IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00575 COA

TRAVIS RUFFIN A/K/A TRAVIS JEROME RUFFIN

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:

DAVID A. STEPHENSON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN, SPECIAL ASSISTANT ATTORNEY GENERAL

DISTRICT ATTORNEY: BILBO MITCHELL

NATURE OF THE CASE: CRIMINAL (FELONY)-ARMED ROBBERY

TRIAL COURT DISPOSITION: ROBBERY BY USE OF A DEADLY WEAPON HABITUAL OFFENDER; SENTENCED TO SERVE 37 YRS IN THE CUSTODY OF THE MDOC WITHOUT POSSIBILITY OF PROBATION,PAROLE SUSPENSION OR REDUCTION

BEFORE McMILLIN, P.J., KING AND PAYNE, JJ.

McMILLIN, P.J., FOR THE COURT:

Travis Ruffin was convicted of robbery by the use of a deadly weapon by a jury in the Circuit Court of Lauderdale County. Ruffin was sentenced as a habitual offender to serve thirty-seven years without the possibility of parole. On appeal, Ruffin asserts: (1) the trial court erred in admitting into evidence a forty-five caliber pistol found by police officers four or five hours after the incident, and (2) the trial court erred in denying the defendant's various motions challenging the weight and sufficiency of the evidence of guilt.

We conclude that the issues argued by Ruffin are not such as would require this Court to disturb the jury verdict, and we affirm.

I.

FACTS

On the morning of August 15, 1994, Charles Combest was performing some repair work on his truck in the parking lot of a Meridian business. A white car pulled into the parking lot, and one of the passengers in the car inquired as to whether Combest needed any help. When Combest replied that he did not, the car drove across the parking lot, but immediately returned. A young man, later identified as Travis Ruffin, walked to where Combest was working and again inquired if Combest needed any help. When Combest turned to answer, he discovered that Ruffin had a gun pointed in his direction. Ruffin then demanded that Combest hand over his wallet. Combest pretended to reach for his wallet, but, instead, reached for the gun, and the two men struggled. Ruffin then hit Combest, and when Combest fell, he ran back to the car. Combest immediately reported the incident, including a description of the suspect, to the local police. He also informed police that the weapon used in the robbery was a "black gun that had scratches on it, and it looked like a forty-five or a nine millimeter." He told police that he "thought it was a forty-five."

Several hours later, police responded to a call reporting a simple assault that also involved the use of a pistol. In responding to the assault complaint, officers stopped a vehicle believed to contain persons involved in that crime. Ruffin was among the occupants of the car. He was searched, and eight rounds of Remington Peters forty-five caliber ammunition were recovered from his pockets. Officers then retraced the path of the vehicle and found lying along the road a badly scratched forty-five caliber pistol loaded with the same Remington Peters ammunition.

Because both the gun and the clothing which Ruffin was wearing matched the description given by Combest, Ruffin became a suspect in the Combest robbery. He was placed in a line-up, and Combest positively identified Ruffin as his assailant. Ruffin was tried and convicted of armed robbery. It is from this conviction and sentence that Ruffin brings this appeal.

II.

Admission of Gun Into Evidence

Ruffin argues that the trial court erred in allowing the State to introduce into evidence the pistol which was recovered near the point where he was apprehended. Ruffin essentially argues that this was error because Charles Combest, the victim, did not identify the weapon at trial, and there was no basis to introduce it into evidence.

The admissibility of evidence rests within the sound discretion of the trial court, and this Court will reverse a ruling on evidence only upon a showing of an abuse of that discretion. *Johnston v. State,* 567 So. 2d 237, 238 (Miss. 1990) (citations omitted). The trial court allowed the State to introduce the gun through the testimony of one of the officers who investigated the assault. Combest was never asked to identify the gun as the one used to rob him.

