

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN L. WOODS

APPELLANT

VS.

NO. 2008-KA-0366

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE PHOTOGRAPHS INTO EVIDENCE.
- II. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

STATEMENT OF THE FACTS

Derek Williams (age 18), Kerry Johnson (age 19), Bryan Carter (age 21), and the Appellant, John Woods (age 22) were roommates living in an apartment in Gautier, Mississippi. (Transcript p. 487). None of the four held a job or had any income. (Transcript p. 511). Derek was the only one of the four who owned an operating vehicle. (Transcript p. 362). In order to survive the four “would shoplift or go to a friend’s.” (Transcript p. 497). They shoplifted “every night” and put gas in Derek’s truck by “doing drive-offs.” (Transcript p. 497 and 503). Woods described the apartment and their living situation as follows:

... We then had more roommates come in, preferably young people, because they don't want to be with their parents, and I had opened my home for I guess you could say a sanctuary, and a party place, you would say, where anything goes. The only rules were that you just don't steal or bring the police to the house.

(Transcript p. 492). Woods further testified that the police were called to the apartment more than once because of underage drinking. (Transcript p. 492). The four had no electricity or phone service and were on the verge of being evicted for failing to pay rent. (Transcript p. 506 - 507).

On March 11, 2005, they decided to go camping since it was their last night living together before the eviction. (Transcript p. 274). In order to get prepared to go camping, Derek and Kerry stopped by Derek's mother's house to get his sleeping bag and supplies, then headed to pick up Woods and Bryan. (Transcript p. 168 and 275). After checking out a few potential camping sites, they decided to camp at Bluff Creek Water Park in Vancleave. (Transcript p. 363 and 515).

After unloading Derek's truck, they headed to Wal-Mart where they stole steaks, bacon, hamburger meat, and various sauces to go on the meat. (Transcript p. 521). They returned to the campsite and realized they had no beer. (Transcript p. 522 - 523). They headed back into town and broke into the Conoco in Vancleave. (Transcript p. 364). They retrieved a weight bar¹ (which they obtained from a dump truck they previously tried to steal and last used to smash mailboxes and a car belonging to a family member of Woods) from the back of Derek's truck. (Transcript p. 524 - 525). Derek first tried to smash the glass at the station with the bar but was unable to do so. (Transcript p. 282). Woods then grabbed it and successfully broke the glass. (Transcript p. 282). They stole beer, soda, and cigarettes from the store and headed back to the campsite. (Transcript p. 282, 365 and 528 - 529).

The four were sitting around the campfire, talking, drinking, and smoking when the topic of

¹ This weight bar was also referred to in the record as the lead pipe.

conversation changed to women: “what they look like, what we did exactly, sex wise, who they were, who would we like to do it with. . .” (Transcript p. 284 and 535). During this conversation, Derek stated that he wanted to have sex with Woods’s sister. (Transcript p. 537). Woods grabbed the weight bar, walked away, and began pacing. (Transcript p. 538). Woods signaled to Bryan and Bryan went to talk to him. (Transcript p. 367). Woods indicated that he was mad and told Bryan that he wanted to kill Derek. (Transcript p. 367 and 539). Bryan testified that he thought Woods was just venting. (Transcript p. 368). Bryan returned to the campfire and told Kerry to go talk to Woods. (Transcript p. 285). Kerry found Woods with the weight bar in this hand and Woods also told Kerry that he wanted to kill Derek. (Transcript p. 287 - 288 and 540). Kerry did not take him seriously and went back to the campfire. (Transcript p. 288).

Shortly, Woods returned to the campfire. (Transcript p. 369). Derek was lying in his sleeping bag making a toast when Woods swung the weight bar and hit Derek in the head. (Transcript p. 293, 369, and 540). Woods continued to hit Derek with the bar numerous times. (Transcript p. 293, 370, and 541). Bryan looked away unable to watch, but Woods yelled that he needed to watch. (Transcript p. 372). As Woods hit Derek, he said “why wont you die?” (Transcript p. 373).

Woods then began packing everything up and wrapped Derek’s body in the tent. (Transcript p. 294). He ordered Kerry and Bryan to load Derek’s body into the truck. (Transcript p. 294 and 373). At first they did not comply, but Woods still had the weight bar and threatened them so they did as he asked. (Transcript p. 295 and 373). Woods reached into Derek’s pocket and retrieved his keys. (Transcript p. 547).

Woods ordered Bryan and Kerry to get in Derek’s truck and he drove them to Alabama. (Transcript p. 295 - 296, and 374). They pulled onto a dirt road and Woods drug Derek’s body out

of the truck and hid it. (Transcript p. 296 and 374). Woods pulled Derek's wallet from his pocket and jumped back into the truck. (Transcript p. 550). He then drove back to their apartment. (Transcript p. 297). When he got back to the apartment, he burned Derek's wallet in the sink. (Transcript p. 296 and 378). After Derek's death, Woods drove Derek's truck both to a job interview at Wal-Mart and to New Orleans. (Transcript p. 557 - 558).

