

IN THE COURT OF APPEALS

8/26/97

OF THE

STATE OF MISSISSIPPI

NO. 96-KA-00196 COA

IRA LEE DOUGLAS 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. GEORGE B. READY

COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DAVID CLAY VANDERBURG

ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A.  
KLINGFUSS

DISTRICT ATTORNEY: ASST. DISTRICT ATTY-MICHAEL HORAN

NATURE OF THE CASE: CRIMINAL-RAPE

TRIAL COURT DISPOSITION: RAPE: SENTENCED TO SERVE A TERM OF 10 YRS IN THE

MDOC, WITH LAST 7 YRS SUSPENDED PENDING GOOD BEHAVIOR; DEFENDANT SHALL PAY A FINE IN THE AMOUNT \$500 PAY \$500 TO MS CRIME VICTIMS COMPENSATION FUND & PAY ALL COSTS OF COURT

DATE ISSUED: 9/16/97

BEFORE BRIDGES, C.J., DIAZ, HINKEBEIN, AND KING, JJ.

DIAZ, J., FOR THE COURT:

Ira Lee Douglas was tried and convicted of rape on January 24-25, 1996, in DeSoto County, Mississippi. Douglas filed post trial motions which were denied on February 9, 1996, and was thereafter sentenced to ten years in the Mississippi Department of Corrections, with seven years suspended for good behavior. Douglas was also ordered to pay a fine of \$500 and \$500 to the Mississippi Crime Victims' Compensation Fund and all court costs.

Douglas filed a timely notice of appeal and now alleges that the trial court erred when it denied Douglas's motion for a directed verdict at the close of the State's case, the peremptory jury instruction offered by Douglas, and his motion for a JNOV or in the alternative a motion for a new trial. Douglas also contends that the trial judge committed error when he allowed the assistant district attorney to mention dope dealers and dope sellers in reference to Douglas during the attorneys' closing arguments.

#### FACTS

Douglas moved for a directed verdict at the end of the State's case. The motion was denied. Douglas then sought to have a peremptory instruction given to the jury, which the judge also denied. During the State's closing arguments, the prosecutor made statements to the jury comparing the methods used to gain confessions from drug dealers with those used with Douglas. Douglas objected; the judge did not rule on the objection but did instruct the jury to not infer that Douglas dealt with drugs because of the statement made by the prosecutor. After the jury returned the guilty verdict, Douglas moved for a JNOV or in the alternative a new trial. This motion was also denied by the trial judge. Douglas now appeals on these issues.

#### ISSUES

A. Did the trial judge err when he refused to grant Douglas's motion for a directed verdict, the peremptory jury instruction, and motion for a JNOV or in the alternative a new trial?

Douglas, in his brief to this Court, argues sufficiency of the evidence, which springs from the trial court's denial of Douglas's motions for directed verdict and JNOV. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). However, post-trial Douglas made a motion for a new trial, which goes to the

weight of the evidence, along with his motion for a JNOV. Although Douglas made motions throughout the trial concerning sufficiency of the evidence, this Court must rule on the last challenge made, which is the motion for a JNOV. Even though Douglas argues only sufficiency of the evidence in his brief, this Court will, for the sake of clarity, address not only the sufficiency of the evidence, which was argued in the brief, but the weight of the evidence as well.

### 1. Sufficiency of the evidence.

A challenge to the sufficiency of the evidence requires an analysis of the evidence by the trial judge to determine whether a hypothetical juror could find beyond a reasonable doubt, that the defendant is guilty. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). If the judge determines that no reasonable juror could find the defendant guilty, then he must grant the motion for a directed verdict or JNOV. *Id.* If he finds that a reasonable juror could find the defendant guilty beyond a reasonable doubt, then he must deny the motion. *Id.* Here Douglas made a motion for a directed verdict at the end of the State's case and a motion for a JNOV after the jury returned its verdict, and the judge sentenced Douglas. As stated earlier, we must review the evidence at the last time the motion was made--the JNOV. This Court's scope is limited to the same examination as that of the trial court in reviewing the motion for a JNOV. That is, if the facts point in favor of the defendant to the extent that reasonable jurors could not have found the defendant guilty beyond a reasonable doubt, viewing all facts in the light most favorable to the State, then it must sustain the assignment of error. *Blanks v. State*, 542 So. 2d 222, 225-26 ( Miss. 1989). Of course, the opposite is also true. We may reverse the trial court's ruling only where one or more of the elements of the offense charged is lacking to such a degree that reasonable jurors could only have found the defendant not guilty. *McClain* 625 So. 2d at 778.

