IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KESHIA GILMER — APPELLANT

VS. — NO. 2009-KA-2018

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KESHIA GILMER **APPELLANT**

vs. **CAUSE No. 2009-KA-02018-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Lincoln County, Mississippi in which the Appellant was convicted and sentenced for her felony of **THIRD DEGREE ARSON**.

STATEMENT OF FACTS

On 10 June 2008, Officer Fred Perkins of the Brookhaven Police Department was dispatched to a residence at 1803 Brignall Road to investigate a report of a burglary at that residence. When he arrived, he saw that someone had been in the residence and had taken some things out of it. What he saw was what appeared to be a pile of trash that had been set afire.

As it turned out, inside the pile were a number of items of jewelry, including four rings and a herringbone necklace. (R. Vol. 2, pp. 73 - 75).

Nolan Jones, the assistant chief of the Brookhaven Police Department, also went to the

residence at 1803 Brignall Road, Lincoln County, Mississippi on 10 June 2008. On the following day, a Bruce Robinson and a Luciana Thadison came to his office and gave a statement. They also gave him some jewelry they had recovered from "the burn pile" at 1803 Brignall Road.

Jones also had occasion to investigate an automobile tag number, number RBG336, which was a Rankin County tag number. Thadison gave him the tag number. The vehicle to which the tag number was assigned belonged to the Appellant. (R. Vol. 2, pp. 75 - 78).

Bruce Robinson then testified. He stated that Luciana Thadison was his girlfriend, and that in June of 2008 she and he resided at the residence at 1803 Brignall Road. Robinson knew the Appellant; he had dated the Appellant in the past. In June of 2008 the Appellant was living in Rankin County, but she did not have a key to the house in Brignall Road.

Robinson recalled a day in June of 2008 when some of Thadison's possessions were burned. At about half past eleven on the morning of that day, the Appellant rang Robinson and told him that she wanted to return a sum of money to him that belonged to him. She told him that she was at his house and wanted to know where she could leave the money. The Appellant told her to leave the money on a step or in a mailbox. The Appellant at some point wanted to know what Robinson was hiding. He told her he was not hiding anything.

The Appellant, rather than leaving the money as she was told to do, rang Robinson again and told him to meet her at a truck stop. She also mentioned that she had burned Thadison's jewelry. Specifically, the Appellant told Robinson, "I burned the bitch shit. It shouldn't have been in there." Robinson went to the truck stop, met the Appellant there, and tried to detain the Appellant. The Appellant was driving a small, blue Ford. At about that time, Thadison came upon the scene, and at that point the Appellant high - tailed it from the truck stop. Robinson went back to his house and found Thadison's jewelry in the fire, just as the Appellant said.

The Appellant did not have permission to enter Robinson's house and no permission to do anything with the jewelry. (R. Vol. 2, pp. 80 - 85).

Luciana Thadison, of Monticello at the time of trial, testified that she knew Robinson, that Robinson used to be her "ex." In June of 2008, Thadison stayed with Robinson at his home in 1803 Brignall Road in Brookhaven. Thadison did not know the Appellant, but she did have an opportunity to meet her.

Thadison and the Appellant had the opportunity to become aware of each other when the Appellant rang Robinson. Thadison, apparently feeling sufficiently established in Robinson's home, answered the telephone. The two had a conversation -- one might easily imagine of what kind -- and the Appellant apparently made it plain to Thadison who she, the Appellant, was and that she, the Appellant, was "dealing" with Robinson as well.

Two days later, Thadison pulled into Robinson's driveway. She had been attending "Co-Lin" in an effort to obtain a GED. As she pulled into the driveway, she observed a little, blue car in the yard. Thadison rang Robinson when she saw a woman coming down the step of the house, Thadison being curious about the woman at Robinson's house. Robinson identified the woman by a number of foul names. Robinson then told Thadison that he was on the way.

Thadison took note of the Appellant's tag number. She then left the driveway, went past Robinson's house and to a place they say used to be a juke joint. She saw the Appellant leaving Robinson's house as well. Thadison tried as best she could to follow the Appellant. She told Robinson the Appellant's tag number and that the Appellant had pulled into a truck stop. The next thing Thadison saw was Robinson leaning into the Appellant's car. As Thadison pulled up, the Appellant pulled away.

