IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AMANDA ROCHELLE BROWN — APPELLANT

VS. — NO. 2006-KA-0717

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AMANDA ROCHELLE BROWN **APPELLANT**

vs. **CAUSE No. 2006-KA-00717-COA**

THE STATE OF MISSISSIPPI **APPELLEE**

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Pike County in which the Appellant was convicted and sentenced for her felony of **MANSLAUGHTER.**

STATEMENT OF FACTS

The Appellant and the decedent in this case, one Lakisha Ross (or Russ), were said to be lovers. The Appellant stabbed the decedent and killed her in the presence of Latonya McKnight It seems that there was some sort of a quarrel between the Appellant and Ross, one that became violent. The Appellant stabbed Ross with a knife; Ross was not armed with a weapon. The quarrel began in the Appellant's bedroom. Ross was apparently in the process of removing her belongings from the residence.

After the Appellant stabbed Ross, McKnight rang emergency services. The Appellant became upset and demanded that McKnight help her carry Ross to a car and to the hospital. McKnight made an effort to do so. The Appellant told McKnight to stick to her story. The story the Appellant came up with was that Ross had stabbed herself.

McKnight did, in fact, "stick to the story" for two days. She did so because she was

frightened of the Appellant. She also wrote a statement after Ross died to the effect that she did not see anybody stab Ross. She did this at the Appellant's house and after the Appellant's mother talked to her. She said the Appellant's family members pressured her to write that statement. She also initially told the police that Ross had stabbed herself. (R. Vol. 5, pp. 428 - 450).

One Sabrina Tate had as sexual relationship with the Appellant as well, unbeknownst to Ross. Ross wanted McKnight to "hook up" with Tate, though she was not sure why. On the morning after the Appellant stabbed Ross, the Appellant rang Tate to say that Ross had stabbed herself. Though Tate spent time with the Appellant after the killing, the Appellant did not discuss it with her. (R. Vol. 6, pp. 488 - 497).

The victim had been in a good mood during the day before she was killed. She had not cut herself in the past. (R. Vol. 7, pp. 741 - 748). The victim was not thought to be likely to kill herself. (R. Vol. 8, pp. 751 - 757).

When law enforcement arrived, the Appellant and McKnight were outside of the residence. Ross was lying halfway inside the front door. The Appellant was screaming that Ross had stabbed herself. Ross was not quite dead at that point, she arched her back and put her hands out, and then laid flat. A large amount of blood then flowed from behind her shoulder and neck. (R. Vol. 5, pp. 373 - 376).

An investigator was summoned. He went into the residence and saw blood on the wall of the hallway. He observed a pink slipper, which he determined belonged to the Appellant lying in the hall. It was covered in blood. Further down the hall he found the knife with which the victim was killed. There was blood on it. There was blood on the carpet. A box of knives was found in the bedroom closet. On some clothes found on the bed, clothing belonging to Ross, there

appeared to be bloodstains. There was a "decent amount" of blood on a pillow. There was some blood on the floor of the bedroom. The clothing the Appellant was wearing was covered in blood.

A few days after the killing, law enforcement officers returned to the apartment. The Appellant and McKnight were present there as well. When the door was opened, the Appellant became quite emotional, then composed herself, went in, and got such things of hers that she wanted to take with her. McKnight, would not enter the apartment. Someone else had to get her things for her. (R. Vol. 6, pp. 497 - 590).

The blood-stained knife was sent to the Crime Laboratory. No fingerprints were developed. This was no surprise given the rough texture of the handle of the knife and large amount of blood on the handle. (R. Vol. 7, pp. 654 - 678).

The victim died of a stab wound to the left shoulder. The wound went down at 35 to 40 degrees and to the right at about 25 to 30 degrees. The wound penetrated the shoulder some five inches and severed the brachial artery. The victim bled to death. The wound was not the type ordinarily seen in cases of suicide. Where a sharp - edged instrument is used to commit suicide, the common method availed of is to slash the wrist or elbow, or, less commonly, the throat. (R. Vol. 8, pp. 758 - 801).

