

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEITH BOYDA

APPELLANT

VS.

NO. 2009-KA-1891-COA *E*

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- ISSUE NO. I : THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.
- ISSUE NO. II : EVIDENTIARY RULINGS BY THE TRIAL COURT DID NOT PREVENT BOYDA FROM FULLY DEVELOPING HIS DEFENSE.

STATEMENT OF FACTS

On April 26, 2005, Keith Boyda walked into the living room of his home in Wiggins, Mississippi, pulled his wife from her seat on the couch, pushed her away from him and, within six feet of his fifteen year old daughter, he fired four 9mm rounds into her chest and back. T. 118.

The afternoon of the shooting was filled with constant argument between Boyda and his wife. T. 117. Theresa Boyda, the victim's daughter, testified that she urged her mother to discontinue the confrontations with her father that day because Boyda was "not going to calm down . . . [y]ou're just going to continue the argument." T. 117. During a lull in the argument, Boyda placed his 9mm in the waistband of his pants and retreated to the front porch of his home. T. 117. While outside,

Boyda fired off several rounds from the 9mm. T. 117. After re-entering the house, Boyda shot and killed his wife. T. 118. Following the shooting, Boyda retrieved a .22-caliber rifle, placed it in his vehicle, and left the scene with his daughter. T. 119. Boyda arrived at his nearest neighbor's home, but left quickly when the neighbor threatened to call the police. T. 120. From there, Boyda and his daughter drove to a second nearby home where a friend of Theresa Boyda lived. T. 121. Upon arriving at the home of Melissa Scott, Theresa separated herself from her father and informed Ms. Scott's son that Boyda has just murdered her mother. T. 122. During this time, Boyda also entered the home and asked to use the telephone. T. 122. Within ear shot of Ms. Scott, Boyda informed the person on the other end of the line that he had just killed his wife. T. 122. Boyda then grabbed Ms. Scott's arm and said, "I need to talk to somebody." T. 167. Boyda informed Ms. Scott that he shot his wife and that she "could call the cops now." T. 168. Boyda and Theresa left the Scott's residence to drive to Boyda's mother's home in Gulfport. T. 123. During the drive, Boyda told Theresa that he "was sorry for everything he's done." T. 123. While stopping for fuel on the way to Gulfport, Boyda was apprehended by the police and taken into custody. T. 123. Boyda was indicted and tried for his wife's murder. A Stone County Circuit Court jury found him guilty of murder.

ARGUMENT

I. THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Boyda's weight of the evidence argument centers around a claim that he was M'Naghten insane at the time of the murder. The facts show that Boyda had become unhappy after relocating to a new city and failing to find employment that interested him. T. 132. Boyda's daughter testified that her parents were "constantly aggravated with each other." T. 116. Dr. Gilbert Macvaugh testified that Boyda had a well documented history of daily alcohol and marijuana use. T. 285. Boyda was living in a new place, out of work, and abusing drugs and alcohol while his marriage deteriorated. These factors led Boyda to shoot his wife— not mental insanity.

Reviewing courts examine evidence in the light most favorable to the verdict in determining whether a verdict is against the overwhelming weight of the evidence. *Bush v. State*, 895 So.2d 836, 844 (Miss. 2005). The sanity of a defendant is a question for the jury to determine, and determining the credibility of witnesses lies within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶ 11)(Miss.Ct.App. 2007). The Mississippi Supreme Court has stated that when there is opposing testimony regarding the defendant's legal sanity at the time of the crime, "a jury's verdict on the insanity issue is essentially conclusive and unreviewable." *Crawford v. State*, 787 So.2d 1236, 1243 (¶29) (Miss. 2001) (quoting *Gerlach v. State*, 466 So.2d 75, 79 (Miss. 1985)). In exercising its exclusive duty to determine whether a defendant was legally sane at the time of the crime, the jury may accept or reject expert and lay testimony. *Hearn*, 3 So.3d at 738. The "battle of the experts" that resulted between the State's expert witnesses and the defendant's ended with the jury convicting Keith Boyda of murder. An end result that does not meet the defendant's expectations does not mean that the jury acted irrationally in their analysis of the evidence.

