IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-KA-00532-COA

STANLEY DEWAYNE COLE A/K/A STANLEY COLE — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	02/22/2010
TRIAL JUDGE:	HON. W. SWAN YERGER
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	WILLIAM R. LABARRE GEORGE T. HOLMES JONATHAN MATTHEW EICHELBERGER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY:	ROBERT SHULER SMITH
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF MURDER AND SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
DISPOSITION:	REVERSED AND REMANDED: 11/20/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

FAIR, J., FOR THE COURT:

¶1. Stanley Cole was indicted for the murder of Latasha Norman in January 2008. He was tried in the Hinds County Circuit Court, convicted of murder, and sentenced to life imprisonment. He appeals his conviction asserting eleven errors. Finding that the trial court failed to properly instruct the jury on the law of manslaughter, we reverse Cole's conviction

and remand this case for a new trial.

FACTS

¶2. Cole and Norman were students at Jackson State University (JSU). They were involved in an on-again, off-again romantic relationship for some years. In the fall of 2007, Cole and Norman were out with another couple when an argument escalated into a physical altercation. Norman reported this incident to campus police.

¶3. On November 13, Norman did not return from her afternoon class. The next day she was reported missing by her then-current boyfriend, Marquis Smith. Over the next several weeks, JSU police, Jackson police, and the FBI conducted an extensive search for Norman. Cole and his then-current girlfriend, Samone Harris, were interviewed but stated they knew nothing of Norman's disappearance.

¶4. Detective Juan Cloy of the FBI Violent Crimes Task Force discovered that the carpet lining was missing from the trunk of Harris's car, which Cole regularly drove. Further investigation revealed traces of blood, and DNA testing confirmed it was a match for Norman.

¶5. When Cole appeared in the Pearl Municipal Court on November 29 to answer a domestic-violence charge stemming from the prior incident with Norman, he was arrested for murder and taken to the Jackson Police Department.

¶6. Upon questioning, Cole revealed the location of Norman's body. It was quickly found in the area Cole described. Norman's remains were in an advanced state of decomposition and were immediately transported to Dr. Stephen Hayne for an autopsy. At trial, Dr. Hayne

testified that he found an injury on Norman's chest that was "consistent with a stab wound." The remains were also sent to Dr. Marie Danforth, a forensic anthropologist, for further analysis.

¶7. In a second interrogation, Cole confessed to killing Norman. According to Cole, after he picked Norman up from campus, they argued and it turned physical. During their struggle, he hit her in the head and knocked her unconscious. Cole claims he panicked and put her body in the trunk. After he drove around for several hours, he discovered she was not breathing and left her body in the woods.

PROCEDURAL HISTORY

¶8. Cole filed several pretrial motions that were denied by the trial judge, including a motion to allow possession of biological evidence, motions in limine to exclude various incidents and photos, a motion to suppress statements and physical evidence, and a motion for a change of venue. After holding a special venire and individual voir dire, the jury was sequestered and a trial ensued. Jury instructions were given for deliberate-design murder, but the defendant's proposed manslaughter instruction was refused. Cole was convicted of Norman's murder, and his motions for a judgment notwithstanding the verdict or for a new trial were denied.

¶9. Cole now appeals asserting the trial court erred by: (1) applying the wrong legal standard in refusing a jury instruction on manslaughter; (2) denying the motion for a change of venue; (3) refusing to quash or strike the venire; (4) denying challenges for cause as to specific jurors; (5) denying his motion to suppress statements and physical evidence; (6)

denying his request for an independent forensic examination of the victim's remains; (7) excluding the testimony of Dr. Danforth; (8) denying his motion in limine to exclude evidence of the Pearl arrest; (9) barring testimony of Norman's prior acts; (10) admitting prejudicial evidence with no probative value; and (11) denying his motion in limine to exclude photos of the victim. Cole urges that these cumulative errors necessitate a new trial. Because we find the question of jury instructions dispositive, we do not reach Cole's remaining issues. We address change of venue only to provide guidance on remand.

