

IN THE COURT OF APPEALS 03/11/97
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00297 COA

ROY STRICKLAND

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. KATHY KING JACKSON

COURT FROM WHICH APPEALED: GEORGE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TRAVIS BUCKLEY

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN

DISTRICT ATTORNEY: DALE HARKEY

NATURE OF THE CASE: CRIMINAL - MURDER

TRIAL COURT DISPOSITION: GUILTY - SENTENCED TO LIFE IN THE CUSTODY OF THE
MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER

BEFORE THOMAS, P.J., COLEMAN, AND SOUTHWICK, JJ.

COLEMAN, J., FOR THE COURT:

A jury in the Circuit Court of George County found Roy Strickland guilty of murder of Charlotte Diane Strickland, his former wife. The trial court sentenced him to life imprisonment in the custody of the Mississippi Department of Corrections as a habitual offender. Because Strickland was a habitual offender, the trial court ordered that Strickland's sentence of life imprisonment "shall not be reduced or suspended nor shall he be eligible for parole or probation pursuant to Section 99-19-81 of the Mississippi Code of 1972. Strickland appeals from the trial court's judgment of his guilt of murder on evidentiary grounds, but we affirm the trial court's judgment and sentence.

I. FACTS

Charlotte Diane Strickland (Ms. Strickland) was stabbed to death in her mobile home in George County sometime between the hours of 8:00 p.m. and 1:42 a.m. on Sunday night, August 26, 1990. Ms. Strickland's body was lying in the first bedroom next to the living area of her mobile home. There were bruises on her face, a swollen eye, and a stab wound on her left side just beneath her arm pit which penetrated approximately nine inches or more through her heart and both lungs. Roy Strickland and Ms. Strickland had been divorced in May of 1990. After the entry of the final divorce decree, the couple resumed spending time together. Strickland would often spend the night with Ms. Strickland in her mobile home located at Lee's Trailer Park in Lucedale, Mississippi. On Friday night, August 24, 1990, Roy slept at the trailer park with Ms. Strickland and, on Saturday morning, the two of them took Ms. Strickland's dog to Buzzard's Roost on the Pascagoula River to run around. Strickland and his former wife then returned to her trailer, and Strickland left at around noon to go to Laurel. Strickland spent Saturday afternoon and that night in Laurel "barhopping," visiting "juke houses," and seeing his friends. Strickland drank beer throughout his sojourn in Laurel.

Strickland owned a mobile home in Ellisville, and he spent that Saturday night there alone. On Sunday, the next day, Roy returned around noontime to Ms. Strickland's mobile home in Lucedale, where he found David Malone, his former business partner, visiting with Ms. Strickland. The record is not clear about when Malone left Ms. Strickland's mobile home to go to Mobile, but Strickland and his former wife left her mobile home and drove to the Isle of Pines Lake because Roy wanted to look at a lot that was for sale near the lake. On the way, the two stopped at a convenience store in the area to purchase two six-packs of beer.

After they visited the Isle of Pines Lake, the Stricklands bought at least one more package of beer and then headed for the Escatawpa River to swim and to drink more beer. When they arrived at the river, Ms. Strickland removed her jewelry, a ring and two pair of earrings, and placed them in the glove compartment of the car so she would not lose them while she swam. After swimming and drinking beer, the couple returned to Ms. Strickland's mobile home in Lee's Trailer Park. They went inside, drank a couple more beers, and Roy decided to go to New Augusta and see his friend Billy Ryals. Strickland testified that his former wife did not go with him because David Malone intended to

stop by her mobile home on his return from Mobile. Roy left Ms. Strickland's between 8:30 and 9:00 p.m. on his way to Billy Ryals' place in New Augusta.

Ryals was asleep when Strickland arrived at his place that Sunday, August 26, after 10:30 p.m. On that day Carl Merrill was a guest in Ryals' mobile home. After Strickland arrived, the three men, Merrill, Ryals, and Strickland talked and drank beer. During the conversation, Strickland stated that Ms. Strickland stayed down in Lucedale to make a "dope deal." Strickland then asked Merrill if he knew of someone who could get Ms. Strickland busted, and Merrill said that he did know people who could "bust" her. Ryals testified that Strickland then asked Merrill if he knew anyone who could "set-up" David Malone by planting drugs in Malone's tool box. Merrill responded that the people he knew did not work that way, and such a "set-up" was impossible.

