

Gregory SMITH, Larry Donnell JONES, and  
John Edward PRIDE, Jr. *v.* STATE of Arkansas

CR 80-185

609 S.W. 2d 922

Supreme Court of Arkansas  
Opinion delivered January 12, 1981

1. CRIMINAL LAW — ACCOMPLICES & ACCESSORIES — DISTINCTION BETWEEN PRINCIPAL & ACCESSORY ABOLISHED. — The distinction between a principal and an accessory has been abolished, thus, one who aids or assists in the commission of a crime is as guilty as the actual perpetrator of the deed. [Ark. Stat. Ann. § 41-302 (Repl. 1977).]
2. WITNESSES — CREDIBILITY OF — DETERMINATION BY TRIER OF FACT. — The credibility of witnesses is determined by the court, sitting as a jury, as trier of fact, and the appellate court need only determine if there is substantial evidence to support the judgment.
3. CRIMINAL LAW — SUBSTANTIAL EVIDENCE — WHAT CONSTITUTES. — Where the two female victims were able to identify three of

the five men charged with raping them and they testified as to how many men were present initially, who left the apartment to get liquor, who remained at the apartment, who blocked their way when they tried to leave, and who assisted by restraining them, the testimony is substantial and sufficient to support the findings of guilt of the three men identified, even though there was some discrepancy between the victims' testimony as to other matters, and neither victim could say positively that a certain defendant had penetrated her.

Appeal from Pulaski Circuit Court, First Division, *Floyd J. Lofton*, Judge; affirmed.

*E. Alvin Schay*, State Appellate Defender, by: *Jackson Jones*, Deputy State Appellate Defender, for appellants Smith and Jones.

*Kenneth C. Coffelt*, for appellant Jones.

*Steve Clark*, Atty. Gen., by: *Jack W. Dickerson*, Asst. Atty. Gen., for appellee.

DARRELL HICKMAN, Justice. Five young black males were charged with raping two young white females. The case was tried before the Pulaski County Circuit Court sitting as a jury. After deliberating, the court found three of the defendants guilty and two not guilty. The three found guilty were Gregory Smith, Larry Donnell Jones, and John Edward Pride, Jr. On appeal they allege as common error that there was insufficient evidence to sustain their convictions. Their defense consisted mainly of attacking the credibility of the two females and hinged on the fact that neither of the females could say positively that a certain defendant penetrated her.

It must first be emphasized that the distinction between a principal and an accessory has been abolished. One who aids or assists in the commission of a crime is as guilty as the actual perpetrator of the deed. Ark. Stat. Ann. § 41-302 (Repl. 1977). Next, it is not for this court to determine the credibility of witnesses. That is a function of the trier of fact. *Jones v. State*, 269 Ark. 119, 598 S.W. 2d 748 (1980). We only determine if there is substantial evidence to support the judgment. *McCree v. State*, 266 Ark. 465, 585 S.W. 2d 938 (1979). We find substantial evidence and affirm the convictions.

The female victims both testified that they were only fourteen years of age when they were raped. They were at a high school football game at Quigley Stadium in Little Rock on November 9, 1978, where they met three young black males during the game and engaged in conversation. It was agreed that they would go somewhere and get "high." The victims said that there were two black girls with the young men and they all left the game to go a block or so to an apartment. The females said they did not know any of the black males or females before that evening.

Both white females agreed that at first there were only three males present in the apartment, but that others came into the apartment later. Jones left to get some liquor. When Jones returned the group had a drink, talked, and played cards. Later, one of the white females became somewhat apprehensive because the black females had left and when she asked to go to the restroom, Jones accompanied her to a separate building and stayed outside the room. She said that she was looking for a way out. After they returned to the apartment the two females said they had to leave. Both females agreed that two males blocked their way and that the lights were then turned off. One said she was raped three separate times; the other also said she was raped at least three separate times and perhaps four or five times. One said there were five or six males in the room; the other said there were eight or ten males when the rapes occurred.

Both females gave considerable testimony incriminating Larry Jones. Jones was at the game and at the apartment all the time, except when he left for the liquor. One female said Jones held one of her legs when she was raped. Jones was one of the two males that blocked the door when they tried to leave; he made obscene remarks just before they were raped; and he pushed one of the girls back just before the rape.

The females also identified the two other defendants as participants, but to a lesser degree. One described Gregory Smith as having a pierced ear with a small gold ball in his ear. He was identified as being one of the two who remained in the apartment when Larry Jones left for the liquor. He was

identified by one female as being the other male who assisted Jones in blocking the door.

John Edward Pride, Jr., was identified by one female as having braided hair. He was identified as being one of two males who remained in the apartment when Larry Jones went for the liquor. He was also identified as being one who played a game of cards with one of the females and as one of the males who held one of the females when she was assaulted.

The only defense witnesses were two witnesses who were called on behalf of Pride. These were Pride's brother and mother, both of whom testified that he was home when the alleged rapes took place.

Identity and the credibility of the witnesses were the critical issues in this case. However, the testimony we have recited is substantial and is sufficient to support the findings of guilty entered. Consequently, we affirm the convictions.

Affirmed.

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