IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LORETHA PAULINE LOGAN MURRAY — APPELLANT

VS. — NO. 2008-KA-1039-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2008-KA-1039-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On June 9, 2008, Loretha P. L. Murray,"Murray" was tried for credit card fraud before a Scott County jury, the Honorable Marcus Gordon presiding. R. 1. Murray was found guilty. R. 144. She was given a three year sentence in the custody of the Mississippi Department of Corrections, a thousand dollar fine and thousand dollars of restitution C.P. 28.

A motion for a new trial was denied. C.P. 32. From that conviction, she filed notice of appeal to the Mississippi Supreme Court. C.P. 34.

ISSUES ON APPEAL

I.

DID THE TRIAL COURT ERR IN OVERRULING A PEREMPTORY STRIKE ON JUROR SPIVEY?

II.

DID THE TRIAL COURT ERR IN OVERRULING A PEREMPTORY STRIKE ON JUROR STINGLEY?

III.

DID THE TRIAL COURT ERR IN ADMITTING MURRAY'S STATEMENT INTO EVIDENCE?

IV.

WAS THE VERDICT AGAINST THE WEIGHT OF THE EVIDENCE?

STATEMENT OF THE FACTS

On July 31, 2007, Ms. Murray and her sister, Ms. Leslie L. Lay, were indicted for credit card fraud on November 21, 2006. C.P. 1.

In February, 2008, Leslie Lay, Murray's sister with whom she was indicted, was killed in an traffic accident. R. 73.

On June 9, 2008, Murray was tried for credit card fraud before a Scott County jury, the Honorable Marcus Gordon presiding. R. 1. Murray was represented by Mr. James E. Smith, III. R. 1.

During voir dire, jurors Spivey and Stingley were peremptorily struck from the jury. R. 30-34. The trial court found unemployment and being related or knowing that one was related to a criminal defendant were race neutral reasons for strikes on these two jurors. R. 30-34.

The record contains no identification of jurors by race. C.P. 1-48; 29. Issues about the alleged misuse of peremptory strikes were not included in the motion for a new trial. C.P. 29.

A suppression hearing was held before the trial court. R. 55-80. Officers Will Jones and Robert Roncali testified that they were "the only ones present" when Ms. Murray was interviewed. R. 55.

Officers Will Jones and Robert Roncali testified that Murray was not coerced or promised anything. This was prior to her signing a **Miranda** waiver of rights form and making inculpatory statements. They both testified that Murray was not told that things would be better if she gave a statement. R. 57; 64.

Ms. Murray testified that she was told she would be better off if she provided a statement. R. 75. She admitted that the signature on her two page statement "looked like her signature," as seen on her signed and witnessed **Miranda** waiver form. R. 76. However, she claimed that she signed

a yellow pad, not the two page statement. She also claimed her statement on the pad was different from the contents contained in the two page statement. R. 76.

After hearing the testimony, the trial court denied the motion to suppress. R. 79-80. The trial court found that Murray's statement was "voluntarily and intelligently" entered. It was not induced by any promises, and Murray signed the two page statement. R. 79-80.

Ms. Amarilys Carter testified that her wallet was missing. R. 42. It was last seen inside her purse. She had left her purse at the medical clinic where she worked. Medical records indicated that Murray was present at her husband's clinic the day the wallet was taken. R. 43.

Ms. Carter worked as a medical assistant and office manager for Dr. Carter. R. 41. He was also her husband. She notified the Forest Police Department. Her wallet contained a Visa credit card. $1,000.00 was removed from Ms. Carter's bank account within two hours after she found her wallet was missing. R. 44.

Murray later apologized to Ms. Carter about taking the billfold but did not return anything that had been taken from Ms. Carter's purse. R. 45-46.

Dr. Carter, a podiatrist, testified that Murray was a patient in the office. He testified that she apologized for "talking the wallet out of the purse." R. 51. Murray told them the wallet "had been disposed of." R. 51.

