

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANTHONY SNEED, et al

APPELLANT

VS.

NO. 2007-KA-0381-COA

STATE OF MISSISSIPPI

APPELLEE

**BRIEF FOR THE APPELLEE
JOHNNY BICKHAM**

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

- I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.
- II. THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

On August 11, 2006, Leanna Smith and her boyfriend Herman Fair had an altercation. T. 307. Ms. Smith's niece, Rotandria Foster, witnessed the altercation and would later testify that she saw Ms. Smith choking Fair, but did not see Fair "do anything" to Ms. Smith. T. 325-26. Foster then called her cousin, Anthony Smith, to tell him that his mother and Fair "had got into it." T. 307.

Anthony Smith and Jamario Brady were drinking at Johnny Bickham's house when Smith received Foster's telephone call. T. 389, 415. Smith went to check on his mother who told him to "leave it alone" and not confront Fair. T. 327, 389. Smith ignored his mother's advice and proceeded to Fair's apartment with Brady, Bickham, Thomas German, and Anthony Sneed. T. 308. Foster and Terinesia Burton also followed the group to Fair's apartment. T. 308. The gang waited at the bottom of a stairwell for Fair to emerge from his upstairs apartment. T. 311, 389. When Fair emerged from his apartment and descended the staircase, Smith punched Fair in the face, knocking Fair to the ground. T. 311, 389. All five defendants then kicked or stomped Fair as Brady proceeded to beat him with a golf club. T. 311-312, 332. Fair died from blunt force trauma to the chest when his lungs were lacerated, causing them to bleed more than three quarts of blood into the chest cavity. T. 471. In addition to the lethal wounds, Fair also suffered a broken rib and multiple cuts and abrasions to the head, nose, ear, shoulder, and chest. T. 460, 471. Smith, Brady, Sneed, Bickham, and German were ultimately convicted by a Coahoma County Circuit Court jury for Fair's murder.

SUMMARY OF ARGUMENT

Bickham claims that the State failed to prove the element of deliberate design. Contrary to this assertion, the State provided legally sufficient evidence on the element of intent. Further, the State's evidence is sufficient to support a finding that either Bickham inflicted one of the fatal blows, making him guilty as a principal, or that he was guilty of murder by aiding and abetting.

Bickham's claim that the verdict is against the weight of the evidence must also fail. Where the jury is presented with conflicting evidence, their resolution of such conflicts cannot be disturbed on appeal.

ARGUMENT

I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

In determining whether the State presented legally sufficient evidence to support the jury's verdict, the reviewing court must determine whether, when viewing the evidence in the light most favorable to the State, any rational juror could have found that the State proved each element of the crime charged beyond a reasonable doubt. *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005). Bickham claims on appeal that the State failed to prove the element of intent. Bickham further insists that his lack of intent was evidenced by his "abandonment of the altercation as soon as it escalated," coupled with the fact that he kicked Fair only once with an unlaced tennis shoe.

Unless a defendant explicitly states his intent at the time of the crime, intent can only be proven by the defendant's actions and the surrounding circumstances. *Boyd v. State*, 977 So.2d 329, 335 (¶23) (Miss. 2008) (citing *Thompson v. State*, 258 So.2d 448 (Miss.1972)). Additionally, the question of a defendant's intent is a jury question, and the jury's determination will not be disturbed by reviewing courts so long as record evidence supports the jury's finding of fact. *Id.* at 336. The State provided the following evidence to establish Bickham's intent to kill Herman Fair. Bickham and the other four defendants came together after Smith received notice that his mother and Fair had an altercation. The group then went to Fair's apartment complex where they waited together underneath a stairway for Fair to emerge from his apartment. T. 312,330. When Fair emerged from his apartment and descended the stairway, Smith hit him in the face, knocking him to the ground. T. 311,331. Everyone in the group then began kicking Fair as he lay on the ground. T. 332. Brady then proceeded to beat Fair with a golf club. T. 312,332. According to Foster, the beating lasted five or ten minutes. T. 317. Fair was unable to get up off of the ground after the defendants began

