

IN THE COURT OF APPEALS 9/19/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00598 COA

ROBERT BERNARD BINGHAM

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. BILLY JOE LANDRUM

COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

THOMAS GENE CLARK

ATTORNEY FOR APPELLEE:

BY: JOLENE M. LOWRY

ATTORNEY GENERAL'S OFFICE

NATURE OF THE CASE: CRIMINAL: VICTIM ROBBED OF \$200.00

TRIAL COURT DISPOSITION: ROBBERY, 15 YEARS WITH 5 YEARS SUSPENDED

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

THOMAS, P.J., FOR THE COURT:

SUMMARY

Robert Bernard Bingham was convicted of robbery for having taken from Martha Graham, over a period of time, the total sum of two hundred dollars. Bingham's motion for a directed verdict at the close of the State's case and at the conclusion of his defense was overruled. After Bingham's post trial motion for a new trial, or alternatively, motion for judgment notwithstanding the verdict of the jury were denied, he appealed. Finding no error, we affirm.

FACTS

Martha Graham, her livein boyfriend Frankie Meadows, and Graham's five adopted children, all parties being white, moved into an all black apartment complex in Laurel, Mississippi. According to Graham, corroborated by Meadows, threats were made against the new residents from the beginning; other people in the complex hollered, "no white girl, no white girl." Thereafter, Bingham paid Graham a visit and told her she would have to pay him "protection" money in order for Graham to be able to live at the apartment. Bingham received twenty dollars initially, twenty dollars on his next visit, and eventually took a total of two hundred dollars. During three visits Graham got Bingham to sign a receipt that Graham filled out which listed the money as "protection" money. Graham's excuse to Bingham for need of the receipt was so that she could show others who might call upon her, as Bingham had, that she had already paid to be left alone. During this period of time, a shot was fired into Graham's apartment, and Bingham was seen carrying a shotgun.

In defense, Bingham testified he did receive money from Graham and Meadows, but that it was for his help in securing drugs for Meadows. Bingham admitted signing a receipt for some of the money, but denied the word "protection" was written on the receipt as he originally signed it.

LAW

THE VERDICT OF THE JURY IS CONTRARY TO THE LAW AND EVIDENCE AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THE SECOND ELEMENT REQUIRED FOR ROBBERY.

Bingham's contention is that the State failed to prove that he took money from Graham's

person by putting her in fear of immediate bodily injury.

During Graham's testimony in chief, the following was elicited:

Q Martha, were you afraid of the person who came to your door and you gave the money to?

A Yes, ma'am, because I have got five children at home, and if I hadn't gave the money, he said he was going to turn his goons loose on me.

Thereafter, another question was asked:

Q Okay. And did he make any other threats against your children in any way or against your daughters?

A He said that he would see that we was put out of the place.

Our robbery statute requires that force or fear be used as a means of effectuating felonious intent, but does not require that the victim be frightened or terrified. It is sufficient if the victim expects or anticipates that personal injury may result if the victim does not abide by the instructions of the assailant. *Harper v. State*, 434 So. 2d 1367, 1368 (Miss. 1989), *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989). Needless to say, Graham's testimony, supported by Meadows, and obviously accepted by the jury, is more than adequate to bring Bingham within the parameters of our robbery statute.

The jury's duty in the case sub judice was to judge the credibility of conflicting testimony; it did so adverse to Bingham's defense, and we are not at liberty to disturb the same. *Groseclose v. State*, 440 So. 2d 297, 300-01 (Miss. 1983), *Esparaz v. State*, 595 So. 2d 418, 427 (Miss. 1992).

THE JONES COUNTY CIRCUIT COURT JUDGMENT OF CONVICTION OF ROBBERY AND SENTENCE OF FIFTEEN YEARS WITH FIVE YEARS SUSPENDED IS AFFIRMED. COSTS ARE TAXED TO JONES COUNTY.

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