IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01229 COA

JESSIE BULLOCK **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	3/29/94
TRIAL JUDGE:	HON. JAMES E. GRAVES, JR.
COURT FROM WHICH APPEALED:	CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY
ATTORNEY FOR APPELLANT:	LOUIS F. COLEMAN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	CYNTHIA SPEETJENS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	GUILTY - AGGRAVATED ASSAULT AND MANSLAUGHTER, SENTENCED TO TERMS OF 10 YEARS AND 20 YEARS RESPECTIVELY TO BE SERVED CONCURRENTLY
DISPOSITION:	AFFIRMED - 9/23/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/28/97

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

A grand jury in the First Judicial District of Hinds County returned a two-count indictment against the Appellant, Jessie Bullock, the first count of which was for aggravated assault on Joe Vinzant, Jr., and the second count of which was for the murder of Austin McMillan. A jury found Bullock guilty of aggravated assault on count 1 and manslaughter on count 2. The trial court sentenced Bullock to

serve terms of ten years for aggravated assault and twenty years for manslaughter with both sentences to be served concurrently in the custody of the Mississippi Department of Corrections. Bullock has appealed the jury's verdict on the grounds (1) that the trial court erred in admitting evidence seized during a search of his vehicle in violation of his Fourth Amendment rights and (2) that his conviction was against the overwhelming weight of the evidence. Nonetheless, this Court affirms the trial court's judgments of Bullock's guilt and its sentences which it imposed on him.

I. FACTS

On the evening of July 2, 1992, Joey Vinzant, Jr., was working as a bouncer for a bar known as T. J.'s Tavern (T. J.'s), which was located on Mill and Keener Streets in Jackson. When he heard that a black male had been ejected from the bar because of an encounter with an unnamed white male, Vinzant went outside T. J.'s to monitor the situation. Once outside the bar, he observed a black male, Bullock, and the unidentified white male pushing and talking roughly to each other. Because he feared that the two men would begin to fight, Vinzant intervened in an attempt to defuse the tense situation. Bullock walked away behind Vinzant's back as Vinzant continued to calm the other man. The other man's buddies encouraged him to fight Vinzant.

As he prepared to defend himself from the unidentified man who had begun to advance upon him, Vinzant heard a "smack" from behind him. Vinzant looked to his left in time to see Bullock flat on the ground. Barry Goff, whom all the witnesses described as being between six feet, two inches and six feet, five inches tall and weighing up to three hundred pounds, had struck Bullock at least two times. Bullock regained his feet after each of Goff's blows. Another club bouncer, John Russell, pulled Bullock out of the fight. With the assistance of two other bouncers, Vinzant restrained Goff and asked him to leave the premises. Bullock and the other men were escorted to their respective vehicles by bouncers and instructed to leave the area. Each did so. John Russell testified that before he left, Bullock told him: "I'm coming back. I'm going to kill somebody or somebody's going to have to kill me."

Vinzant attempted to herd the crowd of patrons which had gathered outside back inside the bar and proceeded around the front of the tavern. He explained that the bar could not make any money as long as its customers remained outside. Approximately five to ten minutes after the commotion ceased, Bullock returned. He approached the bar on foot from the road where he had parked his car. According to Vinzant's testimony, when Bullock was approximately ten feet from him, the bouncer raised his hands, uttered, "Whoa, guy," and asked Bullock to stop. Instead, Bullock pulled a small black handgun from his side and shot Vinzant, who was unarmed, in the abdomen.

Fearing that Bullock would fire again, Vinzant ran for cover. Some witnesses testified that as Bullock ran to his car, an older model Cadillac, he fired into the crowd of approximately one hundred fifty customers who had gathered outside the bar to witness the brawl, which they all anticipated. Whatever may have actually occurred, the patrons and onlookers screamed and ran for cover as a barrage of bullets erupted. In an effort to prevent his escape, spectators threw bottles and other objects at Bullock's car. Bullock had returned to T. J.'s in his wife's Buick automobile, which he had parked on or near Keener Street. In his attempt to escape "the maddening crowd" unscathed, Bullock drove westerly a short distance on Keener Street and ran the stop sign located at its intersection with Mill Street. In the intersection of Mill and Keener Street, Bullock's vehicle collided with a Ford

Torino automobile driven by Harold Fultz. The impact of the collision drove Fultz's Torino onto the western edge of Mill Street, and immobilized Bullock's Buick. After the collision, the Buick was facing north in the west lane of Mill Street across from T. J.'s. Fultz was not injured. Gunfire continued after the collision between Bullock's and Fultz's cars.

