

IN THE COURT OF APPEALS 12/17/96
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00662 COA

MACK C. WELLS

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. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAT DONALD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIDRE MCCRORY

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: CRIMINAL-FELONY

TRIAL COURT DISPOSITION: AGGRAVATED ASSAULT--SENTENCED AS A HABITUAL
OFFENDER TO A TERM OF LIFE IMPRISONMENT IN THE CUSTODY OF THE
MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

FRAISER, C.J., FOR THE COURT:

Appellant Mack C. Wells (Wells) was indicted, tried, and convicted of aggravated assault in the Scott County Circuit Court. He was sentenced as a habitual offender to serve a term of life imprisonment in the custody of the Mississippi Department of Corrections. At trial, the victim and a witness to the assault were questioned about threats Wells made to them before and during the crime. Wells objected once to the relevancy and another time objected with no specific reason.

The trial court overruled Well's objections, and he appeals presenting the following issue:

I. DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN ADMITTING, OVER THE OBJECTIONS OF DEFENDANT, CERTAIN "BAD ACTS" AND "OTHER CRIMES" EVIDENCE?

Finding no error, we affirm.

FACTS

Ada Wells (Ada) and Mack Wells (Wells) were divorced on August 15, 1994. Ada and her four children remained in the house that she and Wells jointly owned. Two weeks after the divorce, Reginald Dean (Dean) moved in and began living with Ada and her children. On the night of September 30, 1994, Dean awoke because of a burning sensation on his back. As he opened his eyes, Dean was horrified to see Wells standing above him with a four-inch long double-edged knife. Wells had stabbed Dean repeatedly. Both of Dean's lungs were pierced four times each, and he suffered a punctured liver. Dean remained hospitalized for more than two weeks as a result of the incident. During the stabbing, Wells told Dean that everyone in the house was going to die. Ada testified that she awoke and saw Wells stabbing Dean. She also heard Wells threaten to kill everyone in the house.

Wells fled the house, hiding the knife at the McCarty feed mill. Subsequently, Wells was arrested and gave a statement to the police in which he admitted stabbing Dean. The admissibility of Wells' statement is not challenged.

I. DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN ADMITTING, OVER THE OBJECTIONS OF DEFENDANT, CERTAIN "BAD ACTS" AND "OTHER CRIMES" EVIDENCE?

During trial, the prosecutor asked Dean to relate the events that took place the night of the assault. Specifically, the prosecutor asked if Wells said anything about killing anyone. Dean replied that Wells had threatened to kill everyone in the house. At that point, Wells objected on grounds of relevancy, and the trial court overruled the objection. On cross-examination of Ada and Dean, Wells broached

the subject of threats and asked if Ada or Dean had ever threatened Wells. The prosecution revisited the subject of threats on redirect examination of Dean, and asked if Wells had ever threatened Dean or Ada prior to the assault. Wells made a general objection, which the trial court overruled, and Dean answered that Wells had threatened to stab him two weeks earlier. On appeal, Wells maintains that the trial court committed reversible error in admitting "bad acts and other crimes" evidence over the objection of the defendant. Wells' argument is meritless for several reasons.

For an issue to be preserved for appeal, the trial court must have notice of the defect at trial so that it has the opportunity to make a ruling. While Wells argues on appeal that the testimony was impermissible bad acts and other crimes evidence, he objected at trial on the grounds of relevancy. "The assertion on appeal of grounds for an objection which was not the assertion at trial is not an issue properly preserved on appeal." *Haddox v. State*, 636 So. 2d 1229, 1240 (Miss. 1994); *Baine v. State*, 606 So. 2d 1076 (Miss. 1992); *Willie v. State*, 585 So. 2d 660, 671 (Miss. 1991); *Crawford v. State*, 515 So. 2d 936, 938 (Miss. 1987); *Watson v. State*, 483 So. 2d 1326 (Miss. 1986). "A trial judge will not be found in error on a matter not presented to him for decision." *Ballenger v. State*, 667 So. 2d 1242, 1256 (Miss. 1995), *cert. denied*, 116 S. Ct. 2565 (1996). The trial judge in Well's case had no notice of his appellate complaint to bad acts and other crimes. Moreover, Wells did not specifically object to Dean's testimony about the threat made two weeks before the assault. Wells simply objected to that testimony without giving a reason.

Objections to evidence must bring to the attention of the trial judge the specific ground on which it is contended such evidence is inadmissible so that the trial judge may determine whether or not such evidence is available to objector's adversary. The rule requiring specific objections is necessary because to permit litigants to hold back objections until on appeal would mean that costly new trials would be had where valid objections could have been sustained during the trial.

Lucas v. State, 381 So. 2d 140, 143-44 (Miss. 1980). Wells is procedurally barred from raising this objection for the first time on appeal.

Even if Wells had made the proper objections, the trial judge did not err in allowing Dean and Ada's testimony about Wells' threats. If such testimony was evidence of "bad acts and other crimes" under Mississippi Rule of Evidence 404(b), it would have been permissible to show Wells' motive and knowledge, as well as to show the jury the complete story.

Proof of another crime or act is also admissible where necessary to identify the defendant, to prove motive, or to prove scienter. Evidence of other crimes or bad acts is also admissible in order to tell the complete story so as not to confuse the jury. . . . [T]he State has a 'legitimate interest in telling a rational and coherent story of what happened.'

Ballenger, 667 So. 2d at 1257 (Miss. 1995) (citations omitted).

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF AGGRAVATED

**ASSAULT AND SENTENCE OF LIFE IMPRISONMENT AS A HABITUAL OFFENDER
IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS
AFFIRMED. COSTS ARE TAXED TO SCOTT COUNTY.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**