IN THE COURT OF APPEALS OF MISSISSIPPI

TERRY LEE MADDEN — APPELLANT

VERSUS — No. 2008-KA-1269-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR APPELLEE

ORAL ARGUMENT NOT REQUESTED

RESPECTFULLY SUBMITTED,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI
TELEPHONE: (601) 359-3680
FAX: (601) 359-3796

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STATEMENT OF THE CASE

Procedural History

Terry Lee Madden was convicted in the Circuit Court of Tunica County on charges of the murders of Laura Willis and Andy McCorkle and was sentenced to two terms of life imprisonment. (C.P.161-62) Aggrieved by the judgment rendered against her, Madden has perfected an appeal to this Court.

Substantive Facts

Barbara Willis testified that her sister Laura Willis had had a longtime, on-again off-again, troubled relationship with the defendant, Terry Madden. According to Ms. Willis, the defendant "never treated" her sister "right." At one point, she heard the defendant threaten to kill her sister if he caught her "going with a truck driver." (T.125-30)

Deputy Shundrica Harris of the Tunica County Sheriff's Department testified that she went on duty at 5:45 the morning of July 14, 2007. At some point that morning, she went back to her residence to retrieve a piece of equipment. After she left her house, she "noticed two vehicles across the roadway ... kind of out of place. ... It was a red freightliner, Ozark truck, and a brown Chevrolet Malibu." The truck "was facing eastbound" and the other 18-wheeler was "[r]ight beside it." Deputy Harris observed that the "truck had a broken window and also the car did ... " Deputy Harris then drove "up to Kirby Estates and turned around." She called her supervisor to report this situation. (T.133-35)

When she returned to the scene, Deputy Harris saw that "there was another vehicle parked there, which was a silver Chevrolet Malibu with three occupants" who were flagging her down. Deputy Harris "asked them to move accross the road," and turned her vehicle around. When she "got out of the car, she "saw a female ... [l]aid over... " in the car. The woman had "a wound to the neck." (T.136-37)

Other officers arrived shortly thereafter to secure the scene and investigate this crime. Deputy Harris "ran the tag" of the blue truck "through dispatch" and learned that the owner was Ronnie Baker. (T.140-41)

Anthony Neal testified that he and his girlfriend, Tyra Johnson, worked with Laura Willis at the Gold Strike Casino in Robinsonville. At about 6:30 the morning of July 14, 2007, Mr. Neal "got up and went to go" pick his girlfriend and another friend up from work. When he got back to the Kirby Estates area at approximately 7:15, he saw a car which appeared to be "in trouble." When he "pulled over there," he saw a woman "slumped over" in the car and noticed "a bullet hole in the window." At that point, he "started backing up and flagged the police down." (T.155-54)

Arthur Chancellor, the state's expert crime scene analyst, testified that based on the positioning of the vehicles, he had concluded that Ms. Willis had been shot first "while her window was in the raised position." Mr. McCorkle, in Mr. Chancellor's opinion, had been "shot while he inside the tractor, still parked or near the blue truck. The truck then went forward when it struck vehicle No. I and therned into the milo field, and then, ... a second shot was fired by someone who probably climbed up on top ... to the door and shot inside." The victims' personal belongings remained inside their respective vehicles. Authorities recovered Ms. Willis's wallet, which contained several hundred dollars in cash as well as credit cards. (T.165-68)

Agent Chuck Poe of the Mississippi Bureau of ~~Narcotics~~ Investigation testified that on July 14, 2007, he "received a request to assist the Tunica County Sheriff's Department with a death investigation on Kirby Road." (T.204) Acting on information received from the sheriff, Agent Poe "made arrangements to meet Mr. Terry Madden." (T.206-07) Agent Poe recounted the initial interview as follows, in pertinent part:

> When I met with Mr. Madden, I initially asked him had he heard about Laura and Andy, and he acknowledged that he did, and started questioning him