Officer Will Jones testified that he read Murray her **Miranda** rights. She indicated that she understood them. She was not promised anything or coerced. He typed her statement, read it back to her. She did not change it. He witnessed her signature. He did not recall ever having told her it would be better if she gave a statement. Murray was not under arrest at the time she came to the office. Jones did not use a yellow pad when taking down her statement. R. 96.

Officer Robert Roncali corroborated Officer Jones. He testified that Murray was read her

Miranda rights. There were no promises or coercion. R. 64. She was not told things would be better for her if she made a statement. R. 64. He saw her sign her statement which he witnessed with his own signature. R. 90.

The trial court denied a motion for a directed verdict. R. 98-99. This was on grounds that there was no evidence that Murray had committed credit card fraud. Rather she claimed in her motion that she was merely present when her deceased sister, Ms. Lay, committed the crime. R. 99.

Ms. Murray testified in her own defense. R. 107-120. She admitted to signing the **Miranda** waiver but not the accompanying inculpatory statement. She testified that she signed a hand written statement on a yellow pad. It was different from the two page statement admitted into evidence. She also testified that she was informed that it would be better for her if she cooperated with law enforcement.

The prosecution presented rebuttal witnesses, Officers Roncali and Jones. R. 120- 128. They testified that Murray signed the **Miranda** waiver and the accompanying two page statement. They testified that Murray was not told things would go better for her if she cooperated. Her statement was not taken down on a yellow legal pad. R. 122-123.

Ms. Murray was found guilty. R. 143; C.P. 26. She was given a three year sentence , restitution, and a thousand dollar fine in the custody of the Mississippi Department of Corrections. R. 152; C.P. 28.

From that conviction, she filed notice of appeal to the Supreme Court. C.P. 34.

SUMMARY OF THE ARGUMENT

1. The record reflects that issues about peremptory strikes were waived. They were waived for failure to make an adequate record. The appellee finds nothing about the race of the jurors who served in the record. C.P. 1- 48. **Walker v. State** 823 So.2d 557, 565 (¶25) (Miss. App. 2002). Nor was this issue raised in Murray's motion for a new trial. C.P. 29.

To the best of the appellee's knowledge there were at least some members of Murray's race who served on the jury. R. 35-39.

In addition, the trial court accepted unemployment as a race neutral reason. R. 30-32. The record reflects that both Spivey and his wife were not employed. They also had a child. This case involving financial fraud for personal gain. The trial court accepted unemployment as a race neutral reason given this was a crime for financial advantage.

Ms. Murray and counsel did not allege much less prove any disparate treatment. The Supreme Court has accepted unemployment as a race neutral reason for a peremptory strike. **Berry v. State**, 802 So. 2d 1033, 1046 (¶ 43) (Miss. 2001).

2. The trial court found the fact that a juror knew that she was a relative of someone with a pending criminal charge was a race neutral reason. R. 31-34. This was a basis for striking juror Stingley peremptorily. This reason was not rebutted by Murray.

The Supreme Court has previously accepted this type of relationship as a race neutral reason for a strike. **Tanner v. State** 764 So.2d 385, 396 (¶ 25) (Miss. 2000).

3. There was credible, substantial corroborated evidence in support of the trial court's denial of a motion to suppress. R. 79-80. This resulted in the admission of Murray's inculpatory statement. R.

93-94.

In **O'Halloran v. State** 731 So.2d 565, 570 -571 (¶ 18) (Miss.1999), the Supreme Court stated that confessions admitted "on conflicting evidence" would be affirmed where "factually supported by the evidence."

Officer Jones' testimony was corroborated by Officer Roncali as to Murray's voluntarily and intelligently making her statement. They testified that no hope of reward was offered. They testified that Murray signed the **Miranda** waiver and her accompanying statement. R. 55-58; 64-66.

