

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DANNY JERARD JACKSON

APPELLANT

VS.

NO. 2009-KA-1799

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

| | |
|--|----|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE | 1 |
| STATEMENT OF THE FACTS | 1 |
| SUMMARY OF THE ARGUMENT | 2 |
| ARGUMENT | 3 |
| ISSUE NUMBER ONE. | |
| WHETHER OR NOT THE TRIAL JUDGE ERRED WHEN HE INSTRUCTED THE JURY ON MURDER AND HEAT OF PASSION MANSLAUGHTER | 3 |
| ISSUE NUMBER TWO. | |
| WHETHER OR NOT THE TRIAL JUDGE ERRED WHEN HE OVERRULED JACKSON'S OBJECTION TO QUESTIONS ASKED TO TERRY KING ABOUT KING'S PRIOR CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE | 7 |
| ISSUE NUMBER THREE. | |
| WHETHER OR NOT THE COURT ERRED WHEN IT DENIED JACKSON'S MOTION FOR A DIRECTED VERDICT | 11 |
| CONCLUSION | 16 |
| CERTIFICATE OF SERVICE | 17 |

TABLE OF AUTHORITIES

FEDERAL CASES

| | |
|--|----|
| <i>Gordon v. U.S.</i> , 383 F.2d 936 (D.C.Cir.1967) | 10 |
| <i>Tipton v. State</i> , 2008-KA002060-SCT, 2010 WL 2521762 | 12 |
| <i>Weems v. State</i> , 2007-KA-2011-COA, May 4, 2010, 2010 WL 1758653 | 12 |

STATE CASES

| | |
|---|----|
| <i>Amiker v. Drugs For Less, Inc.</i> , 796 So.2d 942, 947 (Miss. 2000) | 12 |
| <i>Benson v. State</i> , 551 So. 2d 188, 193 (Miss. 1989) | 14 |
| <i>Burrell v. State</i> , 613 So. 2d 1186, 1192 (Miss. 1993) | 14 |
| <i>Heidel v. State</i> , 587 So. 2d 835, 842 (Miss. 1991) | 6 |
| <i>Hornburger v. State</i> , 650 So. 2d 510, 515 (Miss. 1995) | 6 |
| <i>Howell v. State</i> , 860 So.2d 704, 764 (Miss. 2003) | 12 |
| <i>Jackson v. State</i> , 614 So. 2d 965, 972 (Miss. 1993) | 14 |
| <i>Malone v. State</i> , 829 So.2d 1253 | 9 |
| <i>McCullough v. State</i> , 750 So. 2d 1212 | 9 |
| <i>Peterson v. State</i> , 518 So.2d 632 (Miss. 1987) | 10 |
| <i>Taylor v. State</i> , 672 So. 2d 1246, 1256 (Miss. 1996) | 13 |
| <i>Williams v. State</i> , 590 So. 2d 1374, 1379 (Miss. 1991) | 6 |

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DANNY JERARD JACKSON

APPELLANT

VS.

NO. 2009-KA-1799

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

The Circuit Court of Harrison County, First Judicial District, adjudged Danny Jerard Jackson, guilty of murder and sentenced Jackson to a sentence of life imprisonment. R. Vol. 1/ 124

COURSE AND DISPOSITION OF THE CASE IN THE CIRCUIT COURT

The Grand Jury indicted Danny Jerrard Jackson for the crime of murder. R. Vol. 1/ 8

The Court tried Jackson before a jury. The jury returned a verdict of “We, the jury find the Defendant, Danny Jerard Jackson, guilty of murder.” R. Vol. 1/ 123

The Court sentenced Jackson to a term of life imprisonment. R. Vol. 1/ 124

Jackson filed a notice of appeal. R. Vol. 1/ 139

STATEMENT OF THE FACTS

On June 27, 2007, after 9:30 at night, Danny Jerard Jackson was knocking on doors at the River Ten Apartments. He said he was looking for his wife who was cheating on him. Jack Powell was a security officer at the apartment. Powell told Jackson that he had to stop knocking on people’s doors and to leave the apartment complex. R. Vol. 2/ 78-80

One hour later, Jackson approached Neco Strickland at the Kangaroo gas station at the intersection of Highway 49 and Creosote Road in Harrison County, Mississippi. Jackson pulled a knife from underneath his clothing and stabbed Strickland numerous times. R. Vol. 2/ 107. Strickland ran away across the road to the parking lot of a Subway restaurant and collapsed face down on the ground. R. Vol. 2/ 94-96

Jackson walked back to his car, got in and drove to the place where Strickland had collapsed. Jackson got out of the car and began to stab Strickland again, this time in Strickland's back. R. Vol. 2/ 95

R. Vol. 3/ 270

Jackson said he walked to the pump, asked Strickland his name, and then he blacked out. R. Vol. 3/ 270

Neco Strickland died of massive blood loss due to stab wounds. R. Vol. 3/ 187.

