooting in the case at bar. She found a bullet hole in the front screen door of the house. By its appearance the bullet had been fired from within the house. She also found bullet holes in the window of a bedroom. She found a shell casing on the carpet in the bedroom. She found a bullet hole in the dresser in the bedroom and a bullet in the dresser. She found another bullet hole in a wall. She observed a number of bullet holes in the window and one to the front screen door. (R. Vol. 2, pp. 128 - 150; Vol. 3, pp. 151 - 178).

Deborah Diane Cable Wright, a sometime dump truck driver, testified that she met the Appellant when her ex son - in - law brought him to her house to repair her plumbing. The Appellant then rang her about a week later and she and he became involved in some way. However, the Appellant soon showed that he was a violent sort of fellow, became a lay about, did not like her choice in churches and so forth, and so Wright put him out of her house. The Appellant did not take well to that indignity, so on one occasion he came to Wright's house, struck her in the eye and threatened to kill her. This resulted in a report of domestic abuse. Wright then went to live with a relative.

But the Appellant was not through. He then began harassing Wright by telephone and threatening to injure her or members of her family. The Appellant, apparently still unemployed, drove by the house in which Wright was staying at least twice a day.

It all came to a head on 21 May 2006. That day, a Sunday, began innocently enough. Wright's grandchild asked her whether they would attend church. Wright told him no, since she had neglected to have their Sunday clothes cleaned. Wright's brother rang her to ask if he might put some fish in her deep freezer. She told him that she did not care. Some thirty minutes later, though, her brother rang again to say that the Appellant had got him.

Wright hung up the telephone the first time her brother reported that the Appellant had taken him, and the second time he called as well. Then the Appellant called Wright to say that he had her brother and that if she did not meet him somewhere on Flag Chapel Road he was going to kill her brother dead. The Appellant further warned Wright that if he saw any police he would kill her brother on the spot. At some point during this flurry of calls, Wright rang emergency services.

As Wright waited for a policeman to arrive, she observed her brother's truck pulling into her daughter's driveway. Her daughter and her children were standing by a window as this happened. Wright's brother got out of the truck, began to run, and called out, "Call the police!". Wright's grandsons began hollering, "Coon Dog leaving us!", "Coon Dog" apparently being Wright's brother's name.

At that point, the Appellant got out of Wright's brother's car. The Appellant was armed. He went into the house and began firing. Wright's daughter and children were able to find a place of safety; Wright, at this point apparently inside this house, took cover behind a dresser in the boys' room. The Appellant fired a number of shots inside the bedroom. Wright, who had gotten a gun from her daughter when she was on the telephone with emergency services, shot the Appellant at

some point during the shooting. Wright's gun then jammed, and so she was unable to finish the Appellant off.

The Appellant then scampered out of the house, jumped into Wright's brother's truck, and drove off. As he was doing so, three car loads of police – all women – came up. Wright's brother told them all that the Appellant got his gun from his auntie, telling her that he needed it to kill a rabid dog.

So the three car loads of police women, Wright and several members of her family were standing on the porch when the Appellant drove by. When the Appellant was espied, one dropped to the ground, another ran behind the house, and the police officers almost ran over Wright's family while attempting to seek cover inside the house. Wright did not blame them, though, seeing as how they were women too. After it was thought that it would be safe to leave the interior of the house, the police got about their work. (R. Vol. 3, pp. 182 - 226).

On redirect examination, Wright's statement to the police was read into evidence. (R. Vol. 3, pp. 227 - 230).

Wright's brother, one Cornelius Wells, testified. He said that he went to Wright's house on the 21st only to find that the Appellant had gotten into the house and was sitting around in his boxer underwear. The Appellant came in through the bathroom window, though not, apparently, protected by a silver spoon. Wells knew he was in some trouble, so he went to the kitchen. He was unable to get out of the house there, though, since he had previously boarded up the house. So he attempted to retrace his steps, to leave by the way he had come, but the Appellant stopped him and exhibited a .38 revolver. The Appellant informed Wells that he was going to take him to Well's sister or he would kill him. Wells realized that he was not ready to die, so he agreed to take him to Wright.

