IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEIR D. SANDERS — APPELLANT

VS. — NO. 2008-KA-1445-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2008-KA-1445-COA**

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STATEMENT OF THE CASE

The grand jury of Tishomingo County indicted defendant, Keir D. Sanders in a multi-court indictment for Two Counts of Murder in violation of Miss. Code Ann. § 97-3-19, as an habitual offender. (Indictment, cp.8). On motion of defendant venue was changed to Lafayette County. Trial was had the jury deadlocked and a mistrial was ordered. Venue was again changed to Lee County where trial before a jury presided over by, Judge Thomas J. Gardner III, was had. The jury found defendant not guilty of the first count by reason of insanity (c.p. 704) and guilty of Murder in Count II. (C.p.706). Defendant was sentenced to the State Hospital pursuant to Miss. Code Ann. § 99-13-7 on Count I, said sentence suspended. Defendant was sentenced to Life

for the Murder in Count II without benefit of parole, reduction or early release in the custody of the Mississippi Department of Corrections. The sentence in Count I is to run consecutive to the sentence in Count II. (Sentence order, cp. 712-713).

It would appear defendant filed his own notice of appeal prior to the trial court ruling on the post trial motions, divesting the trial court of jurisdiction. (Notice of appeal filed June 25, 2008, c.p. 726; order denying post-trial motion, filed August 13, 2008, c.p. 729). Martin v. State, 732 So.2d 847, 851(¶ 18)(Miss. 1998).

STATEMENT OF FACTS

Defendant was living with his grandparents. One morning about breakfast time he got into an argument with his grandfather who was cooking breakfast. Defendant shot him with a shotgun. It was not a 'kill' shot so defendant bludgeoned his grandfather about the head with a ball-peen hammer. Defendant then proceeded upstairs and shot his grandmother as she lay in bed. The shotgun blast of defendant did not kill her. She crawled down the stairs leaving a bloody trial. She wrote, in her own blood "KD SHOTGUN" so that if she died they would know who and how they were killed. She crawled over the legs of her dead husband and out to the porch to find the phone. Defendant had taken the phone and car keys fleeing the scene in the family auto.

About 14 hours later law enforcement found Elma Lee Crawford gravely injured and started a man-hunt for defendant K.D. Sanders. The car was found in Memphis but no trace of K.D. Sanders.

Elma Lee Crawford died 65 days later from injuries sustained from the shotgun blast to her body. TWENTY YEARS LATER law enforcement officers in San Antonio, Texas detained a man and found two birth certificates in his pocket. One of those birth certificates was in the name of Keir Dulea Sanders. A computer check of the name found two FBI warrants for the murders of W.D. Crawford and Elma Lee

Crawford.

Defendant was returned to Mississippi and this trial.

SUMMARY OF THE ARGUMENT

I.

INCONSISTENT OR CONTRADICTORY VERDICTS ARE NOT, IN AND OF THEMSELVES, REASONS TO OVERTURN A CRIMINAL CONVICTION.

II.

THE TRIAL COURT DID NOT ERROR IN GIVING THE JURY A FLIGHT INSTRUCTION.

III.

THE PHOTOS WERE NOT UNDULY GRUESOME BUT PROVIDED PROBATIVE INFORMATION TO THE JURY ON THE NATURE AND EXTENT OF INJURIES.

IV.

SENTENCING WAS APPROPRIATE AND WITHIN THE LAW.

ARGUMENT

I.

INCONSISTENT OR CONTRADICTORY VERDICTS ARE NOT, IN AND OF THEMSELVES, REASONS TO OVERTURN A CRIMINAL CONVICTION.

Defendant seeks remand for retrial on the count of the indictment for which the jury found him guilty. As basis for such relief defendant points to the acquittal in Count I of the indictment as evidence toward his acquittal on Count II.

When looking at the sufficiency of the evidence supporting the conviction the State need not look at or consider the acquittal by reason of insanity on the other counts of the indictment even if committed in the same series of criminal acts. *Edwards v. State*, 797 So.2d 1049, 1057 -1058 (¶25)(Miss.App. 2001).

The State and this reviewing court need only consider the evidence supporting the jury verdict: Guilty in the Murder of Elma Lee Crawford.

