

COPY

IN THE OF THE STATE OF MISSISSIPPI

JEFFREY HOLMAN

APPELLANT

V.

NO. 2008-KA-0611-SCT

STATE OF MISSISSIPPI

FILED

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COURT OF APPEALS**

APPELLEE

BRIEF OF THE APPELLANT

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IN THE OF THE STATE OF MISSISSIPPI

JEFFREY HOLMAN

APPELLANT

V.

NO. 2008-KA-0611-SCT

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

THE UNDERSIGNED COUNSEL OF RECORD CERTIFIES THAT THE FOLLOWING LISTED PERSONS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE. THESE REPRESENTATIONS ARE MADE IN ORDER THAT THE JUSTICES OF THIS COURT MAY EVALUATE POSSIBLE DISQUALIFICATIONS OR RECUSAL.

1. STATE OF MISSISSIPPI
2. JEFFREY HOLMAN, APPELLANT
3. HONORABLE DOUG EVANS, DISTRICT ATTORNEY
4. HONORABLE JOSEPH H. LOPER, JR., CIRCUIT COURT JUDGE

THIS THE 21st DAY OF July, 2008.

RESPECTFULLY SUBMITTED,
MISSISSIPPI OFFICE OF INDIGENT APPEALS

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JEFFREY HOLMAN

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NO. 2008-KA-0611-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF ISSUES

- I. THE TRIAL COURT ERRED IN FAILING TO GRANT HOLMAN'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT A CONVICTION OF ARMED ROBBERY.**
- II. THE TRIAL COURT ERRED IN FAILING TO GRANT HOLMAN'S MOTION FOR A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Attala County, Mississippi, where Jeffrey Holman was convicted of armed robbery. On March 5, 2008, the Honorable Judge Joseph H. Loper, Jr., presided over the two- day jury trial. Following the trial, Holman was sentenced to serve twenty-two years under the supervision of the Mississippi Department of Corrections and ordered to pay court costs and assessments. Holman is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On the night of November 10, 2007, George Dotson entered Ella's County Store in McCool, Mississippi and robbed Foster Glass, the convenience store clerk, at gunpoint of approximately \$358. [T. 66,69, 92, 94-95] Jeffrey Holman and Glass were the only other individuals present in the store at the time of the robbery. [T. 67-69] Jeffery, a regular patron of the store, was at the cash register with Glass, having a conversation and attempting to purchase candy when Dotson entered the store. [T. 67,69] Dotson walked through the door, pointed the gun at Glass, demanded money, and ran out of the store after he received the money. [T. 94] During the robbery, Holman moved away from the counter, but once the robber left, he returned to Glass to check on him and to offer to pay for his candy. [T. 67-68] Glass informed Holman that he did not need to pay for the candy and, once Holman left, Glass locked the door and pushed the store's panic button to alarm the police. [T. 68]

The Attala County Sheriff's Department responded to the call at the store. [T. 111-12] After reviewing the surveillance tape, the officers believed that Holman may have acted in concert with Dotson (who was still unidentified at this time). [T. 112,114; State Exhibit 1] The Choctaw County Sheriff's Department and Weir Police Department were contacted to help with the investigation. C.B. "Hap" Anderson, of the Weir Police Department, was one of the officers that assisted. [T. *Id.*]

While the police were searching for Holman in order to question him, Holman attempted to seek help from Mike Hutchinson, the former sheriff of Ackerman, Mississippi. [T. 173] Holman left a note at Hutchinson's home, who was not at home at the time, and informed Hutchinson that he needed help. [T. *Id.*] Holman told the former sheriff that a man called "Junior" took Holman's gun and robbed the convenience store and that Holman attempted to stop him. Holman requested that Hutchinson offer assistance. [T. 173-74]

Shortly after leaving Hutchinson's house, Holman's brother informed him that Officer

Anderson was looking for Holman. [T. 81] He arrived at the Weir Police station for questioning. [T. 88] Detective Randy Blakely, of the Attala County Sheriff's Department, also came to the police station and met with Officer Anderson and Holman. [T. 115] According to Officer Anderson, Holman informed the police that the masked robber was known as "Junior". The police later identified Junior as George Dotson, Jr. [T. 117] The next day, Holman informed Officer Anderson that the gun that was used in the robbery was at his girlfriend's house. [T. 121-22] Officer Anderson retrieved the gun at the location Holman described. [T. 122]

Dotson and Holman were both placed under arrest. [T. 118] The men gave separate statements to the police, each differing from the other regarding the events that transpired the night of the robbery. [T. 118; R.E. 5]

