

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01129 COA

GEORGE COOPER

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. ANDREW CLEVELAND BAKER

COURT FROM WHICH APPEALED: TALLAHATCHIE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID CLAY VANDERBURG

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: ROBERT L. WILLIAMS

NATURE OF THE CASE: CRIMINAL: FORGERY

TRIAL COURT DISPOSITION: COUNT I FORGERY: COUNT II UTTERING FORGERY:
COUNT I SENTENCED TO 5 YRS IN THE MDOC WITH LAST 3YRS SUSPENDED,
PENDING GOOD BEHAVIOR; COUNT II SENTENCED TO 5 YRS IN MDOC TO RUN

CONSECUTIVELY TO COUNT I; PAY RESTITUTION OF \$780.45 & ALL COURT COSTS

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

PER CURIAM:

George Cooper was convicted of forgery and uttering a forgery. Feeling aggrieved, Cooper appeals arguing that the trial court erred in denying his motion for directed verdict, denying his request for a peremptory instruction, and denying his post-trial motions. Finding there is sufficient evidence to support the verdict and the rulings of the trial court, we affirm.

DISCUSSION

I. DID THE TRIAL COURT ERR BY REFUSING TO GRANT COOPER'S MOTION FOR DIRECTED VERDICT AT THE END OF THE STATE'S CASE, BY REFUSING TO GRANT HIS PEREMPTORY INSTRUCTION, OR BY FAILING TO GRANT HIS MOTION FOR JNOV?

Cooper asserts that the evidence was not sufficient to support his convictions because the evidence did not establish that he signed the check, or that it was his handwriting on the check. Cooper's arguments regarding the denial of his motion for directed verdict, request for peremptory instruction, and motion for JNOV all challenge the legal sufficiency of the evidence against him. Where a defendant asserts that evidence was insufficient for a conviction and thereby challenges the legal sufficiency of that evidence, the authority of an appellate court to interfere with the jury's verdict is quite limited. *Williams v. State*, 667 So. 2d 15, 23 (Miss. 1996) (citation omitted). "The standard for reviewing a denial of a directed verdict and a peremptory instruction is the same as that for a denial of a judgment notwithstanding the verdict." *Tait v. State*, 669 So. 2d 85, 88 (Miss. 1996) (citing *Alford v. State*, 656 So. 2d 1186, 1189 (Miss. 1995)). "On appeal, this Court reviews the lower court's ruling when the legal sufficiency of the evidence was last challenged." *Id.* (citing *Smith v. State*, 646 So. 2d 538, 542 (Miss. 1994)); *see also McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993) (sufficiency challenges require consideration of the evidence before the court when made, so that appellate court must review ruling on the last occasion the challenge was made at the trial level). This occurred when the trial court overruled Cooper's motion for JNOV. The Mississippi Supreme Court has stated that the standard of review regarding a challenge of the sufficiency of the evidence is well established:

[T]he [sufficiency of the evidence] as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with [Cooper's] guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to 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.

Jones v. State, 669 So. 2d 1383, 1388 (Miss. 1995) (quoting *McClain*, 625 So. 2d at 778); *see also Tait*, 669 So. 2d at 88; *Williams*, 667 So. 2d at 23.

In the present case, the evidence was legally sufficient to find that Cooper was the individual who signed the check. Catherine Maxwell, employee for Western Auto, testified that she saw George Cooper endorse the check on the back side of the check. The only endorsement on the check read "E. Hardy." Cooper next gave the check to Maxwell requesting that \$100 credit be applied to Hardy's Western Auto account, and that the remaining balance of \$680.45 be given to him (Cooper) in cash. Edward Hardy testified that he never received his paycheck for the last two weeks in July 1993, which is the same time period represented by the check that Cooper gave to Maxwell. Hardy testified that he never endorsed the check, that he never authorized anyone to cash his checks, and that he never gave Cooper the authority to cash his check or to pay \$100 on his Western Auto account. Considering all of this evidence in the light most favorable to the State, we find that the evidence was sufficient to support the verdict. Accordingly, this assignment of error is without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF TALLAHATCHIE COUNTY OF CONVICTION ON COUNT I OF FORGERY AND SENTENCE OF FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE LAST THREE YEARS SUSPENDED, PENDING GOOD BEHAVIOR; COUNT II OF UTTERING A FORGERY AND SENTENCE OF FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVELY TO SENTENCE IN COUNT I; SAID SENTENCE TO BE SUSPENDED PENDING GOOD BEHAVIOR; AND PAYMENT OF RESTITUTION OF \$780.45 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO TALLAHATCHIE COUNTY.

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