There was essentially the eye-witness testimony of Elma Lee Crawford describing in detail the killing of her husband and her own killing. During the 65 days before she died from wounds inflicted by defendant she was able to recount the heinous facts of what would be two murders. Tr. 102-105.

The jury heard facts regarding venue, cause of death as to Elma Lee Crawford from gunshot injuries Tr. 461 and the identity of the shooter written in the victim's own blood.

It is the unequivocal position of the State there was ample credible evidence supporting jury verdict of Murder in the killing of Elma Lee Crawford.

No relief should be granted based upon the legal argument of inconsistent verdicts. The law is clear that if there is evidence supporting the verdict it should be affirmed.

The State would ask this court to adopt the rationale clearly reiterated in *Edwards* and affirm the conviction and sentence of the trial court.

II.
THE TRIAL COURT DID NOT ERROR IN GIVING THE JURY A FLIGHT INSTRUCTION.

In this initial allegation of error appellate counsel avers it was error for the trial court to grant a flight instruction. The remedy sought is remand for retrial.

> ¶ 29. In determining whether error lies in the granting of jury instructions, the instructions must be read as a whole. Johnson v. State, 823 So.2d 582, 584(¶ 4) (Miss.Ct.App.2002). "When so read, if they fairly announce the law of the case and create no injustice, no reversible error will be found." Id.
>
> ¶ 30. Our supreme court has consistently held that "flight is admissible as evidence of consciousness of guilt." Fuselier v. State, 702 So.2d 388, 390(¶ 4) (Miss.1997) (citing Williams v. State, 667 So.2d 15, 23 (Miss.1996)). However, a flight instruction "is appropriate only where that flight is unexplained and somehow probative of guilt or guilty knowledge." Id. (quoting Reynolds v. State, 658 So.2d 852, 856 (Miss.1995)). Therefore, evidence of flight is inadmissable where there is an independent reason for the flight. Id. at 390-91(¶ 7).
>
> *Anderson v. State,* 1 So.3d 905, 915 (Miss.App. 2008).

The key to this issue is whether there is an independent reason for the flight. Independent, presumably, meaning in apposition to the flight was evidence or guilt.

Counsel for defendant argued at trial and now on appeal that their expert gave a 'reason' or explanation for the flight. Specifically that defendant was scared people were after him. Of course they were he'd murdered two people. That is not an independent reason or explanation for flight. And in fact those very reasons given by the expert show guilty knowledge. Defendant knew the police would be searching for

him. They were not immediately there firing at defendant, there was no claim of self-defense. His flight lasted twenty years.

Such an instruction guided the jury on how to view and consider the evidence. The reason given for the flight was not an independent reason of the crimes but part of a reaction of guilty knowledge to the crimes. Defendant was scared of being caught.

The trial court heard argument of counsel and the evidence and overruled the objection to the State's flight instruction. Tr. 820 Such was not error and the instruction was supported by the evidence as evidence of consciousness of guilt.

No relief should be granted on this allegation of trial court error.

III.

THE PHOTOS WERE NOT UNDULY GRUESOME BUT PROVIDED PROBATIVE INFORMATION TO THE JURY ON THE NATURE AND EXTENT OF INJURIES.

> ¶ 24. The admission of photographs is within the discretion of the trial judge and his or her decision will be upheld absent an abuse of that discretion. Hart v. State, 637 So.2d 1329, 1335-36 (Miss.1994). However, "[a]utopsy photographs are admissible only if they possess probative value." McNeal v. State, 551 So.2d 151, 159 (Miss.1989). They must not be so gruesome or used in such a way as to be overly inflammatory or prejudicial. Hurns v. State, 616 So.2d 313, 319 (Miss.1993).
>
> *Ramsey v. State*, 959 So.2d 15, 24 (Miss.App. 2006).

During trial outside the presence of the jury the defense objected to three of the State's photos, taken at the autopsy, as gruesome. (States Exhibit, 24, 25 & 26, photographs). The trial court heard arguments and made an on-the-record finding of fact and conclusions of law using the appropriate standard of review, enunciated above. Tr. 446-449.

Further, it would appear from the record that these photos, were displayed for the jury to see during the reading of the testimony of Dr. McLees. Such photos, accompanying the deposed testimony would have helped illustrate the nature, proximity, and extent of wounds. Important in this case were there wounds from blunt force trauma and shotgun blasts.

