IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT L. GRANT — APPELLANT

VS. — NO. 2007-KA-0108-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT L. GRANT **APPELLANT**

VS. **NO. 2007-KA-0108-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Pearl River County, Mississippi, in which the Appellant, Robert L. Grant, was convicted and sentenced for the felony crime of **CAPITAL MURDER**, Miss. Code Ann. § 97-3-19(2)(e) (1972) and as a **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-83 (1972).

STATEMENT OF FACTS

On or before July 17, 2004, in Pearl River County, Mississippi, Robert L. Grant (Grant) did wilfully, unlawfully and feloniously, knowingly and intentionally effect the death of Arthur Joshua. (R. E. 6).

On July 16, 2004, Deputy Naquin was dispatched to a home invasion. (Tr. 13). Shannon Landry, Robert Grant, and Arthur Joshua conspired to and committed robbery at 123 Ed Reid Road, Lumberton, Mississippi.

Below is the testimony of Shannon Landry, one of the three co - conspirators.

Q. What, if anything, did you, Robert Grant and Arthur Joshua do together on that day?

A. They robbed Terry Adams, and I picked them up. (Tr. 197).

The direct eye witness testimony of Jerome Williams regarding the facts of the vicious attack / robbery are below.

A. Well, I fell asleep watching the movie, and the next thing I know, my front door--abductors opened it up and a man stepped in, with a mask on, and proceeded to beat me over the head with a two by four.
Q. And you said this man had a mask on?
A. Yes.
Q. Do you know what kind of mask it was?
A. It looked like the kind of mask--a ski mask or whatever you call it.
Q. What color was it?
A. It was white. I believe it looked like white.
Q. White, and what happened with the man that came in your door?
A. He proceeded to beat me over the head with a two by four, and I threw my arms up to try to block the blow, and he told me to get down on my face, or he'd kill me. So I got down on the floor like he told me.
Q. Okay, and after you got down on the floor, what happened?
A. I heard some steps go by me, and he stood there for a little while, and then he went back to the back.
Q. Okay, and do you know that was that had the white mask on with the two b four hitting you in the head?
A. When it first happened, no, I didn't know, cause I was too busy trying to defend myself, and I didn't even think about it until after it was over. After it was over, I recognized his voice.
Q. Okay, when you say after it was over, you mean when he quit hitting you or--
A. Well, after the commotion, they had left the house and everything had calmed down, and I'm trying to think about who this was. Why it happened and all that kind of stuff, and then I recognized his voice.
Q. Okay, you recognized his voice before the police got there?
A. Yes.
Q. Okay, and who was it that hit you over the head with the two by four?
A. It was Arthur.
Q. Arthur who?
A. What's his name, Joshua.
Q. Arthur Joshua?
A. Yeah.
Q. How do you know Arthur Joshua?
A. Well, I been knowing Arthur Joshua for quite a few years. I use to hang out with his half-cousin. He be over there some time, and we be drinking beer and stuff like that. We been to a few parties. I'd see him at the parties at Robert's house. I'd see him at different places in Lumberton. I gave him the privilege to hunt on my land. Him and Robert both had privilege to hunt on my land.

Q. He and Robert both had the privilege to hunt on your land?
A. Uh-huh.
Q. Okay, and when you say Robert, who are you referring to?
A. Robert Grant.
Q. Okay. Do you know Robert Grant?
A. Yes, I do.
Q. Do you see him in the Courtroom today?
A. Yes.
Q. Could you point him out for us?
A. Right there.
A. I remember steps going by. I remember, after laying there a while, it got kind of quite. So I kind of raised up a little bit to see what was going on. By that time, the door was opening and Tishma and Skip was coming back.
A. When they came back, somebody started shooting. I don't know who, Robert or Arthur. I just know somebody started shooting.
Q. Okay, and when they started shooting, what were you doing?
A. Ducking bullets.
Q. Okay, and you were still laying down?
A. Yes.
Q. What happened after that?
A. After that, it got quite, and they had left.
Q. Okay, and--
A. And I got up.
Q. --how did they leave?
A. Huh?
Q. How did they leave?
A. Through the back door.
Q. Okay. Then what did you do?
A. I got up and started tending to my head.
Q. Okay, what's the next thing that happened?
A. I think they went and called the police--called the Sheriff or somebody.
Q. Okay. (Tr. 101 - 106).

