

IN THE COURT OF APPEALS 3/11/97
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01085 COA

GEORGE JACKSON

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

TRIAL JUDGE: HON. ANDREW CLEVELAND BAKER

COURT FROM WHICH APPEALED: CIRCUIT COURT OF TATE COUNTY

ATTORNEY FOR APPELLANT:

DAVID C. VANDERBURG

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS

DISTRICT ATTORNEY: HONORABLE ROBERT J. KELLY

NATURE OF THE CASE: CRIMINAL: MURDER

TRIAL COURT DISPOSITION: CONVICTED OF TWO COUNTS OF MURDER AND
SENTENCED TO SERVE TWO CONSECUTIVE LIFE SENTENCES

BEFORE McMILLIN, P.J., KING AND PAYNE, JJ.

KING, J., FOR THE COURT:

George Jackson was convicted of two counts of murder in the Circuit Court of Tate County for the killings of his wife Hester Jackson and his stepdaughter, Shandra Moore. Aggrieved, Jackson appeals his conviction alleging the following errors: (1) the trial court erred in overruling a motion for directed verdict of acquittal at the close of the State's case-in-chief, in denying jury instruction D-1, and in denying post-trial motions; (2) the trial court erred in denying a motion; (3) the trial court erred in allowing the coroner to testify as to the cause of death of the victims; (4) the trial court erred in denying a mistrial due to a prosecutorial statement; (5) the trial court erred in overruling Defendant's objection to questions as to his involvement in past domestic disturbances with his deceased wife; and (6) the trial court erred in denying jury instructions D-2, a self-defense instruction, and S-3, a peremptory instruction of not guilty.

FACTS

George Jackson was convicted of two counts of murder for the killing of his wife, Hester Jackson, and his stepdaughter, Shandra Moore, in the Circuit Court of Tate County. The State presented testimony that the sheriff's deputies were frequently called to the Jackson's home to quash domestic disturbances between Jackson and his deceased wife, Hester. One of the deputies, Jerry Nelson, testified that when he delivered Jackson a summons in a divorce action, Jackson made threats against his wife's life. The court had previously overruled Jackson's motion in limine to exclude the deputy's statement. The State also presented a statement signed by Jackson's mother stating that Jackson had telephoned her after the shootings and admitted killing both Hester and Shandra, and also stated that he intended to kill himself. Both the medical examiner and the state forensic expert stated that both victims died as a result of gunshot wounds to the head, and that such wounds were consistent with the type made by the weapon found at the crime scene. The forensic expert also testified that the wounds to both victims were made by a person taller in stature than the victims. Jackson, six feet and two inches, was found at the crime scene along with the weapon lying near him. At the close of the State's case-in-chief, Jackson moved for a directed verdict. Because the trial court determined that the State had put on sufficient evidence to withstand a directed verdict, Jackson's motion was denied and he proceeded with his defense before the jury.

Jackson testified in his own defense and stated that he did not shoot either victim. During cross-examination, Jackson objected to questions relating to whether or not he had received certain discovery provided by the State. In explaining the relevancy of the question, the prosecutor stated, "It is my contention that Mr. Jackson is telling a bald face lie, and I intend to demonstrate that Mr. Jackson had information from as long ago as November of 1993 to prepare his story for this jury today." Jackson objected to the prosecutor's statement made in the presence of the jury. The court sustained the objection.

At the close of Jackson's case-in-chief, the court refused to grant a jury instruction of self-defense, however, the court granted a manslaughter instruction and a murder instruction for count one, which was the killing of Hester Jackson. The court denied a manslaughter instruction as to count two, for the killing of Shandra Moore, because Jackson testified that he did not have a confrontation or struggle with her. However, the court granted a murder instruction for the killing of Moore. The jury

convicted Jackson of the murders of Hester Jackson and Shandra Moore.

I.

THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR A DIRECTED VERDICT OF ACQUITTAL; IN DENYING JURY INSTRUCTION D-1; AND IN DENYING THE DEFENDANT'S POST-TRIAL MOTIONS.