Meanwhile, nineteen-year-old Austin McMillan was driving north on Mill Street in his Honda Accord with William Holland as his passenger in the car's front seat. McMillan approached T. J.'s from the south on Mill Street unaware of the danger that lay ahead. William Holland testified that as McMillan and he neared T. J.'s Tavern, they heard what they thought were fireworks celebrating the upcoming Fourth of July holiday but which were gunshots instead. When Holland saw the spectators outside T. J.'s running and screaming, he realized what was happening and told McMillan, the driver, to duck. When his friend did not respond, Holland perceived that it was too late. According to the testimony of the pathologist who performed McMillan's autopsy, a .25 caliber bullet had entered the left side of McMillan's skull about one inch above his ear, traversed his brain, and come to rest inside the front of McMillan's skull. McMillan had apparently already shifted the manual transmission of the Honda into first gear as he passed Bullock's stalled Buick; thus, Holland was able to stop the car about 383 feet north of the intersection of Mill and Keener Streets on the east side of Mill Street. McMillan was dead at the scene of the accident.

When it appeared that the gunfire had ceased, Jeff Parkman, a football player for Arkansas State and one of T. J.'s patrons, along with five other men caught Bullock and subdued him until the police arrived. At some point, Bullock was shot in the leg with a bullet from a .9 millimeter handgun by an assailant whose identity was never established. After Bullock had been restrained, one of the spectators, Dewayne Leggett, found a pistol lying on the ground a few feet behind Bullock's car. Leggett took the pistol with him. About two weeks later, when Leggett's father discovered his son had kept the gun, he convinced Leggett to return it to the police. Leggett had taken the pistol with him on a fishing trip and fired it at turtles a number of times. When Leggett returned the pistol, he told the officer to whom he surrendered it that the pistol was in working condition.

The police towed the Buick in which Bullock had returned to T. J.'s to the Jackson Police Department's impound lot for safekeeping. Bullock was taken to the Mississippi Baptist Medical Center, where surgeons removed the .9 mm bullet from his ankle. Around nine o'clock on July 3, the same morning of the incident, Jackson Police Department Detectives Robert Jordan and Rod Erikson interviewed Bullock in his hospital room following his return from the recovery room. Detectives Jordan and Erikson testified that during their interview, Bullock was coherent and alert, notwithstanding his surgery earlier that morning. After the detectives gave Bullock the customary *Miranda* warning, Bullock told them that he had fired his .25 caliber pistol only once because it jammed after he fired the first shot.

During their interview with Bullock, Mrs. Bullock told the officers that her husband had come home around midnight and told her that he had had problems with some other men. She stated that after he left, she could not find her .25 caliber pistol, which she kept behind the dresser drawer. She then informed the detectives that the handgun's box, which had its serial number on it, was located in the trunk of the Buick in which Bullock had returned to T. J.'s. When Mrs. Bullock suggested that Detectives Jordan and Erikson discontinue their questioning of her husband, they terminated their interview of Bullock.

The detectives then proceeded to the impound lot. The Jackson Police Department's procedure rendered any officer impounding a vehicle responsible for searching it and preparing an inventory of its contents. However, upon Detectives Jordan and Erikson's arrival at the impound lot, they learned that the officer who had impounded the Buick had failed to conduct an inventory search of the Buick after he had impounded it. Thus, to expedite their investigation of the aggravated assault on Joey Vinzant and the murder of Austin McMillan, the two detectives searched the Buick and prepared an inventory of its contents. They recovered a live .25 caliber round of ammunition from the glove compartment, and from the trunk, the detectives recovered a cardboard box, which had once contained a .25 caliber Raven handgun. The police determined that the serial number on the box found in the Buick matched the serial number on the pistol which Leggett turned over to them.

