

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00205 COA

CHRISTOPHER DEAN PATRICK

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. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAT DONALD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR.

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: ARMED ROBBERY

TRIAL COURT DISPOSITION: GUILTY OF ARMED ROBBERY AND SENTENCED TO SERVE TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

DIAZ, J., FOR THE COURT:

Christopher Dean Patrick (Patrick) appeals his conviction of armed robbery and sentence of twenty (20) years imprisonment in the custody of the Mississippi Department of Corrections. Patrick assigns as error the following: (1) the confession of the Appellant was involuntary and taken in violation of his *Miranda* rights and (2) the State made improper closing arguments which prejudiced the Appellant. Finding no error, we affirm.

FACTS

At approximately 9:00 P.M. on November 27, 1993, three masked intruders entered the Hillsboro Fish House in Harpersville, Mississippi. One intruder carried a sawed-off shotgun while another carried a pistol. One of the intruders broke out a restaurant window, reached through the broken glass, and pointed the pistol at Vicki Reese, an employee. Reese opened the cash register. The three intruders proceeded to rob the restaurant and escape with approximately \$370.00 in cash. Because the intruders were masked, none of the witnesses could positively identify the perpetrators.

On January 5, 1994, Patrick was interviewed by Deputy Jerry McNeese and Officer Marvin Williams at the Forest Police Department. Officer McNeese testified that he advised the Appellant of his *Miranda* rights and that he voluntarily signed a waiver of those rights at approximately 12:25 P.M. Later in the evening, about 9:00 P.M., Patrick requested that Officer Williams come back to the jail and speak to him. When Williams arrived, Patrick advised him that he wanted to talk to him about the Hillsboro Fish House. Williams then left and returned with Deputy McNeese. Patrick was again advised of his rights and signed another waiver. Patrick proceeded to give an oral and written statement about his involvement in the Hillsboro Fish House robbery on November 27, 1993.

During trial, Patrick made a motion to suppress the January 5, 1994, statement. The trial judge ruled that the statement was admissible, and the jury found the Appellant guilty of armed robbery.

DISCUSSION

I. DID THE TRIAL COURT ERR IN ADMITTING

THE APPELLANT'S CONFESSION?

Patrick is arguing that the trial judge should have found his confession inadmissible. In support, he contends that improper inducements and promises of leniency were made as well as that the officers violated his right to counsel and his *Miranda* rights. For clarity, we have divided this assignment of error into two sub-parts which will be discussed separately herein.

I. Inducements and Promises of Leniency

Initially, Patrick attacks the voluntariness of his confession based on promises of leniency. He invokes the general rule that a confession obtained as a result of promises of reward, threats or inducements is inadmissible. *Layne v. State*, 542 So. 2d 237, 240 (Miss. 1989). Due process requires that this Court determine whether Patrick's statement was, in fact, voluntarily given. *Powell v. State*, 540 So. 2d 13, 16 (Miss. 1989). The State has the burden of proving, beyond a reasonable doubt, that the statement or confession was voluntary. *Cox v. State*, 586 So. 2d 761, 763 (Miss. 1991). This burden can be met by the testimony of an officer, having knowledge of the facts, that the confession was made without the use of threats, coercion, or improper inducements. *Id.* This determination is to be made by the trial judge while following the correct legal standard. The trial judge must make a determination of whether the confession was voluntary without considering whether the confession was, in fact, truthful or authentic. *Powell*, 540 So. 2d at 15. If we find that the trial court followed the correct legal standards, and there is substantial evidence to support the finding of voluntariness, we will not disturb the lower court's ruling.

Patrick contends that he signed the confession to secure leniency for his fourteen-year-old brother, to protect his brother from homosexual assaults in prison, and to secure leniency for himself. The record reveals that the interviewing officers deny any promises of leniency or reward to Patrick for signing a confession. In this situation, the trial judge may make a determination as to the veracity of the witnesses and his determination will not be overturned by this Court without evidence to the contrary. *Alexander v. State*, 610 So. 2d 320, 326 (Miss. 1992). Thus, this assignment of error is without merit.