This was sufficient evidence for the trial court to deny the motion to suppress. Murray's testimony about allegedly not signing the statement she alleged law enforcement altered merely created a conflict in the evidence. The trial court and jury resolved this conflict in favor of the prosecution. R. 79-80; 143.

The jury was the finder of fact and the judge of Murray and the officers credibility.

4. There was credible, substantial evidence in support of Murray's conviction. 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 is entitled to have the evidence in support of its case taken as true together with all reasonable inferences.

The record reflects that there was sufficient evidence for inferring that Murray was actively involved in committing credit card fraud. While her two page statement shifts blame to her deceased sister, she admitted to assisting her in fraudulently obtaining $1,000.00. This was by using Ms. Carter's stolen Visa credit card. R. 93-94. Murray admitted to Dr. Carter that she removed "the wallet from the purse." R. 51. This provided evidence in addition to her inculpatory post-**Miranda** statements.

In addition, as shown under proposition III, there was sufficient, corroborated evidence for

admitting Murray's redacted statement. There was also sufficient evidence for finding that her testimony about law enforcement altering her statement was not credible. It was rebutted by Officers Jones and Roncali. R. 120-124.

The appellee believes there was sufficient evidence for inferring that Murray was not merely a passive observer. She was actively involved with her sister in committing credit card fraud.

Murray's testimony merely created a conflict in the evidence the jury, as finder of fact, was responsible for resolving in their collective deliberations. It is the jury's responsibility to resolve any issues related to the weight of the evidence. **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983). There was credible, substantial corroborated record evidence in support of Murray's conviction based upon the weight of the evidence.

ARGUMENT

PROPOSITION I AND II.

THESE ISSUES WERE WAIVED AS WELL AS LACKING IN MERIT.

Ms. Murray argues that the trial court improperly permitted the prosecution to strike two African American jurors peremptorily. She thinks they were improperly struck because the state did not present what she considers to be valid race neutral reasons for these strikes. Appellant's brief page 2-8.

To the contrary, to the best of the appellee's knowledge the record does not contain data as to the racial composition of all the jurors. C.P. 1-48. To the best of the appellee's knowledge there were at least some members of Murray's race who served on the jury. R. 35-39.

In **Walker v. State** 823 So.2d 557, 565 (¶25)(Miss. App. 2002), the court found that failure to make a record on the composition of the jury waives **Batson** issues on appeal.

> ¶ 25. In addition, the record is silent as to the racial composition of the jury. Therefore, we are unable to conclude that a **Batson** challenge was warranted and if so, whether the failure to make one was prejudicial to Walker and such performance was obvious to the trial judge to declare a mistrial. Therefore, this assertion is without merit.

In addition, the record reflects that the prosecution presented a race neutral reason for striking Mr. Spivey. Mr. Spivey and his wife were not employed, and they also had a child. The case before the jury was about credit card fraud for financial gain. The trial court accepted the juror's employment status as being race neutral. R. 30-31.

The record reflects that Ms. Stingley admitted during private voir dire that she was probably related to Mr. Antonio Stingley. He was facing pending criminal charges. R. 30; 32-34.

The record reflects that Murray did not make any claim or offer any evidence of

discriminatory treatment of jurors based upon these peremptory strikes. Nor was this issue raised in Murray's motion for a new trial. C.P. 29.

In **Conner v. State**, 632 So. 2d 1239, 1255 (Miss. 1993), the Court found that objections can not be "enlarged" or expanded on appeal.

> An objection on one or more specific grounds constitutes a waiver of all other grounds. **Stringer v. State**, 279 So. 2d 156, 158 (Miss. 1973); see **McGarrh v. State**, 249 Miss. 247, 276, 148 So 2d 494, 506 (1963) (objection cannot be enlarged in reviewing court or embrace omission not complained of at trial). Cert denied, 375 U.S. 816, 84 S. Ct. 50, 11 L Ed 2d 51 (1963). Since Conner failed to object to the state's form of verdict instruction on grounds that it was incomplete, he is procedurally barred from raising the point here.