The defense produced an exceedingly tedious case - in - chief which, for the most part was simply a rehash of the State's case. It was a fine example of an attempt to secure an acquittal by putting the jury to sleep. It focused upon the fact that the eyewitness to the killing told two different tales about how the victim met her end before telling the truth, something that had been endlessly gone into during the State's case - in - chief. And once again the witness admitted that she lied initially about the killing, saying that she had done so because she did not want the

Appellant to go to prison or because she was frightened of the Appellant. The Appellant then called a number of law enforcement officers involved in the case. The jurymen were required to listen to all of that again. We see no need to set all that down here.

Finally, at long last, the defense got round to calling the Appellant to the stand. She started out by saying she loved the victim, that the victim and she were lovers and that they had a dog. She then went into a very long and detailed account of the day of the victim's death, which we see no purpose in relating here. Of more significance was her account of how the victim came to her death.

It seems that the victim had been drinking. The Appellant told the victim that they might have to separate on account of the Appellant's notion that the victim could not handle her liquor. The victim began taking her clothes out of the apartment. The talk turned to separation, and the victim supposedly asked the Appellant whether she was going to have anyone over her, whatever that means. Then the victim went to the kitchen, came back to the bedroom and grabbed the Appellant and pushed her back. The victim supposedly had a knife and held it over the Appellant's head. The victim again asked the Appellant whether she would have anyone over her. The knife was in contact with the Appellant's head. The Appellant told the victim to move; the victim moved back, and the next thing the Appellant supposedly saw was blood shooting out from behind her head. So the Appellant picked up a towel and held it to her ear. The Appellant looked at the victim and the victim fell down. Then the Appellant began screaming. The Appellant claimed that the blood on the pillow case was her blood. (R. Vol. 9, pp. 1032 - 1050; Vol. 10, pp. 1051 - 1067).

Not to be outdone by the defense strategy of trial by boredom and redundancy, the State recalled two witnesses in rebuttal. Sabrina Tate testified that she met the Appellant in May of

2005 and that she lived at Kenner, Louisiana before she moved to Pike County.

The defense, on cross - examination took the opportunity to explore such relevant and important issues such as how far Kenner, Louisiana was from Progress, and what direction one would go if one wanted to visit Kenner.

On re-direct, the jury found out that Sabrina Tate lived with friends whilst living in Kenner. (R. Vol. 10, pp. 1069 - 1074).

Then the State recalled a law enforcement officer. She testified again that the Appellant denied having stabbed the victim. She testified again that, when the Appellant entered the apartment to get her things, she stepped over a pool of blood as though it were not even there.

The defense brought out the fact that the original statements of the Appellant and the witness to the killing were similar. (R. Vol. 10, pp. 1074 - 1077).

STATEMENT OF ISSUES

1. WAS THE EVIDENCE SUFFICIENT TO SUPPORT THE VERDICT OF MANSLAUGHTER?

2. DID THE TRIAL COURT ERR IN REFUSING TO GRANT A MISTRIAL ON ACCOUNT OF THE INTRODUCTION OF TESTIMONY CONCERNING PRIOR BAD ACTS?

3. DID THE TRIAL COURT ERR IN REFUSING TO DISMISS THE INDICTMENT ON ACCOUNT OF AN ALLEGED INVALID ARREST?

4. DID THE TRIAL COURT ERR IN REFUSING CERTAIN JURY INSTRUCTION?

5. DID THE TRIAL COURT ERR IN REFUSING TO DISMISS THE INDICTMENT AGAINST THE APPELLANT ON ACCOUNT OF "TORTURE"?

6. DID THE TRIAL COURT ERR IN REFUSING TO DISMISS THE INDICTMENT ON ACCOUNT OF THE APPELLANT'S ALLEGED INCOMPETENCY?

7. DID THE TRIAL COURT ERR IN REFUSING TO SUPPRESS THE TESTIMONY OF THE WITNESS McKNIGHT?

8. DID THE TRIAL COURT ERR IN REFUSING TO DISMISS THE INDICTMENT ON ACCOUNT OF THE ALLEGED FACT THAT THE JURY OBSERVED THE APPELLANT IN SHACKLES?

