

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00192 COA**

QUINTEN LARUE CRISP

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:	02/16/96
TRIAL JUDGE:	HON. BARRY W. FORD
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	MICHAEL G. THORNE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	JOHN R. YOUNG
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	POSSESSION OF A WEAPON BY A FELON: SENTENCED TO SERVE A TERM OF 1 ½ YEARS IN MDOC; DEFENDANT IS ORDERED TO PAY COURT COSTS
DISPOSITION:	AFFIRMED - 2/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	3/30/98

EN BANC

McMILLIN, P.J., FOR THE COURT:

Quentin Larue Crisp has appealed his conviction by a Lee County Circuit Court jury under section 97-37-5 of the Mississippi Code of possession of a firearm by a convicted felon. Crisp raises a number of issues dealing with alleged errors by the trial court in ruling on the admissibility of evidence. He also claims that, once all improperly admitted evidence is excluded from consideration, the evidence was insufficient as a matter of law to sustain his conviction. We find Crisp's issues to be without merit and affirm his conviction.

I.

Facts

The State's proof consisted of one witness, Ronny Thomas, an officer with the Tupelo Police Department. Thomas testified that it was a part of his duties to routinely review the records of pawn shop transactions in the area. These records, in the form of "pawn tickets," must be maintained by pawn shops per section 75-67-305 of the Mississippi Code. The records must be available for inspection by law enforcement authorities under section 75-67-309.

Thomas testified that, in the course of his duties, he noticed a record indicating that Crisp had pawned a handgun at Northside Pawn Shop in the City of Tupelo. Thomas recognized Crisp's name and was aware that he had previously been convicted of aggravated assault. Through Thomas's testimony, a copy of the pawn ticket bearing what appeared to be Crisp's signature and the handgun matching the description in the pawn ticket were introduced into evidence. Officer Thomas testified that he obtained both the ticket and the gun from the pawn shop.

Officer Thomas also testified that Crisp, after his arrest, gave a voluntary statement indicating that he had obtained the gun from a young friend he identified only as Joey. Crisp claimed that he admonished the young man that he should not be carrying a gun and that, to assist him in getting rid of the gun, the two took the weapon to the pawn shop where Crisp pawned it for \$40, giving \$20 to Joey and keeping \$20 for himself.

The State rested at the conclusion of Officer Thomas's testimony. Crisp's motion for a directed verdict was denied. The defense proceeded to call several witnesses, including the defendant himself.

At trial, Crisp told a story different from the one related in his statement to Officer Thomas. He indicated that the gun actually belonged to his girlfriend and that he had insisted, as a condition of his moving in with her, that she get rid of the gun. He said that he accompanied her to the pawn shop and consented to his name appearing on the pawn ticket only because the shop owner required a driver's license before accepting the handgun in pawn and Crisp's girlfriend did not have a driver's license. Crisp admitted that he signed the pawn ticket but denied having ever been in physical possession of the gun. He said that he was untruthful in his earlier statement to the police because he did not want to involve his girlfriend in the matter. The girlfriend also testified and corroborated Crisp's version of events. Crisp attempted to call the pawn shop operator as a witness, claiming that the owner would substantiate his version of the facts. However, the operator, once called to the stand and placed under oath, repeatedly refused to answer any questions concerning the transaction, citing his Fifth Amendment right against self-incrimination.

The jury returned a verdict of guilty and Crisp's post-judgment motions at the trial level were unsuccessful. This appeal ensued.

II.

The Admission of Evidence

Crisp claims the trial court erred in admitting, over his objection, the pawn ticket, the handgun he

was alleged to have possessed, and the documentary evidence concerning his prior felony conviction.

A.

The Pawn Ticket

Crisp argues that the trial court erred in admitting the pawn ticket into evidence. At trial, defense counsel urged that the instrument had not been properly authenticated because the custodian of the record did not testify as to its authenticity. On appeal Crisp argues that the ticket constitutes inadmissible hearsay. No hearsay objection was raised at trial, and the State argues that Crisp is barred from raising the issue for the first time on appeal. *See Nixon v. State*, 533 So. 2d 1078, 1086-87 (Miss. 1987). However, in arguing against admissibility of the ticket at trial, defense counsel invoked Mississippi Rule of Evidence 803(6)--the "business records" exception to the hearsay rule. While the authentication of a business record and its admissibility under Rule 803(6) despite being hearsay are two separate issues, the language of Rule 803(6) invokes consideration of both questions. Because the defense couched its objection in terms of a failure of the evidence to comply with that exception to the hearsay rule, we will review the issue on the merits rather than impose the procedural bar urged by the State.

