IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JERMAINE NEAL — APPELLANT

VS. — NO. 2007-KA-1899-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

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II. THE TRIAL COURT FULFILLED ITS STATUTORY DUTY IN STRIKING JURORS WHO WERE ADMITTEDLY PREJUDICE AGAINST THE DEFENDANT.

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X. THE STATE'S EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT THE JURY'S VERDICT, AND THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

Shortly after 1 a.m. on August 22, 2006, Tallahatchie County Sheriff's Deputy Rodzinsky Weekly was dispatched to the home of Jermaine Neal and Lakeisha Cleveland. T. 81. When Weeks arrived at the scene, Neal was standing outside holding his and Lakeisha's eight-month-old son and was incomprehensible. T. 83. Weeks eventually understood that Neal was saying that Lakeisha was dead. T.84. Weeks entered the home and saw a large amount of blood on a bed, and a trail of blood leading to the bathroom. T. 88. Upon entering the bathroom, Weeks saw Lakeisha's decapitated body floating in the bathtub. T. 89.

Investigator Brandon Hodges responded to Week's call for backup. T. 95. In addition to the observations made by Weeks, Hodges testified that the words, "Bitch take care of my son. Lame," were written in big red letters on the bathroom wall. T.100. A bottle of Clorox bleach was also near the bathtub. T. 100. Hodges called the Mississippi Bureau of Narcotics and then read Neal his Miranda rights before questioning him. T. 103. Hodges also obtained written consent from Neal to search the home. T. 104. Neal stated that he had worked a 3-11 shift, came home, and found Lakeshia dead. T. 105. Although not under arrest, Neal was taken to the sheriff's department for further questioning. T. 106.

Neal waived his *Miranda* rights and spoke with Hodges at the station. He also surrendered the clothing he was wearing. T. 118. Because Neal was the last one to see Lakeshia alive, and the first one to find her dead, in addition to the fact that he had blood on his underwear, but not on his outer clothing, he became a suspect in the gruesome murder. T. 119. Neal originally denied having a hand in Lakeshia's death, but later that night he told Hodges that he would reveal the location of

Lakeshia's head if Hodges would take him to a payphone to make a telephone call.[1] T. 121. After using the payphone, Neal told officers that he had disposed of Lakeshia's head in Grenada Lake. T. 121. The officers drove to the lake with Neal, and he first advised that he had thrown the head near the dam. T. 123. However, after Hodges opined that Neal could not have thrown the head that far, Neal led the officers to the spillway, maintaining that he had thrown the head there instead. T. 123.

On the way back from the spillway, Neal gave a full confession. T. 127. He had suspicions of Lakeshia's infidelity. T. 135. After an uneventful day, Neal shot Lakeshia twice in the head. T. 128. Afterward, as Lakeshia jerked and kicked, Neal cut her head off with a knife from the kitchen. T. 172. He then rolled her body onto a comforter and drug it to the bathroom. T. 172. Neal then put the body in the bathtub, ran water in the tub, and poured bleach over the body to remove fingerprints. T. 172. Shortly after the gruesome murder, Neal left for work. T. 173. Before leaving the baby alone in his crib for approximately fourteen hours, he changed his diaper and left him two bottles. T. 134, 139.

The spillway was later drained, but the head was never found. T. 125-26. Homeland Security videos of the spillway were reviewed, and Neal was not seen on any of the footage. T. 124. Although Neal told officers were he allegedly disposed of the knife and the gun, those items were not recovered either. T. 180. Neal was ultimately tried and convicted of deliberate design murder by a Tallahatchie County Circuit Court jury.

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[1]For reasons unknown, Neal refused to use a land line at the station or an officer's cell phone. The record does not reveal who Neal called, or if he reached the person to whom he placed the call.

SUMMARY OF ARGUMENT

It could be argued that the State undertook a heavier burden by unnecessarily including in the indictment the method employed by Neal to effectuate Lakeshia's death. However, the State met this burden by proving with legally sufficient evidence that Neal murdered Lakeisha by decapitating her. The elements instruction, although it did not reference decapitation, fairly and accurately informed the jury of the elements of the crime of deliberate design murder which it must find before returning a verdict of guilt.