SUMMARY OF THE ARGUMENT

ISSUE NUMBER ONE.

Jackson claims the trial judge abused his discretion when he charged the jury on murder.

ISSUE NUMBER TWO.

Jackson claims that the trial judge erred when he allowed the State to impeach a witness with evidence of a prior conviction for possession of drugs.

King and two other witnesses all testified that Jackson had a reputation for peace and honesty. King alone was impeached. The other two witnesses, who gave the same testimony on behalf of King, were not impeached, and their testimony on behalf of Jackson was consistent with King's testimony. Even if the jury was given King's testimony with King's prior conviction to consider, the other two gave the same testimony without any impeachment. The jury could have

discounted King's testimony and still had the testimony of two witnesses, who were not impeached, to evaluate when they considered Jackson's reputation for peacefulness and honesty. Any error would have been harmless.

ISSUE NUMBER THREE.

Jackson argues that the trial judge erred when he denied Jackson's motion for a directed verdict and motion for a new trial. He again argues that the evidence did not prove that he had the intent to kill Neco Strickland and that he killed him in the heat of passion.

The evidence was sufficient to support a verdict of guilty. The evidence showed that Jackson armed himself with the murder weapon before he approached Strickland, had already gone to Strickland's apartment complex, and had been acting differently, in a less kind and loving manner for a period of two weeks before he killed Neco Strickland.

ARGUMENT

ISSUE NUMBER ONE.

WHETHER OR NOT THE TRIAL JUDGE ERRED WHEN HE INSTRUCTED THE JURY ON MURDER AND HEAT OF PASSION MANSLAUGHTER.

Jackson argues the Court erred when it instructed the jury. Jackson complains that the court erred granting State's instruction S-9 and denied Jackson's proffered instruction D-10.

Even Jackson's testimony supports a finding of deliberate action. He said that after he realized that Strickland was there, he walked to his car, got his knife(which he concealed underneath his clothing), walked to where Neco Strickland was standing at the gas pump, and he then blacked out. With all due respect, that supports a finding that Jackson acted with deliberate design when he then stabbed Strickland. That testimony does not support a finding that Jackson acted in the heat of passion.

Jackson said he first went to get his knife, then lost control, and then he blacked out. By getting his knife first and then immediately walking to meet Neco Strickland, he demonstrated the deliberate design to kill him.

Jackson's argument that the jury was not properly instructed that they could have considered that he was in the heat of passion for a period of time even for weeks is refuted by Jackson's testimony. He said he did not stay in the rage all the time because he had to go to work during that period of time. He also described how after he saw Neco Strickland he went to his car and armed himself with the knife he used to kill Strickland and then approached Strickland. He says it was only after he arrived at Strickland's location that he lost control and blacked out. If he had not intended to use the knife, he would have had no reason to return to his car first before he approached and killed Strickland.

Jackson probably received the heat of passion instruction when the evidence did not support granting it. It was certainly not error to refuse Jackson's requested instruction after already granting a heat-of-passion instruction.

STANDARD OF REVIEW

The Court reviews all of the instructions as a whole. When the appellate Court reviews the trial Court denying a requested jury instruction, it is not error if the instruction accurately states the law, is supported by the evidence, and is not covered by other instructions.

APPLICABLE FACTS

The trial Judge gave instructions on murder and heat of passion manslaughter. R. Vol. 1/92-93, 95.

Jackson did not deny that he told Detective Kirkland that he knew about the relationship for two or three months before the killing. He saw naked pictures two weeks before the killing. R. Vol.

3/ 258, 260.

Jackson said that he was asking about Neco Strickland and his car two weeks before the killing. R. Vol. 3/ 259.

Jackson admitted that he did not stay in the uncontrollable rage for the entire two weeks. R. Vol. 3/ 261.

Jackson said that, after he saw Neco Strickland, he went to his car and got his eight-inch knife. R. Vol. 3/ 265.