> about his relationship with Laura and were they still together, which he said he was not. They had, I believe, broken up back in February. ... [H]e and Laura were supposed to have gone out to eat Friday night in Southaven... and [he] had made arrangements to call her Friday night. ... He said that he tried to call her seeral times Friday night, and she did not pick up. He did not– he was unable to talk to her, but he did leave a voicemail, and then on Saturday morning, we've asked him about his activities, where he was at that Saturday morning, and he said he was in Sumner, at his residence the entire morning.
>
> (T.207)

Knowing that a .40 caliber casing had been found near the 18-wheeler at the crime scene, Agent Poe went on to ask Madden if he had ever owned a .40 handgun. Madden answered that "the only handgun he had ever owned was a .380." Upon further questioning, Madden gave Agent Poe his cellular phone number and acknowledged that he had had it with him the morning on July 14. He also stated that he had phoned Mary Wallace that morning. (T.208-10)

Further investigation revealed that Madden had not spoken with Mary Wallace at the time in question. (T.210-12)

Bobbie Robinson, owner and operator of Robinson Guns and Ammo, testified that on April 27, 2005, he sold a .40 caliber handgun to the defendant. (T.222-280)

Deputy Clifton Bailey testified that on January 27, 2006, he was working in his yard when he "heard some tires squeaking and somebody hollering for help... The person hollering for help was Laura. She was saying: 'Somebody help me. Terry's trying to kill me.'" Deputy Bailey "ran to the road" to see a .40 caliber handgun "come flying out the window." He "picked the gun up off the ground, secured it, and then

Terry stepped out of the car and went back to his vehicle, and Laura pulled off." After "all of the charges were dropped several months later," the gun "was given back to him, returned to Terry." (T.234-35)

Haywood Wilson testified that he had lived on Sumner Road, "right across from Terry Madden," for the past three or four years. One morning as he was reparing his lawnmower, Mr. Wilson saw Madden "hit" Laura Willis and heard him say, "'Get out of my yard or I'm gonna kill you." Ms. Willis then "[g]ot in the car and left." (T.242-46)

Arthinia Saulsberry testified that just after midnight on July 14, Madden picked her up and took her to his house. He woke her up "around four o'clock" and drove her back to her residence, which was "down the road" from his. Later that morning, at about 8:00, he called to tell her that "he had just got a call that Laura Ann had been shot ... in the neck, and that it was two guys dressed in black, and they ran out across the field or something, and that they could have been driving an 18-wheeler or something." Later still that day, "after the investigators came to Tallahatchie County," Madden informed Ms. Saulsberry that he had given her name as an alibi witness. She informed him that she could not "vouch for the time" because she had not been "with him all night." He then insisted that he had dropped her off at 5:30, although she distinctly remembered that he had done so "around 4:00." (T.249-52)

Michael Gilmore, senior vice-president in charge of safety and human resources for Ozark Motor Lines, authenticated the vehicle position history for unit 7654, which had been assigned to Andy McCorkle. From his records, Mr. Gilmore could tell that this vehicle "was turned off the afternoon of July 13th, at 3:31 in the

afternoon. It remained off all that evening and was turned on July 14th at 6:52 a.m." (T.257-60)

Willie Garner testified that his wife Teretha was the victim's sister. The morning of July 14, Madden called Mr. Garner between 7:00 and 7:38 to tell him about a "big [motorcycle] race in Louisiana." Mr. Garner agreed to "tag along." Madden went on to inform him that he (Madden) had planned to have dinner with Laura the night before, but that he had been unable to reach her, and that he had decided that he needed to let her "go on with her life." Later that morning, Madden called Mr. Garner again to tell him Laura had been killed. (T.262-67)

Gwendolyn Willis, Laura Willis's daughter, testified that her mother and Madden had been "staying together" for "[a]bout 16 years." When she told him that her mother had been shot, Madden seemed "like he was unconcerned." (T.268070)

Dr. Steven Hayne performed the autopsies on the bodies of the victims. He concluded that Laura Willis had died of "a gunshot wound ... consistent with distance, consistent with re-entry; a gunshot wound of the left side of the neck, producing a gunshot wound of the right common carotid artery, the right jugular vein, with massive external bleeding ... " Mr. McCorkle died of a gunshot wound to the left chest which produced "massive internal bleeding ... " He had also sustained a non-lethal gunshot wound to the left forearm. (T.286-87)