Below is the direct eye witness testimony of victim Terry Adams.

A. Then I heard three shots fired--three or four shots fired, and then Robert came to the door and pointed a nine millimeter at me.
A. I said Robert came to the door and pointed a nine millimeter at me, and so he pointed me down on the ground. I got down on the ground. He tapped me on the back of my shoulder and pointed at my safe. I opened my safe and gave him the contents out of it. (Tr. 153).

Arthur Joshua's body was later found shot dead near the trailer. (Tr. 26).

On September 8, 2006, the Appellant was sentenced to life imprisonment without the

eligibility of parole in the Mississippi Department of Corrections for **CAPITAL MURDER**, Miss. Code Ann. § 97-3-19(2)(e) (1972) and **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-83 (1972)(R. E. 29). (R. E. 273 - 274).

SUMMARY OF THE ARGUMENT

I.

THE MISSISSIPPI CAPITAL MURDER STATUTE IS APPLICABLE IN THIS CASE.

CAPITAL MURDER, Miss. Code Ann. § 97-3-19(2)(e) (1972):

> (2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases:
> (e) When done with or without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, kidnapping, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or in any attempt to commit such felonies;

II.

THE JURY INSTRUCTION WAS PROPER.

The Mississippi Supreme Court held in Smith v. State, 835 So.2d 927, 934 (Miss. 2002) that when considering a challenge to a jury instruction on appeal, the Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly instructed. Dobbs v. State, 950 So.2d 1029 (Miss. 2006) holds that when read as a whole, if the jury instructions fairly announce the law of the case and create no injustice, then no reversible error will be found.

III.

THE TRIAL COURT DID NOT ERR IN RESTRICTING THE APPELLANT'S EXPERT TESTIMONY.

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Mississippi Rule of Evidence 401, "RELEVANT EVIDENCE:"

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

IV.

THE COURT WAS PROPER IN ALLOWING THE FULL TESTIMONY OF CHRIS THOMAS.

Mississippi Rule of Evidence 401, "RELEVANT EVIDENCE:"

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mississippi Rule of Evidence 801(2): Admission by Party Opponent

(2) Admission by Party-Opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

V.

THE APPELLANT WAS PROPERLY SENTENCED AS A HABITUAL OFFENDER.

HABITUAL OFFENDER, Miss. Code Ann. § 99-19-83 (1972):

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

VI.

THE TRIAL COURT DID NOT ERR IN ITS REFUSAL TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL AND IN THE ALTERNATIVE A JUDGMENT NOT WITHSTANDING THE VERDICT. THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the 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.

THE ARGUMENT

PROPOSITION I.

THE MISSISSIPPI CAPITAL MURDER STATUTE IS APPLICABLE IN THIS CASE.

Appellant's counsel maintains that his issue is whether or not the legislature intended that Miss. Code Ann. § 97-3-19(2)(e) (1972) is to apply in the scenario of a co - conspirator dying during the commission of a crime. (Appellant Brief 8). The State contends that the elements of the below

capital murder statute are clear met.

CAPITAL MURDER, Miss. Code Ann. § 97-3-19(2)(e) (1972):

> (2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases:
> (e) When done with or without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, kidnapping, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or in any attempt to commit such felonies;

In July 2004, some people, Jerome Williams, Roderick Shanks, Roderick Shanks, Jr., Larry Bowens, Terry Adams, Tishma Peralti, and Skipper, lived at 123 Ed Reid Road. (Tr. 151 - 152).

During the robbery, the direct eye witness testimony of victim Terry Adams stated that:

> A. Then I heard three shots fired--three or four shots fired, and then Robert came to the door and pointed a nine millimeter at me.
> Q. What did you say?
> A. I said Robert came to the door and pointed a nine millimeter at me, and so he pointed me down on the ground. I got down on the ground. He tapped me on the back of my shoulder and pointed at my safe. I opened my safe and gave him the contents out of it. (Tr. 153).

