

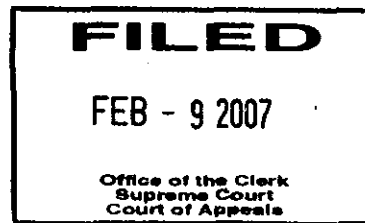
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DARON J. ROUSTER

APPELLANT

VS.



NO. 2006-KA-0451

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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NO. 2006-KA-0451-COA

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Procedural History

Daron J. Rouster was convicted in the Circuit Court of the First Judicial District of Hinds County on one count of murder and two counts of aggravated assault and was sentenced one term of life imprisonment and two 20-year terms, all to be served consecutively. (C.P.53-55) Aggrieved by the judgment rendered against him, Rouster has perfected an appeal to this Court.

Substantive Facts

In February 2005, Corderries Brown [hereinafter "Corderries"] was living Apartment E-22 of the Audubon Grove Apartments on West McDowell Road in Jackson. The defendant, Daron Rouster, had "dated" Corderries' sister Rhonda Brown [hereinafter "Rhonda"] "and had two little boys by her." At the time in question, Ms. Brown was living in this apartment with these two young children,

along with her mother, Carolyn Gray, two other sisters and another brother. (T.184-89)

At about noon on February 16, 2005, Corderries was playing a video game in a bedroom with his younger brother Christopher Brown [hereinafter "Christopher"]. Rhonda "was in the second bedroom." At some point, the defendant entered the apartment, although Corderries "didn't see him come in." At one point Corderries heard Rhonda "make a joke or something" about the defendant. Approximately three minutes later, he heard her scream for help. Corderries and Christopher went to Rhonda's bathroom to find Rouster "standing by the bathroom door." Rhonda was in the bathroom. As the brothers approached, Rouster "pulled the gun out." Rouster pointed the gun at Corderries and Christopher, about three inches away from their faces. The defendant then ran out of the room. (T.193-99)

As Christopher ran past Rouster, the defendant "threw the clip in the gun and shot." As Corderries turned around, Rouster "just kept shooting," hitting both boys from very close range. Corderries tried to run back to his sister's bedroom, but he was paralyzed from a gunshot wound. After Corderries fell, Rouster "made it in the room here she [Rhonda] was and shot her in the head" while she was sitting on the bed. Rouster then left the room. Corderries "crawled on up to where she was and grabbed her and held her. By that time the two little boys [were] in the room ... Davian and Devontae, the two young kids." Corderries told the older boy to bring him the cordless telephone; the boy did so; and Corderries called 911. As he held

his sister, he realized that she was dead. There were "[c]hunks of blood just everywhere on the side of the floor where she was ... " (T.199-206)

Shortly thereafter, the defendant came back into the room, sat down on the bed and stared at Corderries, who asked him, "Why did you shoot us?" Rouster replied that Rhonda had "made him do it" and tried to shake Corderries' hand. Afraid that he might suffer further injury, Corderries closed his eyes and "played dead." When he opened them, he saw Rouster "just stabbing himself and slashing his wrists." By that time, two police officers had arrived. (T.206-07)

Corderries testified that he sustained three gunshot wounds, one in the elbow and two in his back. He was paralyzed from the waist down. (T.211-12)

Christopher testified that after he heard Rhonda scream for help, he and Corderries went into the hallway next to the bathroom. As they stood about three inches from one another, Rouster "pulled out a gun" and Corderries and Christopher "stepped back." Rouster ran into the dining room; the brothers followed; and the defendant "put a clip into the gun and started shooting ... [s]traight down the hall." Although he was hit in his left arm, Christopher managed to grab his sister and take her to his bedroom, where he "put her on the side of the bed." At one point, he attempted to cover her with his body. After he "had backed off a little bit," Rouster came into the room still holding the gun. According to Christopher, "He started shooting my sister." He then tried to shoot himself, but the gun "didn't shoot." At that point, Rouster went into the next room, Rhonda's bedroom. (T.235-42)

Christopher went to his cousin's apartment, in the same complex, to get help. An "old woman" answered the door, but Christopher's cousin eventually came out.