II. Trial

Before the trial began, the trial judge heard Bullock's motions to suppress the inventory of the impounded Buick made by Detectives Robert Jordan and Rod Erikson and to suppress the statements which Bullock had given these same detectives from his hospital bed and later statements which he gave other officers after he was incarcerated in the Hinds County Jail following his discharge from the Mississippi Baptist Medical Center. The trial judge denied both motions, and the trial then began.

As one of its witnesses, the State called Joey Vinzant, Jr., the bouncer for T. J.'s whom Bullock shot in the stomach. Vinzant's testimony is reflected in our recitation of the facts. John Russell, another bouncer, was the State's next witness. Russell testified that he and some other bouncers had intervened in a fight which had erupted between two of T. J.'s customers inside the bar and had escorted the two combatants to their respective cars before he noticed Bullock's "rubbing up against another guy that was friends with Barry Goff." Russell corroborated that Goff struck Bullock twice, and he added that "other people started in on [Bullock]." When that happened, Russell grabbed Bullock, got him out of the crowd, and escorted him to the back parking lot. It was Russell who testified that Bullock told him that he was coming back to kill somebody or else to be killed.

Russell saw Bullock return to T. J.'s in the Buick and emerge from the car. He saw Bullock carrying the pistol in his hand when he walked past, and he witnessed Bullock shoot Vinzant in the stomach. Russell testified that as Bullock ran to his car to leave the scene, Bullock continued to fire the pistol indiscriminately into the crowd of spectators, who by then were no longer interested in watching a fight but were instead running and screaming. Russell further testified that Bullock continued to fire his pistol from the Buick as he drove down Keener Street toward its intersection with Mill Street. He added that after Bullock wrecked the Buick, he got out, "got over his car," and began firing his pistol into the scurrying crowd. Russell observed the red Honda Accord which McMillan was driving as it passed the bar. After Bullock was restrained, Russell went to the Honda where he found McMillan slumped over its steering wheel.

The State's next witness, Jeff Parkman, testified that he saw Barry Goff strike Bullock three times with his fist and that Bullock got back up after each blow. He also saw Bullock shoot Vinzant. He confirmed Vinzant's testimony that Bullock continued to shoot at random into the crowd after he shot Vinzant. Parkman added that three or four of the bar's patrons went to their cars, retrieved their firearms, and shot at Bullock as he drove down Keener Street. Then he corroborated that Bullock

fired "approximately three times" into the crowd after the collision with Fultz's Torino automobile. After Bullock quit firing, Parkman assumed that the pistol was empty, and he along with five or six others chased and subdued Bullock.

Next, Dewayne Leggett testified for the State and related that he saw Bullock shoot Vinzant and continue firing into the crowd. Leggett ducked behind parked cars when the shooting erupted. He did not see Bullock fire his pistol after the collision in the intersection of Mill and Keener Streets, but after the firing stopped, he went to where Bullock was being subdued. As we related, Leggett found a pistol "about ten feet . . . [b]ehind [Bullock's] car, kind of the back left side, driver's side." Leggett surrendered the pistol to the police after he had returned from National Guard summer camp. He identified the pistol which he found that night, whereupon the trial judge admitted it into evidence on the State's motion.

The State called Detective Robert Jordan who testified that Bullock told him from his hospital bed that he had fired the pistol one time, after which it jammed. Jordan also related the result of his and detective Erikson's inventory of the Buick, which included the live .25 caliber round of ammunition and the box for a Raven .25 caliber pistol. The serial number on the box matched the serial number on the .25 caliber pistol which Leggett had surrendered to the police. John Dial, a criminalist at the Jackson Police Department crime laboratory, was qualified as a ballistics expert. He testified to a reasonable scientific certainty that the bullet removed from the brain of Austin McMillan came from the .25 caliber Raven automatic handgun registered to Ella Mae Bullock, the appellant's wife, which Leggett found behind Jessie Bullock's car.

