

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

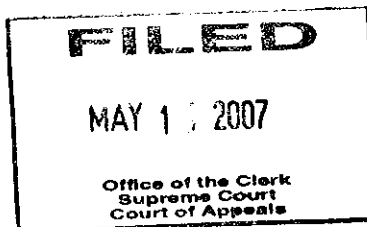
KEITH NORCELL YOUNG

APPELLANT

VS.

NO. 2005-KA-2036

STATE OF MISSISSIPPI



APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE STATE SUFFICIENTLY PROVED THE REQUISITE ELEMENTS OF CAPITAL MURDER.
- II. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY ALLOWING MR. BORGOGNI'S OPINION TESTIMONY.

STATEMENT OF THE FACTS

Eighty-six year old Rosie Lee Davis lived alone in her home on Fairview Street in Greenville, Mississippi. (Transcript p. 740 - 741). She took great pride in the appearance of her yard and hired the Defendant Keith Young (hereinafter "Young") to help her with yard upkeep. (Transcript p.p.793 - 794).

In October of 2003, Young asked Ms. Davis for extra money and she refused to give it to him. (Transcript p.p. 545 - 546). Desperate for money to buy drugs, Young broke into Ms. Davis's house through the front door which she always kept locked. (Transcript p.p. 548, 586 - 587, 596, and 743). He discovered Ms. Davis in the kitchen and drug her to her bedroom where he strangled the eighty-six-year old to death with a stocking. (Transcript p.p. 589 and 546). Young was later seen

in Ms. Davis's vehicle trying to sell her television. (Transcript p. 667). He was also seen trying to sell the tires from Ms. Davis's car and the car itself. (Transcript p. 668). Young then went back to Ms. Davis's house and called his sister, Bridget Doss, to ask her to come pick him up explaining that he had killed Ms. Davis and was about to burn her house down to destroy the evidence. (Transcript p.p. 541 - 543).

Ms. Davis's house was discovered on fire on October 29, 2003. (Transcript p. 525). When police and fire fighters responded to the house fire; they found the front door open and a one inch pry mark on the door. (Transcript p.p. 504, 505, 586, and 587). They later discovered Ms. Davis's lifeless body face down on her bed. (Transcript p. 587). Ms. Davis's vehicle was located later that day on fire just off Walnut Street. (Transcript p. 529).

Young was tried and convicted of capital murder, first degree arson, and third degree arson. He was sentenced as a habitual offender to serve life in prison without the possibility of parole for each of the three crimes.

SUMMARY OF THE ARGUMENT

There is sufficient evidence of each of the requisite elements of capital murder including the underlying crime of burglary. Further, the trial court did not commit reversible error by allowing Mr. Borgogni's opinion testimony.

ARGUMENT

I. THE STATE SUFFICIENTLY PROVED THE REQUISITE ELEMENTS OF CAPITAL MURDER.

Young argues that the State failed to "sufficiently prove all of the necessary elements of capital murder." (Appellant's Brief p. 5). This Court has previously held that

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We

proceed by considering all of the evidence - not just that supporting the prosecution - in the light most consistent with the verdict. We give the prosecution the benefit of all favorable inferences that may be reasonably drawn from the evidence. If the facts and the inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty, reversal and discharge are required. On the other hand, if there is in the record such substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fairminded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb. *Moody v. State*, 841 So.2d 1067, 1092 (Miss. 2003) In other words, once the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part that given the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty. *May v. State*, 460 So.2d 778, 781 (Miss. 1984) (citing *Pearson v. State*, 428 So.2d 1361, 1364 (Miss. 1983))

Phinisee v. State, 864 So.2d 988, 992 (Miss. Ct. App. 2004) (*Emphasis added*). With this standard in mind, there is sufficient evidence in the case at hand to prove each and every required element of capital murder and the underlying crime of burglary.