In the case *sub judice*, there was legally sufficient evidence to find Douglas guilty beyond a reasonable doubt. The State made out its prima facia case by having the rape victim testify that Douglas had forcibly penetrated her. The State also put on evidence that Dr. James Lewis testified to bite marks and internal bleeding in the victim's uterus which were consistent with the victim's testimony. Douglas testified that the sexual intercourse was consensual, yet he presented no other witnesses to corroborate his testimony. Because both the State and Douglas put forth sufficient, credible evidence, the trial judge was required to leave the final decision of guilt or innocence to the jury. We affirm the judge's ruling as to the motion for a JNOV.

### 2. Weight of the evidence.

The second motion the defense made, although it is not argued in the brief, is that the jury's verdict was against the overwhelming weight of the evidence. Because Douglas did not brief this issue, we are not required to address it; however, we feel compelled to do so for the sake of clarity. In reviewing this claim, the Court should examine the trial judge's overruling of Douglas's motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). The decision of whether or not to grant a motion for a new trial rests in the sound discretion of the trial judge and should only be granted when the trial judge is certain that the verdict is so contrary to the overwhelming weight of the evidence that failure to grant the motion would result in an unconscionable injustice. *May*, 460 So. 2d at 781. In making the determination of whether a verdict is against the overwhelming weight of

the evidence, this Court must view all evidence in the light most consistent with the jury verdict, and we should not overturn the verdict unless we find that the lower court abused its discretion when it denied the motion. *Blanks*, 542 So. 2d at 228. The proper function of the jury is to decide the outcome in this type of case, and the court should not substitute its own view of the evidence for that of the jury's. *Id.* at 226. Likewise, the reviewing court may not reverse unless it finds there was an abuse of discretion by the lower court in denying the defendant's motion for a new trial. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991). Upon reviewing all of the evidence presented in the light most consistent with the verdict, we find that the trial judge did not abuse his discretion in denying Douglas's motion for a new trial.

The judge, correctly finding that the State had made out a prima facie case of rape, allowed the case to go to the jury. The jury properly performed its function by drawing reasonable inferences from the evidence presented and rendering a verdict which was supported by the evidence. Therefore, we affirm the lower court's denial of Douglas's JNOV and motion for a new trial.

B. Did the trial court err when it allowed the assistant district attorney to make comments which Douglas felt implied he was a drug dealer?

During the State's closing arguments, the assistant district attorney made comments analogizing the fact that the victim tried to trick Douglas into a confession by secretly taping a phone conversation with him, to the video and audio tapes made by the State of drug deals. Douglas objected and moved for a mistrial; although the trial judge did not rule on the objection, he did instruct the jury to not infer anything concerning drugs or drug dealings to Douglas. The assistant district attorney then moved to the next issue.

It appears from the record that the assistant district attorney was attempting to explain the statement made by the defense counsel in his closing argument where defense counsel said the State had tried to trick Douglas into making a confession. The assistant district attorney was trying to explain that the State used these methods in certain other circumstances, and he gave an example of drug deals.

Whether the statement by the prosecutor was improper or not is not relevant here since the judge followed the necessary procedure for curing any error by instructing the jury to not infer anything from the statement. There is a strong presumption that jurors follow the instruction given by the trial judge so as to dispel any prejudice. *Crenshaw v. State*, 520 So. 2d 131, 134 (Miss. 1988); *Payne v. State*, 462 So. 2d 902, 904 (Miss. 1984). In *Johnson v. State*, 475 So. 2d 1136, 1142 (Miss. 1985), the Court stated that "The admonition of the trial judge . . . was adequate to remove any prejudice that might have formed in the minds of the jurors." Therefore, because the trial court instructed the jury correctly, and it is presumed the jury followed the instruction, there is no error as to the comment made by the prosecutor. We find that the trial court did not err and affirm its ruling on all issues.

**THE JUDGMENT OF THE DESOTO COUNTY CIRCUIT COURT OF CONVICTION OF RAPE AND SENTENCE TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH SEVEN YEARS SUSPENDED, AND A FINE OF \$500 AND \$500 TO THE MISSISSIPPI CRIME VICTIMS COMPENSATION FUND IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO DESOTO COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, HINKEBEIN,  
KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**