

CERTIFICATE OF INTERESTED PERSONS

I, Tommy W. Defer, Counsel for the Appellant, hereby certify that the following individuals have an interest in the outcome of this appeal:

1. Lakeith Dorsey, MDOC, Parchman, Mississippi;
2. Tommy W. Defer, Counsel for the Appellant, Water Valley, Mississippi;
3. Bobby T. Vance, Counsel for the Appellant, Batesville, Mississippi;
4. Lawrence Mellen, District Attorney, Cleveland, Mississippi;
5. Gray Burdick, Assistant District Attorney, Cleveland, Mississippi.
6. Azki Shah, Trial Counsel for Appellant, Clarksdale, Mississippi.

This the 7th day of August 2007.

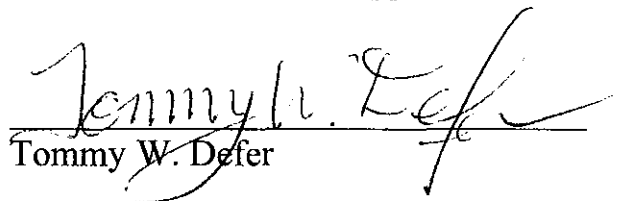

Tommy W. Defer

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STATEMENT OF THE ISSUES

1. Whether the trial court erred in denying Appellant's Motion of Acquittal
Notwithstanding the Verdict or in the Alternative for a New Trial.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Lakeith Dorsey (“Appellant”) along with Co-Defendants Tremayne Douglass and Danyel Richardson were indicted on December 2, 2003, by the Grand Jury of Coahoma County, Mississippi for Armed Robbery. A fourth Co-Defendant, Caidree Harris was indicted as accessory after the fact.

The Coahoma County Grand Jury indicted Appellant and his Co-Defendants for the alleged Armed Robbery of the Isle of Capri Casino on September 11, 2003. Appellee tried Appellant separately from his Co-Defendants. Appellant’s trial in Coahoma County Circuit Court commenced on January 20, 2004. The jury returned a verdict of guilty of armed robbery. The trial sentenced Appellant to serve twenty five (25) years in the Mississippi Department of Corrections. Appellant’s trial counsel failed to perfect an appeal of Appellant’s conviction and sentence. Appellant’s appellate counsel however filed a motion on his behalf for an out of time appeal and the trial court granted the motion. Appellant subsequently appeals his conviction and sentence to this Court.

APPELLEE'S TRIAL WITNESSES

BARBARA JOHNSON

Barbara Johnson was employed as a cage cashier at the Isle of Capri Casino on September 11, 2003, and was working that day. R. at 100. Ms. Johnson's shift manager Tracy Willis was also working that day and was working at one of the cashier cages. R. at 101. Ms. Johnson overheard someone tell Ms. Willis to "get down." R. at 101-102. While Ms. Johnson did not see anyone at Ms. Willis' window, she did hear a person at Ms. Ms. Willis' window to "come here and get me the money." R. at 103. Ms. Willis placed money into a bag and the person who requested the money left the casino with the bag. Id. Ms. Willis appeared to be scared. R. at 107. Ms. Johnson did not see a gun and did not see who allegedly robbed the casino. R. at 111.

MALIA JACKSON

Malia Jackson is employed with the Isle of Capri Casino. According to Ms. Jackson approximately \$64,310.00 was taken from the casino during the alleged robbery and approximately \$64,309.00 was recovered and returned to the casino. R. at 115-116.

ANDREW THOMPSON

Andrew Thompson is the Sheriff of Coahoma County, Mississippi. R. at 120. Sheriff Thompson participated in the investigation of the casino robbery. Id. While in route to casino the Sheriff received information that the robbery suspects had been spotted in Arkansas and Arkansas law enforcement officers were pursuing them. R. at 121.

During the chase the suspects crashed their vehicle into a fence, and Sheriff Thompson drove to the scene of the crash. Id. While at the scene the Sheriff observed a bag of money and LaKeith Dorsey's ID card outside the crashed vehicle. Id. A toboggan, red bandana, and 9 millimeter pistol were found in the crashed vehicle. R. at 121-122.

