

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00961 COA

**TERRY FERNANDO ROBERSON A/K/A "P.I." AND FERDINANDO THOMAS A/K/A
"SKILLET"**

APPELLANTS

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANTS:

FOR THOMAS: STEPHEN BRANDON

FOR ROBERSON: CHARLES WEBSTER

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: ARMED ROBBERY

TRIAL COURT DISPOSITION: ROBERSON CONVICTED OF ARMED ROBBERY
SENTENCED TO 25 YRS IN MDOC. THOMAS CONVICTED OF ARMED ROBBERY,
SENTENCED TO LIFE IN MDOC AS HABITUAL OFFENDER

MANDATE ISSUED: 8/19/97

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PER CURIAM:

This case involves two separate Appellants. Terry Fernando Roberson was convicted of armed robbery and sentenced to twenty-five years in the custody of the Mississippi Department of Corrections. Ferdinando Thomas was convicted of armed robbery and sentenced as a habitual offender under section 99-19-83, to serve life imprisonment in the Mississippi Department of Corrections. Aggrieved, both Appellants appeal arguing the verdict of the jury was against the overwhelming weight of the evidence.

ARGUMENT AND DISCUSSION OF THE LAW

I. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

The Mississippi Supreme Court has on many occasions cited the standard of review for a challenge to the weight of the evidence. The standard is as follows:

In determining whether or not a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when it is convinced that the circuit court has abused its discretion.

Isaac v. State, 645 So. 2d 903, 907 (Miss. 1994); *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989) (citations omitted). 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. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). On review we accept as true all evidence favorable to the State, and the State is given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994); *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992).

In the case sub judice, the only issue is the factual dispute between the victim, Hunter, and the Appellants, Roberson and Thomas. The Appellants testified that they did not rob Hunter, but that

Hunter gave Roberson \$100.00 to obtain cocaine. They allege that after buying the cocaine, Roberson ran away with it. Hunter, on the other hand, testified that he picked up each of the Appellants in his car, one at a time, and together they robbed him at gun point. Regardless of whether the jury focused on the Appellants' or the victim's testimony, the jury, which primary function is to judge the credibility of the witnesses, obviously believed Roberson and Thomas committed the armed robbery. Clearly, the jury's verdict was not against the overwhelming weight of the evidence, and the trial court properly denied the motion for a new trial. This issue is without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF TERRY FERNANDO ROBERSON OF ARMED ROBBERY AND SENTENCE OF 25 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH SENTENCE TO RUN CONSECUTIVELY TO ANY AND ALL PREVIOUSLY IMPOSED SENTENCES, AND TO PAY RESTITUTION IN THE AMOUNT OF \$140 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF FERDINANDO THOMAS OF ARMED ROBBERY AND SENTENCE OF LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

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