

IN THE COURT OF APPEALS 07/02/96
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00528 COA

ROY LIMUEL ODOM

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. EUGENE BOGEN

COURT FROM WHICH APPEALED: CIRCUIT COURT OF WASHINGTON COUNTY

ATTORNEY FOR APPELLANT:

ROBERT E. BUCK

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY W. GLENN WATTS

DISTRICT ATTORNEY: JOYCE CHILES

NATURE OF THE CASE: CRIMINAL -- BURGLARY

TRIAL COURT DISPOSITION: GUILTY -- SENTENCED AS A HABITUAL OFFENDER TO A
TERM OF SEVEN YEARS IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

BEFORE FRAISER, C.J., BARBER, DIAZ, AND McMILLIN, JJ.

BARBER, J., FOR THE COURT:

The Appellant, Roy Limuel Odom (Odom), was found guilty by a jury in the Circuit Court of Washington County for the crime of business burglary. He was sentenced as a habitual offender for a term of seven years in the custody of the Mississippi Department of Corrections without the possibility of parole. Finding no merit in the issues raised by Odom, the conviction is affirmed.

I. FACTS

David Duprell owns a farm in Washington County. On the evening of September 21, 1991, the farm's shop and grease shed were burglarized. Duprell's Yamaha four-wheeler and various tools were stolen from the premises.

Several days later, Deputy Tony Sullivan of the Washington County Sheriff's Department spotted a Yamaha four-wheeler that fit the description of the one stolen from Duprell. The four-wheeler was in the possession of a man named Eddie Pierce. When Sullivan investigated further, Pierce stated that he purchased the four-wheeler from Roy Odom. Odom told Pierce that he had obtained the four-wheeler in Oak Grove, Louisiana. As a result of Sullivan's interview with Pierce, a warrant was procured for Odom's arrest.

Sheriff's Deputy Bennie Keith arrested Odom on September 26, 1991. At the time of this arrest, Odom had in his possession many of the tools that matched the description of those stolen from Duprell.

Captain Charles Haynes was working as an investigator with the Washington County Sheriff's Department on the day that Odom was arrested. Haynes gave Odom his *Miranda* warnings and, at approximately 2:10 P.M., Odom gave him a statement in which he claimed to have bought the four-wheeler in a Mississippi Wal-Mart parking lot from a man named Charles Smith. Then, at approximately 4:20 P.M., Odom gave a second statement in which he confessed to taking some screws off of a hinge, breaking into Duprell's shed, driving off with Duprell's four-wheeler and selling that four-wheeler to someone named "Eddie."

At Odom's trial, the trial court overruled Odom's motion to suppress his second statement. At the trial's conclusion, the jury found him guilty of business burglary, and the court sentenced him as a habitual offender to a seven-year prison sentence without the possibility of parole. Odom now appeals.

II. DISCUSSION

A) Did the Trial Court Err in Failing to Suppress Odom's Second Confession?

Before trial commenced, Odom made a motion to suppress the second statement that he gave to the sheriff's department. Odom did so based upon his assertion that he gave this statement in response to a threat by the police that they would prosecute his wife as an accessory to the burglary if he did not

confess. Odom contended that in view of this threat against his wife, his second statement was involuntarily given. The trial court held a hearing on the motion. After various witnesses testified, including Odom and his wife, the judge stated in pertinent part:

[T]he Court can find nothing in this record to reflect any intimidation or duress to cause this statement to be suppressed, and the jury can hear the testimony [of both Odom and the police] and determine whose testimony they choose to believe.

Accordingly, the judge denied the motion. Odom contends that this denial was erroneous.

With respect to the issue of a confession involuntarily given, the Mississippi Supreme Court has stated:

In order for a confession to be admitted into evidence, it must have been given freely and voluntarily and without the influence of promises or threats. A confession which in truth is not voluntary, which comes about as a result of threat, physical mistreatment, or the promise of reward, cannot be used either for the State's case in chief or for impeachment purposes. "[W]here a criminal defendant challenges the voluntariness of a confession, he has a due process right to a reliable determination that the confession was in fact voluntarily given." In a hearing to determine the admissibility of a confession, the trial judge is the trier of fact and is charged with determining whether there has been, under the totality of the circumstances, a knowing and voluntary waiver of the accused's privilege against self-incrimination. "[T]he State has the burden of proving all facts prerequisite to admissibility beyond a reasonable doubt." *Once the trial judge determines that a confession is admissible, his finding becomes finding of fact which will not be reversed on appeal unless it is manifestly in error or contrary to the overwhelming weight of the evidence.*

Lutes v. State, 517 So. 2d 541, 548 (Miss. 1987) (citations omitted) (emphasis added).

We have examined the record of the suppression hearing. After doing so, we are of the opinion that the trial judge's ruling that Odom voluntarily gave his second statement to the police and that this statement was not the product of intimidation or threat was not manifestly wrong or contrary to the overwhelming weight of the evidence. Accordingly, we hold that this assignment of error is without merit and fails.

B) Was the Jury's Guilty Verdict Against the Weight and Sufficiency of the Evidence?

Odom's second assignment of error is that the trial court erred in overruling his motion for a new trial or JNOV because the jury's guilty verdict was against the sufficiency and weight of the evidence. We find this assignment also without merit.

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence -- not just that supporting the case for the prosecution -- in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and

inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.

McFee v. State, 511 So. 2d 130, 133-34 (Miss. 1987).

At trial, Odom presented the testimony of four witnesses, two of whom were his wife and himself, to the effect that he was in Oak Grove, Louisiana, at the date and time when the burglary took place. Set against this testimony, the prosecution presented Odom's second statement in which he confessed to the burglary, as well as Eddie Pierce's testimony. Pierce testified that when Odom sold him the four-wheeler, Odom told him that he bought it in Oak Grove, Louisiana. This testimony is contrary to the first story that Odom gave to the police--that he purchased the four-wheeler from a man in a Mississippi parking lot.

We think that Odom's confession to the burglary and Pierce's testimony regarding Odom's statements about how Odom obtained the four-wheeler comprise sufficient evidence to support a guilty verdict. Furthermore, this evidence, set against the evidence presented in favor of Odom's innocence, creates a conflict in the evidence that was proper for the jury to resolve. We certainly cannot say that in view of such a record, the jury's guilty verdict was against the overwhelming weight of the evidence. Consequently, we find no error in the trial court's refusal to grant the motion for a new trial or JNOV and hold that Odom's second assignment of error is without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY FINDING APPELLANT GUILTY OF THE CRIME OF BURGLARY OF A BUSINESS AND SENTENCING HIM AS A HABITUAL OFFENDER TO A TERM OF SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED TO WASHINGTON COUNTY.

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