

IN THE COURT OF APPEALS 11/12/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00858 COA

JEROME LEWIS A/K/A LEE LEE

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. LARRY E. ROBERTS

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ROGERS J. DRUHET, III

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: BILBO MITCHELL

NATURE OF THE CASE: CRIMINAL - BURGLARY

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED AS A HABITUAL
OFFENDER TO SERVE A TERM OF FIFTEEN (15) YEARS IN THE MISSISSIPPI
DEPARTMENT OF CORRECTIONS AND ORDERED TO PAY COSTS OF \$184.50.

BEFORE BRIDGES, P.J., BARBER, KING, AND PAYNE, JJ.

BARBER, J., FOR THE COURT:

Jerome Lewis was tried and convicted of burglary of an occupied dwelling in the Lauderdale County Circuit Court. He was sentenced as a habitual offender to serve a term of fifteen years imprisonment in the custody of the Mississippi Department of Corrections. On appeal, Lewis raises the following issues:

I. LEWIS WAS DENIED HIS RIGHT TO A FAIR TRIAL BY THE USE OF IMPROPER IMPEACHMENT

II. THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE

Finding no error in the proceedings below, we affirm the conviction.

FACTS

On May 25, 1993, John Wilson was sleeping on the couch in his home. Wilson felt someone pull on his back pocket where he kept his billfold. Wilson sat up and saw a man in his house. Wilson and the intruder then began to fight and the intruder eventually ran out of Wilson's house. The man ran toward Grand Avenue in Meridian, Mississippi. Lewis's brother, Junior Mitchell, owned two houses on Grand Avenue. Lewis and his brother Junior Mitchell lived in one of the houses on Grand Avenue.

Wilson identified Jerome Lewis as the man who came into his house, fought with him, and ran away. Wilson later noticed that a screen on one of his windows was torn off. Wilson testified that the screen was on earlier in the evening of the break-in. Wilson also stated the window with the torn off screen was the only one that did not have burglar bars on it.

ANALYSIS

I. LEWIS WAS DENIED HIS RIGHT TO A FAIR TRIAL BY THE USE OF IMPROPER IMPEACHMENT

Lewis argues that improper character evidence was admitted against him in an attempt to impeach his credibility. This, he submits, deprived him of his right to a fundamentally fair trial.

During opening arguments, Lewis's counsel stated that because the police department knew that Lewis had prior convictions for burglary, the officers performed only a perfunctory investigation

before focusing on him as their prime suspect. During cross-examination, the district attorney began to question Lewis on his prior criminal record. The court sustained Lewis's objections to these questions. Lewis then moved for a mistrial which the court denied. The court instructed the jury that it could consider the evidence of other felonies only for the purpose of determining credibility and not to consider the evidence as proof that Lewis committed the burglary.

The decision to declare a mistrial is within the sound discretion of the trial judge. To find error from a trial judge's failure to declare a mistrial, there must have been an abuse of discretion. *Brent v. State*, 632 So. 2d 936, 941 (Miss. 1994). The trial judge is in the best position to determine if a remark by a witness is prejudicial and is given considerable discretion to determine whether a remark creates irreparable prejudice necessitating a mistrial. *Reynolds v. State*, 585 So. 2d 753, 755 (Miss. 1991). Moreover, when a prosecutor says something objectionable, and the trial court sustains the objection and then instructs the jury to disregard the comment, the appellate court will presume that the jury followed the court's instructions so as to dissipate any prejudicial effect. *Crenshaw v. State*, 520 So. 2d 131, 134 (Miss. 1988).

We find that the trial court acted within its discretion in denying Lewis's motion for a mistrial. There was no evidence that the statements were so damaging that their effect on the jury could not be adequately cured by the trial judge's admonition or instruction. The law requires that damage be of an incurable nature before the court must declare a mistrial. *Baine v. State*, 604 So. 2d 249, 257 (Miss. 1992). Additionally, Lewis did nothing to rebut the presumption that the jury followed the court's instructions to consider Lewis's prior convictions only in determining his credibility and not as proof that he committed the crime with which he was charged. This first assignment of error is without merit.

II. THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE

Lewis makes no attempt to support this assignment of error, either by way of argument or citation to authority. If the appellant cites no authority, the reviewing court may treat the issue as procedurally barred. The court is under no obligation to consider the assignment. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). Because the record supports the conviction and because this issue is procedurally barred, we find this assignment of error is without merit.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF AN INHABITED DWELLING AND SENTENCED AS A HABITUAL OFFENDER TO SERVE A TERM OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF APPEAL ARE ASSESSED AGAINST LAUDERDALE COUNTY.

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