IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00859 COA

GOLDEN PEEBLE A/K/A GOLDEN PEEBLE, JR.

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. ROBERT W. BAILEY

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ROGERS J. DRUHET III

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: E. J. MITCHELL III

NATURE OF THE CASE: CRIMINAL--AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: SENTENCED TO SERVE TWENTY YEARS IN THE

CUSTODY OF THE MDOC; PARTICIPATE IN A&D PROGRAM AND PAY COURT COSTS

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

PER CURIAM:

Golden Peeble, a/k/a Golden Peeble, Jr. was convicted of aggravated assault in the Lauderdale County Circuit Court, and sentenced to serve twenty years in the custody of the Mississippi Department of Corrections with participation in an alcohol and drug program. Peeble raises two issues on appeal.

First, Peeble argues that prosecutorial misconduct deprived him of a fair trial. He asserts that the prosecutor's comment on Peeble's failure to produce the shovel used in the assault was tantamount to shifting the burden of proof and therefore a comment on Peeble's right to remain silent. In support of his argument, Peeble cites *Smith v. State*, an Alabama case in which the prosecution commented on the defense's failure to produce the murder weapon. The Alabama Supreme Court held there was no difference between a defendant's oral testimony and his production of physical evidence. *Smith v. State*, 25 Ala. App. 183, 142 So. 779, 780 (1932).

Peeble mistakenly relies on *Smith*. Peeble himself opened the door to the issue of the missing shovel when, during the questioning of a State's witness, he shouted in the presence of the jury, "They don't even have a weapon." Peeble's counsel cross-examined two witnesses extensively on the whereabouts of the shovel. The prosecutor "was merely trying to fight the fire kindled by the defendant." *Doby v. State*, 557 So. 2d 533, 539 (Miss. 1990). "[W]here opposing counsel "opens the door," the prosecution may enter and develop a matter in greater detail." *Doby* 557 So. 2d at 539 citing *Jefferson v. State*, 386 So. 2d 200, 202 (Miss. 1980). "If a defendant opens the door to[a] line of testimony, ordinarily he may not complain about the prosecutor's decision to accept the benevolent invitation to cross the threshold." *Doby*, 557 So. 2d at 539 (citations omitted).

Second, Peeble asserts the verdict of the jury is not supported by the evidence. However, he cites no authority and makes no argument in his brief. "In the absence of meaningful argument and citation of authority, this Court generally will not consider an assignment of error." *Baine v. State*, 604 So. 2d 249, 255 (Miss. 1992). Moreover, we have carefully examined the record and find more

than sufficient evidence undergirding the jury verdict. Peeble's appellate contentions are without merit. We affirm.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT, SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND PARTICIPATION IN A DRUG AND ALCOHOL PROGRAM IS AFFIRMED. COSTS ARE TAXED TO LAUDERDALE COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,

McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.