Starks Hathcock, accepted by the court as an expert in the field of firearms identification, testified that the fired shell casings and fragments submitted for his examination had all been fired from the same gun, a .40 caliber. (T.295-306)

The state presented expert testimony that the defendant's cellular phone connected with a tower in Dublin at 5:32 a.m. on July 14; with a tower near the Coahoma-Tunica County Line at 6:01; and with a tower on Hambrick Road, three to four miles from the crime scene, at 6:52 a.m. (T.307-338)

The defendant did not testify, but he did present a defense of alibi. (T.350-64)

SUMMARY OF THE ARGUMENT

The state submits verdicts are based on legally sufficient proof and are not contrary to the overwhelming weight of the evidence. The proof presented a straight issue of fact which was properly resolved by the jury.

Moreover, Madden may not be heard to raise a hearsay-grounded objection to certain testimony for the first time on appeal. He may not put the trial court in error on a point not presented to it.

Finally, the state submits Madden's invocation of the cumulative error doctrine is procedurally barred. It lacks substantive merit as well.

PROPOSITION ONE:

THE VERDICTS ARE BASED ON LEGALLY SUFFICIENT PROOF AND ARE NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Under his first and second propositions, Madden challenges the sufficiency and weight of the evidence undergirding his conviction. To prevail, he must satisfy the following formidable standards of review:

> "If there is sufficient evidence to support a verdict of guilty, this Court will not reverse." *Meshell v. State*, 506 So.2d 989, 990 (Miss.1987). [other citations omitted] This Court should reverse only where, "with respect to one or more elements of the offense charged, the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty." *Alexander v. State*, 759 So.2d 411, 421(¶ 23) (Miss.2000) (quoting *Gossett v. State*, 660 So.2d 1285, 1293 (Miss.1995)).
>
> The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is also well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Collins v. State*, 757 So.2d 335, 337(¶ 5) (Miss.Ct.App.2000) (quoting *Dudley v. State*, 719 So.2d 180, 182(¶ 9) (Miss.1998)). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Collins*, 757 So.2d at 337(¶ 5) (citing *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992)). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Collins*, 757 So.2d at 337(¶ 5) (quoting *Dudley*, 719 So.2d at 182).
>
> *Carle v. State*, 864 So.2d 993, 998 (Miss.App.2004).

Moreover, "[t]his Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss.Ct.App.2001).

Furthermore,

> The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).
>
> (emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss.App.1999).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court reitereated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted] Finally, in this case "[t]here was not a great deal of evidence for the fact finder to weigh since the defendant did

not testify." *White v. State*, 722 So.2d 1242, 1247 (Miss.1998). The defendant's failure to do so left the jury free to give "full effect" to the testimony of the state's witnesses. *Id.*

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the court did not err in submitting this case to the jury and refusing to disturb its verdict. As the prosecutor argued in closing, the defendant had abused and threatened Ms. Willis during their long-term relationship. He specifically threatened to kill her if he caught her seeing a truck driver. The evening before these murders, he called her six times between 5:30 and 6:30. (T.394-95) Regarding the sequence of key events, the assistant district attorney argued as follows:

> We know that the shooting occurred at around 6:52 that morning. We know that at 5:30 that morning when Shundrica Harris left Buck Island Trailer Park her patrol video shows those two trucks were parked side by side where Andy had left it the night before. We know that Laura was supposed to be at work that morning at Gold Strike at 7:00, that she was most likely dropping Andy off. That at 6:52 the records from the trucking compnay indicate that his truck was cranked. We know from the cell phone records that Terry Madden's cell phone registered with the cell phone tower right on Hambrick Road at 6:52. We know that the distance from that tower to the crime scene was just at four miles, that that was within the radius that Mark Winstead testified to she had to be in to hit that tower.
>
> (T.395)

The fact that the victims' personal effects remained on the scene demonstrated that "this was not some random robbery or shooting ... " The state also proved that the defendant had purchased a .40 caliber handgun. (T.395-97)

The state submits the proof created a straight issue of fact for the jury. No basis exists for disturbing the jury's determination that Terry Madden murdered Laura Willis and Andy McCorkle.[1] Madden's first proposition should be denied.

