

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WINDELL WASHINGTON

APPELLANT

VS.

NO. 2008-KA-0947-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLEE

PROCEDURAL HISTORY:

On May 11, 2008, Mr. Windell Washington, "Washington" was tried for murder of Mr. Anthony Collins and aggravated assault of Ms. Patricia Gibson before a Holmes County Circuit Court jury, the Honorable Jannie M. Lewis presiding. R. 1. Washington was found guilty of manslaughter. He was sentenced to a twenty year sentence in the custody of the Mississippi Department of Corrections. R. 320; 374.

On May 30, 2008, Washington filed notice of appeal to the Supreme Court. C.P. 73.

ISSUES ON APPEAL

I.

WAS THE ADMISSION OF AN AUTOPSY PHOTOGRAPH SHOWING THE DECEDENT'S FACE PREJUDICIAL?

STATEMENT OF THE FACTS

On January 9, 2007, Washington was indicted for murder of Mr. Anthony Collins and the aggravated assault of Ms. Patricia Gibson on July 23, 2006 by a Holmes County Grand jury. C.P.

4.

On May 12, 2008 , Washington was tried for the murder of Mr. Anthony Collins before a Holmes County Circuit Court jury, the Honorable Jannie M. Lewis presiding. R. 1. He was represented by Ms. Latrice Westbrooks. R. 1

On July 23, 2006, Washington went in his truck to down town Lexington, Mississippi. Washington went to the Lexington town square to speak to his former girlfriend, Ms. Patricia Gibson. He found her sitting in her car. Sitting nearby in their separate cars were Ms. Angela Thomas, a friend of Patricia's, and the decedent Mr. Anthony Collins. They were talking to each other from their respective cars. Washington drove past their cars slowly, and then left.

Washington returned and stopped behind Gibson's car. Washington then asked Patricia, "Why did you take that nigger by my house?" R. 229. Patricia tried to explain that she had gotten her grandchild up the street from his house. R. 229.

Mr. Anthony Collins told Washington to stop arguing with Patricia. R. 229. He and Washington had harsh words for each other. R. 230. When Collins got out of his car and moved toward Washington's truck, Washington pulled out a handgun. He shot him six times, a projectile also struck Patricia in the leg. R. 235. Ms. Thomas called 911. R. 236.

On July 27, 2006, Dr. Stephen Hayne performed an autopsy of the decedent, Mr Anthony Collins. R. 147-173. Dr. Hayne testified that Collins died from gun shot wounds to his right chest. R. 149. It was found to be “a homicide.” R. 150. During his testimony, photographs of the deceased were introduced into evidence. R. 160-161. Among those photographs was S-2-C which included the face of the alleged victim. R.158-162 ; C.P. 44. The defense objected to the introduction of the photographs on the basis of it being prejudicial since it allegedly showed the swollen face of the decedent. R. 160-162.

See autopsy photographic images contained in the court papers. C.P. 43-46. The photographs were both black and white and multi-colored.

The trial court found that the state’s photographic evidence taken during the autopsy were more probative than prejudicial. R. 160-161.

The trial court denied a motion for a directed verdict. R. 252.

Mr. Washington testified in his own behalf. R. 253-267. Washington testified that we went to the square to check on a grandchild. R. 254. He allegedly tried “to discuss the situation” with Patricia, his ex- girl friend. However, Mr. Collins allegedly angrily interfered with the conversation. When Collins got out of the car allegedly with his hand in his pocket, Washington testified that he feared for his life. R. 255. He testified that he fired only three shots toward Collins. He testified that he voluntarily turned himself in to the Lexington police after the shooting.

On cross examination, Washington did not remember either using the “nigger” word in referring to Collins, or going home looking for his handgun. R. 261-267. On cross examination, Collins also did not know how the decedent received six gunshots and Patricia Gibson, his ex-girl friend, received one shot. R. 265. He claimed to have allegedly fired only “three shots.”

Washington was found guilty of manslaughter and given a twenty year sentence in the

custody of the Mississippi Department of Corrections. R. 320; 374.

On May 30, 2008, Washington filed notice of appeal to the Supreme Court. C.P. 73.

SUMMARY OF THE ARGUMENT

1. The record reflects that the trial court found that the autopsy photographs were “more probative than prejudicial.” R. 160-161. The record reflects that the autopsy photographs were used to describe the location of the “entrance” and “exit” wounds to the body of the decedent. One of them was a faithful representation of the face of the decedent at the autopsy. R. 162-163. It also showed two bullet wounds to the left arm. R. 153-154.