DISCUSSION

1. Change of Venue

¶10. Cole properly applied to the trial court for a change of venue pursuant to section 99-15-35 of Mississippi Code Annotated (Rev. 2007) by presenting a sworn motion supported by two credible affidavits. A presumption of law then arose that an impartial jury could not be obtained in Hinds County, and the State was charged with the burden of rebutting that presumption. *See Johnson v. State*, 476 So. 2d 1195, 1211 (Miss. 1985). The Mississippi Supreme Court has listed "certain elements which, when present[,] would serve as an indicator to the trial court as to when the presumption is irrebuttable." *White v. State*, 495 So. 2d 1346, 1349 (Miss. 1986). Those elements are:

(1) Capital cases based on considerations of a heightened standard of review;

(2) Crowds threatening violence toward the accused;

(3) An inordinate amount of media coverage, particularly in cases of:

(a) serious crimes against influential families;

(b) serious crimes against public officials;

(c) serial crimes;

(d) crimes committed by a black defendant upon a white victim;

(e) where there is an inexperienced trial counsel.

Id. The State may rebut the presumption by proving through voir dire that the trial court did, in fact, impanel an impartial jury. *Swann v. State*, 806 So. 2d 1111, 1116 (¶19) (Miss. 2002). Then, the conviction will stand despite negative pretrial publicity. *Johnson*, 476 So. 2d at 1211 (citing *United States v. Harrelson*, 754 F.2d 1153, 1159 (5th Cir. 1985)).

¶11. Under the first element, this case is a "capital case" as defined by statute.[1] Accordingly, we apply a heightened standard of review. Addressing the second element, Cole asserts that "virtual crowds" threatened him with violence by posting anonymous comments on the internet. This Court does not see such internet postings as the modern equivalent of actual crowds physically threatening the accused with violence, so we move to the third indicator. Cole asserts that there has been an inordinate amount of media coverage of his case, making it impossible for him to receive a fair trial. However, there is no evidence that Norman was part of an influential family or held any public office. She was an undergraduate student from Greenville. Similarly, this was not a serial crime; both the victim and the accused are of the same race; and trial counsel was not inexperienced.

[1] "Capital case, when used in any statute shall denote criminal cases, offenses and crimes punishable by death *or imprisonment for life in the state penitentiary.*" *Harrison v. State*, 49 So.3d 80, 84 (¶11) (Miss. 2010) (quoting Miss. Code Ann. § 1-3-4 (Rev. 2005)) (emphasis added).

Therefore, we agree with the trial court that while the presumption that an impartial jury could not be obtained was raised, it was not an irrebuttable presumption.

¶12. "The decision to grant a change of venue rests soundly in the discretion of the trial judge." *King v. State*, 960 So. 2d 413, 429 (¶25) (Miss. 2007). This Court will not disturb the ruling of the trial court in denying a change of venue if its discretion was not abused. *Howell v. State*, 860 So. 2d 704, 718 (¶30) (Miss. 2004).

¶13. A review of recent case law shows that negative pretrial publicity alone is not enough to show an abuse of discretion in the denial of a change of venue where the trial judge conducts individual voir dire and ensures all selected jurors assert their ability to remain impartial. *See Barfield v. State*, 22 So. 3d 1175, 1184 (¶29) (Miss. 2009)*; Byrom v. State*, 927 So. 2d 709, 716 (¶¶13-15) (Miss. 2006)*; Howell v. State*, 860 So. 2d 704, 720 (¶37) (Miss. 2003); *Swann v. State*, 806 So. 2d 1111, 1116 (¶¶19-21) (Miss. 2002).

¶14. Cole urges this Court to apply the ruling in *Fisher v. State*, 481 So. 2d 203 (Miss 1985), and reverse the denial of a change of venue. There, the supreme court pointed out that its main concern was the "saturation media coverage" that generated a sense of community fear and disclosed damning facts that would be inadmissible at trial. *Id.* at 217. It was not only the quantity of coverage, which was substantial, but the quality of coverage that necessitated a change of venue. Because the defendant was repeatedly linked to other murders and his prior convictions were disclosed, he could not receive a fair trial in that county.