9. WAS THE SENTENCE IMPOSED DISPROPORTIONATE?

SUMMARY OF ARGUMENT

1. THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT OF MANSLAUGHTER

2. THAT THE TRIAL COURT DID NOT ERR IN ALLOWING PRIOR BAD ACT EVIDENCE INTO EVIDENCE

3. THAT THE TRIAL COURT DID NOT ERR IN DECLINING TO DISMISS THE INDICTMENT AT BAR ON ACCOUNT OF AN ALLEGED ILLEGAL ARREST

4. THAT THE TRIAL COURT DID NOT ERR IN DENYING CERTAIN JURY INSTRUCTIONS

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6. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE CASE ON ACCOUNT OF THE APPELLANT'S ALLEGED MENTAL INCOMPETENCY

7. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO SUPPRESS THE TESTIMONY OF THE WITNESS McKNIGHT

8. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE INDICTMENT ON ACCOUNT OF THE ALLEGED FACT THAT SOME MEMBERS OF THE VENIRE MIGHT HAVE SEEN THE APPELLANT IN HANDCUFFS

9. THAT THE NINTH ASSIGNMENT OF ERROR IS NOT BEFORE THE COURT

ARGUMENT

1. THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT OF MANSLAUGHTER

In her First Assignment of Error, the Appellant contends that the evidence was insufficient to support the verdict. In considering this claim, we bear in mind the standard of review applicable to it. *May v. State*, 460 So.2d 778 (Miss. 1983). We also bear in mind the

elements of "heat of passion" manslaughter. *Sullinger v. State*, 935 So.2d 1067 (Miss. Ct. App. 2006).

The evidence in support of the verdict, taken as true, together with all reasonable inferences therefrom was that the Appellant stabbed the victim in the course of a lover's quarrel. The victim was removing her clothing from the apartment at the time she was killed. There was a use of a deadly weapon, in the heat of passion, without authority of law and not in self - defense.

That this occurred was established by eyewitness testimony. While it may be that there were no other witnesses, other than the Appellant, this fact is inconsequential. The eyewitness' testimony was corroborated by the location of the bloodstains in the hall and on the carpet, the location of the murder weapon, and bloodstains in the bedroom. The pathologist's testimony further corroborated the eyewitness' testimony. Suicides do not stab themselves. It was also the opinion of the pathologist that it would have been difficult if not impossible for the victim to have stabbed herself in the way that she was stabbed. The physical evidence at the crime scene and the testimony of the pathologist corroborated the eyewitness' testimony. The evidence was sufficient. *Martin v. State*, 818 So.2d 383 (Miss. 2002).

The Appellant says that the State's case rested entirely upon the testimony of the eyewitness, yet he contends that this is a circumstantial evidence case. It is not. *Long v. State*, 934 So.2d 313 (Miss Ct. App. 2006). The Appellant's argument based upon a circumstantial evidence analysis should be disregarded.

That the State's case was heavily based upon the testimony of one eyewitness is not a particularly unusual thing. Any number of cases have this characteristic. *Dawkins v. State*, 775 So.2d 1271 (Miss. Ct. App. 2000). What weight and credibility to give to the eyewitness'

testimony are matters left solely to the jury to determine. Insofar as sufficiency of the evidence is concerned, we think the evidence was amply sufficient to put the case to the jury.

The Appellant cites *Pipkins v. State*, 592 So.2d 947 (Miss. 1991). That case, though, involved considerations concerning a confidential informant, in the context of a Fourth Amendment issue. Here, the eyewitness was not a confidential informer. Credibility considerations that are pertinent to the issuance of a search warrant on the basis of information from a confidential informant are simply inapplicable to credibility issues concerning trial witnesses.

The First Assignment of Error is without merit.

2. THAT THE TRIAL COURT DID NOT ERR IN ALLOWING PRIOR BAD ACT EVIDENCE INTO EVIDENCE

In her Second Assignment of Error, the Appellant says that the trial court erred in allowing testimony to the effect that she had stabbed her stepfather on a prior occasion. The Appellant, however, has seen no reason to tell the Court where this was done. We do not recall that any of the witnesses testified to the Appellant's habit of stabbing people.