Christopher told them both that Rouster had shot him, his brother and his sister. The police were telephoned. Christopher did not re-enter his own apartment that day. He identified the weapon marked for identification as State's Exhibit 10 as, in his words, "the gun I got shot with." (T.243-46)

Kevia Cates, the assistant manager of the Audubon Grove Apartments, testified that on February 16, 2005, she "had to do an inspection" of one of the units," which happened to be Apartment E-22, the Browns' residence. According to Ms. Cates, "Rhonda was there, Ms. Kelly's daughter and two of her sons, and there was another guy in there." Also present were two young children. Ms. Cates remained in the apartment for about ten minutes. She did not hear any arguing; nor did she see any sort of weapon. (T.258-60)

After she left Apartment E-22, she "went downstairs to take a picture of the outside AC unit." She then "went back over to the office," which was about 30 yards away, "to label the pictures" she had taken. Looking out the window, she "saw a guy come out and he fell to the ground on his knees." Thereafter, she heard a shot, and saw the man "acting like you would if you had been shot." Ms. Cates called 911. At trial, she identified Exhibit 13 as a Tec-9, "[t]he gun the guy was holding." (T.260-66)

Officer Stephan Coleman of the Jackson Police Department was on patrol that day when he was dispatched to the scene of the shootings. When he and other officers arrived at the Browns' apartment, Christopher, who was shirtless, barefoot and in "disarray," ran out and said, "He shot us." When the officers asked, "Who shot you?" he answered, "My sister's boyfriend." He then became ill, but was

able to point the officers in the direction of the other victims. (T.269-71)

After they secured a red Monte Carlo in the parking lot, Officer Coleman and his colleagues "walked toward the east breezeway of Building E." At that time they "observed a white tee shirt that was covered in blood and also a black handgun that was covered in blood laying [sic] in the grass area adjacent to the red Monte Carlo." Inside Unit 22-E, they found it "like a scene out of a horror movie. It was just blood everywhere." They also saw "shell casings... from the gun being fired." An Officer Liggins "removed the baby from the apartment for his safety." Following the sound of "moans and groans," Officer Coleman entered a bedroom to find "a black male sitting on the bed covered in blood. The floor was bloody. He had a knife in his hand cutting at his left wrist." Officer Coleman identified this man as the defendant, Daron Rouster. The defendant ignored "several verbal commands to put the knife down." (T.273-78)

Officer Coleman then observed another small child and Corderries, who told him, "Y'all come get me. My sister is dead. ... She is lying next to me. ... We all going to die in this apartment today." Having assured Corderries that medical help was en route, Officer Coleman removed the second child for his safety. When he returned to the apartment, he saw "the defendant crawling out of the bedroom into the hall area." The defendant "began to wipe his wrists on the carpet," crawled to the bathroom, turned on the faucet and got into the bathtub. Finally, the medics arrived and found him there. (T.278-81)

At the time of this crime, Andrew McGahey was a crime scene investigator for the Jackson Police Department. Mr. McGahey testified that the recovered the

weapon from the grassy area described by Officer Coleman. He found Rhonda's lifeless body on one of the beds. He also recovered spent nine millimeter cartridges from the living room, hallway, and two bedrooms. Seventeen projectiles or casings were found inside the apartment. Mr. McGahey retrieved the magazine, or clip, which was capable of holding 15 to 30 rounds but was empty. A live round was found by the passenger side of the red Monte Carlo in the parking lot. (T.285-329)

Starks Harthcock, accepted by the court as an expert in the field of firearms and toolmark identification, testified that he had examined and test-fired the nine-millimeter weapon admitted into evidence as State's Exhibit 10. The firearm had a 12-round capacity. (T.339-49) Having examined the casings and projectiles collected at the crime scene, Mr. Hartcock summarized his findings as follows:

The cartridge cases in crime lab submissions 2, 4, 7, 9 and 10-U, and the projectiles in submissions 12, 15, 17, and 18 bear class characteristics consistent with that gun. However, they could not be positively included or excluded as having been fired in that gun.