Jackson said he then walked over to Strickland and blacked out. R. Vol. 3/ 270

Jackson testified that he did not remember what happened, but he admitted that there was a statement that said he told Detective Kirkland that he stabbed Strickland. R. Vol. 3/ 271.

Between 9:20 and 9:35 Danny Jerard Jackson was at the River Ten Apartment complex where he said his wife was with another man. Jack Powell was a security officer at the complex, and he talked to Jackson from a distance of 5-6 feet. Powell said Jackson did not appear to be mad. R. Vol. 2/ 79-81

It was after 10:00 when Jackson stabbed and killed Neco Strickland. R. Vol. 2/ 104

Jackson had the knife beneath his clothing. He pulled it out and stabbed Neco Strickland. R. Vol. 2/ 107

Neco Strickland, referred to as "the smaller man", ran away across the street and collapsed face down on the ground. The larger man got into his car, drove to the smaller man, and stabbed him in the back. R. Vol. 2/ 94-96

When Jackson walked to his car after Neco Strickland ran off he was walking at an average pace. R. Vol. 2/ 118

Jackson testified that he "blacked out" and did not remember what happened when he walked

to the pump where Neco Strickland was standing.

LEGAL PRINCIPLES

It is not error to deny a proffered instruction if the matter in the instruction is covered in the other instructions given by the Court to the jury.

Questions of criminal intent are for the trier of fact to resolve. The task of the reviewing court is to evaluate the trial court's instruction to the jury to ensure they were properly informed of the state's burden of proof. *Williams v. State*, 590 So. 2d 1374, 1379 (Miss. 1991).

Jury instructions must be read as a whole. If the instructions properly instruct the jury when read together, an improper instruction is harmless error. *Hornburger v. State*, 650 So. 2d 510, 515 (Miss. 1995).

Jury instructions are reviewed as a whole and not individually. A defendant is entitled to have jury instructions given which present his theory of the case. This entitlement is limited to instructions that correctly state the law, are not covered fairly elsewhere in the instructions, and have a foundation in the evidence. *Heidel v. State*, 587 So. 2d 835, 842 (Miss. 1991).

THE TRIAL JUDGE DID NOT ERR DENYING JACKSON'S REQUESTED HEAT-OF-PASSION INSTRUCTION AND GRANTING THE ELEMENTS INSTRUCTION.

Jackson complains mostly that the instructions unfairly place a time limit on the deliberate design.

When the evidence of Jackson's testimony is examined, it supports a finding that Jackson, while maybe suffering from the anger for may be weeks, was in his right mind when he realized who Neco Strickland was at the Kangaroo gas station, went to his car and obtained an eight-inch knife, and then went to the location where Strickland was standing at the pumps.

According to Jackson, he had not lost his mind at the time he armed himself with the

weapon he used to stab Strickland. He then claims that he blacked out. With all due respect, that does not support “heat-of-passion” manslaughter. That supports a finding that Jackson knew what he was doing and intended to stab Neco Strickland.

The Judge acted out of an abundance of caution when he gave the heat-of-passion instruction. Jackson was not entitled to more. The Judge did not err charging the jury.

ISSUE NUMBER TWO.

WHETHER OR NOT THE TRIAL JUDGE ERRED WHEN HE OVERRULED JACKSON’S OBJECTION TO QUESTIONS ASKED TO TERRY KING ABOUT KING’S PRIOR CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE.

Jackson called Jennifer Francine Bridgett, Terry King, and Robin McCant to testify on his behalf. King and the others were non-party witness called as character witnesses. They were not asked to testify about the facts of this case, with the exception of King’s demeanor two weeks before the killing.

King’s testimony was consistent with the two other witnesses, Bridgett and McCant, who said Jackson had a reputation for being honest and peaceful. Their character evidence testimony about Jackson’s reputation in the community for peacefulness and honesty was not impeached. Nor did the State put on character rebuttal evidence to counter their testimony. The jury thus had only their testimony before them to evaluate when they considered Jackson’s reputation.

With all due respect, if the testimony about King’s prior conviction affected the jury’s evaluation, his testimony was still consistent with the testimony of the only other two witnesses who testified about Jackson’s reputation. If it was error to admit evidence of the conviction, it was harmless.

STANDARD OF REVIEW

The Court reviews issues about the admission of evidence for abuse of discretion.

