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The Admissibility of Law Opinion of the Question of Insanity - Alexander v. State

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THE ADMISSIBILITY OF LAY OPINION ON THE QUESTION OF INSANITY

Alexander v. State, 358 So. 2d 380 (Miss. 1978).

The defendant, John Peyton Alexander, was convicted of murder and sentenced to life imprisonment. The defendant's primary defense at trial was that he was not guilty by reason of insanity.

At the age of nineteen (19), the defendant began to have an affair with the deceased, Harriett Robinson, a thirty-seven year old married woman he met while working as a lifeguard for the Jackson Country Club. John Robinson, the husband of the deceased, learned of the affair and telephoned the defendant in October of 1974 at Vanderbilt University and warned him to stay away from his wife. At this time the defendant became very confused and upset about his relationship with Mrs. Robinson and began to see a psychologist at Vanderbilt University. In January of 1975, the defendant dropped out of college and returned to Jackson.

During the spring of 1975, the defendant attempted to secure a position as lifeguard at the Jackson Country Club but was prevented from doing so when the Robinsons circulated a petition among club members declaring that the defendant was incompetent. The Robinsons also frustrated the defendant's attempts to become a lifeguard at the River Hills Club. In retaliation, the defendant photocopied some love letters from Mrs. Robinson and sent them to club members to prove that his affair with Harriett Robinson was the reason behind the Robinson's petition. In May of 1975, John Robinson filed suit against the defendant for fifty thousand dollars ($50,000.00) in damages for sending the letters.

The defendant became obsessed with the affair and the law suit. He became fearful that John Robinson was trying to kill him or was going to have the Mafia kill him, and he began to sleep in the breezeway of his home with a loaded shotgun between his mattress and the frame of his bed. During this time, the defendant began to see a psychiatrist. The psychiatrist placed him on Thorazine, an antipsychotic drug, and attempted to persuade him to leave Jackson. The defendant contemplated sending copies of Mrs. Robinson's love letters to *Time* and *Newsweek* magazines drawing a parallel between his affair and the affair of the central character of the movie "The Graduate."

On October 4, 1975, the defendant drove to Parham Bridges Tennis Courts and walked up to Harriett Robinson and shot her eight times. He then walked calmly off the tennis courts and drove home. When defendant arrived home, he told his mother that he had just shot Harriett Robinson. The defendant then phoned the police and waited for them to arrive. On route to the police station, the defen-

dant talked to an officer in a calm tone and even discussed a mutual acquaintance.

At the trial the defendant offered seven lay witnesses who testified that the defendant did not know the difference between right and wrong at the time of the crime.[1] After an examination of these witnesses in the absence of the jury, the trial court excluded their testimony on the basis that the witnesses were not qualified to give an opinion as to the defendant's mental state at the time of the homicide.[2] The lay witnesses were acquainted with the defendant, and all had opportunities to observe the defendant before the homicide.[3] One witness observed the defendant before and after the homicide.[4] Their testimony revealed that the defendant had a disturbed childhood, suffered psychosomatic illnesses, and requested psychiatric help from the time he was fifteen (15) years old. The testimony also revealed that the defendant often contemplated suicide.

On appeal, the Mississippi Supreme Court affirmed the trial court's decision and held that the lay testimony was properly excluded on the grounds that a sufficient predicate had not been established.[5] Applying the rule in *In Re Estate of Prine*[6], the court held that a lay witness can not project an opinion to the sanity of another at a future time.[7]

The Mississippi Supreme Court stated that the requirements to establish a sufficient predicate are: "(1) the witness has a reasonably sufficient opportunity to observe the subject and (2) has noted behavior on his part reasonably indicative of an unsound mind and upon which he bases an opinion that the subject was, at the time of his observation by the witness, of unsound mind."[8] The court reasoned that a sufficient predicate had not been established because the lay witnesses did not state any specific facts or circumstances which indicated that the defendant was insane or incapable to distinguish between right and wrong.[9] The fact that the lay witness is well acquainted with the defendant is not sufficient to permit the witness to

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[1]358 So. 2d at 382-83. The first witness, Herlihy, was asked the following question:

> Do you have an opinion based on your knowing John Alexander since you were both in the 9th grade, your conversations with him, and your observations of his demeanor, as to whether on October 4, 1975, when Harriett Robinson was shot, he knew the difference between right and wrong?

The other witnesses were asked questions similar to the above.

[2]*Id.* at 382.

[3]*Id.* at 382.

[4]*Id.*

[5]358 So. 2d at 383.

[6]208 So. 2d 187 (Miss. 1968).

[7]358 So. 2d at 383.

[8]*Id.* at 384.

