

IN THE COURT OF APPEALS 03/26/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00833 COA

CHUCK OZAH

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: CLAY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

THAD BUCK

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY KLINGFUSS

DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: MURDER

TRIAL COURT DISPOSITION: SENTENCED TO THE MISSISSIPPI DEPARTMENT OF
CORRECTIONS FOR THE REST OF HIS NATURAL LIFE

BEFORE FRAISER, C.J., BARBER, AND DIAZ, JJ.

BARBER, J., FOR THE COURT:

Chuck Ozah was indicted and convicted of the murder of Darrick Collins pursuant to section 97-3-19(1) of the Mississippi Code. He was sentenced to imprisonment for life in the state penitentiary. Feeling aggrieved, Ozah appeals his conviction on the grounds that the trial court erred in overruling his request for a subpoena duces tecum for the production of the juvenile record of the victim. The request was made to the circuit court after trial commenced, rather than to the youth court as required by statute.

FACTS

On October 3, 1993, the victim, Darrick Collins, a sixteen year-old young man died as a result of two gunshot wounds and a blunt trauma to the head. Chuck Ozah was arrested and charged with murder for the death of Darrick Collins.

Ozah claimed that his actions were in self-defense. There was testimony to the effect that Collins was associated with a gang in West Point, Mississippi. According to Ozah, Collins was the aggressor not only on the night he died, but also during a previous altercation of physical violence involving Ozah. Based upon this evidence, Ozah requested the court during trial to order a subpoena duces tecum for the production of Collins' youth court records. The stated purpose of the requested records was to show Collins' propensity for violence, which would tend to corroborate Ozah's version of self-defense. The trial court overruled Ozah's request for the subpoena duces tecum, and the records, if any, were never produced.

ANALYSIS

Ozah argues on appeal that the trial court erred when it denied his request for the production of Collins' youth court records because they showed Collins' propensity for violence which would tend to corroborate Ozah's version of self-defense. The record reflects the following colloquy:

BY MR. BUCK: Yes, sir. Your Honor, the State would request a subpoena duces tecum for Patricia Cantrell to produce the youth court records of Darrick Collins. We--we'd make that motion at--at this time.

BY THE COURT: For what purpose; what--

BY MR. BUCK: Because it's in evidence that he was the aggressor in this case and that, uh, it's our understanding that he has a violent youth court record, and I think that's admissible before the jury that they know his propensity for violence.

BY MR. RAY: Your Honor, there's no evidence that he was the aggressor. The only thing that -- that we've heard that from is Mr. Buck asking the witnesses. There's not one shred of evidence other than his assertion of that.

BY THE COURT: I agree that there is no evidence before this jury that the deceased was the aggressor in this incident. The only evidence of that comes from a prior altercation some two months previous.

BY MR. BUCK: Your Honor, in the --the statement that's been admitted into evidence, it's testi-- it does say in that statement that he--Darrick Collins hit, uh, Chuck Ozah first, and that's what started the whole altercation.

BY MR. RAY: Your Honor, the defendant's saying that it was aggression and self-defense does not make it so. He has to prove some type of overt act other than just his statement.

BY THE COURT: No. His -- his statement is sufficient to put the aggressor issue in issue before a jury. What I want to know is why I'm waiting till the second day of trial to have this request made?

BY MR. BUCK: Your Honor, I did file a motion that--for the State to produce any prior records of -- of their witnesses and also the defendant, and the defendant's records, including the youth court; my motion was also including the youth court records and I have not received them, and I did file that motion. I think it's in the court file.

BY THE COURT: Being in the court file doesn't bring it to my attention. I didn't have any idea you wanted youth court records until right now.

BY MR. BUCK: Well I--I--I discussed it, uh--

BY THE COURT: What do you suspect is in there?

BY MR. BUCK: I don't know, your Honor. I--I just understand that he's got a youth court record, and uh, there may be some violent, uh, charges in that youth court record.

BY THE COURT: Then what you're telling me is that you want the youth court records to see whether there is or not.

BY MR. BUCK: Yes, sir.

BY THE COURT: Fine. The motion is overruled.

Ozah cites the cases of *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) and *Williams v. State*, 544 So. 2d 782 (Miss. 1987) in support of his argument that the trial judge should have performed an *in camera* inspection of the victim's youth court records to determine whether they contained exculpatory evidence of such character that it probably would change the outcome of the trial.

The record reveals that Ozah did not request the trial judge to perform an *in camera* inspection of the records. What Ozah requested was that he be given the records directly for his inspection. According to the case law cited by Ozah, he is not entitled to this. Consequently, Ozah is barred from raising this issue on appeal because he failed to raise this issue at trial. The trial court in this instance was never presented with the concept of an *in camera* inspection to determine if there was any exculpatory material. The trial court cannot now be held in error on a legal point never presented to it for consideration. *Chase v. State*, 645 So. 2d 829, 846 (Miss. 1994).

Assuming, arguendo, that the issue had been properly raised on appeal, it is doubtful that Ozah would have been entitled to a review of Collins' youth court record for two reasons. First, Ozah's request for discovery of the records in question was dated July 25, 1994, two days prior to the commencement of trial. This was in violation of the pre-trial order dated April 12, which mandates that "[i]f discovery is required by the Defendant, the request shall be made no later than April 19, 1994, and completed thirty days from the date thereof." Second, Ozah's discovery request was filed with the Clay County Circuit Court. According to section 43-21-261 of the Mississippi Code, it was incumbent upon Ozah to first petition the youth court for access to the records. The statute reads in pertinent part:

[R]ecords involving children shall not be disclosed, . . . except pursuant to an order of the youth court Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons:

....

(c) A judge of any other court or members of another court staff; . . .

There is no indication in the record that this request was ever made to the youth court, nor is there any evidence that an order for disclosure was issued by the youth court. Therefore, the trial judge was not in error in refusing to issue the subpoena duces tecum because he was essentially without the authority to do so. We cannot find reversible error under these circumstances. Therefore, we affirm.

THE JUDGMENT OF THE CLAY COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED AGAINST CLAY COUNTY.

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