APPLICABLE FACTS

Jackson called Jennifer Francine Bridgett, Terry King, and Robin McCant to testify as character witnesses. All three testified that Jackson had the reputation of being honest and peaceful. R. Vol. 3/ 285-286, 290, and 294.

King's testimony:

Jackson called Terry King to testify on his behalf. King and Jackson had been friends since King was thirteen years old. King was thirty-two years of age when he testified for Jackson. R. Vol. 3/ 289

King said Jackson seemed “. . . like a pretty cool dude to me.”

King said his opinion was that Jackson is very peaceful. King never saw Jackson get in any trouble. R. Vol. 3/ 290

On cross-examination, the State asked King if he had ever been convicted of a felony. King said “Yes, sir.” The State then announced, “Nothing further, your Honor.” R. Vol. 3/ 291

Jackson announced that he had just an objection, unless “. . . unless they tell us what crime it was.” R. Vol. 3/ 291

The State asked King if he was convicted of possession of a controlled substance in 2002. King said yes.

Jackson objected saying it was a crime which “. . . is not one that is impeachable under 609.” Jackson said it was improper, and he requested a mistrial. R. Vol. 3/ 292

The State responded that King was not a party witness, and his conviction was admissible. The Court overruled the objection. R. Vol. 3/ 292

Robin McCant's testimony:

Jackson's aunt, Robin McCant testified as a character witness. She said she had known her nephew for thirty-five years. McCants said Jackson was a peaceful and honest man. R. Vol. 3/ 294

McCants said that she noticed Jackson's demeanor changed two weeks before June 26, 2010. She said that he was not his usual kind and loving self. R. Vol. 3/ 294-297

Jennifer Francine Bridgett's testimony:

Bridgett testified that Jackson had a reputation of being honest and peaceful. She also said that, two weeks before the killing, Jackson was not his normal self; he was depressed. R. Vol 3/ 285-286.

LEGAL PRINCIPLES

Rule 609, M.R.E., controls admission of evidence attacking the credibility of witnesses with proof of a prior conviction. The evidence is subject to *Rule 403, M.R. E.*, the crime must be punishable by death or imprisonment of one year or more, the court finds that probative value of admitting the evidence outweighs its prejudicial effect to the party, and it occurred within ten years of the trial.

A conviction for possession of cocaine was admissible to impeach a defense witness in a prosecution for aggravated assault. *McCullough v. State*, 750 So. 2d 1212, paragraphs 22-24, (Miss. 1999). Note, the Supreme Court reversed *McCullough* on another ground, *i.e.*, the Court had admitted evidence that McCullough, the party-defendant, had been previously convicted of another shooting.

The Mississippi Supreme Court examined the use of impeachment by prior of the defendant himself in the case of *Malone v. State*, 829 So.2d 1253, paragraph 19 (Miss.Ct.App. 2002). The impeachment of a defendant is to be distinguished from the impeachment of a non-party witness, but

the Court in *Malone* discussed some of the factors to be considered. In determining whether to admit evidence of a defendant's prior criminal history, the court conducts a hearing in accordance with *Peterson v. State*, 518 So.2d 632 (Miss.1987). Peterson adopted the list of factors set forth in *Gordon v. U.S.*, 383 F.2d 936 (D.C.Cir.1967) which requires review of: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Peterson, 518 So.2d at 636.

THE JUDGE DID NOT ABUSE HIS DISCRETION WHEN HE ADMITTED THE EVIDENCE OF KING'S PRIOR CONVICTION.

The facts in this case that are relevant to the factors found in *Malone, above*, are discussed. (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue.

First, King's conviction occurred in 2002, within ten years of King's testimony.

Second, King's crime and the crime for which Jackson was tried were not similar.

Third, King's testimony was not important because two other witnesses McCant and Bridgett gave the same testimony that King gave, *i.e.*, they both also testified that Jackson had a good reputation for peace and honesty. There was no inconsistency in the testimony of Jackson's three character witnesses. Even if the jury disregarded King's testimony because of the evidence of his prior conviction, the jury still had the testimony of McCant and Bridgett. Most importantly, their testimony was consistent with that of King, and they were not impeached. Even if it was error to admit evidence of King's prior conviction, it was harmless.