The prosecution stated that juror Spivey was in his twenties, married with a child and both he and his wife were unemployed.

> Kilgore: Your Honor, on Spivey it's uh–we- he was struck because-uh-his-uh–occupation. He's unemployed, also has an unemployed wife. We thought at that point that given the nature of the crime, a fraud case dealing with where monies are stolen, that he would not be a fair juror. R. 29.
>
> Court: **I feel that the racial neutral reason offered by the state regarding Spivey is a racial neutral reason, but I'm going to permit you to call in the juror Stingley for examination.** R. 32. (Emphasis by appellee).

The record reflects that the prosecution pointed out that juror Stingley was believed to be related to Mr. Antonio Singley. He was facing pending criminal charges. She was questioned and admitted to being probably related to a Stingley.. The trial court found "her knowledge" that she was related to a criminal defendant was sufficient for allowing the strike.

> Brooks: **Lives on Steadman Road in Morton. (Antonio Stingley).**
>
> Stingley: **Probably so. We probably are going to be related because I have–I mean, I'm not for sure, but I know I have–I'm related to some Stingleys in Morton.** R. 33.
>
> ...
>
> Court: **Of course, what has happened, you have now developed her knowledge**

> **that she is related to a criminal defendant, and the state has offered that as a reason to-uh-exercise the challenge so I'm going to permit the challenge.** R. 34. (Emphasis by appellee).

In **Tyler v. State** 911 So.2d 550, 554 (Miss. App. 2005), the Court of Appeals relied upon **Berry v. State**, 802 So 2d 1033, 1046 (¶ 43) (Miss. 2001). The court found that "unemployment" was acceptable as a race neutral reason for a peremptory strike.

> ¶ 13. The Mississippi Supreme Court has stated: "[p]ursuant to **Batson**, this Court has acknowledged that there are [an] infinite number of grounds upon which a prosecutor reasonably may peremptorily strike a juror so long as the prosecutor presents clear and reasonably specific explanations for those reasons.... Among the reasons accepted as race-neutral are ... unemployment [and] employment history".... **Berry v. State**, 802 So.2d 1033, 1046(¶ 43) (Miss. 2001) (emphasis added) (internal citations omitted). Following established Mississippi law, we find that the prosecutor's reason was sufficiently race-neutral, notwithstanding Tyler's arguments that the number of unemployed blacks is disproportionate to the number of unemployed whites. This issue is without merit.

In **Tanner v. State** 764 So.2d 385, 396 (¶ 25) (Miss. 2000), the Supreme Court found that being related to a family member for a conviction or a criminal charge was acceptable as a race neutral reason for a peremptory strike.

> ¶ 25. "Striking a juror because of the conviction or charge of a family member is a valid, race-neutral reason to exercise a peremptory strike." **Magee**, 720 So.2d at 189. Furthermore, Tanner points out in his brief that Stevens's mother works for Tommy Mayfield, one of the prosecutors in this case. Therefore, Tanner's argument that Stevens was excluded based on race is without merit.

In **Lockett v. State** 517 So. 2d 1346, 1350 (Miss. 1987), the court stated that "great deference" is owed to the trial court's factual findings on peremptory strikes. Among the reasons found acceptable in that case was being related to a criminal defendant.

> We today follow the lead of other courts who have considered this issue and hold that a trial judge's factual findings relative to a prosecutor's use of peremptory challenges on minority persons are to be accorded great deference and will not be reversed unless they appear clearly erroneous or against the overwhelming weight of the evidence. This perspective is wholly consistent with our unflagging support of the

trial court as the proper forum for resolution of factual controversies.

In **Lynch v. State** 877 So.2d 1254, 1277 (Miss. 2004), the Supreme Court pointed out that failure to rebut a race neutral reason waived the issue on appeal. It also found that "the physical disability" of a juror was "race neutral" as found by the trial court.

