

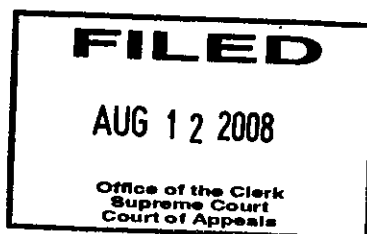
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN L. WOODS

APPELLANT

V.



NO. 2008-KA-0366-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. John L. Woods, Appellant
3. Honorable Anthony (Tony) Lawrence, III, District Attorney
4. Honorable Robert B. Krebs, Circuit Court Judge

This the 12 day of August, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO. 1

THE TRIAL COURT ERRED BY ALLOWING INTRODUCTION OF GRUESOME PHOTOGRAPHS THAT WERE UNNECESSARY AND PREJUDICIAL AGAINST WILLIAMS.

ISSUE NO. 2

THE EVIDENCE WAS INSUFFICIENT TO CONVICT WOODS OF CAPITAL MURDER INSTEAD OF MANSLAUGHTER.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jackson County, Mississippi, and a judgment of conviction for the crimes of Count I - Capital Murder, Count II - Commercial Burglary. The jury affixed the penalty to life in prison without the possibility of parole on Count I, and woods was also sentenced to seven (7) years on Count II, with count II to run

consecutive with Count I. Woods is in the custody of the Department of Corrections following a jury trial on January 15-19, 2008, Honorable Robert P. Krebs, presiding. John L. Woods is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On March 11, 2005, Derek Williams and John Woods decide to go camping. Tr. 511, 513. Williams and Kerry Johnson went to Williams' mother's house to get some tents. Tr. 513. Around 7:00 p.m. Woods, Williams, Johnson, and Bryan Carter get in the truck and drive up Highway 57 to go camping. Tr. 514. All four guys end up camping at Bluff Creek Water Park around 8:30 p.m.. Tr. 515-16. After asking permission from a Mr. Adams, they proceed to unload the truck and set up camp. Tr. 517.

After getting camp set up and realizing that they did not have any food, they decide to go to Walmart to get some food. On the way to the store, they decide to get some gas and drive off without paying for it. Tr. 521. They go to Walmart and steal some food. *Id.* They stop by another store and steal some more items and then go back to the campsite. Tr. 522. They cook and eat and realize that they do not have anything to drink so they decide to go burglarize a store. Tr. 523.

Williams uses the weight bar to break into the store. Tr. 528. Williams, Woods, and Johnson go into the store. *Id.* Williams goes and gets some beer, Woods gets eight cartons of cigarettes, and Johnson got some soft drinks. Tr. 528-29. They leave the store and loaded the truck and then go back to the campsite around 1:30am March 12, 2005. Tr. 529. Once they get back to the campsite, Carter mentioned that he did not go into the store and Woods

said let's go back. *Id.* So, Woods and Carter go back to the store and get some more beer and cigarettes. Tr. 530-31. They go back to camp and start drinking around 2:00am. Tr. 531.

Williams then mentions that he wants to go to his father's and get some gas, because the fire had died down a little. Tr. 532. Williams leaves and returns 30 or 45 minutes later with a gas jug. *Id.* While Williams was gone, the other three guys were drinking and smoking cigarettes. Tr. 533. When Williams returns all four guys are sitting around toasting, talking, and partying. Tr. 534. Woods testified that he consumed approximately a case and a half beers in four hours. *Id.* At some point during the night, all four guys admitted that they are drunk or wasted. *Id.*

Then the guys start talking about women. Tr. 535. Williams then states that we would like to have sex with Woods' sister. Tr. 537. Woods becomes enraged because Williams makes this comment. *Id.* Woods got mad and started pacing or walking around. Tr. 537-38. He then picked up the bar instantly and then walks away. Tr. 538. Woods stated that he up pacing around five minutes. Tr. 539. Carter then comes out and asks Woods what is wrong, to which Woods replies that his is going to kill Williams. *Id.* Carter then leaves and Johnson immediately comes and asks Woods what is wrong and then Woods tells him that he is going to kill Williams. Tr. 540. Within a few minutes, Woods walks over and starts beating Williams repeated in the head with the bar. *Id.* Woods testified that it was around ten minutes from the time that he was provoked to the time that he started hitting Williams with the bar. *Id.*

After Woods stops hitting Williams, he started saying he was sorry and felt that he was going to throw up. Tr. 545. Woods then mentioned to Carter and Johnson that they should take Williams' body and move it into the truck. Tr. 546. Carter and Johnson take the body that is in a sleeping bag and move it to the tent. *Id.* They then carry the body to the truck. *Id.* They then loaded everything in the truck and drove East towards Alabama. Tr. 548. Woods drove and once they were in Alabama he just pulled off of the interstate and put the body on the side of the road. Tr. 550-51. Woods removed Williams wallet to conceal his identity to anyone that found the body. Tr. 550. After getting rid of the body, Woods, Carter, and Johnson drove back to their apartment in Gautier. Tr. 551.