Woods, Bryan and Kerry were arrested after the body was discovered. Bryan and Kerry pleaded guilty to manslaughter and commercial burglary. Woods was tried and convicted of capital murder and commercial burglary. He was sentenced to life in the custody of the Mississippi Department of Corrections for the capital murder charge and to seven years in the custody of the Mississippi Department of Corrections for the commercial burglary charge.

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in allowing the photographs in question into evidence as they served a meaningful evidentiary purpose. Also, there was more than sufficient evidence to establish that Woods was properly convicted of capital murder. Woods, himself, admitted to killing Derek and taking his truck keys and wallet. Woods' testimony along with the other evidence clearly establishes that each of the elements of capital murder and the underlying felony robbery were proved beyond a reasonable doubt. Furthermore, the evidence did not support a conviction of manslaughter.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE PHOTOGRAPHS INTO EVIDENCE.

Woods first argues that “the trial court erred by allowing introduction of gruesome photographs that were unnecessary and prejudicial against Woods.” (Appellant’s Brief p. 5). Prior to trial, a hearing was held with regard to the admissibility of these photographs. During this hearing, the State noted that out of approximately four hundred autopsy photographs, it selected only ten. (Transcript p. 119). The State argued that the photographs showed a clean body with no maggots and very little blood. (Transcript p. 120). The State further argued that it attempted to narrow the photographs down to those absolutely necessary to assist the pathologist in explaining the injuries to Derek’s body. (Transcript p. 120). After hearing arguments from both sides, the Court decided to forego ruling until the pathologist testified. (Transcript p. 125). During trial and outside the presence of the jury, the pathologist was questioned regarding whether her diagrams or the photographs would be most helpful in explaining Derek’s injuries and autopsy to the jury. (Transcript p. 231 - 233). She testified that the photographs were more accurate depictions of the injuries and that the diagrams were “not necessarily the shape, and they’re two dimensional, and they do not show exactly what, in [her] opinion, needs to be shown to describe the injuries and explain the injuries.” (Transcript p. 232 - 233). The Court made its ruling after reviewing the photographs and relevant caselaw holding that the photographs were admissible and further holding that the family of the victim should not be present in the courtroom during testimony regarding the photographs. (Transcript p. 237 and 239).

The Mississippi Supreme Court has recently held the following regarding the admission of photographs:

Admission of photographs by the trial court is reviewed for abuse of discretion. (*citation omitted*). A decision favoring admissibility will not be disturbed absent a clear abuse of that discretion. The discretion of the trial judge is almost unlimited regardless of the gruesomeness, repetitiveness, and the extenuation of probative value. (*citations omitted*). Some probative value is the only requirement needed in order to support a trial judge's decision to admit photographs into evidence. (*citations omitted*). So long as a photograph has probative value and its introduction serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, grisly, unpleasant, or even inflammatory. (*citations omitted*). A photograph has a meaningful evidentiary purpose when it: (1) aids in describing the circumstances of the killing; (2) describes the location of the body or cause of death; or (3) supplements or clarifies witness testimony. (*citation omitted*).

Chamberlin v. State, 989 So.2d 320, 340 (Miss. 2008) (*emphasis added*). These photographs clearly aided in describing the circumstances of the killing as they showed the injuries Derek received as a result of being hit with the weight bar. They also aided in describing the location where Derek's body was thrown and left after the killing. Finally they clarified and aided in the pathologist's testimony. Thus, the trial court did not abuse its discretion in allowing them into evidence.

II. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

Woods also argues that "the evidence was insufficient to convict Woods of capital murder instead of manslaughter." (Appellant's Brief p. 8). This Court has held that "[w]hen on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, [the court's] authority to interfere with the jury's verdict is quite limited." *Phinisee v. State*, 864 So.2d 988, 992 (Miss. Ct. App. 2004). The evidence which is consistent with the verdict must be accepted as true. *Lee v. State*, 469 So.2d 1225, 1229-30 (Miss.1985) (citing *Williams v. State*, 463 So.2d 1064, 1067 (Miss.1984); *Spikes v. State*, 302 So.2d 250, 251 (Miss.1974)). The State must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* (citing *Glass v. State*, 278 So.2d 384, 386 (Miss.1973)). Basically, "once the jury has returned a verdict of guilty in a criminal case, [the court is] not at liberty to direct that the defendant be discharged short of a

conclusion on [its] part that the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.” *Id.* (citing *Fairchild v. State*, 459 So.2d 793, 798 (Miss.1984); *Pearson v. State*, 428 So.2d 1361, 1364 (Miss.1983)). With this standard in mind, there is sufficient evidence in the case at hand to prove each and every required element of capital murder and the underlying crime of robbery.

