

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CORNELIUS YOUNG

APPELLANT

FILED

VS.

JUL - 8 2008

NO. 2007-KA-1753

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

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE FACTS

The Defendant Cornelius Young admitted to law enforcement that he shot and killed the victim, Wilson “Chuck” Thomas. (Transcript p. 111 - 112 and Exhibits S-4, S-5, and S-6). The two ladies with the victim at the time he was shot both testified that Young shot and killed Mr. Thomas. (Transcript p. 164 and 197). Additionally, there was testimony that Young had previously shot at Mr. Thomas. (Transcript p. 214).

Ms. Kyles, one of the ladies with Mr. Thomas at the time of the murder, testified that she and Shay Parker were walking near the Shady Lanes Apartments with Mr. Thomas who was on a bicycle. (Transcript p. 161 - 162). Ms. Kyles saw Young in the back seat of a vehicle that drove by and then parked nearby. (Transcript p. 163). Young got out of the vehicle and ran over to where Mr. Thomas

was on his bicycle and told Mr. Thomas “I told you I was going to get you mother fucker.” (Transcript p. 163). Mr. Young then shot Mr. Thomas two times. (Transcript p. 163). Mr. Thomas fell over with the bicycle between his legs. (Transcript p. 164). Ms. Kyles further testified that Mr. Thomas was not armed and at no point appeared to be reaching in his pocket for anything. (Transcript p. 164).

Mr. Thomas died as a result of the gunshot wounds. Young was arrested, tried, and convicted of murder. He was sentenced to life in the custody of the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The verdict was not against the overwhelming weight of the evidence. The weight of the evidence unequivocally established that Young was guilty of murder and not manslaughter.

ARGUMENT

Young argues on appeal that “the verdict was against the overwhelming weight of the evidence.” (Appellant’s Brief p. 1). The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

[This court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an “unconscionable injustice.”

Pierce v. State, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86 (Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993).

In support of his contention that the verdict was against the weight of the evidence, Young argues “the prosecution has to prove its case beyond a reasonable doubt and to the exclusion of every

other reasonable hypothesis” and that “manslaughter, under §97-3-35 of the Miss. Code, was a reasonable hypothesis which was not excluded by the evidence.” (Appellant’s Brief p. 5). However, the State is only required to prove its case “beyond a reasonable doubt and to the exclusion of every other reasonable hypothesis” in circumstantial evidence cases. *Leflore v. State*, 535 So.2d 68, 70 (Miss. 1988). “A circumstantial evidence case is one in which there is neither eyewitness testimony nor a confession to the crime.” *Jones v. State*, 962 So.2d 1263, 1272 (Miss. 2007). As there were two eyewitnesses and a confession in this case, it is clear that the State only had to prove its case beyond a reasonable doubt and not to the exclusion of every other reasonable hypothesis, which it did.

The evidence unequivocally established that Young was guilty of murder and not manslaughter as “there was no evidence of immediate and reasonable provocation by the victim.” *See Bradford v. State*, 910 So.2d 1232, 1233 -1234 (Miss. Ct. App. 2005). In this regard, Ms. Kyles, an eyewitness to the murder, testified as follows:

Q: When that car drove by, what if anything did Wilson Thomas do when Cornelius Young came by?
A: What did he do?
Q: Yeah
A: He did nothing.

(Transcript p. 189). She further testified that Mr. Thomas was not armed and did not appear to reach for anything from his pocket. (Transcript p. 164). Even considering Young’s version of what happened on the night in question, there was no provocation. Young’s statement read in pertinent part as follows:

. . . . Wilson came between the truck and the car where I was standing and said, “Why did you fuck with me?” I began to back up and walk backwards. Wilson was still coming toward me . . . Wilson was about to get off his bike, off the bike. When he raised up, I pulled out the gun and shot him twice in the chest and then walked off.”

(Transcript p 111 - 112 and Exhibit S-4). It is well-established that “mere words, no matter how provocative, are insufficient to reduce an intentional and unjustifiable homicide from murder to manslaughter.” *Booze v. State*, 942 So.2d 272, 274 -275 (Miss. Ct. App. 2006) (quoting *Tyler v. State*, 784 So.2d 972 (¶ 12) (Miss. Ct. App.2001)). Certainly getting off of a bicycle is not provocation for killing someone either. Moreover, whether a homicide is classified as a murder or manslaughter is ordinarily an inquiry to be made by the jury. *Hodge v. State*, 823 So.2d 1162, 1166 (Miss. 2002). The jury was properly instructed with regard to the elements of both murder and heat of passion manslaughter and clearly believed that the evidence established that Young was guilty of murder.

Young also argues that “there was absolutely no evidence that disputes Cornelius Young’s witnesses and his statement that Cornelius was put in a state of being terrorized by Wilson Thomas’s actions.” (Appellant’s Brief p. 4). However, whether Mr. Thomas had previously “terrorized” Young had nothing to do with whether Young was guilty of murder. In *Bradford*, the Court of Appeal noted that heat of passion manslaughter is defined as:

A state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.

910 So.2d at 1234 (quoting *Phillips v. State*, 794 So.2d 1034, 1037(¶ 9) (Miss.2001)) (*emphasis added*). Furthermore, the overwhelming weight of the evidence supported the fact that Young murdered Mr. Thomas. As such, the verdict was not against the overwhelming weight of the evidence.

CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Cornelius Young as the verdict was not against the overwhelming weight of the evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

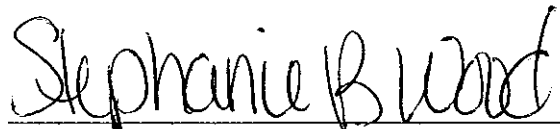
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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