

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MICHAEL JEROME WILLIAMS, JR.

APPELLANT

VS.

NO. 2008-KA-0800-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi wherein a jury convicted Michel Jerome Williams for the capital murder of Latanya Thompson and Calvin Jennings during commission of a house burglary in violation of Mississippi Code Annotated section 97-3-19(2)(e), and possession of a firearm by a convicted felon in violation of Mississippi Code Annotated section 97-37-5. Williams received two concurrent life sentences in the custody of the Mississippi Department of Corrections without the possibility of parole for the capital murder charges and a concurrent three year sentence for the firearm charge. (CP 74-79; RE 12-17; T 454; 460).

STATEMENT OF THE FACTS

Latanya Thompson (“Latanya”) and Michel Jerome Williams (“Williams”) had been a couple for several years when Latanya broke up with Williams. Williams admitted he was a very jealous man. (T. 361-63). Three or four months before her death, Latanya moved into a rental house on Maria Drive with her three children, her best friend Tawanda Hedge and Tawanda’s children. (T. 171, 184). Even after the breakup Williams continued to visit Latanya and their three children at her house. (T. 185-86). Latanya’s brother, Zachary Thompson (“Zachary”), moved in with his sister a few weeks before her death. (T. 148-49).

In the early morning hours of November 20, 2005, Williams was driving to Latanya’s house when he saw an unknown car parked at her house. (T. 261). Williams testified he stopped by Latanya’s to tell her how much he loved her. (T 355, 359). According to Williams, he stopped and knocked on the front door. When no one answered he looked in Latanya’s bedroom window and saw a man laying beside Latanya in bed. (T.).

Zachary testified that while sleeping on the living room sofa, he awoke to a knock at the door. (T 153). Latanya told Zachary it was Williams and not to open the door. (T 155-56, 186). The knocks got louder and then Williams kicked in the door. *Id.* Williams entered the home with his gun in hand. (T. 158). Williams and Latanya tussled, he pushed her out of the way and then entered her bedroom. (T. 157). Zachary heard the first gun shot; Calvin Jennings (“Calvin”) ran out saying “he shot me” and then crossed the street. (*Id.*) Zachary went after Jennings, and heard two more shots. (*Id.*) As he went back into the house; Michael ran out with the gun and left in his car. (*Id.*) Zachary found his sister on the floor behind her bedroom door. (T. 159).

Zachary further testified that while Williams visited the house on occasion, Latanya never gave Williams a key to the house, nor did she invite Williams to come to the house the night of the

shooting. (T. 170).

Tawanda Hedge (“Tawanda”) was the next witness for the State. Tawanda corroborated Zachary’s rendition of the night’s events. (T 173-175). Tawanda and Latanya moved in the rental house three or four months prior to the shooting. She also testified that she woke up to a banging on the door. She got up when she heard a gun shot, opened her bedroom door and saw Calvin run out. She then heard Williams shoot Latanya and saw him exit Latanya’s bedroom looking for Calvin. (T. 176-77). Tawanda grabbed Williams trying to throw him off to keep him from going into Tawanda’s room. (T. 177). He pointed a gun at her and asked if Calvin were in her room. (*Id.*). Williams went to his car, placed the gun in the trunk and left (*Id.*).

Zachary and Tawanda both testified that Latanya had only recently started seeing Calvin; this was the first time he had been to their home. It was undisputed that the two gunshot victims were unarmed when shot. At the time of their deaths Jennings was dressed in boxer shorts and Latanya in clothing.

Shamika Whitlock, Latanya’s neighbor, testified that an unknown man woke her by knocking at her side door and then the front door. He told her he’d been shot and needed help. Afraid, she didn’t open the door but called the police for him. (T. 189-94).

Officer Keith Dowd testified that at 3:27 a.m., upon responding to a “shots fired” call, he found the wounded Jennings outside of Whitlock’s home. (T. 216-17). Jennings told him Latanya’s ex-boyfriend shot him. (*Id.*). Investigator Eneke Smith, a crime scene investigator, testified to the condition of the crime scene and photographs thereof, evidence recovered, and the murder weapon. (T. 221-51). Sargent Eric Smith with the Jackson Police Department testified to his investigation of the case, his interview with witnesses and to his interview with Williams. (T. 251-84). Smith testified Williams turned himself into the police and gave a statement. (T. 256, 259-63).