Terry L. Kirkland, resident agent in charge of the Bureau of Alcohol, Tobacco and Firearms (ATF) in Jackson, identified a federal firearms transaction record maintained by the ATF in Washington. This record established that the pistol introduced into evidence was manufactured by Raven Arms of Industry, California, which transferred the pistol to Metro Pawn Brokers in Jackson. The record further indicated that Metro Pawn Brokers sold the pistol to Ella Mae Bullock on July 27, 1991. Dr. Rodrigo Galvez, a pathologist and psychiatrist, testified about the result of his autopsy on Austin McMillan, which is contained in the recitation of facts. William Holland, the passenger in McMillan's Honda, testified that McMillan was shot as he drove past T. J.'s and the Buick stalled on Mill Street.

After the State rested, Bullock called David Fondren, an investigator with the Hinds County Public Defender's Office, who testified that he examined the Buick after it had been impounded and that he found several bullet holes in it. Fondren also testified that when he talked to Dewayne Leggett, Leggett told him that when he picked up the pistol, it was jammed and that the slide would not come back. Leggett also told him that the pistol was empty when he picked it up behind the Buick.

Bullock's next witness was John McMinn, a Hinds County Deputy Sheriff, who was in T. J.'s the night of July 2 until the early morning hours of July 3. McMinn testified that he was in the parking lot where he witnessed the collision between the Buick and Fultz's car and that he saw Bullock exit the Buick and begin running down Mill Street. McMinn then testified that he did not see Bullock fire a gun after the collision. McMinn stated that he heard several other gunshots, but he could not estimate the number. Bullock's last witness was Melissa Johnson, a regular at T. J.'s, who testified that a .9 millimeter bullet penetrated her car during the exchange of gunfire outside the bar.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES

We quote verbatim from Jessie Bullock's brief his two issues.

1. Whether the trial court committed error in refusing to sustain the Appellant's Motion to Suppress Evidence taken by officers of the Jackson Police Department at the time when the Appellant's car was searched without a valid search warrant.

2. Whether the verdict was contrary to the overwhelming weight of the evidence.

Issue One: Did the trial court commit error when it refused to sustain the Appellant's Motion to Suppress Evidence taken by officers of the Jackson Police Department at the time when the Appellant's car was searched without a valid search warrant?

Bullock asserts that the conversation he and his wife had with Detectives Jordan and Erikson provided the officers with probable cause to search his vehicle. Thus, he asserts that the officers should have obtained a search warrant before they searched the Buick. In contrast, the State asserts that the search at issue was an inventory search and, hence, valid without a warrant. Bullock does not controvert the authority of the police to impound the Buick.

A. Standard of Review

It is within the discretion of the trial judge whether evidence is admissible. *Johnston v. State*, 567 So. 2d 237, 238 (Miss. 1990); *Davis v. State*, 684 So. 2d 643, 661 (Miss. 1996). His decision will not be overturned on appeal unless it was an abuse of discretion. *Johnston*, 567 So. 2d at 238; *Davis*, 684 So. 2d at 661. The Court will not reverse the trial court's decision merely because of an erroneous evidentiary ruling. *Newsom v. State*, 629 So. 2d 611, 614 (Miss 1993). The appellant must show that he was effectively denied a substantial right by the ruling before a reversal can be possible. *Newsom*, 629 So. 2d at 614; *Peterson v. State*, 671 So. 2d 647, 656 (Miss. 1996). If a constitutional right has been violated, the case must be reversed unless the Court finds that the "error was harmless beyond a reasonable doubt" upon consideration of the entire record. *Newsom*, 629 So. 2d at 614.

Bullock is correct that as a general rule, law enforcement officers are required to obtain a search warrant before conducting a search of an individual's home, property, or automobile. *Norman v. State*, 302 So. 2d 254, 257 (1974). The State bears the burden of proving that any search and seizure it conducts was performed within the confines of the law. *Davis v. State*, 660 So. 2d 1228, 1238 (1995). However, it has long been the practice of the courts to allow warrantless searches of automobiles under certain circumstances. *Franklin v. State*, 587 So. 2d 905, 907 (Miss. 1991) (upholding the warrantless search of an automobile and seizure of evidence on three grounds: plain view, probable cause, and inventory). The United States Supreme Court has held that automobiles are not as stringently protected from warrantless searches as are homes. *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976). The mobility of automobiles is one basis for this decreased protection. *Opperman*, 428 U.S. at 367. Another reason cars receive less protection from government intrusions is the lessened expectation of privacy in vehicles due to pervasive government regulation of vehicles and the very nature of automobiles themselves. *Id.* at 367-8.