It was the Appellant's duty to show where in the record the alleged error occurred. Rule 28(a)(6) MRAP; *Britt v. State*, 844 So.2d 1180, 1183 (Miss. Ct. App. 2003). This requirement is especially important when the Court is presented with a record as voluminous as the one here. Because the Appellant has failed to support his argument with citation to the record, it should be considered abandoned.

In the event that this Court will consider the Second Assignment of Error on its merits notwithstanding the foregoing reason why it should not, there is no merit in it.

The Court will find some discussion out of the presence of the jury about the

admissibility of the fact that the Appellant had stabbed her stepfather. Apparently, there was a reference to that event by the eyewitness in the course of a tape or video recording of her interview by law enforcement. (R. Vol. 6, pp. 591 - 595). It was the Appellant, however, who asked that the tape or tapes be played for the jury. (R. Vol. 6, pg. 582). As the tapes were being played, there was no objection by the defense. (R. Vol. 6, pp. 583 - 586). It was only after the tapes were played that the Appellant objected. (R. Vol. 6, pg. 586).

The Appellant claimed that he had preserved his right to object to the contents of the tape. However, rather than having provided a redacted copy of the tape(s), it was the Appellant's idea that he would just object if and when something came up. The State continually objected to the playing of the tape(s); the judge was in a quandary as how to handle or anticipate objections. The trial court seems at some point to have decided that, if the Appellant wanted the tapes played, the whole tape would be played. (R. Vol. 6, pp. 457 - 468).

While the facts about this issue are fairly sloppy, one thing is clear: The Appellant did not object when the said - to - be objectionable statement was made. (R. Vol. 6, pg. 586). It may be that the Appellant noted that he intended to make objections if necessary. However, he was bound to make a contemporaneous objection at the time some supposedly inadmissible testimony was about to come in. His failure to do so works a waiver of the issue here. *Christmas v. State*, 700 So.2d 262, 271 (Miss. 1997). His statement, made prior to the playing of the tape(s), to the effect that he intended to object if necessary, does not amount to a contemporaneous objection.

Beyond this, it should be recalled that it was the defense that insisted that the tape or tapes be played for the jury. Counsel for the Appellant, presumably, was familiar with the contents of the tape. If there was inadmissible evidence in the tapes, he should have informed the trial court prior to the playing of the tape(s) so that some action might have been taken. He

might have created a redacted copy of the tape(s). In any event, the Appellant may not complain of an alleged error that resulted from his actions. A party may not request some action by a trial court, or introduce evidence, and later allege error in the action or admission of evidence. *Isom v. State*, 928 So.2d 840 (Miss. 2006).

The Second Assignment of Error is without merit.

3. THAT THE TRIAL COURT DID NOT ERR IN DECLINING TO DISMISS THE INDICTMENT AT BAR ON ACCOUNT OF AN ALLEGED ILLEGAL ARREST

In the Third Assignment of Error, it is said that the Appellant's arrest was illegal because there was a lack of corroborative evidence and because the eyewitness was "unreliable." Prior to trial, the Appellant filed two motions concerning probable cause. The first consisted of a claim that the Grand Jury did not have probable cause to return a true bill on the charge of murder. However, the Appellant did not trouble herself to state why that might have been so. The second was an obscure "Motion to Dismiss: Probable Cause." Somehow or another, the Appellant was of the view that her rights were being violated on account of her being charged with murder. (R. Vol. 1, pp. 33 - 36). These were brought on for a hearing and relief upon them was denied. (R. Vol. 3, pp. 29 - 30; 77 - 78).

The Appellant was arrested after the eyewitness to the homicide told law enforcement what happened. Her account was in fact corroborated by location of blood stains and the murder weapon at the apartment. Her account was corroborated by the fact that the victim's death was very unlikely to have occurred in the way claimed by the Appellant. There was no question but that the eyewitness was present when the victim was killed.

The Appellant cites *State v. Woods*, 866 So.2d 422 (Miss. 2003) for the proposition that an arrest based upon uncorroborated information is invalid. What the Appellant does not

understand, though, is that *Woods* concerned information from a confidential informant who had never given information to law enforcement previously and who was unknown to law enforcement. The Court found that there was no corroboration to establish the truthfulness and reliability of the confidential informant.

