

**IN THE COURT OF APPEALS 1/14/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00832 COA**

**CASEY WOODS**

**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. RICHARD T. WATSON

COURT FROM WHICH APPEALED: ADAMS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAMELA A. FERRINGTON

OFFICE OF THE ATTORNEY GENERAL

ATTORNEYS FOR APPELLE: BY: WAYNE SNUGGS

DISTRICT ATTORNEY: STURGEON, ALONZO,

NATURE OF THE CASE: FELONY: ROBBERY

TRIAL COURT DISPOSITION: ROBBERY: SENTENCED TO SERVE A TERM OF 15 YRS IN THE MDOC, AS AN HABITUAL CRIMINAL, WITHOUT BENEFIT OF PAROLE, PROBATION, SUSPENSION, OR REDUCTION OF SENTENCE, CONSECUTIVE TO THE SENTENCE CURRENTLY BEING SERVED BY THE DEFENDANT IN THE MDOC

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

A jury convicted Woods of robbery, and the Circuit Court of Adams County sentenced him as a habitual offender to serve 15 years in the custody of the Mississippi Department of Corrections. Aggrieved, Woods appeals and contends: (1) The court erred when it submitted to the jury an instruction which contained an element of armed robbery and (2) The court erred when it submitted the case to the jury on the charge of robbery because the State failed to prove that Woods placed the victim in fear or used force or violence to gain possession of the victim's property. We find no merit to Woods' arguments; therefore, we affirm the conviction and sentence.

## **FACTS**

Elmo Irby was employed at the Deposit Guaranty National Bank in Natchez and often reported to work early. One morning Irby arrived early and was proceeding to walk to the entrance of the bank, when he encountered Woods walking toward him. Woods uttered words to Irby, which Irby did not comprehend. When Irby asked Woods to repeat the conversation, Woods ordered Irby to hand over his billfold. Irby advised Woods that he did not carry a billfold. Again, Woods ordered Irby to hand over his billfold, and Irby again advised Woods that he did not carry a billfold. Finally, Woods told Irby, "Give me your billfold. I've got a gun or you're going to get hurt." Thereafter, Irby attempted to flee into the bank's entrance, but Woods grabbed Irby's left hip pocket. Irby's pocket tore, and Woods grabbed Irby's wallet and ran.

Woods was indicted for armed robbery; however, at trial, Woods moved for and was granted a directed verdict on the charge of armed robbery because the State failed to adduce evidence that Woods exhibited a weapon during the robbery. However, the court determined that the evidence was sufficient to submit the case to the jury on the offense of robbery. Counsel for Woods did not object to the court's submitting the case to the jury on the offense of robbery. Without objection from defense counsel, the court instructed the jury:

The Court instructs the jury that the defendant, Casey Woods has been charged by an indictment with the crime of robbery.

If you find from the evidence in this case beyond a reasonable doubt that:

1. A wallet and its contents was the personal property of Elmo Irby, and
2. The defendant, Casey Woods, on or about the 18th day of October, 1993, in Adams County, Mississippi, did wilfully, unlawfully and feloniously take said wallet and its contents away from the person of and in the presence of one Elmo Irby, and
3. The taking was against the will of the said Elmo Irby, and
4. The defendant, Casey Woods, took said wallet and its contents by the use of force and violence to the person of the said Elmo Irby by pointing what the Defendant stated to be a

handgun at the said Elmo Irby by demanding his wallet, and by violently and forcibly snatching said wallet and its contents from the pocket of Elmo Irby,

Then you shall find the defendant guilty of robbery. If the State has failed to prove any one or more of these elements beyond a reasonable doubt then you find the defendant not guilty.

## **ANALYSIS OF THE ISSUES AND DISCUSSION OF LAW**

**DID THE COURT ERR IN SUBMITTING TO THE JURY AN INSTRUCTION WHICH CONTAINED AN ELEMENT OF ARMED ROBBERY WHEN THE EVIDENCE DID NOT SHOW THAT WOODS EXHIBITED A WEAPON?**

Woods finds objectionable language in the above mentioned instruction, which alluded to Woods pointing a handgun at Irby and argues that the conviction should be reversed because the State failed to adduce evidence indicating that a weapon was exhibited during the commission of the offense. Woods did not object to the instruction at trial, nor was this issue raised by Woods in his motion for new trial. This Court is not obliged to consider issues not raise in the trial court. *Cole v. State*, 666 So. 2d 767, 774 (Miss. 1995) (citations omitted). Because Woods failed to object to the jury instruction at trial or raise this issue in his motion for new trial, we apply the procedural bar and do not address the merits of this assignment of error.

II.

**DID THE TRIAL COURT ERR WHEN IT SUBMITTED THE CASE TO THE JURY ON THE OFFENSE OF ROBBERY?**

Woods contends that the case should not have been submitted to the jury on the offense of robbery because the State failed to show that Irby's wallet was taken by violence to his person or by putting Irby in fear of some immediate injury to his person. Again, we are not obliged to consider this issue because Woods failed to raise the objection at trial. Notwithstanding the procedural bar, Woods argument is void of merit.

Even though the State failed to adduce evidence that a weapon was exhibited during the crime and even though Irby testified that he was angered not frightened by Wood's conduct, we find that the State adduced sufficient evidence from which reasonable jurors could infer that the wallet was taken by violence to Irby's person. The evidence indicates that Woods held Irby against his will, ripped the pocket of his trousers, and took the wallet. From this evidence, a jury could reasonably infer that Woods effectuated the taking by violence to Irby's person. Thus, the court did not err when it submitted the case to the jury on the offense of robbery.

In conclusion, we find Woods' appeal to be lacking in merit and therefore, affirm the conviction and

sentence.

**THE JUDGMENT OF THE CIRCUIT COURT OF ADAMS COUNTY OF CONVICTION OF ROBBERY AND SENTENCE OF FIFTEEN YEARS AS A HABITUAL OFFENDER IS AFFIRMED. SENTENCE IS TO RUN CONSECUTIVELY TO SENTENCE APPELLANT IS NOW SERVING. COSTS OF THIS APPEAL ARE TAXED TO ADAMS COUNTY.**

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