

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-KA-00624-COA

DEWAYNE PRICE

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

Appeal from a final judgment of conviction in the Circuit Court of
Attala County, Mississippi

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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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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Appellant.

State of Mississippi

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OF RECORD FOR DEWAYNE PRICE

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STATEMENT OF THE ISSUES

- I. WHETHER THE TRIAL COURT COMMITTED ERROR IN DENYING THE MOTION OF PRICE FOR A DIRECTED VERDICT.
- II. WHETHER THE VERDICT OF THE JURY IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE .

STATEMENT OF THE CASE

I. Nature of the case, course of proceedings and disposition in lower court.

This is an appeal of a verdict and judgment of conviction of Dewayne Price ("Price") of the offense of grand larceny in the Circuit Court of Attala County, Mississippi. Price was indicted by grand jury of Attala County in a three (3) count indictment for the crime of grand larceny.¹ (R. 1, p. 6-7). Indicted along with Price in this indictment were Corradrron Buchanan and David Holmes.

The cause came on for trial on March 18, 2008 in the Circuit Court of Attala County, Mississippi, before the Honorable Joseph H. Loper, Circuit Court Judge. (R. 2, p. 1). At the conclusion of the presentation of evidence by the State, Price moved for a directed verdict on the ground that the State had failed to meet its burden of proof. Specifically, Price argued that the State had failed to prove beyond a reasonable doubt that he was involved in taking any property from the victims, the Kuhns on July 13, 2007, the date of the crime. (R. 2, p. 70). The Court overruled the motion for directed verdict. (Record excerpts ("RE"), p. 7-8).

Price called one witness who established an alibi for the time of the alleged crime. (R. 2, p. 72-74). After Price rested, the jury was instructed and closing arguments were given. (R. 2, p. 79-101). The jury retired to deliberate at 1:50 p. m. on March 18, 2008. (R. 2, p. 101-02).

On March 19, 2008 at 2:08 p.m., the jury returned a verdict of guilty of grand larceny. (RE, p. 10). The Court sentenced Price as a habitual offender under Miss. Code Ann. §99-19-81, to a term of ten (10) years, without the benefit of any type of early release. (R. 2, p. 105-07). A judgment of conviction was entered on March 24, 2008. (RE, p. 1).

¹The indictment was handed down by the March 2007 term grand jury, that had been recalled on August 7, 2007.

Price filed a motion for a new trial. (RE, p. 7). An order overruling the Motion was entered on March 27, 2008. (RE, p. 7). On April 11, 2008, Price filed his Notice of Appeal. (R. 1, p. 1-2).

ii. Statement of Facts

Price was indicted for three (3) counts of grand larceny by the grand jury of Attala County, Mississippi. He was charged with stealing two (2) four wheelers. (R. 2, p. 13). David Holmes and Cordarron Buchannon were alleged to have been involved in the larceny and were indicted along with Price.

At the trial of the cause, the primary witnesses against Price were his alleged accomplices, Holmes and Buchannon. Buchannon testified that he, Price and Holmes stole the four wheelers and loaded them in a truck. (R. 2, p. 27-30).

However, Buchannon had given a prior inconsistent statement to the State in which he did not implicate Price in the crime. (R. 2, p. 31-32). Additionally, Buchannon had enter a guilty plea to the grand larceny and was testifying against Price as a condition of that plea and the sentence he received. (R. 2, p. 30).

Holmes testified that he and Buchannon stole the four wheelers. (R. 2, p. 56). Price rode with them the night of the theft, but he did not anyway participate in the theft. In fact, he remained in the truck the entire time that Holmes and Buchannon were stealing the property. (R. 2, p. 56). Holmes and Buchannon loaded the property in Buchannon's truck. (R. 2, p. 57-58). Holmes testimony did not in any manner implicate Price in the commission of the crime.

The State offered absolutely no other probative evidence to connect Price to this crime. The stolen property was not found in his possession, and no one other than Buchannon testified that they

ever saw Price with this property.

After the State rested, Price moved for a directed verdict. This Motion was overruled. At the conclusion of the presentation of the case, and after closing arguments, the jury returned a verdict of guilty. Price timely filed his Notice of Appeal.

SUMMARY OF THE ARGUMENT

In Mississippi, uncorroborated accomplice testimony may be sufficient to convict in a murder case. *Blocker v. State*, 809 So. 2d 640 (Miss. 2002); *Gandy v. State*, 438 So. 2d 279, 285 (Miss. 1983) (citing *Oates v. State*, 421 So. 2d 1025 (Miss. 1982)). However, this Court has ruled that “the testimony of an accomplice must be viewed with ‘great caution and suspicion. Where it is uncorroborated, it must also be reasonable, not improbable, self-contradictory or substantially impeached.’” *Johns v. State*, 592 So. 2d 86, 87 (Miss. 1991).

In the instant case, the testimony of the single witness who implicates Price is an accomplice, Buchannon. He provided previous inconsistent statements to law enforcement regarding Price’s involvement. His testimony is totally uncorroborated.

If a jury verdict is against the overwhelming weight of the evidence, then the remedy is to grant a new trial. *Smith v. State*, 907 So.2d 292, 298 (Miss. 2005); *Dunn v. State*, 891 So.2d 822, 826 (Miss. 2005). The evidence against Price consisted mainly of the testimony of Buchannon. He was an accomplice and his testimony was uncorroborated and inconsistent with a prior statement given to law enforcement.