Wells drove. He drove around aimlessly for a while, telling the Appellant that he could get into quite a lot of trouble for doing what was doing and what he might yet do. The Appellant held his gun to Wells' head. While driving about, there were calls from Well's mother. She asked him, "Do [Appellant] have a gun to your head?". Wells, thinking that it would do no good to possibly annoy the Appellant, denied that the Appellant had a gun to his head. After one or two other telephone calls from Wright and Wells' mother, the Appellant became tired of the delay and indicated that he was to be taken to Wright immediately.

After arriving at the house, the Appellant told Wells to get out of the vehicle. Wells did so and ran behind a tree. The Appellant got out of the vehicle, walked up to the porch of the house, pulled the screen door open, and fired a couple of shots. He then went on to the porch and fired into the house. Wells' sister returned fire, wounding the Appellant. The Appellant ran away from the house, got into Wells' vehicle, and left the premises. Some five or ten minutes later, the Appellant drove by the house, acting as though nothing had happened. When he drove by, the police and the bystanders all went into the house. (R. Vol. 3, pp. 235 - 274).

A Laquita Simpson, Wright's daughter and Wells' niece, testified. Since her testimony was substantially the same as Wells' and Wrights' testimony, we do not consider it necessary to set it out at length. She stated that she was present when the Appellant came into the house and began firing. She testified that her mother shot the Appellant in the buttocks. The Appellant then left the house and took Wells' vehicle. (R. Vol. 3, pp. 275 - 295).

Vladimir Hill, an officer in the Jackson police department, arrested the Appellant. The officer did not find a weapon in the vehicle the Appellant was driving or upon the Appellant's person. The Appellant had been shot through the buttock, but the wound was not serious. The Appellant was treated and released, and then taken to the Standard Life building for an interview,

and then to jail. (R. Vol. 3, pp. 295 - 300; Vol. 4, pp. 301 - 302).

The Appellant testified for the defense. He went into a tedious version of his relationship with Wright, claiming that he was not the type of man to hit a woman but did hit her once during an argument that result when he discovered that some of his money had gone missing. The Appellant, though, stated that he knew he was not guilty of the charges brought against him in consequence of his actions on 21 May 2006.

According to the Appellant, Wright asked him to move back in with her after she had eye surgery. However, he claimed that certain members of her family began threatening him while he was working. On one occasion he was pushed around. He said he feared for his life. He thought that Wright was trying to have him killed. So he began sleeping in Raymond.

On 21 May 2006, the Appellant said he went to Wright's house to get his things. He claimed he had borrowed a car from a Hinds County deputy for the purpose. While he was at the house, Wells drove up. According to the Appellant, he was on the telephone with the deputy and asked her to stay on the line because he did not know what was going to happen.

Wells was said to have told the Appellant that he wanted to get things straightened out between Wells' nephew and brothers and the Appellant so that someone did not get killed. Wells wanted the Appellant to take him to them to work things out. The Appellant said he reluctantly got into Wells' vehicle, thinking that he would be safe since the deputy was listening via telephone. The Appellant denied having brandished a gun.

Wells took the Appellant to the house in which Wright was living. Just before arriving there, Wells was said to have made a telephone call. Then Wells' mother called and asked to speak with the Appellant. She asked him what was going on. After that call was concluded, Wells was said to have said to the Appellant that someone might hurt the Appellant on account of "all the domestic

violence going on", and that nothing would happen to those who might hurt the Appellant.

The Appellant said he realized he was in trouble, so he started looking for a way to get out. He was going to jump out of Wells' vehicle, but by that time Wells was at the house. According to the Appellant, upon arrival at the house, Wells jumped out and shouted, "Shoot him, shoot him!". Wright appeared on the porch of the house, and just as the Appellant was getting out of the vehicle she fired, shooting him in the buttock.

So then, according to the Appellant, as he was falling to the ground he reached for his gun. He took cover on the far side of the truck, but could not get into it from that side since the door would not open from the outside. So he ran around the back of the vehicle and fired off three shots for "cover", got into the truck, and left.

The Appellant denied having been on the porch, and said there was not a single fingerprint of his on the porch. The Appellant claimed that he took Wells' truck because he had no choice – it was either leave or be shot.

