

IN THE COURT OF APPEALS 08/06/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00573 COA

VERLETTA BREWER

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. JOHN M. MONTGOMERY

COURT FROM WHICH APPEALED: NOXUBEE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CURTIS H. AUSTIN

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: PATRICIA SPROAT

NATURE OF THE CASE: CRIMINAL: AGGRAVATED ASSAULT UPON LAW
ENFORCEMENT OFFICER

TRIAL COURT DISPOSITION: GUILTY; SENTENCED TO SERVE 30 YEARS IN MDOC

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

DIAZ, J., FOR THE COURT:

Verletta Brewer (Brewer) was convicted of aggravated assault of a law enforcement officer in the Noxubee County Circuit Court. Brewer was sentenced to serve thirty (30) years in the Mississippi Department of Corrections. Aggrieved from that judgment, Brewer appeals to this Court asserting the following issues: (1) that the trial court erred in admitting into evidence lead fragments which were found at the scene; and (2) that the trial court erred in permitting testimony regarding other shootings that night. Finding no merit to these issues, we affirm the judgment.

FACTS

Officer Robert McCrary (McCrary) of the Brooksville Police Department was on patrol on the midnight to 6:00 A.M. shift. At approximately 2:00 A.M., he parked at the B.P. gas station to watch traffic. At about 2:40 A.M., he noticed that a gray car with an Alabama license plate failed to stop at the stop sign. McCrary identified Brewer as the driver of the car. Two other people were in the car with Brewer.

At about 3:15 A.M., McCrary saw the gray car drive back into view. Four or five minutes later, McCrary heard a gun shot. McCrary testified that a "forklift pallet," which was stored behind a parts shop across the street, fell. McCrary then saw Brewer fire a shot at him. McCrary called for back up while Brewer ran to the church across the street. Later that night, Officer McCrary, Chief of Police Mike Shelton, Investigator Ernest Eichelberger from the Sheriff's Department, and Sheriff Albert Walker went to the home of Stella Roby, Brewer's fiancée. There, they found Orlando Brewer, the defendant's brother, and Stella Roby. The gray car with the Alabama license plate was parked at the house. Harold Bardley, Stella Roby's neighbor, happened to be sitting on his front porch when the officers arrived at Roby's house that night. Bardley testified that he saw Brewer after the officers left. Bardley testified that Brewer stated, "I could have killed him." He then asked Bardley, "Who did they get?" In a pretrial statement, Bardley stated that Brewer was carrying a sawed off shotgun; however, at trial, Bardley testified that Brewer was holding an 18-20 inch stick in his hands.

The next morning, McCrary noticed that there were bullet dents on his patrol car. Pellets were found at the B.P. station as well as in McCrary's patrol car. The owner of the B.P. station testified that the wooden trim on top of the station was painted only two to three months before the incident. As part of their investigation, Eichelberger removed the trim boards above the station that had indentations on them. As he did so, metal fragments fell out of the wood. The metal fragments were sent to the crime lab for analysis. Brewer was arrested the day after the incident. A weapon was never found.

DISCUSSION

LEAD FRAGMENTS

Brewer contends that the court erred in admitting lead fragments that were found at the scene, into evidence. Brewer maintains that the lead fragments should not have been admitted because it was not shown that the fragments had any connection with the perpetration of the crime. The lead fragments

were found embedded in the wooden trim of the B.P.station. The court has held that evidence as to the condition of the scene of a crime and objects found at the scene, if relevant, are admissible in evidence, if not remote in time and place. *Tillis v. State*, 661 So. 2d 1139, 1143-44 (Miss. 1995). The determination of whether evidence is too remote to be relevant is usually left to the discretion of the trial judge; his decision will not be reversed in the absence of clear proof of abuse of discretion. *Tillis*, 661 So. 2d at 1143 (citations omitted).

By stipulation, the testimony of John Michael Allen, a forensic scientist at the Mississippi Crime Laboratory was read into the record. Because the fragments were extensively mutilated, Mr. Allen could not positively identify from where the fragments may have come; however, he did state that the only way the metal fragments would have had sufficient energy to penetrate the board would have been from a firearm. It is evident from Mr. Allen's testimony that the trial court did not abuse its discretion when it admitted the metal fragments into evidence.

TESTIMONY REGARDING ADDITIONAL SHOTS

Brewer's second contention is that trial court erred in admitting testimony concerning two other shootings that occurred on the same night. On direct examination, Officer McCrary testified that after Chief Shelton arrived on the scene, "somebody fired" shots. The defense objected to this testimony stating that since Brewer was only charged with one count of aggravated assault, the additional shots were a separate incident. The court sustained the objection and instructed the jury to disregard that testimony regarding the other shootings. The prosecutor then asked officer McCrary what he did after Chief Shelton arrived at the scene. Officer McCrary responded that "they shot at us a couple of times..." to which the defense objected on the same grounds. The judge held a bench conference and asked the State to submit case authority permitting this line of testimony. After lunch, the prosecutor withdrew her intention to offer this evidence.

The rule in Mississippi is that where an objection is sustained, and no request is made that the jury be told to disregard the objectionable matter, there is no error. *Perry v. State*, 637 So. 2d 871, 874 (Miss. 1994). This rule is precisely applicable to this case. The trial court sustained Brewer's objection, and told the jury to disregard the testimony about the other shootings. The defense did not offer any further jury instructions regarding this testimony. Since the defense did not request that the jury be admonished, the sustaining of the objection was sufficient to prevent reversible error. *Cotton v. State*, No. 92-KA-01102-SCT, 1996 WL233895 at *7 (Miss. May 9, 1996); *Williams v. State*, 445 So. 2d 798,809 (Miss. 1984). There is no reversible error where the court did all that it was asked to do. *Wetz v. State*, 503 So. 2d 803,811 (Miss. 1987). There is no merit to this issue.

THE JUDGMENT OF CONVICTION OF THE NOXUBEE COUNTY CIRCUIT COURT FINDING VERLETTA BREWER GUILTY OF AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER AND SENTENCE OF THIRTY YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO NOXUBEE COUNTY.

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

