

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00302 COA

YOLANDA EUNICE MILLS

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. R. KENNETH COLEMAN

COURT FROM WHICH APPEALED: TIPPAH COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID O. BELL

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: LAWRENCE L. LITTLE

NATURE OF THE CASE: CRIMINAL: MANSLAUGHTER

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO SERVE A TERM OF 20 YRS IN
THE MDOC WITH 5 YRS OF SENTENCE SUSPENDED

MANDATE ISSUED: 5/29/97

BEFORE BRIDGES, P.J., COLEMAN, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

The Appellant, Yolanda Eunice Mills (Mills), was tried and convicted of manslaughter in the Tippah County Circuit Court. She was sentenced to serve twenty years in the Mississippi Department of Corrections with five years suspended. Aggrieved from this judgment, she appeals to this Court asserting that the trial court erred in failing to suppress a statement made by Mills. Finding no reversible error, we affirm.

FACTS

On July 6, 1992, the Appellant, Mills, and her friend Jeff Graves (Graves) were driving in Graves' truck. The two went by Graves' friend, Becky Rollins' house to pick up Graves' .22 caliber rifle. After making stops at other friends' houses, Mills and Graves picked up Christopher Gibbs (Gibbs), a friend of Graves. The three then stopped at several other friends' houses. Apparently, they were trying to buy alcohol from bootleggers selling liquor at that hour. Finally, they decided to take a trip to Blue Mountain, Mississippi.

On the way to Blue Mountain, Mills discovered that some items were missing from her purse. She asked Graves if he had been through her purse. He replied that he had not. Gibbs testified that at that point, Graves stopped the truck, got out, pulled Gibbs out of the truck, and started punching Gibbs in the face while accusing him of taking valium from Mills' purse. A fist fight ensued between Gibbs and Graves. Gibbs stated that Mills told him to let go of Graves and then he heard two shots go off. He felt a stinging in his leg after he heard the second shot. Gibbs managed to get away from Graves and proceeded to run into the bushes on the side of the road. He testified that he heard a series of shots as he ran into the bushes.

Mills' offered a different account of the incident. According to Mills, when Gibbs and Graves were entangled in the fist fight, Gibbs was choking Graves. She testified that she got Graves' gun and stood over the two men intending to scare Gibbs. She held the gun over Gibbs and told him to get off of Graves. At that point, according to Mills, Gibbs grabbed the gun from her. She testified that Graves ordered her to get in front of the truck, where she squatted down. She stated that she saw the two men struggling for the gun, and then she heard some shots. She then got up, and ran to call for help. When Mills returned to the scene, the police and ambulance were arriving on the scene. Both Gibbs and Graves were taken to the hospital. Gibbs was treated and released. Graves died the next day.

Sheriff Paul Gowdy was one of the police officers that arrived at the scene. Gowdy testified that he originally took Mills with him in his police car because he did not want to leave her on the deserted road at that hour. On the way back to town, Mills made several incriminating statements. Gowdy repeatedly told her not to say anything until she received her *Miranda* warnings. Despite this, Mills

continued to make inculpatory statements. In response to her statements, Gowdy detained her at the county jail that night, and formally read her *Miranda* rights the next morning.

DISCUSSION

The only issue raised on appeal is that the trial court erred in admitting statements made by Mills to the police before she had been given her *Miranda* warnings. Mills argues that she was in police custody when she made incriminating statements before her *Miranda* rights were read to her. She contends these statements should not have been admitted into evidence.

After the ambulance arrived and Gibbs and Graves were taken to the hospital, Sheriff Gowdy took Mills back into town in his police car. She was not under arrest at that time. He merely intended to bring her back into town because there were no other cars around, and he did not want to leave her at the scene. During the ride back to town, Sheriff Gowdy testified that Mills made several incriminating statements. Sheriff Gowdy's testimony was as follows:

A: She said I shot that black son-of-a bitch. At that time, I advised her not to say anything else until we got to the office and I would read her her rights. She said this again. Said--at that time she said to me again that she shot the black man. He had stole [sic] a pair of earrings out of her purse and Jeff and the black man was [sic] fighting. She was also fighting him to get her earrings back. I advised her again not to say anything else until I read her her rights and Yolanda stated again that she shot the black man and she did not think she shot Jeff but she just started shooting until the gun quit shooting.

Gowdy testified that Mills was hysterical. He repeatedly told her not to say anything until *Miranda* warnings had been given to her. Apparently, she would calm down, but would begin talking again after a few moments.

Absent a knowing and intelligent waiver of rights, statements made by a suspect while under custodial interrogation are inadmissible at trial where prior to making the statements, the suspect was not given *Miranda* warnings. *Tolbert v. State*, 511 So. 2d 1368, 1374 (Miss. 1987) (citing *Miranda v. Arizona*, 384, U.S. 436, 444-45 (1966)). However, it is firmly embedded case law in this State and many others, where certain circumstances are excluded from the scope of *Miranda*. *Miranda* warnings are not required where the interrogation is investigatory and non-custodial. *Tolbert*, 511 So. 2d at 1375. The warnings are only required to be given where the situation has reached the accusatory stage, or if the interrogation is custodial. *Id.* The accusatory stage is reached when law enforcement first charges the accused with a crime. *Id.* *Miranda* warnings are also not required for admissibility of any noncustodial statement given freely and voluntarily. *Id.* (citations omitted). Mills' statements to Sheriff Gowdy fell within the second of the *Miranda* exclusions.

Sheriff Gowdy originally placed Mills in his police car merely to transport her back into town. At that point, Mills was not under arrest; therefore, the situation had not yet reached the accusatory stage, nor was there any custodial interrogation. Custodial interrogation occurs when questioning is initiated by law enforcement officers after a person has been taken into custody or otherwise deprived

of his freedom in any significant way. *Pierre v. State*, 607 So. 2d 43, 52 (Miss. 1992) (citations omitted). Arguably, Mills could not get out of the police car while it was moving. Therefore, she did make her inculpatory statements while in custody; however, she did not make the statements in response to custodial interrogation or any police action designed to elicit a response. *See Pierre v. State*, 607 So. 2d at 52. Her statements were spontaneous and voluntary. After Mills made her statements, Gowdy asked her how she thought Graves got shot. Mills argues that this was custodial interrogation. In this instance, Sheriff Gowdy did not initiate the questioning. The one question that he asked Mills was in response to Mills' voluntary inculpatory statements. Because we find that Mills' statements made before Sheriff Gowdy were given freely and voluntarily, this issue falls within an exception to the *Miranda* rule. Accordingly, *Miranda* warnings were not necessary for admissibility of the statements in question. Therefore, we find no merit to this argument, and we affirm the judgment of the lower court.

THE JUDGMENT OF CONVICTION IN THE TIPPAH COUNTY CIRCUIT COURT OF MANSLAUGHTER AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE (5) YEARS SUSPENDED IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO TIPPAH COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.