IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MIKIMIE TENILLE BROWN — APPELLANT

VS. — NO. 2006-KA-2058-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

JUSTIN T. HAYDEN
ADMITTED TO LIMITED PRACTICE
ATTORNEY GENERAL LEGAL INTERN

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

STATE RULES

STATEMENT OF THE ISSUES

I. WHETHER THERE WAS ABUSE OF DISCRETION IN THE TRIAL COURT RULING THE STATEMENT OF DEFENDANT ADMISSIBLE

II. WHETHER THE COURT BELOW ERRED IN ALLOWING THE INTERVIEWING OFFICER TO ANSWER AS TO WHETHER OR NOT THE DEFENDANT APPEARED TO BE MENTALLY ILL

III. WHETHER THE COURT BELOW ERRED BY NOT ALLOWING DEFENDANT'S MOTION TO INTRODUCE EVIDENCE OF DIMINISHED CAPACITY

IV. WHETHER THE COURT ISSUED A JURY STATEMENT WHICH IMPROPERLY STATED THE LAW REGARDING 'CULPABLE NEGLIGENCE.'

V. WHETHER THE STATE BOLSTERED ITS CASE WITH THE REDIRECT EXAMINATION OF THEIR OWN WITNESS.

VI. WHETHER THE DEFENDANT WAS PREJUDICED BY THE STATE'S CLOSING ARGUMENT.

VII. WHETHER DEFENDANT'S CONVICTION SHOULD BE REDUCED TO MANSLAUGHTER.

STATEMENT OF THE CASE

This is an appeal by Mikimie ("Kim") Tenille Brown, from her guilty jury conviction of attempted arson and the murder of Gerald Dillon. Brown is currently serving a life sentence plus two years with the Mississippi Department of Corrections, pursuant to an order by the Honorable Judge Michael R. Eubanks, of the Circuit Court of Marion County, Mississippi.

STATEMENT OF THE FACTS

On December 11, 2000, Gerald Dillon spent the evening at his home with LaTeya Watts, a young woman he had met a club in Hattiesburg, Mississippi. (T. 99.) At around ten o'clock p.m., Mikimie Brown showed up at Dillion's residence and spoke with him at the front door. (T. 102-104.; Ex. 30.) Brown previously dated and was impregnated by Dillion, but had a miscarriage. (T. 340.) In addition to the miscarriage, Brown and Dillon had a tumultuous relationship; she made threats to him and his other girlfriends[1] and claimed to others that he physically abused her. (T. 339-40, 342-44, 346-48.)

Knowing that Dillon was with another woman, Brown went to her father's home and retrieved a nine ("9") millimeter handgun. She returned to Dillion's house between five and six o'clock on the morning of December 12, 2000. Again Brown failed in her attempt to get inside Dillion's house. She returned soon thereafter and entered Dillon's home as Watts was on her way out. (T. 103.) Dillon pleaded with Watts to come back inside, to which she told him that he needed to talk to Brown. (T. 103-104; Ex. 30.) Watts agreed to come back inside until her car warmed up. *Id.*

When Watts came back inside, she pled with Dillon to go into the living room,

---

[1]Brown told Cassandra Watts, another of Dillon's previous girlfriends, that if she found Watts and Dillon at his house again, she would "leave [Watts] and [Dillon] on the kitchen floor for stinking." (Ex. 30; T. 204) Cassandra Watts also testified to Brown's breaking into Dillon's house through the windows. (Ex. 30; T. 201)

where Brown was, and talk to her. She stood in the kitchen as the two spoke. Watts heard as Brown made a threat at Dillon, saw Dillon backing away from Brown, heard a gunshot and saw sparks come from the muzzle of the gun. Dillon, hit in the chest from point-blank range, staggered back into the kitchen and fell. (T. 107-108.) His heart and lung had been perforated by the bullet and he died on the kitchen floor of his home. (T. 322.) Brown then entered the kitchen and pointed the gun at Watts' face. Watts smacked the hand of Brown away from her face and the gun discharged again. Watts fell to the floor and Brown put the gun back in her face. Watts told Brown that she did not have to do this and begged for her life. (T. 108-109.) "I'm sorry but Gerald lied to me, and if you tell anything, I will come after you." stated Brown. (Ex. 30.) Watts luckily escaped without any further harm.