Holman's Version

According to Holman, Dotson coerced him into participating in the robbery. [T. 144-49] What began as a friendly trip from Weir to McCool, Mississippi, ended in Holman being tracked down by the police as an accomplice to armed robbery. [T. 141-154]

At trial, Holman testified that, on November 10th, he was leaving a friend's house in Weir, headed to McCool, when Dotson asked for a ride. [T. 141] Holman only knew Dotson as "Junior", and while the two were not friends, Holman did not mind taking Dotson to his desired location because it was on the way. [T. 140]

On the way, Dotson began sniffing drugs and asked if Holman had a gun in his possession. [T. 141-42] Holman told Dotson that he did not have a gun but Dotson looked in Holman's glove compartment and found one. [T. 142] Dotson told Holman that he needed to rob a store because his child needed surgery and he was in need of money. [T. 143] Holman informed Dotson that he could not use his gun since the gun was registered to his girlfriend. [T. *Id.*] As the two passed a store,

Dotson told Holman to stop and Holman protested because it was Ella's Country Store. Holman told Dotson that he was not interested in the robbery. [T. *Id.*] Holman frequented this store quite often and he was very familiar with the store owner and the her employees. [T. 73]

Holman drove about fifty yards pass the store and Dotson told Holman to stop the car. [T. 144] Holman refused and Dotson then pointed the gun on Holman. [T. 144-45] Holman slammed on brakes and Dotson exited the car. [T. 145] Dotson informed Holman that he would rob the store and if the cashier was uncooperative, Dotson would kill the clerk. [T. *Id.*]Holman told Dotson that he knew the clerk in the store, but Dotson walked away, presumably to commit the robbery. [T. *Id.*] Holman got back in his car and rode up the road toward the store.[T. *Id.*] He attempted to tell Foster Glass that Dotson planned to rob him before Dotson arrived at the store. [T. 146]

While Holman attempted to warn Foster, Dotson arrived at the store. [T. *Id.*] Dotson pointed the gun at Glass and took the money from the cash register.[T. 94] Holman jumped out of the way and, after the robbery, he stayed in the store to see what, if anything, he needed to do for Glass. [T. 68] After Glass told Holman to go home, Holman got in his car and headed home. [T. *Id.*]

On the way home, Dotson jumped in the road as Holman was approaching in his car. Dotson pointed the gun at Holman, believing that Holman was attempting to leave him. [T. 147] Holman, afraid that Dotson would shoot if he did not pull over, allowed Dotson to get in the car. [T. *Id.*] Dotson kept the gun on Holman as he entered the car. [T. 147]

Back in the car, Jeffery took Dotson to Dotson's house in McCool. [T. *Id.*] Dotson, still partaking in drugs, gave Holman directions to his house since Holman was not familiar with the area. [T. 147-48] When they arrived at Dotson's house, Dotson still had Holman's girlfriend's gun. [T. 148] Dotson attempted to buy the gun from Holman, and when Holman refused to sell the gun, Dotson just left money on the seat of the car as payment for the gun. [T. *Id.*] Holman later counted

the money and found out it was about \$160. [T. *Id.*]

Holman pleaded with Dotson to return the gun and Dotson eventually gave Holman the gun back. [T. 148-49] Dotson threatened Jeffery and told him that if he ever told what had happened, Holman, his mom, and his two children would be killed. [T. 149] Dotson threw the gun back in the car, through Holman's window, onto his lap. [T. *Id.*] At trial, Holman's aunt testified that Dotson later came to her house and threatened to harm Holman. [T. 180] Holman was not present at the time of this visit. [T. 180]

After leaving Dotson, Holman went to Weir to the police station but Officer Anderson was not there. [T. 87, 149] Holman panicked, knowing that he now had both the gun and the money. [T. 149, 151]. He took the gun to his girlfriend's house, and tried to dispose of the money by gambling it away within minutes. [T. *Id.*] Holman then went to Mike Hutchinson's house to seek advice. [T. 151] When he discovered that Hutchinson was not present, he left a note on Hutchinson's door, asking for help. [T. 173-74]

Holman was informed by his brother that Officer Anderson was searching for him. [T. 81] Holman immediately went to the police station for questioning. [T. 88] At trial, several witnesses testified that Holman was a non-violent and truthful person – the store owner- Laerae Carter, the cashier- Foster Glass, and Officer Anderson - officer with the Weir Police Department. [T. 73-75, 136, 179] Each testified that Holman had a reputation for being a good kid. Holman was peaceful, truthful, and had not ever been in trouble with the law prior to this occasion. [T. *Id.*] At sentencing, however, the trial judge stated that he believed Holman was the mastermind behind the robbery and, therefore, sentenced him to twenty-two years in prison. [T. 216-17]

