

**IN THE COURT OF APPEALS 03/26/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 93-KA-01435 COA**

**CLAUDELL SYKES**

**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. HOWARD Q. DAVIS, JR.

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHERYL CROSBY GRIFFIN

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: BURGLARY OF A CHURCH

TRIAL COURT DISPOSITION: FOUND GUILTY

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

DIAZ, J., FOR THE COURT:

Claudell Sykes (Sykes) was tried and convicted in the Washington County Circuit Court for burglary of a church. The Honorable Howard Q. Davis, Jr. sentenced Sykes, as a habitual offender, to a term of seven (7) years in the custody of the Mississippi Department of Corrections without the possibility of parole. Sykes was also ordered to pay all costs and assessments, which totaled \$192.50. On appeal, Sykes assigns the following errors: 1) the trial court erred in allowing Sykes' prior convictions of burglary to be admitted into evidence; 2) the trial court erred when it did not allow a defense witness to testify; 3) the verdict is against the overwhelming weight of the evidence; and 4) that the cumulative errors committed by the trial court require reversal of his conviction and sentence. We find that evidence of Sykes' prior convictions was improperly admitted. Thus, we must reverse and remand this case.

## THE FACTS

At approximately 10:30 p.m. on April 6, 1993, Officers Keith White (White), David Damman (Damman), and Carlos Thompson (Thompson), and other officers of the Greenville Police Department responded to a burglary-in-progress call at the Shady Grove North Baptist Church in Greenville, Mississippi. Upon arriving at the scene, the officers surrounded the church. White stayed at the front of the church while Damman covered the rear entrance to the church building. Damman testified that the rear window of the church was broken and that a trash can had been placed underneath the window. Thompson was stationed on the east side of the church by a door.

Officer White testified that he saw the doorknob of the front door start to turn slightly, so he decided to kick open the door. White saw the man that he identified as Sykes standing in the church with a white piece of cloth (possibly a pillowcase) in his hand and stated that Sykes was laying a brown attache case on the church's water fountain. Inside the attache case were copies of church songs and hymns; the case and its contents were property of the church. White handcuffed Sykes and placed him under arrest.

Sykes told the officers that his name was Robert Pollay and that he was a member of the church. The police learned of Sykes' identity, and thereafter, he made the following statement to the police officers:

I [C.S.] went inside the church on Carver Circle street by using a flat head screw driver on the right side door of the church and I pried it open. I first tried to gain entry through the back rear window but I could not. I use[d] to attend that church and I stop[ped] going, I went inside the church to get some sleep tonight.

This statement was introduced into evidence through the testimony of Officer Thompson.

At trial, Charles Williams (Williams), a deacon of the church, testified that the rear window was not broken approximately one hour earlier. Williams also testified that Sykes was not a member of the church.

## DISCUSSION

### I. EVIDENCE OF PRIOR CONVICTIONS

The trial court granted Sykes' motion in limine to exclude any evidence of prior convictions as long as Sykes did not testify. However, once Sykes took the stand to testify, the order would be waived if he opened the door for impeachment.

On direct examination, Sykes' attorney asked the following questions:

Q: Did you go in there to steal anything out of the church?

A: No, no.

Q: Did you have plenty of time to steal something if you wanted to?

A: Yes. I know that would have been wrong. I'm not going to steal out of God's church. I just went in there to sleep and pray to God and to get some sleep. That's all. I had no bad intention, sir, of trying to take nothing out of God's church. I've already got bad luck as it is than to go to God's church and, you know, try to take something out of the church. No.

On cross-examination, the following colloquy was had between the district attorney and Sykes:

Q: So, I take it that the only reason you are saying that you didn't steal was because it was a church, right? Had it been a house, you wouldn't have had any hesitation to take something out, right?

A: No.

Q: You would have stolen out of a house, right?

A: No.

Q: Now you wouldn't have. Would you have stolen out of a house?

A: No.

....

Q: Okay. And you also said that you aren't going to burglarize any place, correct?

A: Correct.

Q: Isn't it true that you've got a long history of burglaries?

Sykes now argues that the trial court should not have allowed this line of questioning because the prejudicial effect outweighs the probative value of the testimony. The State, however counters that the evidence was admissible to impeach the witness, and furthermore, that it was proper to allow such evidence once Sykes opened the door for its admissibility.

Rule 609 of the Mississippi Rules of Evidence, in relevant part, allows a party to attack the credibility of a witness on cross-examination by eliciting evidence of a prior conviction from the witness if the crime was (1) punishable by death or imprisonment in excess of a year under the law which he was convicted, and the probative value outweighs the prejudicial effect or (2) the crime involved dishonesty or false statement, regardless of the punishment. M.R.E. 609(a). During direct examination, Sykes did not make any contradictory or inconsistent statements that would justify the State's attempt to impeach him by introducing prior convictions. Thus, evidence of his prior convictions could not have been properly admitted pursuant to Rule 609 of the Mississippi Rules of Evidence.

"Where an accused, on direct examination, seeks to exculpate himself, such testimony is subject to normal impeachment via cross-examination, and this is so though it would bring out that the accused may have committed another crime." *Johnson v. State*, 666 So. 2d 499, 503 (Miss. 1995) (citations omitted). "Normal impeachment applies when the defendant, on direct examination, makes blanket statements which open the door for impeachment," *Johnson*, 666 So. 2d at 503. (citations omitted). On the other hand, where the State "initiate[s] the matter by eliciting from the defendant the response it later [seeks] to impeach by showing the defendant's prior criminal. . . activities," the impeachment is impermissible and cause for reversal and remand. *Id.* (alteration in original) (citations omitted).

Upon review of the record, we cannot find an instance where Sykes made blanket exculpatory statements on direct examination that would justify the State's introducing evidence of prior convictions for "normal impeachment" or rebuttal. The first time Sykes denied burglarizing *any* place was on cross-examination in response to a question initiated by the prosecutor. In this instance, we find that the State improperly initiated the matter by eliciting the very answer it sought to impeach. According to case law, this is cause for us to reverse and remand.

Because we find that it was reversible error for the trial court to admit evidence of Sykes' prior convictions, we do not address the other issues raised by the Appellant as to Mrs. Sykes' testimony, the weight of the evidence, and the effect of cumulative errors.

## CONCLUSION

We find that the State improperly initiated and elicited the response that it was seeking from Sykes. The State then tried to introduce prior convictions to impeach Sykes based on the elicited responses he gave. This is impermissible as stated in *Johnson v. State. Johnson*, 666 So. 2d at 503. Therefore, we reverse this case and remand the cause for further proceedings consistent with this opinion.

**THE JUDGMENT OF CONVICTION AND SENTENCE OF THE WASHINGTON COUNTY CIRCUIT COURT OF CHURCH BURGLARY IS REVERSED. THIS CAUSE IS REMANDED FOR FURTHER PROCEEDINGS. COSTS ARE TAXED TO WASHINGTON COUNTY.**

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