

IN THE COURT OF APPEALS

8/26/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00867 COA

CARL ANDERSON 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. JOHN B. TONEY

COURT FROM WHICH APPEALED: MADISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: EDWARD BLACKMON, JR.

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M.  
LOWRY

DISTRICT ATTORNEY: JOHN KITCHENS

NATURE OF THE CASE: CRIMINAL-MANSLAUGHTER

TRIAL COURT DISPOSITION: CONVICTION OF MANSLAUGHTER, SENTENCE OF 18 YRS. IN CUSTODY OF MDOC.

MOTION FOR REHEARING FILED:9/4/97

CERTIORARI FILED: 11/4/97

MANDATE ISSUED: 2/24/98

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

DIAZ, J., FOR THE COURT:

### FACTS

Carl Anderson was convicted in the Circuit Court of Madison County on June 8, 1993, of manslaughter for the homicide of Vincent Eldridge. There was a fight between three bar patrons; Carl Anderson was on one side while Vincent Eldridge and Lee Harris were on the other. Anderson shot and killed Eldridge during the fight. There was a dispute as to who started the fight and whether Anderson shot in self-defense or not.

During his closing argument, the district attorney made references to the epidemic of shootings in Madison County, and he asked the jury to send a message to the community to stop the ever-increasing number of homicides in their county by convicting the guilty. Anderson objected and moved for a mistrial. The judge overruled the objection and denied the mistrial. After the jury returned a verdict of guilty of manslaughter, Anderson filed a motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a motion for a new trial. The trial court denied the motions, and Anderson filed a notice of appeal. The dilemma then became the lack of transcript of the attorney's closing arguments. The transcript of the closing arguments was lost or misplaced and was not available to the trial judge when he heard arguments on the motions for JNOV and new trial.

Anderson's brief was originally filed without a transcript of the closing arguments. Thereafter, Anderson filed a motion for leave to supplement the record and his brief with the closing argument notes which were finally located and transcribed. The Court granted the motion and allowed Anderson to supplement his brief.

### ISSUES

A. Did the closing arguments of the State prejudice the jury and impede Carl Anderson's right to a fair trial?

Anderson argues that the district attorney, Mr. Kitchens, made improper statements in his closing

argument. The only portion of the statement available to this Court for review follows:

We can't let people in Ridgeland, Mississippi, shoot other people because they don't obey; in Madison County in Canton, Mississippi, do it; Camden, Mississippi, County Line, Mississippi, Carthage, Mississippi, anywhere in Mississippi. We can't continue to thrive as a society if we allow these type of opinions to flourish and for people to be excused from murdering 19-year-old men because of it . . . We can't keep having this stuff. We have got to. We can't allow this county to take the law in their own hands.

Anderson further argues that the Kitchens implied the wave of shootings in Madison County would continue if Anderson was not convicted of murder.

In *United States v. Solivan*, 937 F. 2d 1146, 1154-55 (6th Cir. 1991), the court clarified that an improper statement made during closing arguments does not cause error per se unless the statement is intended to incite prejudice and emotion. *Solivan* discussed the remarks pertaining to the drug problem and drug dealers in America which were offered by the prosecutor and obviously intended to inflame the jury. The court elaborated on the fact that the daily attention given by the media and society to the drug problem has increased awareness and made it an emotional issue. *Id.* The court in *Solivan*, went on to contrast *United States v. Alloway*, 397 F. 2d 105 (6th Cir. 1968), by saying that the prosecutor in *Alloway* never specifically referred to the crime in question--armed robbery--and that armed robbery was not the specific focus of the whole nation as is the drug problem. *Solivan*, 937 F. 2d at 1155.

In the case at hand, Kitchens only asked the jury to convict a guilty person and referred to the community need to convict guilty people. There was no intent to incite emotion and passion among the jurors. We therefore hold that although the statements made by Kitchens may have, in some circumstance, been improper, there was certainly no reversible error which resulted from these statements. We affirm the trial court's denial of a mistrial and of a JNOV or, in the alternative, a motion for a new trial.

B. Did the State's failure to provide the appellant a transcript of closing arguments deny Carl Anderson due process and his right to a fair trial?

In Anderson's original brief to the Court, he argued that the State's failure to provide a transcript of closing arguments denied Anderson due process and his right to a fair trial. However, the lost material was located subsequently, and Anderson was allowed to file a supplemental brief and include the pertinent transcribed portions of Kitchen's closing argument. Therefore, this second issue has become moot.

**THE JUDGMENT OF THE MADISON COUNTY CIRCUIT COURT OF CONVICTION OF MANSLAUGHTER AND SENTENCE OF EIGHTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, HINKEBEIN,  
KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**