The trial court struck, *sua sponte*, nine potential jurors who admitted on the record that they could not be fair and impartial. This action was not only proper, but required by statute. The trial court also ensured that a juror who indicated that he had poor eyesight could see all of the evidence presented. Neal's claim that the prosecutor impermissibly defined reasonable doubt during opening statements is belied by the record.

Neal is procedurally barred from arguing that he was entitled to a change of venue because he did not move for a change of venue in the trial court.

The trial court did not err in not examining a juror who momentarily left the courtroom. The juror was followed by the bailiff, and nothing in the record suggests that she had contact, much less improper contact, with anyone.

Neal failed to object at trial to the hearsay statement of which he now complains. Accordingly, his fifth assignment of error is procedurally barred. The assignment is also without merit, as no substantial right belonging to Neal was affected by its admission. The statement was in no way testimonial, and therefore does not implicate Neal's Sixth Amendment right to confrontation.

The record does not affirmatively show ineffective assistance of counsel, thereby making the

issue inappropriate for review on direct appeal. Neal's first claim of ineffective assistance cannot be substantiated without the benefit of supporting affidavits. The remainder of Neal's allegations concern trial strategy, which cannot be the basis for an ineffective assistance claim.

Neal seems to argue that because the trial court never announced on the record that it agreed with the jury's determination of guilt, he was not validly adjudicated guilty. Although this frivolous claim hardly warrants a response, the State would simply direct this honorable Court to the trial court's order of judgement of conviction and sentence.

Neal is procedurally barred from arguing for the first time on appeal that he was entitled to instructions which he never requested. Although the State had prepared a heat of passion manslaughter instruction, it withdrew it from the Court's consideration. The trial court also correctly noted that the evidence simply would not support such an instruction.

Neal is not entitled to relief based on cumulative error, because Neal has failed to demonstrate even one harmless error committed by the trial court.

Finally, the State proved with legally sufficient evidence that Neal murdered Lakeshia Cleveland. The jury's verdict was not against the overwhelming weight of the evidence.

ARGUMENT

I. THE INDICTMENT AND ELEMENTS INSTRUCTION WERE LEGALLY SUFFICIENT.

Neal claims that the trial court committed reversible error in granting a murder instruction which did not track the language of the indictment. Although not required, the murder indictment included the method by which Neal murder Lakeshia, that is, decapitation. The jury instruction, however, was the standard deliberate design murder instruction, which did not reference the method employed by Neal to effectuate Lakeshia's death.

In *Duplantis v. State*, the defendant's capital murder indictment stated that the killing was done with malice aforethought. 708 So.2d 1327, 1343 (¶71) (Miss. 1998). The jury instructions, however, informed the jury that capital murder was committed with or without design to effect death. *Id.* at (¶¶72-73). On appeal, Duplantis argued that the instructions unconstitutionally amended the indictment, and that the State should have been required to prove malice aforethought, as charged in the indictment. *Id.* at (¶74). The supreme court resolved the issue in stating the following.

> At trial, the jury should be instructed in language that tracks the indictment. However, if the instruction fails to contain this language, the instruction is not necessarily fatally defective. Furthermore, intent to kill is not a necessary element of felony murder when a person is slain during the course of a robbery.
>
> No error exists within the instructions given in this case. Although the instructions may not accurately follow the indictment, they do accurately follow the requisite elements of the crime.

Duplantis v. State, 708 So.2d 1327, 1344 (¶¶75-76) (Miss. 1998) (internal citations omitted). Similarly, in the case *sub judice*, although the elements instruction did not track the language of the indictment, it did accurately contain the statutory elements of the crime of deliberate design murder. As such, the instruction was properly given.

Neal also claims that the State did not prove that Lakeshia was killed by decapitation. He

points to the autopsy report in which the medical examiner referred to the decapitation as post-mortem. This fact is irrelevant for two reasons. First, the report was not entered into evidence, nor did the medical examiner testify. As such, the jury was presented with no evidence to support a finding that the decapitation was committed after Lakeshia was already dead. Second, the report explicitly stated the cause of death was undetermined. C.P. 146.