1. Caretaking function

This Court recognizes that law enforcement officials must often impound vehicles as a "community caretaking function" or to prevent the destruction or removal of evidence. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973); *Opperman*, 428 U.S. at 368. "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *Opperman*, 428 U.S. at 369.

2. Instrument Used in the Crime

In addition to impounding vehicles as a part of their community caretaking functions, police officers are also obligated to seize vehicles which are instrumentalities of a crime. In *Dorsey v. State*, 243 So. 2d 550, 551 (Miss. 1971), the appellant and his accomplice were stopped and arrested by a police officer because they were driving a vehicle which fit the description of one used in a robbery. The car was immediately impounded but was not searched until the next day. *Dorsey*, 243 So. 2d at 551. The appellant argued that evidence discovered during the search was wrongfully admitted against him in his trial for armed robbery. *Id.* The Mississippi Supreme Court held that because the vehicle was both an instrument of the crime and evidence of how the appellant and his accomplice were identified, the seizure of the car was reasonable. *Id.* The car's evidentiary value gave the police the authority to seize it. *Id.* The subsequent search of the car was upheld because probable cause existed, despite the fact that the search was conducted a day later. *Id.*

In *Gordon v. State*, 222 So. 2d 141, 142 (Miss. 1969), the police stopped a car described as one used in a recent bank robbery. They removed the robber and her accomplice from the car and arrested them. Upon seeing a flash of light reflected from the trunk, the officers pulled aside a curtain in the back of the car and discovered a second accomplice. *Id.* The Mississippi Supreme Court upheld the seizure and subsequent search of the automobile at the police station. *Id.* at 144. The Court reasoned that since the car was an "integral part of the evidence of the crime committed," the police were authorized and duty-bound to seize the car and preserve it as evidence. *Id.*

B. INVENTORY SEARCHES

It is standard procedure for most police stations to conduct inventory searches of impounded vehicles for the following reasons: (1) to secure the property of individuals while it is being detained by the police, (2) to protect the agency from claims of lost, stolen, or damaged property, and (3) to protect the officers from risk of harm. *Opperman*, 428 U.S. at 369 n.4. Searches of impounded automobiles have been consistently upheld where the purpose of the intrusion is to secure the vehicle and any personalty it contains. *Id.* at 373. It should be noted, however, that there is no rule which requires police officers to make an inventory search upon the seizure of a vehicle. *Wright v. State*, 236 So. 2d 408, 411 (Miss. 1970).

1. Validity of Search

The test for the validity of a search is one of reasonableness. Whether a search was legally allowed by the Fourth Amendment is determined by an examination of whether the search was reasonable based upon the specific facts of the individual case. *Opperman*, 428 U.S. at 372; *Norman*, 302 So. 2d at 258. Since the Fourth Amendment protects against "unreasonable searches and seizures," the proper

inquiry is whether the seizure upon the existing facts and circumstances was reasonable, not whether law enforcement officials could reasonably have obtained a search warrant. *Opperman*, 428 U.S. at 373. Likewise, the Mississippi Supreme Court applies the same test. *Gordon*, 222 So.2d at 144 (holding that reasonableness is the test for the validity of the search of an automobile and not whether officers could have obtained a search warrant after the car was taken to police headquarters). *See also Robinson v. State*, 418 So. 2d 749, 752 (Miss. 1982).

The United States Supreme Court has consistently held that inventory searches conducted by police officers as a standard procedure are reasonable under the Fourth Amendment. *Opperman*, 428 U.S. at 372. *See also Cooper v. California*, 386 U.S. 58, 61-2 (1967) (holding that it was reasonable for police department to conduct inventory search of automobile it had to maintain custody of for four months while awaiting forfeiture proceedings). Likewise, the Mississippi Supreme Court has held that inventory searches of vehicles in police custody are reasonable. *Franklin*, 587 So. 2d at 907; *Patterson v. State*, 413 So. 2d 1036, 1038 (Miss. 1982). *See also Black v. State*, 418 So. 2d 819, 821 (Miss. 1982) (holding that the warrantless search of an impounded vehicle was valid even though it was not conducted immediately).