Dotson's Version

According to Dotson, earlier that evening at the house of a mutual friend, Dotson told Jeffery

that he needed to rob a store for some money. [T. 91-92] Dotson needed the money because his son was in the hospital. [T. 92] Dotson said Holman informed Dotson that he knew “ a lick” or an establishment worth robbing. [T. *Id.*] Dotson got in the car with Holman and nothing else was said about the robbery.[T. *Id.*] Once they got to the store, Holman protested about going into the store but Dotson informed him that he was still part of the robbery. [T. 93]

Holman dropped Dotson off down the road from the store and he drove to the store. [T. *Id.*] Dotson walked up the store with the pistol that was in Holman’s glove compartment. [T. 93-94] Holman was already in the store when Dotson approached. [T. 94] Dotson got the money from the store clerk and ran back to the road. [T. 95] Later, Holman came back to the road where he dropped Dotson off and picked him back up. [T. 95]

Holman drove Dotson back to the house of the mutual friend. [T. 95] Later, Holman dropped Dotson off at his house. Dotson asked Holman about selling the gun to him but Holman refused to sell. [T. 95] Dotson testified that he gave Holman \$165 and kept the rest of the robbery proceeds. [T. 96] About two or three hours later, the police knocked on Dotson’s door and later arrested him. [T. 95] Dotson was convicted of eighteen years, in exchange for his trial testimony against Holman. [T. 110]

SUMMARY OF THE ARGUMENT

On November 10, 2007, George Dotson robbed Ella’s Country Store in McCool, Mississippi. Jeffrey Holman, the defendant, was charged with armed robbery as an accomplice. However, the State’s case was based on weak and tenuous evidence and the State did not present sufficient evidence to support the elements of the charged offense. Therefore, the trial court erred in failing to grant Holman’s JNOV motion and, alternatively, the court erred in denying Holman’s motion for a new trial.

ARGUMENTS

I. THE TRIAL COURT ERRED IN FAILING TO GRANT HOLMAN'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT A CONVICTION OF ARMED ROBBERY.

The Court reviews challenges to the legal sufficiency of the evidence in the light most consistent with the verdict. *Pate v. State*, 557 So. 2d 1183, 1184 (Miss. 1990). The prosecution is given the benefit of all reasonable inferences from the evidence. *Id.* However, reversal is required when the facts and inferences drawn from the evidence indicate that, as to one or more of the elements of the offense charged, reasonable and fair-minded jurors could only find the accused not guilty. *Coleman v. State*, 926 So. 2d 205, 208 (¶9) (Miss. 2007).

Holman was convicted of armed robbery, as a principal, pursuant to §97-3-79 of the Mississippi Code Annotated (Rev. 2006). Section 97-3-79 defines armed robbery, in pertinent part, as the following:

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 and, upon conviction

Miss. Code Ann. §97-3-79 (Rev. 2006).

The Mississippi Supreme Court has previously held that “[a]ny person who is present at the commission of a criminal offense and aids, counsels, or encourages another in the commission of that offense is an ‘aider and abettor’ and is equally guilty with the principal offender.” *Jones v. State*, 710 So. 2d 870, 874 (Miss. 1998) (¶15) (citing *Sayles v. State*, 552 So. 2d 1383, 1389 (Miss. 1989)).

In *Welch v. State*, 566 So. 2d 680, 684 (Miss. 1990), the Court held that, “[t]o be convicted as an accessory, the defendant must possess the mens rea for the commission of the crime. The

precise state of mind of the defendant has great significance in determining the degree of his guilt. An accomplice may be convicted of accomplice liability only for those crimes as to which he personally has the requisite mental state. He must have a “community of intent” for the commission of the crime.” *Welch*, 566 So. 2d at 685.

The State failed to present sufficient evidence that Holman possessed the requisite mens rea for the offense of armed robbery of Ella’s Country Store. At trial, the State relied on the evidence that Holman’s gun and automobile were used in the commission of the crime. Holman never refuted those facts. However, Holman’s testimony established that he did not have any plans, desire, or “community of intent” to rob the store.