Mississippi Code Annotated §97-3-19(2)(e) defines capital murder as “[t]he killing of a human being without the authority of law by any means or in any manner . . . [w]hen done with or without any design to effect death, by any person engaged in the commission of the crime of . . . burglary . . . or in any attempt to commit such felonies.” In the case at hand, the underlying crime during which Ms. Davis was killed was burglary. “The crime of burglary requires proof of (1) an unauthorized entry (or breaking), and (2) the intent to commit a crime after the unauthorized entry.” *Cortez v. State*, 876 So.2d 1026, 1030 (Miss. Ct. App. 2003) (citing Miss. Code Ann. §97-17-23 (Rev. 2000)). Accordingly, in the case at hand, the State had the burden of proving that Ms. Davis was killed by Young while he burglarized her house. The State of Mississippi met this burden and provided sufficient evidence that Ms. Davis was killed by Young after he broke into her house with the intent to steal her property. The evidence presented at trial establishes the following facts in this

regard:

- (A) Young confessed to his sister Bridget Doss that he killed Ms. Davis by strangling her. (Transcript p.p. 540 - 542, 545, and 548).
- (B) Ms. Davis always kept the front door of her house locked and secure. (Transcript p. 743).
- (C) Ms. Davis kept all the doors of her house locked and when people came to visit her, they always came to the door in the back, knocked, and identified themselves before Ms. Davis would let them in. (Transcript p.p. 743, 744, and 788).
- (D) When police and firefighters arrived at Ms. Davis's house after the fire was discovered, the front door was found open. (Transcript p.p. 504 - 505 and 522).
- (E) There was a one inch pry mark on Ms. Davis's front door near the latch. (Transcript p.p. 586 - 587 and 596).
- (F) Ms. Davis's television was missing. (Transcript p.p. 588 and 738).
- (G) Ms. Davis's purse was missing. (Transcript p. 745).
- (H) Ms. Davis's jewelry was missing. (Transcript p. 738).
- (I) Ms. Davis's car was missing. (Transcript p.p. 609 and 739).
- (J) Young sold a television matching the description of the television missing from Ms. Davis's house. (Transcript p.p. 667 and 677).
- (L) Young was subsequently seen with a purse. (Transcript p. 549).
- (M) Young was also seen driving Ms. Davis's car and attempted to sell the tires from the car and the car itself. (Transcript p.p. 560 and 668).
- (N) Young told Ms. Doss that he went back to Ms. Davis's house to set the fire to get rid of evidence that he killed her. (Transcript p. 550).

In the face of all this evidence against him, Young argues that there was "conflicting evidence as to whether a burglary occurred." (Appellant's Brief p. 5). He specifically addressed the testimony of Darrell Braxton, of the Greenville Police Department, who testified that there was a one inch pry mark on Ms. Davis's front door and the testimony of Jerry Jordan, the assistant fire chief, who testified that the front door did not appear to be damaged or breached but also testified that he did not examine the door for evidence. (Transcript p. 536).

The Mississippi Supreme Court has stated that "when the evidence is conflicting, the jury will be the sole judge of the credibility of witnesses and the weight and worth of their conflicting testimony." *Gathright v. State*, 380 So.2d 1276, 1278 (Miss.1980)(*Emphasis added*). Further, this

Court has noted that “[i]t is the responsibility of the jury to resolve conflicts in testimony” and that “[t]hey may believe or disbelieve, accept or reject the utterances of any witness.” *Long v. State*, 934 So.2d 313, 317 (Miss. Ct. App. 2006) (quoting *Groseclose v. State*, 440 So.2d 297, 300 (Miss.1983)). The jury obviously believed Mr. Braxton’s testimony regarding the pry mark on the door and found it to be sufficient evidence of a breaking.

Young also argues that “there was no proof that, if Young broke and entered the house, he did so with the intent to steal or kill.” (Appellant’s Brief p. 6). “It is both common sense and common law that a man be held to have intended that which he did.” *Fisher v. State*, 481 So.2d 203, 213 (Miss. 1985). As there is ample evidence that Young had possession of many of Ms. Davis’s personal items shortly after the burglary and as Young admitted to killing Ms. Davis, there is sufficient evidence of his intent to steal and kill.

