

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00118 COA

AMOS MCCRAY AND ROOSEVELT FORD

APPELLANTS

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. ELZY J. SMITH

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANTS:

RICHARD B. LEWIS

STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: CLYDE V. HILL

NATURE OF THE CASE: CRIMINAL - BURGLARY OF A BUILDING

TRIAL COURT DISPOSITION: MCCRAY: CONVICTED AND SENTENCED TO SERVE

SEVEN (7) YEARS IN THE MDOC FORD: CONVICTED AND SENTENCED AS A HABITUAL OFFENDER TO SERVE SEVEN (7) YEARS IN THE MDOC

BEFORE THOMAS, P.J., BARBER, AND MCMILLIN, JJ.

PER CURIAM:

Amos McCray and Roosevelt Ford were tried and convicted in the Coahoma County Circuit Court for burglary of a business in violation of section 97-17-33 of the Mississippi Code. Both McCray and Roosevelt challenge the verdict as being against the overwhelming weight of the evidence and request a new trial. Finding no merit in their arguments, we affirm the convictions.

Ford, in his *pro se* reply brief, raises several additional issues not formerly raised in the Appellant's brief. Because this practice does not conform with the requirements of Mississippi Rule of Appellate Procedure 28(a)(3), and because Ford exceeded the page limitation prescribed by Rule 28(g) without obtaining permission of the court to do so, we will not consider these new assignments of error contained in the reply brief.

The proof presented by the State of Mississippi showed that Ryals, the owner of the grocery store that was burglarized, saw three men going into his grocery store. Ryals observed them for approximately fifteen minutes as they carried items out of the store and loaded them into the trunk of a car. Ryals telephoned the sheriff's department, gave a description of the vehicle and the burglars and stated in which direction the car was headed. The vehicle was intercepted by the sheriff's department within one mile of the store. Goods from Ryals' store were found in the car. Ryals identified the three people in the car as the ones he had seen taking things from his store minutes earlier. The three men had spilled drinks on the floor of the store and had walked through them leaving footprints which matched those of McCray, Ford, and the third defendant, a juvenile.

When deciding whether a verdict is against the overwhelming weight of the evidence, we must accept as true all the evidence supporting the State's position, as well as all reasonable inferences flowing therefrom, in the light most favorable to the State. *Britt v. State*, 520 So. 2d 1377, 1379 (Miss. 1988) . Considering this standard, and after reviewing the record, we find that the jury had ample evidence to support a verdict of guilty. Therefore, based upon the weight of the evidence supporting the verdict, we find that the trial court did not err in denying the Defendants' motions for a new trial. Accordingly, we affirm both McCray's and Ford's convictions and sentences.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF A BUILDING AND SENTENCE OF SEVEN (7) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED AS TO MCCRAY. THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF A BUILDING AND SENTENCED AS A HABITUAL OFFENDER TO A TERM OF SEVEN (7) YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED AS TO FORD. MCCRAY AND FORD SHALL MAKE

FULL RESTITUTION TO VICTIM. SENTENCE IMPOSED SHALL RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS ARE ASSESSED TO COAHOMA COUNTY.

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