> However, we are bound by the record at hand. Pursuant to our precedent case law, we hold that a disability of a juror is a race-neutral reason. We also note that because the District Attorney based the peremptory challenge on the juror's physical disability, which is a race-neutral reason under this Court's decisions, and the trial judge is limited to an examination of the State's proffered reasons where the defendant fails to rebut those reasons, we find that the trial judge did not clearly err in accepting the State's proffered race-neutral reasons as to its challenge of Juror 41.

The record reflects that Murray did not provide any specific rebuttal to the reasons provided for peremptory strikes on jurors Spivey and Stingley. R. 30-34. The record also reflects Murray did not claim any disparate treatment of jurors based upon the race neutral reasons offered by the prosecution. R. 30-34. Nor did Murray make a record as to the racial composition of the jurors who served at her trial. C.P. 1-48.

The appellee would submit that this issue was waived for failure to make a record. In addition, the reasons accepted by the trial court were "race neutral." They did not refer to the juror's race as a reason for striking them. Being unemployed and being related to a criminal defendant can apply to any potential juror regardless of their race, sex or religion. The Mississippi Supreme Court and the Court of Appeals in the cases cited above have accepted these reasons as a basis for a race neutral strike.

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

PROPOSITION III

MURRAY'S INCULPATORY STATEMENT WAS PROPERLY ADMITTED.

Ms. Murray argues that her inculpatory statement to law enforcement should have been suppressed. It should have been suppressed because she claims it was made after she was told things would go better if she cooperated. In addition, Murray denied having signed the inculpatory statement attributed to her. Rather she claimed that she signed a statement on a yellow pad. She thinks the statement introduced by the officers was allegedly an entirely different statement. Murray also denied in her testimony any direct involvement in the fraud. Appellant's brief page 8-9.

The record reflects that after a suppression hearing the trial court denied a motion to suppress. R. 55-80. The court found that there was sufficient evidence for determining that the statement was voluntarily and intelligently entered. R. 79-80. It was made after a **Miranda** waiver form had been signed and witnessed. R. 89-95. While she denied having signed her statement, she admitted that her signature "looked like" her signature on the waiver. R.. 61; 127. The trial court found that there was also sufficient evidence for inferring that the signature on the inculpatory statement was hers. R. 79-80.

The appellee would submit that record reflects that the court applied the correct principles of law and its finding are factually supported by the evidence, which will be cited below. **Haymer v. State**, 613 So. 2d 837, 839 (Miss.1993).

Contrary to assertions in appellant's brief, Officer Jones was corroborated by Officer Roncali. This was as to Murray not having been told things "would go better" with her if she cooperated. R. 64. He also corroborated him as testifying as a witness to seeing Murray sign her two page inculpatory statement. R. 66. This was his testimony at the suppression hearing as well as before the

jury after the denial of the suppression motion. R. 122-123.

The record reflects that Officer Jones and Officer Roncali were the only persons present when Murray was interviewed. R. 55. They both testified at the suppression hearing along with Murray. **Agee v. State**, 185 So. 2d 671, 673 (Miss. 1966).

Officer Jones testified to not making any promises or using any coercion. He also testified that he did not remember telling Murray that it would be better for her if she made a statement. And he testified to seeing her sign the **Miranda** waiver and the accompanying statement. R. 57-60. He was corroborated by Officer Roncali.

Officer Will Jones testified that he made no threats, or promises to Murray. She was read her **Miranda** rights. She said she understood them. He did not recall telling her it would be better if she cooperated by giving a statement. R. 57-58.

At the hearing on the motion to suppress Officer Will Jones's statement.

Q. **Were any promises of reward or offers of leniency made to her?**

A. **No, sir.**

Q. Any threats made against her or violence used upon her?

A. No, sir.

Q. **Was she told she would be better off if she cooperated and gave a statement, or words to that effect?**

A. **I don't recall any statement like that.**

...

