

IN THE COURT OF APPEALS 08/06/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00381 COA

MELVIN SMITH, JR.

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. WILLIAM COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT, 1ST JUD. DIST.

ATTORNEY FOR APPELLANT:

THOMAS FORTNER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART

DISTRICT ATTORNEY: BOBBY DELAUGHTER

NATURE OF THE CASE: CRIMINAL- ARMED ROBBERY

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SERVE A TERM OF 15
YEARS IN THE CUSTODY OF THE MDOC, 8 YEARS SUSPENDED 5 YEARS PROBATION
AND 7 YEARS TO SERVE

BEFORE FRAISER, C.J., BARBER, AND SOUTHWICK, JJ.

PER CURIAM:

Melvin Smith, Jr. was indicted and convicted of armed robbery. He was sentenced to serve a term of fifteen years in prison. On appeal, Smith contends that the court erred in refusing a jury instruction on the offense of accessory after the fact of armed robbery and challenges the jury verdict as being without sufficient evidence to support it and against the overwhelming weight of the evidence.

The evidence presented by the State showed that on February 3, 1992, between 1:00 and 1:30 A.M., the Burger King restaurant on Clinton Boulevard was robbed of approximately \$1,500. This occurred when a man approached the manager on duty, Michelle Bell, in the parking lot while she was attempting to leave with the restaurant's deposits. The victim identified Melvin Smith as the man who robbed her. At trial, Bell testified that a man with a silver colored gun in his hand came out of the dumpster and demanded the money. At the time, she was approximately ten feet from the man who robbed her. Bell also testified that the parking lot was well lighted and that the robber was clearly visible to her. She stated that she had no doubt that the man who robbed her was Smith.

Smith gave a written statement to the police wherein he admitted that another man asked him to go with him to get some money. He stated that he knew the man had a gun and was going to rob someone at Burger King. He parked two blocks away from the restaurant and, after some time, the other man returned with the money, and they drove away. Smith said the man shared some of the money with him. At trial, Smith denied knowing that anyone was going to be robbed. Smith admitted signing and initialing the statement. He said, however, that he did not read the statement before he signed it.

We find that the trial court correctly refused Instructions D-5, 6, 7, and 8. There was no evidence to support a conviction of accessory after the fact. *Gangl v. State*, 539 So. 2d 132, 136 (Miss. 1989). Furthermore, the refusal was not error because the proposed instructions incorrectly stated the law. As proposed, the instructions allowed the jury to find a principal guilty of accessory after the fact. *See Murphy v. State*, 566 So. 2d 1201, 1206 (Miss. 1990); *Crosby v. State*, 175 So. 180, 181 (Miss. 1937).

When we review the denial of a motion for directed verdict, we give the State the benefit of all favorable inferences and then examine the evidence to be sure it supports the verdict beyond a reasonable doubt. *Pierre v. State*, 607 So. 2d 43, 54 (Miss. 1992). We will not reverse unless we conclude that no reasonable hypothetical juror could have found the defendant guilty. *Ross v. State*, 601 So. 2d 872, 874 (Miss. 1992). In reviewing the evidence in this case, we find it to be sufficient to support a verdict of guilty beyond a reasonable doubt. Therefore, we find no error in the denial of the motion for directed verdict.

When deciding whether the verdict is against the overwhelming weight of the evidence, we must accept as true all the evidence supporting the State's position, as well as all reasonable inferences flowing therefrom, in the light most favorable to the State. *Britt v. State*, 520 So. 2d 1377, 1379 (Miss. 1988). Considering this standard, and after reviewing the record, we find that the jury had

ample evidence to support a verdict of guilty. Therefore, based upon the weight of the evidence supporting the verdict, we find that the trial court did not abuse its discretion in denying the Defendant's motion for a new trial. Accordingly, we affirm Smith's conviction.

THE JUDGMENT OF THE FIRST JUDICIAL DISTRICT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH EIGHT (8) YEARS SUSPENDED, FIVE (5) YEARS SUPERVISED PROBATION AND SEVEN (7) YEARS TO SERVE IS AFFIRMED. COSTS ARE ASSESSED AGAINST HINDS COUNTY.

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