

IN THE COURT OF APPEALS 04/23/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00771 COA

JOSEPH NELSON

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. JAMES E. THOMAS

COURT FROM WHICH APPEALED: HANCOCK COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES G. TUCKER III

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLEN WATTS

DISTRICT ATTORNEY: CONO CARANNA

NATURE OF THE CASE: CRIMINAL--TRANSFER OF COCAINE

TRIAL COURT DISPOSITION: SENTENCED TO SERVE THIRTY YEARS IN THE
CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE FRAISER, C.J., KING AND SOUTHWICK, JJ.

PER CURIAM:

Joseph Nelson was convicted of transfer of cocaine by a jury in the Hancock County Circuit Court. He was sentenced to serve thirty years in the custody of the Mississippi Department of Corrections. Nelson raises one issue on appeal.

Nelson argues that the trial court committed reversible error in granting jury instruction C-13 on the state's burden of proof. Instruction C-13 read as follows:

The law presumes every person charged with the commission of a crime to be innocent. This presumption places upon the State of Mississippi the burden of proving the Defendant guilty of every material element of the crime with which he is charged. Before you can return a verdict of guilty, the State must prove that the Defendant is guilty beyond a reasonable doubt. The Defendant is not required to prove his innocence.

Nelson contends that instruction C-13 has been criticized by the Mississippi Supreme Court, and therefore this Court must reverse his conviction in order "to enforce [the Mississippi Supreme Court's] supervisory powers." In support of his argument, Nelson cites *Watson v. State*, 465 So. 2d 1025, 1031 (Miss. 1985), which states "[i]nstructions the on burden of proof should clearly and unequivocally inform the jury that the state is required to prove beyond a reasonable doubt each and every essential element of the offense." However, when asked by the trial judge if he had any objections to the instruction, Nelson made no objection to the court's action in granting it. Moreover, Nelson in his motion for new trial failed to assign the granting of the instruction as error.

It is counsel's responsibility not only to object to instructions at trial, but to object specifically to preserve the issue for appeal. The Uniform Circuit and County Court Rule 3.07 states "The attorneys must dictate into the record their specific objections to the requested instructions stating the grounds for each objection." URCCC 3.07. "This Court has long held that the failure of a party to object to a jury instruction at the trial level bars that person's right to challenge the jury instruction on appeal." *Butler v. State*, 544 So. 2d 816, 818 (Miss. 1989) (citations omitted). We are also committed to the rule that "[i]f an appellant raises for review an issue not raised in the pleadings, transcript, or rulings, the appellant must have preserved the issue by raising it in a motion for new trial." *Collins v. State*, 594 So. 2d 29, 36 (Miss. 1992) (citations omitted).

Nelson failed to preserve this issue for appellate consideration. We affirm.

THE JUDGMENT OF THE HANCOCK COUNTY CIRCUIT COURT OF CONVICTION OF TRANSFER OF COCAINE AND SENTENCE OF THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE TAXED TO HANCOCK COUNTY.

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