**IN THE SUPREME COURT OF MISSISSIPPI**
**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2008-KA-01269-COA**

**TERRY LEE MADDEN** — **APPELLANT**

**VS.**

**STATE OF MISSISSIPPI** — **APPELLEE**

# REPLY BRIEF OF APPELLANT

**AN APPEAL OF THE CONVICTION FOR TWO COUNTS OF MURDER IN VIOLATION OF MISSISSIPPI ANNOTATED CODE SECTION 97-3-19 AND A SENTENCE TO TWO LIFE SENTENCES WITHIN THE CUSTODY AND CONTROL OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**APPELLANT IS CURRENTLY INCARCERATED**

**(ORAL ARGUMENT REQUESTED)**

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## SUMMARY OF THE ARGUMENT

Appellant in its initial Brief contends that the verdict was against the overwhelming weight of the evidence and the verdicts evinced bias and prejudice against the Appellant, and that the trial Court erroneously failed to grant the Appellant's Motion for A Directed Verdict at the close of the State's case in chief, and erroneously failed to set aside the verdict of the jury after considering Appellant's Motion For a Judgment Not Withstanding the Verdict or in the alternative a New Trial.

In its brief Appellee opines and argues that the verdicts against the Appellant were based upon "legally sufficient proof" and were not contrary to the overwhelming weight of the evidence presented at the trial for the jury's consideration, and that "the proof presented ***a straight issue of fact*** which was properly resolved by the jury." [Emphasis Added] Appellant respectfully disagrees.

## ARGUMENT

The primary and straight issue presented to the jury was "whether or not Terry Madden, Appellant, killed Laura Willis and Andy McCorkle on the early morning of July 14, 2007 in Tunica County, Mississippi." The issue made by the Appellant on appeal was "whether or not the evidence presented was sufficient to prove to the Jury beyond a reasonable doubt that Terry Madden was the person who killed Laura Willis and Andy McCorkle on the early morning at approximately 6:52 a.m. of July 14, 2007 and whether the finding of guilty by the jury at the trial of this cause was contrary to the overwhelming credible evidence presented."

Evidence is defined as competent and admissible proof which enables the Trier of fact to resolve the issue presented. As stated succinctly the issue to be resolved in this case was whether Terry Madden, Appellant, the person who killed and murdered Laura Willis and Andy McCorkle as charged in the indictment. Laura and Andy were found shot to death in their respective vehicles with all of their personal property intact and undisturbed. Both were obviously shot from outside of their vehicles by someone who used a .40 Caliber weapon, since a .40 Caliber spent shell was found at the scene of the murders near the 18 wheeler driven by the deceased Andy McCorkle and a .40 Caliber spent shell casing was found in a puddle of water next to the car of Laura Willis. The projectiles found in

or near their bodies were found to have come from the same weapon. There was no evidence, however, presented to identify the .40 Caliber weapon from which the .40 Caliber shell casings or projectiles were fired. There was no .40 Caliber weapon found either on the crime scene, on the property or person of the Appellant, or anywhere.

The Appellee presented evidence that the Appellant had in his possession, a .40 Caliber weapon, approximately two (2) to one and a half (1 ½ ) years prior to the murders. Although the appellant denied ever owning a .40 Caliber weapon, proof was presented that the Appellant bought a .40 Caliber handgun from Bobbie Robinson, owner of Robinson's Gun and Ammo, on April 27, 2005 more than two years prior to the murders. Further proof was presented that on January 27, 2006, more than a year and a half prior to the murders, the Appellant and the deceased Willis were arguing and at the scene of the argument a Deputy Sheriff, Clifton Bailey, retrieved a .40 Caliber handgun that he had seen thrown from a car in which they were arguing. Bailey later returned the weapon to the Appellant. Perhaps this was proof that Appellant lied about his ownership of a .40 Caliber handgun, but despite the alleged lie, there was no proof presented that on the morning of the murders the Appellant still possessed the .40 Caliber weapon which he allegedly purchased or was given to him by Deputy Bailey following the earlier argument with the deceased Willis. Further there was no proof presented that the .40 Caliber weapon

purchased by Appellant was the weapon that was used in the crimes, or that the .40 Caliber weapon allegedly used in the crimes was linked to the Appellant in any way. There was no proof presented that showed that the Appellant actually had a .40 Caliber weapon in his possession on the morning of the crimes or that he used the particular .40 Caliber weapon that left the .40 Caliber spent shell casings at the crime scene except by way of speculation, guesswork, conjecture or supposition. At best the .40 Caliber evidence raised a suspicion about the Appellant, but did not lead to a conclusion beyond a reasonable doubt and to the exclusion of every other reasonable hypothesis consistence with innocence that Appellant committed the murders.