Q. **And did she sign her name waiving her rights there?**

A. **Yes, sir. She did sign her name.** R. 57.

..

Q. **Now, following that, (recording and reading to her the two page statement and allowing her to correct it) ,did she sign it?**

A. **Yes. She did sign it.** R. 60. (Emphasis by appellee).

Officer Robert Roncali corroborated Will Jones. He testified that Jones made no promises. He did not use any coercion. R. 64. He testified that he did not tell her things would be better off if she cooperated. And he testified that Murray signed the two page statement after being given an opportunity to review or correct it. R. 62-66.

Q. **Was she told, by either of you officers or anyone, that she would be better off if she cooperated and gave a statement, or any kind of words to that effect?**

A. **No, sir**. R. 64. (Emphasis by appellee).

...

Q. Was she given an opportunity to make any corrections or changes? (To her two page statement, after she signed the **Miranda** waiver of rights form)

A. No, sir.

Q. **Okay. And did she sign it?**

A. **Yes, sir.**

Q. **And you and Officer Jones then signed it as witnesses as shown there on it?**
A. **Yes, sir.** R. 66.(Emphasis by appellee).

In addition, while Murray testified to being told it would be better if she cooperated with a statement, she admitted that the signatures on her inculpatory statement "looks like my statement."

Q. And what did you sign?

A. I signed the legal pad, the–the–where the statement was at.

Q. So you're saying that you did not give that statement?

A. No, sir.

Q. **Is that your signature?**

A. **It looks like my signature.**

Q. Do you recall signing this document?

A. I didn't sign this document. No. 76. (Emphasis by appellee).

In **O'Halloran v. State** 731 So.2d 565, 570 -571 (¶ 18) (Miss.1999), the court stated that confessions admitted "on conflicting evidence" would be affirmed where "factually supported by the evidence."

> ¶ 17.This Court's ambit of review is firmly established and defined when the circuit court expressly or implicitly resolves the issue of admissibility of a confession against a defendant. **Morgan v. State**, 681 So.2d 82, 87 (Miss.1996). When the trial court has overruled a motion to suppress a defendant's confession, we will reverse the trial court's decision only if the trial court's ruling is manifest error or contrary to the overwhelming weight of the evidence. **McGowan v. State**, 706 So.2d 231, 235 (Miss.1997). In other words, this Court will not reverse a trial court finding that a confession was voluntary and is admissible as long as that trial court applies the correct principles of law and the finding is factually supported by the evidence. See **Greenlee v. State**, No. 97-KA-00507-SCT, 1998 WL 319209, at *8, 725 So.2d 816, 825 (Miss.1998) (citing **Haymer v. State**, 613 So.2d 837, 839 (Miss.1993)).
>
> [15] [16] ¶ 18. The voluntariness of a waiver, or of a confession, is a factual inquiry that must be determined by the trial judge from the totality of the circumstances. **Gavin v. State**, 473 So.2d 952, 954 (Miss.1985); **Stevens v. State**, 458 So.2d 726, 729 (Miss.1984). Further, where there is conflicting evidence on a confession's admissibility, this Court will not disturb the court's findings "unless it appears clearly contrary to the overwhelming weight of the evidence." **Wiley v. State**, 465 So.2d 318, 320 (Miss.1985).

In **Abram v. State**, 606 So. 2d 1015, 1022-1023 (Miss. 1992), relied upon by Murray, there was evidence that both Rev. Jones and Sheriff Forbes told Abram the benefits of cooperation. The appellee believes that this distinguishes this case where there was no such evidence other than a uncorroborated claim that such occurred by Murray.

The record cited above indicates that Officer Jones was corroborated by Officer Roncali. R.

57;60; 64; 66. They both testified that Murray was read her **Miranda** rights, and said she understood them. She did not at any time request an attorney or invoke her right to silence. She was not promised anything or coerced. And she was told that things would go better for her if she gave a statement.

