IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CODY BANTON — APPELLANT

VS. — NO. 2009-KA-0905-COA

STATE OF MISSISSIPPI — APPELLEE

# BRIEF FOR THE APPELLEE

## APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**VS.** **NO. 2009-KA-0905-COA**

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## STATEMENT OF ISSUES

I. THE JURY'S VERDICT IS ENTIRELY CONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

II. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

III. BANTON'S SENTENCE OF LIFE IMPRISONMENT DOES NOT VIOLATE THE EIGHT AMENDMENT'S BAN ON CRUEL AND UNUSUAL PUNISHMENT.

## STATEMENT OF FACTS

On the night of April 24, 2008, Harley Banton (Harley), his son, Codie Banton (Banton), Shane Keel, and Tina Kramer were socializing and drinking beer at Harley's house. Harley retired for the evening at around 9:30 p.m., but was later awaken by cursing and vulgar talking. T. 53. Shane and Banton had gotten into a minor argument, which was quickly resolved with smiles and a handshake. T. 66, 139, 151. Shane and Banton were in the living room when Harley passed through, and Tina was outside sitting on the hood of Harley's car. T. 53. Harley went outside to talk to Tina, and Shane came out shortly thereafter. T. 53, 67-68, 153.

Harley mistakenly thought that Shane and Tina had been arguing, and Harley asked Shane to leave. T. 68-69. Shane declined, and instead stayed in the yard drinking a beer trying to talk to Tina. T. 54, 154. When Shane would not leave after having been asked to do so several times, Harley picked up a shovel and started beating Shane with it. T. 56, 69, 154. Harley acknowledged at trial that the victim never hit him, nor did the victim have a weapon when Harley beat him with the shovel. T. 58, 63. Tina also testified that Shane had not hit Harley, threatened to hit Harley, or in any way attempted to engage in a fight with Harley before being beat with the shovel. T. 69. Harley's explanation for beating Shane was that Shane was furious after Harley asked him to leave, and that Harley thought that Shane was going to "beat the crap out of me" as Shane approached him. T. 60. As Harley beat Shane with the shovel, Codie came outside and shot Shane in the abdomen. T. 57, 70, 155.

Harley called 911 and informed dispatch that there had been an accidental shooting at his house. T. 18. When officers arrived, Harley claimed that he, Banton, Shane, and Tina had been sitting around a campfire shooting into the woods, and that at some point Shane got up and "the next thing he knew he heard a gunshot and Mr. Keel was laying on the ground." T. 27. Banton, who was inside the house when Harley gave his version of events to the officers outside, told the officers that he was inside playing video games when he heard four or five gunshots, came outside and found Shane dead on the ground. T. 132. At trial, Harley testified that he did not see his son with the gun before hearing the gunshot and did not know why his son shot Shane unless it was to protect him. T. 57-58. Tina and Banton, however, testified that while Harley was beating Shane with the shovel, Harley yelled for Banton to "go get the gun." T. 70, 155. Banton admitted at trial that he did go get a gun and aim it at Shane, but he only intended to scare Shane. T. 155. He further claimed that he fired only after he saw Shane's hands go up, and Banton **thought** Shane had a knife because he had

one earlier in the night. T. 155. No knife, however, was ever recovered from the scene.

A Panola County Circuit Court jury found Banton guilty of deliberate design murder.

## SUMMARY OF ARGUMENT

The jury's verdict is consistent with the overwhelming weight of the evidence. It is within the sole province of the jury to assess witness credibility and weigh the evidence presented. The jury found that the State's witnesses were more credible, and rightly so as Banton's testimony and prior statements to police were rife with inconsistencies.

The State proved each element of the crime of murder beyond a reasonable doubt. The Castle Doctrine is inapplicable to the facts of this case, as there is no evidence in the record that the victim intended to commit an assault or any other felony at the Bantons' residence.

There is no authority to support Banton's contention that a juvenile's sentence of life imprisonment offends the Eight Amendment. Banton's reliance on cases pending before the United States Supreme Court is misplaced, not only because they have not yet been decided, but also because those cases do not involve juvenile murder defendants.

