

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MICHAEL D. LEGGETT

APPELLANT

VS.

NO. 2009-KA-1713-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUE

I. THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

In the several weeks before his murder, Jewel Duane Douglas had allowed co-worker Michael Leggett to live in his home and also gave him a ride to work every morning. T. 754. On the morning of Douglas's murder, Douglas accompanied Leggett and their boss, Jason Ard, to Jackson to pick up a part for a work truck. T. 519. The part was unavailable in Jackson, so Douglas and Leggett went to Baton Rouge to pick up the needed part. T. 520. The pair returned to Douglas's home later that afternoon or early evening. T. 756. The two began to argue about the proper procedure for repairing the truck. T. 756. As a result, Leggett drove off in Ard's dump truck. T. 521, 759. Upon Leggett's return to Douglas's residence, Ard took the keys to the dump truck and fired Leggett for taking it. T. 524, 761. This upset Leggett, who punched out a pane of glass in the storm door to Douglas's home. T. 525, 761. Leggett, whose hand was bleeding pretty badly, took

off walking. T. 761.

Douglas went after his friend, trying to offer him a ride. T. 478. One witness who saw this encounter also testified that Douglas was holding a wallet out of the truck window, telling Leggett to get in the truck and trying to give him the wallet. T. 478. Leggett refused the ride and refused to acknowledge Douglas. T. 478, 762. Instead, he walked toward the Odom residence¹, the home of his baby's mother, Jennifer Shannon. Mississippi State Highway Patrol Trooper Larry Foster, responding to a call about an intoxicated man walking down Highway 583, encountered Leggett. T. 542. Foster gave him a ride to the Odom residence. T. 544, 763. During the ride, Leggett told the trooper that he believed his friend had stolen his wallet. T. 543.

At the Odom residence, Jennifer's friend, Tina, helped Leggett with his bleeding hand while Jennifer took a shower. T. 639. Tina urged her friend to hurry up and get out of the shower because she did not want to be left alone with Leggett because he was scaring her. T. 639-40. Randi Odom and Mark Culbertson arrived at the Odom residence, and an angry Leggett started begging Culbertson to take him to Douglas's house. T. 700-701. Leggett claimed that Douglas had stolen his money and dope. T. 700. When Culbertson acquiesced, Leggett armed himself with kitchen knives which he tucked into the waistband of his pants. T. 649, 701. Before leaving, Leggett told Randi, "The next time you see me, you'll be seeing me in prison." T. 649.

Exactly what happened next at the victim's residence was disputed at trial. Culbertson testified as follows. Culbertson stayed in the car while Leggett walked up to Douglas's trailer and beat on the door. T. 703. Leggett entered the victim's home, and Culbertson heard him hollering

¹Living in the house at the time was Jennifer Shannon and her two children; Jennifer's sister, Randi Odom; Randi's boyfriend, Mark Culbertson; and Randall Odom, Jennifer and Randi's father. T. 636-37.

and cussing. T. 704. Soon after, Culbertson walked up to the door and saw Leggett waiving a knife around. T. 704. Culbertson told Leggett they should leave. T. 704. Culbertson walked back to his car, and then saw Leggett still waiving the knife around while pulling the victim out of the trailer. T. 705. Douglas broke free and started running toward his truck when Leggett yelled out to Culbertson to "get him." T. 706. Culbertson grabbed a tire tool from the floorboard of the car and threw it at the victim. T. 706. The tire tool hit the victim's back, and the victim fell to the ground. T. 707. Leggett then straddled the victim and started beating him with the tire tool. T. 707-708. After the beating, Leggett threw the tire tool toward Douglas's truck, walked back to the car, and said, "Let's get out of here." T. 709.

Leggett denied ever laying a hand on the victim, instead claiming that Culbertson, who had never met or even seen the victim prior to the murder, murdered Douglas. Leggett admitted at trial that he armed himself with two or three steak knives before going to the victim's house. T. 766. Leggett admitted that he and Douglas argued at the trailer, and claimed that Douglas then went out to his truck to retrieve Leggett's wallet. T. 771. Leggett claimed that he followed the victim outside and saw Culbertson, for no apparent reason, throw a tire tool which hit Douglas in the back of the head. T. 771. The victim then fell face first on the gravel. T. 771. Both Leggett and Culbertson agreed that after the fatal incident, a truck approached and they sped off to the Odom residence.

When the pair returned to the Odom residence, Jennifer testified that Leggett was "acting crazy," cussing, and waiving a knife in the air. T. 641. Randi testified that Leggett started rummaging through drawers in her father's bedroom looking for a gun. T. 650. Authorities arrived momentarily and took Leggett and Culbertson into custody. In the squad car, Culbertson began telling Deputy Kelly Porter that he had only taken Leggett to retrieve his wallet. T. 686. As Culbertson proceeded to relay the events, Leggett told him to shut up. T. 686, 722.

Douglas was airlifted to Baptist Hospital where he died the next day. Culbertson pleaded guilty to manslaughter. Leggett was tried and convicted of murder.

SUMMARY OF THE ARGUMENT

The State proved each element of the crime of murder beyond a reasonable doubt. The jury's verdict is not against the weight of the evidence. The conflicts in the eyewitness testimony were properly resolved by the jury, which is solely responsible for assessing witness credibility and resolving conflicts in the evidence.