Information was that a brown Oldsmobile had left the scene of the robbery, but the suspects were driving a blue Oldsmobile. R. at 122. A brown Oldsmobile was recovered in Helena, Arkansas at an abandoned CITGO Station. R. at 123. Law Enforcement Officers captured Co-Defendant Richardson at the scene of the vehicle crash, and captured Co-Defendants Harris and Douglas later that day. Id. Officers arrested Appellant several days later. Id.

ROBERT FERGUSON

Robert Ferguson is a police officer Helena Arkansas, who was on duty on September 11, 2003. R. at 160-161. The Helena Police Department received a telephone call that the Isle of Capri Casino had been robbed by four males driving a late model Oldsmobile. R. at 161. Officer Ferguson and another police officer proceeded to the Helena Bridge but did not see a vehicle matching the description of the late model Oldsmobile. Id. The Officers next proceeded on Highway 49 towards West Helena, Arkansas, and observed a late model Oldsmobile in the distance. Id. They made contact with the suspect vehicle, a late model Oldsmobile, and chased it for about two miles until it wrecked. R. at 161-163. Four people occupied the suspect car. R. at 163. Two of the four occupants exited the vehicle before it came to a stop. R. at 164. The passenger who occupied the back driver's seat (Co-Defendant Richardson) tried to exit the vehicle after it wrecked, but tripped over a bag. Id. Officer Ferguson arrested Richardson at the scene. R. at 165.

SHIRLEY MUFFALETTO

Shirley Muffaletto was the on duty floor supervisor at the Isle of Capri Casino at the time of the robbery. R. at 180-181. Ms. Muffaletto observed two black men proceed to the cashier's cage and rob the cashier. R. at 181. The skinny man had a silver gun that he was pointing at everyone with instructions to get on the floor. R. at 181-182. Ms. Muffaletto only saw the one gun. R. at 182. She described the skinny suspect as being 6'3" tall and described the second suspect as being 5'5" tall. Id. The shorter one of the two suspects demanded money from the cashier's cage while the tall skinny one held a gun on everyone. Ms. Muffaletto noticed two male suspects in the Casino. The gunman wore a red bandana, black hat, and dark clothes. Ms. Muffaletto did not see the clothes worn by the shorter suspect as she only saw his back. R. at 182-185.

JASON GUIDRY

Operations manager Jason Guidry was on duty at the Isle of Capri Casino at the time of the robbery. He observed someone not employed by the casino “running through the pit.” R. at 190-191. He then noticed a second non-employee proceeding through the pit. The second person pointed a gun at the Casino crowd and said “get on the floor.” Both persons were wearing masks, gloves, and dark clothing. The one at the cage was 5'8" tall, and the slim guy was 6'3' tall. Id.

Mr. Guidry only saw one gun, and the tall guy telling everyone “stay on floor.” R. at 191-192. The two men exited through the front door of the Casino. Guidry followed them to the front door where he saw a late model brown car speeding away from Casino toward Arkansas. R. at 192-193. Guidry saw three men in the brown car, one in the front seat and two in the back seat. R. at 194-195.

MIRANDA GREGORY

Miranda Gregory serves as an emergency medical technician at Isle of Capri and was on duty at time of the robbery. She noticed two people wearing ski masks with guns; one person had a silver gun and the other had a black gun. R. at 199-200. Ms. Gregory described as suspect as being taller than the other. R. at 201. She spotted the two suspects leaving the Casino in a brown vehicle proceeding in the direction of Helena, Arkansas. R. at 202-204.

MELISSA SIMMONS

Melissa Simmons is employed with the Isle of Capri Casino and is in charge of surveillance at Isle of Capri. Appellee admitted the surveillance tape through Ms. Simmons' testimony. R. at 207-208.

TREMAYNE DOUGLAS

Tremayne Douglas was the driver of the brown Oldsmobile that departed the Isle of Capri Casino following the robbery as he was the driver of the get away vehicle. Douglass pleaded guilty to Armed Robbery prior to Appellant's trial. R. at 218-232. Douglass did not know Appellant before the Casino robbery. R. at 235. Douglass met with Richardson and Appellant in Tunica just before the robbery. R. 238-239. Douglass drove Richardson and Appellant to the Casino to cash a check. Id. Douglass assumed that Richardson and Appellant went inside the Casino and upon returning to the car Richardson yelled for Douglass to drive the car. R. at 239-240. Appellant did not say anything. R. at 242.