Murray's testimony about allegedly not signing the inculpatory statement accompanying the **Miranda** waiver created a conflict in the evidence. The trial court and jury resolved this conflict in favor of the prosecution. She admitted that she signed the **Miranda** waiver. R. 111.

The appellee would submit that the record referred to and cited above indicates that trial court used the correct legal standard in admitting Murray's statement. R. 79-80. And , as shown with cites to the record, his decision was not against the overwhelming weight of the evidence. Therefore, this issue is also lacking in merit.

PROPOSITION IV

THERE WAS CREDIBLE, SUBSTANTIAL CORROBORATED EVIDENCE IN SUPPORT OF THE JURY'S VERDICT.

Ms. Murray argues that there was insufficient evidence in support of her conviction. She denied having signed an inculpatory statement. She also denied admitting she was involved with her deceased sister in committing bank fraud. This was by using a credit card from a stolen wallet. Murray thinks her statement did not involve an admission of participating in the crime or sharing in the financial benefits from the transfer of Mrs. Carter's funds. Rather she admitted to only being present. Murray argues this was insufficient for finding her guilty of fraud. Appellant's brief page 10-11.

The record reflects, as stated under proposition III, that the trial court admitted Ms. Murray's inculpatory statement. This was after a suppression hearing. R. 55-80. It was admitted as having been voluntarily and intelligently made. It was made after a **Miranda** waiver had been read to her, and she had signed it, indicating she understood her rights. She did not request an attorney or assert her right to silence. R. 79-80.

Mrs. Amarilys Carter testified that Murray was one of the patients her husband, Dr. Carter, a podiatrist, saw on November 21, 2006. R. 43. This was the day her wallet was taken. Inside her wallet was a Visa credit card. Within a few hours of the wallet disappearing, $1,000.00 was transferred from her account by someone using her credit card and Western Union. R. 44.

Ms. Murray, who Mrs. Carter, identified in the court room, returned to the medical clinic at a later date. R. 48. She apologized for the taking of the wallet and contents, but did not return anything to her. R. 45-46. She mentioned a Leslie, her sister, as another person who was involved in the taking of the wallet. R. 46.

Dr. Carter testified that Murray admitted to "taking the wallet out of the purse." R. 51.

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 an appeal's court.

Contrary, to Murray's argument on appeal, the appellee believes a reading of Murray's statement does not exonerate her. While she attempts to blame her deceased sister, her statement indicates that she was a participant in the fraud. She was not only with her but assisted her in using the credit card to remove $1,000.00 from Ms. Carter's bank account. R. 93-94.

Relevant portions of Murray's statement indicates that she was actively involved in obtaining $1,000.00. She assisted her in fraudulently using Mrs. Carter's stolen credit card for this purpose. She answered her questions about procedures needed for withdrawing funds by means of a pin number, provided her with a telephone, and agreed with her about the amount of money to withdraw from Mrs. Carter's account.

> **When we were in the car, she showed me the wallet. ..I told her that you can't get no cash off a credit card without a pin number. ..**
> **Leslie said to call Western Union. I made the call to Western Union and asked them if you could use a credit card to wire money. I gave Leslie the phone because I was driving.** She had the wallet in her lap, and she put the phone of speaker phone. I could hear the automated service instructing on the information needed. **When it asked for the dollar amount, she looked at me and I said don't go crazy. Leslie looked at me and said, one thousand? I nodded my head 'yes.' At some point the person came on the phone and was asking some questions. Leslie was answering the questions, and when she asked–when she was asked some questions that she did not know the answers to, I answered them. When the call was finished, I called my mom back and let Leslie talk to her. She gave her the confirmation number.**
>
> Q. Okay. **And then below that it whose signature?**
>
> A. **Uh–this would be Loretha Murray's signature.** This in the witness blank

would be her signature. And this is in the other witness blank would be Robert Roncali's signature. R. 94.(Emphasis by appellee).