There was evidence presented from a neighbor of Appellant who testified that Appellant had "hit" the deceased Willis, told her to get out of his yard, and said he was going to kill her although the record does not reflect when that incident occurred. Barbara Willis, sister of the deceased, Laura Willis, testified that her sister and the Appellant had a longtime, on-again off-again relationship, that Appellant "never treated her sister right," and that she heard the Appellant threaten to kill her if he caught her "going with a truck driver." There was no evidence presented as to when that threat occurred. The said evidence only allowed the jury to speculate and guess, but did nothing to aid the jury in resolving the issue of whether the Appellant committed the murders or not—i.e., to identify the Appellant as

the perpetrator of the crimes. At best such evidence may have caused one who heard it to strongly view the Appellant as a suspect, but no more. It does not lead one to the conclusion that Appellant was the only person under the circumstances who could have been the killer. Could one believe from this evidence that the Appellant ***could have been*** the killer? Yes! But does it lead one to the conclusion beyond a reasonable doubt that the Appellant ***was*** the killer? No!

Appellant when interviewed the afternoon of the murders allegedly told investigators that he and the deceased Willis were no longer together, having broken up in February, but he had heard about the murders. He told them that he was scheduled to eat dinner with her the evening prior to the murders, but was unable to reach her by phone after having tried to call her several time. He gave investigators his cell phone number and told them that on the morning of the murders he was in Sumner at his residence which is more than sixty (60) miles from the scene of the murders. He acknowledged that he had his cell phone with him. Appellee presented the testimony of Arthinia Salsberry that Appellant picked her up shortly after midnight and took her to his house where she stayed with him until he woke her up around four o'clock on the morning of the murders and drove her home which was "down the road" from his home, and she further said he called her later that morning "at about 8:00," told her he had been told Laura had been killed, and allegedly tried to get her to agree

that he had dropped her off at home around 5:30 that morning, which he disputed. Assuming that the testimony of Salsberry was truthful and accurate, it offered no proof to the jury that showed beyond a reasonable doubt that the Appellant was the killer.

Testimony was presented from Willie Garner, who was the husband of the deceased's Willis's sister, and that Appellant had called him between 7:00 and 7:38 a.m. on the morning of the murders and told him about a "big motorcycle race in Louisiana" and asked him if he would like to tag along. Appellant told him about a planned dinner date with Laura that did not occur the night before and that he was going to leave her alone. After hanging up, Appellant called him again later and informed him that Laura had been killed. Further the daughter of the deceased Willis, Gwendolyn Willis, testified that her mom and Appellant had been "staying together" for 16 years. She further testified that when she told Appellant that her mom had been shot and killed he seemed "like he was unconcerned."

Appellant queries, "Does the testimony of Garner and Gwendolyn Willis assist the jury in determining whether or not Appellant committed the murders? The answer is "No!" Did that evidence provide to the jury with evidence of the identity of the murderer. Again, the answer is "No."

The pathologist, Dr. Steven Hayne, testified that the cause of death of both victims was due to gunshot wounds. The Firearms Identification Expert, Starks Hathcock testified that the shell casings and fragments

found and submitted by investigators for his examination had all been fired from the same gun, ***"a"*** .40 Caliber weapon. [Emphasis Added.] No testimony was offered by him about ***"a particular .40 Caliber weapon"*** being identified or used in the crimes which was linked to the Appellant. [Emphasis Added.]

The Appellee further presented testimony from an expert that Appellant's cellular phone connected with a tower in the Dublin, Mississippi area at 5:32 a.m. on July 14, the morning of the killings, that it also connected with a tower near the Coahoma-Tunica County Line at 6:01, and with a tower on Hambrick Road, within three (3) to four (4) miles from the crime scene, at 6:52 a.m. The evidence further presented showed that U.S. Highway 61 which extends from Clarksdale to Memphis, Tennessee passed through Tunica County, Mississippi through the coverage of the tower on Hambrick Road within the three (3) to four (4) mile radius from the crime scene. Yet there was no physical evidence presented that suggested or showed that the Appellant was personally present at the scene of the crimes at the time of the killings. At best such evidences could only lead the jury to the conclusion that the Appellant ***could have been in the area***, but did not lead to the conclusion that the Appellant ***was at the scene*** of the crime and ***was the killer*** beyond a reasonable doubt and to the exclusion of every other reasonable conclusion consistent with the innocence of the Appellant. [Emphasis Added.]

The Appellee has argued that in order for the Appellant to prevail, he must satisfy the standard set forth in ***Meshell v. State***, 506 So.2d 989, 990 (Miss. 1987) that unless "there is sufficient evidence to support a verdict of guilty, this Court will not reverse." Appellant agrees, but strongly asserts that the Appellee has failed to present sufficient evidence to support the verdict of guilty on both counts of murder, especially if it relies on the aforementioned testimony.

