

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LAKEITH DORSEY

APPELLANT

VS.

FILED

NO. 2007-KA-0336

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SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS.

NO. 2007-KA-0336

STATE OF MISSISSIPPI

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STATEMENT OF THE ISSUE

PROPOSITION:

The trial court correctly denied Dorsey's Motion for Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial.

STATEMENT OF THE CASE

On or about December 2, 2003, the Coahoma County Grand Jury indicted Lakeith Dorsey, Tremayne Douglas and Danyel Richardson for armed robbery, specifically, "unlawfully, wilfully and feloniously, with intent to steal, tak[ing] approximately \$64,309.00 in good and lawful money of the United States of America, of the property of IOC - Lula, Inc., a corporation d/b/a "Isle of Capri," from the person or from the presence of, and against the will of Tracy Willis, but putting her in fear of immediate injury to her person by the exhibition of a gun, a deadly weapon" on or about September 11, 2003. Caidree Harris was indicted for accessory after the fact to the armed robbery for acting as the get-away driver for Douglas, Dorsey and Richardson.

Dorsey, the appellant in the instant appeal, was tried in the Circuit Court of Coahoma County on or about January 20, 2004, and was convicted of armed robbery. On or about March 8, 2004,

Dorsey was sentenced to 25 years in the custody of the Mississippi Department of Corrections. On March 9, 2004, trial counsel filed a Motion for Judgment of Acquittal Notwithstanding the Verdict, or in the Alternative, a New Trial. Said motion was denied by the trial court on March 19, 2004. Trial counsel never filed a notice of appeal.

On or about January 16, 2007, Dorsey retained new counsel and filed a Motion to File Appeal Out of Time in the Coahoma County Circuit Court. The trial court granted the motion on February 1, 2007, and the instant appeal ensued.

STATEMENT OF THE FACTS

In the early morning hours on September 11, 2003, LaKeith Dorsey, a black male, about Tall, and Danyel Richardson, a black male, about 6'3" tall, entered the Isle of Capri Casino in Tunica armed with guns and wearing masks and gloves, and robbed the casino of \$64,309.00. The two men forced Tracy Willis at gun point to get the money out of the cage drawer where she was counting. They gave Willis a white bag to put the money in, then they took the bag and left.

Cage Cashier Barbara Johnson was on duty on September 11, 2003 and stopped to assist the shift manager, Tracy Willis counting at another window. As she approached the window, she heard a person at the window say "Come here," and "Get over here and get me the money." Willis got the money out of the cage drawer where she was counting. Someone passed her a white long bag and Willis put the money in the bag. The person took the bag and left. After the incident, Johnson testified that Willis was shaking and was upset and crying. Johnson testified that Willis appeared to be frightened. Johnson testified that she was also afraid that she would be shot. She did not see a weapon, but assumed there was a weapon because of what was said. She testified that the money Willis put into the bag came from the cash register owned by the Isle of Capri.

Shirley Muffaletto, the floor supervisor on the graveyard shift at the Isle of Capri Casino,

testified that two men jumped over the ropes into the pit, and went to up to the cage and robbed the casino. Muffaletto testified that one of the men was tall and skinny, 6' to 6'3", and had a silver gun. The shorter man, approximately 5'5", asked for money from the cage cashier. The tall skinny man held a gun on the other people in the pit and forced them to get on the floor. The man who held the gun on Muffaletto and the others in the pit wore a red bandannan and some kind of dark hat and dark clothes.

Jason Guidry, the operations manager of the Isle of Capri Casino, was standing between the table games and the pit and saw two people running through the pit. The taller of the two men pointed a gun at him and ordered him to get down on the floor. Both men were masked, wore dark clothes and had gloves on. Guidry testified that the man at the cage was small and the other man was very tall and slim, and that there was a drastic difference between the two. The short man took the money and the tall man walked back and forth pointing a gun at people to make sure they stayed on the floor. The two men left the way they came, jumped the ropes again going through the pit and went to the front doors. When they went out the front doors, the two men got into an old model brown sedan. Guidry observed the two men who left the casino get into the brown car and saw a third man driving the car. The car sped off and went through the stop signs. The car took a right to Arkansas.

Miranda Gregory testified that on the morning of September 11, 2003, she saw two men enter the casino. The sun was in her eyes so she could not see them clearly until they were 8 or 10 feet away. The two black males had on ski masks and had guns in their hands. The taller of the two men had a silver gun and the shorter man had a black gun. The two men told her to get down on the floor. Gregory turned her head to see where they were. One was at the cage and the other was going around something. After the two men passed her again, Gregory got up and went to the far door.