According to Douglas he did not plan the robbery, did not know what occurred when Richardson and Appellant went inside the Casino, did not go inside the casino, and did not have gun. R. at 243-244. He did not see Appellant commit any robbery. R. at 244-245. After leaving the casino Richardson directed Douglass to drive to Arkansas and go to an abandoned service station. R. at 247. They obtained the blue Oldsmobile from behind the abandoned station. Id.

CADDREE HARRIS

Caddree Harris knows Tremayne Douglas, Danyel Richardson, and Appellant. Harris pleaded guilty to accessory after the fact to armed robbery prior to trial. R. at 257. According to Harris Dorsey owns a blue Oldsmobile Cutlass and on September 11, 2003, Harris got into a blue Oldsmobile along with Douglas, Richardson, and Appellant. Harris was driving the blue car. R. at 258-260.

According to Harris Douglass, Richardson, and Appellant left from Arkansas going to the Isle of Capri Casino in a brown car. Harris sat in the blue car with the motor running waiting for the others to return. Douglas was driving the brown car when they returned. Richardson and Appellant were with Douglas. All four individuals got into the blue care and left the brown car abandoned. Harris is driving the blue car. R. at 261-265. When the police got behind their car, Harris pulled over. However, Richardson pulls a gun on Harris and tells him to “go ahead.” Harris then drives very fast in an attempt to elude the police, but he hits a fence and wrecks the car. Richardson was in the back seat passenger, Appellant was in the back seat driver’s side, and Douglass was the other front seat passenger. Upon crashing into the fence all passengers exited the vehicle and fled on foot. Harris and Douglass ran together and soon were captured. Richardson was caught at the scene of the wrecked car. Harris does not have any knowledge of Appellant leaving the vehicle after it wrecked. Harris described Dorsey as being 5’7” tall and Richardson being over six feet tall. R. at 265-274.

Harris testified on cross-examination that he would not give an interview to Appellant's trial counsel. Harris stated he was testifying against Appellant to "save himself. R. at 272. He is approximately 5'8" tall and weighs about 120 pounds. R. at 278.

ALLEN THOMPSON

Allen Thompson serves as an investigator with the Mississippi Bureau of Investigation. Investigator Thompson assisted with the investigation of the Casino robbery. R. at 280-281. When he arrived at in West Helena, Arkansas, at the scene of the crashed suspect vehicle, Investigator Thompson noted that Harris, Douglass, and Richardson were in custody. R. at 281-282. Money found at the scene of the accident totaled in excess of \$64,000.00. The money was returned to the Isle of Capri Casino. R. at 283-284.

Appellant was identified as the owner of the crashed blue Oldsmobile. The brown Oldsmobile that was abandoned at the service station was owned by Marvin Smith of Tunica, Mississippi. Mr. Smith's auto had been reported stolen approximately 24 hours before the Casino robbery. R. at 286-288.

Based upon a review of the Casino surveillance tapes Investigator Thompson determined there were two guns involved in the robbery. However, only one of the guns was recovered, a nine millimeter at the scene of the wrecked blue car. The gun was loaded and ready to fire with two rounds in the clip and one in chamber. Appellant was taken into custody in Tunica five days after the robbery. R. at 289-291. Appellant's identification card was found in the blue vehicle at the accident scene. Other items were found in the brown car. R. at 294-296.

Harris and Douglas denied any involvement in the robbery. Richardson however admitted he was involved. R. at 314. Appellant's fingerprints were not found on any items found in the blue or brown car or anywhere else. R. at 315.

Appellee rested its case in chief at the conclusion of Investigator Thompson's testimony. Appellant accordingly made a motion for a directed verdict, but the trial court denied the motion. R. at 316-319.

APPELLANT'S TRIAL WITNESSES

Sheriff Thompson stated that the initial report his office received concerning the Casino robbery was that two individuals entered the casino and robbed it. R. at 322-323. Appellant rested his case following Sheriff Thompson's testimony. R. at 323.

SUMMARY OF THE ARGUMENT

1. The trial court erred in denying Appellant's Motion of Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial. The sufficiency of the evidence did not support the verdict, which requires the conviction to be rendered. There were not sufficient facts to warrant justifying a conviction of armed robbery. Appellee failed to prove the elements of the offense and further failed to prove beyond a reasonable doubt that Appellant knew about or participated in the robbery.