(T.350)

Dr. Steven Timothy Hayne, accepted by the court as an expert in the field of forensic pathology, performed the autopsy on the decedent's body. The decedent had sustained three gunshot wounds and three stab wounds. One gunshot wound "struck the decedent on the front surface of the left thigh at a point 41 inches below the top of the head." The bullet traveled downward "through the thigh, angling to the left and downward," fracturing the femur and the left fibular, and exiting through the shin. Having found no powder residue, Dr. Hayne characterized this wound as distant, as well as penetrating and non-lethal. (T.356-59) In Dr. Hayne's opinion,

it was caused by a large caliber projectile. The bullet would have been traveling downward at approximately 60 to 65 degrees, and to the left at approximately 20 to 25 degrees; it would have been fired from a distance above the victim. (T.263-64)

The wound arbitrarily described as gunshot wound number two was a lethal gunshot wound "to the top of the head at a point four inches forward from the back of the head." This bullet, too, had traveled downward, and had exited from the left cheek. The bullet had traveled from back to front; the trajectory was consistent with its having been fired from above the victim. It had been fired from a distance of at least a foot and a half to two-and-a-half feet, but "[i]t could have been much greater than that but no closer than that." (T.364-69)

The gunshot wound arbitrarily described as gunshot wound number three was "a lethal distant or near contact perforating gunshot wound to the right side of the head." The bullet had "entered on the right side of the head " and had "traveled downward" and to the left "at approximately 20 degrees each ... " This wound, too, was "consistent with a large amount of force, consistent with a large caliber projectile striking the decedent in the head ... " (T.369-72) The trajectory indicated that it had been fired "[f]rom above and behind the decedent's head." (T.374)

The first described stab wound had been inflicted over the victim's left cheek. The second stab/slash wound, described as a defensive, posturing wound," was "located over the back of the left hand." (T.375-77)

Finally, Dr. Hayne testified that in his expert opinion, the cause of death was "two lethal gunshot wounds to the head..." The manner of death was homicide. (T.379)

The defendant took the stand and testified that he had "dated" Rhonda for approximately three years; that they had two children together; and that he often spent the night with her in the apartment in question. The morning of February 16, he woke up in bed with Rhonda, went to the bathroom, and returned to bed. She accused him of waking her up "on purpose, " demanded to know where he was going, and accused him of "going to cheat" on her. This verbal row continued as Rouster "got on the phone" to call "for a ride"; she accused him of "trying to call a girl" and told him that he could not go anywhere unless he took the children with him. Rhonda then "snatched" the phone from him. When he refused to "fight her back," she called him "names" and laughed at him. (T.390-95)

Rouster went on to testify, "I just wanted to leave. That made her mad. Then I turned around and she stabbed me with a knife." After she stabbed him in the shoulder, Rouster "pushed" her, and she called for aid from her brother. Corderries and Christopher then blocked the doorway of Rhonda's room. When Rouster "tried to leave," Corderries "pushed him back," and he and Chris "continued to laugh." Having decided that he would be unable to leave "without fighting them," Rouster "dropped to the ground and rolled on the carpet of the hall." (T.394-98)

At some point, according to Rouster, Corderries "jumped on" him, and he (Rouster) retrieved a gun from underneath Rhonda's bed. Corderries took the gun away and pointed it at Rouster. "The gun went off three or four times," and Rouster was shot in the hand. When asked "what happened after the first shooting," Rouster answered, "Rhonda was shot. She was on me by my penis. She was trying to cut it off. She managed to attempt. I was cut below." Using a racial slur,

Rhonda then directed her brothers "get" Rouster. The brothers chased Rouster down the hall toward the kitchen; Rouster "turned the gun toward the end of the hall and shot" because he "thought" Corderries and Chris would "catch" him. Rouster went to the kitchen and "stayed there till Chris left." Later, he got into a tub of cool water because he was "extremely hot." (T.398-402)

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in sustaining the state's objection to the defendant's cross-examination of a witness for the prosecution. Whether the Brown brothers had been smoking marijuana prior to this shooting spree had no bearing on the question of the defendant's guilt. The sole proposition raised on this appeal has no merit; therefore, the judgment entered below should be affirmed.

PROPOSITION:

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN SUSTAINING THE STATE'S OBJECTION TO THE DEFENDANT'S CROSS-EXAMINATION OF A WITNESS FOR THE PROSECUTION

Rouster contends the trial court committed reversible error in restricting his cross-examination of Corderries Brown. This issue implicates the following, which was taken during that cross-examination:

[MR. SMITH:] Q. Were you all smoking marijuana?

MR. DOLEAC: Objection, your Honor, to relevance.

THE COURT: Mr. Smith, you and Mr. Doleac approach the bench.

(BENCH CONFERENCE OUTSIDE THE HEARING OF THE JURY:)

THE COURT: What are you doing?

MR. SMITH: Well, based on my investigating and the information that I am getting from Mr. Rouster he wants me to ask questions based on what he says happened in that apartment.