¶15. In *Harris v. State*, 537 So. 2d 1325, 1328-29 (Miss. 1989), the trial court's denial of

a change of venue was affirmed where fifty-two of eighty-two venire members had knowledge of the case. Saturation media coverage was urged as a ground for reversal, but the supreme court held that the facts before it were not comparable to *Fisher* because the saturation coverage in *Fisher* linked the defendant to other crimes and inadmissible evidence. *Id.* at 1328.

¶16. More recently, in *Welde v. State*, 3 So. 3d 113, 119 (¶¶28-29) (Miss. 2009), the supreme court held that there was no abuse of discretion in denying a change of venue even though numerous venire members had seen news coverage of the case. The only venire member to state he had formed an opinion was stricken, and any member with knowledge of the case was given an individual voir dire. *Id*. at (¶26). All who remained as potential jurors affirmed their impartiality. *Id*. at (¶28). Further, the trial court gave careful instructions and sequestered the jury. *Id*. at (¶¶27-29).

¶17. Here, Cole argues that the quantity of media coverage his case received required a change of venue. Seventy-seven venire members declared they had knowledge of his case through media coverage, and several newspaper articles[2] covered his prosecution.

¶18. While it is clear that Cole's case received much pretrial publicity, that alone is not enough to require a change of venue. There was very little showing that any inadmissible

[2] Cole's brief asserts that there were "some 400 newspaper stories" covering Norman's murder and his prosecution. The State counts thirty *Clarion-Ledger* articles that centered on the story and asserts that the defense has inflated its numbers by including every article that so much as mentions either Norman or Cole.

evidence was released in the press.[3] The testimony at the motion hearing, from all witnesses, was that Cole had not recently been in the news at the time of trial. After Norman's body was discovered, the media coverage was greatly reduced, and the trial did not occur until over a year later.

¶19. More importantly, individual voir dire examination was conducted of all eighty-four venire members, and those twelve who could not set aside pre-formed opinions were excused. The prospective jurors who remained stated under oath that they could be impartial. Once the jury was selected, the trial judge gave clear instructions and sequestered the jury. A heightened level of precaution was taken to ensure Cole received a fair trial. After reviewing the record, we find that an impartial jury was, in fact, impaneled, and that the trial judge did not abuse his discretion in denying a change of venue. While this is a fact-specific inquiry, we note for purposes of remand that an impartial jury can be obtained in Hinds County if the proper procedures are followed.

2. Jury Instructions

¶20. Cole asserts that the trial judge erred in refusing his manslaughter instruction and that it was fatally prejudicial to his defense.

¶21. A criminal defendant is entitled to a jury instruction that presents "his theory of the

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[3] There was a news story the night before voir dire that stated Cole hoped to make a plea deal but was turned down by the prosecution. It is undisputed that this information was factually incorrect. However, prior to the broadcast, the court instructed all potential jurors to refrain from watching any media, and individual voir dire was subsequently conducted on the media-exposure issue.

case even when 'the evidence that supports it is weak, inconsistent, or of doubtful credibility.'" *Banyard v. State*, 47 So. 3d 676, 682 (¶17) (Miss. 2010) (quoting *Ellis v. State*, 778 So. 2d 114, 118 (¶15) (Miss. 2000)). "'[W]here the defendant's proffered instruction has an evidentiary basis, properly states the law, and is the only instruction presenting his theory of the case, refusal to grant it constitutes reversible error.'" *Chinn v. State*, 958 So. 2d 1223, 1225 (¶13) (Miss. 2007) (quoting *Phillipson v. State*, 943 So. 2d 670, 671-72 (¶6) (Miss. 2006)).