She saw the two men enter a brown car. There were three men in the car, the two men who left the casino, and the driver of the car. The car turned toward Helena, Arkansas.

Melissa Simmons, a surveillance employee for the Isle of Capri Casino, testified that the tape entered into evidence at the trial accurately depicted what was seen on surveillance during the robbery.

After the two men left, everyone got off the floor and the floor supervisors asked them to leave the cage. The floor supervisors took them to the break room to be interviewed. Johnson testified that Willis no longer works at the Isle of Capri and that she has not seen her since and does not know where she is.

Dorsey and Richardson left the casino and got into a brown Oldsmobile driven by 17 year old Tremayne Douglas, who served as the get away driver. Douglas saw Richardson running out of the casino and Dorsey and Richardson got in the car. Richardson yelled, "Drive, Drive! And told Douglas to "hurry up and get out of here." Douglas was instructed to drive to Arkansas. In Arkansas, Dorsey, Richardson and Douglas met Caidree Harris and changed cars. The new vehicle was a blue Oldsmobile registered to LaKeith Dorsey. Dorsey saw Richardson with a gun during the time he was driving Dorsey and Richardson to Arkansas. After they had switched cars, the four men were pulled over by the Arkansas police. Douglas, Richardson and Harris were arrested at that time, but Dorsey escaped.

Caidree Harris testified that early in the morning on the 11th Dorsey, Richardson and Douglas left him sitting behind an old abandoned service station in Arkansas in Dorsey's blue Oldsmobile. Harris testified that Dorsey, Richardson and Douglas drove off in the brown vehicle and Harris was instructed to wait in Dorsey's blue vehicle. When they came back, Richardson and Dorsey got in the backseat and Douglas got in the front. They left the brown car behind the abandoned service

station and left in the blue car. When the police attempted to pull them over, Richardson told Harris to drive and Harris pulled off and drove the car into a fence.

Police found a white pillowcase containing in excess of \$64,000 on the ground beside the car. Also, a red bandana, baseball cap and toboggan style cap were found on the ground beside the rear drivers side door. One gun was recovered from the car. A black jacket and latex gloves were found inside the car. LaKeith Dorsey's Mississippi ID card was found in the car. The blue 1986 Oldsmobile the men were in when they were stopped was registered to LaKeith Dorsey. The brown Oldsmobile that Dorsey, Richardson and Harris used as the getaway car from the casino robbery was stolen from Marvin Smith during the night or early morning hours before the robbery. A brown toboggan cap and a bandana were found in the brown car as well. Dorsey was later taken into custody by Deputy William Lewis in Tunica. His gun was never found.

SUMMARY OF THE ARGUMENT

The trial court correctly denied Dorsey's Motion for Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial. The evidence is sufficient to show that Dorsey committed armed robbery by robbing the Isle of Capri Casino of over \$64,000 by taking money from the cashier's cage at gun point. The evidence proved that Dorsey committed each and every element of armed robbery and the trial court correctly upheld Dorsey's conviction. The evidence did not preponderate so heavily against the verdict that an unconscionable injustice would result without a new trial. This assignment of error is without merit. *Evans*.

ARGUMENT

A motion for a new trial challenges the weight of the evidence. *Beckum v. State*, 917 So.2d 808, 812 (Miss. Ct. App. 2005) (citing *Carr v. State*, 774 So. 2d 469, 472 (Miss. Ct. App. 2000)). Upon review of a trial court's denial of a motion for a new trial, the appellate court

must consider the evidence in the light most favorable to upholding the verdict. *Id.* at 813. The appellate court will only reverse a trial court's decision when convinced that there was an abuse of discretion in failing to grant a new trial. *Dudley v. State*, 719 So. 2d 180, 182 (Miss. 1998) (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)).

Review of a motion for a directed verdict or judgment notwithstanding the verdict tests the sufficiency of the evidence. *Bush v. State*, 895 So. 2d 836, 843 (Miss. 2005). The court must ask whether the evidence shows "beyond a reasonable doubt that the accused committed the act charged and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." *Id.* at 843. (quoting *Carr v. State*, 208 So. 2d 886, 889 (Miss. 1968)). Taking the evidence in the light most favorable to the verdict, the question is whether a rational trier of fact could have found all the elements beyond a reasonable doubt. *Bush*, 895 So. 2d at 844 (citing *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)).

In order to prove armed robbery, the state must show that the defendant has: "(1) feloniously taken or attempted to take another's personal property; (2) from the person or from the presence; (3) against the person's will; (4) by violence to his person, or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon." *Clayton v. State*, 946 So.2d 796, 804 (Miss. Ct. App. 2006) (citing Miss. Code Ann. § 97-3-79).