The men continued to talk and drink beer. Strickland got up and went to the bathroom which was located down the hall in Ryals' mobile home. The bathroom was located on the other side of a bedroom, on the inside of which, immediately at the door to the hallway from the bedroom a gunrack was located. Merrill went to the bathroom after Strickland returned. While Merrill was in the bathroom, Ryals testified that Strickland asked him for a favor. Ryals stated at trial:

Strickland asked me was I a good friend of his and I told him yeah. He said, 'Well, I've got something I want you to keep for me.' And he pulled out -- I thought it was a little bar of gold and a ring. He said he wanted me to keep it for a few days. And I told him I'd put it up in my -- a little cedar chest in my room where I keep old money.

This was Ms. Strickland's jewelry which she had placed in the glove compartment of Strickland's car when they had gone swimming earlier that Sunday afternoon. Strickland placed the jewelry in a small box, which Ryals agreed to keep for his friend Strickland. Strickland remained at Ryals' mobile home with Ryals and Merrill until sometime between 12:30 and 1:00 a.m. on Monday morning, when, according to Ryals' testimony, Strickland left.

Strickland returned to Ms. Strickland's mobile home at approximately 1:30 a.m. that same Monday morning. Strickland testified that after he entered the mobile home, he discovered Ms. Strickland's body lying in the first bedroom next to the living area of the mobile home. The record indicates that this bedroom contained no furniture and that perhaps Ms. Strickland had used it for a laundry room, in which she ironed and folded her clothes and linens after she had washed them. According to the subpoenaed copy of Ms. Strickland's telephone bill, Strickland called his sister and her husband, Marie and D.A. Rainer, at 1:42 a.m. His reason for calling the Rainers was to ask them to come from their home in Ocean Springs to Ms. Strickland's mobile home in Lucedale so that he might talk with them.

The Rainers drove to Lucedale early that same Monday morning to see about what Strickland wanted to talk. Knowing only that he lived in Lee's Trailer Park, the two arrived about 4:00 or 4:30 a.m. and asked directions to the location. Once they found Lee's Trailer Park, Mrs. Rainer spotted a car with a Jones County tag parked in front of a mobile home, which they then assumed was Ms. Strickland's mobile home. Mr. Rainer knocked on the door, but no one answered. The Rainers left to eat breakfast, after which they returned to the mobile home to knock again. Again no one answered the door. Because Mr. Rainer feared that something was wrong, he and his wife decided to find an officer to accompany them to Ms. Strickland's mobile home.

When they arrived for the third time sometime after 6:30 a.m. with George County Deputy Sheriff Barry Lambert and knocked, Strickland answered their knock at the door. The Deputy Lambert asked Strickland if everything was okay and Strickland responded, "Yes. Why shouldn't it be?" Lambert left, and the Rainers went inside to talk with Strickland. After a few minutes, Mr. Rainer asked where Ms. Strickland was. When Strickland told his brother-in-law that she was dead in the other room, Mr. Rainer and Strickland went in there to see. Mr. Rainer called the police back to the trailer park. Deputy Sheriff Lambert returned to the mobile home, entered it, saw Ms. Strickland's body, and called for the sheriff and a coroner to come to the scene. Strickland was later arrested for the murder of his former wife, Charlotte Diane Strickland.

II. TRIAL

At the trial, the State called Don Leo Martin, Ms. Strickland's neighbor in the trailer park, who testified that he heard Strickland and Ms. Strickland arguing vigorously about jewelry on the weekend of the murder. Ms. Strickland's sister, Libby Holt, testified that Ms. Strickland and Strickland had a "rocky" marriage, fighting often, and that they were separated at least seven times before they were finally divorced. Ryals testified that when he learned of Ms. Strickland's death, he showed the jewelry, which Strickland had asked him to keep, to his niece, Angela Johnson, who identified the items as belonging to Ms. Strickland. Ryals called the sheriff of Perry County to tell him that he, Ryals, had Ms. Strickland's jewelry, after which Eugene McRee, a Perry County deputy sheriff, came to get them. Eugene Howell, the sheriff of George County, testified that there was no evidence of a break-in at Ms. Strickland's mobile home and that nothing in her mobile home appeared to be out of place.

Dr. Paul McGarry, the pathologist who performed the autopsy on Ms. Strickland's remains, testified that based on his observation of the body and its deterioration, she died sometime between 8:00 p.m. and midnight on August 26, 1990. The cause of death was a stab wound of the left side of the chest just beneath the arm pit. The lethal instrument penetrated both lungs and the heart. Its tip ended under the skin on the right side of the chest at a depth of eight-and-one-half inches. About the description of this instrument, Dr. McGarry opined at trial:

This would be a weapon in that, in that range of length and width. Uh, the chest was compressible. In other words, the, the side of the chest could be pushed in an inch or so, so that means that a seven-and-a-half to nine-inch wound by being driven in with such force that the chest actually indents and allows the knife to go in, the blade to go in deeper than its length. I would think it's a, it's a knife blade that has a tapering configuration. It's broad at the base, it's pointed at the tip, it's sharp along one edge, and it's in the range of eight inches in length.

