

IN THE COURT OF APPEALS 06/04/96
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00374 COA

MICHAEL LEWIS MOBLEY

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. GRAY EVANS

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MARTIN A. KILPATRICK

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: WIN PITTMAN

NATURE OF THE CASE: CRIMINAL/AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: CONVICTED OF AGGRAVATED ASSAULT AND

SENTENCED TO SERVE A TERM OF TWENTY (20) YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS.

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

PER CURIAM:

The Defendant, Michael Lewis Mobley, was tried and convicted of the crime of aggravated assault and sentenced to serve a term of twenty (20) years in the Mississippi Department of Corrections. Mobley appeals his conviction claiming that the verdict of the jury was contrary to the weight of the evidence and therefore the lower court erred in denying his motion for a new trial. Finding that the issues raised by Mobley are without merit, we affirm the judgment of the lower court.

In reviewing a challenge to the weight of the evidence, we reverse only for an abuse of discretion, and must accept as true all evidence favorable to the State. *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987). The jury is the sole judge of the credibility of testimony. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). Furthermore, the jury is responsible for weighing the conflicting evidence and the credibility of the witnesses. *Lewis v. State*, 580 So. 2d 1279, 1288 (Miss. 1991). In *Doby v. State*, 532 So. 2d 584, 591 (Miss. 1988), the supreme court held that the testimony of a single witness is sufficient to support a conviction. Moreover, in *Williams v. State*, the court held that jurors may accept or refuse the testimony of witnesses. *Williams v. State*, 427 So. 2d 100, 104 (Miss. 1983).

Tyrone Clark, the victim, identified Mobley as the man who stabbed him. Other witnesses testified that Clark, Mobley, and another man, Leroy Warren, had been fighting, and that Mobley chased Clark behind a building. Leroy Warren testified that he saw Mobley chase Clark behind the building but did not see who stabbed Clark. There was no direct evidence to contradict the victim's testimony that Mobley was the one who stabbed him.

Here, the jury heard the witnesses, and the evidence presented by both the State and the defense. The jury was within its power to weigh the evidence and the credibility of the witnesses' testimony and to convict Mobley. The trial court did not abuse its discretion by refusing to grant Mobley a new trial based on the weight of the evidence. The jury verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand, would have been to promote an unconscionable injustice. The trial court properly denied Mobley's motion for a new trial.

We find Mobley's arguments to be wholly without merit and affirm the judgment of the lower court.

THE JUDGMENT OF THE WASHINGTON COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON AND SENTENCE OF TWENTY (20) YEARS WITH FIVE YEARS SUSPENDED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WASHINGTON COUNTY.

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

McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., NOT PARTICIPATING.