The case at bar does not involve an arrest warrant issued upon information given by a confidential informant who was unknown to law enforcement. *Woods* rests upon long-established law, but it simply has no application under the facts at bar. The eyewitness was not a confidential informant. She was a witness. As such, it was not necessary to demonstrate that she was a credible person. *Walker v. State*, 473 So.2d 435, 438 (Miss. 1985).

The arrest was valid. But even if it were not, it would make no difference. The Appellant did not give a confession or incriminating statement after her arrest. No evidence from her was seized. (R. Vol. 3, pg. 55). The mere fact of a said - to - be illegal arrest does not bar prosecution. *Fleming v. State*, 604 So.2d 280 (Miss.1992).

The Third Assignment of Error is without merit.

4. THAT THE TRIAL COURT DID NOT ERR IN DENYING CERTAIN JURY INSTRUCTIONS

The Appellant assigns error in the trial court's denial of a number of jury instructions in her Fourth Assignment of Error. None have merit.

First of all, the Appellant, following her usual practice of letting the Court shift for itself with respect to the record, has not seen fit even to identify the instructions she complains of. This is slovenly appellate practice, and the Court should consider the Fourth Assignment of Error to be abandoned on account of the Appellant's failure to cite to the record as she was required to do.

Beyond this, beyond a bare claim that the trial court erred in refusing certain instructions, the Appellant presents no argument or citation to authority in support of her claims. The Fourth Assignment of Error is waived or abandoned for this reason as well. *Wall v. State*, 883 So.2d 617 (Miss. Ct. App. 2004).

Assuming the Fourth Assignment of Error is before the Court, though without intending to waive the foregoing reasons why it is not, it is utterly without merit.

We do not think it necessary to take the Fourth Assignment of Error any more seriously than the Appellant. We will not take upon ourselves the burden of divining what the Appellant considers erroneous in the denial of these instructions. We will observe only that: (1) the eyewitness was not an accomplice in homicide. That she was at first a suspect hardly makes her an accomplice, for purposes of an accomplice instructions; (2) the case at bar was not a circumstantial evidence case, for purposes of a circumstantial evidence instruction; (3) and that the *Weathersby* instruction simply was not applicable.

The Fourth Assignment of Error is without merit.

5. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE INDICTMENT AT BAR ON ACCOUNT OF ALLEGED "TORTURE"

In the Fifth Assignment of Error, the Appellant presents a very unusual claim. She says that she was tortured whilst in jail, either during or before trial. One does not see very many unusual issues in appeals against criminal convictions; we are at turns amused and annoyed by this silly claim.

The Appellant tells the Court (again without benefit of citation to the record) that she and others were "attacked" by the sheriff's men and that she and they were sprayed with mace. And this when the Appellant was pregnant even! The Appellant then mutters something about the

duty laid upon the State to provide medical care for inmates.

On one morning in the course of the trial, the Appellant, prior to commencement of the day's work, complained to the trial court of having been "maced" in the jail. She also complained of having had family visitation canceled. She also complained of having been improperly fed in that she was given cold hot dogs, cold beans and bread. She also complained that she had not been seen by a doctor, something that she said was necessary in that she had somehow gotten herself pregnant. This last point was significant, she thought, because she had previously miscarried. (R. Vol. 8, pp. 846 - 847).

The State related to the court what it understood had transpired. At the time appointed for lunch or supper, twenty trays were provided for the twenty inmates present. The Appellant complained that she had received nothing to eat, so the woman having charge of the inmates went to get a "dead man's tray," which was apparently an extra tray of food the jail kept on hand.

The Appellant was given the "dead man's tray." However, the Appellant thought that the food it contained was cold, perhaps as cold as a morgue, and so she threw the tray and its contents against a wall. The Appellant and perhaps her fellow inmates were told that, if they were going to act that way, visitation would be cancelled. Another inmate took umbrage at this announcement and attacked the jailer. A pepper spray was used to subdue that inmate. The Appellant was not so sprayed, but she was apparently in the area.

After this excitement died down, the inmates were taken into the yard. The Appellant complained of stomach pains. She was taken to see a doctor that night. The Appellant was also seen by gynecologist, who reported that she was "fine." The Appellant was then taken back to jail.