A knife, the description of which was consistent with the pathologist's quoted opinion, was found in the gun rack which, as we already noted, was located immediately inside the door of the bedroom in Billy Ryals' mobile home, by which Strickland passed when he went to the bathroom on the Sunday night that his former wife was killed. Ryals testified that he had never seen this particular knife inside his mobile home, and his niece, Angela Johnson, the previous occupant of the trailer, also testified that she had never seen this knife in Ryals' mobile home. When Strickland's attorney suggested during his cross examination of Ms. Johnson that her husband might have used this knife to butcher

deer that he had killed, she admitted that her husband had indeed butchered the carcasses of deer at Ryals' mobile home when they lived there. However, she insisted that she regularly watched her husband dress the carcasses and that he always used his pocket knife when he did so.

The jury returned a verdict of "Guilty of murder" against Strickland; and the trial judge sentenced him to serve a life sentence in the custody of the Mississippi Department of Corrections as a habitual offender. Thus, Strickland's life sentence could neither be reduced nor suspended; and Strickland could not become eligible for parole or probation pursuant to Section 99-19-81 of the Mississippi Code of 1972.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES

In his brief, Strickland presents this Court with the following two issues, which we quote *verbatim* from Strickland's brief, for its review, analysis, and resolution:

1. The trial court erred in overruling the defendant's objection to the introduction of the butcher knife.
2. The court erred in permitting the state to show evidence of prior arguments between the deceased and the defendant through hearsay testimony of Libby Holt, sister of the deceased.

Issue 1. The trial court erred in overruling the defendant's objection to the introduction of the butcher knife.

Strickland argues that the trial judge erred when she overruled his objection to the introduction of the butcher knife into evidence. As we mentioned, Angela Johnson found this knife on a shelf in a gunrack in Ryals' trailer the day after her uncle showed her the jewelry which Strickland had left in his care. Neither Ryals nor Johnson had ever seen the knife before. The State admitted that it could not show that the knife was the fatal weapon, but from the evidence in the record, it is apparent that Strickland had access to the gunrack where it was discovered, Ryals, the owner and occupant of the mobile home had never seen it before, and the pathologist testified that a blade of that size and shape was consistent with the size and nature of the wound from which Ms. Strickland died.

Strickland argues in his brief that "[d]uring the course of the trial, the state brought up the subject of a butcher knife that had been found at the home of the witness Ryals, after the body of Ms. Strickland had been discovered." However, the question as to the existence of a knife was first mentioned during the defense's cross-examination of Billy Ryals, the state's first witness. The questioning of Ryals by defense counsel concerning the knife was as follows:

Q. And you didn't see a knife there that night, did you?

A. No, sir.

Q. And you never saw a knife in Mr. Strickland's possession, did you?

A. No, sir.

Q. And you have no personal knowledge of him ever having -- pardon me -- having ever used a knife in connection with Diane Holifield Strickland, do you?

A. No, sir.

"Where the defense attorney inquires into a subject on cross-examination of the State's witness, the prosecutor on rebuttal is unquestionably entitled to elaborate on the matter." *Crenshaw v. State*, 520 So. 2d 131, 133 (Miss. 1988). During his redirect examination of Billy Ryals, the prosecutor produced the knife found in the trailer and proceeded to ask questions concerning the discovery of it by Ryals' niece, Angela Johnson. "Evidence, even if otherwise inadmissible, can be properly presented where the defendant has 'opened the door'." *Id.*

The state never claimed that the knife found in the trailer was the actual murder weapon. As discussed previously, the pathologist who performed the autopsy testified that the wound which caused the death of Ms. Strickland was made with a knife with an approximately eight inch blade and a width of one inch tapering to a point. The pathologist's opinion about the size and description of the weapon with which Ms. Strickland was stabbed fits the description of the knife recovered at Ryals' trailer. Because circumstances existed to associate the knife with Strickland, it was allowed to be entered as evidence.

