

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01095 COA

JONSHA BELL A/K/A JONSHA JERONE BELL 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. WILLIAM F. COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DAN W. DUGGAN, JR

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W.  
MARIS, JR

DISTRICT ATTORNEY: ED PETERS

NATURE OF THE CASE: CRIMINAL: KIDNAPPING, ARMED ROBBERY AND BURGLARY.

TRIAL COURT DISPOSITION: GUILTY OF KIDNAPPING, ARMED ROBBERY AND BURGLARY. SENTENCED TO A TOTAL 125 YEARS IMPRISONMENT, WITH 90 YEARS CONSECUTIVE, AS HABITUAL FELON.

MANDATE ISSUED: 9/30/97

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

HERRING, J., FOR THE COURT:

Jonsha Bell was tried and convicted for armed robbery, burglary, and two counts of kidnapping. He was thereafter sentenced, as a habitual offender, to serve forty years for armed robbery, twenty-five years for burglary, and thirty years each for the two counts of kidnapping. The sentences for armed robbery, burglary and the first count of kidnapping were to be served consecutively. The second count of kidnapping was to run concurrently with the first count of kidnapping. Therefore, Bell was sentenced to serve a total of ninety-five years in the custody of the Mississippi Department of Corrections without the possibility of parole, pursuant to the provisions of the habitual offender statute, section 99-19-81 of the Mississippi Code of 1972. Bell now appeals to this Court citing the following errors, which are taken verbatim from his brief:

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ALLOWING SHEDARIAN STUBBS TO APPEAR IN COURT.

II. THE JURY'S VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

After a careful review of the record and applicable law, we are unable to find any reversible error, and therefore affirm.

#### I. THE FACTS

This case arises from a series of events which occurred in the early morning hours of June 1, 1994, in Hinds County, Mississippi. The facts, as they relate to Bell, are very much in dispute. Witnesses for the State testified that at sometime after midnight Mrs. James Esther Taylor was at her home watching television when three men kicked in her locked, front door and announced their intention to rob her. She testified that each of the three men wore a white mask and possessed a firearm of some kind. The men immediately ordered Mrs. Taylor to alert the other occupants of the house to the fact that a robbery was taking place. The other occupants of the house, James Taylor, Thomas Taylor, Shedarian Stubbs, Felicia Stubbs, and Michael Gross, were all asleep at the time. All of the occupants, except Michael Gross, were then awakened and were led into a hallway where they were told to relinquish anything of value. Gross was eventually awakened and was also led into the

hallway.

Mrs. Taylor, James Taylor, and Felicia Stubbs testified that at some point one of the assailants put a gun to the head of young Shedarian Stubbs, who was three years old at the time. He then stated that if Mrs. Taylor and the others did not turn over all things of value immediately, the assailants would kill the child. Felicia Stubbs immediately gave the assailants \$352 and testified that, in addition to the money which she gave them, the men took a Guess watch from her, as well as a herringbone necklace.

Throughout the entire episode at the home of Mrs. Taylor, the assailants were interested in knowing the location of a certain Camaro automobile which had normally been parked in Mrs. Taylor's yard during the evening hours. Mrs. Taylor testified that the Camaro belonged to her eldest son who lived in Clinton, Mississippi, and that he had returned to his home in the Camaro earlier that evening.

James Taylor informed the assailants that he knew where the men could find the Camaro, as well as more money and drugs. The assailants then forced James Taylor and Michael Gross, at gun point, to accompany them to Clinton. James Taylor and Michael Gross were taken outside, where Gross was locked in the trunk of Taylor's vehicle. Taylor was ordered to drive to his older brother's house in the Clinton and two of the assailants joined Taylor in his vehicle, with guns drawn, while the third assailant followed in a burgundy Ford Tempo. They warned Mrs. Taylor to call no one. Nevertheless, Mrs. Taylor ran to her neighbor's house and called the police after the assailants had left the scene. She later testified that the assailants had cut the telephone lines connected to her house in an effort to prevent her from calling for help. The police departments of the cities of Jackson and Clinton were contacted and were informed of the robbery. They were also advised of the destination of the three men and their prisoners, James Taylor and Michael Gross.

