



OFFICIAL NOTICE  
COURT OF APPEALS  
FOURTEENTH DISTRICT OF TEXAS

RE: CASE NO. 14-90-00246-CR  
STYLE: Southerland, Shirley Annette a/k/a  
V: The State of Texas

February 11, 1991

Please be advised that on this date in the above  
cause the State's brief has been received and filed.  
ORAL ARGUMENT WAIVED.

*180th*  
~~TRIAL COURT CASE NO. 526,673~~

~~MARY JANE SMART, Clerk~~

COURT OF APPEALS  
FOURTEENTH DISTRICT OF TEXAS  
1307 SAN JACINTO, 11TH FLOOR  
HOUSTON, TX 77002

MAIL TO:

Hon. Katherine Tyra  
District Clerk, Harris County  
Attention: Criminal Division  
P. O. Box 4651  
Houston, TX 77210

Affirmed and Opinion filed February 28, 1991.



FILED  
CLERK  
HARRIS COUNTY, TEXAS  
1991 MAR -4 PM 11:39  
BY *[Signature]* DEPUTY

In The

**Fourteenth Court of Appeals**

NO. C14-90-00246-CR

SHIRLEY ANNETTE SOUTHERLAND, Appellant

v.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court  
Harris County, Texas  
Trial Court Cause No. 526,673

**OPINION**

Appellant, Shirley Annette Southerland, appeals her judgment of conviction for the offense of murder. TEX. PENAL CODE ANN. § 19.02 (Vernon 1989). The jury rejected appellant's not guilty plea and assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for life and a fine of ten thousand dollars. We affirm.

On February 19, 1989, at approximately 1:30 p.m., Darrell Lathrop discovered the body of Shawnte Collins in a garbage can on the side of the street across from his home. The cause of death was a gunshot wound to the right side of the head.

In the early morning hours of February 18, 1989, Angelica Cavazos, Pedro Cavazos, and Yvonne Gonzalez witnessed an argument between appellant and Collins at

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their home. All three testified that appellant threatened Collins' life. Appellant and Collins left the home shortly after the altercation. Appellant left first. Collins followed shortly thereafter.

On February 19, 1990, appellant returned to the Cavazos home and talked to Jesus Cavazos. Jesus Cavazos testified that appellant admitted to him that she had killed Shawnte Collins because Shawnte had slept with her husband. Yvonne Gonzalez testified that she overheard appellant tell Jesus Cavazos that she had "taken out the garbage". Ms. Gonzalez took that to mean appellant had killed Shawnte Collins. Wanda Jean White testified that she met appellant in jail while White was being held on charges of robbery and theft. White testified that appellant admitted to killing Shawnte Collins because she had slept with her husband.

Appellant testified that on February 18, 1989, she went to the Cavazos home to sell a shotgun to Pete or Jesus Cavazos. While appellant was there she saw Shawnte Collins. She had known Collins since 1987. Appellant did not strike or menace Shawnte Collins. Appellant left the Cavazos home at approximately 11:00 p.m., returning to her home where she watched a video tape and fell asleep on the sofa. Shawnte Collins was still at the Cavazos home when appellant left. Appellant did not see Collins after appellant left, and did not kill her. She learned of her death the next day when she returned to the Cavazos home.

In appellant's first point of error, she asserts the trial court erred when it failed to allow Katy Lou Smith to testify as to the substance of the conversation she had with Arnold Ramirez. During the course of the trial, the State called the victim's stepmother, Kitty Smith, for the purpose of identifying a photograph of the deceased. Ms. Smith testified that she first learned of her stepdaughter's death at approximately 12:30 a.m., on Monday morning when a representative of Alief Funeral Home came to her house. Thereafter, Ms. Smith said she gained some information about her stepdaughter from Arnold Ramirez, and that she passed that information on to the Harris County Sheriff's Department. Ms. Smith testified as follows:

PROSECUTOR: Ma'am, did you ever receive any information from - and I am not asking you what the information was, but from a person named Arnold Ramirez, regarding what happened to Sissy (Shawnte Collins)?

A. Would you please repeat that question to me?

PROSECUTOR: Did you receive any information from an Arnold Ramirez about what happened to Sissy [the complainant]?

A. Yes, sir, I did.

PROSECUTOR: Okay. And what action, if any, did you take regarding that information?

A. I contacted Harris County Sheriff's Department Homicide Division and I contacted Stevens with the Houston Police Department, first, because at that time I didn't know who was taking - who was taking care of things.

PROSECUTOR: Okay.

A. And I was referred to Harris County Sheriff's Department.

PROSECUTOR: Okay. Do you remember approximately when that was?

A. Any information that I had or when I talked to them was the weekend following Sissy's burial on Thursday.

PROSECUTOR: Okay. And what date? Do you remember the date that she was buried?

A. Sissy was buried February 23rd.

PROSECUTOR: And did you tell the deputy sheriffs the information that you had learned?

A. Yes, sir, I did.

PROSECUTOR: Okay. And did they handle the investigation after that?

A. Yes, sir, they did.

On cross-examination, appellant's counsel restricted his questions solely to whether the witness had previously made a statement to police.

Thereafter, Arnulfo Ramirez, the same person who had passed information to Kitty Smith was called as a witness by the State. Ramirez was asked no questions on direct or cross-examination about the "information" which was passed to Kitty Smith.

After the State had rested its case, the jury was retired and appellant recalled Kitty Smith, outside the presence of the jury, to make a proffer of evidence. Ms. Smith testified that she told the police that the victim had gotten into some trouble about a year prior to her death with a Columbian named Pablo, and that she had "ripped" him off in a drug deal. Ms. Smtih further testified that she had gained this information from the decedent a year prior to her death.

