

**COPY**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHRISTY HITT

APPELLANT

**FILED**

VS.

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SUPREME COURT  
COURT OF APPEALS

NO. 2006-KA-1474

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**IN THE COURT OF APPEALS OF MISSISSIPPI**

**CHRISTY HITT**

**APPELLANT**

**VERSUS**

**NO. 2006-KA-1474-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

**Procedural History**

Christy Hitt was convicted in the Circuit Court of Neshoba County on a charge of simple assault on a law enforcement officer and was sentenced to a term of three years in the custody of the Mississippi Department of Corrections with one year suspended. (C.P.16-17) Aggrieved by the judgment rendered against her, Hitt has perfected an appeal to this Court.

**Substantive Facts**

On December 8, 2005, Officer Cliff Moore and Officer Patrick Estess of the Philadelphia Police Department went to the residence of Brett Fox to arrest Christy Hitt pursuant to an "active warrant." When Hitt came to the door, the officers told her that they had "a warrant for her arrest for failure to pay old fines." They asked her to accompany them to the patrol car, but Hitt resisted, insisting that she needed "to go back inside to see the kid, or kids ... " (T.26-27) According to Officer Moore,

And at that time she come down to the steps and ... we was going to take her and put her in the patrol car... and ... she says, I want to see my kids again. We kept telling her and telling her, Christy, come on, we got a warrant for your arrest. It's failure to pay old fines, a thousand and something dollars. And she said... you been wanting to do this for a long time. And she ... stated her left arm was hurt, so she put out her right arm. Then, at that time, I took my handcuffs out, put it on her right arm, and whenever it clicked she snatched away from me, and I tried to grab the cuffs and detain her at the same time. We wrestled around there for a little bit. We fell to the inside of the door, the entrance to the house. We got stood up and I was trying to get her cuffed. She snatched away from me again. She swung at me. I seen it coming. I ducked, and Officer Estess was behind me and that's when he got... hit with the cuffs.

(T.28)

Officer Moore heard Estess groan and saw him "laid over across the hood of the car which was under the carport." Officer Moore ultimately "got her other arm and cuffed her." Thereafter, the officers "had to forcefully walk her back to the car."<sup>1</sup> (T.29)

On redirect examination, the prosecutor asked Officer Moore, "[D]id she swing her arm, and therefore the handcuff hit Officer Estess, or was she putting her arm away from you and it hit Officer Estess?" Officer Moore answered, "She swung."<sup>2</sup> (T.35)

Officer Estess corroborated Officer Moore's testimony about the events leading up to this assault. (T.37-39) He described what happened next as follows:

And ... so, he [Officer Moore] placed a cuff on her right wrist, and she started screaming something about her wrist was hurting. She jerked away from him and ... when she did,

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<sup>1</sup>Officer Moore testified that Britt Fox's wife, Hitt's aunt, was at the house and available to care for Hitt's young child. (T.29)

<sup>2</sup>Officer Moore also testified that he and Officer Estess did not plan originally to handcuff Hitt; they did so only after she became "belligerent and non-cooperative." (T.35-36)

she turned around and swung, and ... he ducked and, of course, I was standing behind him, it was in a small space in the carport. The car was parked here and the door to the house was right there. And, of course, that's when I got struck in the eye... with the handcuffs.

(T.39)

All the while, Hitt was uttering "some profanity." (T.39)

Officer Estess suffered blurry vision for "somewhere close to an hour" after he was struck. He "went home and kept ice on it [his eye] overnight to keep the swelling down."  
(T.40-41)

Hitt testified that her left arm had been badly injured in a car crash. When the officers attempted to put a cuff on that arm, she flinched in pain and "snatched back." She had "no idea" how Officer Estess "got struck." (T.50-51)

### **SUMMARY OF THE ARGUMENT**

The verdict is not against the overwhelming weight of the evidence. Accordingly, the trial court did not err in overruling the defendant's motion for new trial.

