


IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOSHUA KING

APPELLANT

VS.

NO. 2011-KA-0137 

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING EXHIBIT 3E INTO EVIDENCE.
- II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE FACTS

While watching television around 10:00 p.m., Ulysses Brown and his girlfriend, Mary Phillips, heard gunshots. (Transcript p.238 and 249). They stepped outside to see what was going on and saw two young black males running away from Leadway Grocery. (Transcript p. 239, 245-46, 250, and 252). They called 911. (Transcript p. 244).

When officers arrived at Leadway Grocery, they found the bodies of Alfred Quong and So Ha Jung, who was also known as Sophie Jung. Alfred was the owner and manager of Leadway Grocery and Sophie worked for him in the store. (Transcript p. 256-57).

It was later determined that the night before the shootings, Terrance Stanton, Jontarious

Moody, and the Appellant, Joshua King discussed robbing Leadway Grocery. (Transcript p. 334). Moody provided the gun that was later used in the robbery to King who then gave it to Stanton. (Transcript p. 335-36). Moody declined to participate in the actual robbery. (Transcript p. 357).

On the night of the robbery, King first went inside the store and asked Alfred for some cold medication. (Transcript p. 341-42). King came back outside the store and Stanton proceeded inside the store telling King to stay outside. (Transcript p. 342). Stanton placed a soda on the counter and also asked Alfred for cold medication. (Transcript p. 344). When Alfred turned around to get the medication, Stanton shot him. (Transcript p. 344). King then ran inside the store. (Transcript p. 346). Stanton handed King the gun while he grabbed money from the register. (Transcript p. 347). Meanwhile, Sophie dropped down on the floor beside Alfred. (Transcript p. 347). King handed the gun back to Stanton and asked, "Are you gonna kill her? Ain't you gonna shoot her?" (Transcript p. 348). Stanton then shot Sophie. (Transcript p. 348). As they were about to leave the store, King said "I still heard dude breathe." (Transcript p. 348-49). King then said, "shoot him again." (Transcript p. 349). Stanton shot at the floor near Alfred and ran out of the store. (Transcript p. 349-50). King ran out after him. (Transcript p. 350). The two then ran through the nearby lumberyard and back to the apartment complex where they both lived. (Transcript p. 351).

An investigation led to both Stanton and King being arrested. (Transcript p. 304). Stanton confirmed that there were "two things of money" and that each came from the register at Leadway Grocery. (Transcript p. 362). He also confirmed that one of the "things of money" was his and the other was King's. (Transcript p. 362 and 374). After talking to Stanton, officers were led to one set of cash totaling \$134. (Transcript p. 270 and 310). King advised officers exactly where to find the other set of cash which totaled \$310. (Transcript p. 297 and 306).

Both men were charged with two counts of capital murder. Stanton pleaded guilty. King

went to trial. He was convicted of both counts and was sentenced to life in the custody of the Mississippi Department of Corrections for each count.

SUMMARY OF THE ARGUMENT

This Court should affirm Joshua King's convictions and sentences as he did not establish that there were any reversible errors committed during his trial. Additionally, the verdict was not against the overwhelming weight of the evidence and allowing it to stand would not sanction an unconscionable injustice.

Furthermore, the trial court did not abuse its discretion in allowing the photograph at issue into evidence. This picture was one of two pictures of Alfred and was the only one where his face was visible. It was used to supplement and clarify the law enforcement officers' testimony about how the victims' bodies were found and also corroborated King's accomplice's testimony regarding the circumstances of the killing. As such, it served an evidentiary purpose.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING EXHIBIT 3E INTO EVIDENCE.

King first argues that "the trial court erred by allowing the introduction of Exhibit 3e, a gruesome crime scene photograph that was unnecessary and prejudicial." (Appellant's Brief p. 7).

This Court has held the following regarding the admission of photographs:

Admission of photographs by the trial court is reviewed for abuse of discretion. (*citation omitted*). A decision favoring admissibility will not be disturbed absent a clear abuse of that discretion. The discretion of the trial judge is almost unlimited regardless of the gruesomeness, repetitiveness, and the extenuation of probative value. (*citations omitted*). Some probative value is the only requirement needed in order to support a trial judge's decision to admit photographs into evidence. (*citations omitted*). So long as a photograph has probative value and its introduction serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, grisly, unpleasant, or even inflammatory. (*citations omitted*). A photograph has a meaningful evidentiary purpose when it: (1) aids in describing the

circumstances of the killing; (2) describes the location of the body or cause of death; or (3) supplements or clarifies witness testimony. (*citation omitted*).

Chamberlin v. State, 989 So.2d 320, 340 (Miss. 2008) (*emphasis added*). The picture at issue here served an evidentiary purpose and was not so gruesome as to be inflammatory.

