

IN THE COURT OF APPEALS 2/27/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00503 COA

COREY REED

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. EUGENE BOGEN

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MARIE WILSON

ATTORNEY FOR APPELLEE:

ATTORNEY GENERAL MIKE MOORE

BY: DEIDRE MCCRORY

NATURE OF THE CASE: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SERVE TWENTY
YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND
ORDERED TO PAY RESTITUTION IN THE AMOUNT OF \$5,000.00.

BEFORE THOMAS, P.J., COLEMAN, AND McMILLIN, JJ.

THOMAS, P.J., FOR THE COURT:

Corey Reed was tried and convicted of the crime of aggravated assault by the Circuit Court of Washington County, for the shooting of Carl Smith. From this conviction, Reed appeals to this Court assigning five alleged errors. Finding the appeal to be without merit, we affirm.

FACTS

On October 28, 1994, Mark Hollins and his friend Carl Smith were cleaning Smith's coin laundry in Metcalfe when "[t]wo guys came in." The two guys were identified as the Defendant, Corey Reed, and Darnell Lewis. A third man, Kenan Baker, stood in the doorway to the washeteria. When the two men entered they asked Hollins and Smith if they knew "a guy named Geblonski Ford." Hollins answered yes and began to give directions to Ford's home. As Hollins was giving the directions to Ford's home, Reed told Hollins to get in the car and show them where Ford lived. Hollins declined. At that point, Reed began to approach Hollins while at the same time reaching into his coat. Hollins testified that at that time he saw the handle of a gun and attempted "to stop [Reed] from getting it out." As the two men scuffled, the ammunition clip fell out of Reed's gun onto the floor. This is when the shooting started.

Hollins was shot once in the right shoulder and once in the left shoulder, both shots being fired by Baker. Hollins testified that Reed did not fire the first two shots that hit him because at that time Reed's ammunition clip was on the floor. However, Hollins testified that the third shot that hit him in the leg was fired by Reed. He testified that while he did not see Reed fire the shot, Reed was the only person on the side of the room from which the bullet came. Furthermore, while Hollins was being shot in the right leg, Baker was shooting Smith.

Jim King, the Metcalfe Chief of Police, testified that on the day following the shooting, bullet fragments were found at the scene. He testified that one of the fragments indicated that it had ricocheted after being fired. Reed argued to the jury that this ricocheted bullet was the third bullet that struck Hollins and that Reed never fired his weapon.

DISCUSSION

I. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND WHETHER THE STATE PROVED ITS CASE BEYOND A SHADOW OF A DOUBT?

Our scope of review on appeal is limited, has been stated many times before, and need not be restated here. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987); *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987). Suffice to say that Hollins' testimony that Reed was the person who fired the third shot was more than sufficient evidence to convict Reed on the charge of aggravated assault. Reed presented his ricochet theory to the jury who chose not to believe that Hollins was struck by a ricochet bullet fired from Baker's gun. The State was able to present to the jury sufficient evidence to meet the elements of aggravated assault.

II. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED SMITH TO TESTIFY AS TO THE EXTENT OF HIS INJURIES.

This Court finds that no error was committed through the testimony of Smith as to where he was shot and as to the fact that he suffered a limp as the result. While this is testimony concerning a different crime than the one Reed is charged with, our supreme court has stated that where another crime or act is "so interrelated [to the charged crime] 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. *Wheeler v. State*, 536 So. 2d 1347, 1352 (Miss. 1988) (citation omitted). In addition, evidence of other crimes is admissible to tell the complete story so as not to confuse the jury. *Brown v. State*, 483 So. 2d 328, 330 (Miss. 1986).

III. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE EVIDENCE WHEN IT ALLOWED HOLLINS TO GIVE HIS OPINION AS TO WHO SHOT HIM.

At trial Hollins testified he was shot in the right leg from the right side of the room. He further testified that Reed was the only person on that side of the room with a gun. On appeal, Reed argues that Hollins' answer of "Evidently, it was [Reed]" in response to the question "Do you know where the shot came from" was improper because it did not assist the trier of fact, and it was an opinion on the ultimate issue. However, this Court finds that such testimony was admissible under Mississippi Rules of Evidence 701. The testimony was "rationally based upon [Hollins'] perception[s]," and Hollins' opinion was "helpful to the clear understanding of his testimony or the determination of a fact in issue." M.R.E. 701.

IV. WHETHER THE TRIAL COURT MADE IMPROPER COMMENTS DURING THE TRIAL THAT ADVERSELY AFFECTED REED'S RIGHT TO A FAIR TRIAL.

At the end of Carl Smith's testimony, the trial judge commented that he was "pleased to see that you've improved much since the last time you appeared in this Court." Reed argues that this comment was improper.

Reed is procedurally barred from raising this issue on appeal. When the trial court made this comment Reed did not object. In *Norman v. State*, 385 So. 2d 1298, 1302 (Miss. 1980), our supreme court stated:

We need not decide, however, whether the trial judge impermissibly 'crossed the line between judging and advocacy,' . . . because [Reed's] failure to object . . . precludes appellate review.

Momentarily setting the procedural bar aside, this Court in the alternative finds no error in the trial judge's comment. The rule in this State has always been that a trial judge does not have to remain silent during a trial. This Court will not require a trial judge to "behave as a deaf-mute." *Hansen v. State*, 592 So. 2d 114, 132 (Miss. 1991). It is clear from looking at the innocent comment made by

the trial judge that he did not cross the line between "judging and advocacy."

V. WHETHER REED WAS DENIED A FAIR TRIAL DUE TO THE CUMULATIVE ERRORS MADE AT TRIAL.

This Court finds this issue to be completely without merit. Reed simply combines his issues one through four into one issue and argues that its cumulative effect denied him a fair trial. Reed is correct in his argument that just because one error, by itself, may not be grounds for reversal, the errors at trial, taken as a whole, may deny an accused his constitutional right to a fair trial. *Griffin v. State*, 557 So. 2d 542, 552-53 (Miss. 1990). However, in this case, Reed has not convinced this Court that there were any errors at trial. Because this Court found no error in Reed's first four issues, we must necessarily reject his cumulative error allegation.

THE CONVICTION OF AGGRAVATED ASSAULT BY THE CIRCUIT COURT OF WASHINGTON COUNTY, SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND TO PAY RESTITUTION IN THE AMOUNT OF \$5,000.00 ARE AFFIRMED. COSTS OF APPEAL ARE ASSESSED AGAINST WASHINGTON COUNTY.

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