We have little doubt that a traditional business record such as a sales receipt, invoice, journal entry, or other similar documentation of a business transaction involving the defendant would be hearsay. Such hearsay would be, as Crisp argues on appeal, inadmissible unless it could be shown to fall within one of the exceptions to the hearsay rule, the most likely exception being Rule 803(6), which permits the introduction of such records if they meet certain stringent conditions "as shown by the testimony of the custodian or other qualified witness" **M. R. E. 803(6)**. However, the pawn ticket at issue in this case is somewhat unique. Since the pawn ticket contained a series of representations made by Crisp to further the transaction, it became an out-of-court "statement" by Crisp himself. By signing the pawn ticket and thereby adopting the representations printed thereon, Crisp, rather than the pawn shop operator, became the "declarant" for purposes of hearsay analysis. This can be seen by reference to Mississippi Rule of Evidence 801, which provides that "[a] 'statement' is . . . an oral *or written assertion* . . ." and that "[the] 'declarant' is [the] person who makes [the] statement." **M. R. E. 801** (emphasis supplied).

That same evidentiary rule provides that "[a] statement *is not hearsay* if . . . [t]he statement is offered against a party and is . . . his own statement" **M. R. E. 801(d)(2)** (emphasis supplied). A defendant in a criminal proceeding is a "party" for purposes of this rule. *See Gayten v. State*, 595 So. 2d 409, 414-15 (Miss. 1992). The pawn ticket was not hearsay because it was a written assertion by Crisp of ownership of the pistol; therefore, Rule 803(6) had no application and the sole question concerning the admissibility of the ticket was whether it was properly authenticated.

The question of authentication is governed by Mississippi Rule of Evidence 901, which provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." **M. R. E. 901(a)**. The rule further provides, by way of illustration, a number of alternate means of authentication including a provision that authentication may be provided by "[t]estimony that a matter is what it is claimed to be." **M. R. E. 901(b)(1)**. In this case, Officer Thomas testified

that he, in the course of performing his official duties, went to the pawn shop in question, asked to review the shop's copies of its legally-mandated pawn tickets, and found this particular ticket among those he reviewed on the business premises. We find that this is sufficient evidence, from one possessing actual knowledge, that the pawn ticket was "what it [was] claimed to be" by the State. **M. R. E. 901(b)(1)**. Certainly, the testimony of the pawn shop operator was a legitimate method to authenticate the record; however, it was not the *only* means of authentication. Therefore, we conclude that the pawn ticket was properly authenticated.

B.

The Handgun

As for the pistol, we also find that Officer Thomas had sufficient knowledge of the pistol to authenticate it for purposes of introduction at trial. Officer Thomas acquired personal knowledge of the pistol by obtaining it from the pawn shop operator and linking it to the pawn shop receipt which Crisp had signed. Possessed of this information, he was more than qualified to authenticate the pistol as a "witness with knowledge" under Mississippi Rule of Evidence 901(b)(1). His inability to testify of his own knowledge that the pistol had ever been in Crisp's physical possession does not render the pistol inadmissible. That fact merely required that the State prove this element of the crime by some other proof.

C.

Prior Felony Conviction Records

Crisp claims error in the fact that Officer Thomas was not qualified to authenticate the copy of the indictment and sentencing order introduced to prove his prior felony conviction. This assertion is without merit. The documents were introduced during Thomas's testimony; however, their admissibility did not depend on Officer Thomas's ability to authenticate them. These documents bore the appropriate certification of the Lee County Circuit Clerk, the official custodian of these public records and were, therefore, self-authenticating documents admissible under Rule 902.

III.

Suppression of Crisp's Statement

Crisp makes a perfunctory argument of one paragraph that his statement to the arresting officer should have been suppressed because Crisp testified that the officer told him that "[i]t would be best that you cooperate with me. . . ." The arresting officer testified at the suppression hearing and denied making any such statements. The trial court, acting as finder of fact, elected to believe the arresting officer over Crisp and refused to suppress the statement. The trial court had the opportunity to view the witnesses first hand and was in a much better position than this Court to assess the believability of witnesses testifying to two diametrically opposed versions of the same event. Our authority to review such matters is, therefore, limited to discovering an abuse of discretion by the trial court. *See Sills v. State*, 634 So. 2d 124, 124 (Miss. 1994). We find no such abuse of discretion in this case.