Four pictures of the victims were accepted into evidence. Exhibit 3d is a picture of the two victims as they were found with Alfred lying face down on the ground and Sophie draped over the top of him. Exhibit 3g and 3h are pictures of Sophie after she was removed from the top of Alfred. The picture at issue here, Exhibit 3e, is a picture of Alfred after Sophie was removed from his body and is the only picture of Alfred where his face is visible. This picture was used to supplement and clarify the law enforcement officers' testimony about how the victims were found and it also aided in describing the circumstances of the killing. This is important as the four pictures admitted not only clarified the law enforcement officers' testimony, but they also helped describe the circumstances of the killing as testified to by King's accomplice, Stanton. The pictures when looked at together confirm his version of how the shootings occurred.

Moreover, as this Court noted in *Holly v. State*, the Supreme Court has held photographs "to be so gruesome and inflammatory as to be prejudicial in only one circumstance, a close-up photograph of a partly decomposed, maggot-infested skull." 671 So.2d 32, 41 (Miss. 1996) (quoting *Taylor v. State*, 672 So.2d 1246 (Miss. 1995)). That case was *McNeal v. State*, 551 So.2d 151 (Miss. 1989). *Id.* As is the case here, the *Holly* Court held that the picture at issue, "although certainly not pleasant to look at, [is] not comparable to those described in *McNeal*." *Id.*

As such, it is clear that the pictures when viewed together served an evidentiary purpose in that they supplemented and clarified testimony as well as aided in describing the circumstances of the killings. Furthermore, the picture at issue is not so gruesome as to inflame the jury. Thus, the

trial court did not abuse its discretion in admitting the photograph.

II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

King also argues that “the trial court erred in denying King’s motion for a new trial because the jury verdict was against the overwhelming weight of the evidence.” (Appellant’s Brief p. 10). The Court of Appeals, quoting this Court, has previously held that “[w]hen reviewing a denial for a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Herron v. State*, 941 So.2d 834, 838 (Miss. Ct. App. 2006)(quoting *Bush v. State*, 895 So.2d 836, 844 (Miss.2005)). “However, the evidence should be weighed in the light most favorable to the verdict.” *Id.* “It is within the discretion of the court whether to grant a new trial, and this discretion should be exercised ‘only in exceptional cases in which the evidence preponderates heavily against the verdict.’” *Id.* (*emphasis added*). King’s case is not one of those exceptional cases where the evidence preponderates heavily against the verdict.

King’s only argument that the verdict was against the weight of the evidence is that “all of the evidence implicating King at trial, with the exception of the palm print found at the checkout counter, came from the testimony of Stanton, who admitted that he killed the two victims and that accepted a plea deal with the State in exchange for testimony against King.” (Appellant’s Brief p. 10). This argument is not sufficient to show that a new trial was warranted for several reasons. First, this Court stated that it has “repeatedly recognized that a defendant may be lawfully convicted on the uncorroborated testimony of an accomplice (*citations omitted*), although we frequently caution that such testimony should be viewed with suspicion and must be reasonable and not improbable, self-contradictory or substantially impeached (*citations omitted*).” *Fairchild v. State*, 459 So.2d 793,

798 (Miss. 1984). *See also Holly*, 671 So.2d at 40 (holding that “the uncorroborated testimony of an accomplice is sufficient to sustain a conviction”) and *Ballenger v. State*, 667 So.2d 1242, 1253 (Miss. 1995) (holding that “the uncorroborated testimony of an accomplice may be sufficient to convict an accused”). Secondly, as was the case in *Holly*, “the jury was instructed to weigh the accomplice testimony with ‘great care and caution and suspicion.’” 671 So.2d at 41. Instruction S-10, which was given to the jury, states as follows:

The Court instructs the jury that although the testimony of an accomplice should be received by the jury with great caution and suspicion, yet if you believe that such testimony is reasonable and is neither improbable, self-contradictory, or substantially impeached, then it is your duty to take such testimony into consideration in determining your verdict and give it such weight, faith, and credit as you believe it deserves.

(Record p. 161). As is well-established Mississippi law, jurors are presumed to follow the instructions of the court. *Neal v. State*, 15 So.3d 388, 402 (Miss. 2009) (quoting *Moore v. State*, 787 So.2d 1292, 1291 (Miss. 2001)). This jury was properly instructed regarding how to consider Stanton’s testimony and clearly found it credible. Mississippi law is also clear that “the jury must be left to resolve matters regarding weight and credibility of the evidence.” *Holly*, 671 So.2d at 40 (citing *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993)). Third, King was allowed to cross-examine Stanton regarding his plea deal and his motivations for testifying. (Transcript p. 365-66). The jury was also able to weigh that testimony in its analysis of Stanton’s credibility. Finally, Stanton’s testimony was not improbable, self-contradictory, or substantially impeached.

The record clearly reveals that the verdict was not against the overwhelming weight of the evidence and allowing it to stand would not sanction an unconscionable injustice. The trial court did not abuse its discretion in refusing to grant King’s motion for new trial.

CERTIFICATE OF SERVICE

I, Stephanie B. wood, 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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and
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This the 12th day of September, 2011.


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