kicking him. T. 318. Despite each defendant's best effort at trial and on appeal to characterize the brutal beating of Fair as consisting of five light kicks, the medical evidence proved otherwise. Fair's external injuries consisted of lacerations on the scalp, bridge of the nose, back of the head, left side of the head, and the left ear, and several contusions on the chest wall that each measured up to 6.5 inches. T. 460. Dr. Hayne testified that the lacerations were consistent with being hit with a golf club or similar object. T. 469. Dr. Hayne stated that prior to the internal examination, he believed that the head injuries would prove to be the cause of death. T. 484. However, the cause of death was determined to be blunt force trauma to the chest. T. 473. The surface of Fair's right and left lungs were bruised and lacerated, causing him to bleed out more than three quarts of blood into his chest cavity. T. 471. Fair had also suffered a broken rib. T. 471. Dr. Hayne opined that the lethal chest injuries were consistent with being kicked or stomped with great force, as it would take a significant amount of force to compress the chest wall to the point of lacerating the lungs. T. 474. The aforementioned evidence of the defendants' acts and the surrounding circumstances is sufficient to support the jury's finding that each defendant intended to kill Fair.

This Court has stated the following regarding the accomplice liability concept of aiding and abetting.

[O]ur supreme court [has] ruled that in order to be held criminally liable as an aider and abetter in the commission of a felony, one must "do something that will incite, encourage, or assist the actual perpetrator in the commission of the crime." And it has been further stated that "[i]f two or more persons enter into a combination or confederation to accomplish some unlawful object, any act done by any of the participants in pursuance of the original plan and with reference to the common object is, in contemplation of law, the act of all."

Scarborough v. State, 956 So.2d 382, 386 (¶21) (Miss. Ct. App. 2007) (internal citations omitted).

Accordingly, the jury could have determined from the evidence that Bickham caused one of the fatal lacerations to Fair's lungs, making him guilty as a principal, or that he was guilty of murder under

the theory of aiding and abetting.

Bickham makes much of the fact that he only kicked Fair once. However, this Court has affirmed murder convictions on the theory of aiding and abetting where a defendant did not even participate in the lethal beating. In *McDowell v. State*, 984 So.2d 1003, 1008 (¶2) (Miss.Ct.App. 2007) Barbara Lynn Chapman claimed that her boyfriend, Marlon Maurice Davis, would beat her when he was drunk. . The beatings led to the couple's eventual break-up. *Id.* On the day of Davis's murder, Chapman was attempting to remove her belongings from Davis's apartment when he cut her with a knife on the neck and face in the process of trying to cut off her ear. *Id.* at (¶3). Later that night, Chapman brought her seventeen-year-old son, Eric McDowell, to Davis's apartment. *Id.* at (¶5). Chapman parked her car down the street while McDowell banged Davis's door. *Id.* at (¶6). McDowell and Chapman waited for Davis to come home. Approximately thirty minutes later, Davis approached and Chapman yelled to McDowell, "There's Maurice. Here he come." *Id.* at 1009 (¶9). McDowell beat Davis with a stick and stomped on him as Chapman looked on. *Id.* An unidentified male also approached and began kicking Davis repeatedly. *Id.* at (¶10). Davis died from a combination of blunt force trauma to the head and a lacerated liver. *Id.* at (¶11). Chapman admitted to police "that she had put her son up to it, but Davis was not supposed to die." *Id.* at 1011 (¶21). McDowell and Chapman were convicted for Davis's murder. On appeal, Chapman claimed that the State failed to prove that she intended to kill Davis. *Id.* at 1010 (¶20). This honorable Court found that the above-referenced facts were sufficient to support the jury's verdict on a theory of aiding and abetting. *Id.* 1011 (¶22).

