

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARL SHERMAN SPURLOCK

APPELLANT

FILED

JAN 31 2008

VS.

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

NO. 2007-KA-0843-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Lauderdale County indicted defendant, Carl Sherman Spurlock for Armed Robbery and Capital Murder as a very habitual offender all in violation of *Miss. Code Ann.* §§ 97-3-73, 97-3-79 & 99-19-83. (Indictment, cp.2-6). After a trial by jury, Judge Lester F. Williamson, Jr., presiding, the jury found defendant guilty of armed robbery (Count I) and Capital Murder (Count II). (Jury verdicts c.p. 61-61). Subsequently, after a separate sentencing hearing defendant was found to be an habitual offender and sentenced to LIFE without the possibility of parole or early release. (Sentence order, cp. 67).

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Defendant aided by a buddy went to the home of a man under the pretense of selling him some stone arrowheads. The man answered the door and invited them inside. Defendant handed the man an empty bag and when the man noticed there was nothing inside began stabbing the man. There was a violent struggle and defendant stabbed the elderly man nine times with four of the stabs wounds that were fatal in kind. Defendant robbed the man and ran from the scene, went to his companions house and changed clothes.

The accomplice testified as part of a plea agreement giving the facts of the crimes.

SUMMARY OF THE ARGUMENT

Issue I.

THE TRIAL COURT DID NOT ERR IN NOT ALLOWING IMPEACHMENT OF THE DEFENSE WITNESS WITH PRIOR CONVICTIONS.

Issue II.

THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR JNOV.

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN NOT ALLOWING IMPEACHMENT OF THE DEFENSE WITNESS WITH PRIOR CONVICTIONS.

In this initial allegation of trial court error it is alleged the trial court would not allow the defense to impeach the prime eye-witness with his prior convictions.

Looking to the transcript, this was brought up as a motion in limine pretrial. The court correctly followed the rules and found that TWO of the prior convictions for larceny and burglary could be used to impeach. The rationale was that those convictions fell within the ten year period before the date of the offense. Tr. 10-12.

¶ 20. The Mississippi Supreme Court has also spoken on the admissibility of prior convictions of nonparty witnesses under Rule 609: "Even where the non-party witness being impeached is one party's primary or sole witness, evidence of a prior conviction of that witness must be admitted if the requirements of Rule 609(a) ... are met." *Moore v. State*, 787 So.2d 1282(¶ 26) (Miss.2001). In order to lessen the possibility of any prejudicial effect to Sessom that may have been caused by allowing Thomas to be impeached with proof of a prior conviction under Rule 609, the court ruled that Thomas's conviction would be allowed into evidence, but informed the prosecution that it would not be allowed to mention that Thomas's conviction was in any way related to Sessom's current charge.

Sessom v. State, 942 So.2d 234 (Miss.App. 2006).

Looking to the cross-examination the priors were mentioned as they were in closing argument to challenge the credibility of this witness and his familiarity with the criminal justice system. Tr.380-81.

There is no merit to this allegation of error as the prior convictions allowed by the rules were available for impeachment purposes.

No relief should be granted on this allegation of error.

Issue II.

THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR JNOV.

Lastly, defendant claims the trial court erred in denying his motion for judgment notwithstanding the verdict.

¶ 21. Motions for judgment notwithstanding the verdict implicate the sufficiency of the evidence. *Bullins v. State*, 868 So.2d 1045, 1048(¶ 12) (Miss.Ct.App.2004). Our standard of review on the question of the legal sufficiency of the evidence is clearly defined. In *Manning v. State*, 735 So.2d 323, 333(¶ 10) (Miss.1999), the Mississippi Supreme Court held:

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 case for the prosecution-in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.

Kiker v. State, 919 So.2d 190 (Miss.App. 2005).

Looking to the evidence both testimonial and physical there was ample evidence linking defendant to the crime. The jury heard it all and can decide to

accept it or, reject part or all of the evidence. The jury was told of the eye-witness deal for his testimony, they were instructed on the manner in which to view his testimony, – and yet the fact are abundant that defendant committed murder for a net gain of less than \$200.

There is no merit to this allegation of error as the trial court applied the correct legal standard to the evidence presented.

No relief should be granted on this allegation of trial court error.

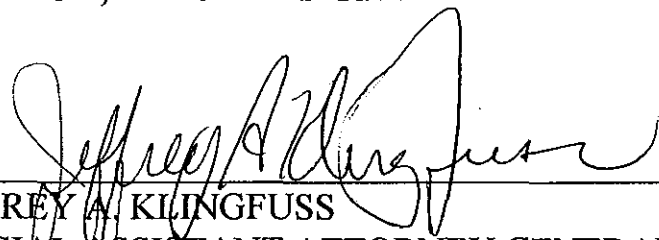
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdicts of the jury and the sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

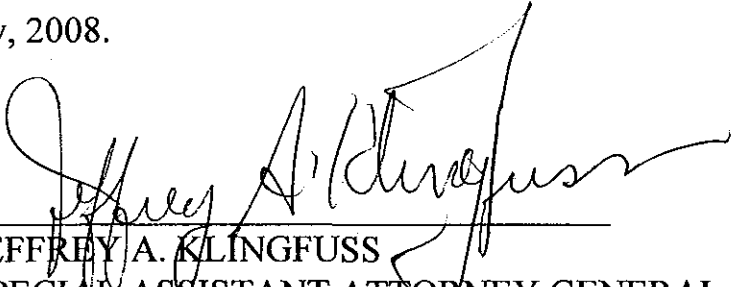
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 31st day of January, 2008.



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