IV

Proffer of Evidence

Crisp also complains that the trial court refused to permit a proffer of the testimony of a private investigator who had assisted Crisp's attorneys in investigating the case. Apparently the investigator was prepared to testify that he had interviewed the pawn shop operator and that the operator had essentially confirmed the version of events related by Crisp and his girlfriend at trial. The investigator was also apparently prepared to testify that the pawn shop operator told him that the reason he was refusing to testify was that Officer Thomas had informed him that, if he testified to that effect, he would be prosecuted for his involvement in the incident.

Crisp assigns the issue in his brief as a claim that his proffer of this evidence was refused. It appears, however, that what he is actually complaining about is the fact that he was not permitted to introduce this evidence before the jury. Proffered evidence is not heard by the jury. It is a means of making known to the trial court the substance of evidence that was excluded by the trial court's ruling. Its primary purpose is to assist the appellate court in evaluating the impact of the exclusion if it is determined on appeal that the evidence should have been admitted. *See M. R. E. 103(a)(2)*. The substance of the evidence excluded by the trial court is readily ascertainable in this case; therefore, there is no merit to the contention that the trial court erred in not permitting a proffer of the proof.

As to the real issue apparently urged by Crisp--whether the jury was entitled to learn what statements the pawn shop operator made to the investigator concerning the incident and the reasons why he was refusing to testify--we find these statements to be hearsay not subject to any exception in the evidentiary rules. Therefore, there was no error in excluding this testimony from the jury's consideration.

Crisp seems to also imply, but never actually argues, that Officer Thomas's alleged threats to prosecute the pawn shop operator amounted to an improper intimidation of a defense witness, thereby depriving Crisp of a fundamentally fair trial. The remedy for such improper conduct would be a mistrial. Nothing would be gained by making the jury aware of the State's tactics since it would be beyond the province of the jury to properly remedy this type of activity. No motion for mistrial was made at trial based on misconduct by the State and we find, therefore, that any perceived error on this point has not been preserved. *See Nixon, 533 So. 2d at 1086-87*.

These comments should not be construed to suggest that this Court is of the opinion that such misconduct by the State actually occurred and that a procedural bar is all that prevents this Court from dealing with it. There is some indication in this record that the pawn shop operator, not unlike Crisp, related two versions of the sale--one to Officer Thomas and a different one to Crisp's private investigator. To the extent that the second version was true and the pawn shop operator participated in the production of pawn shop records designed to conceal the actual identity of the owner of the pawned article, there could exist some measure of criminal culpability. We find no impropriety in the fact that Officer Thomas pointed this fact out to this potential witness.

V

The Sufficiency of the Evidence

As his final issue, Crisp complains that the evidence was not sufficient to support a verdict of guilty

to the charge. We review the sufficiency of the evidence as a whole, viewing it in the light most favorable to the guilty verdict, accepting all evidence consistent with the defendant's guilt as true, giving the state the benefit of all favorable inferences that may be reasonably drawn therefrom, and will reverse only if we conclude that, viewing the evidence in this manner, a reasonable and fair-minded juror could only return a verdict of not guilty. *Heidel v. State*, 587 So. 2d 835, 838 (Miss. 1991).

Crisp admitted to substantial involvement in the pawning of the gun. In his statement to the arresting officers he confessed to being in actual possession of the firearm, claiming only that his possession was for a laudable purpose--to get the gun away from his young friend, Joey. This statement is probative of guilt. There is nothing in the law pertaining to this crime that requires possession for any particular period of time or that permits possession of a firearm by a convicted felon if undertaken for purposes that arguably advance the public good. Of course, it was also within the jury's authority to accept Crisp's admission that he pawned the gun and reject his uncorroborated and self-serving explanation that he was doing so for a friend. *See Carter v. State*, 310 So. 2d 271, 272 (Miss. 1975).

Crisp's admission that he pawned the gun was corroborated by the documentary evidence of the pawn ticket and the gun itself--items that Officer Thomas verified were obtained from the pawn shop. We find this evidence sufficient to support a finding of guilt by the jury.

