

IN THE COURT OF APPEALS 3/11/97
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00862 COA

LEE EARL CAMP

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. ANDREW C. BAKER

COURT FROM WHICH APPEALED: PANOLA COUNTY CIRCUIT COURT

FOR APPELLANT:

TIMOTHY R. BALDUCCI

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN

DISTRICT ATTORNEY: ROBERT WILLIAMS

NATURE OF THE CASE: CRIMINAL - RAPE

TRIAL COURT DISPOSITION: CONVICTION AND SENTENCE OF FIFTEEN YEARS WITH
TEN YEARS SUSPENDED

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

BRIDGES, C.J., FOR THE COURT:

Lee Earl Camp was convicted of rape in the Circuit Court of Panola County and was sentenced to fifteen years in the custody of the M.D.O.C. with ten years suspended. Aggrieved, Camp appeals to this Court arguing 1) that the verdict is against the overwhelming weight of the evidence, and 2) that he received ineffective assistance of counsel. Finding no merit in the issues raised by Camp, we affirm the judgment of the trial court.

FACTS

On the night of January 20, 1993, Camp repeatedly raped and physically abused Debra Williford. Williford and Camp, who had lived together previously, had been out and about near Batesville, drinking and socializing, on the night in question. Late the same evening, Camp and Williford were joined by Randy McCarty, and the three proceeded in Camp's truck to a cotton field with Camp and Williford arguing the whole time. At the cotton field, Williford was raped and beaten repeatedly by Camp in the presence of McCarty. She was also threatened with sexual abuse by McCarty. After enduring this abuse through the night and into the morning, Williford was able to get away and sought refuge with her family.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE TRIAL COURT ERRED IN OVERRULING CAMP'S MOTION FOR JNOV CONSIDERING THE VERDICT WAS AGAINST THE GREAT WEIGHT OF THE EVIDENCE.

A directed verdict entitles the defendant to a discharge. A verdict based upon insufficient evidence entitles the defendant to a discharge by way of a JNOV. However, a verdict against the weight of the evidence entitles the defendant to a new trial. We shall now consider both in support of the conviction.

This Court's standard of review of denials of directed verdicts is as follows:

In passing upon a motion for a directed verdict, all evidence introduced by the state is accepted as true, together with any reasonable inferences that may be drawn from that evidence, and, if there is sufficient evidence to support a verdict of guilty, the motion for directed verdict must be overruled.

Gray v. State, 549 So. 2d 1316, 1318 (Miss. 1989) (citing *Guilbeau v. State*, 502 So. 2d 639, 641 (Miss. 1987)).

Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778.

On the other hand, where the defendant contends that a new trial should have been granted because the jury verdict was against the weight of the evidence, the standard of review is as follows:

The challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes [Mississippi Uniform Criminal Rule of Circuit Court Practice] 5.16. New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

Id. at 781. All matters concerning the weight and credibility of the evidence are resolved by the jury. *Id.*

The Supreme Court of Mississippi eloquently condensed this standard stating:

[O]nce the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part from that [sic] the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.

Williams v. State, 463 So. 2d 1064, 1068 (Miss. 1985). The jury in this case was provided with substantial evidence, including eyewitness testimony, from which to derive their verdict. We find that the evidence in this case clearly supports the conviction, and that the jury's verdict should be left intact.

II. WHETHER CAMP RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

With respect to an ineffective assistance of counsel claim, the Mississippi Supreme Court has stated:

In *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984), the United States Supreme Court established a two-prong test, required to prove the ineffective assistance of counsel: the defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defense

The burden of proof then rests with the movant

Under the first prong, there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." . . . In short, defense counsel is presumed competent.

Under the second prong, even if counsel's conduct is "professionally unreasonable," the judgment stands "if the error had no effect on the judgment." . . . Consequently, the movant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome."

Handley v. State, 574 So. 2d 671, 683 (Miss. 1990) (quoting *Cabello v. State*, 524 So. 2d 313, 315 (Miss. 1988)). Having stated the relevant standard, we now turn to Camp's specific contentions.

Camp cites counsel's allowance of certain leading questions, and the failure of counsel to submit prepared jury instructions. Camp has failed to show how he was prejudiced by these or any other actions or inactions by his trial counsel. This Court has not been shown that absent these errors, the outcome of the case would be any different. We find that Camp has not satisfied the *Strickland* standard in his attempt to show ineffective assistance of counsel. Accordingly, we find this issue to be without merit.

THE JUDGMENT OF THE PANOLA COUNTY CIRCUIT COURT OF CONVICTION OF RAPE AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH TEN YEARS SUSPENDED IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

MCMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR

HERRING, J., NOT PARTICIPATING.