

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2008-KA-01551-COA

KARRIE LYNETTE GLENN

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

**(Appeal from the Circuit Court of
Jackson County, Mississippi,
Criminal Action No. 2007-10.757)**

REPLY BRIEF OF APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

To say the case of the State of Mississippi versus Karrie Lynette Glenn is unusual is a bit of an understatement. In this murder conviction resulting in a life sentence, there was no motive established, no gun, money or narcotics found, and a known shooter, Karrie Glenn got hammered. It is also a case where the only direct, credible evidence adduced at Karrie's second trial was the fact her deceased husband was dead from two 12 gauge shotgun blasts. The only other evidence connecting Karrie with the murder came out of the mouths of convicted felons. It is no wonder then why Karrie and her two children left the Martin Young Road area near Moss Point for Pascagoula never to return.

The State's alleged arguments in its Brief seem to indicate that it supports Karrie's conviction by a preponderance of suspect evidence, rather than proof beyond a reasonable doubt. In both its authorities and reasoning therefrom, this is apparent. In its mind, conjecture, suspicion and plea deals make for a good case. This is the start of a very slippery slope.

For these reasons, Karrie Glenn submits that oral argument is necessary in this appeal and will prove essential in putting a brake on this slippery slope. In noting recent decisions by this Court, she submits it is apparent this Court is also seeing this attitude on the part of the State, and requiring a higher standard of proof by the State. Her's is precisely such a case.

For the above reasons, Karrie Glenn, pursuant to **Miss.R.App.P., Rule 34(b)**, respectfully requests oral argument in her appeal.

FACTUAL REBUTTAL STATEMENT

In review of the State's factual summary, although a long litany of the testimony the State's witnesses, and selected portions of Karrie Glenn's investigation and testimony the general structure outlined in her request for oral arguments remains accurate, there is no direct, credible hard evidence to convict Karrie Glenn.

In fact, taken in a realistic light, the testimony of the State's 'star' witness, David Stokes, demonstrates all the proper elements of a murder: (1) he had a motive, his love affair and passion for Karrie; (2) having lived in the Glenn home for a period of time, he knew the layout, and where guns, contraband and money could be found; (3) his departure to South Carolina; and, (4) his identification by still an unknown individual that restarted the investigation of the crime almost eight years later.

Yet having all this, the State in a effort to convict Karrie, sought the easier and softer way to its goal, the use of "bought" testimony from Martin Young Road low life. This is disgusting and requires reversal.

SUMMARY OF THE REPLY ARGUMENT

Unfortunately, there has been one undisputed fact about the Appellant, Karrie Lynette Glenn that has never been brought to light in this odyssey of a prosecution. Throughout this entire period, from July 27, 1998 until her arrest in August, 2007, Kerrie Glenn retained her certification and license as a home health nurse, and care giver to her patients and her two children. Tragic as Tony Glenn's death was, the factual basis of Karrie's conviction is even more tragic, and makes no real sense.

In the reply argument to follow, Karrie Glenn will again focus on the infirmities in the State's case against her, and the absolute lack of a credible factual basis to support the infirm verdict in this case. This will extend to the State's non-substantial support of this conviction in its Brief. In attempting to prop up this sham prosecution, the State is still relying upon slender threads of reason and authority that may be a preponderance of the "evidence", but fall far short of proof beyond an reasonable doubt.

Karrie Glenn requests this Court's full review of these threads and its denial of same as a basis of conviction.

REPLY ARGUMENT AND CITATION OF AUTHORITIES

Reply Proposition One: D-5, the clean slate/reasonable doubt instruction should have been granted.

In opening the door on this issue, (State's Brief at Page 18, "*arguendo*"), the State recognized two basic areas: (1) the critical importance of D-5 to Karrie Glenn's defense, and (2) the lack of such an instruction in the Jury Instructions as a whole.

Both issues are underlying principles in proof beyond a reasonable doubt.

To address the alleged waiver issue briefly, it is instructive that in its argument the State chose *Baker v. State*, 930 So.2d 399 (Miss.App. 2005) as its principal authority. In *Baker*, the defendant voluntarily absented himself from his trial, apparently he did not care what the State did to him. In Karrie's case, she stood trial twice, opened herself to examination, and in Round Two was subject to a travesty. Karrie Glenn waives nothing. Let's keep this argument apples to apples State.

As to the merits on this issue, this is another story. It is instructive that in support of its rather tenuous argument on this point, the State relies upon ten civil cases on this subject, and but two criminal cases, *Ford v. State*, 975 So.2d 859 (Miss. 2008), and *Howell v. State*, 860 So.2d 704 (Miss. 2003), both addressing the "instructions as a whole" principle. Yet, even looking at *Ford* and *Howell* in an impartial manner, the alleged wholeness in this set of instructions is glaring without D-5 and D-9, the other "bad acts" instruction, also refused, over objection. Apparently proof by a preponderance of the evidence is alive and well in the State of Mississippi.