**Hitt's challenge to the sufficiency of the indictment has no merit.**

### **PROPOSITION ONE:**

### **THE VERDICT IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE**

The first issue presented on this appeal is whether the trial court erred in overruling the motion for new trial on the ground that the verdict is against the overwhelming weight of the evidence. (C.P.34, 37) To prevail on this point, Hitt must satisfy the rigorous standard set out below:

The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence

which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182. **"This Court does not have the task of re-weighting the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible."** *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).

(emphasis added) *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss.App.2004),

Furthermore,

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).

(emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App.1999).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As this Court recently reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for

the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

The state respectfully submits that Hitt's challenge to the weight of the evidence presented is essentially an improper attempt to relitigate factual issues, including credibility of the witnesses, properly resolved by the jury. Incorporating by reference the facts set out under the Statement of Substantive Facts, the state asserts the trial court did not abuse its discretion in overruling the motion for new trial. The evidence is not such that allowing the verdict to stand would be to sanction an unconscionable injustice.

Specifically, the state points out that Hitt deliberately "swung" her arm and hit Officer Estess in the eye. As the prosecutor argued during final closing, "Now, whether she intended to hit Moore, or intended to hit Estess, is of no concern. She intended to hit either one of them. It's the same thing. They're both law officers." (T.62) Pursuant to the doctrine of transferred intent, this argument is legally correct. *Bruce v. State*, 746 So.2d 901, 905-06 (Miss.1998) (evidence was sufficient to support murder conviction, even though victim was not defendant's target). Hitt's testimony to the contrary simply created an issue of fact properly resolved by the jurors. No basis exists for disturbing their verdict. Hitt's first proposition should be denied.

#### **PROPOSITION TWO:**

#### **HITT'S CHALLENGE TO THE SUFFICIENCY OF THE INDICTMENT IS WITHOUT MERIT**

Hitt finally contends the indictment returned against her is fatally defective for misstating an essential element of the crime charged. The indictment charged in pertinent part that she



did wilfully, unlawfully, feloniously, purposely and knowingly caused [sic] bodily injury to Patrick Estes [sic], a human being, and an officer with the Philadelphia Police Department, Philadelphia, Mississippi, while the said Patrick Estes [sic] was acting within the scope of his duty as a law enforcement officer with the Philadelphia Police Department, Philadelphia, Mississippi, by striking Patrick Estes [sic] in the face, contrary to an in violation of Section 97-3-7(1)(a), Miss. Code Ann. (1972) ...

(C.P.3)

"As a general rule, where an indictment tracks the language of a criminal statute it is sufficient to inform the accused of the charge against him." *Calhoun v. State*, 881 So.2d 308, 311 (Miss. App. 2004). The indictment returned against Hitt tracked the language of the offense-defining statute. MISS. CODE ANN. § 97-3-7(1)(a).

The state submits further that Hitt's argument appears rooted in her failure to recognize the doctrine of transferred intent discussed under Proposition One above. Hitt is laboring under the mistaken premise that the state was required to prove that she had the specific intent to strike Officer Estess. The state alleged and proved that Hitt committed an intentional, unlawful act in bodily injury to Officer Estess. Whether she specifically intended to strike him, or Officer Moore, or both officers is immaterial. See *Dobbins v. State*, 766 So.2d 29, 33 (Miss. 2000), and *Brandon v. State*, 263 S0.2d 560, 562 (Miss. 1972). There is no merit to Hitt's challenge to the sufficiency of the indictment. Her second proposition should be denied.

**CONCLUSION**

The state respectfully submits that the propositions presented by Hitt are without merit. Accordingly, the judgment of the circuit court should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

A handwritten signature in black ink, appearing to read "Deirdre McCrory", with a large checkmark at the end.

BY: DEIRDRE McCRORY  
SPECIAL ASSISTANT ATTORNEY GENERAL

## CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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:

Honorable Marcus D. Gordon  
Circuit Court Judge  
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This the 18<sup>th</sup> day of December, 2007.

  
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