The State offered two expert witnesses in the field of psychiatry and psychology who

testified that Boyda may suffer from a personality disorder of some kind, but that he did not fit the profile of a paranoid schizophrenic. Dr. Reb McMichael and Dr. Gilbert Macvaugh testified that Keith Boyda did not suffer from any form of mental disorder that would cause him to lose the ability to judge right from wrong or comprehend the consequences of his actions. They also opined that Boyda was malingering about his mental illness and memory of the crime. T. 296. Additionally, a prison nurse observed that Boyda's "symptoms" were more obvious and dramatic before court appearances, and conveniently disappeared upon his return. T. 327. The doctors stated that even IF Boyda suffered from paranoid schizophrenia, he would not necessarily lack any and all ability to prevent himself from committing murder. Although the expert witnesses for the defense may have disagreed with Dr. Macvaugh and Dr. McMichael's testimony, the ultimate decision of determining witness credibility is left in the hands of the jury, and their decision will most often stand. "Institutional and practical considerations mandate that in insanity defense cases, perhaps more than any other, a jury's verdict ought to be given great respect and deference." *Crawford v. State*, 787 So.2d 1236, 1243 (¶29) (Miss. 2001) (quoting *Groseclose v. State*, 440 So.2d 297, 301 (Miss. 1983)). The State's experts believed Boyda's narcissistic personality disorder and history of substance abuse led to his wife's murder, and Boyda used "malingering amnesia" as a defense for his actions. T. 296, 309. Their ultimate opinion was that Boyda knew right from wrong at the time of the murder.

As noted by Boyda, once a reasonable doubt of sanity is raised, the State bears the burden of proving the defendant's sanity beyond a reasonable doubt. *Roundtree*, 568 So.2d at 1181 (citing *Billiot v. State*, 454 So.2d 445, 463 (Miss. 1984)). The State contends that the defense failed to raise a reasonable doubt as to the sanity of Keith Boyda. Boyda's expert witnesses relied on a report about Boyda's mental state which they believed was prepared by a psychiatrist, when in fact a local family

physician wrote the report. Boyda's experts gave a "provisional" diagnosis of "schizophrenic paranoia type," stating that other diagnoses could be possible. T. 251. It is well established in Mississippi law that a criminal defendant who is medically insane is not automatically M'Naghten insane. *Laney v. State*, 486 So.2d 1242 (Miss. 1986). Also, although Dr. Erin Skaff opined at trial that Boyda did not know right from wrong, in her report she stated that Boyda's mental disorder "could have" affected his understanding of right versus wrong and "likely" hindered his ability to comprehend the consequences of his actions. T. 252. Dr. Skaff testified that she could not say with one hundred percent certainty whether Boyda's mental state was impaired at the time of the crime. T. 252.

The defense also offered lay testimony from Boyda's brothers who recalled past incidents that they believed called Boyda's mental state into question. However, despite one instance where Boyda's firearms were removed from his home for fear that he would injure himself, the brothers testified that Boyda's "incidents" were never violent and Boyda's guns were soon returned to him. The defense failed to raise a reasonable doubt about Boyda's sanity. Despite Boyda's failure to raise reasonable doubt as to his sanity, the State nevertheless adequately demonstrated that Boyda was in fact legally sane and able to understand his actions at the time of the murder.

In addition to the expert testimony which showed Boyda knew right from wrong at the time of the murder, Boyda's conduct after the murder clearly shows that he understood the difference between right and wrong. See *Tyler v. State*, 618 So.2d 1306 (Miss. 1993) (holding that defendant hiding murder weapon showed that he knew that his actions were wrong). After the murder, Boyda placed a .22 caliber rifle in his car before leaving the crime scene. T. 119. Boyda drove to a neighbor's house, but left when the neighbor threatened to call the police. Before departing from a second neighbor's home, Boyda told the neighbor that they could "call the police" after informing

them that he had killed his wife. T. 168. Shortly before being apprehended, Boyda told his daughter that he was “sorry for everything he’s done.” T. 123. All of these actions demonstrate guilty knowledge.

