

IN THE COURT OF APPEALS 08/20/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00742 COA

CHARLES TORNES A/K/A CHARLES TORNES, JR. A/K/A "BOOTSIE"

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. L. BRELAND HILBURN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT (1ST DIST)

ATTORNEY FOR APPELLANT:

GEORGE S. LUTER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN

DISTRICT ATTORNEY: ED PETERS

NATURE OF THE CASE: CRIMINAL: AGGRAVATED ASSAULT WITH DEADLY WEAPON

TRIAL COURT DISPOSITION: GUILTY VERDICT AND SENTENCED TO 20 YRS IN
PRISON WITH 5 YRS SUSPENDED

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

SOUTHWICK, J., FOR THE COURT:

Charles "Bootsie" Tornes was convicted of aggravated assault with a deadly weapon and sentenced to serve twenty years in prison. He appeals his conviction challenging only the weight and sufficiency of the evidence. We affirm.

FACTS

On August 29, 1992, Tornes and several of his friends were in an altercation at a party. As they were driving away from the party, a passenger asked Tornes for his gun. Tornes provided the gun and then drove the passenger to find one of the participants in the fight. Tornes and his armed passenger located their prospective victim. Tornes stopped the car and dropped off his passenger. The passenger shot their victim, returned to the car, and with Tornes drove away. Knowing that his passenger had shot someone, Tornes returned to his house and hid the gun under a chest of drawers.

Tornes was charged with aggravated assault with a deadly weapon. His trial resulted in a conviction, and he was sentenced to twenty years in prison with five years suspended during his completion of five years supervised probation.

DISCUSSION

Tornes challenges the weight and sufficiency of the evidence. Our standard for reviewing challenges to convictions based on sufficiency of the evidence is well-established. As to each element of the offense, we consider all of the evidence in the light most favorable to the verdict. We reverse when, with respect to an element of the offense charged, the evidence is such that reasonable and fair-minded jurors could only find the accused not guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). As to whether the verdict is contrary to the overwhelming weight of the evidence, a similar standard is employed. We view the evidence in the light most favorable to the verdict. The trial court is given discretion to order a new trial in the face of overwhelming evidence contrary to the jury's verdict to prevent an unconscionable injustice. *McClain*, 625 So. 2d at 781 (citation omitted). In this case, there was ample evidence of Tornes' guilt.

The Mississippi Code provides that "a person is guilty of aggravated assault if he . . . knowingly causes bodily injury to another with a deadly weapon . . ." Miss. Code Ann. § 97-3-7 (1972). An accomplice who aids an individual who directly causes the bodily injury is, nevertheless, accountable under this provision as if he was the principal. *Davis v. State*, 611 So. 2d 906, 911-13 (Miss. 1992); *see*, Miss. Code Ann. § 97-1-3 (1972). The evidence presented at trial supports the conclusion that Tornes was an accessory before the fact in an aggravated assault.

Tornes does not challenge the State's version of the facts. He concedes that he drove his passenger to an area near his victim's residence, that he gave the passenger his gun, that Tornes picked up the passenger after the shooting, and that Tornes hid the gun following the shooting. Tornes argues that he was not an accessory before the fact because, under his view of the facts, he did not know what his passenger intended to do with his gun. However, there was testimony that Tornes admitted to police that he offered the gun to his passenger. In context, a reasonable and almost unavoidable

inference the jury could reach is that Tornes knew the intended use. Tornes also argues that he is not an accessory before the fact because he was not present at the shooting. While an "aider and abettor" must be present at the crime, an accessory before the fact need not. *Sayles v. State*, 552 So. 2d 1383, 1389 (Miss. 1989) (citations omitted). It is an accessory before the fact that is subject to punishment as a principal under section 97-1-3 of the Mississippi Code. The State's proof was also consistent with the theory that Tornes had agreed to help his passenger in the shooting both before and after the crime. Under this evidence, the conviction is based on an appropriate quantum of evidence.

THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY OF CONVICTION OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIVE (5) YEARS SUSPENDED AND FIVE (5) YEARS UNDER SUPERVISED PROBATION, IS AFFIRMED AND ALL COSTS OF THIS APPEAL ARE TAXED TO HINDS COUNTY.

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