Since it was the duty of the officers to hold the automobile as evidence until the participants could be indicted and tried, it would be unreasonable to hold that for their own protection the officers did not have the duty to search the automobile. They were responsible for all the contents of the car and in order to properly account for such contents they had to inventory and preserve them.

Gordon, 222 So.2d at 144. *See Robinson*, 418 So. 2d at 752. Thus, inventory searches meet the requirements of Article 3, § 23 of the Mississippi Constitution. *Franklin*, 587 So. 2d at 907; *Patterson*, 413 So. 2d at 1038.

2. Analysis

In the case *sub judice*, the wrecked and inert Buick blocked the flow of traffic on Mill Street. Therefore, the police officers had the duty to remove it. In addition, since the Buick was an integral part of the crimes for which Bullock had been indicted, the police were obliged to preserve the Buick as evidence. The best way to preserve the Buick was to impound it. Once the car was properly impounded, which we reiterate Bullock does not dispute, the police had the right to conduct an inventory search of it if such is a routine part of the department's procedures and not a pretext for a warrantless search.

During the suppression hearing before Bullock's trial, Detective Robert Jordan testified that the Jackson Police Department's standard operating procedure was to conduct an inventory of all impounded vehicles. He stated that an inventory search would have been conducted regardless of any information provided to him by Bullock's wife. Thus, this Court finds that the inventory search of the Buick was not a pretext for a warrantless search.

C. Probable Cause

Bullock argues that the detectives in this case were given probable cause to search his vehicle because of his wife's statements about the gun box's being in the trunk of the Buick. He contends that this fact brings the search of his vehicle out of the inventory search exception to the warrant

requirement. This is not so, for the Mississippi Supreme Court has held that law enforcement may conduct inventory searches of vehicles necessarily impounded without regard to what circumstances necessitated placing the car in police custody. *Black*, 418 So. 2d at 821. However, even if it could be argued that probable cause removed the police department's right to conduct an inventory search, Bullock would still not prevail.

Where probable cause exists and is coupled with exigent circumstances, the longstanding rule is that the warrantless search of an automobile is valid. *Barry v. State*, 406 So. 2d 45, 47 (Miss. 1981). This is an exception to the warrant requirement grounded in the basic differences which exist between vehicles and homes. *Barry*, 406 So. 2d at 47, *Franklin*, 587 So. 2d at 907.

In *Michigan v. Thomas*, 458 U.S. 259 (1982) (per curiam), police officers stopped the appellants for a traffic violation. The passenger of the vehicle was arrested. *Thomas*, 458 U.S. at 259. As the driver was only fourteen years old, it was necessary for the police officers to impound the car. *Id.* In keeping with their standard police procedure, the officers conducted an inventory search before the car was towed to the impound lot during which they recovered two bags of marijuana from the glove compartment. *Id.* at 260. The officers then conducted a more extensive search and found a .38 caliber revolver inside an air conditioner vent. *Id.* The United States Supreme Court held that the police did not have to obtain a warrant before conducting this more extensive search because the area of the car they were allowed to search had been expanded by the probable cause created when the marijuana was discovered. *Id.*

Officers may conduct warrantless searches of cars they stop where probable cause to do so exists. *Thomas*, 458 U.S. at 260. This authority continues to exist even after the vehicle has been impounded. *Id.* at 261. It follows that the justification for a warrantless search does not vanish once the car has been placed in police custody. *Id. See also Franklin*, 587 So. 2d at 907 (rejecting the contention that a warrantless search of an automobile is impermissible once the car has been immobilized). The Mississippi Supreme Court relied upon the United States Supreme Court's decision in *Thomas* in holding that an officer had the authority to continue a search nine hours after the first search because he spotted a money clip in the backseat which he believed to be evidence of a crime. *Jackson*, 440 So. 2d at 309.

D. Harmless error

Bullock claims that the trial court erred in refusing to sustain his motion to exclude the round of live .25 caliber ammunition and Raven automatic pistol box containing the gun's serial number. He asserts that this evidence should have been excluded on the grounds that it was obtained through an illegal search and seizure of his car. Assuming *arguendo* that Bullock is correct that the police ought to have obtained a search warrant, the *sub judice* case would still not merit reversal. Bullock has the obligation of proving that the evidentiary ruling he claims is erroneous affects a substantial right. *Newsom*, 629 So. 2d at 614. He has failed to do this.