Appellant sought to have this testimony elicited before the jury, but the prosecutor objected and the trial court sustained the objection. Appellant contends that the testimony was admissible under the rule of optional completeness found in TEX. R. CRIM. EVID. 107. It is appellant's position that knowledge obtained by Ms. Smith from her stepdaughter, a year prior to her death, should have been admitted to show the whole topic of conversation which Ms. Smith had with Arnulfo Ramirez.

The record reveals that the conversations are separated by a year in time and are with two different people. The State never offered any portion of the contents of the conversation which Ms. Smith had with Arnulfo Ramirez. We find that where no part of the conversation has been admitted into evidence, there can be no "completion" of that evidence with the remainder of the conversation. *Allridge v. State*, 762 S.W.2d 146, 153 (Tex. Crim. App. 1988). Appellant's first point of error is overruled.

In appellant's second point of error, she contends during his final argument, the State's attorney improperly commented on the failure of appellant's spouse to testify.

Several witnesses testified that appellant was convinced, and had loudly proclaimed, that the victim had "slept" with her husband. In his closing argument, the prosecutor observed that there were no witnesses to this event if it occurred, other than the deceased and appellant's husband. There was no objection to this argument at trial. Appellant complains on appeal that the following argument was improper.

We hear from all the other witnesses that Shawnte had slept with her husband. Now, who knows about that? Who really knows about whether Shawnte slept with her husband? Well, one person knows and that's Shawnte. She would know, but she is not around. She can't testify to that, but who can? Isn't there another person on this earth that lives in Houston, Harris County, Texas, that is still under good terms with the defendant? Isn't there another person that can shed some light on the relationship between Shawnte and Ron Southerland? Guess who that would be? Yes, that's right, Ron Southerland. He can testify to that. And we talked about on voir dire how each side has the ability to call the witnesses to have them subpoenaed. Well, you know from the defendant's testimony that she's still on good terms with the husband. He still lives in Houston. But, where was he? Draw your own conclusions.

Since appellant made no objection to the State's argument, she has waived error on appeal. T.R.A.P. Rule 52 (a) states in pertinent part that in order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling he desired the Court to make. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion. We find that appellant has waived her right to present any error for review on appeal. Appellant's second point of error is overruled.

Accordingly, the judgment of the trial court is affirmed.

/s/ George T. Ellis  
Justice

Judgment rendered and Opinion filed February 28, 1991.

Panel consists of Justices Pressler, Junell and Ellis.

Do Not Publish - TEX. R. APP. P. 90.

CAUSE NO. 526,673 DEFENDANT'S NAME SHIRLEY ANNETTE MARTIN SUTHERLAND  
IN THE 180th DISTRICT COURT / ~~CRIMINAL COURT AT LAW NO.~~ OF HARRIS COUNTY, TEXAS  
1, Kathleen O'Connor Powers Court Reporter for the 180th District Court / ~~Criminal Court~~  
AT LAW NO. \_\_\_\_\_, do hereby tender for filing to ~~Ray Maydy~~, District Clerk, Harris County, the following exhibits in the above styled and numbered cause:  
(LIST EXHIBITS, INCLUDING SERIAL AND/OR MODEL NUMBER) Katherine Tyra

STATE'S EXHIBITS

Sx1 thru Sx11-photographs; Sx12-autopsy report; Sx13 thru Sx15-autopsy  
photographs; Sx16-large photograph; Sx17-1-pg key map.

RECORDERS MEMORANDUM:

This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming.

Dx1 thru Dx3-photographs DEFENDANT'S EXHIBITS

COURT EXHIBITS

Court Ex. No. 1-1-pg judgment; Court Ex. No. 2-2-pg. indictment.

Katherine Tyra

COURT REPORTER

I, ~~Ray Maydy~~ District Clerk, Harris County, Texas, do hereby acknowledge receipt of the above listed exhibits ONLY as tendered and described above  
with no responsibility as to the weights or veracity of contents in the above styled and numbered cause. Katherine Tyra

1 3-13-91  
TIME: 2:46 P.M. A.M./P.M.  
BY ~~Ray Maydy~~ District Clerk, Harris County, Texas  
F Deputy



MANDATE

The Fourteenth Court of Appeals

RECORDED BY [unclear]
This instrument is a true and correct copy of the original and not subject to any change or modification by the recorder; all amendments were present at the time of filing.

NO. C14-90-00246-CR

SHIRLEY ANNETTE SOUTHERLAND, Appellant

VS.

THE STATE OF TEXAS, Appellee

Appeal from the 180th District Court of Harris County. (Tr. Ct. No. 526,673). Opinion delivered by Justice Ellis. Justices Pressler and Junell also participating.

TO THE 180TH DISTRICT COURT OF HARRIS COUNTY, GREETINGS:

Before our Court of Appeals, on the 28th day of February, A.D. 1991, the cause upon appeal to revise or reverse your judgment was determined. Our Court of Appeals made its order in these words:

"This cause came on to be heard on the transcript of the record of the court below. The same being considered, it is the opinion of this Court that there was no error in the judgment. It is ordered by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

WHEREFORE, WE COMMAND YOU to observe the order of our said Court in this behalf and in all things have it duly recognized, obeyed and executed.

WITNESS, the HON. J. CURTISS BROWN, Chief Justice of our Fourteenth Court of Appeals, with the Seal thereof affixed, at the City of Houston, this the 15th day of APRIL, A.D. 1991.

MARY JANE SMART, CLERK

By [Signature of Mary Jane Smart]

FILED

KATHERINE TURA District Clerk

APR 17 1991

Time: 4:30 pm Harris County, Texas

By [Signature] Deputy

21-11

2/4/80

[Handwritten mark]