

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00905 COA**

**QUINTAROS NELSON A/K/A QUINTERO XAVIER  
NELSON A/K/A JULIUS WALKER**

**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:	8/06/96
TRIAL JUDGE:	HON. WILLIAM F. COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	A. RANDALL HARRIS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	EDWARD J. PETERS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTION OF ACCESSORY AFTER THE FACT OF ARMED ROBBERY.
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Quintaros Nelson was convicted by a Hinds County Circuit Court Jury of being an accessory after the fact to armed robbery. He appeals arguing that a directed verdict should have been given because no evidence of intent was entered and that there is error in a jury instruction. Neither argument shows error on the part of the trial court and we affirm.

**STATEMENT OF FACTS**

Nelson had no involvement shown at trial in the underlying crime. That crime was Michael Johnson's seizing, at gunpoint, an automobile driven by Hunter Slay on September 10, 1995. Slay was slowly driving his Chevrolet Corvette in the parking lot of the Metrocenter Shopping Center in Jackson when Johnson entered the car through the unlocked passenger door. Johnson warned Slay to drive away from the shopping center and eventually directed him through some woods in rural Hinds County. Slay was ordered out of the car, and Johnson drove the vehicle away.

Nelson's connection with this offense began a short time later. Johnson had driven the automobile to the trailer where Nelson lived. By that time Johnson had picked up another individual, Charlie Williams, who went with him to Nelson's trailer. Williams and Johnson removed items of value from the Corvette. There is no evidence that Nelson assisted, but he did watch. Nelson admitted knowing Johnson for about a year and had played basketball with him once a week at a nearby court. They had also gone out for at least one meal together.

Nelson testified that after the two men had removed the expensive stereo system from the vehicle, they abandoned the car at his trailer. According to his trial testimony, Nelson feared that Johnson would seek revenge if Nelson called the police. As a result Nelson opted to drive the car away from his trailer and hide it in a distant corn field. He took the cellular phone from the car, but nothing else. Nelson also retained the keys, which he hid on part of the bracing beneath his trailer.

The victim's father, Scott Slay, spent several hours a few days later searching for the Corvette by driving roads near where his son had been abandoned. Slay was able to find it and notified the police. By means not clear from the record, the police became aware of Nelson's possible involvement. He was questioned a few days after the car-jacking and stated the facts already laid out above. During that conversation he did not say that he feared Michael Johnson.

## **DISCUSSION**

### **I. A Directed Verdict Should Have Been Granted**

After the State rested and again after all evidence had been received, Nelson moved for a directed verdict. Both motions were denied. Nelson's position is that he was an innocent observer of the concluding part of a crime committed by Michael Johnson. In order to be convicted of being an accessory after the fact, Nelson agreed that the following jury instruction properly defined the necessary proof:

The Court instructs the jury that if you find from all of the evidence in this case beyond a reasonable doubt that:

#### **JURY INSTRUCTION S-1**

(1) On or about September 10, 1995, Michael Terrell Johnson committed the crime of armed robbery,

(2) that after the commission of the said armed robbery, the defendant, Quintero Xavier Nelson, received, relieved, aided or assisted Michael Terrell Johnson, knowing that Michael Terrell Johnson had committed an armed robbery,

(3) and such aid or assistance was rendered by the defendant, Quintero Xavier Nelson, with the intent to enable Michael Terrell Johnson to avoid arrest, trial, conviction or punishment after the commission of said armed robbery, then in that event you should find the defendant, Quintero Xavier Nelson, guilty as charged.

Should the State fail to prove any of the above elements, you should find the defendant not guilty.

Nelson asserts that there was insufficient evidence to prove the facts required under Paragraph (3) of the instruction, namely, that the assistance given by Nelson was "with the intent to enable Michael Terrell Johnson to avoid arrest, trial, conviction or punishment . . ." Nelson was under no obligation to notify the police, and the State does not assert that he had such an obligation. Criminal responsibility arises if Nelson took steps for the purpose of aiding Johnson's successful avoidance of his criminal responsibility.

Intent rarely can be proven by direct evidence. Instead, intent is a fact that is inferred from the conduct of the accused. *Wells v. State*, 521 So. 2d 1274, 1277 (Miss. 1987). Here the actions of hiding the Corvette and keeping the keys and the cellular phone, all could be seen as enabling the actual car-jacker "to avoid arrest, trial, conviction, or punishment." In addition to inferring the intent from those actions, the State also impeached Nelson's argument that he did these things only because he feared for his life if he informed the police that the car was at his trailer. The State introduced Nelson's written statement to the police given at the time he was first interviewed. At no place in that statement did he express fear of Michael Johnson or assign fear as the reason for his prior silence.

Nelson is probably correct that the only person who knows his intent is Nelson himself. He is not entitled to acquittal on that basis. His actions speak to his intent. What the jury "heard" from those actions was an intent to help Johnson after the commission of the crime. There was sufficient evidence to support that inference, and there was no error in denying a directed verdict.

## **II. Jury Instruction**

Nelson also complains that instruction S-3 should not have been given to the jury:

The Court instructs the jury that assisting in the concealment and/or distribution of property of items stolen in a felony, such as a robbery, may aid the felon that committed the robbery in the sense that it renders evidence of the robbery less accessible to law enforcement authorities and thus aids in the robber's efforts to avoid arrest, trial, conviction or punishment.

Thus, if you find by the evidence in this case beyond a reasonable doubt that on or about September 10, 1995, in Hinds County, Mississippi, the defendant, Quintero Xavier Nelson, assisted in the concealment and/or distribution of property or items feloniously taken or stolen in a robbery committed by Michael Terrell Johnson, then you may find that such assistance thereby aided said Michael Terrell Johnson in his effort to avoid arrest, trial, conviction or punishment.

Instruction S-1 was quoted in the preceding section of this opinion. Instruction S-3 is focusing on the second requirement of that previous instruction. Under S-1, the State must prove (1) that Michael Terrell Johnson committed an armed robbery, (2) that after the commission Nelson assisted him, knowing that a robbery had occurred, and (3) that such assistance had the intent of enabling Johnson to avoid punishment. All instructions are to be read together and not in isolation. The State was entitled to have the jury know that concealing the automobile could be seen as assisting Michael Terrell Johnson. There was no requirement that all of instruction S-1 be restated.

There was no error in granting S-3.

**THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF BEING AN ACCESSORY AFTER THE FACT TO ARMED ROBBERY, AND SENTENCE OF FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS ARE TAXED TO HINDS COUNTY.**

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