Finally, the question of King's credibility was not a central issue in the trial of Jackson for

the murder of Neco Strickland. King's testimony was about Jackson's reputation for peacefulness and honesty. The question in issue at the trial and on appeal is whether Jackson killed Neco Strickland with deliberate design or in the heat of passion. King did not claim to be present immediately before or at the killing. He did not testify that Jackson was in the heat of passion or that Jackson was so enraged that he lost his mind when he killed Strickland.

The trial judge did not abuse his discretion and err when he admitted proof of King's prior conviction. If he had erred, it would have been harmless because Jackson put on other evidence of his reputation for peacefulness and honesty through other witnesses who were not impeached with prior convictions. Regarding Jackson's character witnesses, the jury had only testimony that Jackson had a good reputation for peacefulness and honesty.

ISSUE NUMBER THREE.

WHETHER OR NOT THE COURT ERRED WHEN IT DENIED JACKSON'S MOTION FOR A DIRECTED VERDICT.

Jackson argues that the Judge erred when he denied Jackson's motion for a directed verdict. He claims the State put on "... no direct evidence that Jackson had the deliberate design to kill Neco Strickland."

There was evidence that Jackson was neither mad nor in an uncontrollable rage approximately one hour before he stabbed Neco Strickland to death. There was also evidence that Jackson concealed the murder knife beneath his clothing before he approached and killed Neco Strickland. Danny Jackson testified that he blacked out and did not remember what happened when he went to the pump where he assaulted Neco Strickland. With all due respect, not remembering what happened when he committed the act of stabbing does not support a finding that he acted in the heat of passion. Nor does it refute a finding that Jackson acted with deliberate design.

The judge did not abuse his discretion when he denied Jackson's motions for directed verdict and new trial.

STANDARD OF REVIEW

Directed Verdict/Sufficiency of the evidence:

The standard of review for a post-trial motion is abuse of discretion. *Howell v. State*, 860 So.2d 704, 764 (Miss.2003).

When reviewing the denial of a motion for a directed verdict the court views the evidence in the light most favorable to the prosecution.. The question is whether any rational trier of fact have found the essential elements of the crime beyond a reasonable doubt. If the facts and inferences "in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant guilty," the court must reverse and render. *Tipton v. State*, 2008-KA002060-SCT, 2010 WL 2521762, 1, paragraph 5 (Miss. 2010).

In reviewing whether the evidence is legally sufficient, the court does not determine from the evidence whether the reviewing court would convict or acquit. Rather, the court reviews the evidence in the light most favorable to the prosecution, and determines whether a rational juror could have concluded beyond a reasonable doubt that all elements of the crime were satisfied. *Weems v. State*, 2007-KA-2011-COA, May 4, 2010, 2010 WL 1758653, paragraph 32.

New trial/weight of the evidence:

Only in "exceptional cases in which the evidence preponderates heavily against the verdict" should the trial court invade the province of the jury and grant a new trial. *Amiker v. Drugs For Less, Inc.*, 796 So.2d 942, 947 (Miss.2000). The verdict must be "so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." However, the evidence should be weighed in the light most favorable to the verdict. *Dilworth v. State*, 909 So.2d

731, Paragraphs 20, 21, and 22 (Miss. 2005).

When reviewing a challenge to the weight of the evidence, the Supreme Court must determine whether or not the trial Judge abused his discretion when he denied the defendant's motion for a new trial. *Taylor v. State*, 672 So. 2d 1246, 1256 (Miss. 1996).

APPLICABLE FACTS

McCants said that she noticed Jackson's demeanor changed two weeks before June 26, 2010. She said that he was not his usual kind and loving self. R. Vol. 3/ 294-297

Before Jackson walked up to Neco Strickland at the Kangaroo gas station and stabbed Strickland to death, Jackson obtained a knife and placed it underneath his clothing. R. Vol. 2/ 107

Sometime between 9:25 and 9:35 at night, Jackson was at the River Ten Apartments. He was knocking on doors and said he was looking for his wife. Jackson said she was with a man who owned a car parked at the complex. Jackson stayed at the complex for fifteen more minutes talking to Jack Powell, the security guard. R. Vol. 2/ 78-80

Powell told Jackson that he had an ex-wife who cheated on him. Jackson did not appear to be mad or upset. Powell did not feel threatened by Jackson. Powell did not appear to be in an uncontrollable rage. R. Vol. 2/ 81

Jackson testified that he asked a guy at work about Neco two weeks before he killed Neco. R. Vol. 3/ 260 He also said he saw the naked pictures of Neco Strickland two weeks before he killed him. R. Vol. 3/ 260

