

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-KA-00979 COA**

**T.C. RICHARD**

**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

DATE OF JUDGMENT:	08/22/95
TRIAL JUDGE:	HON. R. KENNETH COLEMAN
COURT FROM WHICH APPEALED:	MARSHALL COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	TIMOTHY R. BALDUCCI
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I ARMED ROBBERY: SENTENCED TO 15 YRS IN THE MDOC; THE COURT SUSPENDS 8 YRS OF SAID SENTENCE CONDITIONED UPON THE DEFENDANTS GOOD BEHAVIOR AFTER HIS RELEASE FROM THE INSTITUTION
DISPOSITION:	AFFIRMED -11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

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

KING, J., FOR THE COURT:

Richard was convicted of armed robbery in the Marshall County Circuit Court and sentenced to serve seven years in the custody of the Mississippi Department of Corrections. Richard assigns the following errors on appeal: (1) the trial court failed to grant Instruction D-7, an accessory after the fact jury instruction, (2) the trial court failed to reform Instruction D-7 and (3) the evidence was against the overwhelming weight of the evidence. Finding no error, we affirm the circuit court's judgment.

**FACTS**

On September 19, 1993, T.C. Richard was present at Cool Man's, a bar situated in Holly Springs, Mississippi. James Lee Hankins approached Richard in the bar and asked him for a ride home. Eddie McNeal, Hankins' cousin, was also in the bar. With Richard as the driver of his blue Thunderbird, the three men left Cool Man's and proceeded to a gas station to get gas. After getting the gas, Richard, Hankins, and McNeal rode around for a short period drinking and smoking drugs. While riding, the idea to rob the Fast Lane Gas Station emerged among the men. Richard dropped McNeal off approximately 250 feet from the Fast Lane and drove a short distance away. McNeal entered the Fast Lane and ordered the attendant to give him the money from the register. He left the store and shortly thereafter, Richard drove back near the Fast Lane to pick McNeal up. The men used a portion of the money to purchase more gas for Richard's car.

After robbing the Fast Lane, the men continued to ride around. With McNeal now driving, Hankins sitting in the front passenger's seat and Richard sleeping on the back seat, they proceeded to Smith's Grocery Store. While McNeal and Hankins robbed the store, Richard remained in the car. McNeal drove Richard's car away from the store, and they were subsequently spotted by some police officers. The officers gave chase, and McNeal ultimately lost control of the car and hit a tree. Richard, McNeal, and Hankins were arrested at the scene.

McNeal and Hankins pled guilty to two counts of armed robbery. However, Richard went to trial. A jury found him guilty of the Fast Lane armed robbery and acquitted him of the Smith Grocery Store armed robbery. Richard now appeals his conviction and sentence.

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

### **I. WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT INSTRUCTION D-7 ON ACCESSORY AFTER THE FACT, THEREBY LEAVING THE QUESTION OF WHETHER OR NOT T.C. RICHARD WAS A PRINCIPAL IN THE COMMISSION OF THE ARMED ROBBERY AS THE JURY'S ONLY OPTION.**

Richard argues that the trial court should have granted an accessory after the fact jury instruction because there is an evidentiary basis in the record to support this instruction. He suggests that evidence introduced at trial showed that the events leading up to the Smith Grocery armed robbery did not differ in any important way from the events leading up to the Fast Lane armed robbery, other than the fact that Richard did not drive to Smith's Grocery. Richard further suggests that he acted only as an accessory after the fact by picking McNeal up upon the completion of the armed robbery. We disagree with Richard's arguments. Richard acquiesced in an agreement to rob the Fast Lane, dropped McNeal off to commit the armed robbery, picked McNeal up after the armed robbery's completion and then shared some of the stolen proceeds. These facts distinguish his acts from those of an accessory after the fact. An accessory after the fact participates only at the point a completed felony has been committed.<sup>(1)</sup> Though Richard did not actually go into the Fast Lane, he participated as a principal because he assisted in the commission of the armed robbery by driving the "getaway vehicle" and sharing the proceeds.

The following factual assertions in the record support Richard's conviction of armed robbery:

(1) Hankins stated that he and Richard circled around the Fast Lane, dropped McNeal off and then later picked him back up after the armed robbery.

(2) Hankins and McNeal testified that Richard was the driver during the Fast Lane robbery and that Richard used some of the money stolen from the Fast Lane to purchase gas and drugs .

(3) Shirease Falkner, the Fast Lane gas station attendant, stated that she saw a blue Thunderbird circling around the store about an hour before the armed robbery took place.

Although Hankins and McNeal disagreed as to who stated that McNeal should be dropped off near the Fast Lane, the fact remains that Richard dropped McNeal off and then picked him back up after the armed robbery. "Lesser-included offense instructions should be given if there is an evidentiary basis in the record that would permit a jury rationally to find the defendant guilty of the lesser offense and to acquit him of the greater offense." *Welch v. State*, 566 So.2d 680, 684 (Miss.1990). However, we find that the evidence in the record does not support a lesser-included instruction of accessory after the fact. The weight of the evidence supports Richard's conviction and sentence of armed robbery.

**II. WHETHER THE TRIAL COURT ERRED IN FAILING TO REFORM AND CORRECT INSTRUCTION D-7 OVER THE STATE'S OBJECTION THAT IT WAS CONFUSING AND IN FAILING TO REFORM AND CORRECT INSTRUCTION S-3 OVER THE DEFENDANT'S OBJECTION.**

"[W]here under the evidence a party is entitled to have the jury instructed regarding a particular issue and where that party requests an instruction which for whatever reason is inadequate in form or content, the trial judge has the responsibility either to reform and correct the proffered instruction himself or to advise counsel on the record of the perceived deficiencies therein and to afford counsel a reasonable opportunity to prepare a new, corrected instruction." *Harper v. State*, 478 So.2d 1017, 1018 (Miss.1985). Having determined that the evidence in the record does not support Instruction D-7, we find that the trial judge was under no duty to reform or correct an instruction that Richard was not entitled to receive under the evidence.

**III. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

As discussed in Richard's first assignment of error, the evidence in the record clearly supports a guilty verdict. We find that the verdict is not against the overwhelming weight of the evidence. Finding no error, we affirm the circuit court's judgment.

**THE JUDGMENT OF THE CIRCUIT COURT OF MARSHALL COUNTY OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF FIFTEEN YEARS WITH EIGHT YEARS SUSPENDED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS CONDITIONED UPON THE APPELLANT'S GOOD BEHAVIOR AFTER HIS RELEASE IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO MARSHALL COUNTY.**

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

1. Richard was indicted with robbery with a deadly weapon under § 97-3-79 Miss. Code Ann. (Rev.1994). Section 97-1-3 of the Miss. Code Ann. (Rev.1994) allows Richard to be indicted as a principal in the Fast Lane armed robbery.