The direct eye witness testimony of victim Jerome Williams stated that:

> Q. Okay, you recognized his voice before the police got there?
> A. Yes.
> Q. Okay, and who was it that hit you over the head with the two by four?
> A. It was Arthur.
> Q. Arthur who?
> A. What's his name, Joshua.
> Q. Arthur Joshua?
> A. Yeah.
> A. When they came back, somebody started shooting. I don't know who, Robert or Arthur. I just know somebody started shooting.
> Q. Okay, and when they started shooting, what were you doing?
> A. Ducking bullets. (Tr. 101 - 106).

Below is the testimony of Shannon Landry, one of the three co - conspirators.

> Q. On July 16th of the year 2004, in the early hours of the evening, who were you with?
> A. Arthur Joshua.

Q. And how were y'all traveling?
A. In my grandmother's car.
Q. And what kind of car did your grandmother have?
A. A red Geo Metro.
Q. Did you have an occasion on that day to meet up with anyone else?
A. Yes, ma'am.
A. Robert Grant.
Q. What, if anything, did you, Robert Grant and Arthur Joshua do together on that day?
A. They robbed Terry Adams, and I picked them up.
Q. Okay. Earlier in the evening, were all three of you in the car together?
A. Yes.
Q. And did you have an occasion to travel out to 123 Ed Reid Road?
A. Yes.
Q. Why were y'all going out to Ed Reid Road?
A. To rob Terry.
Q. And who was suppose to rob Terry?
A. Arthur and Robert.
Q. Arthur and Robert. Now, what was it that Terry had they wanted?
A. Money.
Q. Did they know where the money was?
A. In a safe.
Q. When you arrived on Ed Reid Road, who got out of the car?
A. Arthur and Robert.
Q. And what did you do?
A. I got in the driver's seat.
Q. And why were you in the driver's seat?
A. Because I was suppose to come back in an hour and pick them up.
Q. And pick them up. After the job was done; is that right?
A. Yes, ma'am.
Q. You knew what they were going out there to do; didn't you?
A. Yes, ma'am.
Q. And you were charged in this case; weren't you?
A. Yes, ma'am.
Q. You were charged, and you pled guilty; haven't you?
A. Yes, ma'am.
Q. And what did you plead guilty to?
A. Accessory before robbery.
Q. Accessory before a robbery?
A. Yes.
Q. But you are the one that drove the car; right?
A. Right.
Q. Where did you--where did Robert and Joshua get out of the car?
A. In the woods near Terry's house, past his house.
Q. And after they got out, what did you do?
A. I left.

Q. And where did you go?
A. I went to my grandmother's house.
Q. How long was it before you returned?
A. An hour.
Q. And when you returned, tell us what happened.
A. Robert--well, I was driving to where I was suppose to pick them up, and they weren't there. So I drove up and down the road, and I heard gunshots, and then later Robert came out of the woods and got in the car with me.
Q. Okay, Robert came out of the woods and got in the car with you?
A. Yes.
Q. When he got in the car, what, if anything, happened?
A. He told me that Arthur had been shot by someone in Terry's house.
Q. And did he tell you where Arthur had been shot?
A. In the face.
Q. In the face?
A. Yes.
Q. Robert Grant told you that Arthur Joshua had been shot in the face?
A. Yes.
Q. What, if any, kind of weapon did Robert have?
A. A gun.
Q. What kind of gun was it, if you know?
A. I don't know. It was silver. That's all I know. (Tr. 197 - 201).

Arthur Joshua's body was later found shot dead near the trailer. (Tr. 26).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

PROPOSITION II.

THE JURY INSTRUCTION WAS PROPER.

The Mississippi Supreme Court held in Smith v. State, 835 So.2d 927, 934 (Miss. 2002) that when considering a challenge to a jury instruction on appeal, the Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly instructed. Dobbs v. State, 950 So.2d 1029 (Miss. 2006) holds that when read as a whole, if the jury instructions fairly announce the law of the case and create no injustice, then no reversible error will be found.

Brassfield v. State, 905 So.2d 754 (Miss. App. 2004) instructions should clearly inform jury

of elements of crimes and State's burden of proof, and there was no risk that jury was confused about elements of crime necessary to convict.

The Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly instructed. Smith v. State, 835 So.2d 927, 934 (Miss. 2002), Kelly v. State, 493 So.2d 356, 359 (Miss. 1986) and Norman v. State, 385 So.2d 1298, 1303 (Miss. 1980). Reading the jury instructions as a whole, all elements to the crime of capital murder are present and properly stated.