## ARGUMENT

### I. THE JURY'S VERDICT IS ENTIRELY CONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Banton frames his first issue as one regarding the weight of the evidence.[1] A conviction will only be reversed based on an argument that the verdict is against the weight of the evidence where allowing the verdict to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005).

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[1]Although Banton argues in his first assignment of error that the murder was justifiable homicide under the Castle Doctrine, the State would respond to that argument under issue number two.

Tina Kramer's testimony, which makes out a clear case of deliberate design murder, was wholly consistent with her prior statements to authorities. Also, her version of events was the only version that matched the physical evidence. Banton and his father gave contradictory versions of events to police. Their stories matched only insofar as they both claimed that several shots had been fired prior to the victim being murdered. However, no spent casings were recovered from the scene to corroborate their attempt to mask the shooting as an accident. More importantly, father and son initially claimed the shooting was an accident, but later changed their stories to make the shooting self-defense. Harley also claimed at trial that he had not seen Banton with the gun prior to the shooting and did not know why he shot Shane, whereas Tina and Banton both testified that Harley told Shane to get the gun.[2] Banton admitted at trial that he lied when he told police that he was inside when he heard gunshots. T. 165. He claimed that lied because he was directed to do so by his father. 165. Banton claimed that he his trial testimony was true because he was under oath. T. 166.

There were certainly conflicts in the evidence to be resolved, but that duty lies within the sole province of the jury. *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993). After weighing the evidence and assessing witness credibility, the jury returned a verdict of guilty of murder. The jury's verdict is supported by the weight of the evidence and does not represent an unconscionable injustice. Therefore, Banton's argument regarding the weight of the evidence must fail.

## II. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

Banton's legal sufficiency argument is that Harley did not have to retreat when confronted

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[2]Tina did, however, testify that when Banton appeared with the gun, Harley told him not to shoot. T. 80.

by Shane, and that Banton had the right to shoot and kill Shane in order to protect his father. Again, Tina's testimony alone makes out a case of deliberate design murder. The uncorroborated testimony of a single witness is sufficient to support a jury's verdict. *Collins v. State*, 817 So.2d 644, 658 (¶46) (Miss. Ct. App. 2002) (citing *Sturdivant v. State*, 745 So.2d 240, 248 (Miss. 1999)). However, Tina's testimony was not uncorroborated. Much of Harley and Banton's testimony was consistent with Tina's testimony.

This Court has stated the following with regard to the Castle Doctrine.

> The law regarding defense of habitation is not such that a mere trespasser, having been once warned to vacate the premises, may thereafter be killed by the premises' owner with impunity if he fails to leave the property soon enough to satisfy the desires of the owner. The law contemplates, rather, that deadly force may only be employed to repel a trespasser who demonstrates the apparent purpose of assaulting or offering violence to an occupant or committing some other crime on the premises.

*Westbrook v. State*, No. 2008-KA-00436-COA (Miss. Ct. App. Sept. 29, 2009) (quoting *Lester v. State*, 862 So.2d 582, 585 (¶11) (Miss. Ct. App. 2004)). As previously stated, Tina testified that Shane had not hit Harley, threatened to hit Harley, or in any way attempted to engage in a fight with Harley before being beat with the shovel and shot to death. Harley also testified that Shane never hit him, and Harley acknowledged that Shane did not have a weapon. Banton never alleged at trial that he saw the victim so much as lay a hand on his father. Instead, he subjectively believed, and unreasonable so, that his father was in some type of danger, even though the victim was unarmed and had not touched or even threatened Harley before Harley began beating him with a shovel. Simply put, there is no evidence in the record to show that Shane intended to commit an assault or any other crime on the premises. Even if, for the sake of argument, his status changed from guest to trespasser after being asked to leave, his murder was not justified simply because he failed to leave the property soon enough to satisfy the desires of the owner. *Id.*

The State proved each element of murder beyond a reasonable doubt. The Castle Doctrine is wholly inapplicable to the facts contained in the record. As such, Banton's second assignment of error must fail.