ARGUMENT

I. THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

When reviewing a claim that a conviction is against the weight of the evidence, a reviewing court will not disturb the verdict unless allowing it to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005). Leggett claims that the State failed to put on proof of premeditation or deliberate design, and claims that he is either entitled to a new trial or that his conviction should be reversed and the case remanded for sentencing for manslaughter.

The following proof shows beyond a reasonable doubt that Leggett went to the victim's home with every intention of killing him. Leggett armed himself in advance before leaving the Odom residence by concealing kitchen knives underneath his clothing. Before leaving, he told Randi, "The next time you see me, you'll be seeing me in prison." Additionally, intent to kill is inferred "through the intentional use of any instrument which, based on its manner of use, is calculated to produce death or serious bodily injury." *Wright v. State*, 915 So. 2d 527, 537 (¶8) (Miss. Ct. App. 2005) (finding broken bottle and wooden tray combined with severe injuries of decedent amounted to use of instruments calculated to produce death, establishing inference of intent to kill). Clearly, Leggett's act of beating the victim over the head with a tire tool with enough force to cause a depressed skull fracture is an act designed to produce death or serious bodily injury. As such, Leggett's intent to kill the victim was established.

Leggett and Culbertson's versions of events are contradictory. However, the determination of witness credibility lies within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). The jury is also solely responsible for resolving any conflicts in witness testimony which may arise. *Id.* Leggett admitted that he and the victim always argued. Leggett was

furious with Douglas for telling Ard that Leggett drove his truck without permission, which resulted in Leggett's termination. Leggett either believed that the victim stole his wallet, or he used this excuse to go back to Douglas's home. Leggett armed himself in advance. Culbertson, on the other hand, did not know Douglas. Culbertson did not want to give Leggett a ride to Douglas's house, but agreed after Leggett continued to beg Culbertson to drive him. In Leggett's version of the fatal encounter, Culbertson throws the tire tool which strikes the victim in the head. No other blows are inflicted. Culbertson's version places Leggett on top of the victim, swinging the tire tool down on the victim numerous times. Dr. Hayne testified that in addition to the depressed skull fracture, the victim also had various cuts, scrapes, and bruising on his body. T. 556. The victim also suffered fractures on three separate locations on the skull. T. 557. Certainly, considering the amount of injury on various locations of the body, the jury reasonably believed Culbertson's version of a severe beating over Leggett's version that the instrument was thrown and struck the victim once.

Leggett claims that the present case is one of manslaughter at best. The jury was properly instructed on heat of passion manslaughter and rejected the notion that the killing was less than murder. The record is absolutely devoid of any evidence of provocation, much less adequate provocation that would reduce a killing from murder to manslaughter. Leggett claims that the *Dedeaux* and *Clemmons* cases warrant direct remand and resentencing for manslaughter. In *Dedeaux v. State*, the victim was killed outside a "juke joint." 630 So.2d 30 (Miss. 1993). *Dedeaux* claimed that he acted in self-defense, shooting after he believed the victim reached behind his back while making a statement which indicated that the victim had a gun. *Id.* at 32. Also in *Dedeaux*, the court found that there was no evidence of premeditation. *Id.* at 31. Such is not the case at hand, because the evidence showed that Leggett planned an attack of the victim. Also, there was no issue of self-defense in the present case. Leggett points to Culbertson's testimony in which he expresses a half-

hearted belief that the victim may have been going for a gun when he ran to his truck. T. 709-710. Culbertson's belief certainly cannot be transferred to Leggett. Leggett never expressed any fear that the victim had a gun. Leggett's theory of defense was that he played no part whatsoever in the killing, not that he acted in self-defense. Accordingly, *Dedeaux* is inapplicable.

In *Clemmons v. State*, 473 So. 943 (Miss. 1985), the victim was killed during a barroom brawl. Numerous witnesses in *Clemmons* gave conflicting versions of what transpired during the fatal encounter. The supreme court reversed the murder conviction, finding, "there is such contradictory testimony that it is virtually impossible to reconstruct what happened" and the conflicting evidence "cast at least a reasonable doubt, as to murder." *Id.* at 944-45. The present case does not concern conflicting testimony of numerous witnesses. The only eyewitnesses to Douglas's murder were Leggett and Culbertson. Culbertson admitted to his participation in the killing, and is currently incarcerated for manslaughter. The jury judged the credibility of the two eyewitnesses and found that Leggett's testimony was not credible. It is not the function of the reviewing court to determine whose testimony to believe. *Smith v. State*, 945 So.2d 414, 421 (¶21) (Miss. Ct. App. 2006) (citing *Taylor v. State*, 744 So.2d 306, 312 (¶17) (Miss. Ct. App. 1999)). So long as substantial credible evidence supports the jury's verdict, the verdict must be affirmed. *Id.* Culbertson's testimony, along with other physical evidence and reasonable inferences from the evidence support the jury's verdict.

The jury's verdict is not against the weight of the evidence and represents no unconscionable injustice. It must therefore be affirmed.

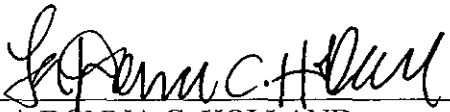
CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Leggett'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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