Appellant's counsel alleges that the last word in Instruction S - 13 should have been capital murder and not just murder. (Appellant Brief 11).

If any error exists at all, it is harmless. Smith v. State, 907 So.2d 389 (Miss.App.2005) holds that the plain error doctrine requires that there be an error and that the error must have resulted in a manifest miscarriage of justice, and if a contemporaneous objection is not made at trial, an appellant must rely on plain error to raise the argument on appeal.

Moreover, the State's response to the "plan" and "cumulative" error argument is found in Genry v. State, 735 So.2d 186, 201 (Miss. 1999), where we find the following language:

> This court may reverse a conviction and sentence based upon cumulative effect of errors that independently would not require reversal. Jenkins v. State, 607 So.2d 1171, 1183-84 (Miss. 1992); Hansen v. State, 592 So.2d 114, 153 (Miss. 1991). However, where "there was no reversible error in any part, so there is no reversible error to the whole." McFee v. State, 511 So.2d 130, 136 (Miss. 1987).

The result of life imprisonment is the same inasmuch as the Appellant was convicted of being a **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-83 (1972):

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies

shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

PROPOSITION III.

THE TRIAL COURT DID NOT ERR IN RESTRICTING THE APPELLANT'S EXPERT TESTIMONY.

Grant wrongly alleges that his expert's opinions were relevant. (Appellant Brief 13).

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Mississippi Rule of Evidence 401, "RELEVANT EVIDENCE:"

> "Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The analytical framework provided by the modified Daubert standard requires the trial court to perform a two-pronged inquiry in determining whether the expert testimony is admissible under Mississippi Rule of Evidence 702. Under Mississippi Rule of Evidence 702 expert testimony should be admitted only after a two pronged inquiry. First, the witness must be qualified as an expert because of the knowledge, skill, experience, training, or education he or she possesses. Mississippi Rule of Evidence 702. Second, the witness's scientific, technical, or other specialized knowledge must assist the trier of fact. Watkins v. U-Haul International, Inc., 770 So.2d 970, 973 (Miss. App. 2000), Mooneyham v. State, 915 So.2d 1102 (Miss. App. 2005), and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993).

The aforementioned two part test was not met, and the trial judge ruled that Grant's expert's testimony was not relevant.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

PROPOSITION IV.

THE COURT WAS PROPER IN ALLOWING THE FULL TESTIMONY OF CHRIS THOMAS.

Mississippi Rule of Evidence 401, "RELEVANT EVIDENCE:"

> "Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mississippi Rule of Evidence 801(2): Admission by Party Opponent:

> (2) Admission by Party-Opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

The trial judge properly ruled on the admissibility of the testimony of Chris Thomas pertaining to the statements Grant made to him soon after the capital murder.

> A. He said he was shot. They was running through the woods, and they split up. He said he was shot. That's all he said.
>
> BY MR. GRAY: That's a hearsay statement.
>
> BY MS. CREEL: Your Honor, it is an out of Court admission by a party opponent. It is admissible.
>
> BY THE COURT: No, it's--
>
> BY MS. CREEL: It is an admission by Robert Grant to Mr. Thomas.
>
> BY MR. GRAY: Admitting what?
>
> BY MS. CREEL: Admitting that he was out there. Admitting that he knew that Arthur Joshua had been shot. It's an admission by a party

opponent.

BY MR. GRAY: It doesn't meet the exception to the hearsay rule.

BY THE COURT: Well, a statement to a third party can be used against him.

BY MS. CREEL: 801(2), admission by party opponent.

BY MR. GRAY: That's not an admission.

BY MS. CREEL: The statement is offered against a party, and it's his own statement.

DIRECT EXAMINATION BY MS. CREEL: (Continuing)

Q. Is that what Robert Grant told you?

A. Yes.

BY MS. CREEL: It's an admission of party opponent, and it's admissible.

BY MR. GRAY: Is that a criminal rule?

BY MS. CREEL: It's a rule of evidence.

BY THE COURT: It's a statement that they're trying to get entered into evidence that your client made.

BY MR. SWEATT: It would have to be an interest--

BY MS. CREEL: Mr. Thomas is not a law enforcement officer, your Honor.

BY THE COURT: That's right. Now, he doesn't have to waive any rights, no.

BY MS. CREEL: It's an admission by a party opponent.