The general proposition is that all relevant evidence is admissible. M.R.E. 402. Our rules of evidence define "relevant evidence" as being "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." M.R.E. 401. Evidence that a suspect, within hours of the crime, had possession of a gun that fit the description given by the victim would appear to make it more likely that the suspect was the perpetrator than evidence that this same suspect did not have a gun. While a verification by the victim that the gun appeared to be the same one used in the crime would certainly have strengthened the probative value of the pistol, we are aware of no rule of evidence that requires the evidence to be excluded if so definite a connection cannot be made.

By having the victim describe, as best he could, the gun he observed while the robbery was underway, we conclude that the State laid the proper foundation to have the pistol admitted into evidence upon satisfactory proof that it had characteristics similar to the weapon described by the victim. The fact that the victim was never called upon to identify the weapon as being the same one he saw merely serves to weaken the probative value of the weapon, not to render it inadmissible. The more tenuous the connection between the evidence and the crime, the less probative it becomes; however, it is only when there is no connection that the evidence becomes inadmissible. In close cases, such issues are submitted to the sound discretion of the trial court and can be reversed on appeal only upon a showing of a manifest abuse of discretion. *Johnston,* 567 So. 2d at 238. We can find no such abuse in this case.

III.

Weight and Sufficiency of the Evidence

Ruffin also alleges reversible error in the trial court’s failure to grant a peremptory instruction in his favor or his motions for a directed verdict, JNOV, or a new trial. Such challenges attack both the weight and sufficiency of the evidence establishing guilt.

Ruffin essentially argues that the initial statement given by Combest to police describing the robber as five feet eight inches or five feet eleven inches, when Ruffin is actually only five feet four inches tall, makes his purported identification incredible. He bolsters this proposition by showing that Combest failed to mention in the description he gave to the investigating officers that Ruffin had two gold front teeth. Ruffin claims that this feature of his appearance is so remarkable that it is highly unlikely that anyone observing him at close range would fail to mention it. According to Ruffin, the discrepancy and the omission in Combest's description generate sufficient doubt in his testimony as to require reversal.

Combest gave a detailed description of the robber, including his clothing and the weapon involved. That same day, Combest made a positive identification of Ruffin in a police line-up. In addition, Combest made a positive identification of Ruffin at trial. The weapon recovered by police near the location where Ruffin was apprehended, and which was tied to him by circumstantial evidence, matched the description given by Combest. While Ruffin is correct that the gun would have had more probative value if Combest had positively identified it, the absence of such an identification does not totally negate its evidentiary value.

The jury was made aware of the discrepancy between Ruffin's actual height and that reported in Combest's description given to the police. Matters concerning the weight and credibility of the witnesses are resolved by the fact finder - in this case the jury. *Holly v. State*, 671 So. 2d 32, 40 (Miss. 1996) (citations omitted). It was the jury's responsibility to assess the worth of the testimony offered by the witnesses. *Id.*; *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993) (citations omitted). Taking the evidence of Combest's identification of the defendant in the light most favorable to the State, we cannot say that his miscalculation of the defendant's height and his failure to mention Ruffin's gold crowns render his positive identification so suspect that "reasonable and fair-minded jurors could only find the accused not guilty." *McClain*, 625 So. 2d at 778. Neither can we say that the trial court erred in refusing to grant a new trial on the basis that the verdict was against the great weight of the evidence based on the reasons advanced by the defendant. *See, e.g., Strong v. State*, 600 So. 2d 199, 204 (Miss. 1992).

We note that the defendant, as a part of his argument, criticizes the police for failing to investigate fully the license plate recorded by Combest as his assailant left the robbery scene. Any speculation of what evidence a police investigation might have uncovered if additional leads were pursued is irrelevant to an analysis of the weight or sufficiency of the evidence of guilt presented at trial.

Based on the foregoing reasoning, we conclude that Ruffin's conviction must be affirmed.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF ROBBERY BY USE OF A DEADLY WEAPON AND SENTENCE AS A HABITUAL OFFENDER OF THIRTY-SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO LAUDERDALE COUNTY.

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