These photographs were used to supplement the testimony of Dr. Hayne. Dr. Hayne testified that the cause of death was a lethal gun shot wound. This was a lethal shot or shots to the chest of the decedent, Mr. Anthony Collins. R. 149-150 . In addition, the photographs were used as evidence for the number of shots that were fired. There were six. R. 149; 235.

The record reflects that while Washington admitted to firing his weapon, he claimed to have shot only three times. R. 265. The autopsy photographs supplemented the testimony of Ms. Thomas, an eye and ear witness to the shooting. Thomas, who was present with the victims when shots were fired, testified that “about five or six” shots were fired. R. 235. She was talking with Ms. Patricia Gibson , who had a baby in her arms , and Mr. Collins. There were in downtown Lexington when the incident at issue occurred. Ms. Gibson was shot in the leg at the same time Mr. Collins was shot six times.

The record reflects that the handgun used by Washington was not recovered. R. 188 ;193. The testimony and exhibits also indicated that decedent was morbidly obese. C.P. 59.

PROPOSITION I

PHOTOGRAPHIC EVIDENCE FROM THE AUTOPSY WAS PROPERLY ADMITTED AS RELEVANT AND MATERIAL TO THE CAUSE OF DEATH, AS WELL AS TO SHOWING THE NUMBER AND LOCATION OF THE GUN SHOT WOUNDS TO THE DECEDENT.

Washington argues that the trial court erred in admitting photographic evidence from the autopsy performed by Dr. Steven Hayne. He argues that there was no need for a photograph showing the alleged swollen face of the decedent, Anthony Collins. He believes that this photograph was gruesome and inflamed the passions of the jury against him. It was also not needed since he was not contesting the identity of the decedent but rather the circumstances under which he had died. Appellant's brief page 1-5.

To the contrary, the record reflects that the trial court found that photograph evidence, which included S-2-A was more probative than prejudicial. R. 160-161. The testimony indicated that the photos were a fair, accurate and true representations of the bullet wounds received by the decedent, Mr. Collins. R. 163-164. The testimony was also that the photograph S-2-A "truly and accurately represented" the decedent's facial features at the time of the autopsy. R. 162-163. It also showed bullet wounds to the victim's upper left arm. R. 153-154.

As stated by the prosecution, the photographs show "entrance" and "exit" wounds on the body of the decedent, Mr. Collins.

Waldrup: S-2-C, your Honor, it shows two bullet wounds to the chest. This is an exit wound. One of these is an entrance wound to the arm. The other is an exit wound. That's two bullet holes to the leg. And maybe two to the arm. Every one of them is a different bullet hole. It's an exit wound. R. 158-159.

Dr. Steven Hayne testified to doing the autopsy on the decedent, Mr. Collins. R.149. He testified that the cause of death was two lethal gun shot wounds to his right chest. R. 149-150. These bullet wounds penetrated his "lung," "liver," "diaphragm" and "colon."

Q. And what was the cause of death?

A. The two lethal gunshot wounds struck the chest. One struck the chest at a point 19 inches below the top of the head. The other gunshot wound struck the decedent also in the right chest at a point 20 and one half inches below the top of the head. Both bullets traveled markedly downward. Both bullets went through the diaphragm, also, went through the liver, and each bullet also perforated the colon. R. 149-150.

Dr. Hayne also testified that the picture of the decedent's face was an accurate depiction of its appearance at the time of the autopsy. He also testified that it also showed another bullet wound to the left arm. They were traveling from the back of the arm to the front. R. 153-154.

In addition, the autopsy report also indicated that Mr. Collins was "morbid obesity, severe" for a man his height. C.P. 59.

Q. In regard to S-2-A, what is that a photograph of, or photographs of?

A. Showing a picture of the decedent, it appears after the post-mortem examination has been performed.

Q. As far as his facial features?

A. It shows his general facial features and the image is the two large ones were taken from the left side of the decedent.

Q. And as far as the facial features go on S-2 A, does that photograph truly and accurately represent his facial features at the time you performed your autopsy?

A. It does, counselor. R. 162-163. (Emphasis by appellee)

...

Q. Yes, sir, S-2-C. What is that a photograph of?

A. Shows a, shows two gunshot wounds of one image. I believe, counselor, that one of them is the gunshot wound—uh—I can't tell the one, counselor. I don't have enough of the image to locate it. It's near one nipple, but I can't determine where that is.

Q. Would you mind marking or signing your name on the one you cannot tell, Dr. Hayne?

A. And two other images show entrance gunshot wounds to the front of the right arm,

exit gunshot wound to the upper right arm, and there's a a third image showing entrance gunshot wound to the back.

