IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JULIAN C. WILLIAMS — APPELLANT

VS. — NO. 2007-KA-2030

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JULIAN C. WILLIAMS **APPELLANT**

vs. **CAUSE No. 2007-KA-2030-COA**

THE STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF FACTS

Sometime during the late night of July 14th and the early morning of July 15th, 2006, Rhonda Michelle Mullins, also known as Michelle Mullen, was strangled to death by Julian Williams. The two met for the first time earlier in the evening on July 14th when Mullins was visiting friends at Louise Blade's trailer park. (Trial Record Vol. 2, p. 107). Williams had been "down in the community" all day. (R. Vol. 2, p. 122). He and Mullins left the group to go to neighbor Tom Black's house. (R. Vol. 2, p. 123).

Both Williams and Mullins had used crack cocaine that day. Williams and Mullins engaged in sexual intercourse at Black's house. After they had intercourse, Mullins became agitated because she wanted more drugs. Williams believed he heard footsteps outside the trailer. He tried to go investigate that noise. Mullins got loud and began to hit Williams. He became

convinced that he was about to be robbed. In his written statement, Williams says that he "began to put on [his] clothes so [he] could leave and she kept trying to detain [him] in the bedroom so [he] became very afraid and feared for [his] life and turned and began to choke her on the bed." He held her throat tight for what he believed was three to four minutes. After going outside to investigate the noise and seeing nothing, he returned to find Mullins unconscious on the floor, partially under the bed. She stopped breathing and he forced her body the rest of the way under the bed. He admits that he was still high. (State's Exhibit 5).

Williams rejoined the group of people gathered at a nearby trailer. When he got there, he was soaking wet with sweat. When questioned, he lied about where he had been and where Mullins was. (R. Vol. 2, pp. 123-24). Tom returned to his trailer that night to try to get some sleep. After Tom laid down, Williams came back into the trailer but Tom made him leave. Unable to sleep, Tom returned to the neighbor's house. (R. Vol. 2, p. 135). Nearing daybreak, Tom again returned home and went to bed. Still unable to fall asleep, he lit a cigar. As he was moving to dump ashes from the cigar, he saw Mullins's hair and part of her body underneath his bed. (R. Vol. 2, p. 138). Because the bed was broken, the frame of the bed was actually being supported by the body underneath. (R. Vol. 2, p. 78). Mullins's face was disfigured from having the bed slat rest across it. Her body was found naked but for socks and one shoe. Her panties remained around one ankle. (R. Vol. 2, p. 94).

STATEMENT OF ISSUES

1. DID THE TRIAL COURT ERR IN REFUSING A "HEAT OF PASSION" INSTRUCTION

SUMMARY OF ARGUMENT

THE TRIAL COURT DID NOT ERR IN REFUSING TO GIVE THE REQUESTED "HEAT OF PASSION" JURY INSTRUCTION

ARGUMENT

THE TRIAL COURT DID NOT ERR IN REFUSING TO GIVE THE REQUESTED "HEAT OF PASSION" JURY INSTRUCTION

Williams contends that the court below erred in denying the requested jury instructions regarding heat of passion manslaughter. Defense instruction D-9 purports to set forth the elements of heat of passion manslaughter as set out in Miss. Code Ann. Section 97-3-35. The instruction permitted a verdict of manslaughter if the jury found beyond a reasonable doubt that the defendant killed the deceased in a cruel or unusual manner, without malice but in the heat of passion, and not necessarily in self-defense and with the authority of law. (R. Vol. 1, p. 55). Defense instruction D-10 defined heat of passion as "a state of violent and uncontrollable rage engendered by a blow or certain other provocation given and will reduce a homicide from the grade of murder to that of manslaughter. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror." (R. Vol. 1, p. 56). Williams argues that heat of passion manslaughter was a theory of his defense, and that the jury should have been instructed thereon.

The trial court refused the "heat of passion" instructions for the reason that there was no evidence in support of them. The trial court was correct. If anything, the most that the Appellant's fear - of - being robbed argument might establish would be the defense of self defense. The trial court instructed the jury on this defense. (R. Vol. 1, pg. 46).

Williams established nothing that would lead to a reasonable apprehension that his life was in danger. Williams offered no evidence to show that Mullins did anything to provoke him. It is true that the Appellant indicated that, after hearing a noise outside the trailer, he became seized with the notion that he was about to be robbed, yet he had no reasonable basis to think

that, or to think that the victim was any part of such a thing.

The victim had become agitated because she wanted drugs. Williams said that when he tried to leave the bedroom, she began to raise her voice and hit him. (State's Exhibit 5). Mullins's actions alone, even if she did strike Williams, were insufficient provocation to support a heat of passion instruction. As the trial court noted, Williams never asserted that he believed he was in any danger from Mullins herself, but from the perceived noises outside. Even if Williams did believe that Mullins was part of a conspiracy to rob him, that is not what provoked the attack. The attack was not provoked by Mullins's actions or by his fear, but motivated by Williams's desire for silence so that he could determine what was going on outside.

Furthermore, Williams presented no evidence to show that he was in a violent and uncontrollable rage. Williams stated that he choked Mullins to make her be quiet so that he could better hear what he perceived to be footsteps outside the trailer. While he does claim that he believed he was about to be robbed and that he feared for his life, he offers nothing to show that he was in a violent and uncontrollable rage as a result of that fear. Heat of passion manslaughter requires a loss of control over his or her own actions caused by some emotional trauma. Williams offered no evidence that he was so overcome by his fear that he went into a violent and uncontrollable rage and was unable to stop himself from choking Mullins to death. Rather, his choking her was a calculated means of making her be quiet so he could hear what was going on outside. (State's Exhibit 5). His contention that he was just trying to silence Mullins, not kill her, is further indication that he was aware of and in control of his behavior. Williams was sufficiently in control of himself to hide the body from view under the bed and return to the group, lying to them about Mullins's and his own whereabouts. (State's Exhibit 5, R. Vol. 2, pp. 123-24).