When the assailants reached the home of James Taylor's brother in Clinton, an officer of the Clinton Police Department was already on the scene waiting for them. In the confusion that followed, Taylor engaged in a struggle with one of the assailants, and several shots were fired from the assailant's weapon. One of the stray bullets struck another one of the three assailants. He was later identified as Jonsha Bell. Two of the assailants were eventually apprehended, including Bell, who was found lying down and bleeding in the burgundy Ford Tempo. He was then taken to a nearby hospital. Michael Gross remained locked in the trunk of James Taylor's automobile throughout the melee and was later freed from the trunk by officers of the Clinton Police Department.

At trial, Bell denied any involvement in the robbery of the home of Mrs. Taylor. Bell claimed that he had been shooting pool in Lacy's Tavern Pool Hall from around midnight until 3:00 A.M. on the morning of June 1, 1994. He called two witnesses, Stacy Smith and Kenya Knotts, to verify his story and further testified that James Taylor paged him at the pool hall and informed Bell that he was coming by in his vehicle to pick him up. Bell claimed that Taylor fraudulently sold him a substance purported to be crack cocaine on the day before and was meeting with Bell in an attempt to make amends by supplying him with authentic crack.

According to Bell, Taylor did pick him up at the pool hall, and he and a friend, Patrick Liddel, accompanied James Taylor and Michael Gross to the city of Clinton. Bell stated that once they arrived in Clinton, everyone got out of the vehicle and began walking across a parking lot to an apartment complex where a group of men, including James Taylor's older brother, were standing.

Bell testified that as he approached the group of men, he saw one of the men with a gun. At this point, Bell panicked and ran. A few seconds later, he was shot in the back of the leg. Bell testified that he limped over to the burgundy Tempo automobile and climbed inside. Bell testified that the Tempo belonged to a man named "Tim," whom Bell described as a "crack fiend" or a person who tests the quality of the drugs for the drug dealers. It is important to note that the State presented the true owner of the Tempo, Mable Conic, as a witness. Conic testified that earlier in the evening she traded the use of her car for a small amount of crack cocaine. She identified Bell as one of the men who borrowed her car. Furthermore, Michael Gross testified that after the incident Bell telephoned him and apologized for the incident. When asked at trial if he had spoken with Bell since the incident, Gross responded:

Well, he had called my house from the city jail, wherever he was locked up at, and he had his mother call me on three-way. I don't know how they got the number, but he told me, he said, "Don't come to court because," he said, "they going to try to lock y'all up, too." And I was like for what, you know. He was saying by the time they had come in there and kicked the door down, he was sorry, he didn't know that was me, that I stayed there.

This statement is important because it was the only evidence that placed Bell actually at the scene of the armed robbery that occurred at Mrs. Taylor's house. All of the other evidence presented by the State as to Bell's guilt was circumstantial. At the time Bell was apprehended in the burgundy Ford Tempo, he was holding one of the white masks which had been described by the Taylor family as being worn by the armed assailants. Bell claimed that he was merely using the mask to stop his wounded leg from bleeding. A search incident to arrest revealed that Bell had \$130 cash in his possession, as well as two watches. One of the watches was identified as the Guess watch that had been taken from Felicia Stubbs at the home of Mrs. Taylor.

## II. ANALYSIS

### I. DID THE TRIAL COURT ERR IN ADMITTING TESTIMONY CONCERNING SHEDARIAN STUBBS AND IN ALLOWING SHEDARIAN TO ENTER THE COURTROOM?

Bell now claims that the trial court committed reversible error when it allowed State witnesses to testify that during the course of the robbery at the home of Mrs. Taylor, one of the masked assailants placed a shotgun to the head of Shedarian Stubbs, a three year old child. In this regard, Mrs. James Esther Taylor testified that "[a]nd when they couldn't find more, that's when they said 'If you don't come up with more money, more than this, we going to kill this innocent child.'" At this point, defense counsel objected, stating, "Your Honor, we object at this time to that. There has been nobody charged with committing any crime against this Shedarian Stubbs, and we object to that." This objection was promptly overruled by the trial court. Also, Felicia Stubbs was questioned about Shedarian Stubbs, her niece. When asked if Shedarian was in the courtroom, Felicia replied, "Yes, she is over there." Defense counsel objected, stating, "[y]our honor, at this time I am going to object. This child is not involved in any manner of the indictment against my client. I would object as being prejudicial and ask for a mistrial." The trial court overruled the objection by stating that "[i]t's an open courtroom."