After leaving with Wells' vehicle, the Appellant accidentally went into a dead end street. He stopped there and put some tissue into the wound on the buttock. He then took Wells' telephone, which had been left in the vehicle, and rang his friend at the sheriff's department. He told her that he had been shot but that everything was alright. He told her that he thought Wright and her people were only trying to scare him. He did not think they were trying to kill him. When his friend offered to call the police on his behalf, he asked her not to do so.

After this discussion, the Appellant drove out of the dead end street and drove back to the house. As he did so, he saw people running. He said he did not see a single police car. He "punched" the truck and drove on, intending to go to his cousin's house and thence to a hospital. But he was intercepted by the police and arrested.

On cross- examination, the Appellant stated that he had not been the same man he was when he first took up with Wright. He thought he had been depressed on account of monies that went missing, monies that he thought Wright had taken, and the fact that he had been robbed. He stated that Wright and her people wanted him to take matters into his own hands with respect to the robbery, but thought he was too scared to do so. He allowed that he grew up in Raymond and was not used to the fast ways of the city of Jackson. He said he took gun play seriously.

He said that when he got into the car with Wells he thought he was going to get into a fist fight, nothing more. He had his gun with him because he had the gun with him. He also had it with him because he had been threatened. He later said that he did not think there was going to be a fist fight, only a discussion.

He denied having used crack cocaine while living with Wright, but he did admit that he had been convicted of conspiracy to sell cocaine.

While the Appellant claimed he was bleeding heavily, there was apparently no blood on the seat of the truck, and he had time to give his friend the key to her vehicle. He only did that, he said, so as to protect Wright. He claimed that he did not want Wright to go to jail because he thought that she was just trying to scare him, or because maybe he had walked into the bullet. (R. Vol. 4, pp. 356 - 406).

Irene Shepard, an employee of the Hinds Sheriff's department, testified that she had a conversation with the Appellant on 21 May 2006. She had been trying for two or three days to reach the Appellant in order to get her car back from him. She was having this conversation with him when he told her that his ex-brothers-in-law had arrived. Over the telephone she heard some mumbling, and then a question by the Appellant, "Well, y'all want me to go with you?" She then

heard someone say that the Appellant either needed to make up with her or get his stuff out of her house. The Appellant was then heard to agree to go.

Over the next few minutes, she could hear a muffled conversation. A bit later she heard someone shout, "kill him!" A couple of seconds went by and she then heard what sounded like firecrackers going off. The telephone went dead at that point. Shepard said she tried to call the Appellant back because she was still annoyed with him about her car.

About twenty minutes later, the Appellant appeared at her residence. He was in a SUV. She went out to ask him about her car. The Appellant gave her the keys to her car and told her where it was. The Appellant then said he had to go, that he had been shot, but Shepard saw no blood in the vehicle.

The witness denied having told the prosecutor that the incident had taken place so long ago that she could not remember much of what had happened. She could recall nothing about what was said between the time of the appearance of the brothers-in-law and the sound of firecrackers. Even though the Appellant said he had been shot, and even thought this witness said she heard what sounded like firecrackers going off, she did not report the matter to the police. Nor did she contact the police department about her knowledge of what the Appellant had said.

This witness met the Appellant when he was a member of the Second Chance choir, a choir she directed. The Appellant confided much in her about his troubles with Wright. (R. Vol. 4, pp. 409 - 440).

The State then re-called Wright. She stated that she and the Appellant visited Shepard three or four times. She had no idea how many time the Appellant visited Shepard by himself. She then testified again as to what the Appellant did on 21 May 2006. (R. Vol. 4, pp. 441 - 447).

STATEMENT OF ISSUES

1. DID THE TRIAL COURT ERR IN DENYING INSTRUCTIONS D-9 AND D-11?

2. WERE THE VERDICTS SUPPORTED BY THE EVIDENCE?

SUMMARY OF ARGUMENT

ARGUMENT

1. THAT THE TRIAL COURT DID NOT ERR IN DENYING INSTRUCTIONS D-9 AND D-11

In the First Assignment of Error, the Appellant complains of the fact that he was not given an instruction on the defense of duress (Instruction D-9, Vol. 1, pg. 39) and the defense of necessity (Instruction D-11, Vol. 1, pg. 40). Instruction D-9 was refused by the trial court on the ground that it was not supported by "the law and evidence". (R. Vol. 5, pg. 463). D-11 was refused because it was confusing and was not supported by the evidence. (R. Vol. 5, pp. 465 - 466).