¶22. However, this entitlement is limited. The court may refuse a lesser-included-offense instruction if – taking the evidence in the light most favorable to the accused, considering all reasonable inferences in his favor, and considering the jury may not be required to believe any evidence offered by the State – no hypothetical reasonable jury could convict the defendant of the lesser offense. *Fairchild v. State*, 459 So. 2d 793, 801 (Miss. 1984) (citing *Ruffin v. State*, 444 So. 2d 839, 840 (Miss. 1984)).

¶23. "In deciding whether lesser[-]included instructions are to be given, trial courts must be mindful of the disparity in maximum punishments." *Boyd v. State*, 557 So. 2d 1178, 1181 (Miss. 1989). Where the question is close, "the doubt should be resolved in favor of the accused." *Brown v. State*, 39 So. 3d 890, 900 (¶37) (Miss. 2010) (quoting *Davis v. State*, 18 So. 3d 842, 847 (¶15) (Miss. 2009)).

¶24. First, we must determine if the proposed instruction properly stated the law. Cole's proposed instruction, D-9, stated: "Manslaughter is defined as the killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a

dangerous weapon, without authority of law, and not in necessary self-defense." This language tracks section 97-3-35 of the Mississippi Code Annotated (Rev. 2006) and is, therefore, a proper statement of the law.

¶25. Second, we examine whether the given instructions cover the defendant's theory of the case. We must consider not only the refused instruction but all of the court's instructions to determine if there was error in its refusal. *Robinson v. State*, 40 So. 3d 570, 575-76 (¶21) (Miss. Ct. App. 2009). The jury was given fourteen instructions ranging from its duty to apply the law, to selecting a foreman, to the form of the verdict. However, it was only instructed on one crime, murder. The crime of manslaughter, a lesser-included offense of murder, does not appear in the given jury instructions. In fact, the record reveals that the jury submitted a question to the trial judge asking for the definition of manslaughter. The judge replied, "Manslaughter is not an issue in this case." It is apparent that no jury instruction was issued on Cole's theory of the case.

¶26. Finally, we look to whether there was a sufficient foundation in the evidence for the requested instruction. In considering the lesser-included offense of manslaughter, we must determine if, taking the evidence in the light most favorable to Cole, no hypothetical reasonable jury could convict him of the lesser offense. Certainly, Cole's confession supports his manslaughter theory. He stated:

> We just kept arguing and kept fighting[,] and uh, one thing just led to another. We was just fighting[,] and just cussing and just, just really just got out of hand[,] and before I knew it[,] I hit her too hard and knocked her out and just panicked and wasn't thinking straight, scared. I didn't know if she was still alive at that moment or what[,] but I just panicked and just put her in the trunk

> . . . . we was just fighting all over . . . she was fighting back, I was fighting back . . . we was just going crazy.

¶27. The physical evidence could also support Cole's theory of the case. No weapon was ever found, and the injury identified by Dr. Hayne was only "consistent with" a stab wound. Dr. Hayne never testified to a reasonable degree of medical certainty as to the cause of death. He could not exclude a head injury as the cause of death, and when asked, he responded: "I didn't see that, counselor. Of course, a lot of the soft tissue was gone. It was skeletal, so *I would not see a soft tissue injury*." This created a question of fact as to the cause of Norman's death. The photographic evidence presented shows a small dark hole in Norman's flesh that is covered in grass, dirt, and leaves. The jury could have concluded this injury was inflicted after Norman's death when she was left in the woods. Further, Dr. Danforth testified to evidence of trauma on Norman's skull and described a reddish patch over Norman's left eye the size of a silver dollar.

¶28. The jury was concerned about manslaughter and specifically asked for guidance on that point. "In a criminal prosecution, trial and appellate judges do not always find the defendant's testimony believable, credible, or consistent with other evidence. Still, it is evidence . . . . [and] juries, not judges, determine the weight and credibility of the evidence . . . ." *Flowers v. State*, 51 So. 3d 911, 913 (¶9) (Miss. 2010). Had the jurors believed Cole's statement, they could not have applied those facts to the law because the trial judge provided them no instruction on the law of manslaughter. *See id.* at (¶10).