Bell asserts that by allowing this testimony, the trial court subjected him to punishment for a crime not mentioned in the indictment. In support of this assertion, Bell cites *Brock v. State*, 530 So. 2d 146, 148 (Miss. 1988) for the proposition that any evidence of a crime, separate from that for which the defendant has been charged, is inadmissible. Furthermore, Mississippi Rule of Evidence 404(b) generally prohibits the admissibility of prior crimes or bad acts of the defendant to show that he may have acted in conformity therewith. However, the Mississippi Supreme Court has recognized a broad exception to this rule, most recently in *Townsend v. State*, 681 So. 2d 497 (Miss. 1996). In *Townsend*, the Mississippi Supreme Court held:

Generally, evidence of a crime other than that charged in [the] indictment is not admissible against the accused; however, where another crime or act is so interrelated to the charged crime so as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences, proof of the other crime or act is admissible. Evidence of another offense is admissible if that offense is so clearly interrelated to the charged crime as to form a single transaction or closely related series of transactions. It must be integrally related to time, place, and fact to that for which [the] defendant stands trial. In other words, the evidence is essential for telling the total, rational, and coherent story.

*Townsend*, 681 So. 2d at 506. (citations omitted). This same exception was recognized in *Brock v. State*, 530 So. 2d at 148.

In the case *sub judice*, the testimony objected to by Bell concerns an event that occurred during the commission of the armed robbery, burglary and kidnapping charged in the indictment. It is crystal clear that the testimony at issue concerning the threat on the life of Shedarian Stubbs is totally interconnected with the other events that occurred during the robbery and that it would be very difficult to separate them. Without doubt, all of the events that occurred during the robbery constituted a single transaction. This fact is no less true simply because the acts of Bell and the other assailants were directed at a small child. Thus, we must also examine whether the evidence involving Shedarian is essential for telling the total and coherent story of what happened at the home of Mrs. Taylor.

The definition of "relevance" is a broad one, favoring admissibility. "If the evidence has any probative value at all, the rule favors its admission." M.R.E. 401, cmt. The fact that a deadly weapon was pointed at a small child accentuates the gravity of the situation that occurred at the home of Mrs. Taylor and the level of fear imposed upon the other victims. Moreover, according to the testimony, the threat on the minor child's life motivated Felicia Stubbs to immediately turn over her possessions to the robbers. Thus, without question, the testimony concerning the minor child is relevant and admissible, under the standards set forth in *Townsend* and Mississippi Rule of Evidence 401.

In his brief, Bell also argues that the testimony concerning Shedarian Stubbs should have been excluded since its probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues. *See* M.R.E. 403. However, no such objection to the testimony was made at trial. Instead, Bell objected to the testimony concerning the child only on the ground that the State was attempting to introduce evidence of a crime not charged in the indictment. Thus, this argument by Bell is procedurally barred. It is well settled that an objection on one ground at trial waives all

other grounds for objection on appeal. *Lester v. State*, 692 So. 2d 755, 772 (Miss. 1997).

Bell also contends in his assignments of error that the trial court erred when it allowed Shedarian to be present in the courtroom and when it allowed Felicia Stubbs to point her out to the jury at trial. In his brief, Bell presents no argument in support of this contention. Thus, we are bound by the decisions of the Mississippi Supreme Court which "has repeatedly held that it is the duty of the appellant to provide authority and support of an assignment. If a party does not provide this support this Court is under no duty to consider assignments of error when no authority is cited." *Drennan v. State*, 695 So. 2d 581, 585-86 (Miss. 1997) (citations omitted). Therefore, this assignment of error is barred. Nevertheless, it is clear from the record that Bell's counsel objected to the presence of Shedarian Stubbs at trial on the grounds that her presence would unduly prejudice the right of the appellant to a fair trial. The trial judge overruled this objection, stating that "[i]t's an open courtroom."

An objection based on undue prejudice pursuant to Mississippi Rule of Evidence 403 vests a great deal of discretion upon the trial court. *Hoops v. State*, 681 So. 2d 521, 531 (Miss. 1996). In allowing Shedarian Stubbs to remain in the courtroom, the trial judge made the determination that unfair prejudice to the accused did not occur by allowing the child to be pointed out to the jury. In doing so, we are unable to say that the trial judge abused his discretion.

