

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00456 COA**

KENNY RAY MOORE

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/19/96
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	SCOTT COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JANE E. TUCKER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: WAYNE SNUGGS
DISTRICT ATTORNEY:	KEN TURNER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 12 YEARS IN THE MDOC.
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

BEFORE THOMAS, P.J., KING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

PROCEDURAL HISTORY

Kenny Ray Moore was convicted in the Circuit Court of Scott County on a charge of aggravated assault and was sentenced to a term of twelve years in the custody of the Mississippi Department of Corrections. Aggrieved by the judgment rendered against him, he perfected his appeal to this Court. After reviewing the facts and the law applicable to this case, we affirm the conviction below.

FACTS

Kenny Ray Moore and Kimberly Ficklin were boyfriend and girlfriend. From this bond, the couple produced a child named Shakkur. From this point on, the testimony by and large is conflicting.

Kenny Ray's rendition of the facts, as per his testimony, was that he showed up at the Ficklin's home in order to visit his son. He was armed with a gun but had this protection in order to fend off Kimberly's father who, according to Kenny Ray, had previously threatened him. Kenny Ray explained that he and his estranged girlfriend had an argument, wrestled, and due to this physical confrontation, his gun accidentally went off.

Kimberly tells a different story. At approximately 11:00 a.m. on March 29, 1995, she was sitting in the living room of her mother's house in Forest, with her son resting in her lap. According to Kimberly, Kenny Ray approached the screen door, opened the door, then pointed the .9 millimeter handgun at her, at the same time saying, "I told you I was going to get you."

From that point in time, she says the defendant pulled the trigger of his gun. The gun jammed. Because the gun jammed, Kenny Ray was forced to replace the clip. Kimberly states that she knew that he wanted to shoot her, so she cast her baby to the side and made for the hall of the house. Unfortunately, Kimberly was shot in the arm, but the bullet traveled through her spleen and kidney before finally retiring in her spinal column. Kimberly underwent surgery and had a rod implanted, which ran from her shoulder to her elbow. According to her testimony, a nerve in her right leg had been destroyed from the incident, and she continues to have difficulty walking.

Eartis Smith, Kimberly's mother, testified that Kenny Ray "ran up in the front door, and pulled out a gun." She then went on to say, that he said, "I told you I'm going to get you." Eartis Smith says that she frantically ran from the house to that of a friend and told the occupants to call the police.

Another witness, Dot Robinson, was visiting her daughter, who lived right behind Eartis Smith's house. Dot testified that she saw Kenny Ray unsuccessfully attempt to open the door to Eartis Smith's house. She said Kenny Ray then went to another door in order to gain entry. Shortly after that, Dot says she heard a gunshot and saw Eartis "come out of the backdoor running" with Kenny Ray in pursuit, "with the gun."

The defendant gave the following statement to the police:

At approximately 11:13 a.m. I pulled up on the street by Kimberly Ficklin's house and p[ar]ked [parked] my Pontiac Grand Am. I had my .9 millimeter in my pocket. I got out of my car and walked to the front door and knocked. Kimberly said come in. I asked her was she ready for me to get the baby. I had pulled the gun out of my pocket and had it in my right hand. Kimberly was sitting on the couch. She got up and started toward the kitchen. I shot the gun and she fell. I shook her and I ran out the door. I was trying to unjam the gun. I ran to my car, got in, and drove to Southside Mart 501. I then got on 80 and went to Morton. I met two ambulances on highway 80 by the junkyard. When I got to Morton, a police car got behind me and followed me to my grandma's house, where Jeff Robertson arrested me. The gun I shot Kimberly with was lying on the seat. Jeff put me in his car and carried me to the Police Department.

ARGUMENT AND DISCUSSION OF THE LAW

I. WHETHER COUNSEL'S PERFORMANCE WAS SO DEFICIENT AS TO PREJUDICE HIS CLIENT'S RIGHT TO A FAIR TRIAL. WHETHER THE TRIAL COUNSEL WAS INEFFECTIVE WHEN HE ELICITED FROM THE VICTIM TESTIMONY THAT THE DEFENDANT HAD PREVIOUSLY THREATENED HER AFTER THE COURT HAD RULED THAT THE PROSECUTOR COULD NOT INTRODUCE THIS EVIDENCE. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST A LESSER INCLUDED OFFENSE INSTRUCTION OF SIMPLE ASSAULT. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE KENNY MOORE'S COMPETENCE AND/OR SANITY PRIOR TO TRIAL. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INQUIRE FURTHER OF JURORS WHO RESPONDED POSITIVELY WHEN ASKED WHETHER THEY BELIEVED THAT "WHERE THERE'S SMOKE THERE'S FIRE."