THE COURT: Assuming the answer is yes, that they were, what's the probative value?

MR. SMITH: I think it goes to state of mind and credibility.

THE COURT: All right. In what way would it affect credibility?

MR. SMITH: If they were able to show propensity to—

* * * * *

(JURY EXCUSED FROM THE COURTROOM. THE FOLLOWING PROCEEDINGS OCCURRED OUTSIDE OF THEIR PRESENCE:)

THE COURT: All right. At the bench, Mr. Smith, you indicated that you felt the testimony would affect the credibility of the witness.

MR. SMITH: That's correct, your Honor.

THE COURT: I need you to tell me how it would do so.

MR. SMITH: We believe, your Honor, that if it's— if the jury believes that Mr. Brown was using marijuana that could have had a propensity for violence. Earlier Mr. Brown testified that when the gun was pointed into his face that they basically stood there when it was two inches in front of their face. We believe based on Mr. Rouster's version

that there was a fight and that if they had been smoking marijuana that that probably would be the likely result.

THE COURT: All right. Well, do you have any evidence or authority that someone smoking marijuana is at an increased risk or level or propensity for violence?

MR. SMITH: Not in this trial I do not have any evidence to that effect.

THE COURT: All right. Well, it would seem to me that marijuana, as alcohol, affects different people in different ways. I have known people that becoming intoxicated they get meaner. I have known people that get intoxicated, but, you know, they mellow out. So unless you have got some kind of other evidence to tie it in, I don't think that the threshold of establishing the probative value for the purpose that you have indicated has been met. And I certainly think that even if relevant— and I am finding, first of all, that for the reasons stated that it is not relevant at this point as it has no probative value. But even if it did have some that it would be outweighed by undue prejudice and confusion of the issue by the jury. So it would be— the objection is sustained under Rule 401 as— 401, 402 and 403 of the Mississippi Rules of Evidence.

(emphasis added) (T.217-19)

As the Supreme Court stated in *Hewlett v. State*, 607 So.2d 1097, 1100

(Miss.1992)

[t]he right of a defendant to confront and cross-examine the witnesses against him is fundamental and cannot be substantially restricted, *Murphy v. State*, 453 So.2d 1290, 1292 (Miss.1984), but the right of confrontation is not without limits. Though the scope of cross-examination is ordinarily broad, it is within the sound discretion of the trial judge, who possesses the inherent power to limit cross-examination to relevant matters. *Sayles v. State*, 552 So.2d 1383, 1386

(Miss.1989); *Foster v. State*, 508 So.2d 1111, 1114
(Miss.1987); *Dozier v. State*, 257 So.2d 857, 859
(Miss.1972).

Whether the evidence sought to be brought out on cross-examination is relevant and admissible is a discretionary matter for the trial court's determination. *Nichols v. State*, 822 So.2d 984, 993 (Miss. App. 2002). Where, as here, the testimony has no bearing on whether the defendant committed the crimes charged, this Court will find no abuse of discretion in the exclusion of the evidence.¹ *Nichols*, 822 So.2d at 993.

The state submits the trial court properly exercised its discretion in prohibiting the defense from attempting to impeach this witness on an irrelevant collateral matter. *Bingham v. State*, 723 So.2d 1189, 1191 (Miss. App.1998). The sole proposition raised on this appeal has no merit.

¹The two surviving eyewitnesses testified essentially that the defendant, totally unprovoked, went on a shooting rampage, killing their sister and wounding both brothers. The defendant's testimony is amply contradicted by the testimony of the Brown brothers as well as by the physical evidence, which showed that Corderries was shot in the back, and that Rhonda was shot in the head while the shooter was in a position above her. Under these circumstances, the issue whether the brothers had been smoking marijuana had absolutely no bearing on the defendant's guilt and was properly excluded. Furthermore, the overwhelming evidence of guilty renders any arguable error— and we maintain there was none— harmless. *Martin v. State*, 872 So.2d 713, 723 (Miss. App. 2004), citing *Lentz v. State*, 604 So.2d 243, 249 (Miss.1992).


CONCLUSION

The state respectfully submits the argument presented by Rouster is without merit. Accordingly, the judgment entered against him should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

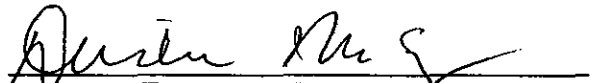
I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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