

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01155 COA

PENNY LYNN MEEKS

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. BARRY FORD

COURT FROM WHICH APPEALED: ALCORN COUNTY CIRCUIT COURT

FOR APPELLANT:

TERRY L. WOOD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE LOWRY

DISTRICT ATTORNEY: JOHN R. YOUNG

NATURE OF THE CASE: CRIMINAL--FELONY (MURDER)

TRIAL COURT DISPOSITION: CONVICTED OF MURDER AND SENTENCED TO LIFE
IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF
CORRECTIONS

MANDATE ISSUED: 5/29/97

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

THOMAS, P.J., FOR THE COURT:

Penny Meeks was convicted of murder. Feeling aggrieved, she appeals assigning the following issues as error. We have combined and renumbered Meeks' assignments for clarity purposes.

I. WHETHER THE TRIAL COURT ERRED IN EXCLUDING CERTAIN TESTIMONY AS IRRELEVANT;

II. WHETHER THE TRIAL COURT ERRED IN ADMITTING PROPENSITY EVIDENCE;

III. WHETHER THE TRIAL COURT ERRED IN PERMITTING THE USE OF PROPENSITY EVIDENCE DURING REBUTTAL;

IV. WHETHER THE TRIAL COURT ERRED IN DENYING MEEKS' MOTION FOR JNOV OR NEW TRIAL BECAUSE MEEKS WAS NEVER ARRAIGNED;

V. WHETHER THE TRIAL COURT ERRED IN DENYING MEEKS' MOTION FOR JNOV OR NEW TRIAL ON THE BASIS THAT THE CONVICTION OF MURDER WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE; AND

VI. WHETHER CUMULATIVE ERRORS DENIED MEEKS' HER RIGHT TO A FAIR TRIAL.

Finding no error, we affirm.

FACTS

In August of 1993, Penny Meeks and Cassandra Grimes lived with Patricia Lambert in Lambert's house trailer in rural Alcorn County. Lambert was Grimes' mother, and Meeks was a friend of Grimes. Both Grimes and Meeks were eighteen years old. At the time of the murder, Meeks was pregnant with the child of Kevin "Butch" Clemmons.

Shortly before her death, Lambert informed Alcorn County Sheriff's Department investigator Houston Brown that her daughter, Grimes, had threatened to kill her. Lambert gave Brown a bag containing cocaine and told Brown that her daughter was using the cocaine.

On the night of August 19, 1993, Lambert and Grimes went to the Twentieth Century Club and drank beer until the club closed at midnight. Clemmons was also present at the club. Prior to leaving the club, Grimes allegedly asked her mother for money to buy cocaine. The two briefly argued, and then Lambert left the club with Clemmons. After the two had sexual relations, Clemmons returned Lambert to the club. Clemmons then went to Mauri Mills' house. Mills was Clemmons' girlfriend at the time.

After the club closed, Grimes went to a friend's apartment. Grimes went home around 1:30 A.M. and soon went to bed. Prior to going to bed, Grimes told Meeks what had happened between Lambert and Clemmons. When Grimes arrived at the trailer, Lambert had not yet gotten home. Grimes later testified that she awoke later that night to "hollering and banging." Grimes went into the living room and saw Meeks standing over Lambert with a baseball bat. Lambert had been beaten to death. Grimes attempted to telephone for help for her mother, but Meeks stopped her. Meeks devised a plan to dispose of the body, and the two women placed Lambert in a car, and Meeks ran the car off the side of the highway near Corinth.

Meeks' version of the story is somewhat different from Grimes' version. Meeks testified at trial that Grimes arrived home very drunk and angry with her mother. Meeks said that both she and Grimes were awake when Lambert came home. She testified that when she went to bed, Lambert and Grimes were arguing. Meeks testified that Grimes woke her and told her that she had killed her mother. Meeks refused to help Grimes until Grimes called Clemmons, who told Meeks that he would beat her if she did not help Grimes.

At trial, Clemmons denied that he spoke to Meeks on the night of the murder. Mauri Mills corroborated Clemmons' denial, testifying that Clemmons slept with her on the night of the murder and that the telephone did not ring.

