

IN THE COURT OF APPEALS 03/25/97
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00304 COA

JAMES STEVENSON

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. LEE J. HOWARD

COURT FROM WHICH APPEALED: CIRCUIT COURT OF LOWNDES COUNTY

ATTORNEY FOR APPELLANT:

JOE O. SAMS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: CRIMINAL FELONY

TRIAL COURT DISPOSITION: CONVICTED OF MURDER; SENTENCED TO A
MANDATORY TERM OF LIFE IMPRISONMENT IN THE CUSTODY OF MDOC

MANDATE ISSUED: 8/19/97

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

PAYNE, J., FOR THE COURT:

James Stevenson was convicted of murder and was sentenced to serve a mandatory term of life imprisonment in the custody of the Mississippi Department of Corrections. Stevenson appeals, assigning one issue as error: Did the trial court err in permitting the State to use Stevenson's prior conviction for grand larceny to impeach his veracity as a witness?

Finding no error, we affirm.

FACTS

James Stevenson was indicted, tried, and convicted in the Circuit Court of Lowndes County for the murder of Angela Williams. Prior to resting its case in chief, the State requested a *Peterson* hearing on the admissibility of Stevenson's prior conviction of grand larceny for impeachment of credibility under Mississippi Rule of Evidence 609(a)(1). The trial court ruled that the probative value of the prior conviction outweighed its prejudicial effect and authorized its admission should Stevenson testify. Stevenson did testify, and the prosecutor elicited the conviction on cross-examination. Stevenson requested and was granted an instruction limiting consideration of the prior conviction for impeachment purposes only. Stevenson, feeling aggrieved, now appeals.

ANALYSIS

I. DID THE TRIAL COURT ERR IN PERMITTING THE STATE TO USE STEVENSON'S PRIOR CONVICTION FOR GRAND LARCENY TO IMPEACH HIS VERACITY AS A WITNESS?

Stevenson contends that the trial court, in allowing evidence of his prior conviction of grand larceny, prejudiced the Appellant and robbed him of the protection of the Mississippi Rules of Evidence. Stevenson argues that the trial court did not properly weigh each factor as outlined in *Peterson v. State*, 518 So. 2d 632, 636 (Miss. 1987). Stevenson contends that one must consider each factor in "great detail" if one is to properly weigh the probative value of the conviction against the prejudicial effect of its admission. Specifically, Stevenson argues that the impeachment value of the prior crime, which he states is not a crime of dishonesty or false statement, and the importance of his testimony weigh against admissibility, and that the "affect [sic] of his prior conviction which was improperly highlighted to the jury . . . so prejudiced this Defendant that he did not receive a fair trial."

"When a criminal defendant elects to take the witness stand in his own defense he is subject to being

impeached under Rule 609, M.R.E., with evidence of prior convictions." *Bogard v. State*, 624 So. 2d 1313, 1316 (Miss. 1993) (quoting *Hawkins v. State*, 538 So. 2d 1204, 1206 (Miss. 1989)). Impeachment by evidence of conviction of a crime is governed by Mississippi Rule of Evidence 609(a) which reads as follows:

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect on a party or (2) involved dishonesty or false statement, regardless of the punishment.

Id. The Mississippi Supreme Court has mandated that Rule 609(a) requires the trial court to make an on-the-record determination that the probative value of the prior conviction outweighs its prejudicial effect before admitting this type of evidence. *Peterson*, 518 So. 2d at 636. In making this determination, the *Peterson* court identified the following factors as essential to the determination: (1) the impeachment value of the crime, (2) the time of the conviction and the witness' subsequent history, (3) the similarity between the past crime and the charged crime, (4) the importance of the [witness'] testimony, and (5) the centrality of the credibility issue. *Id.*

A review of the record in the present case indicates that the prosecution made a prima facie showing that the conduct giving rise to the prior conviction was such that it reasonably bore upon Stevenson's propensity for truthfulness. *Bogard*, 624 So. 2d at 1316. The prosecution argued that Stevenson's prior conviction for grand larceny was admissible because the conviction was less than ten (10) years old; the grand larceny conviction is not similar to murder, the crime for which Stevenson is presently being tried; and the jury needs to know whether or not they are dealing with a credible witness, a fact to which Stevenson's prior conviction pertains. Following the arguments by both the State and the defense, the judge, indicating that he had considered the *Peterson* factors, then made an on-the-record finding that the probative value of the grand larceny conviction outweighed its prejudicial effect. The judge stated in his ruling that "[t]his is a case in which the defendant's credibility is, should he testify, a matter of primary consideration in that he is the sole surviving witness to this homicide and his credibility is of a central issue in this case."

We find that the trial judge satisfied the requirements under Mississippi Rule of Evidence 609(a)(1). We find further that the judge did not abuse his discretion in making his determination regarding the admissibility of Stevenson's prior conviction; and, as such, decline the Appellant's invitation to reweigh the *Peterson* factors. Interestingly, however, we note that Stevenson, in his brief, concedes that three of the five (5) factors favor admissibility of the prior conviction.

We find no merit in Stevenson's argument and therefore affirm the judgment of the trial court.

THE JUDGMENT OF THE LOWNDES COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE TO A LIFE TERM IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS

APPEAL SHALL BE TAXED TO LOWNDES COUNTY.

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