ARGUMENT

I. THE TRIAL ERRED IN DENYING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE A NEW TRIAL.

Following his conviction Appellant filed a Motion for Judgment of Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial. Appellant alleged in his post-trial motion that the verdict of the jury was legally insufficient and against the overwhelming weight of the evidence. The trial court denied the motion. Appellant made the issue apart of his post-trial motions, thus raising his final challenge to the jury's verdict with the trial court. Accordingly, he is not procedurally barred raising the issue on appeal. Fears v. State, 779 So.2d 1125, 1127 (Miss. 2000).

A motion for J.N.O.V. challenges the legal sufficiency of the evidence. McClain v. State, 625 So.2d 774, 778 (Miss. 1993). The Appellate Court properly reviews the ruling as to the legal sufficiency of the evidence of the final occasion the challenge was made in the trial court. Id. This occurred in the present case when the trial court denied Appellant's post-trial motion for J.N.O.V.

In Bush v. State, 895 So.2d 836, 843 (Miss. 2005), the Mississippi Supreme Court set forth the proper standard of review for legal sufficiency as follows:

In Carr v. State, 208 So.2d 886, 889 (Miss. 1968), 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 verdict, the critical inquiry is whether the evidence shows “beyond a reasonable doubt that the accused committed the act charged, and 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.”

Bush v. State, 895 So.2d at 843 (quoting Carr v. State, 208 So.2d at 889).

“A motion for a new trial challenges the weight of the evidence. A reversal is warranted only if the lower court abused its discretion in denying a motion for a new trial.” Howell v. State, 860 So.2d 704, 764 (Miss. 2003) (citing Edwards v. State, 800 So.2d 454, 464 (Miss. 2001)). See also Sheffield v. State, 749 So.2d 123, 127 (Miss. 1999). “A greater quantum of evidence favoring the state is necessary for the State to withstand a motion for a new trial, as distinguished from a motion for J.N.O.V.” Pharr v. State, 465 So.2d 294, 302 (Miss. 1984).

When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable justice.

Bush, 895 So.2d at 843 (citing Herring v. State, 691 So.2d 948, 957 (Miss. 1997)).

See also Sheffield, 749 So.2d at 127.

A review of the State's credible evidence on each element of the crime of armed robbery reveals the following. Elements of the offense of armed robbery are: the felonious taking from a person or their presence the personal property of another against their 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. Miss. Code Ann. § 97-3-79 (Miss. 1972). See also Thomas v. State, 754 So.2d 579 (Miss. Ct. App. 2000). An analysis of the credible evidence taken in the light most favorable to the State can be said to establish (1) felonious taking; (2) that the taking was from the presence of a person, a casino employee; (3) That the personal property was the personal property of the Isle of Capri of Casino; (4) That the taking was against the will of the Isle of Capri. It can be argued that Appellee met its burden of proof on the foregoing four elements. The State's burden of proof in its case-in-chief requires that each element of the offense be proven beyond a reasonable doubt. When the directed verdict motion is made at the close of the State's case-in-chief, the trial judge must determine whether a hypothetical juror could find beyond a reasonable doubt that the defendant is guilty. Appellant avers that Appellee failed to meet its burden of proof on the charge of armed robbery as an accessory before the fact or while aiding and abetting others. Therefore, the Court committed reversible error in denying

Appellant's Motion for a Directed Verdict. An analysis of the credible evidence before the trial court, at the directed verdict point, requires that one look at the evidentiary facts established by the State.

No one saw Appellant enter or leave the casino. Co-Defendant Douglass never saw Appellant enter the Casino; he only assumed that he did. According to Douglass when Richardson and Appellant returned to the vehicle it was Richardson who yelled for Douglass to drive away from the Casino and then drive to Arkansas. Appellant did not say anything. It was Douglass who pulled a gun and ordered Harris not to stop for the police. No one saw Appellant inside the Casino and Appellee failed to present any physical evidence tying Appellant to the Casino robbery. When the blue Oldsmobile wrecked following the chase by Helena Police Officer Robert Ferguson no one saw Appellant flee from the scene. Appellant, unlike his Co-Defendants, was not caught at the scene of the wreck. Appellee failed to produce any evidence that Appellant directly participated in the planning of the Casino robbery. Co-Defendant Douglass testified that he drove Richardson and Appellant to the Casino to cash a check.