The Appellee further has argued that "This Court should reverse only where, " with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty." ***Alexander v. State***, 759 So.2d 411, 421 (Para. 23)(Miss. 2000)(quoting ***Gossett v. State***, 660 So.2d 1285, 1293 (Miss. 1995)) considering the evidence presented in the case at bar, fair minded jurors could only have found the Appellant not guilt. The only elements of the crimes proven were that the people were killed by gunshots on the morning alleged, but the evidence presented at trial and discussed herein could not demonstrate to a fair minded jury beyond doubt and to the exclusion of every other reasonable conclusion consistent with innocence that the Appellant was the person who committed the crimes. It could not be done without speculation, conjecture, guesswork, or supposition.

Appellant further agrees that the standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is

well settled and is that "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced the circuit court has abused its discretion in failing to grant a new trial," citing ***Collins v. State***, 757 So.2d 335, 337(Para. 5)(Miss. 2000) (quoting ***Dudly v. State***, 719 So. 2d 180, 182(Para. 9)(Miss. 1998)). Appellant asserts that a candid and discerning review of the evidence presented reveals that there was no evidence presented which should be accepted as "true" since there was no physical or tangible evidence or testimonial evidence that directly or circumstantially connected the appellant to the crimes without speculation, supposition, or guesswork that would support a finding beyond a reasonable doubt of the Appellant's a guilt.

Appellee rightly argues that "[O]n review, the State is given the 'benefit of all favorable inferences that my reasonably be drawn from the evidence." ***Collins v. State***, 757 So.2d at 337 (Par. 5) (citing ***Griffin v. State***, 607 So.2d 1197, 1201 (Miss. 1992). What favorable inferences can be "reasonably" drawn of the Appellant's guilt beyond a reasonable doubt from the testimony of the witnesses which were presented by Appellee discussed herein? Appellant strongly asserts that there is no favorable inferences that can be reasonably drawn from same that would be conclusive of Appellant's guilt.

The credibility of witnesses is really not at issue here! Assuming the jury believed all of the witnesses presented by the Appellee, same would not

and could not lead to a conclusion beyond a reasonable doubt of the Appellant's guilt under the circumstances of this case, since there was no evidence obtained and presented which demonstrated a clear and reasonable nexus between the Appellant and the crimes, such as eyewitness identification testimony of the actual crimes or the alleged perpetrator, and/or evidence of latent fingerprints, DNA, footprints, tire tracks, gun powder residue, stains, or fibers which places the Appellant at the scene of the crimes, or gun powder evidence or the alleged murder weapon found and linked to the crime and/or to the Appellant.

An unconscionable injustice cries out from the verdicts of guilty in then nhj case at bar. The verdicts clearly are based on sheer and utter speculation, conjecture and guesswork based on collateral matters testified to by the lay witnesses. The guilty verdicts should be set aside. As also cited by the Appellee, ***Collins v. State***, supra, that is also instructive on this point, where the Court says "[O]nly 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 the Court disturb it on appeal." ***Collins***, at 337 (Para. 5)(quoting ***Dudley***, Supra, 719 So.2d at 182.

Finally Appellee argues that this case involves simply a straight issue of or conflict in facts and cites ***Hales v. State***, 933 So.2d 962, 968 (Miss. 2006) to support its position, where Court says "where there is a straight

issue of fact, or conflict in the facts....." "juries are impaneled for the very purpose of passing upon such questions of disputed facts, and [the Court does] not intend to invade the province and prerogative of the jury." Appellee also suggests that "the fact that the Appellant chose not to testify left the jury free to give 'full effect' to the testimony of the State's witnesses, citing ***White v. State***, 722 So.2d 1242, 1247 (Miss.1998).

Appellee can find no solace in such a position. The "full effect" of Appellee's witnesses is not enough to support a verdict of guilty beyond a reasonable doubt. None of the witnesses could place the Appellant at the scene of the crime, committing the crime, either circumstantially or directly, and none of the witnesses could eliminate the fact that the evidence presented could reasonably lead to the conclusion that some person other than the Appellant, including but not limited to the wife of the truck driver or someone acting on her behalf.

## CONCLUSION

For the above and foregoing reasons Terry Madden, Appellant herein respectfully reiterates his request that this Honorable Court reverses and renders his convictions and sentences herein, and/or remands his case to the trial Court for a new trial or further appropriate proceedings.

Respectfully submitted,

Johnnie E. Walls, Jr.

## CERTIFICATE OF SERVICE

I, **Johnnie E. Walls, Jr.**, attorney of record for Appellant, hereby certify that I have this day caused to be mailed by first-class mail, postage prepaid, a true and correct copy of the foregoing Reply Brief of Appellant to:

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Witness the signature of counsel for Appellant on this the 9th day of June, 2009.

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