Mississippi Code Annotated §97-3-19(2)(e) defines capital murder as “[t]he killing of a human being without the authority of law by any means or in any manner . . . [w]hen done with or without any design to effect death, by any person engaged in the commission of the crime of . . . robbery . . . or in any attempt to commit such felonies.” In the case at hand, the underlying crime during which Derek was killed was robbery. The three essential elements of robbery are: (1) felonious intent; (2) force or putting in fear as a means of effectuating the intent; and (3) by that means, taking and carrying away the personal property of another from the person or in his presence. *Garner v. State*, 944 So.2d 934, 940 (Miss. Ct. App. 2006) (citing *Crocker v. State*, 272 So.2d 664, 665 (Miss.1973)).

Accordingly, in the case at hand, the State had the burden of proving that Derek was killed during the commission of the crime of robbery. The State of Mississippi met this burden and provided sufficient evidence that Derek was killed during the commission of the crime of robbery. First, there is no question that Woods killed Derek by striking him multiple times with a weight bar. (Transcript p. 184, 192, 195, 196, 209, 293, 369, 370, 540, 541, and 579). Second, there is no question that Woods took Derek’s truck keys from his pocket and took Derek’s wallet from his pocket after killing him. (Transcript p. 296, 547, 550, 586, and 587).

Nonetheless, Woods argues that “. . . the State did not prove all the elements of robbery.” (Appellant’s Brief p. 9). The State, however, asserts that it did prove all the elements of robbery.

For example, there was ample evidence Woods took Derek's personal property from his presence including his own testimony:

- Q: Now the keys - - who's got the keys? Derek has the keys? You've got the keys? What's the story on the keys?
A: I believe Derek had them.
Q: How did you get the keys from Derek?
A: They were in his pockets, sir.
Q: Who got them out of his pocket?
A: I did.

(Transcript p. 547).

- Q: And what's this business about a wallet?
A: He had identification on him at the time, his wallet, so I took his wallet out of his back pocket.
Q: You did that?
A: Yes, sir I did.

(Transcript p. 550).

- Q: But at some point time, you knew he was dead?
A: Yes sir, I did.
Q: And that's when you reached into his pocket and pulled out the keys?
A: Yes sir.
* * *
Q: So he had the keys in his pocket?
A: Yes, sir.
Q: And every time you wanted to use that truck that night, Mr. Woods, you would ask him to give you the keys?
A: Yes sir.
* * *
Q: When you took those keys out of the pocket . . . did you ask permission to take those keys?
A: No, sir, I did not.

(Transcript p. 586 - 587). Furthermore, there is no dispute that the truck belonged to Derek and that Woods was the only person who drove the truck after he killed Derek. (Transcript p. 273, 340, 507, 606 and Exhibit 42). He even drove it to a job interview and to New Orleans where he left it. (Transcript p. 557 - 558). There is also no dispute that Woods took Derek's wallet and burned it.

(Transcript p. 296, 378, and 550). Thus, there can be no doubt that Woods took Derek's wallet and truck keys "with the intent to permanently deprive [Derek] of [his] property." *See Downs v. State*, 962 So.2d 1255, 1259 (Miss. 2007).

Woods, however, specifically argues that the State "did not prove the element of intent." (Appellant's Brief p. 10). The Mississippi Supreme Court has held on multiple occasions that "a person is presumed to intend that which he does." *Downs*, 962 So.2d at 1260 (quoting *Lee v. State*, 146 So.2d 736, 738 (Miss. 1962). *See also Fisher v. State*, 481 So.2d 203, 213 (Miss. 1985). Moreover, this Court has held that "the jurors could reasonably infer [a defendant's] felonious intent by looking to the circumstances surrounding the crime." *Moore v. State*, 942 So.2d 251, 254 (Miss. Ct. App. 2006). The circumstances surrounding this crime as shown in the record, many of which are set forth above, clearly indicate that Woods did not lack the requisite intent. Accordingly, there is sufficient evidence of each of the requisite elements of capital murder and the underlying crime of robbery.

Woods also claims that "taking the State's case in its best light, the only conviction which could arguably said to be supported by the evidence is one for manslaughter, not capital murder or murder." (Appellant's Brief p. 8). However, there is absolutely no evidence that this killing was manslaughter. Woods claims that he killed Derek because he said he wanted to have sex with Woods's sister. (Appellant's Brief p. 10). It is well settled law in Mississippi that "[m]ere words, no matter how provocative, are insufficient to reduce an intentional and unjustifiable homicide from murder to manslaughter." *Gates v. State*, 484 So.2d 1002, 1005 (Miss. 1986). Thus, there is absolutely no way that the evidence supported a conviction of manslaughter.

As such, the record clearly establishes that there was more than sufficient evidence to support the Appellant's conviction for capital murder. Thus, his second issue is without merit.

CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of John Woods as the trial judge acted within his discretion in allowing the photographs into evidence and as there was sufficient evidence to support the verdict.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in black ink, appearing to read 'Stephanie B. Wood', written over a horizontal line.

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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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This the 15th day of October, 2008.



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