There is nothing in the record that makes Crisp's in-court version of the events, invoking the involvement of his girlfriend, so believable that the jury was required to reject Crisp's earlier statement and accept his later version of events. Even though the later version was corroborated by the girlfriend's testimony, this evidence did nothing more than create a disputed issue of fact to be resolved by the jury. The jury's finding of guilt when the essential facts are disputed can be tested by a claim that the verdict was against the weight of the credible evidence, but that is a different issue from a claim that the evidence was insufficient to sustain the conviction. *See May v. State*, 460 So. 2d 778, 781 (Miss. 1984); *McQueen v. State*, 423 So. 2d 800, 804 (Miss. 1982). We conclude that the challenge to the sufficiency of the evidence fails.

Crisp's third and fourth issues in this appeal claim (a) that the State failed to present a prima facie case of guilt and (b) that the trial court erred by denying various motions for a directed verdict. These issues deal with the sufficiency of the evidence of guilt and are deemed without merit for the same reasons already discussed. There is, in the discussion of the fourth issue, some reference to Crisp's entitlement to a new trial. A finding of insufficient evidence to convict invokes double jeopardy considerations and would not permit a new trial. However, a conclusion that the verdict was against the weight of the evidence would require a new trial. *Hiter v. State*, 660 So. 2d 961, 964 (Miss. 1995). Crisp advances no argument concerning the weight of the evidence and we will not undertake an independent analysis of the evidence to determine if there would have been merit in this unassigned issue.

Having concluded that Crisp's issues raised in this appeal are without merit, we affirm his conviction.

THE JUDGMENT OF THE LEE COUNTY CIRCUIT COURT OF POSSESSION OF A WEAPON BY A CONVICTED FELON AND SENTENCE OF ONE AND ONE-HALF YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LEE COUNTY.

BRIDGES, C.J., HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. DIAZ, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY THOMAS, P.J., COLEMAN, HERRING AND KING, JJ.

DIAZ, J., DISSENTING:

I respectfully dissent. I do not agree with the majority's opinion that the pawn shop receipt is a "written assertion" by Crisp. The simple fact overlooked by the majority is that the State has not been able to produce a witness who participated in the making of the document used to convict Crisp. In order for us to make the bold leap from hearsay to "written assertion" that the majority would have us make, the State must first produce some evidence that Crisp actually made this "written assertion." Again, the State has produced no one to verify that Crisp actually signed the document in question. How can this document be an assertion by Crisp when there is no evidence that Crisp even signed the document? The document is pure hearsay.

This case is based solely on circumstantial evidence. The entire case was centered on a pawn shop receipt that was not properly authenticated for admission into evidence. Although the majority correctly states that "[the] requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims," there was still no authentication proving Crisp's signature is what its proponents claim. **M. R. E. 901**. There was no doubt that the receipt was from the pawn shop and that it was kept in the regular course of business of the pawn shop, yet no one testified to actually seeing Crisp sign the ticket. Officer Thomas obviously did not observe Crisp sign the ticket and therefore had no first-hand knowledge as to who signed the ticket. Additionally, the pawn shop employee refused to testify as to his own personal knowledge because of fear of prosecution himself. There is no possible means by which Officer Thomas could testify that he has first hand knowledge that Crisp signed the receipt. The State produced no one who actually observed Crisp signing the document nor anyone who could authenticate Crisp's handwriting from prior knowledge in accordance with Mississippi Rules of Evidence 901(2). The only person who could have testified to observing Crisp sign the document and likewise corroborate Crisp's testimony refused to testify because he had been threatened with prosecution.

Crisp was eventually forced to take the stand only to rebut what had been charged against him by Officer Thomas. Yet, had the ticket been excluded from admission into evidence, as was proper in this case, there would have been no need for Crisp to testify about the ticket. There is no doubt the pawn ticket was what it was claimed to be, but there was no authentication as to who actually signed Crisp's name to the ticket.

The receipt should have been excluded from evidence due to lack of authentication. Without the pawn shop receipt, the State does not have any incriminating evidence against Crisp. I would hold that the circuit judge's ruling was in error and Crisp's conviction should be reversed on this issue.

THOMAS, P.J., COLEMAN, HERRING AND KING, JJ., JOIN THIS SEPARATE OPINION.

