

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00178 COA

JOE LEE BROWN

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT WALTER BAILEY

COURT FROM WHICH APPEALED: CIRCUIT COURT OF LAUDERDALE COUNTY

ATTORNEY FOR APPELLANT:

ROGERS J. DRUHET, III

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: GLENN WATTS

DISTRICT ATTORNEY: E. J. MITCHELL

NATURE OF THE CASE: CRIMINAL: ARMED ROBBERY

TRIAL COURT DISPOSITION: GUILTY VERDICT; SENTENCED TO 12 YRS IN PRISON
AND FINED

BEFORE THOMAS, P.J., KING AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Joe Lee Brown was convicted of armed robbery and sentenced to serve twelve years in prison. He appeals his conviction, challenging the sufficiency of the evidence. We find no merit in his appeal and affirm.

There was evidence at trial that on January 24, 1992, a convenience store in Meridian was robbed by Brown. Earlier, a friend of Brown's had shoplifted beer from the store and, when the men ran out of beer, Brown was sent back for more. Instead of completing the assigned errand, Brown leapt over the store counter and held a knife similar to a meat cleaver in the clerk's face. Brown emptied the cash register and returned to where he and his friend had been drinking. He told his friend that he had robbed the store.

The store clerk later described her assailant. Brown was apprehended. The clerk identified Brown in a live line up after she had been unsuccessful in recognizing his picture in a photographic line up consisting of more than one hundred pictures. Brown was indicted, tried, and convicted for this armed robbery.

Brown's challenge to the sufficiency of the evidence centers around his contention that the identification of him by a witness was inadequate to link him to the crime. Brown does not argue that the evidence of the identification was inadmissible by virtue of undue suggestiveness. Consequently, the test under *Neil v. Biggers*, 409 U.S. 188, 198-200 (1972) is not invoked. We find that there is sufficient evidence to link Brown to the armed robbery at issue in this appeal and, further, that there was sufficient evidence of the other elements of armed robbery.

In our review of the sufficiency of the evidence, we accept as true all of the evidence consistent with Brown's guilt together with any reasonable inferences that may be drawn from the evidence. *Heidel v. State*, 587 So. 2d 835, 838 (Miss. 1991). Reversal is not appropriate unless evidence of the elements of the crime is such that reasonable and fair minded jurors could only find the accused not guilty. *Wetz v. State*, 503 So. 2d 803, 808 (Miss. 1987). Otherwise, if there is disputed proof, the jury is entrusted with the exercise of impartial judgment to consider the weight and the credibility of the evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987). This appeal concerns a case of disputed proof.

Armed robbery requires proof of the taking of personal property of another from that person against his will by putting the victim in fear of immediate physical injury. Miss. Code Ann. § 97-3-73 (1972). There is sufficient evidence to support the charge in this case. Brown was identified by the store clerk in a live line up and in court as the assailant. She had accurately described the clothing he was wearing on the day of the crime. The jury was entitled to accept this identification, even though it was also aware the store clerk was unable to pick Brown's picture out of a photographic line up of more than one hundred pictures and provided a marginally inaccurate physical description of Brown. Evidence was presented that an individual identifying himself as Brown called the police and identified Brown's companion that day as the armed robber. In addition, Brown's fingerprints were not found at the scene. Presented with a straight issue of fact, i.e., whether Brown was the assailant, the jury fulfilled its role to resolve conflicts in the evidence and base its verdict on the evidence it believed. *Hankins v. State*, 288 So. 2d 866, 868 (Miss. 1974). There was testimony that it was Brown who had threatened the store clerk with a knife while he took money from the store register.

In light of this evidence, the charge of armed robbery was supported by sufficient evidence. Accordingly, we affirm.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF TWELVE (12) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO LAUDERDALE COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.