Not once did the State address the our Court's concerns in *Chinn v. State*, 958 So.2d 1223 (Miss. 2007), nor in *Hester v. State*, 602 So.2d 869 (Miss. 1992). The State did not because it cannot under the total facts and circumstances of Karrie Glenn's case. What we were left with was a grossly uninstructed jury guided only by its bias in favor of conviction. *Edwards v. State*, 755 So.2d 443 (Miss.App. 1999). This is not proof beyond a reasonable doubt.

Reply Proposition Two: The Jury Verdict in Karrie Glenn's case requires reversal.

"They killed Tony, they killed Tony", Marjorie Glenn's, the mother of Tony Glenn statement of her conversation with Karrie Glenn the morning of the murder, July 27, 1998. (T-191) Karrie does not object to Mrs. Glenn's recollection of her conversation with the Grandmother of her children, who cared for these children while she and Tony worked. Karrie Glenn does object to the State's taking of this slender thread of an alleged admission against interest, never proven, to fabricate a case against her.

And how the State attempted to bolster this slender thread as well as its "star" witness, David Stokes, would be almost comical absent the grossly infirm verdict that was reached by the jury. This is borne out by the litany of witnesses paraded by the State many of which had no hard information. Of particular interest is the testimony of Officer Reiter of the Jackson County Sheriff's Department, who was in the 1998 investigation, and found that Karrie Glenn had legally bought a shotgun in December, 2007, and he had interviews with Stokes, his then girlfriend and other unnamed witnesses, and found nothing. (T-164-65) Then there was Brenda Carpenter, Tony Glenn's aunt, and her great information was that on the day of the murder, Karrie and Stokes were sitting in the Glenns' bedroom, "Indian style". (T-195). The rest from the Martin Young Road crowd was hearsay and conjecture. This is not credible testimony, it is overkill.

But, there is a another slender thread here, a Christmas present from Karrie to Tony. (T-164) And, it was missing, (T-163), and has never been found. David Stokes was the last person to have the gun, (T-312), and maybe he sold it for money to bail out to South Carolina. Yet, when all is critically examined, nothing, but Stokes' testimony

connects Karrie to her husband's death. The State's strategy becomes very clear at this point, if you throw enough of it against the wall, perhaps some of it will stick. Unfortunately this is what happened in Karrie Glenn's case.

It has been long settled that the testimony of a convicted accomplice and felon, Stokes, must be viewed with great caution and suspicion. *Dahl v. State*, 989 So.2d 910 (Miss.App. 2008). Particularly when this testimony is uncorroborated, it must also be reasonable, not improbable, self-contradictory or substantially impeached. *Dahl* at Page 915. Equally important are testimonial statements of witnesses out of court that would implicate an accused during an investigation, that are not subject to confrontation. *Smith v. State*, 986 So.2d 290, 296 (Miss. 2008). This particular element is subject to this Court's *de novo* review. *Hayden v. State*, 972 So.2d 525 (Miss. 2007); *U.S.C. Const. Amend. 6*. Karrie Glenn suggests this, and the entire record in her case, require this type of review.

As stated earlier, recent decisions by this Court strongly suggest that it is no longer a "rubber stamp" to shabby prosecutions. This has even extended to sham guilty pleas when there is an insufficient factual basis for conviction. *Carreiro v. State*, 5 So.3d 1170 (Miss.App. 2009). Karrie Glenn respectfully suggests that when this Court conducts its review of the record in her case, it will find also, there is no credible factual basis for her conviction.


CONCLUSION


Karrie Glenn is and remains a person who, even with her previous mistakes, has Lived a good and productive life. It has been devoted to her continued improvement and skills as a care giver, and the welfare and advancement of the two children of her marriage with Tony Glenn. To allow a fabricated conviction supported factually only by convicted felons and various low life would indeed be a miscarriage of justice.

Karrie Glenn submits that in the argument above, together with the facts and circumstances of this case, and its entire record, she has presented abundant grounds for this Court's reversal of the Jury Verdict and Sentence of the Circuit Court of Jackson County. She respectfully requests this Court's decision to that effect.

Respectfully submitted this, the 29th day of July, 2009.

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CERTIFICATE OF SERVICE

I, George S. Shaddock, Attorney of Record for the Appellant, Karrie Lynette Glenn, do hereby certify that I have this day filed the original and three (3) true and correct copies of the above and foregoing Brief of Appellant with the Honorable Kathy Gillis, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.


I further certify that I have mailed a true and correct copy thereof by United States Mail, postage prepaid, to the following listed persons:

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CERTIFIED this, the 29th day of July, 2009.


GEORGE S. SHADDOCK