Young further argues that there was no temporal nexus between the burglary and the murder. (Appellant’s Brief p. 10). He argues that “perhaps” she was killed on the 27th and he stole her belongings on the 29th or that he committed the breaking and entering on the 29th when he set the fire. (Appellant’s Brief p. 8). However, the evidence indicates that Ms. Davis was last seen alive on Friday October 24, 2003. (Transcript p. 749). She made and received phone calls through Monday October 27, 2003. (Exhibit “S-1”). No one noticed a problem until the morning of Wednesday October 29, 2003 when a neighbor noticed that her car was missing. (Transcript p. 780). Young was seen in Ms. Davis’s car trying to sell her television between 2:00 a.m. and 4:00 a.m. on October 29, 2003. (Transcript p. 667) The fire and Ms. Davis’s body were discovered later in the morning of October 29, 2003. Thus, the evidence indicates that Young broke into Ms. Davis’s house, killed Ms. Davis, and stole her car, television, and other belongings on or around October 29, 2003. There is no evidence that Ms. Davis was killed at one point and that Young later reentered the house to steal

her belongings. Just as the defendant in *Morris v. State*, Young offered no defense and did not attempt to rebut any of the State's evidence, therefore, this Honorable Court "must take the evidence presented by the State as true and affirm the trial court's denial of [Young's] Motion for a Directed Verdict." 777 So.2d 16, 23 (Miss. 2000).

As set forth above, there is sufficient evidence of each of the requisite elements of capital murder. Thus, Young's first issue is without merit.

II. THE COURT DID NOT COMMIT REVERSIBLE ERROR BY ALLOWING MR. BORGOGNI'S OPINION TESTIMONY

"The admissibility of evidence is within the discretion of the trial court, and absent abuse of that discretion, the trial court's decision on the admissibility of evidence will not be disturbed on appeal." *Porter v. State*, 869 So.2d 414, 417 (Miss. Ct. App. 2004) (citing *McCoy v. State*, 820 So.2d 25, 30 (Miss. Ct. App. 2002)). Young argues that Mr. Borgogni's testimony regarding whether the fire was intentionally set "crossed the boundaries established by Mississippi Rules of Evidence 701 and 702." (Appellant's Brief p. 11). Even if Mr. Borgogni's testimony did cross the barriers set forth by the Rules of Evidence, it would constitute harmless error. "[A]n error is harmless only when it is apparent on the face of the record that a fair-minded jury could have arrived at no verdict other than that of guilty." *Gray v. State*, 799 So.2d 53, 61 (Miss. 2001) (quoting *Forrest v. State*, 335 So.2d 900, 903 (Miss. 1976)). Furthermore, the Mississippi Supreme Court held the following regarding "harmless error":

To warrant reversal, two elements must be shown: error, and injury to the party appealing. Error is harmless when it is trivial, formal, or merely academic, and not prejudicial to the substantial rights of the party assigning it, and where it in no way affects the final outcome of the case; it is prejudicial, and ground for reversal, only when it affects the final result of the case and works adversely to a substantial right of the party assigning it. Obviously, in order for the rule of harmless error to be called into play in support of a judgment, the judgment must be otherwise supportable, and will be reversed when there is nothing in the pleadings or evidence to support it.

Id. (quoting *Catholic Diocese of Natchez-Jackson v. Jaquith*, 224 So.2d 216, 221 (Miss.1969)).

As Young admitted to his sister that he set Ms. Davis's house on fire and that he planned to set her car on fire, any error in allowing this testimony to be admitted into evidence was harmless. (Transcript p.p. 541 and 543). Therefore, Young's argument that the judgment of the lower court should be reversed in this regard is without merit.

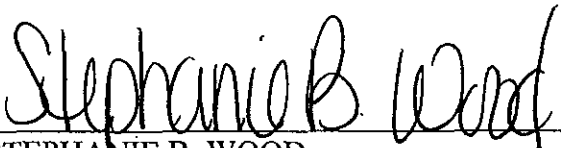
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm Young's conviction and sentence as there was sufficient evidence of capital murder and the underlying crime of burglary and as the trial court did not commit reversible error in allowing Mr. Borgogni's opinion testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

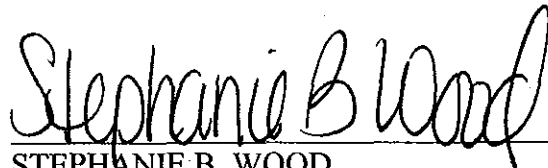
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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