Kenny Ray insists that his counselor's legal performance in this case was severely defective. To begin with, he states that his trial attorney, Firnist Alexander, while aware that his condition might require the raising of the mental health issue, failed to pursue this issue and present them in either a competency hearing and/or employ the insanity defense.

Further Kenny Ray argues that Alexander failed to conduct a voir dire sufficient enough to determine whether there were prospective jurors who would enter the trial believing that the defendant must have done something wrong. Kenny Ray also insists that his trial counsel introduced evidence of prior threats made by his client even though an earlier ruling of the trial court had prevented that evidence from being given to the jury. Finally, Kenny Ray suggests that his trial attorney failed to request an instruction of simple assault, which was consistent with his combination of facts.

This cumulation of errors, he argues, undermines confidence in the outcome of his case. For this, he reasons, he is entitled to either a judgment of acquittal or a new trial.

Kenny Ray's first contention is devoid of merit. In order to succeed on ineffective assistance of counsel, he must meet the two-pronged test set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and reiterated by the Mississippi Supreme Court as follows:

Under the first prong, the movant "must show that the counsel's performance was deficient and that the deficient performance prejudiced the defense." Here there is a strong presumption of competence. Under the second prong of the test, the movant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." The defendant must prove both prongs of the test.

Mohr. v. State, 584 So. 2d 426, 430 (Miss. 1991).

As to the first prong, it is presumed "that trial counsel's conduct is within the wide range of reasonable conduct and that decisions made by counsel are strategic." *Edwards v. State*, 615 So. 2d 590, 596 (Miss. 1993). Understandably, the *Strickland* standard "is difficult to establish, and

appropriately so." *Knox v. State*, 502 So. 2d 672, 676 (Miss. 1987).

Moore enumerates particular lapses, the first of which is that his attorney elicited from the victim testimony that he had threatened her previously. The issue was raised on a motion for a new trial. The State argued the following:

[A]pparently what Mr. Alexander was doing, she had testified that she was sitting there with the door unlocked, and he was just trying to show the inconsistency in her statement that she was sitting there unafraid with the door unlocked, when supposedly she took the position that the Defendant had threatened her before. He was simply trying to show an inconsistency in her testimony.

Without resort to hindsight, one cannot show that an attorney employs unsound trial strategy by attempting to paint the victim's testimony as illogical. Indeed, the trial court ruled that it could not be said that these tactics were not legitimate trial strategy. *See Blue v. State*, 674 So. 2d 1184, 1199-1200 (Miss. 1996). The court also found that no prejudice had been shown. For these reasons, Moore's first claim of ineffective assistance of counsel fails.

Next, Moore submits his counsel was ineffective in failing to request a lesser-included offense instruction. Again the State rebutted this contention as follows during the hearing on the motion for a new trial:

I don't think that under any theory of the facts the Court heard, a simple assault instruction would have been proper. The State's theory was the Defendant had intentionally come in there and announced that he was going to shoot Kimberly Ficklin, and he did shoot her.

His side of the story was that he came in there and the only reason he had a pistol was because her father had threatened to kill him on sight, and, so, he had that in his pocket for protection and that it simply fell out of his pocket and went off when it hit the floor, which would be a complete defense, if the jury bought it, that it was just an unfortunate accident but not simple assault.