Before Brown left Dillon's house she locked the door and attempted to set his truck afire, as she stated, to "destroy some of the evidence." (Ex. 53.) Her attempt left part(s) of the truck charred and only furthered the evidence against her. (*Id.*; T. 220-222; Ex. 1, 2, 4-6, 17, 18, 22.) Then she left Dillon's property and returned to her car, where her friend, Donovan Abrams was waiting. (Ex. 53, 48; T. 140-51.)

While her intentions of killing Dillon were unbeknownst to Abrams, upon returning to the car, she dropped the weapon in the floorboard of the passenger side, where Abrams was seated, and proceeded to tell him that she had shot Dillon. (Ex.

48; T. 151-52.) Abrams at first thought she was joking, but she again, calmly repeated to him as she pointed to her chest that she shot Dillon. They then stopped for gas, and Brown told Abrams that she wanted to return to the house to get Dillon and take him to a hospital. Abrams refused and insisted that he go home. (Ex. 48; T. 152-55.) After leaving Abram's home, Brown returned to her trailer, got her children ready for school, dropped them off at her mother's house, took a nap and later attended a funeral. (Ex. 53.)

Dillon's body was discovered when two of his co-workers and close friends came to check on him after he did not show up for work that day. (T. 172.) Brown was found to be a suspect after a short time of investigation and testimonials. (T. 256-57.) A warrant was secured to search Brown's father's property. *Id.* It was therein that police found the murder weapon. (Ex. 38; T. 239, 258.)

Brown voluntarily followed police to their station, where she was read her Miranda rights and interviewed. (T. 259-261.) Brown knowingly and voluntarily waived her rights and gave a written confession. (Ex. 53; R. at 86-88; T. 260-265; 298-301.) She was found guilty of murder and attempted arson and acquitted of her aggravated assault charge. (T. 413-14.)

SUMMARY OF THE ARGUMENT

The State produced overwhelming evidence to prove beyond a reasonable doubt that Mikimie "Kim" Brown was guilty of murder and attempted arson. She knowingly, intelligently and voluntarily waived her rights, confessed to these crimes in a written statement, received a fair trial and if there were any evidentiary flaws contained therein, they were "harmless" errors.

STANDARD OF REVIEW

Issue 1: Abuse of Discretion. *Qualls v. State*, 947 So.2d 365 (Miss.App. 2007).

Issue 2: Abuse of Discretion. *Id.*

Issue 3:Abuse of Discretion. *Id.*

Issue 4: All instructions read and considered together.

Issue 5: Clear abuse of discretion. *Qualls v. State*, 947 So.2d 365 (Miss.App. 2007).

Issue 6: Abuse of discretion *Garrett v. State*, 956 So.2d 229 (Miss.App. 2006).

Issue 7: In light most favorable to the State, drawing all inferences in favor of the verdict below. *Jernigan v. Humphrey*, 815 So.2d 1149 (Miss. 2002).

ARGUMENT

I.
THERE WAS NO ABUSE OF DISCRETION IN THE TRIAL COURT RULING THE STATEMENT OF DEFENDANT ADMISSIBLE.

In this initial allegation of trial court error defendant avers the statement given to police was involuntary.

Prior to trial an extensive hearing was held with testimony from the officers, and expert mental health witnesses. At the conclusion of the hearing the trial court did not suppress the statements.

The applicable standard of appellate review for this issue, is:

> ¶ 18. . . . The standard of review for a trial judge's ruling on a motion to suppress evidence is well established. This Court must decide whether there was substantial, credible evidence to support the trial judge's ruling. Culp v. State, 933 So.2d 264, 274(¶ 26) (Miss.2005). This ruling must not be disturbed by our Court unless such substantial, credible evidence is absent. Ray v. State, 503 So.2d 222, 223-24 (Miss.1986). Further, admission of evidence is within the discretion of the trial court, and can only be reversed upon abuse of its discretion. Crawford v. State, 754 So.2d 1211, 1215(¶ 7) (Miss.2000).

Qualls v. State, 947 So.2d 365 (Miss.App. 2007).