Despite Neal's claim on appeal that Lakeshia was decapitated after death, the State presented sufficient evidence to the jury that Lakeshia was alive prior decapitation. Neal's confession was introduced through Investigator Davis. Davis testified, "He said he took the knife and came across her throat and that she just jerked and kicked and that he cut back and forth until her head came off." T. 172. Davis's notes, which were entered into evidence, reflect the same. See Exhibit 21.

Although it could be argued that the State undertook a heavier burden by including in the indictment the method employed by Neal to effectuate Lakeshia's death, the State met this burden by proving with legally sufficient evidence that Neal murdered Lakeisha by decapitating her. The elements instruction fairly and accurately informed the jury of the elements of the crime of deliberate design murder which it must find before returning a verdict of guilt. Accordingly, Neal's first assignment of error is without merit.

II. THE TRIAL COURT FULFILLED ITS STATUTORY DUTY IN STRIKING JURORS WHO WERE ADMITTEDLY PREJUDICE AGAINST THE DEFENDANT.

During the court's *voir dire*, nine veniremen indicated that they could not be fair and impartial, with two of the nine stating that they had already formed an opinion as to Neal's guilt or innocence.[2] T. 9-11, 14-19. In order to prevent these veniremen from tainting the rest of the panel with explanations as to why they could not serve without bias or prejudice, the trial court instructed the nine that they would not be required to answer any further questions. T. 9-19. After *voir dire*, the trial court, *sua sponte*, struck the nine veniremen in question for cause, as those jurors stated on the record that they could not be fair and impartial. T. 42-47. Defense counsel raised no objection to the trial court's actions.

On appeal, Neal argues that the trial court "communicated implicitly to the other panel members if they wanted to stay on the jury panel, they should be cautious in giving any response that might indicated pre-judgment." Appellant's brief at 27. What a jury panel member may divine from allegedly implicit communication from the trial court is simply no basis for reversible error. Further, Mississippi Code Annotated § 13-5-79 states in pertinent part, "Any juror **shall** be excluded, however, if the court be of opinion that he cannot try the case impartially, and the exclusion shall not be assignable for error." See also, *Langston v. State*, 791 So.2d 273, 281 (¶17) (Miss. Ct. App. 2001). Accordingly, the trial court simply fulfilled its statutory duty in striking those who explicitly stated that they could not be fair and impartial jurors.

Neal also includes the following two seemingly disjointed sub-issues.

Juror Ardis Lee Jones

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[2]The jurors in question were Antonio Andrews, Rosalind Adams, Patrick Hollis, Theresa Davis, Pam Davis, Berlin Taylor, Shirley Brooks, Cherie Truy, and Ella Laws.

After the jury had been selected and sworn in, Juror Jones informed the court that he had poor eyesight. The trial court then stated, "Gentlemen, I don't know what to do but to substitute an alternate juror. I asked the whole panel this morning if they could read or write. I didn't ask any of them if they couldn't see well enough to read." T. 59. After this offer, defense counsel expressed a desire to keep Jones on the jury, as evidence by the following exchange.

MR. BARNETT: Of course, Your Honor, the instructions are going to be read to him.

THE COURT: They will be.

MR. BARNETT: By the Court and I don't know what else he might need to read that may come into evidence but I believe he said -- you can see me?

JUROR JONES: Yes, sir, I have real bad eyesight.

MR. BARNETT: I hope that he might could –

THE COURT: Let's just kind of see how the evidence flows. I don't know what the evidence is going to be other than the instructions of law.

MR. CHAMPION: Your Honor, we are going to have some photographs. We are going to have two videotapes that are pretty important. I don't if he'll be able to -- the juror can answer if whether or not he can see well enough.

THE COURT: Let's start it out this way. Let's let him try and I am going to ask you at some point in time if you are seeing everything that you need to see like these videos. We have got two alternate jurors. You know, if you can't , we'll -- I'll excuse you.

T. 59-60. During trial, after photographic evidence was presented by the State, the trial court asked Juror Jones whether he was able to see the photographs. T. 99. Jones responded in the affirmative. T. 99. Additionally, before turning the case over to the jury for deliberations, the trial court once again ensured that Jones had been able to see all of the evidence presented. T. 230.