Even the defendant's testimony supports this argument posed by the prosecution. When asked whether his position was that the shooting was an accident, he stated, "yes, sir." Because the proof showed that Moore was either guilty of aggravated assault or that he had the complete defense of accident, no evidentiary basis existed for a simple assault instruction, and counsel cannot be faulted for failing to request one. *Blue*, 674 So. 2d at 1201. Furthermore, even where the evidence supports a lesser-included instruction, counsel may as a matter of trial strategy decline to request one. *Hiter v. State*, 660 So. 2d 961, 965 (Miss. 1995). A lesser-included offense instruction is properly refused when the operative facts constituting the offense do not provide an evidentiary basis for the lesser-included offense. *Pinkney v. State*, 538 So. 2d 329, 354 (Miss. 1988). The defendant desires a lesser-included instruction of simple assault. The pertinent portion of *Miss. Code Ann. § 97-3-7 (Rev. 1994)* Moore is concerned with reads : "(1) A person is guilty of simple assault if he (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another." From our review of the facts taken as either the prosecution sees them (where the defendant's actions were intentional) or as the defendant sees them (where the defendant's actions were a mere accident), we

cannot find an evidentiary or factual basis for including simple assault. According to Kenny Ray Moore, he did not attempt to effectuate, either purposefully, knowingly, or recklessly an injury onto his former sweetheart.

In addition to the above noted remarks, Moore complains that his attorney failed to investigate his competence and/or sanity prior to trial. Moore is correct in citing the law. It is true that criminal defendant's have a constitutional due process right not to be tried while incompetent. ***Bishop v. U.S.*, 350 U.S. 961 (1956)**. It is also a basic tenant that the defendant have "the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." ***Drope v. Missouri*, 420 U.S. 162, 171 (1975)**. However, Moore has failed to show us that he was in fact incompetent to stand trial or that he had a viable insanity defense. Inferentially, Moore argues that unless his defense counsel explores this line of defense, his attorney has summarily not rendered effective assistance. After reviewing the record before us, we have found documentation from Dr. Reginald P. White, M.D.

Dr. White saw Kenny Ray Moore for a psychiatric evaluation and current mental status review. Dr. White stated:

In summary, I have examined Kenny Ray Moore for purposes of the use by your office and his defense counsel in determining his ability to cooperate with his attorney in the preparation of and presentation of his defense. Also I am requested to give an expert psychiatric opinion as to whether he understands the nature of his act, and the rightness or wrongness of his actions.

In that order I am able to state that at the present time Mr. Moore, although very anxious and depressed on a situational basis, is in satisfactory reality contact, and that he is capable of participation in his attorney's representation of him at the time of the court trial.

Second, based on my examination, Mr. Moore shows no evidence or that degree of mental impairment that would prevent him from appreciating the nature of the rightness or wrongness of his actions, and since he is not out of reality contact at the present time, I can find no evidence that he was without the ability to comprehend the consequences of his alleged actions. Stated in specific terms, Mr. Kenny Ray Moore, in my opinion, is mentally competent to assist in his defense, and mentally competent to proceed to trial on his charges.

This analysis, from which the doctor summarized his comments took place on August 8, 1995. The date of the incident in question took place March 29, 1995. From reading this critique formulated by Dr. White, we are convinced that Kenny Ray Moore had the capacity to assist in his defense.

Finally, Moore argues that his trial attorney rendered ineffective assistance during voir dire when he failed to inquire further into jurors who indicated that they believed "where there's smoke there's fire." Mr. Alexander broached this issue by stating, "Now, is there anyone here who believes that where there's smoke, there's got to be some fire, and if he hadn't done something, he wouldn't even be sitting in this courtroom today?" Four veniremen, Otis Craig, Henry Clanton, Bruce Parrott, and Catina Rankin, raised their hands. None of these individuals sat on the jury, thus we can not find how the defendant was prejudiced.

As stated above, the *Strickland* test is not easy to establish. In this case, Moore failed in his attempt

to do so.

II. WHETHER TRIAL COURT ERRED IN NOT ALLOWING THE INTRODUCTION OF LETTERS WRITTEN BY KIMBERLY FICKLIN TO KENNY RAY MOORE AFTER THE SHOOTING TO SHOW FICKLIN'S BIAS. WHETHER THE TRIAL COURT ERRED IN FAILING TO FOLLOW *BOX V. STATE* WHEN CONFRONTED WITH THE PROSECUTION'S OBJECTION THAT THE LETTERS HAD NOT BEEN PROVIDED IN DISCOVERY.