We note preliminarily that each of these instructions began with the statement that "[e]vidence has been presented that the defendant acted under duress in committing the crime" and with the statement that "[e]vidence has been presented that the defendant acted under necessity in committing the crime". There are at least two fundamental problems with these statements.

The first is that, had these instructions been granted, the jury would have been told that there was evidence in support of these instructions. We submit that this would have amounted to a judicial comment on the evidence or an emphasis as to part of the evidence. However, courts are not to comment on the weight of evidence or credibility of witnesses or emphasize part of the evidence. Miss. Code Ann. Section 99-17-35 (Rev. 2007); *Hancock v. State*, 964 So.2d 1167, 1172 -

1173 (Miss. Ct. App. 2007). These comments could have been taken by the jury to mean that the court held the view that the defenses involved had merit, and for that reason should not have been in the instructions. While it may be that a trial court should determine whether there is evidence to support proposed instructions in the process of deciding whether instructions should be given, it should not inform the jury of its finding in this regard.

The second problem arises from the fact that the Appellant stood charged with four separate felonies. (R. Vol. 1, pp. 4 - 5). The instructions, though, merely referred to "the crime". The text of the instructions did not indicate which crime or crimes charged against the Appellant the instructions were intended to relate. Nor is it clear that the instructions were intended to set up these defenses as to all charges. The instructions as drafted were very confusing for this reason. They were also confusing in that they were not tied to the facts of the case and were abstract. The simply set out the elements of duress and necessity. A trial court commits no error in refusing confusing instructions. *Sudduth v. State*, 562 So.2d 67, 72 (Miss. 1990).

It may be said that the trial court did not clearly state these reasons as grounds for refusing the instructions, but, if so, this would be a point with no consequence. If an action of a trial court can be upheld for any reason, this Court must affirm. *Gates v. Gates*, 616 So.2d 888, 890 (Miss. 1993). The instructions were fatally flawed; the trial court was correct in refusing them.

Nonetheless, the Appellant here asserts that the duress and necessity instructions related to the two charges the Appellant was convicted of, namely theft of a motor vehicle and felon in possession of a firearm. The problem for the Appellant here is that the defense did not argue that in the trial court with respect to the possession of a weapon charge. In the trial court, the defense asserted that it wanted the duress and necessity instructions to meet the motor vehicle theft charge. (R. Vol. 5, pp. 462; 464). Consequently, the Appellant may not now attempt to urge error because

the trial court did not grant those instructions with respect to the felon in possession of a firearm charge. *Staten v. State*, 989 So.2d 938 (Miss. Ct. App. 2008).[2]

In any event, as to the felon in possession of a firearm charge, there was simply no evidence in support of duress and necessity. The evidence is quite clear that the Appellant had possession of the firearm quite before the time he arrived at the house in which Wright was staying. He was in no danger prior to the time he arrived at that house, and there is absolutely no evidence that he was

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[2] The Appellant, citing *Smith v. State*, 948 So.2d 474 (Miss. Ct. App. 2007), asserts that the defense of duress is synonymous with the defense of necessity. (Brief for the Appellant, at 5). If by this the Appellant means that the names of these defenses are interchangeable – that the defenses are one and the same in substance --, we disagree. And if this is what he thinks, then one must wonder why he submitted two instructions for the same defense, if indeed duress and necessity are the same defense.

It does not appear that the Mississippi Supreme Court or this Court appear to have definitively distinguished the two defenses, but they are distinguishable. The facts in cases in which the defenses have arisen show the distinction. The defense of duress arises where an accused claims that he committed a criminal act at the command of another because he feared bodily harm or death at the hands of the other if he did not commit the act. *E.g. Ruffin v. State*, 992 So.2d 1165, 1177 - 1178 (Miss. 2008); *Milano v. State*, 790 So.2d 179, 191 - 192 (Miss. 2001); *Banyard v. State*, No. 2006-KA-01843-COA (Decided 10 March 2009, Not Yet Officially Reported).