PROPOSITION TWO:

MADDEN MAY NOT BE HEARD TO RAISE A HEARSAY-GROUNDED OBJECTION TO CERTAIN TESTIMONY FOR THE FIRST TIME ON APPEAL

For the first time on appeal, Madden asserts that evidence of prior bad acts constituted inadmissible hearsay. At trial, he objected on the ground of relevance. The objections were overruled at the time. (T.230-31, 240) Thereafter, outside the presence of the jury, the court made these findings and conclusions:

> Let the record show that we have taken our lunch break, that the jury, as well as the spectators have been excused. During the course of this morning's events, a witness– I believe a Mr. Bailey and a Mr. Tribble, Pat Tribble, and a witness were called by the State as concerns prior incidents, acts of violence between this defendant and the victim. An objection was made to this evidence by the Defense. Because the objection was made contemporaneous with the officer of evidence during trial, the Court did not state on the record its reasoning behind the admission of such evidence.

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[1]The jury was instructed that in order to obtain convictions, the state was required to prove Madden guilty beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence. (C.P.141-42)

> The Court will at this time state, for purposes of the record, that in considering the evidence, it viewed the evidence under both Rule 403 and Rule 404(b). The Court did find the evidence to be relevant. However, it also found the evidence to be prejudicial to the defendant. However, finding that the evidence was offered– intended to present matters both as to impeachment as concerns the prior statement of the defendant and as to motive, intent, knowledge, preparation, under Rule 404(b) the Court considered the evidence to be– the probative value of the evidence to outweigh the prejudicial effect, particularly in light of the prior threats which the testimony suggested had occurred between the defendant and the victim.
>
> (T.275)

The defense requested no further action on the part of the trial court. Again, the state submits the sole issue presented to the court was the relevance of the evidence in question. In response to those objections, the court made well-reasoned findings and conclusions. Madden may not be heard to raise a hearsay-based objection for the first time here. "It is elementary that different grounds than the objections presented to the trial court cannot be presented for the first time on appeal." *Thornhill v. State*, 561 So.2d 1025, 1029 (Miss.1989), cited in *White v. State*, 809 So.2d 776, 779 (Miss.App.2002). It follows that Madden is procedurally barred from raising this claim on appeal.

No error has been shown in the court's ruling on the issue presented to it. Madden's third proposition should be rejected.

PROPOSITION THREE:

MADDEN'S INVOCATION OF THE CUMULATIVE ERROR DOCTRINE IS PROCEDURALLY BARRED AND SUBSTANTIVELY MERITLESS

Madden finally contends that the cumulative errors of the trial court mandate reversal of the judgment rendered against him. He did not present this argument at any time in the trial court and may not raise it for the first time on appeal. *Maldonado v. State*, 796 So.2d 247, 260-61 (Miss.2001); *Gibson v. State*, 731 So.2d 1087, 1098 (Miss.1998). His fourth proposition is procedurally barred.

In the alternative, the state incorporates its arguments under Propositions One and Two in asserting that the lack of merit in Madden's other arguments demonstrates the futility of his final proposition. *Gibson*, 731 So.2d at 1098; *Doss v.* State, 709 So.2d 369, 400 (Miss.1997); *Chase v. State*, 645 So.2d 829, 861 (Miss.1994). See also *Brown v. State*, 682 So.2d 340, 356 (Miss.1996) ("twenty times zero equals zero"). Madden's invocation of the cumulative error doctrine lacks substantive merit as well.

CONCLUSION

The state respectfully submits the arguments presented by the appellant are without merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 Charles E. Webstter
Circuit Court Judge
Post Office Drawer 998
Clarksdale, Mississippi 38614

Honorable Laurence Y. Mellen
District Attorney
Post Office Box 2514
Tunica, Mississippi38676

Johnnie E. Walls, Jr., Esquire
Attorney at Law
P.O. Box 634
Greenville, Mississippi 38702

This the 15th day of May, 2009.

DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

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