Mississippi Code Annotated section 97-3-79 (Rev.2006) provides the elements of armed robbery. That section states: "Every person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his will by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon shall be guilty of robbery...." Accordingly, the jury was instructed to find Evans guilty of armed robbery if it found beyond a reasonable doubt that Evans "did wilfully and unlawfully take the personal property of Dixie gas station, from the person or presence and against the will of Billy Fain, by putting him in fear of bodily injury," among other

elements. Evans argues that the State provided insufficient proof of all of the essential elements of the crime. Specifically, Evans argues that there was insufficient evidence that Evans placed Fain in fear of immediate injury to his person. Evans points out that, while Fain testified that he was nervous during the robbery, he expressly denied having been in fear. The crime of robbery has three essential elements: “(1) felonious intent, (2) force or putting in fear as a means of effectuating the intent, and (3) by that means taking and carrying away the property of another from his person or in his presence.” *Crocker v. State*, 272 So.2d 664, 665 (Miss.1973). When putting in fear is relied upon as the proof of the charge, “it must be the fear under duress of which the owner parts with possession.” *Id.* The fear element does not require the victim to be frightened or terrified, but is fulfilled if the victim expects or anticipates that personal injury may result if he does not follow the assailant's instructions made while threatening the use of a deadly weapon. *Harper v. State*, 434 So.2d 1367, 1368 (Miss.1983).

. . . .

While Fain never testified that he was afraid or “in fear,” there was sufficient evidence to enable a rational jury to find beyond a reasonable doubt that Fain anticipated that personal injury would result if he did not follow Evans's instructions. As the State points out, Fain acknowledged that during the robbery he was nervous and worried about how his friends and relatives would fare without him. Powell testified that, after the shot was fired, Fain prayed for forgiveness for his sins. And, Fain behaved compliantly when threatened with the gun. From this evidence, the jury reasonably could infer that Fain anticipated being injured and was acting under duress. There was sufficient evidence supporting Evans's conviction of armed robbery.

Evans v. State, 957 So.2d 430 (Miss. Ct. App. 2007)

Dorsey and Richardson stole over \$64,000 from the Isle of Cabri Casino. Numerous witnesses testified that the money came from the Isle of Casino cash register and was taken at gunpoint from a casino employee. The jury can reasonably infer that Cashier Tracy Willis was acting against her will and put in fear of immediate injury by the display of a gun. There are numerous eye witnesses who testified that both the men had guns during the robbery. These

witnesses were also casino employees who were in fear of immediate injury and who complied with the orders of the gunmen and against their will allowed Dorsey and Richardson to rob the casino.

The weight of the evidence is challenged by a motion for a new trial. On review of the denial of a motion for a new trial, the evidence must be viewed in the light most favorable to the verdict, and determine whether the evidence so heavily preponderated against the verdict that an unconscionable injustice would result from the denial of a new trial. *Bush*, 895 So.2d at 844. The power to grant a new trial should be exercised only in exceptional cases. *Id.* In this case, there was detailed evidence from several sources establishing that two masked men effectuated a robbery of the Isle of Cabri Casino by threatening the cashier with a gun. At trial, Dorsey was identified as one of the gunmen by two of his accomplices. His general description was consistent with the description of the gunman given by the cashier, cage manager, floor supervisor, operations manager and security officer of the Isle of Cabri Casino. Witnesses described a short man and a tall man, both dressed in dark clothes with masks or bandanas and caps and wearing gloves. Witnesses described the pair of robbers as being dramatically different in height as Richardson and Dorsey are, and their accomplices described them after the robbery as being desperate to get away. The men's bandanas, caps and gloves were found in Dorsey's car along with his ID. The evidence is sufficient to show that Dorsey committed armed robbery by robbing the Isle of Cabri Casino of over \$64,000 by taking money from the cashier's cage at gun point.

Richardson is 6'3" and Dorsey is much shorter, as the jury saw. A bandanas, a cap, gloves and one of the guns were recovered for Dorsey's blue Oldsmobile along with his own state ID card.

Dorsey's accomplice Tremayne Douglass testified that he waited for Dorsey and Richardson outside the Isle of Cabri Casino in a brown Oldsmobile and that Dorsey and Richardson got in the car and ordered him to drive to Arkansas where they got into Dorsey's blue Oldsmobile. The stolen

money from the casino was found by Dorsey's car when the car was stopped. The evidence did not preponderate so heavily against the verdict that an unconscionable injustice would result without a new trial. This assignment of error is without merit. *Evans*.

CONCLUSION

The issues raised in the instant appeal from the trial court's denial of Dorsey's Motion for Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial are without merit and the trial court's ruling should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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