

IN THE COURT OF APPEALS 11/12/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00607 COA

STEVE COTTON

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. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

FOR APPELLANT:

RICHARD B. LEWIS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: LAWRENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL--FELONY

TRIAL COURT DISPOSITION: BURGLARY: SENTENCED TO SERVE A TERM OF 7 YRS IN
MDOC; COURT SUSPENDS 3 YRS AFTER DEFENDANT HAS SERVED 4 YRS IN THE
MDOC (SEE OTHER RECORD INFOR)

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

THOMAS, P.J., FOR THE COURT:

SUMMARY

Cotton was convicted of burglary and appeals, assigning one issue as error:

I. DID THE TRIAL COURT ERR IN DENYING HIS MOTIONS FOR DIRECTED VERDICT, JNOV, AND NEW TRIAL?

Finding no error, we affirm.

FACTS

On September 19, 1993, Cotton and Janice Tillman broke into Brown's Chevron service station in Jonestown, Mississippi. They stole beer, cigarettes, and other items totaling over \$3,000.00, and later sold some of these items for crack cocaine.

At trial, Tillman testified that Cotton participated in the robbery, and Lavonne Johnson acted as a lookout. Tillman stated that she thought that two other men were also involved in the burglary. Tillman admitted that she had accepted a plea bargain in exchange for agreeing to testify against Cotton at trial. Tillman's testimony at trial was unclear on some issues such as how many individuals actually participated in the burglary, but she unhesitatingly stated that Cotton was actively involved and actually entered the service station with her. Lavonne Johnson also testified that she saw Tillman and Cotton break into the service station. Johnson testified that Tillman tried to convince her to help her break into the store or to act as a lookout while Cotton and Tillman broke into the service station, but she refused.

ANALYSIS

I. DID THE TRIAL COURT ERR IN DENYING HIS MOTIONS FOR DIRECTED VERDICT, JNOV, AND NEW TRIAL?

A. MOTIONS FOR DIRECTED VERDICT AND JNOV

Cotton asserts as error the trial court's denial of his motion for directed verdict at the close of the State's case in chief and his motion for JNOV. Motions for directed verdict and JNOV challenge the sufficiency of the evidence supporting a guilty verdict. *Butler v. State*, 544 So. 2d 816 (Miss. 1989). We review the evidence on the last occasion when the sufficiency of the evidence was challenged before the trial court, at the time of Cotton's motion for JNOV. *McClain v. State*, 625 So. 2d 774,

778 (Miss. 1993); *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987). To test the sufficiency of the evidence of a crime, this Court must

With respect to each element of the offense, consider all of the evidence - not just the evidence which supports the case for the prosecution - in the light most favorable to the verdict. The credible evidence which is consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty.

Wetz, 503 So. 2d at 808 (citations omitted).

A conviction based upon an accomplice's testimony may be upheld even if the testimony is uncorroborated if the testimony is reasonable and not improbable, self-contradictory, or substantially impeached. *Flanagan v. State*, 605 So. 2d 753, 758 (Miss. 1992) (citation omitted); *Fleming v. State*, 604 So. 2d 280, 288 (Miss. 1992); *Reed v. State*, 506 So. 2d 277, 282 (Miss. 1987). However, "[w]here the record contains even slight corroborative evidence, this Court will hold that the accomplice's testimony is sufficient to sustain the verdict." *Mason v. State*, 429 So. 2d 569, 571 (Miss. 1983) (citation omitted). The jury is the sole judge of the credibility of witnesses, and it alone determines the weight to be accorded to conflicting testimony. *Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1992).

Cotton asserts that there was insufficient evidence to convict him of burglary and that the State should have prosecuted Johnson and the two other men who allegedly participated in the burglary. However, the jury had more than sufficient evidence to convict Cotton of the crime charged. Even though Tillman's testimony conflicted with the testimony of other witnesses, her testimony was sufficient to support the verdict. Further, her testimony that she and Cotton broke into the service station and took a number of items was corroborated by Lavonne Johnson's testimony. Regardless of whether the jury focused on Tillman's or Johnson's testimony, the jury, whose primary function is to judge the credibility of witnesses, obviously believed that Cotton participated in the robbery. The trial court properly denied the motions for directed verdict and JNOV.

B. MOTION FOR NEW TRIAL

A motion for a new trial challenges the weight of the evidence rather than its sufficiency. *Butler*, 544 So. 2d at 819. 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. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994) (citations omitted); *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993) (citation omitted). On review we accept as true all evidence favorable to the State, and the State is given the benefit of all reasonable inferences that may reasonably be drawn from the evidence. *Id.*; *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992). This Court will reverse such a ruling only for an abuse of discretion. *McClain*, 625 So. 2d at 781.

Clearly, the jury's verdict was not against the overwhelming weight of the evidence, and the trial court properly denied the motion for new trial. This issue is without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF BURGLARY OF A BUSINESS AND SENTENCE TO SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THREE YEARS SUSPENDED IS AFFIRMED. SENTENCE IMPOSED SHALL RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED, AND THE APPELLANT SHALL MAKE FULL RESTITUTION TO THE VICTIM. ALL COSTS ARE ASSESSED TO COAHOMA COUNTY.

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