The trial transcript of the suppression hearing is replete with testimony supporting the ruling of the trial court. Albeit there is conflicting testimony, but it was the duty of the trier of fact to evaluate the testimony. There being legally sufficient to support the trial court's finding and no abuse of discretion no relief

should be granted on this initial allegation of error.

II.

THE COURT BELOW DID NOT ERR BY ALLOWING THE INTERVIEWING OFFICER TO ANSWER AS TO WHETHER OR NOT THE DEFENDANT APPEARED TO BE MENTALLY ILL.

At trial, Officers Tim Singley and Darrell Perkins were questioned about the defendant at the time she waived her Miranda rights, interviewed with police and offered a written confession. State's counsel first asked Officer Singley if he had experience dealing with anyone under the influence of drugs, alcohol and mentally disturbed individuals. (T. 264) He replied in the affirmative to each question. *Id.* Officer Singley was then asked if the defendant appeared to be under the influence of drugs, alcohol or mentally disturbed, to which he answered that Brown did not appear so. Counsel for Brown offered no objection to this line of questioning. Later, Officer Perkins (a veteran officer with over thirteen years of experience) was asked the same line of questioning, to which he offered the same affirmative answers as Officer Singley. Counsel for Brown objected to the question: ". . .did she appear to be suffering from any mental disease or illness?" (T. 301) The grounds for objection was that Officer Perkins was not qualified as an expert to give such an opinion. (T. 301.)

The Officer simply offered lay testimony on the appearance of the defendant while she was in their custody. While they probably have more experience than

most people in dealing with individuals with drug, alcohol and mentally problems, appearance of such requires no special knowledge or training and thus should be considered lay, rather than expert, opinion. Miss. R. Evid. Rules 701 and 702.

The courts of Mississippi for long have held that lay testimony is admissible to prove a defendant's mental capacity. *Porter v. State*, 492 So. 2d 970, 973 (Miss. 1986); *Groseclose v. State*, 440 So. 2d 297, 301 (Miss. 1983). Lay person experience is often immediately before or after a crime and can sometimes have as much, if not more, weight than expert testimony in instances where the mental defense is raised. *Lias v. State*, 362 So. 2d 198, 201 (Miss. 1978).

After Brown raised mental illness defenses to her waiver of Miranda rights and the admittance of her written confession, Officer Perkins should have been allowed to comment on the appearance of the defendant. The judge was correct to overrule Brown's objection and admit the answer. Otherwise, if such was an error, it certainly is not reversible in light of the overwhelming evidence against the defendant.

III.

THE COURT BELOW PROPERLY DENIED DEFENDANT'S MOTION TO INTRODUCE EVIDENCE OF DIMINISHED CAPACITY

The defendant petitioned the court below to have the testimony of Dr. Jean Hawks, who testified at a pre-trial hearing as to Brown's diminished capacity, into evidence. (R. at 146-47.) After viewing such evidence, on more than one occasion, the circuit judge correctly denied petitioner's motions. (R. at 174; T. 215.) The Supreme Court of Mississippi has recently held on at least two occasions that "diminished capacity" is not a defense to criminal charges. *Stevens v. State*, 867 So.2d 219 (Miss. 2003); *Garcia v. State*, 828 So.2d 1279 (Miss. 2002). See also *Edwards v. State*, 441 So.2d 84, 88 (Miss. 1983); *Hill v. State*, 339 So.2d 1382, 1385 (Miss. 1976).

Additionally, although not cited, the Circuit Judge had discretion under Mississippi Rules of Evidence Rule 403, to deny the admission of this testimony, as it had the potential to confuse or mislead the jury, and most assuredly would have been a waste of time.

IV. THE JURY WAS PROPERLY INSTRUCTED ON 'CULPABLE NEGLIGENCE' AS DEFINED BY LAW.

As the Mississippi Supreme has recently held:

¶ 22. Miss.Code Ann. § 97-3-47 concerns culpable negligence and provides:

> Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.

"Thus, culpable negligence is defined as 'the conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as a result of the wilful creation of an unreasonable risk thereof.' " Evans v. State, 562 So.2d 91, 94 (Miss.1990) (citing Smith v. State, 197 Miss. 802, 20 So.2d 701, 701 (1945)). ***This Court more recently defined manslaughter by culpable negligence as "such gross negligence ... as to evince a wanton or reckless disregard for the safety of human life, or such an indifference to the consequences of an act under the surrounding circumstances as to render such conduct tantamount to willfulness.***" Shumpert v. State, 935 So.2d 962, 967 (Miss.2006) (citing Evans v. State, 562 So.2d 91, 95 (Miss.1990)).