Woods confesses to his mother and sister around March 31, 2005, about him hitting Williams with the bar, ultimately killing him. Tr. 565-67. Woods' mom and dad come to see him the next day and give him twenty-four hours to turn himself into the police. Tr. 566. Then his mom called the police and Woods was arrested. Woods was arrested, charged, and convicted of capital murder and commercial burglary. Woods is currently incarcerated with the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The trial court erred by allowing the introduction of gruesome autopsy photographs into evidence. The photographs served no probative purpose and were highly prejudicial.

The State did not prove all elements of robbery beyond a reasonable doubt. The State did not prove the element of intent. Without proving the element of intent, Woods should not have been convicted of capital murder. Furthermore, the evidence shows that John

Woods acted on impulse without premeditation. There is no proof of premeditation to commit a homicide; therefore Woods could not have been convicted of murder. The only reasonable evidence that was presented to the jury was that of manslaughter.

ARGUMENT

ISSUE NO. 1

THE TRIAL COURT ERRED BY ALLOWING INTRODUCTION OF GRUESOME PHOTOGRAPHS THAT WERE UNNECESSARY AND PREJUDICIAL AGAINST WOODS.

The admissibility of crime-scene and autopsy photographs containing gruesome depictions of corpses or injuries to them must first be judged under the evidentiary rules proscribing relevancy and its limits. More specifically, a trial court must examine these type of photographs with an eye toward the balancing test of unfair prejudicial effect weighed against probative value required by Mississippi Rules of Evidence 402 and 403, even if the photographs are found to be relevant under Mississippi Rule of Evidence 401.

Prior to testimony in the case, Defense counsel filed a motion to exclude photographs as they were highly prejudicial and the court advised that the photographs would be taken up when during testimony. (C.P. 106, R.E. 24) Tr. 123. Woods objected to the gruesome and inflammatory nature of the photographs introduced in State's Exhibits 8, 9, 10, 11, 12, 13, 14, and 15. Exhibit 8 introduced during trial is an autopsy photograph of the victim's arm and chest badly bruised. Exhibit 9 shows the victims head and chest both severely discolored.

Exhibit 10 is a close-up autopsy photograph of the left cheek of the victim. Exhibit 11 is a picture of the victims head with severe discoloration and cuts all over his head.

Exhibit 12 is a close-up of the victim's head showing a big cut on his forehead. Exhibit 13 is a side view of some of the same injuries as previously shown. Exhibit 14 is a close-up of the victim's face showing the inside of his mouth. Finally exhibit 15 is a view from the top of the victim's head.

In *McFee v. State*, 511 So.2d 130, 135 (Miss. 1987), the Court reiterated that "photographs which are gruesome or inflammatory and lack an evidentiary purpose are always inadmissible."

In *Welch v. State*, 566 So.2d 680, 681 (Miss. 1990), Welch, partly under duress, and two of his buddies beat Joe Ray Heath to death over a gambling argument and dumped Heath's body on the side of the road. Welch's two buddies pled guilty, Welch took his chances at trial and was convicted of murder. *Id* at 682.

The *Welch* court found several reversible errors, one of which was the introduction of autopsy photographs which were more gruesome and prejudicial than probative. The *Welch* court found fault with the photographs of the victim's "dissected cadaver." *Id* at 685.

The *Welch* court reiterated that the admissibility of photographs is at the trial court's discretion and there is no remedy on appeal without an abuse of that discretion. *Id*. One way a trial court abuses the discretion is to allow "[g]ruesome photos which have no evidentiary purpose or probative value except to inflame and arouse the emotion of the jury." *Id*.

The *Welch* court said the cadaver photographs had no probative value; because, they did not show "circumstances surrounding the death, the cruelty of the crime, the place of the

wounds, or the extent of force or violence used, [and], were extremely unpleasant and used in such a way as to be overly prejudicial and inflammatory.” *Id.*

In *Hewlett v. State*, 607 So.2d 1097, 1102 (Miss. 1992) the Court said, “[p]hotographs of a victim should not ordinarily be admitted into evidence where the killing is neither contradicted nor denied, and the *corpus delicti* and the identity of the deceased have been established.” In the present case, the *corpus delicti* of the charges and identity of the deceased were clearly established and unchallenged. This is why it is obvious that the state’s motive here was to merely inflame the jury.