Necessity, on the other hand, can arise where a person claims that he had to commit a criminal act in order to avoid serious injury or death as to himself or another under any number of circumstances not involving duress. Although there are not so many decisions in this State involving this form of the defense, two are illustrative: *Knight v. State*, 601 So.2d 403 (Miss. 1992)(accused, after having accidentally run over a child in his automobile, ran from the scene when someone told him he had better leave) and *Stodghill v. State*, 892 So.2d 236 (Miss. 2005)(Where defense was raised in a DUI case. The accused, while under the influence of alcohol, thought it necessary to drive his girlfriend to a hospital from a remote country location).

In instances of the necessity defense, the fact pattern is that the accused committed some offense in order to avoid death or serious bodily harm to himself or another, or perhaps some other significant evil. In a duress case, though, the fact pattern is that the accused committed some crime because he was ordered (or compelled, to use the phrasing of the jury instruction concerning duress in the case at bar) to do so by another and threatened with serious injury or death if he did not comply. Duress might be thought of as particular form of the defense of necessity, just as the defense of self - defense is a particular form of the defense of necessity, but it is not synonymous with necessity. Duress is a form of the defense of necessity, but it would not be correct to say that necessity is the same thing as duress.

compelled to have possession of the weapon. *Williams v. State*, 953 So.2d 260 (Miss. Ct. App. 2006). A trial court does not err in denying an instruction for which there is not an evidentiary predicate. *Banyard v. State*, No. 2006-KA-01843-COA (Miss. Ct. App., Decided 10 March 2009, Not Yet Officially Reported).

The facts of this case relevant to the possession charge bear no resemblance to the facts of *Hatten v. State*, 938 So.2d 365 (Miss. Ct. App. 2006), cited by the Appellant. In that decision, the accused claimed that he was in possession of a firearm because he took it away from some person who was menacing him with it. Here, the Appellant himself admitted in his testimony that he was in possession of the firearm prior to the gunfight at the house – that he had it because he had it. There was nothing to show that he had some reasonable fear for his safety at that time. The facts of *Lenard v. State*, 828 So.2d 232 (Miss. Ct. App. 2002), also cited by the Appellant, are also factually inapposite, as a cursory review of the decision will quickly show.

In support of his notion that he was somehow under duress to possess the weapon, the Appellant cites *Ruffin v. State*, 992 So.2d 1165 (Miss. 2008), in which the elements of duress were set out. This profits the Appellant nothing for the simple reason that there was no evidence at all that he was under an unlawful and present, imminent and impending threat of such a nature as to induce a well ground apprehension of death or serious bodily harm while was at Wright's house, before he left with Wells, and while he was on the way to the house with Wells. The most the Appellant thought he was going to get into, according to his testimony, was a fist fight. As importantly it was not shown that some person compelled him to possess the gun.

As to the theft of a motor vehicle, the Appellant's testimony was that he had to take the vehicle in order to remove himself from the danger of being shot again. However, the Appellant fails to take into account the significance of the testimony as to what he did after he left the scene

of the shooting. There was testimony that he went off with the car to meet with Shepard and to give her the keys to her car; there was testimony that he cruised by the scene of the gunfight after it was over; and there was testimony that he did not relinquish the vehicle until he was stopped and placed under arrest.

One of the elements of the defense of necessity is a showing that the act charged was committed in order to prevent a significant evil. *Stodghill v. State*, 892 So.2d 236 (Miss. 2005). It simply cannot be said that the Appellant was preventing a significant evil by going to meet with Shepard and then driving past the scene of the shooting. Once the Appellant was out of harm's way, he should have then and there relinquished the vehicle, if indeed his purpose was simply to avoid the risk of being shot again. To the extent that the defense of necessity excuses or justifies an otherwise criminally culpable act, as a logical matter that excuse or justification exists only for so long as the threat giving rise to the excuse or justification reasonably exists.[3] The evidence clearly showed that the Appellant was going about his business in Wells' vehicle at a time when he was in no danger at all.