The State's purpose for introducing the pistol box found in the trunk of Bullock's car was to connect Bullock to the gun as the record reflects testimony that the serial number on the box matched that of the recovered murder weapon. The exclusion of this piece of evidence could not have had any conceivable impact upon the jury's verdict. John Dial testified to a reasonable scientific certainty that the bullet removed from the brain of Austin McMillan came from the .25 caliber Raven pistol which

Dewayne Leggett found behind the Buick. Further, the serial number on the gun revealed that it was registered to Ella Bullock, the appellant's wife. The aforesaid evidence sufficiently connected Bullock to the murder weapon without the admitting into evidence the Raven pistol box or round of live ammunition. Thus, had this Court held that the detectives ought to have obtained a search warrant before they searched the Buick, the admission of this evidence would have been harmless error. *See Gordon v. State*, 222 So. 2d 141, 145 (Miss. 1969) (holding that even if evidence obtained from an allegedly improper search of appellant's purse was inadmissible, its exclusion would not have been reversible error because it would not have changed the result of the case as there was sufficient evidence of the appellant's connection to her assistants through their cohabitation of a hotel room prior to the crime).

E. Summary of Issue One

Evidence obtained pursuant to an inventory taken of a vehicle which has been properly impounded is admissible because such a search for inventory is reasonable and, therefore, violates neither the Fourth Amendment to the United States Constitution nor Section 23 of the Mississippi Constitution. Bullock has not contested the propriety of the police department's impounding the Buick. While probable cause is a prerequisite to the search of a vehicle *sans* impoundment, the impoundment of a vehicle renders probable cause unnecessary, if not irrelevant, to the state's right to search the vehicle after it has been impounded. Nevertheless, the existence of probable cause to search a vehicle usually does not demand that the state obtain a warrant for its search. Warrantless searches of vehicles based on probable cause have long been recognized by the courts. We therefore reject Bullock's argument that because the State had probable cause to search the properly impounded Buick, it must first obtain a search warrant. However, had we decided to the contrary, we would have been constrained to hold the trial judge's admission of the evidence obtained by the search of the Buick harmless error because of the other evidence subsequently obtained independently of that search which connected Bullock to the Raven .25 caliber pistol found at the scene of this tragedy. This Court resolves this issue adversely to Bullock and affirms the trial judge's denial of his motion to suppress the evidence which the police obtained from its having inventoried the results of its search of the Buick after they had properly impounded it.

Issue Two: Whether the verdict was contrary to the overwhelming weight of the evidence?

Bullock offers no argument that the jury's verdict of his guilt of aggravated assault on Joey Vinzant by shooting him in the stomach was against the overwhelming weight of the evidence. The testimony of Vinzant and three eye-witnesses to Bullock's having shot Vinzant renders such an argument difficult to make. Nevertheless, because Bullock does not argue this aspect of this issue, we do not consider it. *See Smith v. Dorsey,* 599 So. 2d 529, 532 (Miss. 1992) (holding that if appellants decline to devote any discussion or attention to an alleged error which the trial court committed, the supreme court is unable to assess the issue on the merits).

However, to support his argument that the jury's verdict of "Guilty of manslaughter" in the death of Austin McMillan was against the overwhelming weight of the evidence, Bullock stresses numerous discrepancies in the testimony of the State's witnesses. He argues that all of the eyewitnesses to the crime were impeached so as to completely discredit the entire testimony of each. He further asserts

that the lack of any witnesses who saw Austin McMillan's car drive through the intersection of Mill and Keener Streets renders the jury's verdict of "Guilty of manslaughter" unsupportable.

A. Standard of Review

It is within the trial court's discretion whether to grant a motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). The motion is not considered *de novo* on review. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991). This Court will only reverse where it finds that there has been an abuse of discretion. *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987); *Catchings v. State*, 684 So. 2d 591, 600 (Miss. 1996). This Court should strike the decision of the trial court only where upholding the verdict of the jury will result in an "unconscionable injustice." *Wetz*, 503 So. 2d at 812; *Taylor v. State*, 672 So. 2d 1246, 1256 (Miss. 1996).