A. MOTION FOR A DIRECTED VERDICT.

Jackson challenges the trial court's overruling of his motion for a directed verdict even though he proceeded to put on evidence in his own defense. The precept for such is elementary: once the defendant proceeds to introduce evidence in his own defense he waives the preceding motion for directed verdict. *Harris v. State*, 413 So. 2d 1016, 1018 (Miss. 1982) (citations omitted).

B. JURY INSTRUCTION D-1.

Jackson complains that the court erred by denying jury instruction D-1, which was a peremptory instruction requiring the jury to acquit him of Count One. This was in essence a renewal of his challenge to the sufficiency of the evidence establishing his guilt, which was originally raised by his motion for directed verdict at the close of the State's case. The same issue concerning the sufficiency of the evidence of guilt is raised in Jackson's claim that the trial court erred in denying his JNOV motion. The discussion that follows concerning the merits of Jackson's JNOV motion have equal application to the court's denial of Instruction D-1. This issue is without merit as we discuss in the following analysis.

C. JUDGMENT NOT WITHSTANDING THE VERDICT AND MOTION FOR A NEW TRIAL.

After the jury returned the verdict of guilty on counts one and two, Jackson moved for a judgment notwithstanding the verdict contending a lack of sufficient evidence to uphold the conviction. The standard of review for a challenge to the sufficiency of the evidence, in a criminal case, can be found in *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993):

In appeals from an overruled motion for JNOV the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. (citations omitted). The credible evidence . . . consistent with guilt must be accepted as true. (citation omitted). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. (citations omitted). Matters regarding the weight and credibility of the evidence are to be resolved by the jury. (citations omitted). We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty. (citations omitted).

We find there was sufficient evidence to support the jury's verdicts of guilty on both counts of murder. Considering the testimony and evidence presented at Jackson's trial, reasonable and fair-minded jurors could find Jackson guilty.

Jackson also makes a claim that the trial court erroneously denied his motion for a new trial. As we previously noted, there was sufficient evidence to support the jury's verdict. We do not find that the jury's verdict was against the overwhelming weight of that evidence. We accept as true the evidence that supports the verdict, and we will not reverse absent the trial court's abuse of discretion in failing to grant a new trial. *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989). Not finding an abuse of discretion, we determine that this issue is without merit.

II.

THE TRIAL COURT ERRED IN DENYING JACKSON'S MOTION IN LIMINE.

In a pre-trial hearing on a motion in limine, Deputy Jerry Nelson testified that Jackson made threats against his deceased wife's life when Nelson served him with a summons in a divorce action. The trial court denied Jackson's motion in limine to exclude the use of this testimony at trial. Jackson now complains that the trial court committed error by its denial.

Our supreme court has previously held that threats made by a defendant are not only admissible, but relevant to show malice, motive, criminal intent, and premeditation if they are not too remote. *Shaw v. State*, 513 So. 2d 916, 920 (Miss. 1987). In the case *sub judice*, Jackson made threats against his wife about one month prior to her murder. Consistent with *Shaw*, we do not find that Nelson's testimony resulted in prejudice to Jackson, or that the court abused its discretion in permitting the testimony. We will not reverse a trial judge's decision to admit evidence absent prejudice to the defendant, or an abuse of discretion. *Johnson v. State*, 567 So. 2d 237, 238 (Miss. 1990).

III.

THE COURT ERRED IN ALLOWING THE CORONER, BUDDY KIRKLAND, TO TESTIFY AS TO THE CAUSE OF DEATH OF THE VICTIMS.

During the trial, Buddy Kirkland, the coroner, testified that the victims' cause of death were gunshot wounds to the head. Kirkland made this statement based on having observed the two victims and the weapon at the crime scene. He was not admitted as an expert witness by the State, nor did Jackson attempt to voir dire him. We find Kirkland's testimony that the two victims died as a result of gunshot wounds was within the purview of any lay person having observed the crime scene, and therefore, certainly within the purview of his position as coroner. Further, the record shows testimony from the state's forensic expert that the victims' deaths resulted from gunshot wounds to the head, which caused severe trauma to the brain. Kirkland's testimony did not result in violation of any substantial right of Jackson that would require this Court to reverse the trial court's determination of the admissibility of that testimony. *See* M.R.E. 103(a).

