

IN THE COURT OF APPEALS 10/15/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00140 COA

JOHNNY HILL

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: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

GARY B. JONES

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS

DISTRICT ATTORNEY: BILBO MITCHELL

NATURE OF THE CASE: CRIMINAL--FELONY

TRIAL COURT DISPOSITION: BURGLARY OTHER THAN A DWELLING: SENTENCED TO
LIFE IMPRISONMENT IN THE CUSTODY OF THE MDOC AND SAID SENTENCE SHALL
BE SERVED WITHOUT SUSPENSION, REDUCTION, PROBATION OR PAROLE UNDER 99-
19-83

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

THOMAS, P.J., FOR THE COURT:

Johnny Hill was tried and convicted in the Circuit Court of Lauderdale County for the crime of burglary of a commercial building and sentenced to life imprisonment as a habitual offender under section 99-19-83. Hill appeals to this Court arguing that the trial court erred in failing to grant a directed verdict, JNOV, or a new trial. Finding no error, we affirm.

FACTS

At about 4:30 A.M. on December 27, 1992, Deputy Fred Porter of the Lauderdale County Sheriff's Office was traveling West on 8th Street in Meridian, Mississippi, when he saw a black male pushing a grocery cart across the street. Porter turned his squad car around and went in the direction of the man pushing the cart. When the suspect saw Deputy Porter, the suspect began to speed up. As Porter pulled up next to the man, the man introduced himself as Johnny Hill. While Hill and Deputy Porter were talking, another vehicle pulled behind Porter's squad car. When Porter turned around to see who had pulled behind him, Hill fled. Porter then radioed for backup.

After Hill had fled the scene, Deputy Porter began to look for the grocery cart that Hill had been pushing. He found it behind a dumpster. Inside the grocery cart, Porter found some beer, cigarettes, potato chips and drinks.

As Porter began to drive around the area, he noticed that a window pane in a window to Sellers Grocery had been knocked out and the window seemed to have been pried open with an object like a knife or screwdriver. The owner of the store was called to the scene and identified the items in the cart as having come from her store.

The following morning Porter spotted Hill walking on 34th Avenue. After stopping and searching Hill, Porter found a knife, a flashlight, and a screwdriver in Hill's pockets. Hill was then arrested and charged with burglary of a commercial dwelling.

DISCUSSION

Hill argues that the State presented insufficient evidence to find him guilty of burglary and also argues that the jury's verdict was against the overwhelming weight of the evidence. Hill argues that the case against him was based solely on circumstantial evidence--that there was no direct proof that he broke into Sellers Grocery, i.e. no fingerprints, footprints, or eyewitness.

First, as to the sufficiency of the evidence, our supreme court, in *Edwards v. State*, 615 So. 2d 590, 594 (Miss. 1993) (citations omitted), stated:

In judging the sufficiency of the evidence on a motion for a directed verdict or request for peremptory instruction, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. If, under this standard, sufficient

evidence to support the jury's verdict of guilty exists, the motion for a directed verdict and request for peremptory instruction should be overruled.

At trial, the State produced evidence that the night that Sellers Grocery was burglarized, Hill was seen within a block of the store moving rapidly with a grocery cart. As Deputy Porter was questioning him, Hill fled the scene leaving the grocery cart behind. In the grocery cart, there were certain items which were identified as having come from Sellers Grocery. The next day, Hill was arrested while in possession of a flashlight, screwdriver, and a knife. Hill did not testify and did not offer any reason why he was in possession of the merchandise which came from the store.

We find that there was credible, substantial evidence for the jury to find that Hill was the person that broke into Seller's Grocery. As our supreme court has stated that "[a] circumstance capable of arousing enormous suspicion may have a perfectly valid explanation, but when the one person capable of dispelling this suspicion chooses to offer no explanation whatsoever, he can hardly blame the inevitable conclusion which will follow in a reasonable fact finder's mind from his choice to keep his mouth shut." *Weaver v. State*, 481 So. 2d 832, 834 (Miss. 1983).

Second, as to the weight of the evidence, our supreme court, in *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1983), stated:

[T]he challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes Miss. Unif. Crim. R. Of Cir. Ct. Prac. 516. New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State. *Wetz [v. State]*, 503 So. 2d 803, at 807, 08 (Miss. 1987)].

....

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed.

In *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992), the court stated the scope of review of the claim at issue as follows:

In *Burge v. State*, 472 So. 2d 392 (Miss. 1985), this Court stated that all evidence, even that which does not support the State's case, must be considered in the light most favorable to the State. *Id.* at 396. *See also May v. State*, 460 So. 2d 778, 781 (Miss. 1984). "[T]his court must accept as true the evidence which supports the verdict." *Spikes v. State*, 302 So. 2d 250, 251 (Miss. 1974). The State must be given the benefit of all reasonable inferences that may reasonably be drawn from the evidence. *Glass v. State*, 278 So. 2d 384, 386 (Miss. 1973).

Under the facts in this case it is clear that the jury's verdict was not against the overwhelming weight of the evidence. We find these issues to be without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF LAUDERDALE COUNTY OF CONVICTION OF THE CRIME OF BURGLARY OF A COMMERCIAL BUILDING AS A HABITUAL OFFENDER AND SENTENCE TO LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF APPEAL ARE TAXED TO LAUDERDALE COUNTY.

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