[9]*Id.* at 385.

express an opinion that the defendant is insane.[10] The witness must also observe some act of abnormal behavior which is reasonably capable of supporting a conclusion of insanity.[11]

In addition to the insufficient predicate, the court stated that the lay opinion was also inadmissible because the testimony violated the rule announced in *Prine*.[12] In *Prine*, a civil case involving a will contest, the court adopted the rule that a lay witness can not be allowed to give an opinion as to the mental condition of another at a future time.[13] The court noted that the observations of the lay witness did not extend to the time the victim was shot, and thus, they should not be permitted to express an opinion as to the defendant's mental state at the time of the homicide.[14]

The lay opinion rule in Mississippi has been the subject of confusion and the requirements for admissibility have been dealt with on a case by case basis.[15] As early as 1881, the supreme court held that a lay witness may testify as to his opinion of the sanity of another.[16] Originally, the primary consideration for the admissibility of lay opinions was that the opinion be based on the perceptions of the witness.[17] Later, the court began distinguishing between testimony as to sanity or insanity. As a result, two standards evolved for determining if a sufficient predicate had been established.[18]

First, a lay witness may testify that a person is sane without setting out the facts upon which the witness's opinion is based.[19] On the other hand, if the lay opinion is that the defendant is insane then the opinion must be accompanied by a statement of specific facts upon which it is

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[10] *Id.*

[11] *Id.*

[12] The court noted that the Prine rule was supported by two criminal cases. Ross v. State, 153 Tex. Cr. R. 312, 220 S.W.2d 137 (1949); State v. Douglas, 312 Mo. 537, 278 S.W. 1016 (1925).

[13] 208 So. 2d at 190.

[14] 358 So. 2d at 384.

[15] *See generally* Comment, *Lay Opinion Testimony in Mississippi*, 43 MISS. L. J. 705 (1972).

[16] Wood v. State, 58 Miss. 741 (1881).

[17] Bishop v. State, 96 Miss. 846, 52 So. 21 (1910). Bacot v. State, 96 Miss. 125, 50 So. 500 (1909). (Court held that trial court erred by giving jury instructions to disregard the opinion of the lay witness and to judge whether defendant knew right from wrong based on the circumstances related by the witness.) Reed v. State, 62 Miss. 405, 408-09 (1884). (Error to exclude lay opinion based on witness's acquaintance with the defendant and opportunity to observe his conduct.) Wood v. State, 58 Miss. 741, 743 (1881). (No requirement that witness articulate specific facts indicative of abnormal behavior before giving his opinion.)

[18] Baird v. State, 146 Miss. 547, 112 So. 705 (1927). (Lay witnesses testifying that defendant was sane based on their ample opportunity to observe his conduct do not have to state the specific facts upon which the opinion is based. However, lay opinion that defendant is insane should be accompanied by a statement of specific facts.)

[19] *Id.*

based.[20] The court imposed an additional requirement that the lay witness must first state the facts upon which the opinion is based and then give the opinion.[21] The admissibility of lay opinions is left largely to the discretion of the trial court.[22] When the defense is insanity, the court is required to give defendant the largest reasonable latitude that the law will allow.[23]

Although a lay witness is required to show a sufficient opportunity to observe the defendant's irrational behavior, there is no exact rule on the extent of the knowledge the witness should possess.[24] However, the observation of irrational acts must be of such an extent to make the opinion valuable.[25] In this respect, the requirement is analogous to Rule 701 of the Federal Rules of Evidence.[26] Rule 701 requires that the opinions be "rationally based on the perceptions of the witness."[27]

Apparently before *Prine*, a properly predicated lay opinion was admissible as to the defendant's sanity at the time of the crime even though the witness was not present when it occurred.[28] Other cases indicate that it was permissible for a lay witness to express an opinion that the defendant was sane at the time of the crime.[29] It is not clear

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[20]*Id.*

[21]Keeler v. State, 226 Miss. 199, 84 So. 2d 153 (Miss. 1955). *But see*, Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708 (1948). (Witness first stated his opinion and then gave the facts upon which the opinion was based.)

[22]Waycaster v. State, 185 Miss. 25, 187 So. 205 (Miss. 1939).

[23]McLeod v. State, 317 So. 2d 389, 391 (Miss. 1975). (When the defense is insanity, every act of the accused relevant to the issue is admissible and the trial court is to be liberal in allowing the introduction of evidence or examination of witnesses which tends to show the insanity of the accused.) Warren v. State, 285 So. 2d 756, 759 (Miss. 1973) (On the question of insanity, considerable latitude is afforded the examination of witness). Tarrents v. State, 236 So. 2d 360 (Miss. 1970). Waycaster v. State, 185 Miss. 25, 187 So. 205 (1939). Bishop v. State, 96 Miss. 846, 52 So. 21, 22 (1910). (Requiring the trial court to give the defendant "the full latitude he is clearly entitled to under the law in making competent proof as to his sanity or insanity.") Bacot v. State, 96 Miss. 125, 50 So. 500, 501 (1909). ("In inquiries as to the insanity of a person, the largest reasonable latitude is allowed.")

[24]Harvey v. State, 207 So. 2d 108, 117-18 (Miss. 1968).