The second issue concerns two letters written by Kimberly Ficklin to Kenny Moore after the March 29, 1995, incident. At the beginning of the defendant's case in chief, the defense called Kimberly Ficklin to the stand. Specifically, the defense was interested in eliciting a response concerning two letters.⁽¹⁾

The prosecution objected to the introduction of the letters because it had not been previously tendered copies of the letters. The court initially ruled that the letters were irrelevant, inasmuch as they had no bearing on what had occurred some nine months earlier, the date of the shooting in March, 1995. The district attorney also argued that the letters were not relevant. "[W]hether this witness may or may not have wanted to reconcile with the Defendant, has no relevance as to whether or not he did what the testimony says he did." After an in chambers hearing on the admissibility of the letters, the trial judge ruled the subject matter of the letters relevant and allowed their entry for identification purposes, but excluded the actual documents because they had not been provided through discovery. However, from his exchange with the defense attorney afterward, it appears that the judge changed his prior ruling because of the discovery violations.

BY THE COURT: I am going to allow the matters in and overrule the objection on the question of relevancy, but I am going to sustain the objection to this particular document on the grounds discovery has not been complied with.

BY MR. ALEXANDER: There are two documents, your Honor.

BY THE COURT: I have only seen one.

BY THE COURT: I am going to sustain the objection on the grounds discovery has not been complied with.

BY MR. ALEXANDER: As to both documents, your Honor?

BY THE COURT: Yes.

Under these circumstances, the exclusion of the letters themselves does not require reversal. However, Moore argues that the *Box* rules were not complied with. *Box v. State*, 437 So. 2d 19, 23 (Miss. 1983). Thus, he states, an error was committed. The *Box* guidelines are:

1. There must be a timely objection toward the introduction of evidence which was not, but should have been disclosed pursuant to the discovery rules.
2. The court should grant a continuance if the injured party believes that he will be prejudiced if

the evidence is offered without his having had the opportunity to investigate the credibility of the evidence.

3. If the offeror of the evidence is of the opinion that it wants to use the witness or evidence in its case, the order for a continuance must stand, unless at the offeror's election, he withdraws his offer of the evidence in dispute and proceeds without use of the evidence in question. Then the continuance will be withdrawn.

Id.

In this case the defendant attempted to introduce the letters without providing adequate discovery and now vainly attempts to employ *Box* as a means of attacking the conviction imposed upon him. Moore says that the district attorney should have followed *Box*, and requested a continuance. This argument is misplaced. From our review of the law, the *Box* guidelines should not be invoked. Because the judge sustained the objection made by the prosecution, we can not say the State was prejudiced by introduction of the evidence, and that is what the *Box* guidelines are used for, to thwart prejudice that may arise from the introduction of late incoming evidence. The evidence (the letters) was simply not introduced, thus the second prong of *Box* has not been violated. As the Mississippi Supreme Court has said, "[a] trial judge has broad discretion as to the admissibility of evidence. Unless this discretion is so abused as to be prejudicial to the accused this Court will not reverse the lower court's ruling." *Dye v. State*, 498 So. 2d 343, 344 (Miss. 1986) (quoting *Shearer v. State*, 423 So. 2d 824 (Miss. 1982)). We do not find that the judge in this instance abused his discretion by restricting this evidence.

Aside from introducing the actual documents, and the subsequent reconciliatory attempts these letters may or may not have evidenced, Kenny Ray was given free reign to explore the information mounted against him. Thus, it cannot be said under these facts that the defendant's right of cross-examination was improperly restricted. *Knox v. State*, 502 So. 2d 672, 674 (Miss. 1987). From our examination of the law, the trial court did not commit any error by excluding the victim's letters. Thus, we reject the defendant's argument that he was not allowed to fully effectuate his defense.

III. WHETHER THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT IN THE ABSENCE OF CHOSEN COUNSEL.

At the time that Kenny Moore was called to his sentencing hearing he was advised that his attorney had been suspended from the practice of law, thus would be unable to attend the hearing. However, attorney Thomas Lee, a member of the local bar, was called to represent and did represent the defendant at the hearing.

The record reflects at this hearing the defendant did not object to this appointment of counsel. In fact, the defendant remained silent and lodged no objection to this appointment, even after he was given the opportunity to confer with his new attorney. Alternatively, the State submits no prejudice from the court's action has been shown. Mr. Lee presented mitigating factors to the court, and the judge ultimately sentenced the defendant to a sentence of twelve years, considerably less time than the statutory maximum. For these reasons, we find Moore's assignment of error to be without merit.

