

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01080 COA

MICHAEL LYNCH A/K/A MICHAEL LEE LYNCH

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. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DARNELL FELTON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEWITT ALLRED III

DISTRICT ATTORNEY: LAURENCE MELLEN

NATURE OF THE CASE: CRIMINAL - AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: CONVICTION FOR AGGRAVATED ASSAULT AND

SENTENCE OF TWELVE YRS IN MDOC

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

PER CURIAM:

On September 4, 1995, Michael Lynch was convicted of aggravated assault in Coahoma County Circuit Court. He was sentenced to twelve years in the custody of the Mississippi Department of Corrections. Lynch appeals the denial of his motion for a JNOV or, in the alternative new trial. The record reveals that on the morning of February 11, 1995, Merdis Williams, who was Lynch's girlfriend, arrived at her home in Clarksdale, Mississippi, to find Lynch with her children, Sharnise, Wykesia, Michael, and Lasonya. Williams and Lynch began to fight about how late she was in returning home. The fight became physical with both Lynch and Williams exchanging blows. Lynch, Williams, and two-year-old Sharnise then went into the bedroom where Lynch was retrieving some of his personal items from the closet. While retrieving his loaded, cocked .38 caliber gun from the closet, the gun discharged and hit Sharnise in the head seriously injuring her.

Lynch argues that in retrieving the gun, he accidentally hit it on a doorknob and a wall, thereby causing it to discharge striking Sharnise. He further argues that his actions do not evidence the reckless mens rea required by section 97-3-7-(2)(a) of the Mississippi Code of 1972. We disagree. Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778.

The record clearly reveals sufficient evidence from which the jury could have arrived at a verdict of guilty. There was testimony of a severe physical fight, that while the fight was continuing Lynch retrieved a loaded, cocked pistol. The child was shot only minutes later. This certainly evidences at least the recklessness and indifference to human life that is sufficient to convict for aggravated assault. Furthermore, Lynch told more than one version of these events. The evidence is not such that reasonable and fair-minded jurors could only find the accused not guilty. Accordingly, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH SAID SENTENCE TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED, IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

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

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