¶29. The State argues the trial judge properly refused the requested instruction because

adequate provocation for a heat-of-passion-manslaughter instruction was not shown. Heat of passion has been defined as:

> a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time.

Underwood v. State, 708 So. 2d 18, 36 (¶54) (Miss. 1998) (quoting *Tait v. State*, 669 So. 2d 85, 89 (Miss. 1996)). It is well established that words alone are not enough to require a heat-of-passion instruction. *Myers v. State*, 832 So. 2d 540, 542 (¶10) (Miss. Ct. App. 2002). Cole testified that he and Norman were fighting and that things got out of hand. The two also had some history of a violent relationship. Specifically, Cole stated: "[S]he was fighting back, I was fighting back . . . we was just going crazy." A reasonable jury could have believed this version of events and found the fight Cole described to be adequate provocation. *See Bolton v. State*, 87 So. 3d 1129, 1133-34 (¶¶14-15) (Miss. Ct. App. 2012). Taking the evidence in the light most favorable to the accused, considering all reasonable inferences in his favor, and considering the jury may not be required to believe any evidence offered by the State, we find that a reasonable hypothetical jury could have convicted Cole of manslaughter. It is the jury's function to determine the weight and credibility of evidence. ¶30. The dissent makes much of Dr. Hayne's medical testimony, but its reliance is problematic. Specifically, when Dr. Hayne was asked about seeing evidence of a head injury, he replied: "I didn't see that, Counselor. Of course, a lot of the soft tissue was gone. It was skeletal, *so I would not see a soft tissue injury*." The dissent converts this statement

into it being "medically impossible" for Norman to have died from a head injury. But more interesting, Dr. Hayne apparently did not notice the reddish silver-dollar-sized patch on Norman's skull, which according to Dr. Danforth evidences trauma. Further, at no point did Dr. Hayne ever state to a reasonable medical certainty that the cause of Norman's death was a stabbing. He could not make that statement; he could only say that her injury was *consistent with* a stab wound. In any event, the jury was entitled to disbelieve any and all of Dr. Hayne's testimony.

¶31. Cole told police that he and Norman were going crazy, fighting with each other, and that she was fighting back. The evidence of provocation is admittedly weak, but it exists. The manslaughter instruction should have been granted because all that was necessary for the jury to convict Cole of manslaughter was that it be unconvinced by a part of the State's proof, specifically Dr. Hayne's testimony. *See Fairchild*, 459 So. 2d at 801-02. Cole was entitled to have his theory of the case submitted to a properly instructed jury. *See Chinn*, 958 So. 2d at 1226 (¶18). Because the trial court failed to properly instruct the jury on the law of manslaughter, we must reverse Cole's conviction and remand this case for a new trial. As we find this issue dispositive, we do not reach Cole's remaining nine issues.

¶32. **THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS REVERSED, AND THIS CASE IS REMANDED FOR A NEW TRIAL. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.**

LEE, C.J., GRIFFIS, P.J., ISHEE, ROBERTS, MAXWELL AND RUSSELL, JJ., CONCUR. IRVING, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY CARLTON, J.; BARNES, J., JOINS IN PART.

IRVING, P.J., DISSENTING:

¶33. The majority reverses Cole's murder conviction because it finds that he was entitled to a heat-of-passion-manslaughter instruction. Cole did not testify. However, the majority finds that Cole's confession to the police, which was admitted into evidence, provides the evidentiary foundation for a heat-of passion instruction and that the circuit court erred in refusing to give one. In my view, the majority, in arriving at its conclusion, has both misapprehended and misapplied the law. Therefore, I respectfully dissent. I would affirm Cole's conviction and sentence.