It is well established that words alone are not sufficient for a heat of passion manslaughter instruction. *Gates v. State*, 484 So. 2d 1002, 1005 (Miss.1986). The Mississippi Court of Appeals has also determined that "a verbal argument and perhaps some pushing, tussling, and/or choking 'a little bit'" are not sufficient to require a heat of passion instruction where there was no testimony that the defendant was in a violent and uncontrollable rage. *Cooper v. State* 977 So. 2d 1220, 1223 (Miss. App. 2007). Here, there was no evidence that the Appellant was provoked into a violent and uncontrollable rage because of anger, rage, hatred, furious resentment or terror. He claimed that he was afraid that he was going to be robbed, yet he had no objective reason to suppose that was so, or that the victim was a part of any such thing. The Appellant's suspicion that the victim might be part of a plot to rob him was not a reasonable provocation. There is nothing to support an argument that Williams was provoked into a violent and uncontrollable rage by an immediate and reasonable provocation as is clearly required by both Section 97-3-35. There is no evidence of such a state of mind in ths record.

Williams is correct that a trial court is bound to instruct the jury regarding the defendant's theory of defense where there is evidence in support of that defense. *Chinn v. State*, 958 So. 2d 1223, 1225 (Miss. 2007). Here, however, there was no evidence presented that supported the theory of defense presented in the requested jury instructions. The trial judge may properly refuse requested instructions if he finds them to incorrectly state the law, to repeat a theory fairly covered in another instruction, or to be without proper foundation in the evidence. *Howell v. State*, 860 So. 2d 704, 761 (Miss. 2003). The court below found that there was no evidence to support a finding of heat of passion manslaughter and properly refused to give the requested jury instructions.

Even if the defense had put forth some evidence to support a theory of heat of passion

manslaughter, the trial court was still correct in refusing to grant the requested instructions. Instructions may be refused if they state the law incorrectly. *Id.*; *Sanders v. State*, 781 So. 2d 114, 120 (Miss. 2001). In *Sanders*, the Mississippi Supreme Court was presented with a similar situation. The trial court had refused a jury instruction defining heat of passion manslaughter requested by the defense. The *Sanders* court found that because the sentence "[p]assion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time" had been left out of the definition, the law had not been correctly stated and the instruction was properly refused. *Sanders*, 781 at 120. Like the instruction in *Sanders*, requested instruction D-10 did not include the above sentence. Neither did Instruction 9.

While a trial court is required to grant jury instructions on an accused's theory of the case, any such instructions must be correct statements of the law. *Sanders*, 781 at 120. Because the requested jury instructions did not correctly state the law regarding heat of passion manslaughter, the court below did not err in refusing those instructions.

The defense failed to offer any evidence to support the theory of heat of passion manslaughter. The jury instructions offered regarding heat of passion manslaughter incorrectly stated the law. Because either of these reasons were sufficient justification for refusing to give the requested instructions, the court below was not in error. The instructions were properly refused.

The trial court did give an instruction on culpable negligence manslaughter. (R. Vol. 1, pg. 48). Given the Appellant's statement as to how he came to kill the victim, we think this instruction was more appropriate than a "heat of passion" instruction. The Appellant claimed that he was trying to silence the victim. His chosen method, though, demonstrated a reckless disregard for the safety of human life or an indifference to the consequences of such an act.

In any event, the jury was in fact given the option of considering manslaughter. We submit that since the jury had that option, if it was error to deny the "heat of passion" instruction any such error was cured by the giving of the culpable negligence manslaughter instruction.

Here, the Appellant asserts that his fear that he was about to be robbed was a sufficient provocation, for purposes of a "heat of passion" manslaughter instruction. This position is unreasonable. A naked woman, under the influence of cocaine and crying out for more cocaine, was hardly likely to present any significant threat to the Appellant. The Appellant simply had no reasonable ground to think he was in danger. The fact that he heard a noise without the trailer was of no significance: The area the trailer was in was inhabited by cocaine users who walked about the area for most of the night. (R. Vol. 3, pp. 171 - 173). While the area was known for drug and alcohol usage, it was not known for incidents of burglary or robbery. (R. Vol. 3, pg. 174).

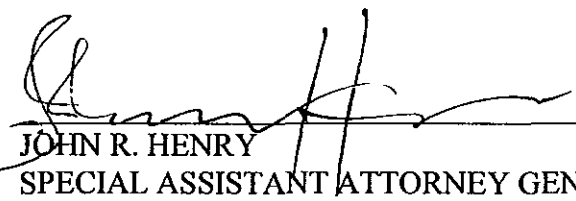
The Assignment of Error should be denied.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, John R. Henry, 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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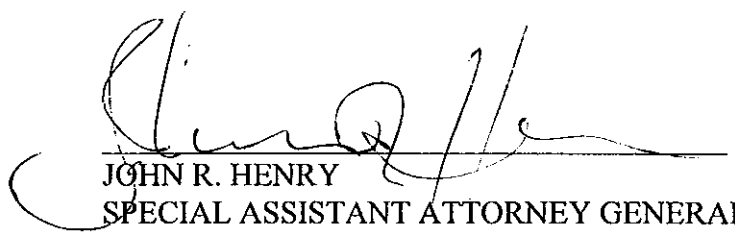

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