Now, while the Appellant, through her attorney, professed concern for her child, what her

attorney failed to relate to the court was that the Appellant had a habit of trying to jump off tables in the jail, this in an attempt to abort the child she was so concerned about. Upon hearing that, the Appellant's attorney then decided that his client might be crazy, so of course he then asked for a competency hearing. But there is no need to go into that imbroglio here, it being the subject of the next assignment of error. (R. Vol. 8, pp. 847 - 849). It then was said that the table - jumping business actually occurred a year or so before trial, when the Appellant was pregnant with triplets. She was apparently successful. (R. Vol. 8, pg. 864). She had not been jumping from table during the pregnancy she had during trial. (R. Vol. 8, pg. 855).

The trial court found that the Appellant was being provided medical care and indicated that it wished to ensure that she did so, if any action by it were necessary for the purpose. (R. Vol. 8, pg. 851).

In all of this, we do not find that the Appellant ever asked that the case against her be dismissed for this said - to - be torture. What the record reflects is that her comments were a generalized complaint about treatment in jail that evolved into a request for a mental competency examination. Since the Appellant did not ask for dismissal of the charge against herself, she is in no position here to complain of the trial court's failure or refusal to grant such relief.

As a factual matter, the Appellant simply was not "tortured." She threw her tray against a wall, which prompted the officer who had charge of the prisoners to threaten cancel family visitation. This threat caused another prisoner to assault the officer; that prisoner was subdued with pepper spray. The Appellant, however, was not the target of the spray. The Appellant was given access to medical services.

Even if by some wild stretch of imagination it might be thought that the Appellant was "tortured," dismissal of the indictment against her would not be the remedy. The remedy would

be a suit for damages against the sheriff's department. The Appellant presents no authority to show that dismissal would be a remedy, and we are aware of none. The one decision he does cite in his brief stands only for the proposition that a city has a constitutional obligation to secure medical care for a person who has been injured by police officers in the course of his apprehension. While this may be so, it certainly does not hold that an indictment must be dismissed where the accused has been subjected to mistreatment by police officers.

The Fifth Assignment of Error is without merit.

6. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE CASE ON ACCOUNT OF THE APPELLANT'S ALLEGED MENTAL INCOMPETENCY

In the Sixth Assignment of Error, the Appellant asserts that she was a twenty-year old minor at the time of trial and was six months pregnant as well. She then says that her counsel told the trial court that she was unable to stand trial on account of her mental state. Until now we were not aware that the fact of pregnancy could make a woman mentally incompetent.

The Appellant, of course, cannot be bothered to tell this Court what actually happened with respect to this issue in the trial court. She simply asserts that the trial court erred.

After the Appellant finished her claim about having been tortured, she took another tack and decided that she might be incompetent to assist in her defense. After the prosecution clarified the time period in which the Appellant was jumping off tables in an attempt to commit abortion, the Appellant's counsel had the bright idea to suggest mental incompetency. The trial judge noted that an accused's mental state could always become an issue, but he also noted that there had been no suggestion of incompetency before trial, no motion for a mental examination before trial. The trial court further noted that it had observed the Appellant during trial and that she appeared to be acting normally and assisting in her defense. The trial court further noted that

the mere claim of lack of medical access and mistreatment was not sufficient to require an evidentiary hearing on the issue of mental competency. A headache and a sore stomach did not suggest such a need to the trial court either.

Undaunted, the Appellant's attorney then claimed that he had not been able to get coherent answers from the Appellant the day before and that when he arrived in court on the morning of this hearing that she was in the courtroom with a coat over her head.

This, understandably, did nothing to convince the trial court that an evidentiary hearing was necessary. The court denied the motion for a mental examination. (R. Vol. 8, pp. 849 - 854; 858 - 860).

At that point, the Appellant's attorney announced that he was not going to go forward with trial – that he was taking his marbles and going home. *Cf. Mingo v. State*, 944 So.2d 18 (Miss. 2006). Only after the near occasion of his being held in contempt did he continue on with the trial. (R. Vol. 8, pp. 861 - 866).