Raphael Ward ("Ralph"), Williams' cousin, testified pursuant to the State's subpoena. On the night of the shootings, Ward's girlfriend telephoned him to tell him about the shootings and asked him to go to Latanya's. (T. 196). Ralph found Latanya dead at her house. (T. 197). Ralph called Williams on his cellular telephone approximately 30 to 40 minutes after the shootings. (T. 98, 201-02). Ralph gave police a statement a few hours after the shootings. Ralph testified Williams told him "He said he was driving past Tanya's house and saw her boyfriend's car outside. He said he kicked the door in and went in and shot." (T. 201). "He couldn't take her being with anyone else." (T. 201, 382). Ralph testified that Williams and Latanya had been broken up a couple of months. (T. 204). Ralph also testified Williams had been dating other women since the breakup. During the conversation, Williams asked Ralph "How's the other guy?" (T. 204). Ralph testified he did not lie to the police when he gave them a statement after the shootings.

Dr. Stephen Hayne performed the autopsies on both shooting victims. He testified that each died of massive internal bleeding due to gunshot wounds. (T. 298, 308). Latanya sustained one shot to the chest and two shots to the head, any of which would have been sufficient to kill her. (T. 306). Jennings sustained one fatal shot to the chest area. (T. 298-308).

Williams testified in his own defense. According to Williams, he started dating Latanya in 1998 or 1999. They lived together and had three daughters. (T. 344). Approximately a year before her death, Latanya moved away from Williams. (T. 348). Three or four months before the shooting Latanya and Tawanda moved in the rental house on Maria Drive. At trial, Williams admitted:

"I was kind of jealous. I ain't going to lie. I was too jealous, a lot jealous. And I believe that was driving her away from me because she just always complained about if she even talked to a dude or something or a guy or something I'd be -- you know, I'd kind of get upset or whatever.

And I don't want to say nothing that ain't true because she ain't here to defend herself and I wouldn't do her like that. But that's just how it was. I was real jealous. But I loved that girl. You know I really loved her. But --"

(*Id.*)

On cross examination Williams admitted that when he entered the home he was angry; he intentionally pulled the trigger when he shot Calvin. (T. 398). Williams admitted that when he shot at Calvin the first time he missed, but hit him in the chest the second time. (T. 403). Williams further admitted if Calvin had stayed in the room and not run he probably would have just shot him. (T. 400). After being shot, Calvin fled the room. Williams turned on the bedroom light and went in search of him. Williams went into the living room and asked Zach where Calvin went. (T 401). Then Williams went looking for him in the kitchen and then came upon Tawanda with his gun in his hand. (T. 402). Tawanda was crouching down in fear. (T. 402). Williams turned his attention back to Latanya in the bedroom when he couldn't find Calvin. (T. 408) Latanya was standing behind her bedroom door when Williams shot her in the chest. (T. 409). The shot knocked Latanya off her feet and she fell to the ground. Latanya said "Mike, you're killing me." (*Id.*). Williams told her "Baby, I'm sorry." (T. 261) and then shot her two times in the head. (T. 420, 425). Williams testified he wasn't mad at Latanya when he shot her, he was hurt. (T. 410-11). After shooting Latanya, Williams left the house with his gun in hand, went to his car placed the gun in the trunk and drove off. Williams testified after he left Latanya's house, he went to a friend's home, intending, he testified, "to do something crazy." (T. 378).

At trial, the defense proffered the testimony of Williams' mother, Beverly Williams ("Beverly"). She testified that Williams entered her apartment early the morning of the shooting with the gun placed to his temple and tried to fire the revolver. Beverly believes the gun failed to fire through divine intervention. (T. 321-23).

An official from the Hinds County Circuit Clerk's office testified as to Williams' prior conviction for attempted car jacking, making him a convicted felon.

The jury found Williams guilty of the capital murder of Latanya Thompson and Calvin Jennings during commission of a house burglar and possession of a firearm by a convicted felon. Williams received two life sentences without the possibility of parole for the capital murder charges and a concurrent three year sentence for the firearm charge. After the denial of post trial motions, Williams appealed raising the following issues:

- I. The trial court abused its discretion to the fatal prejudice of Mr. Williams when it excluded evidence of his attempted suicide in the hours immediately following the shootings.
- II. The verdict of the jury was insufficient as a matter of law because the State failed to prove deliberate design on the part of Mr. Williams, an essential element of the crime.

SUMMARY OF ARGUMENT

The trial court properly refused admission in evidence of Williams' attempted or contemplated suicide. Williams' state of mind in the hours after he shot and killed Latanya Thompson and Calvin Jennings was totally irrelevant as to whether he acted with deliberate design or in the heat of passion.

The question of whether a defendant committed murder or manslaughter is ordinarily a question to be resolved by the jury. The jury heard the evidence and determined Williams acted with deliberate design and convicted him of murder. There was sufficient evidence to support the jury's verdict.

ARGUMENT

I. THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF WILLIAMS' ATTEMPTED SUICIDE.

Williams contends in his first assignment of error that the trial court erred in excluding Beverly Williams' testimony concerning his attempted suicide and his statements to police and to Ralph that he contemplated suicide.