It was within the discretion of the trial court in admitting the photographs. They

were limited in number and probative as well as informing the stipulated testimony of an expert witness. *Ramsey*, supra.

It is the position of the State that no relief should be granted on this allegation of trial court error.

IV.
SENTENCING WAS APPROPRIATE AND WITHIN THE LAW.

Lastly, defendant seeks to first go to the State asylum, then to start the sentences on his criminal conviction upon release from the State Hospital.

It is the position of the State that defendant will be treated for his mental disease whilst incarcerated in the custody of the Mississippi Department of Corrections.

As counsel for defendant has correctly pointed out the trial court did order defendant to the State hospital, such order being suspended.

> ¶ 26. Our standard of review for a trial court's imposition of a sentence is abuse of discretion. "Sentencing is within the complete discretion of the trial court and not subject to appellate review if it is within the limits prescribed by statute." Nichols v. State, 826 So.2d 1288, 1290(¶ 10) (Miss.2002).

Williams v. State, 5 So.3d 496 (Miss.App. 2008).

Defendant was convicted of a heinous crime and found to be an habitual offender. Defendant was also found not guilty by reason of insanity, leading to a civil commitment. It is the position of the State the interest of society as a whole be protected first with the incarceration taking priority.

A similar issue has been confronted before concerning the weighing of a civil commitment or a criminal incarceration for a crime. The court reasoned, thus:

> There is a practical point that need be noted. An acquittal by reason of insanity would have resulted in Groseclose being committed most likely to the Mississippi State Hospital at Whitfield. While we cannot be certain

> of this, he would quite likely have been maintained there for treatment for a substantial period of time. Essentially the same thing will happen anyway. The conviction we affirm here means that Groseclose will be held in the custody of the Mississippi Department of Corrections where, I suspect, the same course of treatment for his mental illness will and ought be followed.
>
> *Groseclose v. State*, 440 So.2d 297, 305 (Miss. 1983)(from specially concurring opinion).

The Mississippi Department of Corrections as part of intake will evaluate and consider physical and mental conditions as part of incarceration placement and medical treatment. The Mississippi Department of Corrections has contracted with Wexford Health Sources, Inc. of Pittsburgh, Pennsylvania to provide comprehensive onsite healthcare services (i.e medical, dental ***and mental health***). (Mississippi Department of Corrections Website, emphasis added).

Interestingly, there was one other case where a defendant was found not guilty of one count in a series of related criminal offenses. It would appear the defendant was sent to the custody of the Mississippi Department of Corrections for fulfillment of his criminal sentences before the civil commitment required on the acquittal by reason of insanity. *Edwards v. State*, 797 So.2d 1049 (Miss.App. 2001).

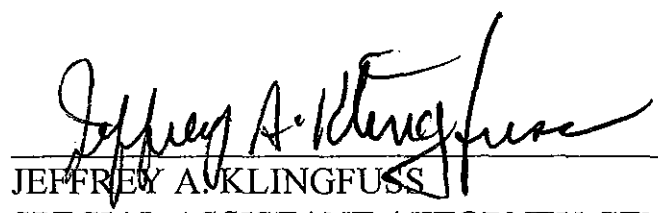
In sum, the sentencing order was well within statutory guidelines and the discretionary decision making powers of the trial court. Consequently, there being no error or abuse of discretion the request for relief should be denied.

CONCLUSION

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

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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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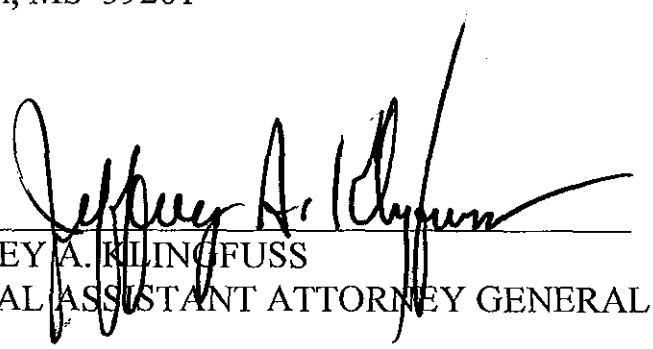
This the 5th day of June, 2009.



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