

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN CHARLES MCGRIGGS

APPELLANT

VS.

FILED

NO. 2006-KA-1927-COA

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STATE OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Marion County, Mississippi, in which the Appellant, John Charles McGriggs, was convicted and sentenced by a jury for the felony crime of **RAPE**, Miss. Code Ann. § 97-3-65 (1972), and **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-83 (1972).

STATEMENT OF FACTS

On August 19, 2004, in Vicksburg, Mississippi, John Charles McGriggs (McGriggs) raped Rosalind Littleton. Rosalind Littleton was a drug addict. Against her will, McGriggs abducted her at knife-point. He beat her and he savagely raped her. (Tr. 196). All of the evidence in the record, particularly the testimony of Dr. Brian Hudson and Dr. Bo Scales, point to the beating and rape of Rosalind Littleton by McGriggs.

SUMMARY OF THE ARGUMENT

I.

THE TRIAL COURT COMMITTED NO ERR IN ALLOWING THE TESTIMONY OF POLICE OFFICER BROWN.

Mississippi Rule of Evidence 701. OPINION TESTIMONY BY LAY WITNESSES:

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to the clear understanding of the testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

II.

THE TRIAL COURT COMMITTED NO ERR IN ALLOWING THE TESTIMONY OF DR. BRIAN HUDSON.

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

THE ARGUMENT

PROPOSITION I.

THE TRIAL COURT COMMITTED NO ERR IN ALLOWING THE TESTIMONY OF POLICE OFFICER BROWN.

Appellant's counsel states, "this case is the classic he said-she said rape allegation case." (Appellant Brief 7). That assertion cannot be further from the truth. The evidence of the savagely beaten body of Rosalind Littleton shown in exhibits S - 1, S - 2, S - 3, S - 4, and S - 5 is proof that this rape was real.

Appellant wrongly contends that some of the testimony of Police Officer Brown was harmful

error. (Appellant Brief 7 - 8).

Mississippi Rule of Evidence 701. OPINION TESTIMONY BY LAY WITNESSES:

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Appellant's counsel is referring to the below.

A. Well, he had asked me that, as far as he and the van, the reason that I asked him, no. But as far as Ms. Littleton, I had very much evidence, in my opinion, that a rape did take place. (Tr. 277).

The aforementioned is not a violation of the opinion testimony; furthermore, the three part test is satisfied. Inferences which are rationally based on the perception of the witness and helpful to the determination of a fact in issue are replete throughout the testimony of Police Officer Brown.

Q. Would you state your name, please, sir?

A. Kenneth Brown.

Q. And Mr. Brown, where are you employed?

A. Vicksburg Police Department.

Q. How long have you been working with the Police Department?

A. Approximately 14 years.

Q. And were you working in August of 2004?

A. Yes, sir.

Q. And what capacity were you working in at that time?

A. An investigator.

Q. So, if someone said, the on-call investigator, on that night, that was you. Is that what you are saying?

A. Yes, sir, that was me.

Q. Did you get a call out that night?

A. Yes, sir, I did.

Q. Tell me what happened, please, sir.

A. I was on the evening shift. I had received a call from the shift commander at that time, Patrick Flowers, and stated that I needed to respond to the area of Drummond Street in reference to an incident that they had there, which was a possible rape.

Q. What area of Drummond Street was that?

A. That is going to be 2816 Drummond Street.

Q. And what did you find when you got there?

A. Well, when I got there, there were several officers on the scene already, I believe Officer Bulloch, Riley Nelson, and also Officer McCalister. I believe the EMT's were there. They were right at the front of 2816 Drummond Street where there was a Ms. Littleton on the ground.

Q. Explain to me what block of, and I know it was the 2800 block, but what is the nearest intersection to that?

A. The nearest intersection is going to be Drummond and Bowmar.

Q. Okay, so its back - -

A. That's going to be north of that residence where we found her.

Q. Is there a little bridge there?

A. Yes, sir, it's a very small bridge that goes over a bayou.

Q. Okay, go ahead and tell me what you saw when you got there.

A. Basically, like I said, when I got there the EMT's were rendering assistance to Ms. Littleton right in the front on the concrete directly in front of 2816. She was half nude. She only had a shirt on at that time. I contacted the officers to try to see if I could get anything out of them. They said at that time they were not able - -

BY MR. RHODES: Objection to, they said.

BY THE COURT: What the officers said?

BY MR. BROWN: Yes, sir, they told me - -

BY THE COURT: Overruled as part of the investigation of the officers.

A. Well, as the on-call detective I have to find out what was going on at the scene even before I approached the scene, I'm trying to get some sense of this. So, I spoke with the officers and at that time they stated that they could not get anything out of her at that time. So, I didn't want to question her at that time because I felt that it was important for the EMT's to render assistance to her.

Q. And they took her to the hospital?

A. Yes, sir.

Q. Did you go to the hospital as well?

A. Yes, sir, I did.

Q. All right, while she was at the hospital, there were some photographs taken. Did you direct that those photographs be taken?

A. Yes, sir.

Q. Now, you didn't take them yourself, did you?

A. No, sir.

Q. Why not?

A. She's a female and it would require her to be unclothed.

Q. Okay, but you did - - who did take the photographs?

A. There was a nurse there, as I recalled, but I stayed directly outside the door. I did not leave and go anywhere at all. But I told her that I needed some photos taken of the injuries.

