

IN THE COURT OF APPEALS 11/14/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00963 COA

CURTIS LEE JUDGE

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. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE McCRORY

DISTRICT ATTORNEY: CLYDE V. HILL

NATURE OF THE CASE: CRIMINAL: BURGLARY AND ROBBERY

TRIAL COURT DISPOSITION: GUILTY VERDICT: SENTENCED TO 15 YRS. IN THE

CUSTODY OF THE MDOC ON COUNT I, BURGLARY , AND 15 YRS. IN THE CUSTODY OF THE MDOC ON COUNT II, ROBBERY, TO BE SERVED CONSECUTIVELY.

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

PER CURIAM:

Curtis Lee Judge was convicted of burglarizing an occupied dwelling and robbing its occupant. He was sentenced as a habitual offender to two consecutive fifteen year terms in prison. He appeals the jury's verdict, contending that it was contrary to the overwhelming weight of the evidence. We conclude that the verdict was well-supported by the evidence and affirm.

Our standard for reviewing challenges to convictions based on the weight of the evidence is well-established. As to each element of the offense, we consider all of the evidence in the light most favorable to the verdict. We reverse when, with respect to an element of the offense charged, the evidence is such that reasonable and fair-minded jurors could only find the accused not guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *Wetz v. State*, 503 So. 2d 803, 808 (Miss. 1987).

The evidence presented at trial was ample to convict Judge of burglary and robbery. To support a burglary charge, the prosecution must prove (1) venue; (2) a "breaking" and entry; (3) that the dwelling was occupied; and (4) that, once inside, the accused intended to commit a crime therein. Miss. Code Ann. § 97-17-21 (1972). To support a conviction for robbery, the prosecution must prove (1) venue; (2) that the property taken was the personal property of another; (3) that the accused took the property; and (4) that the taking was made against the will of the other person by force or violence. *Id.* § 97-3-73. In this case, the prosecution proved each element of both crimes through the victim's testimony. The victim described an incident involving a man forcing his way into her Coahoma County residence and forcibly taking her personal property. While the victim could not identify the perpetrator, the jury was presented with Judge's confession to the crimes and the testimony of a person who drove Judge from the scene of the crime concerning items of women's jewelry, credit cards, and a purse that Judge had in his possession.

In the face of this evidence, Judge relies upon an attack of the certainty of the witnesses for the prosecution in their testimony and his assertion that his confession was involuntary. In addition, Judge testified that he was about to rob the occupant of the subject residence but that, while he was peering into the residence, another individual just happened to have the same idea and, ultimately, was the person who committed the burglary and robbery. Given the evidence presented at trial, a pure fact question was presented to the jury. Would the jury believe the victim's story or Judge's story? We cannot say that the verdict was contrary to the overwhelming weight of evidence in such circumstances. Accordingly, we affirm.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF COUNT I, BURGLARY OF AN OCCUPIED DWELLING, AND SENTENCE TO FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND COUNT II, ROBBERY, AND SENTENCE TO FIFTEEN (15) YEARS

IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AS AN HABITUAL OFFENDER, TO BE SERVED CONSECUTIVELY, IS AFFIRMED AND ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

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