## III. BANTON'S SENTENCE OF LIFE IMPRISONMENT DOES NOT VIOLATE THE EIGHT AMENDMENT'S BAN ON CRUEL AND UNUSUAL PUNISHMENT.

A conviction for murder carries only one sentence - life imprisonment. Mississippi Code Annotated §97-3-21. As a general rule, sentences which do not exceed the statutory maximum will not be disturbed on appeal. *Johnson v. State*, 950 So.2d 178, 183 (¶22) (Miss. 2007). "[P]roviding punishment for crime is a function of the legislature, and, unless the punishment specified by statute constitutes cruel and unusual treatment, it will not be disturbed by the judiciary." *Id.* (citing *Presley v. State*, 474 So.2d 612, 620 (Miss. 1985)).

Neither at trial nor on appeal has Banton argued that a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality, nor has Banton asked this Court to apply the factors enunciated in *Solem v. Helm*, 463 U.S. 277 (1983) (overruled by *Harmelin v. Michigan*, 501 U.S. 957, 965 (1991)). Instead Banton simply states that he was 17 years old at the time of the murder, and notes that the cases of *Sullivan v. Florida* and *Graham v. Florida* are currently pending before the United States Supreme Court. Banton further asks this Court to "follow the rulings in the two Florida cases cited herein when that [sic] are adjudicated by the United States Supreme Court . . . ." Appellant's Brief at 21. The State would simply note that the issue presented for review in *Sullivan* and *Graham* is whether the Eighth Amendment's ban on cruel and unusual punishment prohibits the imprisonment of a juvenile for life without the possibility

of parole as punishment for the juvenile's commission of a ***non-homicide***.[3] Therefore, regardless of the outcome of *Sullivan* and *Graham*, the ultimate holdings in those cases will likely be inapplicable to the present case.

In any event, this Court has already answered the question of whether a minor can be sentenced to life without the possibility of parole without offending the Eight Amendment. In *Edmonds v. State*, this Court held that a thirteen-years-old murder defendant's automatic sentence of life imprisonment was not unconstitutional. 955 So. 2d 864 (Miss. Ct. App. 2006) (Judgement reversed on other grounds by *Edmonds v. State*, 955 So.2d 787 (Miss. 2007)). In so holding, this Court noted that the United States Supreme Court has held that "a sentence does not need to take into account 'individual degrees of culpability' to be constitutional, and Congress may 'define criminal punishments without giving the courts any sentencing discretion.'" *Id.* at 895 (¶96) (quoting *Chapman v. United States*, 500 U.S. 453, 466-67 (1991)). Additionally, this Court stated the following regarding the constitutionality of sentencing a juvenile to life imprisonment.

> The Mississippi legislature has explicitly legislated that convictions for murder are intended to carry life sentences. No exception is named in the statute for a defendant of tender years. The fact that the legislature has specifically written the code so as to expose a minor to prosecution in the circuit court as an adult indicates that juveniles prosecuted for grievous offenses, such as the one here, are intended to be tried and sentenced like an adult. The special exceptions and protections rendered to defendants of tender years are reserved for juveniles prosecuted in youth court.

*Id.* There is simply no authority to support Banton's contention. As such, his claim that his sentence offends the Eighth Amendment necessarily fails.

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[3] See the United State's Supreme Court's docket which lists the issues presented for review in the aforementioned cases at http://origin.www.supremecourtus.gov/qp/08-07621qp.pdf and http://origin.www.supremecourtus.gov/qp/08-07412qp.pdf .

## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Banton's conviction and sentence.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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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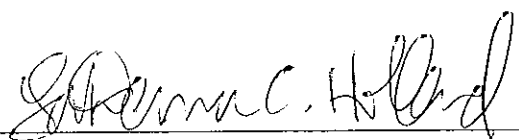
This the 13th day of November, 2009.



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