The facts in this case are similar to the facts in Lewis v. State, 573 So.2d 719 (Miss. 1990). Lewis and his Co-Defendant were both convicted of felony shoplifting for stealing merchandise in a Wal-Mart store. Lewis, like Appellant, was indicted as a principle and not as an accessory after the fact. Lewis, again like Appellant, was never seen inside the store and the only evidence to connect Lewis to the events prior to the crime was the fact that he rode to the store with his Co-Defendant.

The Supreme Court of Mississippi held that:

There is no evidence that he knew that the shoplifting episode was taking place nor that it was planned.” There is no evidence that he was aware that either Wimberly (Co-Defendant) or Wimberly’s mother was involved in such an episode. The record shows that he did ride with Anthony Wimberly when they left the Wal-Mart store, and that Wimberly was driving at a high rate of speed.... While we understand that Lewis’ presence and his conduct following the episode at Wal-Mart casts strong suspicion upon him, we are constrained to say that a reasonable juror, properly understanding the responsibilities of that office could not, under the facts disclosed in this record, have found Lewis guilty beyond a reasonable doubt.

Lewis, 573 So.2d at 723.

In challenging the insufficiency of the evidence with a Motion for JNOV, Appellant again argues that the evidence fails to prove one or more elements of the crime. This Court has said that appellate review of the sufficiency of evidence requests that all evidence be taken in the light most favorable to the State including all reasonable inferences. Holloman v. State, 656 So.2d 1134, 1142 (Miss. 1995).

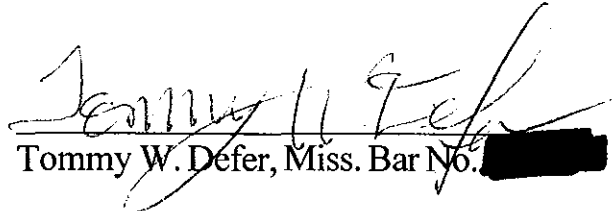
Based upon the foregoing arguments and cited authorities, the trial court abused its discretion in denying Appellant's motion for a J.N.O.V. and a new trial. The denial of Appellant's motion for a J.N.O.V. and a new trial denied him due process of law and a fundamentally fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article Three Sections Fourteen and Twenty-Six of the Mississippi Constitution of 1890. Appellant's conviction should accordingly be reversed and rendered based upon insufficient evidence. Moore v. State, 755 So.2d 1276, 1280 (Miss. Ct. App. 2000). Reversals based upon a finding that the evidence is insufficient to support the verdict are rendered and not remanded. Id. In the alternative, Appellant's conviction should be reversed and remanded for a new trial on the basis the verdict was against the overwhelming weight of the evidence. Id. Reversals based upon a finding that the verdict is against the overwhelming weight of the evidence results in a remand for a new trial. Id.

CONCLUSION

For the foregoing reasons and authorities, Appellant's conviction and sentence should be reversed and rendered or in the alternative a new trial should be ordered.

Respectfully submitted,

This the 9th day of August 2007.

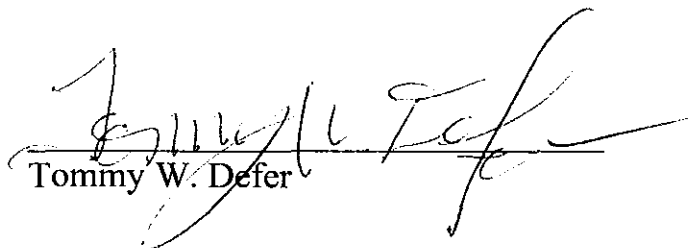

Tommy W. Defer, Miss. Bar No. [REDACTED]

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CERTIFICATE OF SERVICE

I, Tommy W. Defer, Counsel for the Appellant, do hereby certify that I have this day mailed with postage prepaid a true and correct copy of the foregoing *Appellant's Brief* to Hon. Jim Hood, Attorney General of Mississippi, Hon. Albert B. Smith, Circuit Court Judge, and Hon. Laurence Y. Mellon, District Attorney, at their usual business mailing addresses.

This the 9th day of August 2007.


Tommy W. Defer