

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00190 COA

DENNIS DOBBS

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. LEE J. HOWARD

COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MARIE WILSON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: GRAND LARCENY

TRIAL COURT DISPOSITION: FOUND GUILTY; SENTENCED TO SERVE A TERM OF 5

YEARS IN THE MDOC AND PAY A FINE OF \$1,000.00

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

PER CURIAM:

Dennis Dobbs (Dobbs) was indicted and convicted of grand larceny. The Honorable Lee J. Howard of the Clay County Circuit Court sentenced Dobbs to a term of five years in the custody of the Mississippi Department of Corrections and ordered him to pay a \$1,000.00 fine. On appeal to this Court, Dobbs asserts the following errors: (1) that the evidence was insufficient to prove that Dobbs carried away the personal property of another; (2) that the trial court erred in failing to grant an instruction on asportation; and (3) that the trial court erred in denying Dobbs's motion for a JNOV or in the alternative, a new trial. Finding no error, this Court affirms Dobbs's conviction and sentence for grand larceny.

At trial, Wilbur Bruff, the manager of the Boogie Bottom Nightclub, testified that he saw Dobbs standing behind the bar and removing money from the cash register on the night of October 15, 1992. Bruff did not know exactly how much money was in the cash register, but the money found and returned to him on the night of the incident totaled \$356.00. Dobbs testified that he re-entered the nightclub after it was closing in order to tell Bruff that his trailer-home was on fire. Dobbs contended that he went behind the bar to telephone the fire department. However, several witnesses testified that Dobbs was seen with a bag, which contained the money returned to Bruff, that a chase ensued after Dobbs, and that Dobbs was seen to have thrown the bag of money onto the ground during his flight. Four witnesses testified that Dobbs took and carried away money which belonged to Mr. Bruff doing business as the Boogie Bottom Nightclub. Dobbs and a friend of his who was at the nightclub with him testified that Dobbs did not take the money from Bruff on the night in question.

The jury was adequately instructed on the elements of grand larceny, including asportation. *See Mackbee v. State*, 575 So. 2d 16, 34 (Miss. 1990). The jury then evaluated all of the testimony presented to it and found Dobbs guilty as charged. *See Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983). After reviewing the entire record, this Court finds that the weight of the evidence clearly supports the jury's determination of guilt. *See McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Also, and as a result of our determination, we find that the trial court did not err nor abuse its discretion when it overruled Dobbs's motion for a JNOV or in the alternative, a new trial. *See id.* Therefore, this Court affirms Dobbs's conviction and sentence.

THE JUDGMENT OF CONVICTION OF THE CLAY COUNTY CIRCUIT COURT FOR GRAND LARCENY AND THE SENTENCE OF FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF \$1,000.00 IS AFFIRMED. ALL COSTS ARE TAXED TO CLAY COUNTY.

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