Additionally, Boyda’s conduct prior to the murder shows that his subsequent actions were deliberate. Boyda had been fighting with his wife regularly, including the afternoon of the murder. He had become so enraged the night before the murder that he kicked in the door of his home. T. 117. Boyda’s daughter tried telling her mother to end the fighting with Boyda because he “was not going to calm down.” T. 117.

The evidence shows that the State proved beyond a reasonable doubt that Keith Boyda was legally sane at the time he murdered his wife. Pursuant to *Herring v. State*, when reviewing a denial of a motion for a new trial based on a claim that the verdict is against the weight of the evidence, the court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. 691 So.2d 948, 957 (Miss. 1997). Boyda fails to show that the jury’s verdict is unconscionable given the facts available. The conflict in the evidence which resulted from a “battle of the experts” was properly resolved jury, which is solely responsible for determining witness credibility and resolving conflicts in the evidence. Accordingly, the trial court properly denied the motion for a new trial.

II. EVIDENTIARY RULINGS BY THE TRIAL COURT DID NOT PREVENT BOYDA FROM FULLY DEVELOPING HIS DEFENSE.

Boyda claims the trial court erred in limiting the lay witness testimony of his brother's observations. During trial, the defense stated that Kyle Boyda's testimony regarding subsequent events was relevant because if the jury found that Boyda was legally insane, it must also determine whether Boyda had regained sanity after the crime. Boyda's argument on appeal differs. He now claims that the excluded testimony was relevant to show that he was legally insane at the time of the murder. Boyda correctly notes that lay testimony may be relevant to an insanity defense. *Groseclose v. State*, 440 So.2d 297, 301 (Miss. 1983). However, there are limitations to the admissibility of such testimony. Kyle Boyda was allowed to give testimony pertaining to observations and events that occurred involving his brother prior to the murder. The trial court only excluded Kyle Boyda's testimony in which he attempted to make a prognosis as to Boyda's mental condition and further elaborate on certain incidents and observations made three to four years subsequent to the date of the crime. In *Russell v. State*, the court held that a lay witness "may not make a prognosis or project into some future time an opinion as to the mental condition of the subject nor may he extend it to a date subsequent of the observation." 729 So.2d 781, 785 (Miss. 1997). The Court in *Bagget v. State*, added that lay witness testimony should be limited to opinion "based upon observations and interpretations of those observations of a defendant prior to the incident of the specific crime." 793 So.2d 630, 635 (Miss. 2001) (quoting *Russell v. State*, 729 So.2d 781, 786 (Miss. 1997)) (emphasis added). Accordingly, the trial court correctly limited Kyle Boyda's testimony to observations made prior to the crime being committed.

Boyda next claims that he was prevented from fully developing his defense because the credibility and credentials of Dr. Skaff, one of his expert witnesses, was damaged by irrelevant

questions from the State concerning Dr. Skaff's license to practice in Mississippi. In fact, the record shows that Dr. Skaff was not licensed to practice in Mississippi at the time she performed tests and observations on Boyda. T. 230. Dr. Skaff testified that she was unaware that temporary approval was required to perform such tests if the doctor does not have a license to practice in Mississippi. T. 231. Dr. Skaff justified her lack of a license or temporary approval by pointing out that she was working "in direct consultation with a licensed Mississippi provider." T. 231. "Matters probed when impeaching or attacking witness' credibility must be relevant." *Brown v. State*, 690 So.2d 276 (Miss. 1996). The State contends that the questions asked regarding the credibility and credentials of Dr. Skaff were obviously relevant to her credibility and findings.

Boyda also claims that the trial court erred by excluding Dr. Skaff's resume. The Mississippi Supreme Court has held that it is not error to exclude an expert's resume where the expert is given ample opportunity to testify to her qualifications. *Herrington v. Spell*, 692 So.2d 93, 103 (Miss. 1997). Dr. Skaff's testimony regarding her credentials spans three and a half pages of transcript. T. 227-230. Accordingly, her resume was properly excluded as cumulative.

The trial court did not err in limiting the testimony of Boyda's lay witness. The questions the State posed to Dr. Skaff were relevant and the exclusion of her resume did not damage her credibility because she gave ample testimony to display her credentials to the jury.


CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Boyda's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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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