¶34. During his interview with the police, Cole made the following statement, which I quote verbatim, regarding his involvement with Norman's death:

> Uh, Tuesday, I can't recall what, what day it was, but we got together after she got out of her 2:20 class. And we decided to ride around, talk, and go get something to eat. And at the time we was riding around, we was just chilling for a minute and we just started to argue fighting over the stuff that we been through in the last couple of years and stuff we was going through now and we was just kept arguing and kept fighting and uh, one thing just led to another, we was just fighting and just cussing and just . . . really just got out of hand and before I knew it I hit her too hard and knocked her out and just panicked and wasn't thinking straight . . . scared, I didn't know if she was still alive at that moment or what . . . but I just panicked and just put her in the trunk and just rode around and try to figure out what I was going to do at this point and just being scared and then . . . after a couple of hours, I checked on her and it wasn't no pulse . . . I just really just got scared and just didn't know what to do . . . who to turn to . . . or where to go . . . so I just rode around for a couple more hours just rode around trying to figure out where I was going to go, what I was going to do, and I just ended up on County Line Road and then I just turned on a . . . on this street, I didn't even know it was Brown Street at the time, I just ended up turned on it . . . it was late at night . . . and I just seen a couple of abandoned houses and trees and woods and just dropped her off and just covered her up and just dropped her off and just ran; I never said nothing to anybody till this day here. We just kept arguing and fighting and uh, one

> thing just led to another. We was just fighting and just cussing and just, just really got out of hand and before I knew it I hit her too hard and knocked her out and just panicked and wasn't thinking straight, scared.

¶35. After Cole had given the above statement, without interruption, the following colloquy between him and Detective Sammie Neal occurred:

> Q. Let me ask you this Stanley . . . did you hit her with an open fist, or I mean open hand or closed fist and where was the area that you hit her at? Do you know?
>
> A. Across the face, in the head.
>
> Q. Okay, when you're saying across the face . . . here or . . . Or you know.
>
> A. Just.
>
> Q. All over?
>
> A. Yeah, we was just fighting all over . . . I can't even really recall, she was fighting back, I was fighting back . . . at a time it coulda [sic] been open fist . . . slap . . . it was just . . . we was just going crazy . . . .

¶36. In my judgment, the foregoing statement does not provide evidence of the heat-of-passion element of manslaughter. The majority, citing *Bolton v. State*, 87 So. 3d 1129, 1133-34 (¶¶14-15) (Miss. Ct. App. 2012), states: "A reasonable jury could have believed this version of events and found the fight Cole described to be adequate provocation." Maj. Op. at (¶29). The majority continues with this statement:

> Taking the evidence in the light most favorable to the accused, considering all reasonable inferences in his favor, and considering the jury may not be required to believe any evidence offered by the State, we find that a reasonable hypothetical jury could have convicted Cole of manslaughter. It is the jury's function to determine the weight and credibility of evidence.

Id. I first point out that *Bolton* provides no support for resolution of the issue before us, that

is, whether a manslaughter instruction should have been given. That a jury may have believed Cole's version of events is irrelevant if that version does not, as a matter of law, provide an evidentiary basis for a manslaughter instruction. *See Agnew v. State*, 783 So. 2d 699, 703 (¶10) (Miss. 2001). It is the province of the court, not the jury, to determine whether a sufficient foundational basis exists in the evidence to grant an instruction. The jury does not get a chance to weigh in unless and until the court determines that there is evidence in the record that, if believed by the jury, could constitute adequate provocation for manslaughter. It seems to me that the majority's finding that a manslaughter instruction should have been given simply because the jury may have believed Cole's version of events is tantamount to saying that it is not the proper role of the trial judge to instruct on the law and that a jury should always be allowed to base its verdict on whom it believes without any legal guidance from the court. That is just not the law.

