

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00683 COA**

**JIMMY LEE WARNSLEY**

**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:	06/19/96
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	SCOTT COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	EDMUND J. PHILLIPS, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	KEN TURNER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	ATTEMPTED RAPE: HABITUAL OFFENDER: SENTENCED TO SERVE A TERM OF LIFE IMPRISONMENT IN THE MDOC WITHOUT THE BENEFIT OF PAROLE, SUSPENSION OR REDUCTION OF SENTENCE
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE McMILLIN, P.J., HERRING, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Jimmy Lee Warnsley was convicted of attempted rape by the Circuit Court of Scott County. Warnsley appeals alleging errors in the indictment and in an instruction, and also asserting that there was insufficient evidence. We find no error and affirm.

## **FACTS**

The victim testified that on September 16, 1995, she was accosted by Warnsley near a middle school in Forest. She had gone there to walk at approximately 8:30 p.m. She stated that Warnsley stepped out from behind a tree and asked her who she was. She did not respond to the question and kept walking. Warnsley then grabbed her arm, tore her dress, threw her down, fell down on her, and told her that he was going to take her behind the school and "have sex with her." He attempted to pick her up to take her behind the school, but she was able to free herself. He grabbed her again, but this time he threw her into a ditch and fell in beside her and touched her under her dress. He covered her mouth to muffle her screams as a car passed by the ditch.

Once the car had passed, Warnsley leapt to his feet and ran away. The victim brushed herself off and got out of the ditch just as her boyfriend and his cousin were driving by the school. She screamed to get their attention and they stopped and apprehended Warnsley. The two men were able to detain Warnsley until the police arrived. The victim's boyfriend testified that Warnsley was running away from them like he had done something wrong.

Ken Sullivan, a Forest police officer, testified that he answered the call at the middle school. When he arrived, he found the victim crying. He said that "her dress was almost completely ripped off of her." Warnsley was lying on his back, guarded by the two men standing over him. When addressed by Sullivan, Warnsley complained of his side hurting; therefore, he was transported to the hospital. Sullivan accompanied Warnsley in the ambulance. He testified that Warnsley was able to answer the questions posed by the paramedics concerning his identity, the day of the week, year, etc.

Dr. Mark Webb testified that he was the psychiatrist that had examined Warnsley. He found Warnsley to be in good mental condition except for some anti-social traits. He also noted that Warnsley suffered from Huntington's chorea, a neurological disorder, but testified that it did not affect a person's ability to determine right from wrong. Dr. Webb was of the opinion that Warnsley understood the nature and quality of his acts and that he understood that forced sexual relations were wrong. Additionally, Dr. Webb testified that Warnsley's act of running away indicated that he was conscious of the fact that he had done something wrong.

Warnsley's step-mother testified on his behalf. She told the jury about Warnsley's severe mood swings and strange behavior. She testified that she often had to stop Warnsley from running barefoot up and down the railroad tracks in front of their house. In fact, she had stopped Warnsley from doing that earlier the same day as the attempted rape.

In rebuttal, Dr. Webb testified that the fact that Warnsley ran barefoot on the railroad tracks had no bearing on his appreciation of right and wrong. He also testified that mood swings were not indicative of a diminished capacity for appreciating the difference between right and wrong. Warnsley did not testify at trial.

The jury found Warnsley guilty of attempted rape.

## **DISCUSSION**

### **I. SUBSTANTIVE DEFECT IN INDICTMENT**

Warnsley argues that the indictment was substantively defective because the acts complained of did not constitute the offense charged. The indictment charged that Warnsley:

did willfully, unlawfully, feloniously and forcibly attempt to ravish and rape [victim's name omitted], a female human being over the age of fourteen (14) years, against the will of said [victim], by grabbing her, tearing her dress, throwing her down and stating to the said [victim] that he was going to have sex with her, contrary to and in violation of Section 97-3-65(2) and Section 97-1-7, Miss. Code Ann. (1972), as amended. . . .

Warnsley claims that because the indictment does not accuse him of actions constituting an attempt to penetrate the victim's private parts, it omits the essence of attempted rape and instead describes assault. What the indictment states is that certain specific acts were committed as part of an attempt to "rape" the victim. The absence of the language that Warnsley argues was necessary is nothing more than a more detailed method of stating what is in the indictment, namely, an attempt to rape. Warnsley needed no further information in the indictment to understand the offense against which he would have to defend. The indictment was sufficient.

## II. ABANDONMENT

Warnsley alleges that the trial court erred in denying his motion for a directed verdict because he had abandoned his intent to commit the crime. Thus this argument assumes that whatever evidence that there might be of an attempt to rape, Warnsley voluntarily abandoned the crime.

A defendant is not entitled to acquittal under the theory of abandonment if the evidence proves that he fully committed the offense. Under our attempt statute, **Miss. Code Ann. § 97-1-7 (Rev. 1994)**, for conviction the frustration of the crime must have resulted from extraneous causes such as resistance from the victim of a third party intervening and not from voluntary abandonment. *Pruitt v. State*, **528 So.2d 828, 831 (Miss. 1988)**. Warnsley argues that the abandonment was voluntary. The only evidence on the question of abandonment was the fact that Warnsley left the victim in the ditch after an automobile passed by. The trial judge granted a jury instruction concerning abandonment. The jury was left to decide whether an attempted rape had not yet occurred, and only if it had not, whether Warnsley voluntarily abandoned the crime.

The guilty verdict necessarily means that the jury concluded that there was no voluntary abandonment of the attempt to rape, and that if an attempted rape did not occur prior to his running away, that he ran away because of external forces such as the victim's resistance or the fear of capture. It is the jury's function and not this Court's to make reasonable conclusions based on the evidence. *Allman v. State*, **571 So. 2d 244, 253 (Miss. 1990)**.

## III. JURY INSTRUCTION

Warnsley argues that the trial court erred in granting the jury instruction that defined the crime of attempted rape. There was no objection to the instruction. Regardless, Warnsley states that the giving of the instruction was plain error. The instruction restated the indictment, and thus the alleged instruction error is the same argument as we have already rejected regarding the indictment. There was no error, plain or otherwise, in this instruction.

**THE JUDGMENT OF THE CIRCUIT COURT OF SCOTT COUNTY OF CONVICTION OF ATTEMPTED RAPE AND SENTENCE AS AN HABITUAL OFFENDER TO SERVE LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO SCOTT COUNTY.**

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