

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00180 COA

EDDIE BRADLEY

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. FRANK VOLLOR

COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

W. B. DUGGINS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS

DISTRICT ATTORNEY: G. GILMORE MARTIN

NATURE OF THE CASE: CRIMINAL: GRAND LARCENY

TRIAL COURT DISPOSITION: FOUND GUILTY AND SENTENCED TO FIVE(5) YEARS IN
THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS

BEFORE BRIDGES, P.J., DIAZ, KING, AND SOUTHWICK, JJ.

DIAZ, J., FOR THE COURT:

Eddie Bradley (Bradley) was convicted by a jury in the Warren County Circuit Court of grand larceny. For this conviction, Bradley received a five-year sentence in the custody of the Mississippi Department of Corrections. Aggrieved, Bradley appeals to this Court asserting that the trial court abused its discretion in refusing to allow the testimony of two witnesses and that the verdict is against the overwhelming weight of the evidence. Finding no reversible error, we affirm the judgment.

FACTS

On November 4, 1993, Bradley was working for a construction company in Vicksburg, Mississippi. While in town, Bradley and his co-workers were staying at the Plaza Motel. Around 7:00 p.m. Bradley and Bo Bo Grazan got off work and decided to walk two and one-half miles to a local night club. The two drank adult beverages and conversed until the early morning hours. Bradley says that at around 2:00 a.m. he noticed that Grazan was gone and decided to walk back to the motel alone. Bradley says that as he was walking, he was called over to a police car and arrested for car theft.

Bo Bo Grazan testified that he and Bradley were together socializing at the night club that evening when he left Bradley at around 2:00 or 2:30 a.m. and caught a ride to the motel.

That same evening, Aaron Walker, a resident of Vicksburg, was asleep in his home. He awoke in the early morning hours and noticed that his 1984 Chevrolet Monte Carlo was missing. He dressed and went outside to search for his vehicle. Walker spotted Officers Ahlvin Wells and Virgil Woodall who were on their regular patrol. Walker told the officers about his missing car. While he was talking to them he noticed his car coming toward them. He told the officers and they immediately pursued the vehicle. A chase ensued. The chase ended when the vehicle crashed into a bridge.

Officer Woodall pulled up behind the vehicle with his bright lights on thinking that the driver was probably hurt. As Woodall got out of his vehicle the driver hurriedly ran past Woodall. Woodall gave chase on foot and at times was within three or four feet of the fleeing driver. At one point Woodall was able to grab the man as he was scaling a fence, but Woodall lost his grip. The fleeing driver escaped. Woodall broadcast a description of the man on his radio.

Officer Stimac was on patrol when he heard the broadcast. He saw someone fitting the description walking along the street. When Officer Stimac turned his car around to approach the man, he fled. Officer Woodall came to the area and noticed a man emerging from a wooded area along Washington Street. When he determined that this was the man he had chased earlier, he arrested the man. Officer Woodall identified Bradley in the courtroom as the man he had seen in the stolen car and had chased.

At a hearing outside the presence of the jury, the State moved the trial court to disallow the testimony of two witnesses, Charlie Bradley and George Mell, whose names were given to the State the day before trial. The trial court did allow the witnesses to testify whose names were provided to the State at an earlier date. However, the trial court did not allow Charlie Bradley and George Mell to testify.

Bradley made an offer of proof of the testimony of Charlie Bradley and George Mell. Their testimony

would have been that they were with Bradley and Bo Bo Grazan when they arrived at the motel. They knew that Grazan and Bradley left the motel to walk to the night club. They would say that Bradley was wearing blue jeans, a blue and gold jacket, and a black cap. They saw Grazan return to the motel at around 2:30 or 3:00 a.m. without Bradley.

DISCUSSION

In *Box v. State*, 437 So. 2d 19, 21 (Miss. 1983), the Mississippi Supreme Court set forth guidelines to be followed in cases such as this. The State did not request, nor did the trial court offer to allow the State time to interview these two newly disclosed witnesses. Also, the State did not request a continuance. A continuance would have been the proper course for the trial court to follow had the State requested one.

In *Darghty v. State*, 530 So. 2d 27, 33 (Miss. 1988), it was found to be reversible error for the trial court to exclude relevant and competent testimony. This was true even though Darghty had not complied with discovery. The guidelines set forth in *Box* were not followed by the trial court. The court stated that discovery violations did not automatically justify the exclusion of evidence and that such exclusion would be reversible error. *Id.*

In this case, the exclusion of the testimony of Charlie Bradley and George Mell and the lack of adherence to the *Box* guidelines could have been reversible error. However, the record reveals that the testimony of the two men would merely have been cumulative to that of Bo Bo Grazan and Bradley. The proffer states:

Duggin: On behalf of the Defendant Eddie Bradley in regard to George Mell and Charlie Bradley if they had been allowed to testify they would state to the Court that they all arrived at the motel out there, Dixiana Motel, about, between 7:00 and 7:30. That Eddie, Bo Bo and the whole group cleaned up. That Eddie and Bo Bo decided to leave and go to some club and that they left walking. The clothes that Eddie Bradley was wearing, what Eddie testified to that he was wearing, the blue jeans, he was wearing a blue and gold jacket, and a black cap. And that Bo Bo came back into the motel about 2:30 or 3:00 o'clock that morning from down at the Ponderosa. But Eddie Bradley did not come back because at that time he was incarcerated in the jail. And we would renew our motion.

The proffer shows that the two had nothing to add to testimony which was already admitted through other witnesses. Therefore, error, if any, committed by the trial court was harmless and does not rise to the level of reversible.

Bradley's final argument is that he was entitled to a peremptory instruction as the verdict of the jury was against the overwhelming weight of the evidence. Bradley's appeal is based upon a sufficiency of the evidence question; however, his argument addresses the weight of the evidence.

Our scope of review on appeal is limited, has been stated many times 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). Officer Woodall made an in-court identification of Bradley. He testified to being face-to-face with Bradley under good lighting. During the chase, he was only a few feet behind Bradley. He was close enough to reach Bradley at one point. His broadcast description of the suspect was good enough to allow Officer Stimac to identify him. He gave an accurate description of the clothes being worn by the suspect. Also, the time between Officer Woodall first chasing the suspect and finally apprehending Bradley was only approximately fifteen minutes. When all of the testimony is taken together as true, with all reasonable inferences, the evidence is more than sufficient to support the conviction for grand larceny.

THE CONVICTION OF THE WARREN COUNTY CIRCUIT COURT OF GRAND LARCENY AND SENTENCE OF FIVE (5) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE TAXED TO WARREN COUNTY.

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