Q. Dr. Hayne, with the exception of the one photograph you couldn't tell, do all of these , do S-2-A, S-2-B, S-2-C fairly , accurately, and truly represent the wounds that you just testified to?

A. Yes, counselor. R. 163-164. (Emphasis by appellee).

The trial court found that the photograph was more probative than prejudicial:

Court: Okay. In that the photographs are being offered to show the location of the wounds and the ID of the person with the state saying they intend to delete the medical intervention on the photograph for identification, the Court finds that the probative value outweighs the prejudicial effect and the photographs will be admitted. R. 160-161. (Emphasis by appellee).

Washington testified in his own defense. R. 253-269. He testified that he only fired three shots. R. 265. He also did not know how Ms. Gibson was also shot at that time.

Q. You shot three times?

A. Yeah.

Q. Okay. So how he got six bullets in him, you don't know, and how Patricia got one in her, you don't know.

A. Yes, sir. I don't. R. 265. (Emphasis by appellee).

Ms. Angela Thomas, an eye and ear witness, testified that she thought there were "about five or six" shots fired.

Q. Now, do you know how many shots Windell fired?

A. I'd say about five or six. I'm not for sure. R. 235. (Emphasis by appellee).

In **Hurns v. State** 616 So. 2d 313, 319 (Miss. 1993), the Supreme Court found that the the trial court did not err in admitting photographs of the decedent. They were relevant for showing the extent of the decedent's injuries and the cause of his death.

The Court in **Sudduth**, however, went on to say that photographs of bodies may nevertheless be admitted into evidence in criminal cases where they have probative value and where they are not so gruesome or used in such a way as to be overly prejudicial or inflammatory. **Davis**, 551 So.2d at 173; **Griffin v. State**, 504 So.2d 186, 191 (Miss.1987); Miss. R. Evid. 403; **Sudduth**, 562 So.2d at 70. In the case at bar, the photo in question, State's exhibit 11, may indeed appear somewhat gruesome, but the photo clearly had probative value in that it served to illustrate to the jury the exact extent of the damage which caused Anderson's death. Bearing in mind that Hurns attempted to show that the cause of death could not be attributed to a single blow or numerous blows, and since different individuals participated in striking the deceased, it would be extremely difficult to single out Hurns alone as creating the blow or blows which caused the death of Anderson. The photograph was not introduced in an inflammatory manner but instead was introduced during Dr. Hayne's explanation to the jury in scientific terms the cause of death. The photograph clearly corroborates the testimony of Dr. Hayne that a blow or blows to the head resulted in the death of Anderson.

In **Gardner v. State**, 573 So. 2d 716, 718 (Miss. 1990), the court found that the trial court did not abuse its discretion even though they were "not pleasant" to observe. The court found that they were relevant to assisting the jury in their deliberations. They were given instructions for both aggravated and simple assault.

Of course, the decision regarding the admission of photographs is left to the sound discretion of the trial judge and will not be disturbed by us absent a showing that the trial court abused its discretion in reaching its decision. **Sudduth v. State**, 562 So. 67, 69 (Miss. 1990)... "The mere fact that photographs depict an unpleasant or gruesome scene is no bar to their admission if they are relevant." **Lanier v. State**, 533 So. 2d 473, 484 (Miss. 1988)... We have reviewed the photographs admitted into evidence in this case and, while not pleasant, they do not rise to the gruesomeness of those in **McNeal**. Further unlike the **McNeal** photographs, the introduction of the photographs in this case were not only relevant, but absolutely necessary to aid the jury in its decision of whether the assault with fists constituted aggravated assault or simple assault. On the basis of the record before us, we hold that the trial court did not err in admitting the photographs into evidence.

The appellee would submit that the record cited indicates the photographs from the autopsy, including the photograph showing the face of the decedent, were probative for showing the cause of death, the number of times the victim was shot and in what location, as well as the appearance of the victim at the time of the autopsy.

The jury was given instructions for murder as well as manslaughter. The appellee believes we have cited sufficient evidence for showing that the photographs were relevant and material. They assisted the jury in their deliberations.

The appellee would submit that we have cited sufficient record evidence for showing that the trial court did not abuse its discretion. These photographs provided corroboration for contradicting the testimony of Washington. Washington denied knowing how the victim received six gun shot wounds. Nor did he know how Ms. Gibson was shot at the same time in the leg. She was shot while holding a baby in her arms. R. 236. This was the same grand baby Washington claimed he was trying to protect. R. 256. He did not want the unarmed victim near his grandchild or his house.

The appellee would submit that this issue is lacking in merit.


CONCLUSION

Washington's manslaughter conviction should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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 10th day of March, 2010.



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