IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TONNIE L. THOMAS — APPELLANT

VS. — NO. 2008-KA-1637-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Washington County indicted defendant Tonnie L. Thomas with the crimes of Murder and Arson, as an habitual offender in violation of *Miss. Code Ann.* §§ 97-3-19(1), 97-17-1 & 99-19-83. (Indictment, c.p. 1, 2, motion to amend 350-56, Order amending 387-88). After a trial by jury defendant was found guilty on both counts (jury verdict c.p. 400), and proceeded to sentencing. The trial court found defendant to be an habitual offender within the statutory provision and sentenced him to life without possibility of parole on each count. (Sentencing order c.p. 401-403).

A notice of appeal was filed, c.p. 420, divesting the trial court of jurisdiction. Subsequently, the trial court denied the motion for new trial. C.p. 455.

STATEMENT OF FACTS

Defendant sought to obtain money he supposedly was owed from a Louis Harris, Jr. Not having the money defendant became angry and assaulted Mr. Harris with a claw hammer, beating him severally, a laceration to the neck severing the carotid artery and jugular vein, causing loss of 3-4 quarts of blood (tr. 800, 801) leading to his death. (Tr. 803-805). A shirt was found containing DNA of both defendant and his victim. The evidence indicated defendant then went around the house setting fires before exiting the house.

The jury heard the testimony of experts and neighbors. The defendant presented no evidence in their case-in-chief. The jury found defendant guilty on both counts.

SUMMARY OF THE ARGUMENT

I.

THE TRIAL COURT CORRECTLY APPLIED THE LAW TO THE FACT IN FINDING THE THREE STATEMENTS MADE BY DEFENDANT NEED NOT BE SUPPRESSED AND WERE ADMISSIBLE.

After an extensive pre-trial hearing the trial court made extensive findings of fact and conclusions of law as to the each of three statements. The court held there was no reason to suppress any of the statements and all were admissible.

II.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE ARSON CHARGE GOING TO THE JURY.

First, as is succinctly pointed out, defendant essentially admitted to the killing (claiming self-defense) which, by inference, is evidence that defendant was present in the home. Further, there was physical evidence of there being a fight at the house and blood of both the victim and defendant on parts of the house and clothing. (Tr, 933-34. 939, 944-45). There was evidence the fires (multiple points of origin) were set by open flame, were not accidental in origin, were not natural in origin and were arson. (Tr. 684, 685, 687). Venue was established. (Tr. 499).

III.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE MURDER CHARGE GOING TO THE JURY.

Defendant's claim of *Weathersby* is inapplicable to the facts and procedural posture of when the claim was made – first time on appeal.

ARGUMENT

I.

THE TRIAL COURT CORRECTLY APPLIED THE LAW TO THE FACT IN FINDING THE THREE STATEMENTS MADE BY DEFENDANT NEED NOT BE SUPPRESSED AND WERE ADMISSIBLE.

Pre-trial there was an extensive hearing to ascertain whether three statements given by defendant to police and investigators should be suppressed. At the conclusion of the hearing the trial court made extensive written findings of fact and conclusions of law. The Order Denying Defendant's Motion to Suppress (c.p.43-46) is specific as to facts and law.

Now on appeal, defendant cites to cases that would hold such statements should be suppressed because of intoxication, invocation of counsel and essentially claims that the admission of the March 8th (tr. 289-90) is admissible.

> ¶ 34. Considering Bullock's testimony regarding these facts and the testimony of Officer Reed, who was a witness to the interview between Bullock and Greenlee, the trial judge's admission of Greenlee's statement to Bullock was not manifest error or contrary to the overwhelming weight of the evidence. Hunt v. State, 687 So.2d 1154, 1160 (Miss.1996). Greenlee put on no other evidence or testimony on the voluntariness issue to rebut the State's assertion that the statement was admissible. Cox v. State, 586 So.2d 761, 764 (Miss.1991). Based on the foregoing analysis, the trial judge's admission of Greenlee's statement must be affirmed. Thus, Greenlee's last issue is without merit.

Greenlee v. State, 725 So.2d 816, 827 (Miss. 1998).

At the suppression hearing defendant did testify, and the trial court specifically

found, after observing defendant and considering his testimony, that defendant's testimony was not credible. (C.p. 45, para 18).

The trial court addressed with specificity these issues applying law of admission of statements to the facts adduced in the hearing.

> ¶ 12. The trial court has considerable discretion in matters pertaining to discovery, and its exercise of discretion will not be set aside in the absence of an abuse of that discretion. Gray v. State, 799 So.2d 53, 60 (Miss.2001). Judgments of the trial courts come to this Court clothed with a presumption of correctness, and it is the burden of the appellant-King-to overcome that presumption. Branch v. State, 347 So.2d 957, 958 (Miss.1977). "Our law is clear that an appellant must present to us a record sufficient to show the occurrence of the error he asserts and also that the matter was properly presented to the trial court and timely preserved." Acker v. State, 797 So.2d 966, 972 (Miss.2001) (quoting Lambert v. State, 574 So.2d 573, 577 (Miss.1990)). See also Pulphus v. State, 782 So.2d 1220, 1224 (Miss.2001) ("Issues cannot be decided based on assertions from the briefs alone. The issues must be supported and proved by the record.") (citing Robinson v. State, 662 So.2d 1100, 1104 (Miss.1995)).
>
> *King v. State,* 857 So.2d 702, 714 (Miss. 2003).