IV. WHETHER CUMULATIVE ERRORS IN THIS CASE ARE CAUSE FOR A NEW

TRIAL.

Kenny Moore argues that the cumulative errors in the case warrant granting him a new trial. He further notes that especially those errors concerning the ineffective assistance of trial counsel require granting him a new trial. The State argues that Moore in fact received a fair trial, thus should not be given a new one. We agree with the State.

CONCLUSION

Kenny Ray Moore's arguments are devoid of merit. Having read the record and the law appropriate to this action, we find that the defendant, Kenny Moore, received a fair trial before a jury of his peers.

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, AND KING, JJ., CONCUR. SOUTHWICK, J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, C.J., AND McMILLIN, P.J.

SOUTHWICK, J., CONCURRING:

In my view the majority reaches the right result but by a path that I believe detours on occasion from the correct one.

The questions regarding potential ineffectiveness of counsel in this case are serious ones. The majority properly treats them as such. One of the alleged errors is failure to request a lesser included offense instruction. Moore's defense was that the bullet that seriously injured his victim was fired accidentally, not intentionally. During the hearing on a motion for new trial, the State argued that a lesser included offense instruction for simple assault was not supported by the evidence. An accidental shooting, the State argued, could not be simple assault but instead was a "complete defense." The majority agrees with that position. I do not.

The assault statute is divided into separate sections, one for simple assault and the other for aggravated assault. **Miss. Code. Ann. §97-3-7 (Rev. 1994)**. Moore was indicted under the section that penalizes a defendant who attempts "to cause or purposely or knowingly causes bodily injury to another with a deadly weapon. . . ." **Miss. Code. Ann. §97-3-7 (2)(b)**. However, use of a deadly weapon does not automatically make a lesser included offense instruction of simple assault improper. The *simple* assault section penalizes a defendant who "negligently causes bodily injury to another with a deadly weapon. . . ." **Miss. Code. Ann. §97-3-7(1)(b)**. Had Moore in fact accidentally caused the weapon to fire, and that accident was negligence on his part, then he might have been guilty of simple assault.

Had Moore requested a simple assault instruction, I believe it would have been error to refuse it. However, Moore did not make that request. We are called upon to determine whether failure to request the instruction was ineffective assistance of counsel. I agree with the majority that decisions

on whether to request such an instruction are part of trial strategy. Under the instructions given, had the jury determined that the injury was an accident, they would have been obligated to acquit Moore in the absence of a simple assault instruction. Had the factual basis for accident appeared more convincing, it might well have been the State who was requesting this instruction. Defense counsel is entitled to enhance the opportunity for acquittal by refusing to seek a lesser included offense instruction.

Finally on this issue, the majority cites a case to support its position that Moore was guilty of aggravated assault or was completely innocent of any crime because of accident. ***Blue v. State*, 674 So.2d 1184, 1201 (Miss. 1996)**. That was a capital murder conviction, in which a lesser included offense instruction for manslaughter was sought. ***Id.*** All the case states is that before an instruction on a lesser offense -- manslaughter, simple assault, or anything else -- is presented to the jury, "it must be supported by the evidence, however meager that evidence might be." ***Id.*** That case does not state that an accidental shooting is no crime at all. It quite clearly is simple assault if the accident is due to negligence. ***Hutchinson v. State*, 594 So.2d 17, 19 (Miss. 1992)**.

I also believe that the majority errs in discussing the exclusion of certain evidence because of an alleged discovery violation. The two letters from the victim to the defendant, sent months after the shooting involved in this case, were being offered to prove the victim's possible motive for false testimony. The two letters show that the victim, who is the mother of the defendant's child, was trying to renew her relations with the defendant. Apparently the effort to impeach the victim based on these letters was to show that her desire for reconciliation was rebuffed by the defendant, and for that reason the victim was angry and distorting her testimony. Such impeachment is proper.