Rule 401 of the Mississippi Rules of Evidence states that relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The trial court properly excluded the attempted suicide testimony as being irrelevant. The excluded testimony was of Williams' state of mind *after* the shootings occurred. According to Rule 402 of the Mississippi Rules of Evidence, for evidence to be admissible it must be relevant. "The admissibility and relevancy of the evidence are within the discretion of the trial court and, absent an abuse of that discretion, the trial court's decision will not be disturbed on appeal." *McCoy v. State*, 820 So.2d 25, 31(¶ 15) (Miss.Ct.App.2002) (citing *Reynolds v. State*, 784 So.2d 929, 932(¶ 7) (Miss.2001)). Nevertheless, even if an admission of evidence was in error, it is not cause for reversal unless it results in prejudice or harm. *Id.* (citing *Jackson v. State*, 594 So.2d 20, 25 (Miss.1992)).

The cases cited by Appellant in his brief are inapplicable to the case *sub judice*.

II. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

In his next assignment of error, Williams contends that the verdict of murder was not supported by the evidence. Williams claims the state failed to prove the element of deliberate design beyond a reasonable doubt, as required for a murder conviction.

The question of whether a defendant has committed murder or manslaughter is ordinarily a

question to be resolved by the jury. *Strahan v. State*, 729 So.2d 800, 806(¶ 24) (Miss.1998); *Kelly v. State*, 783 So.2d 744, 754(¶ 27) (Miss.Ct.App.2000). In this case, the jury was instructed on both manslaughter and murder. The jury concluded that Williams committed the murder.

In reviewing the sufficiency of the evidence, all evidence supporting the guilty verdict is accepted as true, and the State must be given the benefit of all reasonable inferences that can be reasonably drawn from the evidence. *Bell v. State*, 910 So.2d 640, 646(¶ 16) (Miss.Ct.App.2005). Furthermore, it is well-settled law that the jury determines the credibility of witnesses and resolves conflicts in the evidence. *Evans v. State*, 725 So.2d 613, 680-81 (¶ 293) (Miss.1997).

Deliberate design murder consists of “[t]he killing of a human being without the authority of law by any means or in any manner ... when done with deliberate design to effect the death of the person killed, or of any human being.” Miss.Code. Ann. § 97-3-19(1)(a) (Rev.2006).

In *Windham v. State*, 520 So.2d 123, 126 (Miss.1987), the Mississippi Supreme Court held “Deliberate” always indicates full awareness of what one is doing, and generally implies careful and unhurried consideration of the consequences. “Design” means to calculate, plan, contemplate.... deliberate design to kill ... may be formed very quickly, and perhaps only moments before the act of consummating the intent.

In *Theodore v. State*, 798 So.2d 465, 470(¶ 21) (Miss.2001), the supreme court affirmed a murder instruction that read, “[a] deliberate design cannot be formed at the very moment of the fatal act, however, the deliberate design need not exist ... for any definite time ... but if ... it exists ... but for an instant before the fatal act, this is sufficient deliberate design to constitute the offense of Murder.” *Id.*

Whether Williams had the deliberate premeditated intent to kill Calvin and Latanya before he shot them is a classic jury question between deliberate design and heat of passion. See *Craft v.*

State, 970 So.2d 178 (Miss.App.,2007).

When considering the evidence in the light most favorable to the State, a rational juror could conclude that Williams acted not out of the heat of passion, but with deliberate design to kill Calvin Jennings and Latanya Thompson. The evidence showed that Latanya had broken up with Williams. She was moving on with her life. Williams saw an unknown car parked at her house in the middle of the night. He admittedly was a jealous person. He told Ralph if he couldn't have Latanya, nobody else could. When no one would answer his banging at her door, he peeped through her bedroom window and saw Latanya with another man. He went back to his car for his gun. He acted with the intent of shooting Calvin. Williams broke into the house by kicking down the door. He pushed Latanya out of the way and went for Calvin in the bedroom. He testified he intentionally pulled the trigger to shoot Calvin, and then sought him out. He went from room to room looking for him. Williams' actions were deliberate, calculated and with malice. Although he was angry, he was not in an uncontrollable rage.

Williams admitted that when he returned to Latanya in the bedroom he wasn't angry at her at that time, he was hurt. He said, if Calvin had not run, he probably would not have shot Latanya. Williams actions in shooting Latanya three times were deliberate and intentional. Shooting her when she was on the ground begging for her life was malicious.

Williams had plenty of time to contemplate shooting Calvin and Latanya. Thus, a jury could find that Williams acted with deliberate design. The jury had all the evidence before it and made an informed decision based on the facts before it. In reviewing the evidence on appeal and in the light most favorable to the State, one can reasonably find Williams guilty of capital murder. This issue is without merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the jury's verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

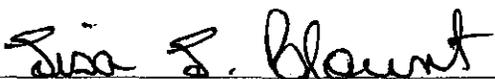
I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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