Chandler v. State, 946 So.2d 355 (Miss. 2006)(emphasis added).

Looking to the record, the court's instruction C-4 (Jury Instruction 10) closely followed the language as approved in *Chandler.* Such instruction and language was cited approvingly and cannot now be held error.

Additionally, there was no objection to the instruction or the language not claimed as error. Consequently, this issue is also procedurally barred as having been waived.

> ¶ 56. This Court has strictly enforced the rule that, in order to preserve a jury instruction issue for appellate purposes, a defendant must make specific, on-the-record objections to proposed instructions.
>
> *Killen v. State*, 2007 WL 1080391 (Miss. 2007).

Accordingly, this issue is procedurally barred as having been waived. Alternatively, it is also without merit as the instruction, as given, was a correct statement of the law.

V.

REDIRECT EXAMINATION OF A WITNESS AND EVIDENCE INTRODUCED ON CROSS IS UNQUESTIONABLE

In this next allegation of error appellate counsel argues the State, on two occasions, engaged in 'improper redirect' of witnesses.

The first supposed incident involved LaTeya Watts. Interestingly, defense counsel on cross introduced in to evidence the statement Watts had given to police. Defense introduced the statement into evidence. The prosecutor then, on re-direct explored that document – that was in evidence by defense counsel.

> ¶ 25. This Court will not reverse the decision of a trial court regarding evidentiary matters unless the discretion of the trial court "so abused as to be prejudicial to a party." Farris v. State, 906 So.2d 113, 119-20(¶ 20) (Miss.Ct.App.2004) (citing Beech v. Leaf River Forest Prods., 691 So.2d 446, 448 (Miss.1997)). "[T]rial courts have broad discretion in allowing or disallowing redirect examination of witnesses and when the defense attorney inquires into a subject on cross-examination of the State's witness, ***the prosecutor on redirect is unquestionably entitled to elaborate on the matter.***" *Manning v. State*, 835 So.2d 94, 99-100(¶ 15) (Miss.Ct.App.2002) (citing Greer v. State, 755 So.2d 511, 516(¶ 14) (Miss.Ct.App.1999)). Consequently, we will not disturb a trial court's ruling on matters pertaining to redirect examination unless there has been a clear abuse of discretion. Farris, 906 So.2d at 119-20(¶ 20) (citing Lloyd v. State, 755 So.2d 12, 14(¶ 9) (Miss.Ct.App.1999)).
>
> *Goodin v. State*, 2007 WL 1248164 (Miss.App. 2007)(emphasis added).

So, the prosecutor was within the scope of redirect. Nothing improper. Defense may not have like the manner in which it was conducted, but there was

nothing warranting any relief on appeal.

Next, the second complained of error was not, as counsel describes, allowing the "State was allowed to explore the second discharge of the 9mm pistol." The transcript reveals nothing of the sort. To wit, the total exchange was this:

Q. Did you see anything in her statement about a second shot?

A. No, sir. I don't remember her ever stating anything to me about a second shot. [Transcript 291.]

The State would hardly describe that one question as improper extension of redirect. No error. Enough said. *Goodin, Manning, supra.*

No relief should be granted on this two part allegation of error.

VI.

THE JURY WAS PROPERLY INSTRUCTED ON 'CULPABLE NEGLIGENCE' AS DEFINED BY LAW.

As the Mississippi Supreme has recently held:

¶ 22. Miss.Code Ann. § 97-3-47 concerns culpable negligence and provides:

> Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.

"Thus, culpable negligence is defined as 'the conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as a result of the wilful creation of an unreasonable risk thereof.' " Evans v. State, 562 So.2d 91, 94 (Miss.1990) (citing Smith v. State, 197 Miss. 802, 20 So.2d 701, 701 (1945)). ***This Court more recently defined manslaughter by culpable negligence as "such gross negligence ... as to evince a wanton or reckless disregard for the safety of human life, or such an indifference to the consequences of an act under the surrounding circumstances as to render such conduct tantamount to willfulness.***" Shumpert v. State, 935 So.2d 962, 967 (Miss.2006) (citing Evans v. State, 562 So.2d 91, 95 (Miss.1990)).