Under Rule 9.06 URCCC, a trial court shall order an accused to submit to a mental examination if it or the accused's attorney has reasonable grounds to believe that the accused is incompetent. After such an examination, the court is to hold an evidentiary hearing on the accused's competency.

In the case at bar, there were no reasonable grounds to believe that the Appellant was mentally incompetent. The fact that nearly a year prior to trial she attempted abortion is no indication of incompetency. Nor the fact that she was in the area when another prisoner was sprayed with pepper spray. A headache and a sore tummy is no indication either.

On the other hand, the trial court noted that the Appellant gave no sign of incompetency during the trial. She appeared to be acting normally to him. Moreover, it appears that the

Appellant had no difficulty in testifying in a rational manner. That is apparent from the transcript of her testimony. (R. Vol. 9, pp. 1032 - 1050; Vol. 10, pp. 1051 - 1067).

The Mississippi Supreme Court has recognized that the question of whether reasonable grounds exist so as to require an examination is a matter left to the discretion of the trial court. The trial court has the opportunity to hear and see the accused. On review on appeal, a trial court's decision to deny a mental examination of an accused is assessed in this way: Did the trial court receive information which, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted him to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense? *Howard v. State*, 701 So.2d 274, 280 - 281 (Miss. 1997).

There was nothing raised in the trial court that can be said to have arisen to reasonable grounds to believe that a mental examination was required. Consequently, the trial court did not abuse its discretion in refusing to continue trial for the purpose of securing such an examination.

The Sixth Assignment of Error is without merit.

7. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO SUPPRESS THE TESTIMONY OF THE WITNESS McKNIGHT

The Appellant renews her attack on McKnight, alleging in the Seventh Assignment of Error that the trial court erred in refusing to suppress McKnight's testimony. Naturally, she does not tell this Court where in the record she requested such relief.

Assuming for argument that the Appellant did seek such relief, the trial court committed no error in admitting McKnight's testimony. While it is true that McKnight gave a different version of what transpired on the night of the victim's death to law enforcement, the most that can be said of that fact is that it went to the witness' credibility. There is no authority of which

we are aware to the effect that a trial court must refuse to permit witnesses with credibility issues from testifying. The appellant cites no authority for such a proposition. On the other hand, it is an elementary proposition that the jury determines witness weight and credibility issues. *Mingo v. State*, 944 So.2d 18 (Miss. 2006); *Robert v. State*, 821 So.2d 812 (Miss. Ct. App. 2006). And the Appellant would not want such a rule, seeing as how many criminal defendants have significant credibility issues.

The Appellant does return to her notion that McKnight was a confidential informant. We have demonstrated above the error in her thinking, and we adopt it here.

The arrest was not illegal. There was no basis to suppress the physical evidence. Most of it was taken prior to the arrest. What was taken afterwards, if anything, was after a valid arrest.

Finally, the Appellant, in an obscure, one-sentence statement, alleges that the admission of the video tape offended the Confrontation clause. We have no idea what she is talking about, or which tape she is talking about. In any event, it was she who insisted that one or more tapes be published to the jury. She may not complain of her decision to do so here.

The Seventh Assignment of Error is without merit.

8. THAT THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE INDICTMENT ON ACCOUNT OF THE ALLEGED FACT THAT THE SOME MEMBERS OF THE VENIRE MIGHT HAVE SEEN THE APPELLANT IN HANDCUFFS

In the Eighth Assignment of Error, the Appellant claims that she was observed in handcuffs by some members of the venire and that the trial court erred in refusing to dismiss the indictment on account of that alleged fact. First of all, dismissal of the indictment would not have been the remedy even had the venire seen the Appellant in handcuffs. The most an accused might expect in such a case is a new venire.

Once again, the Appellant has foregone the necessity of explaining to the Court what occurred.

On the morning of the commencement of trial, the Appellant and two other prisoners were brought to the courthouse. The Appellant was in handcuffs and she had a "straight leg device" under her pants. The other two were in shackles and waist chains. The officer having charge of these prisoners escorted them up the stairs to the second floor of the courthouse. At the top of the stairs he took the handcuffs off the Appellant. It seems that members of the venire from which the Appellant's jury was to be picked were still assembling in the courtroom.