The case of *Shumpert v. State*, 935 So. 2d 962 (Miss. 2006), is also instructive. In *Shumpert*, the victim approached Shumpert wanting to purchase cocaine. *Id.* at 965 (¶2). Shumpert told the victim to leave because too many police officers were around. *Id.* As the victim was walking away,

Shumpert shouted to one of his friends to hit the victim. *Id.* at (¶3). The friend complied and the victim was ultimately beaten to death. *Id.* at (¶5). Shumpert would later testify that his involvement in the victim's beating was limited to hitting him one time, while another witness testified that Shumpert also kicked the victim in the head. *Id.* at 969 (¶22). The supreme court found that even if Shumpert had not participated in kicking the victim in the head, he was still guilty of murder for aiding and abetting in bringing about the victim's death. *Id.* In light of *McDowell* and *Shumpert*, Bickham's claim that the State failed to provide legally sufficient evidence to support a murder conviction must fail.

It must also be noted that had the State failed to provide sufficient evidence that Bickham intended to kill Fair, the jury was instructed on manslaughter, which requires no intent to kill. C.P. 112. The fact that the jury declined the opportunity to convict Bickham of manslaughter is further evidence that the State proved the element of intent to kill beyond a reasonable doubt.

Bickham includes in his legal sufficiency argument another claim which would be properly addressed as an entirely separate issue relating to jury instructions on the element of intent. Bickham acknowledges that instruction C-13 accurately explained deliberate design to the jury. He claims, however, that when read in combination with instruction C-10, the jury "believe[d] that they were required to return a verdict convicting the Appellant of murder due to his likely guilt on the charge of simple assault as a result of his single kick." However, neither Bickham or any other defendant objected to instruction C-10. T. 544-45. As such, he is now procedurally barred from attacking the granting of that instruction. *Smith v. State*, 989 So.2d 973, 986 (¶48) (Miss. Ct. App. 2008). Additionally, the claim lacks merit. Instruction C-13 explained the *mens rea* or mental state required for a finding of murder, whereas instruction C-10 pertained to the *actus reus* of an aider and abettor, stating that "if two or more persons are engaged in the commission of a felony, then the acts of each

in the commission of such felony are binding upon all and all are equally responsible for the acts of each in the commission of such felony.” C.P. 106. Further, Bickham’s argument pertaining to instruction C-10 has already been rejected by the supreme court. See *Doss v. State*, 709 So.2d 369, 378-79 (¶¶21-28) (Miss. 1996).

For the aforementioned reasons, the appellant’s first assignment of error must fail.

II. THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

For his second and final assignment of error, Bickham again attacks the State's evidence on the element of intent. For the most part, Bickham simply rehashes the argument already presented and answered in the preceding issue. This Court will not disturb a jury's verdict based on a claim that it was against the overwhelming weight of the evidence unless allowing the verdict to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005). Additionally, the duties of assessing witness credibility and resolving conflicts in the evidence lie within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). Further,

who the jury believes and what conclusions it reaches are solely for its determination. As the reviewing court, we cannot and need not determine with exactitude which witness(es) or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution.

Id. (quoting *Stephens v. State*, 911 So.2d 424, 436(¶38) (Miss. 2005)).

Bickham claims that the jury was presented with evidence that "the Appellant's kick was not forceful, but was more of a 'get up, come on, let's fight' move as if to provoke the victim to rise and fight." Appellant's brief at 7. To the extent that any such testimony was placed before the jury, it came about in the form of a suggestion by defense counsel for Sneed as a characterization of all of the defendants' actions of kicking Fair. T. 340. The jury also heard the medical testimony that bruising and laceration of one's lungs is not accomplished with light taps, but rather by extremely forceful kicks which compress the chest. To the extent that the jury was presented with conflicting evidence, as previously stated, it is enough that the conflicting evidence presented a factual dispute for jury resolution. Accordingly, Bickham's second assignment of error necessarily fails.


CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Bickham's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

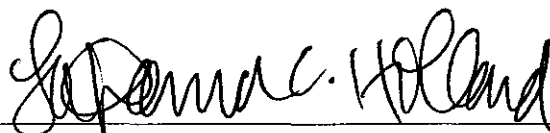
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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