In *McNeal v. State*, 551 So.2d 151, 159 (Miss. 1989), trial judges were instructed to carefully consider the circumstances surrounding the admission of photographs. The trial judge must specifically consider: (1) whether the proof is absolute or in doubt as to the identity of the guilty party, as well as, (2) whether the photographs are necessary evidence or simply a ploy on the part of the prosecutor to arouse the passion and prejudice of the jury.

When the state argued in *McNeal* that the gruesome photographs were needed to prove the *corpus delicti* of the crime, the Court said “we believe that the state could have shown the angle and entry of the bullet wound without the full-color, close-up view of the decomposed, maggot-infested skull.” *Id.* For the photographs to have “evidentiary value”, they must: “(1) aid in opening the circumstances of the killing; (2) describe the location of the body and the cause of death; (3) supplement or [clarify] witness testimony.” *Jones v. State*, 938 So.2d 312, 316-17 (Miss. App. 2006).

In the present case, the gruesome testimony about the victim’s fatal injuries from the pathologist were more than sufficient to establish everything the state needed to prove in this case. Tr. 248-250. Therefore, there was not a legitimate reason here to display the gashed

head of the victim numerous times. Woods did not dispute the fact that he hit Williams in the head with the bar. Tr. 509. This case was not complicated, the details of the injuries were not crucial to the prosecution.

Exhibits 8-15 served no probative purpose. The sole purpose of the Exhibits was to arouse the inherent human emotions of viewing the head and body of the victim. The viewing of these photos is clinical to seasoned members of the Court and criminal bar; but, is highly traumatic to lay jurors. This juror trauma was what the prosecution wanted and obtained. The natural response of a juror is to remain in an emotional state where the only satiation is to convict the person accused of this violent crime. The verdict is thus product of passion and emotion rather than reason and due process of law.

The appellant respectfully requests that this Court here find that the trial court should not have admitted Exhibits 8-15. Therefore, the appellant is requesting that a new trial be granted.

ISSUE NO. 2

THE EVIDENCE WAS INSUFFICIENT TO CONVICT WOODS OF CAPITAL MURDER INSTEAD OF MANSLAUGHTER.

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.

Manslaughter is defined in MCA § 97-3-35 (1972)

The killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense, shall be manslaughter.

Capital Murder is defined in MCA § 97-3-19 (2)(e) (1972)

(2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases: (e) When done with or without any design to effect death, by any person engaged in the commission of the crime of robbery, as defined by Section 97-3-73.

Robbery is defined in MCA § 97-3-73 (1972)

Every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery. **Randolph v. State**, 852 So.2d 547 (Miss. 2002).

Murder requires premeditation or deliberate design. MCA § 97-3-19(1) (1972):

Although our law has never prescribed any particular *ex ante* time requirement, the essence of the required intent is that the accused must have had some appreciable time for reflection and consideration before pulling the trigger. **Blanks v. State**, 542 So. 2d 222, 226-227 (Miss 1989)

This Court has defined “heat of passion” 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. **Mullins v. State**, 493 So. 2d 971, 974 (Miss 1986).

Woods should not have been convicted of capital murder due to the fact that the State did not prove all of the elements of robbery. The elements of robbery as defined by the Mississippi Supreme Court 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 property of

another from his person or in his presence.” *Randolph*, 852 So.2d at 555 (quoting *Caldwell v. State*, 481 So.2d 850, 853 (Miss. 1985) (citing *Glenn v. State*, 439 So.2d 678, 680 (Miss. 1983) (quoting *Crocker v. State*, 272 So.2d 664, 665 (Miss. 1973))), vacated on other grounds, 479 U.S. 1075, 107 S.Ct. 1269, 94 L.Ed.2d 130 (1987). The state must prove each element of the indicted offensive beyond a reasonable doubt. *Hobson v. State*, 730 So.2d 20, 28 (Miss. 1998); *Heidel v. State*, 587 So.2d 835, 843 (Miss. 1991).

In light of the testimony, the State did not prove all elements beyond a reasonable doubt. The State did not prove the element of intent. Woods testified that the only reason his took Williams’ wallet was to conceal Williams’ identity, not to deprive Williams of his wallet. Tr. 338, 552. Furthermore, Woods, Carter, and Johnson had free use of Williams’ truck. Without proving the element of intent, Woods should not have been convicted of capital murder.