On appeal, Neal presents nothing more than mere conjecture in claiming that, "Naturally, once the juror is into the evidence, including hearing the video confession, so to speak, he will say he had no trouble seeing." Appellant's brief at 28. Further, he cites absolutely no case law to support his position, whatever it may be. In any event, the trial court stuck to its word in ensuring that Juror Jones had been able to see all of the evidence presented.

The State's Comment on Reasonable Doubt

During *voir dire*, the State did nothing more than explain to the jury that its burden was to prove Neal's guilt beyond a reasonable doubt. T. 24-25. The prosecutor explicitly told the jury that they would not be receiving a definition of reasonable doubt. T. 25. The prosecutor was then asked by a juror the difference between reasonable doubt and all doubt. T. 26. Again, the prosecutor refused to define reasonable doubt, but just told the juror that he would have to make his mind up one way or another as to guilt. T. 26. Both this honorable Court and the supreme court have found that comments on reasonable doubt, similar to those in question, during *voir dire* and opening and closing statements were proper. *Stigall v. State*, 869 So.2d 410, 413 -414 (¶¶9-11) (Miss. Ct. App. 2003); *Simon v. State*, 857 So.2d 668, 696 (¶73) (Miss. 2003). Further, if Neal found the prosecutor's statements objectionable, he was required to raise an objection in order to preserve the issue for appeal. *Baker v. State*, 930 So.2d 399, 412 (¶30) (Miss. Ct. App. 2005). Because he failed to do so, his claim is both procedurally barred and meritless.

III. BECAUSE NEAL FAILED TO MOVE FOR A CHANGE OF VENUE, HE IS PROCEDURALLY BARRED FROM ARGUING FOR THE FIRST TIME ON APPEAL THAT HE WAS ENTITLED TO SUCH.

Neal is procedurally barred from arguing that he was entitled to a change of venue when he did not move for such in the trial court. *Wilson v. State*, 797 So.2d 277, 284 (Miss. Ct. App. 2001). Whereas some issues which are procedurally barred are still capable of discussion on the merits, the issue of whether a defendant was entitled to change of venue is not. To be entitled to a change of venue, one must present the trial court with sworn affidavits from two credible persons to show that the defendant cannot receive a fair trial in that county due to "prejudgment of the case, or grudge or ill will to the defendant in the public mind." Miss. Code Ann. 99-15-35. "An application for a change of venue must conform strictly to this statute." *Smith v. State*, 981 So.2d 1025, 1033 (¶39) (Miss. Ct. App. 2008). Even after the required showing, the State can rebut the presumption of prejudice during voir dire, and the ultimate decision lies in the sound discretion of the trial court. *Id.* at (¶37) (Miss. Ct. App. 2008) (citing *Hickson v. State*, 707 So.2d 536, 541-42(¶ 22) (Miss. 1997)). Neal failed to move for change of venue, much less conform to the requirements of the statute. Accordingly, his assignment of error necessarily fails.

IV. THE TRIAL COURT DID NOT ERR IN NOT EXAMINING A JUROR WHO MOMENTARILY LEFT THE COURTROOM.

During the State's case, a juror left the courtroom without permission. T. 163. The court then recessed and instructed the bailiff to go check on the juror and "see what's wrong." T. 163. After the recess, the State's direct examination of Davis continued, and there was no further mention of the juror who stepped out of the courtroom. Neal claims on appeal that the trial court should have examined the juror to determine whether she had been improperly influenced "when she was outside the control of the bailiff." Appellant's brief at 32. However, the record indicates that the bailiff immediately left the court room to check on the juror.

Although the trial court did not state on the record that the juror had not had contact without persons, after swearing in the jury, the trial court stated the following.

> Should anyone approach you, don't engage in conversation with anyone. You are required to make your decision based on the evidence presented here in the courtroom and instructions of law that I give you to follow. Anything else would be improper. If you are seen talking to people around the hall ways, on the elevator, parking lot, somebody's going to report that to me and I'm going to have to recess a trial and bring you in and conduct a hearing and try to determine if anybody, No. 1, has done anything improper and if so, has it affected someone's right.