Another element of the defense of necessity is that there was no adequate alternative to the commission of the criminal act. Here, the Appellant could have left the premises on foot, or he could have sought cover behind the car or a nearby tree or house. That the Appellant was wounded in the

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[3] We have not found authority in this State for this proposition – nor any against it. However, we think an apt analogy would be found in the law of defense of self. Where one continues to use force against another after the threat of harm or death from that other has been removed, such use of force is unnecessary. Self - defense is unavailable under such a circumstance. *Harris v. State*, 937 So.2d 474 (Miss. Ct. App. 2006). Similarly, then, if one commits an act to prevent a significant evil, which act otherwise would be criminal in nature, that "license", so to say, to commit such an act would exist only for so long as the possibility of the infliction of that significant evil would reasonably exist. Clearly, the Appellant was in Wells' vehicle long after the shooting at the house and at a time when he was in no danger.

buttock would have been no impediment. That wound did not prevent him from going to see Shepard. Indeed, after meeting Shepard, the wound did not prevent him from going back to the scene of the shooting.

As for whether duress was shown with respect to the theft of the vehicle, we submit it was not. The Appellant was not coerced by anyone to take the automobile. He was not threatened with harm if he did not take the vehicle.

The First Assignment of error is without merit.

2. THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICTS OF GUILTY AS TO FELON IN POSSESSION OF A FIREARM AND THEFT OF A MOTOR VEHICLE

In the Second Assignment of Error, the Appellant appears to assert that the evidence was insufficient to permit verdicts of guilty with respect to felon in possession of a firearm and theft of a motor vehicle. In considering this claim, we bear in mind the standard of review appurtenant to it.[4] *May v. State*, 460 So.2d 778 (Miss. 1984).

Taking the evidence in favor of the verdicts of guilty as true, and disregarding the evidence opposed to those verdicts, the verdict of guilty with respect to the felon in possession of a firearm charge was clearly supported. The State proved that the Appellant had been convicted of a felony. It was also proved, even by the Appellant himself, that he was in possession of a firearm on 21 May 2006. The State's evidence further showed that the Appellant had a handgun while in Wright's

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[4] The Appellant points out that he was acquitted of shooting into a dwelling and kidnaping. He was indeed, though it is quite a mystery to us how the jury could have reached such a conclusion given the strength of the evidence on those charges and the absurdity of the Appellant's account of what transpired. Nonetheless, we do not understand the Appellant here to assert that the verdicts of guilty should be set aside on account of some alleged inconsistency. In any event, the fact that a jury has returned possibly inconsistent verdicts is no ground to set aside those convictions for which it found guilt. *Curry v. State*, 939 So.2d 785 (Miss. 2006).

house, that he used it to force Wells' to drive him to the house in which Wright was living, and that he fired several bullets in or at the house. The Appellant, in his testimony, admitted that he had a gun. It may be that the Appellant had a different tale to tell about his reason for having a gun, but it is sufficient to say that, for purposes of considering whether the evidence was sufficient to permit a verdict against the Appellant, the State's evidence was more than sufficient to show a violation of Miss. Code Ann. Section 97-37-5. *Edwards v. State*, 966 So.2d 837 (Miss. Ct. App. 2007).

As for motor vehicle theft, the testimony in support of the verdict was that the Appellant, after having been shot in the butt, scampered out of the house, got into Wells' vehicle, and drove off. He did not have Wells' permission to do so. He later drove by the house, sending Wright's family members and the policed rushing pell mell for cover. The Appellant found time to visit his friend in Wells' truck. The Appellant only gave up possession of it upon his arrest. This was entirely sufficient to show that the Appellant wilfully and without authority took possession of Wells vehicle with the intent to permanently or temporarily deprive Wells' of possession of the vehicle . Miss. Code Ann. Section 97-17-42 (Supp. 2007).

The Appellant suggests that the evidence, with respect to the theft count, supported trespass, at most. He provides no argument or citation to authority for such a bold claim, and it should be treated as having been abandoned. *Hoops v. State*, 681 So.2d 521 (Miss. 1996). Nonetheless, there was not a shred of evidence to support a theory of trespass. The Appellant does not appear even to have requested an instruction on trespass. The evidence of what the Appellant did with respect to taking Wells' car was sufficient to permit a verdict of guilty on the motor vehicle theft count of the indictment. *Cf. Hogan v. State*, 854 So.2d 497 (Miss. Ct. App. 2003).

The Second Assignment of Error is without merit.

CONCLUSION

The Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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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:

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This the 21ST day of May, 2009.

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