Jackson said he put the knife in his waistband and walked to the pump where Neco Strickland was standing. R. Vol. 3/ 265

Jackson said he walked to the pump, asked Strickland his name, and then he blacked out. R. Vol. 3/ 270

Jackson threw the knife away on his drive home from where he left Neco Strickland. R. Vol. 3/ 272

Jackson said he took off his clothes when he got home, threw them down, and the clothes landed in the washing machine. R. Vol. 3/ 272

LEGAL PRINCIPLES

Factual disputes are properly resolved by the jury in a criminal prosecution and do not mandate a new trial. *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989).

The jury, not the reviewing court, is the sole judge of the credibility of the witnesses as well as the weight and worth of their conflicting testimony. *Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993).

The jury is charged with the duty of determining credibility between several witnesses. *Jackson v. State*, 614 So. 2d 965, 972 (Miss. 1993).

THE EVIDENCE SUPPORTS A FINDING THAT JACKSON HAD THE DELIBERATE DESIGN TO KILL NECO STRICKLAND. IT REFUTES JACKSON'S CLAIM THAT HE ACTED SPONTANEOUSLY IN THE HEAT OF PASSION.

The trial judge did not abuse his discretion when he denied motions for a directed verdict and for a new trial.

The evidence supports a finding that Jackson had the requisite intent to kill Neco Strickland. At some time before Jackson walked up to Strickland and killed him, Jackson obtained a knife on his person and concealed it beneath his clothing so that it could not be seen by anyone else until Jackson pulled it out and began to stab and kill Strickland. Having the knife hidden underneath his clothing on his person supports a finding that Jackson intended to use the knife to kill Strickland.

Jackson went to Strickland's apartment complex one hour before Jackson killed Strickland.

He said he was there looking for his wife; whether or not he had a weapon on his person at that time is uncertain because, as it turned out, the murder weapon was concealed beneath his clothing, presumably to make certain that neither Powell nor anyone else could see it.

With all due respect, there is evidence in the record which supported a finding that Jackson had the intent to kill Neco Strickland by stabbing Strickland with the knife that Jackson concealed before physically approaching Strickland.

There is no evidence supporting Jackson's contention that he acted in the heat of passion. Jackson says he does not know what happened at the pump when he first stabbed Neco Strickland. That does not support Jackson's theory. Jackson said he blacked out and does not remember what happened at the pump.

When evaluating whether or not the verdict was against the weight of the evidence, Jackson's aunt's testimony can be considered in addition to the previously discussed testimony. Robin McCants said that she noticed Jackson's demeanor changed two weeks before June 26, 2010. She said that Jackson was not his usual kind and loving self. R. Vol. 3/ 294-297.

Jackson argues that there was no proof that he had the deliberate design to kill Strickland, and that he acted out of heat-of-passion when he killed Strickland. As noted above, there was evidence that Jackson was at Strickland's apartment an hour before he confronted and killed him, that he did not appear to be mad or in a rage, and he went to find Strickland with the murder weapon concealed underneath his clothing.

The testimony by Robin McCant, Jackson's aunt, further supports a finding that Jackson had the deliberate design to kill Strickland before he did stabbed and killed Jackson. Her testimony of his demeanor two weeks before he killed Strickland was that he was not his usual kind and loving self. While we cannot see inside Jackson's mind, his behavior and demeanor both support a finding

that he was in a less kind and loving mood than normal. A reasonable inference arises that Jackson had learned of his wife's affair, and it made him very unhappy. It further supports an inference that he was planning revenge.

The evidence is sufficient to support denying both the motion for directed verdict. The evidence is such that to affirm the conviction does not sanction an unconscionable injustice.


CONCLUSION

The State asks the Court to affirm the judgment of the Circuit Court of Harrison County.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

I, Scott Stuart, 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:

Honorable Roger T. Clark
Circuit Court Judge
P. O. Box 1461
Gulfport, MS 39502

Honorable Cono Caranna
District Attorney
P. O. Drawer 1180
Gulfport, MS 39502

Leslie S. Lee, Esquire
Attorney At Law
Mississippi Office of Indigent Appeals
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201

Phillip W. Broadhead, Esquire
Attorney At Law
The University of MS School of Law
Post Office Box 1848
University, MS 38677-1848

This the 12th day of July, 2010.



SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680