## II. WAS THE JURY'S VERDICT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

Our standard of review in cases involving an objection to a jury verdict based on the overwhelming weight of the evidence has most recently been explained by the Mississippi Supreme Court in *Herrington v. Spell*, 692 So. 2d 93 (Miss. 1997), wherein the court stated:

In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. Only when the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal.

*Herrington*, 692 So. 2d at 103-04 (citations omitted). Although *Herrington* involved a civil case, the standard is the same in criminal cases. See *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989); *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989) (citing *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987)).

Furthermore, although not listed in his assignments of error, Bell also in his brief challenges the legal sufficiency of the evidence presented against him. This standard of review is somewhat different than that found in a challenge to the weight of the evidence. As our Mississippi Supreme Court has recently held:

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 inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered points 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 beyond our authority to disturb.

*Brooks v. State*, 695 So. 2d 593, 594 (Miss. 1997).

Bell first directs our attention to the discrepancies occurring in the testimony of several of the State's witnesses as to the time of the robbery took place at the home of Mrs. Taylor. Mrs. Taylor testified that the incident occurred between midnight and 1:00 A.M. However, other witnesses stated that the incident occurred around 3:00 A.M. Furthermore, police reports show that the first officers arrived at the scene of the shooting in Clinton at 3:00 A.M. Bell asserts that if the armed robbery at the home of Mrs. Taylor occurred in Jackson around 3:00 A.M., and the shooting in Clinton occurred at about the same time, then it was impossible for him to be in both places at the same time. Thus, Bell contends that his version of the facts must be believed. He also relies upon the fact that he called two alibi witnesses at trial who testified that Bell was playing pool from before midnight until after 3:00 A.M., and therefore he could not have been one of the armed men who robbed Mrs. Taylor. These alibi witnesses also testified that James Taylor drove to the pool hall and picked Bell up in his vehicle. It is noteworthy, however, that both of the alibi witnesses conceded that they had never revealed this exculpatory information to the police or to any other person or persons prior to the trial.

As to Bell's contention that the verdict was against the overwhelming weight of the evidence, a review of the record in the case *sub judice* certainly reveals no unconscionable injustice resulting from the jury's findings. While it is true that the defendant's story of where he was and what he did during the early morning hours of June 1, 1994, was totally different from the testimony of the State witnesses, the determination as to who was telling the truth was properly made by the jury as the finder of fact. One of the basic tenets of our judicial system is that any questions regarding the weight and worth of witness testimony or witness credibility are for the jury to resolve. *Eakes v. State*, 665 So. 2d 852, 872 (Miss. 1995). In this case, the jury rejected Bell's explanation of the events that took place on June 1, 1994, and believed the testimony of Mrs. Taylor and the other State's witnesses. Moreover, we will not overturn the findings of the jury acting in the capacity of a fact finder unless those findings are clearly erroneous. *Herrington*, 692 So. 2d at 104. We cannot say that the jury's verdict was clearly erroneous. Thus, we hold that the jury's verdict was not against the overwhelming weight of the evidence.

Furthermore, in reviewing the record under the sufficiency of the evidence standard, we find that there was sufficient evidence so that a reasonable and fair minded jury could have found Bell guilty beyond a reasonable doubt. Therefore, this issue has no merit and we affirm.

**THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY OF CONVICTION ON COUNT I OF BURGLARY OF AN OCCUPIED DWELLING AT NIGHT WHILE ARMED WITH A DEADLY WEAPON AND SENTENCE OF TWENTY FIVE YEARS; COUNT II OF**

**ARMED ROBBERY AND SENTENCE OF FORTY YEARS, WITH SENTENCE TO RUN CONSECUTIVELY TO COUNT I; COUNTS III AND IV OF KIDNAPING AND SENTENCE OF THIRTY YEARS EACH, WITH SENTENCE IN COUNT III TO RUN CONSECUTIVELY TO COUNTS I AND II AND SENTENCE IN COUNT IV TO RUN CONCURRENTLY TO COUNT III AND CONSECUTIVELY TO COUNTS I AND II, TO BE SERVED AS A HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO HINDS COUNTY.**

**BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., NOT PARTICIPATING.**