"[D]ecisions concerning the relevancy of evidence are in the broad discretion of the trial court." *Terrain Enters, Inc. v. Mockbee*, 654 So. 2d 1122, 1131 (Miss. 1995). "Further, this Court will not reverse the trial court's decision unless abuse of that discretion is shown." *Id.* (citing *Hentz v. State*, 542 So. 2d 914 (Miss. 1989)). As similarly stated in Rule 103 of the Mississippi Rules of Evidence, "for a case to be reversed on the admission or exclusion of evidence, it must result in prejudice and harm or adversely affect a substantial right of a party." *Id.* (citing *Hansen v. State*, 592 So. 2d 114 (Miss. 1991)). Although Strickland's counsel timely objected to the State's motion to admit the knife into evidence, the trial judge made the following on-the-record explanation of why she would admit the knife into evidence:

Well, the court sees some difference in the fact that the knife was found in the trailer where the defendant had just been. The knife was found in the trailer where the jewelry of the victim was left. The owner of the trailer, or the occupant of the trailer says it wasn't his knife, he had never seen it before that morning. This witness is testifying that she had never seen the knife before, she didn't know where it came from. I think there is certainly enough to allow this in and let the jury consider it as one of the circumstances in this case. So, for that reason, I'll overrule your objection.

A substantial right of the defendant was not affected nor was he prejudiced by the admission of the knife into evidence, as it was presented. The prosecution made clear that the knife could not be directly proved as the actual murder weapon, and the jury was never told that it was the weapon used

to kill Ms. Strickland.

Strickland rests his position on his first issue on several Mississippi Supreme Court cases in which that court reversed the appellants' convictions because the trial judge had admitted evidence which the supreme court found to have been inadmissible. However, these cases can be distinguished. The main thrust of his argument is based on *Stringer v. State*, 491 So. 2d 837 (Miss. 1986), in which a shotgun with a thirty-inch barrel was introduced at the murder trial of Jimbo Stringer. The weapon actually used in the murder was a "riot gun." A riot gun was a shotgun with a shorter barrel and a wider shot pattern. The gun introduced was not the murder weapon, and could never be proved as such. The shotgun introduced at Stringer's trial was found at his apartment at the time of his arrest; however, the introduction of such evidence was irrelevant and extremely prejudicial to the defendant. The supreme court reversed on this and other grounds.

Another case cited by Strickland in objection to the admission of the knife is *Culberson v. State*, 405 So. 2d 126 (Miss. 1981). In that case, evidence proved a shotgun was used in the commission of the murder and a pistol was introduced at trial over the objection of the defendant. The supreme court ruled that admission of the pistol under those circumstances was error. *Id.* at 128. The other cases cited by Strickland in his argument against the admission of the knife all contain this same theme, *i. e.*, reversible error for the admission of irrelevant and prejudicial evidence that could result in a defendant's being found guilty. We hold that the knife introduced at Strickland's trial was properly admitted into evidence by the trial judge as another circumstance for the jury to weigh and examine in their determination of Strickland's guilt or innocence.

As stated previously, this Court must give great deference to the decisions of the trial judge in relation to the relevancy and admissibility of evidence. We reverse only when the defendant's rights have been adversely affected. Thus this Court resolves this issue adversely to Strickland's position and affirms the trial judge's admission of the knife into evidence.

Issue 2. The court erred in permitting the state to show evidence of prior arguments between the deceased and the defendant through hearsay testimony of Libby Holt, sister of the deceased.

Strickland also argues that the trial court erred allowing the testimony of Libby Holt, Ms. Strickland's sister, in which she described Strickland and Ms. Strickland's relationship based on her personal observations. In his brief, Strickland argues, "The basic fact is that the witness Holt was allowed to testify to hearsay and conclusions that she drew from hearsay as if she had been testifying to established facts without showing first how the testimony was relevant in point of time, if it had been otherwise admissible."

Rule 701 of the Mississippi Rules of Evidence allows a lay witness to testify and give their own opinions or inferences. However, "[S]uch an opinion is admissible only if it is rationally based on the witness' perception and is helpful to a clear understanding of his testimony or of a fact in issue." *Newsom v. State*, 629 So. 2d 611, 614 (Miss. 1993). Counsel for Strickland objected to questions the State asked of Holt concerning the type of relationship her sister Ms. Strickland had with Strickland. This objection was based on the counsel's argument that anything said by the witness in response to

that line of questioning would be inadmissible hearsay.

The court responded to Strickland's counsel's objection by stating,

[T]he relationship of the parties is certainly material and relevant to the issues before this court. So, I will let this witness testify to what she has observed, what she has seen of the condition of Ms. Strickland, and any statements the defendant has made to her concerning any threats against Ms. Strickland.

The court explained that Ms. Holt could testify to her personal observations about the Strickland's relationship, as allowed by Rule 701 of the Mississippi Rules of Evidence. As the State's questioning of Holt continued, the trial judge sustained Strickland's objection to the State's question about whether Ms. Strickland was afraid of Strickland.