Bullock's specific instances of the impeachment of the State's witnesses include the following. Although John Russell testified on direct examination that he saw Bullock jump from his car after it had collided with Fultz's car, "get over his car," point his gun at the crowd, and fire into it, Russell admitted on cross-examination that when Detective Erikson talked to him about the incident, he did not tell him that he saw Bullock firing across the car "or anywhere else." Bullock notes that Jeff Parkman was equally positive on direct-examination that he had seen Bullock firing toward the crowd from his car after the collision. However, on cross-examination Parkman admitted that he was not aware that a .25 caliber pistol could only hold a maximum of seven rounds. Further, Bullock contends that when he was confronted with this fact on cross-examination, Parkman attempted to bolster his testimony by stating that different magazine clips are compatible with different guns. Bullock then notes that no expanded magazine clip was ever admitted into evidence and that there was no testimony that he ever reloaded his pistol.

Bullock next emphasizes the testimony of Hinds County Deputy Sheriff John McMinn, to which we referred in our discussion of the trial, that he did not see Bullock fire a pistol after he exited the Buick following the collision in the intersection. Bullock summarizes the State's testimony by opining that "[t]he most that can be said of this testimony is that there are serious discrepancies and doubt as to whether Bullock ever fired the . . . pistol following the accident." He next contends that the State's failure "to provide a single witness that saw McMillan's [Honda] as it drove through the accident scene left unresolved doubt as to the timing and origin of the shot that caused [McMillan's] death." This argument utterly ignores the following testimony of William Holland about the events in question:

A. So we got near T. J.'s; I don't remember how close, but I heard gunfire.

Q. What direction on Mill Street were you traveling?

A. North.

Q. And were you in the same block when you first heard gunfire at the location of T. J.'s?

A. Yes, ma'am.

Q. And what, if anything, happened.

A. So after we heard the gunfire and we thought it was fireworks, we kept on going and right before we got there I seen a blue car in the road. And we got maybe -- the last time I heard Austin speak was when we got maybe right in front of the building. There's road beside where we -- we passed that road beside T. J.'s and before we got to the car --

Q. Let me stop you right there. Could you tell me what the name of the street is that you're saying you just got past?

A. Keener.

Holland then related that he warned McMillan that he should duck, but McMillan did not respond. Instead, said Holland, McMillan's "head fell over and I knew then that he had been shot."

Where the testimony of witnesses conflict, the jury is ultimately responsible for making findings of fact and weighting witness credibility. *Wetz*, 503 So. 2d at 812; *Dixon v. State*, 519 So. 2d 1226, 1228 (Miss. 1988). On appeal, the appellate court "do[es] not second guess the jury's assessment of the evidence nor its verdict on disputed points of fact." *Veal*, 585 So. 2d at 695. In *Clark v. State*, 693 So. 2d 927, 931 (Miss. 1997), the Mississippi Supreme Court explained that it would not reverse the denial of a motion for a new trial "unless we are convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice."

The jury's task in the case *sub judice* was to weigh the credibility of the witnesses and to resolve whatever contradictions they might find in the evidence which both the State and Bullock had adduced for their consideration. Included in Bullock's motion for a new trial was the assertion that the jury's verdict of "Guilty of manslaughter" was against the overwhelming weight of the evidence. It is no "unconscionable injustice" to allow the jury's verdict of Bullock's guilt of manslaughter to stand, and this Court therefore affirms the trial judge's denial of Bullock's motion for a new trial.

THE JUDGMENTS OF THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY OF APPELLANT'S GUILT OF AGGRAVATED ASSAULT AND MANSLAUGHTER, AND ITS SENTENCES TO SERVE TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS FOR THE CRIME OF AGGRAVATED ASSAULT AND TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS FOR THE CRIME OF MANSLAUGHTER, BOTH OF WHICH SENTENCES ARE TO RUN CONCURRENTLY, ONE WITH THE OTHER, ARE AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.

BRIDGES, C.J., THOMAS, P.J., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., NOT PARTICIPATING.