2. The Confession Was In Violation of Miranda

In *Miranda v. Arizona*, the United States Supreme Court articulated the law regarding the admissibility of a defendant's waiver of his privilege against self-incrimination under the Fifth Amendment. *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). Under *Miranda*, the State must provide proof that the waiver was voluntarily, knowingly, and intelligently made. As discussed above, this burden can be met by the testimony of an officer. *Cox*, 586 So. 2d at 763.

The second part of Patrick's first assignment of error weaves several arguments into one as to why the lower court erred in allowing his confession into evidence. Patrick contends that his confession was made at a time when he had not been advised of his right to remain silent and his right to counsel. Also, he claims to have been denied the assistance of counsel despite repeatedly requesting an attorney. In support of this position, he cites the fact that he had previously invoked his right to remain silent and claims that the officers initiated the second interrogation.

The State contends that the trial court acted within its authority and discretion in choosing to believe

the testimony of the officers rather than the Appellant and that the trial judge's determination was supported by the evidence and not manifestly in error.

Not surprisingly, the officers' account of the events of January 5, 1994, differ significantly from Patrick's. The testimony of the officers involved in taking Patrick's confession was that the Appellant was questioned at approximately 12:30 P.M. on January 5, 1994, after being advised of his *Miranda* rights, but that he refused to make any statement unless the officers "made him a deal." The officers testified that they refused to make any "deal" with Patrick and that the questioning ceased. However, later during the evening, Patrick sent for McNeese, saying he wanted to talk to him. The jail trustee verified that he called Officer McNeese at approximately 9:00 P.M. at Patrick's request and that McNeese came to the jail to speak with Patrick. McNeese testified that when he arrived, Patrick informed him that he wanted to talk to him about the Hillsboro Fish House. McNeese then testified that he called Deputy Williams to come to the jail as he could not hear Patrick's statement alone. When Williams arrived, Patrick was again advised of his *Miranda* rights and waived them. Both officers involved in the confession testified that the Appellant was advised of his *Miranda* rights and waived them, and that Patrick then gave a voluntary statement that was free of any coercion. The officers also testified that at no time did Patrick request an attorney.

We are of the opinion that the evidence clearly supports the decision of the lower court. Therefore, this assigned error is also rejected.

II. DID THE STATE MAKE IMPROPER AND PREJUDICIAL CLOSING ARGUMENTS?

According to Patrick, the State's closing arguments contained improper and prejudicial statements which were calculated to inflame the jurors against him. The statements upon which Patrick bases this assignment of error were as follows:

The Defendant is sixteen years old. I think we all know that. I think the defense counsel has said it a bunch of times today, but I want to remind you that under our law a sixteen year old that commits an armed robbery is tried as an adult. If he was old enough to pull the armed robbery, he was old enough to pull the trigger if the victim didn't give him what he wanted, and he is old enough to take the punishment for it.

Patrick claims that this statement was error because the evidence did not reveal that he would have killed the victim had they not complied with his demands.

Patrick also claims as error the following closing statements made by the prosecution:

And freedom tomorrow. If you wait for tomorrow, it will be too late. The law enforcement officers of Scott County can catch people until they are blue in the face. We can prosecute them until we just can't talk anymore, but until the jury gives teeth to the law, it will have no meaning, and there will be no law in Scott County.

You decide if you want a teenager or teenagers running around with sawed off shotguns

like this, holding people up.

Patrick claims that these statements are blatantly prejudicial and impermissible.

The State counters that the statements were permissible and that the jury is allowed to consider reasonable inferences which may be deduced from the evidence.

The evidence presented by the State revealed that the Hillsboro Fish House was robbed at gunpoint by three masked individuals. The evidence also revealed that Patrick confessed to being involved in the crime. We are of the opinion that the State was permitted to draw the inference that the perpetrators would have used the weapons they carried and to mention this in closing arguments to the jury. The Mississippi Supreme Court has stated that counsel in criminal cases should be allowed considerable latitude in his arguments to the jury. *Craft v. State*, 271 So. 2d 735, 737 (Miss. 1973). Thus, we do not find reversible error in any of the statements made by the prosecution during closing arguments.

For these reasons, this Court is of the opinion that the conviction and sentence should be affirmed.

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SCOTT COUNTY.

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