BY THE COURT: It's done all the time in criminal cases.

BY MR. GRAY: And it's not only that. She's going to continue to ask him about what Shannon said and ask him--

BY THE COURT: Well, that's what I'm--I'm going to sustain the objection to that. (Tr. 229 - 230).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

PROPOSITION V.

THE APPELLANT WAS PROPERLY SENTENCED AS A HABITUAL OFFENDER.

HABITUAL OFFENDER, Miss. Code Ann. § 99-19-83 (1972):

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Appellant's counsel claims that the other convictions of Grant were admitted into evidence through hearsay testimony. (Appellant Brief 16). This is not the case.

The state complied with Mississippi Rules of Evidence 902: Authentication. Documents contained in "pen packs" have been admitted as competent evidence of prior crimes to enhance sentencing. Russell v. State, 670 So.2d 816, 832 (Miss. 1996).

The record testimony (Tr. 560 - 584) clearly lays plain the authentication of the prior convictions of Grant.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

PROPOSITION VI.

THE TRIAL COURT DID NOT ERR IN ITS REFUSAL TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL AND IN THE ALTERNATIVE A JUDGMENT NOT WITHSTANDING THE VERDICT. THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the 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.

The State counters that the jury heard all of the evidence, exhibits and testimony, and the members of the jury believed the evidence produced by the prosecution. The jury verdict should

stand.

The correct standard as stated above in Smith, is to take the evidence presented by the prosecution as true together with reasonable inferences. The evidence cited in the record, taken as true together with reasonable inference is more than sufficient evidence in support of the jury's verdict. Furthermore, weight and sufficiency of the evidence will be discussed in detail below.

The applicable standard of review is found in Dilworth v. State, 909 So.2d 731, 741 (Miss. 2005) and Bush v. State, 895 So.2d 836, 843 (Miss. 2005). The standard of review for a post-trial motion is abuse of discretion.

In Carr v. State, 208 So.2d 886,889 (Miss.1968) the court held:

> We stated that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for judgment notwithstanding the verdict, the critical inquiry is whether the evidence shows 'beyond a reasonable doubt that 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.' However, this inquiry does not require a court to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Reasonably, matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. "Weight" implicates the denial of a motion for a new trial while "sufficiency" implicates the denial of motions for directed verdict, peremptory instruction, and judgment notwithstanding the verdict. May v. State, 460 So.2d 778, 781 (Miss. 1984).

In other words, the remedy for a defect in "weight" is a new trial while the remedy for a defect in "sufficiency" is final discharge from custody.

Where a defendant has made post-trial motions assailing the sufficiency of the evidence, " . . . the trial court must consider all of the evidence - not just the evidence which supports the State's

case - in the light most favorable to the State." Winters v. State, 473 So.2d 452, 459 (Miss. 1985). See also McClain v. State, 625 So.2d 774 (Miss. 1993). This includes the defendant's evidence, if any, which must be construed in a light most favorable to the prosecution's theory of the case.

In judging the legal "sufficiency," as opposed to "weight," of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. Hart v. State, 637 So.2d 1329, 1340 (Miss. 1994); Edwards v. State, 615 So.2d 590, 594 (Miss. 1993); Clemons v. State, 460 So.2d 835, 839 (Miss. 1984); Forbes v. State, 437 So.2d 59, 60 (Miss. 1983); Bullock v. State, 391 So.2d 601, 606 (Miss. 1980); Boyd v. State, 754 So.2d 586 (Miss. App. 2000).

If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict and request for peremptory instruction or JNOV should be overruled. Brown v. State, 556 So.2d 338 (Miss. 1990); Davis v. State, 530 So.2d 694 (Miss. 1988). As stated previously, a finding that evidence is insufficient results in a discharge of the defendant. May v. State, 460 So.2d 778, 781 (Miss. 1984).

Put another way, the trial court, and this Court on appeal as well, must accept the State's evidence as true and view it in a light most favorable to the State's theory of the case.

The State counters that the jury heard all of the evidence, exhibits and testimony, and the members of the jury believed the evidence produced by the prosecution. The jury verdict should stand.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: _____

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CERTIFICATE OF SERVICE

I, Deshun T. Martin, 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 Michael R. Eubanks
Circuit Court Judge
Post Office Box 488
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