Accordingly, the findings of fact and conclusions of law expressed as findings of the trial court are presumptively correct. It is the position of the State those findings stand and will be relied up those well documented, and correct, ruling of the trial Court.

Therefore, no relief should be granted based on these allegations of error.

II.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE ARSON CHARGE GOING TO THE JURY.

In this allegation of error counsel just flat out claims there is no evidence connecting defendant to the crime of arson.

A look to the record give evidence, and reasonable inferences, for which the jury could convict of arson

First, as is succinctly pointed out, defendant essentially admitted to the killing (claiming self-defense) which, by inference, is evidence that defendant was present in the home. Further, there was physical evidence of there being a fight at the house and blood of both the victim and defendant on parts of the house and clothing. (Tr, 933-34. 939, 944-45).

There was evidence the fires (multiple points of origin) were set by open flame, were not accidental in origin, were not natural in origin and were arson. (Tr. 684, 685, 687). Venue was established. (Tr. 499).

> ¶ 33. Brown claims that there was no evidence of his guilt, thus a reasonable jury could not have found him guilty. However, in weighing the evidence in the light most favorable to the guilty verdict, we cannot agree with Brown's claims. From the record it is clear that Brown was the last person to see Addison alive; Brown stated that he was alone with Addison when the fire started; Brown was seen near the scene of the crime; a gas can was found in the abandoned car where Brown had been sitting; there was testimony that Brown had access to this particular gas can and had used it in the past; Brown was heard threatening to destroy Addison and their trailer if she ever left him; there was

> testimony that the fire was incendiary in nature and had been started inside the trailer; and there was testimony that gasoline was the accelerant. We cannot find that allowing the guilty verdict to stand would sanction an unconscionable injustice; thus, this issue is without merit.
>
> *Brown v. State* 936 So.2d 447, 456 (Miss.App. 2006).

It is the position of the State the evidence presented at trial was legally sufficient to submit the arson charge to the jury. And, any conviction therefrom is supported by legally sufficient evidence of each element of the offense.

Therefore, no relief should be granted based upon his allegation of trial court error.

III.

THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE MURDER CHARGE GOING TO THE JURY.

Defendant claims the *Weathersby* rule is applicable and he was entitled to a motion for directed verdict.

> ¶ 33. However, this Court has provided some guidance for circumstances in which the Weathersby Rule would be inapplicable where a defendant was the only eyewitness to a homicide. See Johnson v. State, 987 So.2d 420, 425 (Miss.2008). "[I]f the defendant or the defendant's eyewitnesses' testimony satisfies all the elements of murder or manslaughter, the defendant would not be entitled to a directed verdict of acquittal, as their testimony would be the basis for a valid conviction." Id. In addition, the Weathersby Rule is inapplicable where: (1) "the defendant's version is patently unreasonable, or contradicted by physical facts"; (2) "where the accused, following the slaying, gives conflicting versions of how the killing took place"; and (3) where the accused "initially denies the act." Id. (quoting Blanks v. State, 547 So.2d 29, 33-34 (Miss.1989)). When a defendant is the sole eyewitness to the killing and the Weathersby Rule does not apply, the question "then becomes a jury issue as to whether to believe or not believe the defendant's testimony of how the slaying occurred, and to either convict or acquit." Id. (quoting Blanks, 547 So.2d at 33-34).

Barfield v. State, 2009 WL 4350427 (Miss. 2009).

The evidence from the trial, expert testimony and reasonable inferences is conflicting. Defendant was charged with Murder and his defense was self-defense. However, at the conclusion of the State's case-in-chief there was conflicting evidence. There was evidence of a knife being used and a claw hammer. The claw hammer was found but not the knife. Defendant hinted that he know where the knife

was.

> ¶ 35. We find that this case properly was decided by a jury. Despite Barfield's assertion that his testimony was uncontradicted, the evidence presented showed otherwise. The evidence showed inconsistencies as to the placement of the gun at the time of the shooting, the disposal of the gun, and the nature of the relationship between Barfield and Talley. "*Where conflicting stories are given about a homicide by the accused, the Weathersby Rule does not apply.*" Fairley v. State, 871 So.2d 1282, 1284 (Miss.2003).

Barfield v. State, 2009 WL 4350427 (Miss. 2009).

At the close of the State's case-in-chief there really wasn't much evidence of defendant's defense (self-defense) in the record. And since there was no evidence presented in the defense case-in-chief, no witnesses and defendant did not testify, *Weathersby* really cannot apply.

Either way, lack of evidence, conflict in evidence or inapplicable at the close of the State's case-in-chief, there was no error in the trial court submitting this case to the jury.

No relief should be granted based upon this allegation of error.

CONCLUSION

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

Respectfully submitted,

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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 8th day of January, 2010.

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