[25]McGarrh v. State, 249 Miss. 247, 148 So. 2d 494, 497 (1963).

[26]R. Gray Jr. & S. Hammond Jr., *Opinion and Expert Testimony*, 49 MISS L.J. 1. Compare and contrast the federal rules to the state rules concerning the admissibility of opinion and expert testimony.

[27]FED. R. EVID. 701.

[28]Reed v. State, 62 Miss. 405, 408 (1884). (Court held that it was error to exclude the opinion of a lay witness as to sanity of accused at the time of the crime. The witness had known the defendant for several years, had seen him nearly everyday, but the witness did not see him the day of the crime.)

[29]In the following cases, the admissibility of opinions of a person's mental soundness at a future time was not in issue, however, dicta indicates that lay opinions are admissible. Rush v. State, 182 So. 2d 214 (Miss. 1966). (Several lay witnesses who did not see the defendant on the day of the crime, testified that he did not know right from wrong "at the time of the shooting." McGarrh v. State, 249 Miss. 247, 148 So. 2d 494 (1963). (Several witnesses who saw the defendant before the crime were permitted to testify that

whether the Prine rule will apply to such cases. The rule clearly excludes testimony that the person is insane, but the court may adopt a less restrictive rule for sanity.

The Mississippi Supreme Court has attempted a much needed step toward the clarification of the requirements for the admissibility of lay opinions concerning the question of sanity *vel non*. The instant case limits lay opinion of the defendant's insanity to the time of the observation. Any prognosis by a lay witness will be based upon mere conjecture or speculation. The court has adopted the rule which precludes lay opinion because the testimony invades the domain of the expert witness.[30]

On the surface, it appears that the court has adopted a standard similar to that of the Federal Rules of Evidence.[31] The main requirement in *Alexander* is that the facts articulated by the lay witness be "reasonably capable" of supporting the opinion of insanity. The two-prong test to establish a proper predicate requires a "reasonably sufficient opportunity to observe" and observation of "behavior reasonably indicative of an unsound mind." This test is analogous to that formulated by the Fifth Circuit[32] and other jurisdictions.[33] However, the requirement of detailing the fact indicative of an unsound mind is confusing and unduly restrictive.

The defense and the state introduced conflicting expert testimony. Surely the opinions of persons who knew the defendant for several years would have been a valuable aid to the jury. After evaluating the lay testimony, the supreme court concluded that the defendant's reactions were no different from those of a normal person under those circumstances.[34] A jury, with the aid of the lay opinion testimony, may have reached the same conclusion.

One witness testified that the defendant was "edgy", "preoccupied with the affair", "completely obsessed with the affair", and "nervous and shaking."[35] A similar predicate was established in *Reed v. State* in which the witness testified that the defendant was nervous, restless,

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the defendant was sane the day of the killing. Williams v. State, 205 Miss. 515, 49 So.2d 261 (1951). (Witness testified that in his opinion the accused was sane before, at the time of, and since the crime.) Brummet v. State, 182 Miss. 580, 181 So. 323, 324 (1938). (Lay witnesses testified that the accused was able to distinguish right from wrong at all times.) Baird v. State, 146 Miss. 647, 112 So. 705 (1927). (Lay witness testified that the appellant was sane at the time of the homicide.)

[30]208 So. 2d 187 (Miss. 1968); Ross v. State, 220 S.W. 2d 137 (Tex. 1949); State v. Douglas, 312 Mo. 373, 278 S.W. 1016 (1926).

[31]FED. R. EVID. 701.

[32]U. S. v. Milne, 487 F.2d 1232 (1973).

[33]Hunter v. State, 335 So. 2d 194 (Ala. 1976); Wenck v. State, 238 S.W.2d 793 (Tex. 1951); Davis v. State, 28 S.W.2d 993 (Tenn. 1930).

[34]358 So. 2d at 384.

[35]*Id.* at 383, 384.

and looked wild.[36] Yet, in *Alexander*, the supreme court held that the predicate was insufficient. Often witnesses may not isolate the separate acts of insanity, rather, they perceive insanity as a whole. Even if the separate impressions can be detailed, they may not convey the complete picture. The total impression of insanity may result from other intangibles that the witness can not reduce to words.

The court is requiring a specificity that is a haunting reminder of the abuses of the lay opinion rule. The exclusion of the opinions of the witnesses as to the sanity of the accused at the times they observed him, deprived the jury of important information which was necessary for determining whether or not the defendant was insane. The requirement for the admissibility of lay opinion testimony should be that the witness had an opportunity to observe and did observe. The present rule is impossible to apply consistently and this uncertainty of the law will result in injustice. Where a defendant is "so restricted in making ... the only defense possible for him to make [he is] denied a fair and impartial trial."[37]

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[36]62 Miss. at 406.

[37]Brock v. State, 92 Miss. 712, 46 So. 67, 68 (1908).