Shortly after the crime, Grimes confessed to the coverup. Four days prior to trial, Grimes pled guilty to accessory after the fact. At the time of trial, Meeks was married to Clemmons but was in the process of getting a divorce. Meeks was found guilty of murder.

ANALYSIS

I. WHETHER THE TRIAL COURT ERRED IN EXCLUDING CERTAIN TESTIMONY AS IRRELEVANT.

The trial court excluded two portions of testimony as irrelevant. Prior to the murder, Lambert informed investigator Houston Brown that Grimes had threatened to kill her. During this conversation, Lambert gave Brown a bag containing crack cocaine and told Brown that her daughter was using cocaine. The trial court allowed Brown to testify about the death threats; however, the court refused to allow Brown to testify about the crack cocaine.

During cross-examination, Grimes testified that she had used cocaine in the past but not within years of her mother's murder. However, during direct examination, Butch Clemmons testified that Lambert and Grimes had argued about cocaine on the night of the murder.

Meeks asserts that the trial court erred in refusing to allow Brown to testify that Lambert had told him about her daughter's use of cocaine and that Lambert had given him the bag containing cocaine which she had found, arguing that the testimony was relevant to impeach Grimes and admissible under Mississippi Rule of Evidence 803(24).

The trial court ruled that the evidence was irrelevant. The relevancy and admissibility of evidence are largely within the discretion of the trial court, and we will reverse such a ruling only where that discretion has been abused. *Johnston v. State*, 567 So.2d 237, 238 (Miss.1990). Even though Brown's testimony regarding cocaine was excluded, Meeks certainly presented proof of Grimes' drug use through both Clemmons' and Meeks' testimony. The trial court did not abuse its discretion in refusing to allow this testimony.

The trial court also excluded the testimony of Michael Grimes, Sandy Grimes' husband, that Sandy had beaten him with a blunt instrument. This assignment of error is without merit. First, Meeks is procedurally barred from raising this issue since she has failed to support this assignment of error with any citation of authority. *Gerrard v. State*, 619 So. 2d 212 (Miss. 1993). Notwithstanding the procedural bar, we cannot say that the trial court abused its discretion in refusing to allow this testimony. Although Meeks attempted to proffer the testimony, Meeks failed to elaborate on any of the details of this alleged attack, including where, when and how the beating occurred. Considering the broad discretion granted the trial court in determining the relevancy of evidence, we refuse to hold the trial court in error on this ruling.

Additionally, Meeks' offer of proof was insufficient to allow this Court to reverse the trial court's finding that the testimony was irrelevant. Although Meeks did indicate that Michael Grimes would testify that Sandy Grimes had beaten him, Meeks failed to provide any specifics of the testimony such as when this action took place. There is no merit to this issue.

II. WHETHER THE TRIAL COURT ERRED IN ADMITTING PROPENSITY EVIDENCE.

During cross-examination of Sandy Grimes, the following exchange took place:

Q. Was Penny--Penny wasn't working at the Sonic when your mother died?

A. No, she got fired for chasing a girl around with a baseball bat.

Mr. Wood: Your Honor, I would ask that that be stricken from the record. It's non-responsive to the question.

The Court: It was in response to your question. You asked if she was working at--was working at the place. I will not strike it.

Later during the course of cross-examination of Grimes, defense counsel asked if Grimes had ever heard Meeks and Clemmons argue. Grimes stated that she had observed them argue about Clemmons' shoes which were found in another woman's car, the same woman who was identified by Grimes as the woman Meeks had chased around the Sonic with the baseball bat. During redirect of Grimes, the trial court allowed the State to inquire further into the incident at the Sonic. Defense counsel objected to the testimony on relevancy grounds, but the trial court overruled the objection, stating that the defense had opened the door on cross-examination.

The trial court later permitted the State to elicit testimony from Mauri Mills that she had physically fought with Meeks over Clemmons. The defense did not object to this testimony.

Meeks asserts that Grimes' answer went beyond the requirements of the question and that Grimes' testimony and Mills' testimony injected improper propensity evidence. Meeks is procedurally barred from raising this issue as error since she failed to object to Mills' testimony at trial and objected to Grimes' testimony only as unresponsive or irrelevant. A specific objection at trial waives all other grounds of objection to the evidence. *Duplantis v. State*, 644 So. 2d 1235, 1245 (Miss. 1994); *Conner v. State*, 632 So. 2d 1239 (Miss. 1993); *Fleming v. State*, 604 So. 2d 280, 292 (Miss. 1992).