Holman testified that he never intended or desired to rob Ella’s County Store. According to Holman, he only entered the store to warn Glass that Dotson intended to rob him. At trial, Dotson admitted that Holman did not support robbing Ella’s Country Store. There is no sufficient evidence that Holman intended to aid or support Dotson’s armed robbery of the country store that evening. Holman’s guilty verdict was not supported by sufficient evidence and the trial court erred in denying his JNOV motion.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT HOLMAN’S MOTION FOR A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). “ A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury’s resolution of conflicting evidence and requires a new trial.” *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if

the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., dissenting)). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005). In this case, the jury based the guilty verdict on weak and tenuous evidence. The overwhelming weight of the evidence should have led the jury to find Holman not guilty of armed robbery.

1. The Grainy Surveillance Tape

First, the police's suspicion of Holman's involvement in the robbery was based on its observation of the store's grainy and shaky surveillance video. According to the officers, the surveillance tape revealed that moments prior to the robbery, someone was standing on the outside of the store, motioning for another individual to come towards the store. [T. 86, 112-13] Moments later, a car pulls up and Holman enters the store. Moments after then, Dotson enters the store and robs Glass at gunpoint.

The jury viewed the surveillance tape during the trial. The quality of the surveillance tape is so poor, it is inconceivable how anyone could come to the conclusion that the police officers' testimonies were substantiated by what was displayed on the surveillance tape. What could be viewed on the tape was Holman entering the store, leaving off the camera to speak with Glass, and then entering back in the presence of the camera, prior to the robbery. Dotson entered the store, moments after Holman arrived, placed the gun in Glass's face, took the money from the cash register, and then left.

What is clear from the surveillance tape is Holman's reaction to Dotson's gun. On the

surveillance tape, Holman can be seen moving out of the way of danger. Once Dotson had exited the store, Holman can be seen holding his chest, as if morbidly petrified from the events that had just occurred.

According to Glass, Holman was a regular in the store and had never done anything to raise suspicion. [T. 72] Glass further testified that Holman's actions did not create fear in him that evening. [T. 78] Holman stayed with Glass until Glass told him not to worry about paying for his candy that he attempted to purchase. [T. 78] Holman's actions, which can clearly be seen from the surveillance tape, do not support the State's theory of the occurrences of that night.⁰

2. Holman's Immediate Cooperation with Police

Secondly, Holman's immediate cooperation with the police also does not support the State's theory that he acted in concert with Dotson. According to Retired Sheriff Mike Hutchinson, Holman left a note on his door the night of the robbery, seeking help. Likewise, Officer Anderson also testified that Holman sought help during his interview at the Weir Police Station. Holman arrived at the station immediately after being informed by his brother that Officer Anderson was searching for him.

Additionally, Holman readily cooperated with police by informing the police of the Dotson's identify and even taking the police to Dotson's house to arrest him. The day after the robbery, Dotson told the police the exact location of the gun that was used in the robbery. These actions were consistent with Holman's statements that he was not a willing participant in the robbery and that Dotson stole his gun, and coerced and threatened him into stopping at Ella's County Store.

3. Holman's Good Reputation in the Community

Finally, the jury was presented with the overwhelming evidence that Holman was a good kid that had a good reputation in the neighborhood for being truthful and nonviolent. [T. 74-75, 136,

179] Learae Carter, the owner of Ella's Country Store, testified on behalf of the defense that Holman had a reputation for truthfulness and peacefulness in the community. [T. 179] Glass testified that he had known Holman's family and he knew Holman to be a nice and peaceful person. [T. 74-75]. Officer Anderson testified that he knew Holman and, initially, he did not believe that Holman could be a part of the robbery. [T. 80]

The jury's verdict in this case was based on extremely weak and tenuous evidence and the trial court erred in not granting Holman's motion for a new trial.

CONCLUSION

Jeffrey Holman should not have been convicted of armed robbery, as the evidence does not support such conviction. George Dotson, Jr. admitted to having entered Ella's Country Store, in McCool Mississippi on the night of November 10, 2007, with the intent to commit armed robbery. Holman testified that Dotson obtained Holman's gun, which was used during the robbery, as a result of coercion and force. Based on the evidence, the trial court erred in failing to grant Holman's JNOV motion, and alternatively, his motion for a new trial. Holman requests this honorable Court to reverse and render this case, or in the alternative, to reverse and remand this case to the trial court for a new trial.

Respectfully submitted,

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For Jeffrey Holman, Appellant

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CERTIFICATE OF SERVICE

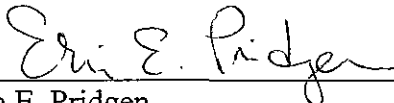
I, Erin E. Pridgen, Counsel for Jeffrey Holman, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Joseph H. Loper, Jr.
Circuit Court Judge
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Honorable Doug Evans
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This the 21st day of July, 2008.


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