T. 56-57. The above quoted language evidences the fact that the trial court was fully aware of its duty to ensure that jurors did not have improper contact with non-jury members. Had the bailiff seen the juror communicating with anyone outside the courtroom, we must presume that the trial court would have conducted a hearing on the matter, as promised.

Additionally, the *Watts* case cited by the appellant is wholly inapplicable, as it dealt with UCCCR 10.02, which requires jury sequestration in death penalty cases. The *Grimsley* case cited by Neal is also distinguishable, because in that case, the record affirmatively established that jurors were unattended by the bailiff and spoke with non-jury members during trial. Neal has failed to

show that the juror had contact with anyone during her absence, much less improper contact. As such, he is entitled to no relief based on this assignment of error.

V. THE HEARSAY STATEMENT ADMITTED WITHOUT OBJECTION IN NO WAY AFFECTED A SUBSTANTIAL RIGHT BELONGING TO THE DEFENDANT.

Mary Loerker, the defendant's neighbor, testified that on the day of the murder the victim's son, who had been at her house after school, went home, came back and informed her that his house was locked. During this testimony, Loerker also testified that the little boy stated, "That seems odd. My window is never locked." T. 77. Incredibly, citing *Crawford v. Washington*, 541 U.S. 36 (2004), Neal claims that this statement violated his Sixth Amendment right to confrontation.

The *Crawford* opinion was absolutely clear in its holding that only testimonial hearsay is violative of the defendant's right to confront the witnesses against him. The *Crawford* opinion did not define testimonial hearsay, but did give examples. However, our supreme court has stated that "a statement is testimonial when it is given to the police or individuals working in connection with the police for the purpose of prosecuting the accused." *Hobgood v. State*, 926 So.2d 847, 852 (¶12) (Miss. 2006) (citing *Burchfield v. State*, 892 So.2d 191, 202 (Miss. 2004)). By no stretch of the imagination could the statement in question be characterized as one given to the police for purposes of prosecuting Neal. The issue, therefore, is one concerning the admission of evidence, rather than an issue of constitutional proportions.

No error can be predicated on the admission or exclusion of evidence unless a substantial right belonging to the defendant was violated. *Woods v. State*, 973 So.2d 1022,1028 (¶15) (Miss. Ct. App. 2008). No substantial right belonging to Neal was violated by the admission of the statement in question. Further, Neal failed to object to the statement. Accordingly, his assignment of error is both procedurally barred and without merit.

VI. NEAL'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS CANNOT BE PROVEN ON DIRECT APPEAL.

Neal's ineffective assistance of counsel claim is incapable of review on direct appeal. That is not to say that all ineffective assistance claims are incapable of review on direct appeal. Such claims may be considered on direct appeal when the record affirmatively shows deficient performance of constitutional proportions. *McGregory v. State*, 979 So.2d 12, 21 (¶28) (Miss. Ct. App. 2008). If a reviewing court finds that the record is sufficient to consider an ineffective assistance claim on direct appeal, it is confined to "the four corners of the trial record." *Id.* at (¶29).

Neal's first allegation of ineffective assistance calls into question defense counsel's assertion during opening argument that intruders killed the victim, which was never fleshed out either through cross-examination of the State's witnesses, or through Neal's case-in-chief. This claim is certainly not capable of review on direct appeal by examining the four-corners of the record, because a very real possibility exists that Neal may have informed defense counsel that he intended to testify to such. The record indicates that Neal had not made up his mind whether to testify. At the close of the State's case, the trial court indicated that it would give Neal and defense counsel time to discuss whether Neal would testify. Defense counsel then stated, " I would like to have a couple of minutes with him. We have discussed it, Your Honor, but I would like to have a final word." T. 220. After this conference, Neal decided that he would not testify. Therefore, Neal's first allegation of ineffective assistance cannot be properly reviewed without the benefit of affidavits to support his claim.

The remainder of Neal's allegations of ineffective assistance fall within the ambit of trial strategy. "Counsel's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections fall within the ambit of trial strategy and do not give rise to an ineffective

assistance of counsel claim." *Watts v. State*, 981 So.2d 1034, 1039 (¶15) (Miss. Ct. App. 2008) (citing *Pruitt v. State*, 807 So.2d 1236, 1240(¶8) (Miss. 2002) (internal quotations omitted). Counsel's decision not to request certain jury instructions also falls under the category of trial strategy. *Smiley v. State*, 815 So.2d 1140, 1148 (¶¶ 31-32) (Miss. 2002). In accordance with *Watts*, none of Neal's remaining allegations give rise to an ineffective assistance claim.