Q. Okay. And did you later talk to Ms. Littleton?

A. Yes. But I would like to note that there were injuries that I could see for myself without going into the room. There were very visible injuries which was to the face. The left side of her face was severely swollen.

Q. Okay. Tell me what - - well, when did you talk to her again?

A. Well, I did talk to her that night. I was trying to get some information from her as

to what happened, what took place.

Q. Okay.

A. And the information that she gave me - -

BY MR. RHODES: Objection to what she said. Hearsay.

BY THE COURT: Overruled. As to the victim?

BY MR. RHODES: Hearsay. The victim's statement - - the victim's statement to the investigator is hearsay.

BY THE COURT: Overruled.

Q. Go ahead.

A. Once again, at this time I'm still trying to find out what happened because I was called out. I asked her to tell me what happened.

Q. Okay, what did she say?

A. She basically was trying to tell me that she was raped.

BY MR. RHODES: Objection.

BY THE COURT: Same objection?

BY MR. RHODES: Objection to the statements from the victim to the investigator. That is hearsay.

BY THE COURT: Which I ruled to be admissible. Overruled.

Q. Go ahead.

A. From this I got my initial information in reference to a tall Black man. She also gave me the description of a van. A brown - -

BY MR. RHODES: Objection.

BY THE COURT: I'll give you a continued objection if your objection is to hearsay as to what the victim is saying. I've ruled on that, that it is not. But if there is something else - - and I'll give you, to make sure that your record is preserved, that you will have a continued objection as to hearsay as to the statements of the victim. But if there is another objection then I will hear that. But I'm saying, for the record, your objection to what the victim said, it is your position that it is hearsay.

BY MR. RHODES: Yes, sir.

BY THE COURT: And I have ruled that it is admissible and to keep you from, and I want to preserve your record, that you will get a continued hearsay along those lines.

BY MR. RHODES: Now, let me make sure that I'm saying clearly. I'm saying that, in this case, which is a rape case, that the statements that the victim made to the investigator are hearsay and to all of which I object.

BY THE COURT: And I understood you perfectly and I said that's overruled. But I will give you a continued objection for any statements that he repeats to the Court and the jury that you are objecting on the grounds of hearsay and therefore your record is protected in terms that you did make a contemporary objection for hearsay purposes.

You may continue.

Q. Investigator Brown, did you develop a description of the vehicle from her?

A. Yes, sir, that night?

Q. What was that description?

A. It was a brown and beige, it was two-tone. And I think she described it as a work

van.

Q. Okay, and did you also develop a description of the suspect, based on what she told you?

A. Yes, sir, briefly, a tall, a tall Black man, slender build, I have in my report. Also with that information I did give out a BOLO that same night in reference to the van and the person.

Q. Explain to the jury what a BOLO is, please.

A. BOLO is be on the look out on all points. Basically what I had my dispatcher to do is that I had officers to call the dispatcher because I didn't want that BOLO given out over the air radio because people have scanner and this was real important and I didn't want this particular person to hear it. Because at that time I did not have a name really. I just had the description of the van and a tall, dark man.

Q. And based on that BOLO, which literally is, be on the look out.

A. Yes, sir, to be on the look out.

Q. Eventually was that van spotted?

A. Yes, sir, it was spotted again several days later. The incident happened on August 19th. Now, I received a call from Ms. Littleton on that Monday, the 23th, I believe.

Q. Okay, tell me what - - did you interview her again at that time?

A. Yes, sir. I wanted to because I felt that I needed more information and that night I asked her the initial questions and she was kind of upset, you know, and in a lot of pain.

Q. Okay.

A. So, I needed to clarify that so she gave me a call on Monday and I went to her house and she had a more detailed description of the person. Actually, she gave me a partial name of Charles or Charlie McGriggs. (Tr. 248 - 254).

This issue brought by the Appellant is therefore lacking in merit.

PROPOSITION II.

THE TRIAL COURT COMMITTED NO ERR IN ALLOWING THE TESTIMONY OF DR. BRIAN HUDSON.

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Dr. Brian Hudson's expert testimony as an emergency room physician was proper.

Q. Doctor, based on your training and experience and to a reasonable degree of medical certainty, are the injuries that you observed on Rosalind Littleton consistent with consensual sex?

A. No.

Q. Can you explain your answer, please?

A. Well, obviously, as we have seen by the pictures and by the medical records, she was beaten pretty significantly about the face, multiple abrasions on the back and vaginal lacerations which would not be consistent with consensual sex.

Q. How difficult is it to damage a vagina?

BY MR. RHODES: Objection, Your Honor. That causes for speculation. How difficult it is.

BY THE COURT: Well, with the training of this doctor, I'll overrule that objection.

A. I'll answer it this way. The vagina is not lacerated in consensual sex. (Tr. 222 - 223).

This issue brought by the Appellant is therefore lacking in merit.

CONCLUSION

Based upon the argument presented herein as supported by the record on appeal and exhibits, the State would ask this court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Deshun T. Martin, 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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This the 11th day of October, 2007.



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