In his brief, Strickland argues that the testimony in which Holt described the Strickland's relationship as "rocky" was inadmissible even though the trial judge admitted it. He cites *Wells v. State*, 604 So. 2d 271 (Miss. 1992), and writes that "the conclusions and impressions of the witness were not proper and this case must be reversed." Ms. Holt's description of her sister's marriage to Strickland as "rocky" was based on her personal observations of her sister's marriage. Anyone could describe a relationship or a marriage as "rocky" if the couple had a history of domestic abuse and were separated seven times. Holt testified the Strickland's separated, "I'd say at least seven times, uh, minimum, because she [Ms. Strickland] would always come to my house and stay during those times of separation."

Holt was only allowed to testify to the Stricklands' marital relationship within parameters of which she was aware and had first-hand knowledge. The conclusions she stated were general in nature, and they may have assisted the jury as finders of fact to understand better the Stricklands' marital relationship. The two-part test to determine the admissibility of a lay opinion were met. "As the comment to Rule 701 explains, there is a two-part prerequisite test for the admissibility of lay witness opinion testimony. First, the information must assist the trier of fact; and second, the opinion must be based on first-hand knowledge." *Wells*, 604 So. 2d at 278.

The facts of the *Wells* case, cited by Strickland in defense of his argument, are not applicable to the evidence in the case *sub judice*. In *Wells*, a store clerk was taking money from a cash register by not ringing up the sales made at her cash register. *Id.* Video tape existed of the clerk at her register, and the owner of the store, not present in the store at the time the tape was made, testified at trial to the clerk's actions while the tape played. *Id.* The Mississippi Supreme Court explained the reason such testimony should not be allowed:

The witness should not tell the jury what they can clearly see for themselves on the tape, as [the witness] did. It naturally follows that if the jury can clearly see for themselves and if the witness is in no greater position to relate what is depicted by personal observation of the events, then his opinion is not one which is helpful to the trier of fact. *See* M.R.E. 701 & Comment. Furthermore, [the witness] also describes instances wherein he alleges that Wells is pocketing cash from the register. These scenes cannot be viewed on the tape since Wells is turned away from the camera. Once again, [the witness] is offering impermissible opinion testimony that Wells is pocketing the money. Since [the witness] had no first-

hand, personal observation of Wells' activities on May 6, 1988, such opinion testimony likewise fails the first prong of the Rule 701 test and should not have been allowed into evidence.

Id. at 279.

The testimony as presented in *Wells* is distinguishable from Holt's testimony about the Stricklands' relationship. Unlike with a video tape, the jury in this trial could base their decision only on the testimony given by Holt. Holt's personal first-hand knowledge of the events in their relationship may have proven extremely helpful to the jury as the trier of fact, whose duty it was to determine whether Strickland was guilty of the crime of murder of his former wife.

Ms. Holt's testimony met the two-prong test of Rule 701 of the Mississippi Rules of Evidence. Her testimony was necessary for the jury to fully understand the relationship of Ms. Strickland and her former husband, which, in the words of the trial judge, was "material and . . . relevant to the question that's before this court and before this jury." This court concludes that the trial court did not err when it allowed Libby Holt to testify about the Stricklands' relationship as husband and wife, and it resolves this second issue adversely to the Appellant, Roy Strickland.

V. SUMMARY

This was a circumstantial evidence case; but "the State may prove a crime solely by circumstantial evidence as long as that evidence proves the defendant's guilt beyond a reasonable doubt." *Walton v. State*, 642 So. 2d 930, 932 (Miss. 1994). The circumstances surrounding the discovery of the knife found in Ryals' mobile home and its remarkable resemblance to the kind of weapon which Dr. Paul McGarry opined caused the death of Charlotte Diane Strickland rendered the knife admissible into evidence as but another circumstance which the jury might consider in their determination of Strickland's guilt or innocence. The testimony of Ms. Strickland's sister, Libby Holt, as to the type of relationship Strickland and Ms. Strickland had, was both properly limited and therefore properly allowed by the trial judge. Holt's testimony was relevant and material to the key issues in this case; therefore, the trial judge did not err when she allowed the testimony. As an appellate court, this court must defer to the trial judge's decisions on the admissibility of evidence. Thus, we affirm the trial court's judgment of Strickland's guilt of murder in the death of his former wife on August 26, 1990, and its sentence of Strickland to serve a life sentence in the custody of the Mississippi Department of Corrections as a habitual offender.

THE GEORGE COUNTY CIRCUIT COURT'S JUDGMENT OF THE APPELLANT'S GUILT OF THE CRIME OF MURDER AND ITS SENTENCE TO SERVE A TERM OF LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER ARE AFFIRMED. COSTS ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HERRING, J., NOT PARTICIPATING.