ARGUMENT

I. THE TRIAL COURT COMMITTED ERROR IN DENYING PRICE'S MOTION FOR A DIRECTED VERDICT.

After the State rested, Price moved for a directed verdict. The Court denied this motion. When analyzing a motion for directed verdict, the question is whether the evidence is sufficient to sustain a conviction in face of a motion for directed verdict. *Smith v. State*, 907 S.2d 292, 299 (Miss. 2005). "The critical inquiry is 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.* (Citing *Carr v. State*, 208 So.2d 886, 889 (Miss. 1968)).

The evidence against Price consisted of the testimony of Michael Kuhn, Randy Blakely, David Holmes, Curtis Price, Eric Price and Cordarron Buchannon. Kuhn was the victim of the crime and offered no testimony to implicate Price. (R. 2, p. 16-21). Blakely was the investigator with the Attala County Sheriff's Department. His testimony consisted of his finding the stolen property and the arrest of the suspects. (R. 2, p. 32-52). He offered no testimony that implicated Price. He did find the stolen property in the possession of Price. He did not obtain an incriminating statement from Price.

The testimony of David Holmes, an alleged accomplice of Price, totally exonerated Price. Holmes testify that only he and Buchannon were involved in the crime. Price was in the truck with them, but in no way, shape or form participated in the crime. (R. 2, p. 55-59).

The testimony of Curtis Price and Eric Price did not in any way connect Price to the crime. The only testimony that provided a nexus between the crime and Price was that of Buchannon.

Buchannon testified that he, Price and Holmes stole the four wheelers. (R. 2, p. 25).

Buchannon had pled guilty to the crime in question, and received a favorable sentence of five (5) years probation in return for his testimony against Price. (R. 2, p. 30). Buchannon had provided a prior inconsistent statement to law enforcement in which he did not implicate Price. (R. 2, p. 30). His testimony was completely without corroboration.

The Supreme Court has ruled that only slight corroboration of an accomplice's testimony is required to sustain a conviction. *Hathorne v. State*, 759 So.2d 1127, 1133 (Miss. 1999); *Mason v. State*, 429 So.2d 569, 572 (Miss. 1983). It therefore follows that where there is no corroboration, the testimony of an accomplice cannot sustain a conviction. This is even more apparent where the testimony of the accomplice is inconsistent with his prior statements.

The State is required to prove every element of the offense charged beyond a reasonable doubt. *Heidel v. State*, 587 So.2d 835, 843 (Miss. 1991). "When considering a denial of a motion for a directed verdict, the appellate court considers all of the evidence presented in the light most favorable to the verdict. The prosecution is given the benefit of all favorable inferences that may be reasonably drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required." *Hathorne v. State*, 759 So.2d at 1133.

In this case, the State based its case on the totally inconsistent and uncorroborated testimony of an alleged accomplice. No reasonable man could have found Price guilty beyond a reasonable doubt based on this evidence. This Court should reverse the conviction and render a decision discharging Price from custody.

II. THE VERDICT OF THE JURY IS AGAINST THE OVERWHELMING WEIGHT OF EVIDENCE.

“If a jury verdict convicting a defendant is against the overwhelming weight of the evidence, the remedy is to grant a new trial.” *Dunn v. State*, 891 So.2d 822, 826 (Miss. 2005). The verdict of the jury in this cause is so contrary to the overwhelming weight of evidence that an unconscionable injustice would occur if this Court allows the verdict of jury to stand. *Id.*

The sole incriminating evidence in this cause was the uncorroborated and inconsistent testimony of Buchannon, an alleged accomplice. None of the other evidence presented by the State supports the testimony of Buchannon,, nor does it implicate Price in the crime.

At a minimum, slight corroboration is required to support an accomplice’s inconsistent testimony. *Hathorne v. State*, 759 So.2d 1127, 1133 (Miss. 1999). In this case there is no corroboration.

The trial court committed error in denying the Motion of Price for a New Trial. This Court should reverse the judgment of the trial court and grant Price a new trial because the verdict of the jury in this case is against the overwhelming weight of the evidence.

CONCLUSION

The evidence in this cause was insufficient to support the verdict of the jury. Because of this, the trial court committed error in denying Price's motion for a directed verdict. "The critical inquiry is 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." *Smith v. State*, 907 S.2d 292, 299 (Miss. 2005).

The evidence presented in this cause fails to show beyond a reasonable doubt that Price committed the offense. One of the alleged accomplices even testified that Price was not involved. The only evidence offered by the State to support the conviction was the uncorroborated testimony of Buchannon.

The verdict of the jury in this cause was against the overwhelming weight of the evidence. The weight of the evidence presented in this case fails to connect Price to the crime. With the exception of Buchannon, no witness presented by the State implicates Price in this crime. No physical evidence was introduced to connect Price to the offense.


In fact, the only evidence offered by the State that mitigates against Price is the testimony of Buchannon, an accomplice who was allowed to plead guilty and given five (5) years of probation for his testimony. His testimony was inconsistent with a prior statement he gave. His testimony was uncorroborated.

This Court should reverse the judgment of the trial court based on the sufficiency of the evidence, and enter a directed verdict and order the discharge of Price. Alternatively, the Court should find that the verdict of the jury is against the overwhelming weight of the evidence, and order

a new trial for Price.

Respectfully submitted,
Dewanye Price

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This the 29th day of September, 2008.



NEYSHA SANDERS