¶37. On two occasions, this Court has determined that a physical altercation was insufficient to justify a heat-of-passion instruction without evidence that the defendant acted out of violent or uncontrollable rage. *See Cooper v. State*, 977 So. 2d 1220, 1223 (¶13) (Miss. Ct. App. 2007) (pushing, tussling, and/or choking insufficient to support heat-of-passion instruction without evidence that defendant was in a state of uncontrollable rage); *Turner v. State*, 773 So. 2d 952, 954 (¶8) (Miss. Ct. App. 2000) (pushing and shoving insufficient to require the instruction absent testimony that the defendant was acting out of violent or uncontrollable rage). Just as in *Cooper* and *Turner*, there is no evidence here that Cole was in a state of violent or uncontrollable rage. Therefore, his confession alone is

insufficient to justify a heat-of-passion-manslaughter instruction.

¶38. Additionally, the majority mentions the fact that Cole and Norman "had some history of a violent relationship." Maj. Op. (¶29). However, the Mississippi Supreme Court has held that long-standing domestic disputes are not grounds for a manslaughter instruction. *Graham v. State*, 582 So. 2d 1014, 1018 (Miss. 1991). Thus, Cole and Norman's less-than-harmonious relationship, which ended in a fight and ultimately Norman's murder, cannot provide the basis for a manslaughter instruction.

¶39. Dr. Hayne asked Dr. Danforth to examine Norman's remains because he did not see Norman's hyoid bone. His specific statement was: "I wanted her to look at that and see if she could identify the hyoid bone, which is located in the neck area." Dr. Danforth testified that she saw "a reddish patch" that was dark pinkish in color, about the size of a silver dollar, over Norman's left eye. However, she did not say that this reddened area was the result of an injury, much less a blow sufficient to cause Norman's death. Indeed, she could not offer such an opinion even if she believed that to be the case, because she was not qualified to testify as to the cause of death. She admitted as much in the following colloquy:

> Q. Dr. Danforth, you don't testify to -- a forensic anthropology -- anthropologist, you guys don't testify to cause and manner of death?
>
> A. No, we do not.
>
> Q. And you can't do that?
>
> A. No.

¶40. Although the majority opinion does not explicitly state that Dr. Danforth's findings

corroborate Cole's testimony—that he knocked Norman out—it appears that the majority believes that those findings provide some evidentiary support for Cole's contention that he killed Norman by striking her about the face and head with his hand. In this respect, I note the majority states that according to Dr. Danforth, the reddish spot was evidence of trauma. While Dr. Danforth did mention the reddish patch when asked by defense counsel if she saw any evidence of trauma, it is significant that Dr. Danforth could not, and did not, correlate the injury to anything. Given the fact that Cole dumped Norman's body in the trunk of his girlfriend's car and again on the cold ground, any suggestion that the reddish spot was caused by the fighting that allegedly occurred between Norman and Cole would be pure speculation. Moreover, since Norman's body lay exposed in the woods for approximately two weeks, there is no basis for assuming that the reddish spot was caused by any blows inflicted by Cole. Suffice it to say that there is absolutely no medical testimony that Norman died as a result of being struck about the face and head. In fact, Cole could not say whether he hit Norman with his fist or whether he simply slapped her. The uncontradicted medical testimony from Dr. Hayne is that Norman died as a result of a stab wound.

¶41. Recently, in *Laurent v. State*, 94 So. 3d 1232, 1235 (¶¶12-13) (Miss. Ct. App. 2012), this Court found that the defendant's testimony—that he accidently killed the victim while the two of them struggled over a gun—was insufficient to justify a self-defense instruction. In so finding, we stated:

> The problem with Laurent's argument is that the medical evidence is that Brandi [(the victim)] did not die as a result of having been shot. Laurent introduced no medical evidence to the contrary, and although he testified that

> Brandi collapsed after being shot, he is not competent to assess the cause of Brandi's death. As stated, Dr. McGarry [(the forensic pathologist)] testified to a reasonable degree of medical and scientific certainty that Brandi died from asphyxia due to compressive injuries of the neck and chest.