In addition, as shown by sites to the record, there was corroborated testimony in support of the trial court's finding that the Murray signed her inculpatory statement. Officer Jones and Roncali testified that they saw her signed it. And it was also witnessed by the officers.

Officer Jones testified in rebuttal of Murray. He did not use a yellow pad to take her statement. He also testified that she did sign her statement. He testified that she signed the two page statement admitted into evidence previously. R. 124-125.

Chief of police Roncali testified that he saw Murray sign the statement. He testified that there was nothing in the statement other than what came from Ms. Murray. R. 122. Roncali also contradicted Murray before the jury, as he had at the suppression hearing. He testified that he did not tell her things would be better for her if she admitted her involvement in the crime being investigated. R. 64.

Q. **All right. And you told her that it'd be better for her to give a statement. Didn't you?**

A. **No, sir.**

Q. **You told her you might as well tell us the truth, didn't you?**

A. **No, sir.** R. 122-123. (Emphasis by appellee).

The jury were given instruction S-2 which stated that "acting in concert" with another in a joint effort or enterprise made one guilty even if every act involved in a criminal enterprise was not personally committed by a defendant. C.P. 24.

The jury heard Murray's testimony. R. 107-120. She denied having signed the two page inculpatory statement, even though she admitted it "looked like" her signature. The record reflects

that she admitted that her signature was on the **Miranda** waiver of rights form. R. 111.

Consequently, the jury viewed the signatures and compared them for themselves. R. 141. Murray admitted to calling Western Union and assisting her deceased sister in obtaining cash from a stolen credit card. R. 115-116. They heard Dr. Carter and his wife testify that Murray apologized for having been involved in taking the wallet and credit card. R. 47; 51.

The jury heard her claim that her statement on a yellow pad was not the same as the admissions made in the two page statement. They also heard her challenge the credibility of Officer Jones and Roncali. She testified that they were both lying in their testimony. R. 109-110.

In **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983), the Court stated that any "conflicting testimony" created by testimony from defense witnesses was to be resolved by the jury. What the jury believes and who the jury believes as to what piece of evidence presented is solely for their determination. As stated:

> Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into finding of fact sufficient to support the verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution. **Shannon v. State**, 321 So. 2d 1 (Miss. 1975) 373 So. 2d at 1045.

The record reflects that the trial court denied a motion for a directed verdict, and Murray testified in her own behalf. R. 98-99; 107-120. She therefore waived the sufficiency of the evidence.

In **Bounds v. State**, 688 So 2d 1363, 1372 (Miss. 1997), the Court stated it succinctly.

> Bounds contests the denial of his motion for directed verdict. However, when his motion was overruled, he proceeded with his case in chief. When the defendant proceeds with his case after the State rests and the court overrules the defendant's motion for a directed verdict, the defendant has waived the appeal of the directed

verdict verdict. **Holland v State**, 656 So 2d 1192, 1197 (Miss 1995).

Murray's testimony along with the rebuttal testimony of Officers Jones and Roncali went to "the weight of the evidence." The jury heard the testimony, viewed the **Miranda** waiver and two page statement, compared signatures on the documents, and evaluated all the testimony and exhibits. Murray chose to challenge the credibility of the state witnesses, and thus place her own credibility before the jury.

The appellee would submit that there was sufficient credible, partially corroborated evidence in support of the trial court's decision to deny all peremptory instructions, and in support of the jury's verdict in finding Murray guilty of credit card fraud. R. 144. This issue is also lacking in merit.

CONCLUSION

Ms. Murray's conviction for credit card fraud 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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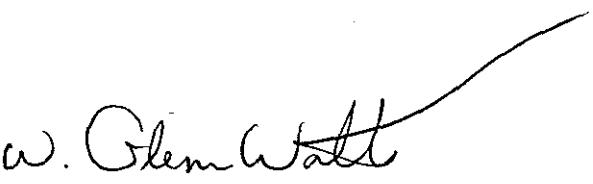
This the 11th day of March, 2009.



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