Chandler v. State, 946 So.2d 355 (Miss. 2006)(emphasis added).

Looking to the record the court's instruction C-4 (Jury Instruction 10) closely followed the language as approved in *Chandler.* Such instruction and language was cited approvingly and cannot now be held error.

Additionally, there was no objection to the instruction or the language not claimed as error. Consequently, this issue is also procedurally barred as

having been waived.

> ¶ 56. This Court has strictly enforced the rule that, in order to preserve a jury instruction issue for appellate purposes, a defendant must make specific, on-the-record objections to proposed instructions.
>
> *Killen v. State*, 2007 WL 1080391 (Miss. 2007).

Accordingly, this issue is procedurally barred as having been waived. Alternatively, it is also without merit as the instruction, as given, was a correct statement of the law.

VII.

DEFENDANT'S MURDER CONVICTION SHOULD NOT BE REDUCED TO MANSLAUGHTER.

Appellant requests that in the alternative to a new trial, that this Court reduce Brown's murder conviction to manslaughter. (A.B. 33.) The standard of review for a judgment notwithstanding the verdict grants a great deal of deference to the jury decision; all evidence and inferences are to be considered in the light most favorable to the appellee. *Jernigan v. Humphrey*, 815 So.2d 1149 (Miss. 2002). The verdict should be set aside only if a reasonable jury could not have reached conclusions that they did. *Alpha Gulf Coast, Inc. v. Jackson*, 801 So.2d 709 (Miss. 2001).

The State has produced an overwhelming about of evidence for a jury to find that Brown murdered Dillon. Needless to say, this killing was done with intent and malice aforethought. This is evidenced through her threats to Dillion and his girlfriends, and the fact that she came to Dillon's house the night before the murder, found him with another woman, retrieved her father's gun, then returned to the house to kill him.

Appellant cites *Wade v. State*, a case in which a woman, whose boyfriend was hitting her head against pool tables, grabbed a gun, told him he was not going to abuse her anymore, and shot him. *Wade v. State,* 748 So.2d 771, 73-76 (Miss.

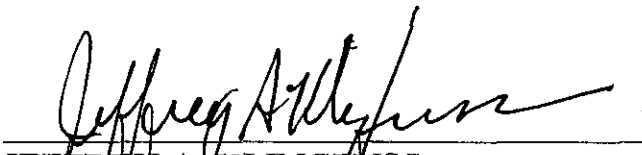
1999). The facts of that case are very different than the one at hand. Brown's killing was not done in self defense, or to prevent great bodily harm. Brown kept returning the house, and on more than one occasion, attempted to get in after she found out another female was with Dillon. She rushed in the door as Watts left. Watts testified that she saw Dillon backing away from Brown, then he was shot. Her life was simply not in danger. The mitigation to a manslaughter conviction would wholly inappropriate.

CONCLUSION

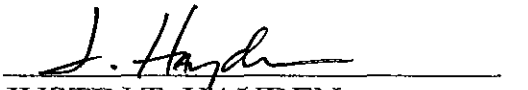
The State produced overwhelming evidence to prove beyond a reasonable doubt that Mikimie "Kim" Brown was guilty of murder and attempted arson. She knowingly, intelligently and voluntarily waived her rights, confessed to these crimes in a written statement, received a fair trial and if there were any evidentiary flaws contained therein, such errors were "harmless."

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]



JUSTIN T. HAYDEN
ADMITTED TO LIMITED PRACTICE
ATTORNEY GENERAL LEGAL INTERN

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

CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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 Prentiss Harrell
Circuit Court Judge
105 E. Spring St.
Ripley, MS 38663

Honorable Haldon J. Kittrell
District Attorney
500 Courthouse Sq., Ste. 3
Columbia, MS 39429

George T. Holmes, Esquire
Attorney At Law
301 North Lamar St., Ste. 210
Jackson, MS 39201

This the 20th day of July, 2007.

JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL

JUSTIN T. HAYDEN
ADMITTED TO LIMITED PRACTICE
ATTORNEY GENERAL LEGAL INTERN

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