VII. NEAL WAS ADJUDICATED GUILTY AND VALIDLY CONVICTED.

Neal audaciously claims that he was not adjudicated guilty. Specifically, he claims that the jury found him guilty, but that the trial court did not state that it accepted the verdict. To support this argument, Neal cites Mississippi Code Annotated §99-19-3, apparently under the misconception that the trial court must state the magic words, "The court accepts the jury's verdict." However, the fact that the trial court accepted the verdict is evidence by the fact that the trial court entered an order of conviction. C.P. 261-262. The cases cited to by Neal under this issue are wholly irrelevant, as they concern polling the jury, which was unquestionably done in this case. T. 256-57. Neal's claim is truly without merit.

VIII. NEAL IS PROCEDURALLY BARRED FROM ARGUING THAT HE WAS ENTITLED TO HEAT OF PASSION MANSLAUGHTER AND DESECRATION OF A CORPSE INSTRUCTIONS, WHERE SAID INSTRUCTIONS WERE NEVER REQUESTED.

A defendant is procedurally barred from arguing on appeal that he was entitled to jury instructions which were never requested at trial. *McDowell v. State*, 984 So.2d 1003, 1014 (¶37) (Miss. Ct. App. 2007). Neal claims that he was entitled to a heat of passion manslaughter instruction and a desecration of a corpse instruction, but neither were requested. Accordingly, he is barred from claiming that he was entitled to such instructions.

The State had prepared a heat of passion manslaughter instruction, but withdrew it from the court's consideration at the close of its case-in-chief. T. 223. Even had the State not withdrawn the instruction, the court correctly found that there was no evidentiary foundation for a heat of passion manslaughter instruction. T. 222. To reduce a killing from murder to heat of passion manslaughter, one of several requirements is that there be evidence of reasonable provocation on the part of the victim. *Livingston v. State*, 943 So.2d 66, 71 (¶15) (Miss. Ct. App. 2006). The only evidence of Neal's interactions with the victim prior to the murder came from Neal's own statement, in which he admitted that they had not even fought or argued on the day of the murder. T. 135. There was simply no evidence in the record to support a heat of passion manslaughter instruction, even had one been submitted to the trial court for consideration.

IX. NEAL IS NOT ENTITLED TO RELIEF BASED ON CUMULATIVE ERROR.

Where there is no error in part, there can be no reversible error to the whole. *Gibson v. State*, 731 So.2d 1087, 1098 (¶31) (Miss. 1998). Because Neal has failed to show error in any of his assignments of error, he is not entitled to relief based on cumulative error.

X. THE STATE'S EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT THE JURY'S VERDICT, AND THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

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). On the issue of legal sufficiency, Neal claims that the State did not prove the allegations laid out in the indictment. Without expressly stating in the brief, he is presumably arguing, again, that the State did not prove that Neal murdered Lakeshia by decapitation. As previously stated, by his own statement, Neal admitted that Lakeshia was jerking and kicking while he cut off her head. T. 172. A verdict is legally sufficient when based even on the uncorroborated testimony of a single witness. *Clayton v. State*, 946 So.2d 796, 805 (¶29) (Miss. Ct. App. 2006). Neal admitted in his confession that he murdered Lakeshia. This was enough for the jury to so find.

Although he does not make a weight of the evidence argument in his brief, he states in the heading of his final issue that the trial court erred in failing to grant a new trial. A motion for a new trial challenges the weight of the evidence, while a motion for JNOV challenges the sufficiency of the evidence. *Middleton v. State*, 980 So.2d 351, 359 (¶35) (Miss. Ct. App. 2008). There can be no weight of the evidence argument on Neal's behalf, because his admission that he murdered Lakeshia was not contradicted by any evidence whatsoever. Accordingly, the jury was not asked to resolve any conflict in the evidence as to who murdered Lakeshia.

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Neal'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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