As far as murder, the evidence shows that John Woods acted on impulse without premeditation. There is no proof of premeditation to commit a homicide; therefore Woods could not have been convicted of murder. Woods testified that he was provoked by Williams when Williams stated that he wanted to have sex with Woods’ sister. Tr. 537. The evidence showed that no fights or arguments prior to this incident with Williams and Woods. Tr. 510. After Woods was provoked, he got up and started pacing and picked up the bar. Tr. 538. Woods talks to Johnson and Carter and tells him he is mad and then walks up and starts to hit Williams in the head. Tr. 538-40. Woods had no intention of injuring Williams prior to the incident where Woods hit Williams with the bar.

The Supreme Court has reversed jury verdicts of murder on more than one occasion remanding for sentencing only for manslaughter. *Williams v. State*, 729 So. 2d 1181,1186 (Miss 1998).

In *Dedeaux v. State*, 630 So. 2d 30, 31-33, (Miss 1993) the court reviewed the facts of a barroom shooting where the Defendant was charged and convicted of murder for shooting his girlfriend's husband. In that case, there was ongoing animosity. *Id.* The defendant Dedeaux shot the victim three times, twice while the victim was moving toward him, and a third time as the victim lay on the ground. *Id.* Even though the defense did not request a manslaughter instruction in the *Dedeaux* case, the Supreme Court found that the facts only supported a conviction for manslaughter because “this clearly was a killing in the heat of passion” even though a “greater amount of force than necessary under the circumstances” was used. *Id.* The *Dedeaux* court reversed the murder conviction and remanded the case for re-sentencing for the crime of manslaughter. 630 So. 2d at 31-33.

In *Clemons v. State*, 473 So. 2d 943 (Miss 1985), the court pointed out that there was “such contradictory testimony that it is virtually impossible to reconstruct what actually happened”. 473 So. 2d at 944. The *Clemons* case involved a barroom stabbing. The *Clemons* court pointed out "there is more than enough conflicting evidence to cast at least a reasonable doubt as to murder", then, reversed the murder conviction and remanded for sentencing for manslaughter. *Id* at 945.

In the case at bar, we see a similar factual scenario as in *Dedeaux* and *Clemons*. Namely, there is some sort of provocation by the victim talking about Woods’ sister and

reaction by the accused involving more than reasonable force, resulting in the unfortunate and unnecessary death of the victim.

In *Tait v. State*, 669 So. 2d 85, 86-88 (Miss 1996) the defendant was indicted for depraved heart murder and convicted. He appealed on weight and sufficiency and that the conviction should have been manslaughter by culpable negligence. Several young men were joking and horsing around with a gun. The defendant put the gun to the victim's head and it went off. The Supreme Court ruled that the only proper verdict supported by the evidence was for manslaughter by culpable negligence. *Id.* at 90. The *Tait* facts are analogous here in that there was no evidence of premeditation, in *Tait* there was horseplay, here there was drunken boasting and arguments.

In an evaluation of sufficiency of evidence the reviewing court must decide whether any of the evidence "point[s] in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty." *Edwards v. State*, 469 So.2d 68, 70 (Miss.1985) (citing *May v. State*, 460 So.2d 778, 781 (Miss.1984)) (emphasis added). If different conclusions could have been reached by reasonable jurors with respect to every element of the offense, the evidence is sufficient. *Bush v. State*, 895 So.2d 836, 843 (Miss.2005) (citing *Edwards*, 469 So.2d at 70). See also *Smith v. State*, 839 So.2d 489, 495 (Miss.2003).

Here, different conclusions could not have been reached. No reasonable juror could have found Woods guilty of murder; because, under either version of the time the incident happened Williams died as a result of an impulse brought on by sufficient provocation. The

State also did not prove the robbery because they failed to prove the element of intent; therefore, Woods should not have been convicted of capital murder.

Woods respectfully asks this court to review the facts of this case, and to reverse the capital murder conviction and remand the case for a new trial or sentencing for manslaughter

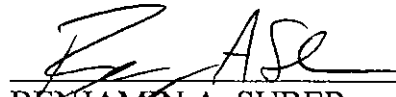
CONCLUSION

John L. Woods is entitled to have his conviction for capital murder remanded for a new trial or sentencing for manslaughter.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For John L. Woods a/k/a John Louis Woods, Appellant

BY:



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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for John L. Woods, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 12 day of August, 2008.


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