This issue is further barred since Meeks opened the door to this testimony herself. Meeks cannot complain on appeal concerning evidence that she elicited at trial. *Fleming v. State*, 604 So.2d 280, 289 (Miss. 1992). There is no merit to this issue.

III. WHETHER THE TRIAL COURT ERRED IN PERMITTING THE USE OF PROPENSITY EVIDENCE DURING REBUTTAL.

During the rebuttal portion of the trial, the State called Tina Hammond, the former roommate of Patricia Starnes, the woman whom Meeks allegedly chased around the Sonic with her baseball bat. Hammond testified that Meeks and Grimes came to the apartment she shared with Starnes several days before the murder. Hammond testified that Meeks threatened to "stomp [Starnes'] ass." Although she never saw it, Hammond stated that she thought Meeks had a weapon during the encounter which "clunked" when Meeks dropped it into the bed of the pickup truck she was driving.

Meeks did not object to this testimony until halfway through the witness' testimony, and when she did object, she objected only to relevancy. Therefore, this assignment of error is waived. We will not find a trial court in error on a matter not presented to it for review. *Duplantis*, 644 So. 2d at 1245.

**IV. WHETHER THE TRIAL COURT ERRED IN DENYING
MEEKS' MOTION FOR JNOV OR NEW TRIAL
BECAUSE MEEKS WAS NEVER ARRAIGNED.**

Without specifying what relief she requests as a result of this alleged error, Meeks asserts that she was not arraigned as required in capital cases under Rule 3.01 of the Uniform Criminal Rules of Circuit Court Practice. Rule 3.01, which was in effect at the time of trial, provided that in all cases not "capital," a defendant may waive arraignment if the defendant is represented by counsel. Meeks asserts that, even though she never objected to the State's failure to arraign her or requested that she be arraigned, she could not waive arraignment since her case was a capital case.

Arraignment is jurisdictional and may be waived. *Thomas v. State*, 26 So. 2d 469, 470 (1946). Since Meeks failed to object prior to trial, she has waived any alleged error. *Id.*; *see also Gentry v. State*, 416 So. 2d 650 (Miss. 1982) (holding that even if arraignment was improperly conducted during vacation, conviction need not be set aside without a showing of prejudice by the defendant.) There is no merit to this issue.

**V. WHETHER THE TRIAL COURT ERRED IN DENYING
MEEKS' MOTION FOR JNOV OR NEW TRIAL ON THE BASIS
THAT THE CONVICTION OF MURDER WAS NOT SUPPORTED
BY SUFFICIENT EVIDENCE.**

Meeks asserts that the evidence did not support a conviction for murder, only manslaughter. Both manslaughter and murder instructions were submitted to the jury. The jury was properly instructed that if the deliberate design to kill was formed prior to the time the wound was made, then Meeks was guilty of murder. The jury convicted Meeks of murder.

To test the sufficiency of the evidence of a crime, this Court must

[w]ith respect to each element of the offense, consider all of the evidence - not just the evidence which supports the case for the prosecution - in the light most favorable to the verdict. The credible evidence which is consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that

reasonable and fair minded jurors could only find the accused not guilty.

Wetz v. State, 503 So. 2d 803, 808 (Miss. 1987) (citations omitted).

Considered in the light most favorable to the State, the evidence showed that Meeks, after learning of Lambert's affair with Clemmons, waited in the trailer with her baseball bat for a period of time until Lambert arrived home and then intentionally beat her to death with the bat. The evidence is sufficient to support the jury's verdict. This issue is without merit.

VI. WHETHER CUMULATIVE ERRORS DENIED MEEKS A FAIR TRIAL.

Since Meeks has shown this Court no error, there is, of necessity, no merit to this issue. Meeks was not entitled to a perfect trial, merely a fair one. *Doby v. State*, 557 So. 2d 533, 542 (Miss. 1990). Meeks received a fair trial.

Finding no merit to any of these issues, we affirm.

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

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