Thadison then rang the Appellant to ask whether she, the Appellant had burned Thadison's

jewelry, Thadison apparently having been informed by Robinson that her jewelry had been burned. The Appellant's response to Thadison's enquiry was, Yeah, [I] burned your shit." The Appellant did not sound sorry. Thadison went on to identify the pieces of jewelry that had been burned and testified as to the price she had paid for one of the items, which was $175.00. She also testified that a pair of sandals and an outfit had been burned, and she figured she paid about $60 - 65 for them. The other items of jewelry were of gold. Thadison moved out of the Appellant's house shortly after the fracas. (R. Vol. 2, pp. 86 - 94).

The tag number testified to was the tag number assigned to the Appellant's car. (R. Vol. 2, pp. 94 - 95).

The defense presented a case - in - chief. The Appellant testified as to her relationship with Robinson and said she last saw him in June of 2009. She stated that she had an on and off relationship with him "between December and January of [2009]." She said she had seen a lot of the Appellant since June of 2008. The Appellant gave a few other details of her relationship with the Appellant.

The Appellant further testified that the first she had ever seen of the Thadison was at trial. She had heard from Thadison in May or 2008. There was then some confused testimony about whether she gave Robinson money when Robinson and she were "talking" while Thadison and Robinson were "talking" and that she, the Appellant, figured that the money that she did not give to Robinson was the cause of "everything as of today." In any event, she denied having seen Robinson at a truck stop in order to give him money.

According to the Appellant, the first she heard of the charge of arson against her was when her mother summoned the law, apparently to eject the Appellant and her children from her house. According to the Appellant, the police in Clinton ran her tag number and discovered that there was

a warrant for her arrest for arson. This was over a year after the burning of the jewelry. According to the Appellant, she had, in that time, resumed whatever relationship she had with Robinson; Robinson in that time said nothing to her about the arson.

The Appellant denied having been at Robinson's house on 10 June 2008. She also said she did not know a Luciana Thadison, again asserting that the first time she saw her was when Thadison testified. She believed that Robinson would have known her tag number. (R. Vol. 2, pp. 99 - 106).

The Appellant thought the arson charge was made up, maybe because of the money she did not give Robinson. She denied having set the jewelry on fire. She did indicate that she had spoken to Thadison on one occasion by telephone, when Thadison rang to introduce herself. (R. Vol. 2, pp. 106 - 110).

STATEMENT OF ISSUES

1. WAS THE EVIDENCE SUFFICIENT TO SUPPORT THE VERDICT?

2. WAS THE VERDICT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE?

SUMMARY OF ARGUMENT

THAT THE VERDICT WAS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

ARGUMENT

THAT THE VERDICT WAS SUPPORTED BY THE EVIDENCE; THAT THE VERDICT WAS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE[1]

In the First Assignment of Error, the Appellant asserts that the State of Mississippi failed to prove the value of the items of jewelry at the time those items were burned. Consequently, says the

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[1] We will respond to the Appellant's two assignments of error in this one response.

Appellant, the State failed to prove an element of third degree arson.

This alleged failure in the evidence was not specifically alleged in the Appellant's motions for a directed verdict. (R. Vol. 2, pp. 95 - 96; 111). Nor was it alleged in the Appellant's post - trial motions for a judgment notwithstanding the verdict or for a new trial. (R. Vol. 1, pg. 29). A review of these motions will show that the Appellant simply made a generic claim to the effect that the evidence was insufficient to permit the jury to consider the case. This was insufficient to preserve the issue. *Riley v. State*, 11 So.3rd 751, 753 - 754 (Miss. Ct. App. 2008).

Assuming *argued* that the First Assignment of Error is properly before the Court, there is no merit in it.

Miss. Code Ann. Section 97-17-7 (Rev. 2006) sets out the felony of third degree arson.

> Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of whatever class or character; (*sic*) (such property being of the value of twenty - five dollars and the property of another person), shall be guilty of arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

The State was thus required to prove (1) that the jewelry and sandals and clothing were personal properly, (2) of a value of at least twenty - five dollars, (3) were wilfully burned, and (4) were maliciously burned. The last two requirements are satisfied where the State proves that the fire was intentionally started and that the accused had a malicious motive. *Kendall v. State*, 772 So.2d 1089, 1091 (Miss. Ct. App. 2000).

Thadison testified that she bought one ring for the sum of $175.00. There were two rings given her by her grandmother, along with a gold chain. Her mother gave her another ring. She did not know the value of the jewelry before it was burned, and she could not obtain an appraisal of it after it was burned. However, she further testified that the gold chain was made of 14 carat gold and

that the rings were either 10 or 14 carat gold. She also testified as to the sandals and the outfit. (R. Vol. 2, pp. 91 - 92).

The Appellant, citing *Williams v. State*, 763 So.2d 186 (Miss. Ct. App. 2000), contends that the State was required to establish the value of the personal property at the time it was burned and that the testimony concerning the price paid for the one ring was insufficient to establish its value. It is true that in *Williams* this Court held that market value on the date of the crime is the proper measure in larceny and receipt of stolen property cases. The case at bar, however, is not such a case. We have found no decision, and the Appellant cites no decision, extending that rule to arson - in - the - third -degree cases.

It may be that the Court will extend the rule concerning value or property in larceny and receiving stolen property cases to arson - in - the - third - degree cases. However, if the Court should do so, it avails the Appellant nothing.

Given the nature of the content of the rings and necklace, either 10 or 14 carat gold, the jury could have reasonably and properly inferred that the value of the jewelry at the time it was burned was twenty - five dollars or more.[2] The gold content of the jewelry alone would have exceeded twenty - five dollars. In addition to this, the victim did testify that she paid one hundred seventy five dollars for one of the rings. This testimony provided a circumstantial basis from which the jury could reasonably infer that it, at least, was of the value of at least twenty - five dollars. *Ewell v. State*, 956 So.2d 315 (Miss. Ct. App. 2006).

The Appellant, citing *Williams v. State*, 763 So.2d 186 (Miss. Ct. App. 2000), asserts that the victim's testimony as to what she paid for the ring was insufficient to establish the ring's value at

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[2] It appears that the value of the jewelry damaged or destroyed was $2, 355.00. (R. Vol. 2, pg. 126). Why this was not proved at trial is a thing, we suppose, that must remain a mystery.

the time it was burned by her. However, as in *Ewell*, the proof offered by the State was sufficient to permit a reasonable jury to conclude that the ring and the other items of jewelry were worth at least if not more than twenty - five dollars. The metal content alone was worth more than that amount, and the jury was not left merely to speculate as to whether the items burned were worth more than twenty - five dollars.

As for the Second Assignment of Error, we find nothing to suggest that the verdict is contrary to the great weight of the evidence, that the verdict is an unconscionable one. The Appellant's car was at her lover's home. The Appellant told her lover that she had burned the jewelry. It may be that the Appellant testified that she did not burn the jewelry, but this merely created an issue of fact for the jury to determine. Perhaps this was a "love triangle" case, but it is quite clear from the evidence what occurred. What occurred is that the Appellant, annoyed with Thadison, put the victim's jewelry outside the house and burned it.

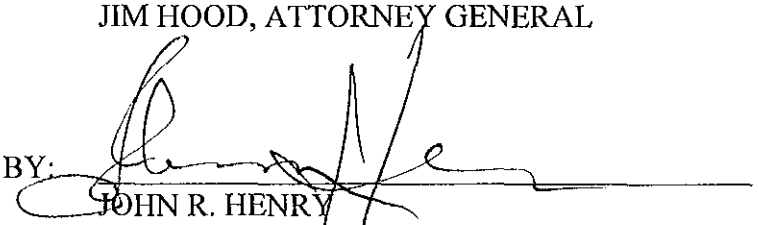
The First and Second Assignments of Error should be denied.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, John R. Henry, 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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