Id. at (¶13). We also noted that it was "unclear from Dr. McGarry's testimony if he was able to examine the areas of Brandi's body where Laurent insists that Brandi was shot [but that] Laurent did not challenge Dr. McGarry's testimony nor did he challenge Dr. McGarry's findings related to Brandi's cause of death." *Id.* at n.2. Just as Laurent was not competent to assess the cause of death, neither is Cole. It is noteworthy that Dr. Hayne asked Dr. Danforth to take a look at Norman's body, and after getting the report from Dr. Danforth, Dr. Hayne gave the following testimony during direct examination:

> Q. Okay. And based upon your findings -- of course, you can explain that -- what was the cause of death?
>
> A. I ruled it as a -- as consistent with a stab wound of the chest. That injury was slit-like[,] located immediately above the left nipple[,] and measured 1.8 centimeters in length, which would be approximately three-quarters of an inch.
>
> The outside edge of it was somewhat distorted[,] secondary to decomposition change or putrefaction breakdown of the body. The body had been exposed for a period of time.
>
> Q. Okay. And the manner of death?
>
> A. I ruled the manner of death as homicide, sir.
>
> * * * *
>
> Q. Okay. Dr. Hayne, just a few more questions. Was there any blunt force trauma to the head?
>
> A. I did not see that, Counselor.

Q. Okay. And so what about any cranial fractures?

A. I did not see that, Counselor. The cranial vault was opened[;] the brain was examined; and I did not see fractures to the base of the skull and the skull cap itself.

Q. Okay. So any claim of an injury to the head --

* * * *

Q. Your finding of the cause of death was a stabbing, correct?

A. It was consistent with a stab wound to the chest, sir.

Q. Or any kind of head injury at all?

A. I didn't see that, [C]ounselor. Of course, a lot of the soft tissue was gone. It was skeletal, so I would not see a soft tissue injury.

Q. Dr. Hayne, blunt force trauma, what would it take to --

* * * *

Q. How much force would it take to cause -- an injury to the head to cause a death?

A. Normally, it'd take a considerable amount of force, counselor. It would not necessarily have to be a fracture. You can have bleeding inside the cranial vault involving the brain or the spaces around the brain without fracture. A strong blow could produce that type of injury.

Q. But this was not found in this case?

A. I did not see evidence of that, no, counselor.

¶42. During the redirect examination of Dr. Hayne, the following colloquy occurred:

Q. Just a follow-up on the last question. You testified earlier to a medical degree of certainty that this cause of death was consistent with a stab wound, correct?

* * * *

Q. And to a medical degree of certainty, you can tell us that this was consistent with a stab wound?

A. It's consistent with a stab wound, and I ruled that and signed an affidavit to that effect, sir.

Q. Okay. Which is a very high standard in the medical field?

A. It's with reasonable medical certainty, which is the highest standard one can go.

¶43. It is clear that the medical evidence here, as did the medical evidence in *Laurent*, contradicts Cole's theory of death. Further, as was the case with the defendant in *Laurent*, Cole is not competent to state the cause of death. Additionally, I should point out that Cole's contention that he knocked Norman out is not unlike the defendant's statement in *Laurent.* In both cases, the defendants contended that their actions caused the victim's death, despite the absence of medical evidence to support it. As Laurent's testimony was insufficient to warrant the giving of a self-defense instruction, Cole's and Dr. Danforth's testimonies also are insufficient to warrant the giving of a manslaughter instruction. Dr. Hayne examined Norman's skull, opened the cranial vault, and found no evidence that Norman could have been killed by a blow to the head. While it is true that, unlike Dr. McGarry in *Laurent*, Dr. Hayne did not testify to a reasonable degree of medical and scientific certainty as to the cause of Norman's death, he did, in his expert capacity, testify essentially that it was medically impossible for Norman to have died as a result of being struck by Cole in the manner that Cole testified. And finally, Dr. Hayne testified, in his expert capacity, without contradiction, that Norman's death was consistent with a stab wound to the chest. There is no evidence that

anyone other than Cole could have caused the stab wound.

¶44. Therefore, I dissent. I would affirm Cole's conviction and sentence.

CARLTON, J., JOINS THIS OPINION. BARNES, J., JOINS THIS OPINION IN PART.