

IN THE COURT OF APPEALS 04/08/97

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01067 COA

RODRICK WILLIAMS

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 JONATHAN SMITH, JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RICHARD B. LEWIS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES MARIS

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO SERVE TEN YEARS IN THE
MDOC WITH FIVE YEARS SUSPENDED; SENTENCE TO RUN CONSECUTIVE TO ANY
AND ALL SENTENCES PREVIOUSLY IMPOSED

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

DIAZ, J., FOR THE COURT:

Rodrick Williams (Williams), the Appellant, was tried and convicted in the Coahoma County Circuit Court for aggravated assault. Williams was sentenced to serve ten years in the Mississippi Department of Corrections with five years suspended. Aggrieved from this judgment, Williams appeals to this Court asserting the following issues: (1) that the verdict is against the overwhelming weight of the evidence and (2) that the lower court erred in denying Williams' motion for directed verdict and a preemptory instruction because the proof presented differed from the charges in the indictment. Finding no reversible error, we affirm.

FACTS

On the night of December 24, 1993, a fight broke out in a night club in Coahoma County. As the three men who were involved in the brawl tried to leave in the van in which they came, the Appellant shot at the back of the van. One of the men in the van, Freddie Williams, was hit with buck shot and was taken to the hospital. None of the men in the van were armed.

DISCUSSION

WEIGHT OF THE EVIDENCE

Williams contends that the trial court erred in denying his motions for directed verdict, and JNOV. Williams uses the term "overwhelming weight of evidence" interchangeably with the term "legal sufficiency of the evidence." As these are two separate concepts, we will address both points.

This Court follows the well-established standard for reviewing the legal sufficiency of the evidence. Our authority to disrupt the jury's verdict is quite limited. *Carr v. State*, 655 So. 2d 824, 837 (Miss. 1995). We must consider all the evidence in the light most consistent with the verdict. *Id.* We give the prosecution the benefit of all favorable inferences from the evidence. *Id.* If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found that he was guilty beyond a reasonable doubt, reversal and discharge are required. *Id.* On the other hand, if there is substantial evidence of such quality and weight that, having in mind the burden of proof, reasonable and fair-minded jurors might have reached different conclusions, the jurors verdict is beyond our authority to disturb. *Id.*

Williams argues that the proof presented by *all* the witnesses shows that he shot at the individuals in the van in self defense. This is incorrect. In fact, the State's witnesses testified that none of the men in the van were armed, much less fired gunshots into the crowd as they were trying to drive away. Accordingly, a reasonable juror could conclude that Williams was not acting in legitimate self defense when he shot at the van.

When we consider whether the jury's verdict is against the overwhelming weight of the evidence, we accept as true all evidence supporting the verdict. *Ellis v. State*, 667 So. 2d 599, 611 (Miss. 1995). Reversal is warranted only if there was an abuse of discretion in the circuit court's denial of a new trial. *Ellis*, 667 So. 2d at 611. Considering the above, we find no abuse of discretion. There is no

merit to this issue.

INDICTMENT VS. EVIDENCE

Williams next contends that the evidence presented varied from the charges stated in the indictment. Williams was indicted under Section 97-3-7 (2)(b) of the Mississippi Code. His indictment reads in relevant part:

Rodrick Williams . . . did unlawfully, willfully, feloniously, and purposely or knowingly cause bodily [sic] to Freddie Williams with a deadly weapon by shooting the said Freddie Williams with a shot gun

Williams argues that he did not specifically intend to shoot Freddie Williams, but that he was acting in self defense. He further argues that from the evidence presented by the State, the most he could have been convicted of was Section 97-3-7 (2)(a) which states in relevant part:

A person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.

Miss. Code Ann. 97-3-7(2)(a) (Supp. 1994).

The State was not required to prove that the Appellant intended to shoot Freddie Williams in order to establish the crime of aggravated assault in this case. Under the doctrine of transferred intent, "when an unintended victim is struck down as a result of an unlawful act actually directed at someone else, the law prevents the actor from taking advantage of his own wrong and transfers the original intent from the one against whom it was directed to the one who actually suffered from it." *Happoldt v. State*, 475 S.E.2d 627, 628 (Ga. 1996). Regardless of whether the Appellant intended to shoot Freddie Williams, his argument throughout trial and on appeal is that he intended to shoot at the van, but only in necessary self defense. The fact that he intended to shoot at the van is sufficient intent.

We will note that the present case differs from *Quick v. State*, 569 So. 2d 1197, 1199 (Miss. 1990). In *Quick*, the defendant was indicted under section 97-3-7 (2)(b). On the morning of the trial, the State moved to amend the indictment to include language that would charge Quick in violation of section 97-3-7(2)(a) as well. *Quick*, 569 So. 2d at 1199. There was no order in the record indicating the amendment, but the jury instructions given were consistent with the requested amendment. *Id.* The supreme court held in that instance, that the trial court impermissibly changed the substance of the indictment. *Id.* Case law clearly supports the rule that the State can only prosecute on the indictment returned by the grand jury. *Id.* The court has no authority to modify or amend the indictment in any material respect. *Id.* However, the *Quick* case is clearly distinguishable from the case at bar.

In the *Quick* case, the court substantively amended the indictment to include a charge under section 97-3-7(2)(a) as well as subsection (2)(b) without the concurrence of the grand jury. No such amendment is found here. Furthermore, in the *Quick* case, a jury instruction was granted which allowed the jury to find the defendant guilty under the language reflected in section 97-3-7(2)(a) even though it was not contained in the indictment. This was not the case here. No such jury instruction

was granted. The jury instructions granted in the present case reflected section 97-3-7(2)(b) which reflects the section under which Williams was indicted.

We find no error here. Accordingly, we affirm the judgment below.

THE JUDGMENT OF CONVICTION OF THE COAHOMA COUNTY CIRCUIT COURT OF AGGRAVATED ASSAULT AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS SUSPENDED UPON CONDITIONS SET FORTH IN THE JUDGMENT IS AFFIRMED. THIS SENTENCE SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

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