There were perhaps six people in the hallway when the Appellant's handcuffs were taken off. One was a member of the Grand Jury; another was a law enforcement officer. (R. 4, Vol. 190 - 202).

After the Appellant's hands were freed, she went off with her attorney. The other two prisoners never entered the courtroom. The persons who were to serve on the Appellant's jury were inside the courtroom. Several members of the Grand Jury were in the hall when the Appellant's handcuffs were taken off. (R. Vol. 4, pp. 202 - 204).

Another witness testified that those who were in the hallway when the Appellant's handcuffs were taken off were witnesses before the Grand Jury and two or three members of the Grand Jury. This witness did not see anyone enter the courtroom while the Appellant was restrained. (R. Vol. 4, pp. 204 - 208).

One of the prosecutors stated that he observed the Appellant and her attorney enter the courtroom. The venire was also present. No one entered or exited the courtroom during a period of 30 to 45 seconds. He did not believe that any member of the venire saw the Appellant in handcuffs.

The trial court then brought a juror into chambers. She said she saw the Appellant in the hallway but did not recall seeing her in handcuffs. She did see the two other prisoners. She had known the Appellant for most of the Appellant's life. This venireman was excused. (R. Vol. 4, pp. 226 - 230).

Another venireman was brought into chambers. He stated that he never saw the Appellant until she entered the courtroom. (R. Vol. 4, pp. 230 - 234).

In the course of *voir dire*, the trial court asked the venire if anyone had seen the Appellant earlier that morning. No one indicated that he had seen the Appellant prior to the time she came into the courtroom, save one member, who reported that she had seen the Appellant on many occasions at her father's washeteria. (R. Vol. 4, pp. 238 - 239).

The Appellant says that she was escorted into the courtroom and suggests that the handcuffs were removed in the presence of the venire. The testimony on this issue demonstrates that the handcuffs were removed in the hall. The one venireman who saw the Appellant in the hall could not recall whether she was handcuffed; in any event, that venireman was excused. When the entire venire was asked whether they had seen the Appellant before she came into the courtroom, none of them responded affirmatively.

There is no evidence that the Appellant was seen in handcuffs. While it may be that an accused has the right not to be seen in restraints, absent reasons where restraints are necessary, there is nothing here to show that the this right of the Appellants was violated.

The Eighth Assignment of Error is without merit.

9. THAT THE NINTH ASSIGNMENT OF ERROR IS NOT BEFORE THE COURT

No argument or citation to authority is presented in support of the Ninth Assignment of Error. It is therefore abandoned. *Wall v. State*, 883 So.2d 617 (Miss. Ct. App. 2004).

Beyond this, it does not appear that the Appellant raised any issue concerning the sentence imposed against her. (R. Vol. 10, pg. 1192; Vol. 2, pp. 158 - 164). She may not raise it now. *Sims v. State*, 928 So.2d 984 (Miss. Ct. App. 2006).

The sentence imposed, twenty years imprisonment with four years suspended on post - release supervision (R. Vol. 10, pg. 1192), was clearly authorized by law. Miss. Code Ann. Section 97-3-25 (Rev. 2006).

The Ninth Assignment of Error is without merit.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John R. Henry, 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 Michael M. Taylor
Circuit Court Judge
P. O. Drawer 1350
Brookhaven, MS 39602

Honorable Dewitt (Dee) Bates, Jr.
District Attorney
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Magnolia, MS 39652

Charles E. Miller, Esquire
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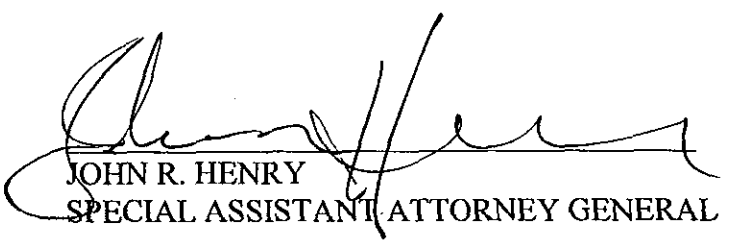
This the 22nd day of March, 2007.



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