

IN THE COURT OF APPEALS 04/22/97
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01213 COA

MONSILINA BLUNT

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. ELZY J. SMITH

COURT FROM WHICH APPEALED: BOLIVAR COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

HONORABLE DANIEL J. GRIFFITH

ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: OFFICE OF THE DISTRICT ATTORNEY

BY: PATRICIA BECKETT

NATURE OF THE CASE: CRIMINAL-COUNT I-BURGLARY OF AN INHABITED
DWELLING AND COUNT II-SIMPLE ASSAULT

TRIAL COURT DISPOSITION: GUILTY; COUNT I-SENTENCED TO 15 YEARS; COUNT II-
SENTENCED TO 6 MONTHS IN COUNTY JAIL AND \$500 AND COURT COSTS

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

DIAZ, J., FOR THE COURT:

Monsilina Blunt, the appellant, was convicted in the Bolivar County Circuit Court of burglary of a dwelling house and sentenced to fifteen years in an institution under the supervision and control of the Mississippi Department of Corrections, and to make full restitution to the victim for the crime. In addition, the appellant was convicted of simple assault and sentenced to six months in the county jail, to run consecutive to the burglary sentence, and to pay a fine of five hundred dollars and all court costs for the crime. Blunt now appeals to this Court asserting that the verdict of the jury was against the overwhelming weight of the evidence and that the State of Mississippi failed to prove a prima facia case as charged in the indictment.

Finding that the State did in fact make out a prima facia case as to the charges in the indictment, and that the verdict of the jury was not against the overwhelming weight of the evidence, we affirm.

FACTS

The acts for which Blunt has been convicted took place on July 4-5, 1994. The victim in this case, Ms. Doe, maintains that Blunt forcibly broke into her home demanding money and that he beat her with items of furniture and raped her. Ms. Doe concedes that the locks on her doors were "real raggedy," but that she did have them locked. She also admits that earlier that evening around 3:00 or 4:00 a.m., she had invited Shirley Fields, Monsilina Blunt, and Randy Lowery into her home after having received a ride home with them, but they only stayed for about five minutes. Doe testified that she was unsure whether or not the three guests smoked any cocaine, but that she did not smoke any. According to Ms. Doe, they all then left her home. Blunt dropped off Lowery and Fields at Lowery's house, and took Doe to her boyfriend's house in the projects. Blunt then took Doe back home and left her there alone. Doe says that Blunt returned to her house, broke in, and proceeded to beat and rape her.

Blunt testified that he and the others, including Doe, smoked cocaine on several occasions earlier in the morning of the 5th. He states that all four of the friends smoked together at Doe's house, and that he and Doe smoked a couple more times after that, before the alleged rape occurred. According to Blunt, when he returned to Doe's house to drop her off, she invited him in, and he accepted. Blunt says that they had consensual sex, and that Doe stole \$20.00 from him. When he asked her to return the money, Doe pulled a pocket knife on him. Therefore, he had to hit her with the stand and the lamp to defend himself. Blunt testified that he quit hitting Doe when she stopped coming at him with the knife.

ARGUMENTS

Blunt makes two main arguments. The first is that the State did not make out a prima facia case to support the jury's verdict. The second argument is that the overwhelming weight of the evidence was in favor of Blunt. He argues sufficiency and weight of the evidence interchangeably, however, they are two separate arguments and will be addressed separately.

A. Sufficiency

A challenge of the legal sufficiency of the evidence springs from the denial of a motion for directed verdict at the end of the State's case and from a motion for JNOV after the jury verdict. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). A challenge such as this 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. *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 Blunt made a motion for a directed verdict at the end of the State's case and a motion for a JNOV or in the alternative a new trial after the jury verdict. This Court must rule on the last challenge made, which is the motion for a 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. *Id.* 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* at 778.

In the case at hand, there was sufficient evidence to find Blunt guilty beyond a reasonable doubt. The State made out its prima facie case by proving that Blunt committed burglary of an inhabited dwelling and simple assault. The crime of burglary of an inhabited dwelling house consists of (1) unlawful breaking and entering of an inhabited dwelling by forcibly bursting or breaking the lock or bolt of an outer door; and (2) intent to commit a crime upon entry of the dwelling. Miss. Code Ann. §97-17-21 (1972). The crime of assault is defined as "attempt to cause or purposely, knowingly or recklessly cause bodily injury to another ..." Miss. Code Ann. §97-3-7 (1972). The State proved that on the morning of July 5, 1994 Monsilina Blunt forcibly entered Doe's dwelling house and started demanding money and beating her. This was shown by testimony and photographs of the lamp and stand which were used to hit Doe and the testimony of her treating physician and other experts.

After the State made out its prima facie case, the defense put on its case and claimed that Blunt and Doe had consensual sex, and that Doe then pulled a knife on him requiring him to use self-defense. Both the State and Blunt put forth evidence which required that the judge leave the final decision of guilt or innocence to the jury.

B. Weight

The second argument the defense makes is that the jury's verdict was against the overwhelming weight of the evidence. In reviewing this claim, the Court should examine the trial judge's overruling of Blunt's motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). The fact that a trial judge denies a motion for directed verdict or a motion for an acquittal notwithstanding the verdict in no way affects his ruling on a motion for a new trial. *May*, 460 So. 2d at 781. 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 be granted only where the judge is convinced 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. *Id.* In determining whether a verdict is against the overwhelming weight of the evidence or not, this Court must view all evidence in the light most consistent with the jury

verdict and should not overturn the verdict unless we find that the 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 Blunt's motion for a new trial.

CONCLUSION

There was neither abuse of discretion by the trial judge nor an unconscionable injustice in the denial of the motion for a new trial. The judge, finding that the State had made out a prima facie case, 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 a directed verdict and the motion for a new trial.

THE JUDGMENT OF THE BOLIVAR COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF AN INHABITED DWELLING AND SIMPLE ASSAULT AND SENTENCE OF 15 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FULL RESTITUTION TO VICTIM FOR BURGLARY AND 6 MONTHS IN THE COUNTY JAIL AND \$500.00 FINE FOR SIMPLE ASSAULT TO RUN CONSECUTIVELY IS AFFIRMED. THE SENTENCE IMPOSED IN COUNT I IS TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS OF THIS APPEAL ARE TAXED TO BOLIVAR COUNTY.

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

HINKEBEIN, J., NOT PARTICIPATING.