IV.

THE COURT ERRED IN DENYING A MISTRIAL DUE TO A PROSECUTORIAL STATEMENT CONCERNING THE DEFENDANT.

Jackson contends that the trial court erred in denying a mistrial when the Assistant District Attorney, Robert Kelly, contended to the court that Jackson was a "bald face lie." Kelly made this statement to the court after the defense objected to his questioning of Jackson concerning his knowledge of the

murder charges against him. Kelly told the court that he intended to show that Jackson had discovery materials several months prior to trial, which provided him with ample time to prepare his testimony for the jury. Jackson moved for a mistrial because of Kelly's statement, and the court denied it. While the court denied Jackson's motion for a mistrial, it did sustain his objection to Kelly's questioning concerning receipt of discovery. In the presence of the jury, the trial judge stated that he did not expect Jackson, or any witness to know of all papers that his lawyer may have received, nor the contents of such papers.

We give the trial judge a considerable amount of discretion to determine whether a remark creates irreparable prejudice which may necessitate a mistrial. *Reynolds v. State*, 585 So. 2d 753, 755 (Miss. 1991) (citation omitted). In circumstances pertaining to the conduct of counsel or witnesses, the trial judge is in the best position to determine the effects of remarks made during the course of the trial. *Id.* In the present case, the trial judge sustained Jackson's objection to Kelly's remarks and stated in the presence of the jury that Jackson was not expected to have knowledge of all material received by his attorneys. We find that Kelly's remarks did not create irreparable prejudice against Jackson and that the judge's remarks cured any prejudicial effects created in the minds of the jury. Therefore, this error is without merit.

V.

THE TRIAL COURT ERRED BY OVERRULING JACKSON'S OBJECTION TO TESTIMONY CONCERNING PRIOR DOMESTIC DISTURBANCE CALLS AT HIS HOME.

During Jackson's cross-examination of State's witness, Deputy Jerry Nelson, Jackson elicited testimony which led to Nelson stating that he had been to Jackson's home to calm prior domestic disturbances between Jackson and his deceased wife, Hester. When the State attempted to cross-examine Jackson concerning this same matter, Jackson objected. The trial court overruled the objection, because Jackson opened the door to this line of questioning. We find that it is not reversible error to question a witness about incidents to which the defense opened the door on cross-examination of a state's witness. *Gill v. State*, 485 So. 2d 1047, 1051 (Miss. 1986) (citation omitted).

VI.

THE TRIAL COURT ERRED BY DENYING JURY INSTRUCTIONS

D-2 AND S-3.

Jackson complains that the trial court erred by denying jury instruction D-2. Instruction D-2, a peremptory instruction, instructed the jury to find Jackson not guilty of count two of the indictment. In this opinion, we have previously stated that there was sufficient evidence presented to withstand a judgment notwithstanding the verdict. The Defendant's request that we review the court's denial of peremptory instruction D-2 is reviewed under the same standard: sufficiency of the evidence. Again, we find that the State presented sufficient evidence to make the court's denial of D-2 proper.

Jackson also asserts that the trial court erred by denying jury instruction S-3. Instruction S-3 provided the jury with an explanation of murder justifiable on the grounds of self-defense. After

reviewing the record, we could not find a specific objection to the court's denial of this instruction. An objecting party must dictate into the record specific objections to jury instructions and articulate the grounds for such objections. *Barnett v. State*, 563 So. 2d 1377, 1380 (Miss. 1990). Failure to raise the objection bars its consideration on appeal. We affirm.

THE JUDGMENT OF THE CIRCUIT COURT OF TATE COUNTY OF CONVICTION OF TWO COUNTS OF MURDER AND SENTENCE OF TWO CONSECUTIVE LIFE SENTENCES IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. SENTENCE IN COUNT 2 TO RUN CONSECUTIVELY TO SENTENCE IN COUNT I. COSTS OF THIS APPEAL ARE TAXED TO TATE COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, PAYNE, AND SOUTHWICK, JJ., CONCUR.