The majority states that the failure of Moore to provide notice of these documents in discovery was properly resolved by the trial judge's exclusion of the evidence. The majority states "because the judge sustained the objection made by the prosecution, we cannot say the State was prejudiced by introduction of the evidence, and that is what the *Box* guidelines are used for, to thwart prejudice that may arise from the introduction of late incoming evidence." In other words, the majority says that there is no obligation to apply the dictates of what is now Uniform Circuit and County Court Rule 9.04, if the evidence is excluded. To the contrary, this rule is intended to structure a trial judge's response to previously undisclosed evidence in order to protect the surprised party, but also allow the pursuit of truth to continue at the trial.

The quoted part of the Rule below is written in terms of a violation of discovery by the State. A subsequent portion of the Rule says "the court shall follow the same procedure for violation of discovery by the defense." The Rule provides:

If during the course of trial, the prosecution attempts to introduce evidence which has not been timely disclosed to the defense as required by these rules, and the defense objects to the introduction for that reason, the Court shall act as follows:

1. Grant the defense a reasonable opportunity. . . to examine the newly produced documents. . . ; and
2. If, after such opportunity, the defense claims unfair surprise or undue prejudice and seeks a continuance or mistrial, the court shall, in the interest of justice and absent unusual

circumstances, exclude the evidence or grant a continuance for a period of time reasonably necessary for the defense to meet the nondisclosed evidence or grant a mistrial.

U.C.C.R. Section 9.04 I. It is evident that the Court's exclusion of the evidence is a decision to be made after going through the process set out in the Rule. Making the decision to exclude before applying the Rule is error.

Examining the evidence indicates that the two letters would have shown the jury that the victim was strongly interested in late December 1995 to resume cohabitation with the defendant. The shooting occurred on March 29, 1995, while the trial was in February, 1996.

Though the right procedure for determining what to do with this evidence was not followed, I believe the error was harmless. The judge failed to comply with the rule previously discussed, but he did permit the victim-witness to be cross-examined upon the content of the letters. Thus the possible motive to fabricate testimony, based on Moore's refusal to reconcile with the victim, was fully explained to the jury. I find no reversible error from the fact that the documents themselves were not provided to the jury.

It is on these two issues that I concur in result only, and in the remainder of the opinion I join.

BRIDGES, C.J. AND MCMILLIN, P.J., JOIN THIS SEPARATE OPINION.

1. Letter dated 12-20-95:

Dear Kenny,

How are you? I'm doing fine and so is our son. I've been thinking about you since we last met. I want to know how serious you are about us. I know what you said, but under the circumstances, I need proof that you still care. I know you will always care about Shakkur, but that still leaves me. If you don't feel the same way I feel about you, I want you to let me know now. I have doubts that you may be faking with me. You may be juicing me just to see your son. I have always told you, I never wanted you to stop seeing him, but you made that decision when you did what you did. If we are going to have any type of future, we have to communicate and start planning now. If we are going to do what we said, I want you to keep in touch with me on how things are progressing. I've gotten a P.O. Box at the post office and we can keep in touch like that. If you want to write or send anything you can send it there. The address is: P.O. Box 815, Forest, MS 39704

The letter of 12-26-95:

Dear Kenny,

How are you? Fine I hope. Shakkur and I are doing fine. I've been thinking about you lately and the more I think, the more I want us back together. As a family, no matter what anyone says we can conquer all. I'm getting to the point where I should live by your motto; just live "one day at a time." What I want you to do is keeping looking for someone else. If you don't think I'm Miss Right, I wont hate you for being interested in someone else. The way I see it, is that if we are meant to be together, it will happen. This doesn't mean I am giving up, I'm just going to break

up off you for a while. I believe that may have been my mistake in the past. I put too much pressure on you. I know that was wrong. If we do get a second chance, I'm willing to do anything in my power to keep my family together. I hope you feel the same way. Shakkur went to sleep in his little car I bought him for Christmas. He looked so peaceful, I just picked him up and laid him next to Jr. I going to buy some film and take some pictures. I'll send you some in the next letter. Until then, I want you to keep your promise and don't drink too much, don't worry too much, and get some sleep. I care about you very much, and the last thing I want is for something to happen to you. Please don't push me and Shakkur out of your life because we belong to you. P.S. Play this tape before you go to bed, and before you fall asleep, because the last think I want on your mind at night and when you awake is to be us.