

**IN THE COURT OF APPEALS 3-/26/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00382 COA**

**JERRY LEE WARNER, A/K/A RAYMOND LAMAR ROSS, JR., A/K/A JOHN J. WALSH,  
A/K/A LARRY SMITH, A/K/A SAM SNEED**

**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. GRAY EVANS

COURT FROM WHICH APPEALED: HOLMES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JANNIE M. LEWIS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: ARMED ROBBERY

TRIAL COURT DISPOSITION: CONVICTED OF ARMED ROBBERY; SENTENCED TO  
THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF  
CORRECTIONS

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

THOMAS, P.J., FOR THE COURT:

Jerry Warner was convicted of two counts of armed robbery. Feeling aggrieved, Warner appeals, assigning as error two issues. Finding both without merit, we affirm.

## FACTS

On January 18, 1992, the Gas Mart and J.C. Holt, the cashier, were robbed by a man armed with a handgun. The man forced Holt to empty the cash register into a purple bag with a "Crown Royal" emblem and took Holt's billfold. The man then ordered Holt to tie his wrists to a door knob with a plastic tie. After the man left the store, Holt cut the plastic tie and called the Holmes County Sheriff's Department and the Durant Police Department. Holt stated that the robber was wearing green coveralls, tennis shoes and a ski mask.

Two days later, Neshoba County Sheriff's Deputy Jimmy McDonald stopped the vehicle driven by Warner based on a tip from a confidential informant that occupants of the car were in possession of a U-Haul which contained stolen goods. After stopping the car, Deputy McDonald received permission to search the car. The search revealed a jacket which contained Holt's wallet, a pair of green coveralls, tennis shoes, a ski mask, some plastic ties, a "Crown Royal" bag and a .38 caliber revolver. Warner, who first identified himself as Raymond Ross, asked the officers to return to him the jacket, which he identified as his and which contained Holt's driver's license, Social Security card and other forms of identification.

## ANALYSIS

### I. DID THE TRIAL COURT ERR IN DENYING WARNER'S MOTION TO DISMISS ?

Warner asserts that the trial court erred in denying his motion to dismiss based on his assertion that the initial stop of his automobile was without probable cause and that the evidence seized in the search of his car was the fruit of an unreasonable search and seizure. We disagree.

An investigative stop may be made without probable cause to arrest if the officer has a reasonable suspicion, grounded in articulable facts, that a person he encounters was involved in or is wanted in connection with a completed felony. *Haddox v. State*, 636 So. 2d 1229, 1933 (Miss. 1994); *McCray v. State*, 486 So. 2d 1247, 1249-50 (Miss. 1986). Vehicles may be the subject of an investigative stop. *Haddox*, 636 So. 2d at 1234.

The deputies had sufficient reasonable suspicion to make the initial stop of the vehicle. Deputy McDonald testified that he believed that the individuals in the car were in possession of stolen goods. He also knew that there were outstanding arrest warrants for individuals in a car fitting the description of the car Warner was driving. As long as the initial detention does not exceed the scope of an investigative stop, it is permissible even without probable cause to arrest. *Id.* The initial stop of Warner's vehicle was valid.

After the car was stopped, Warner gave permission to the deputies to search the car. Consent to search a vehicle by one in lawful possession of the vehicle is sufficient to validate the search. *Shaw v.*

*State*, 476 So. 2d 22, 24 (Miss. 1985). If consent to search follows a permissible investigative stop, the consent is valid. *McCray*, 486 So. 2d at 1249. Voluntariness of the consent is determined by the totality of the circumstances surrounding the search. *Jones v. State*, 607 So. 2d 23, 27 (Miss. 1991); *McCray*, 486 So. 2d at 1249; *Jackson v. State*, 418 So. 2d 827, 830 (Miss. 1982).

Deputy McDonald testified that Warner consented to the search. There is no evidence whatsoever of any coercion, duress or any other actions on the part of the officers which would suggest that the consent was not voluntary. This issue is without merit.

## II. DID THE TRIAL COURT ERR IN DENYING WARNER'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV) OR, ALTERNATIVELY, FOR A NEW TRIAL ?

Warner asserts that the trial court incorrectly denied his motion for JNOV or for a new trial. A motion for JNOV challenges the legal sufficiency of the evidence supporting the guilty verdict. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *Butler v. State*, 544 So. 2d 816, 819 (Miss. 1989). A motion for new trial challenges the weight of the evidence. *McClain*, 625 So. 2d at 781.

Our scope of review is limited. The standard of review has been stated many times and need not be restated here. *McClain*, 625 So. 2d at 778; *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987); *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987).

There was more than sufficient evidence to find Warner guilty. The victim, Holt, testified that Warner looked like the man who had robbed him. Holt identified the seized clothing, mask, plastic ties, "Crown Royal" bag and gun as the items used in the robbery. Deputy McDonald testified that these items were seized from the trunk of the car which Warner was driving. Accepting as true the evidence favorable to the State, we are convinced that the trial court did not abuse its discretion in denying the motion for new trial. This issue is without merit.

**THE JUDGMENT OF THE HOLMES COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCE TO THIRTY (30) YEARS AS AN HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS ASSESSED TO HOLMES COUNTY.**

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