

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**SCOTTY B. LYLES**

**APPELLANT**

**FILED**

**AUG 13 2008**

**VS.**

**NO. 2007-KA-0994-COA**

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SUPREME COURT  
COURT OF APPEALS

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATE OF MISSISSIPPI**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

Scotty B. Lyles was convicted in the Oktibbeha County Circuit Court in violation of the Miss. Code Ann. Sec. 97-3-79, armed robbery. Following the amendment of his indictment to reflect his status as a habitual offender, Mr. Lyles was sentenced to a term of life imprisonment without the possibility of parole or probation. Mr. Lyles filed an appeal to which the State now replies.

## STATEMENT OF THE FACTS

At 10:33 a.m. on May 22, 2006, Scotty B. Lyles walked into the Tobacco Shed in Starkville, MS and told the clerk, Janice Kilgore, that he was robbing her. **T. 155.** He was wearing black pants, a black jacket, a black hat, and right before he walked in, he covered the lower half of his face. He came around the counter brandishing a large knife and proceeded to threaten her. Ms. Kilgore closed the cash drawer and ran outside screaming for help. The entire robbery was recorded from two different angles by the store's security cameras, and lasted only 26 seconds. (State's Exhibit 1, S-1). **T. 156.**

Ms. Kilgore testified that she recognized the robber as a customer, but could not remember his name. **T. 174.** Two or three days later she was shown six photographs and she identified Mr. Lyles. **T. 162.** Donna Arnold and Mary Miles also saw Mr. Lyles leaving the Tobacco Shed. Ms. Arnold said she saw a tall, slender, black man whom she estimated was 20-30 years old. **T. 177-179.** Mary Miles only said that the person she saw was a tall, thin, dark-skinned man. **T. 278.** At the time of the robbery, Mr. Lyles was 40 years old, and his pen pack indicates that he is about 6'2", around 180lbs. Exhibit Pen Pack 2007-044-CR. He was also later identified on the surveillance camera video by Pricilia Logan, a Tobacco Shed employee, who had seen Mr. Lyles on a number of previous occasions when she worked at Great Oakes Cigarettes. **T. 190-192.** Mr. Lyles' stepdaughter, Alexandria Burchfield, and his wife, Novella Lyles, were also shown the surveillance video. Ms. Burchfield testified that she was 100% sure it was the Defendant, while Ms. Lyles said she was only 70-80% certain it was the Defendant, her husband. **T. 295, 247.**

Ms. Lyles also testified that on the day of the robbery, the Defendant was with her. She left home around 10 a.m., but there was some confusion at trial as to the time she went to the car wash.

She said it was after noon at one point and between 10 and 11 a.m. at another. **T. 234.** She testified that she left Mr. Lyles at the car wash to go across the street to the pawn shop for “5 maybe 10 minutes.” **T. 194.**

Finally, Officer Terry Scott found a black cap in Mr. Lyles’ car when he was arrested (State’s Exhibit 2, S-2). Ms. Kilgore testified that it looked the same as the hat worn during the robbery, and Ms. Lyles testified that she owned a similar hat. **T. 160, 240.**

## **ISSUES PRESENTED**

- I. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE**

## **SUMMARY OF THE ARGUMENT**

The verdict of guilty was proper and was not against the overwhelming weight of the evidence. The jury is the ultimate trier of fact and may judge the facts presented in whatever reasonable manner they choose. In this case, the evidence supported the jury's decision and it was not unconscionable injustice.



## ARGUMENT

### I. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

When reviewing a motion for a new trial based on an objection as to the weight of the evidence, the verdict will only be disturbed when it is “so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Bush v. State*, 895 So.2d 836, 844 (Miss.2005). The decision is up to the discretion of the court, and the power to grant a new trial should only be invoked in exceptional cases. *Amiker v. Drugs For Less, Inc.*, 796 So.2d 942, 947 (Miss. 2000).

The evidence should be viewed in a light most favorable to the verdict, but unlike a reversal for insufficient evidence, acquittal does not have to be the only proper verdict. *McQueen v. State*, 423 So.2d 800, 803 (Miss. 1982). Thus in these situations the court must sit as a “thirteenth juror” and grant the motion only when the court so disagrees with the jury’s resolution of the conflicting evidence. *Bush* at 844.

Here there is enough evidence that a jury could have found the defendant guilty of armed robbery beyond a reasonable doubt. The jury sits as the fact-finder and determines the credibility of the witnesses and gives value to the weight of the evidence against the accused. *Moss v. State*, 977 So.2d 1201, 1215 (Miss. Ct. App. 2007) citing *Ward v. State*, 881 So.2d 316, 323 (Miss.Ct. App. 2004). The jury also has the right to believe a part of the witness’ testimony, disbelieve other parts, and arrive at the truth of what transpired. *Alexander v. State*, 171 So.2d 517 (Miss. 1965). While some of the evidence may be circumstantial, both sides were duly presented and it was up to the jury to weigh and measure the evidence to be able to make a decision. No other issues are presented in Mr. Lyles’ appeal.

There are many cases that have been appealed and examined under the “weight of the evidence” standard. While there is no fact pattern identical to this case there are numerous examples of the court’s unwillingness to overturn a jury’s verdict for simple contradictions of testimonies and facts. In *Whittington v. State*, 377 So.2d 927 (Miss. 1979) the victim of a shooting identified the shooter, but the two other witnesses only recognized that the shooter’s car was like the one the defendant normally drove. Despite photos of the crime scene demonstrating the improbability that the victim could have seen his assailant, the court found that the jury simply believed the State and not the defendant. *Id* at 929. Similarly, in *Vickers v. State*, 323 So.2d 743 (Miss. 1975) a drug store was robbed at gunpoint by three men in stocking masks. The defendant was identified by one of the store clerks even though the clerk only got close enough to hand him the “loot” and his testimony contradicted a previous statement. The court determined that, though questionable, the evidence was sufficient as the jury was properly presented with both the “strengths and the weaknesses” of the evidence. *Id*. With all the evidence needed to reach a verdict, the jury in Mr. Lyles’ case just believed the State rather than the Defendant.

The store clerk working on the day of the robbery, Ms. Kilgore, identified Mr. Lyles in a photo lineup, in court, and on surveillance video from the store. At trial and on appeal the Defendant questions whether the clerk, Ms. Kilgore, picked him in a lineup because of the robbery or because they lived close together and saw each other on occasion. Though the Defendant claims that this hurt her credibility, a juror is clearly able to assign credibility to a witness if they so choose. A reasonable person could feel that Ms. Kilgore was better able to identify Mr. Lyles because she had seen him before; perhaps when she saw his eyes she was later able to identify the rest of his face because of her previous experience. In addition to the photo lineup, she also testified that the hat admitted as State’s Exhibit 2 (S-2) was the same as the hat the Defendant was wearing during the robbery. T.

**160.** The jury is capable of deciding for itself whether Ms. Kilgore was able to identify Mr. Lyles.

Pricilia Logan also testified that she recognized Mr. Lyles on the surveillance video admitted as State's Exhibit 1 (S-1). She had seen him on a number of previous occasions and immediately recognized him as the robber. **T. 191.** Also, while the video may never have offered a perfectly clear view of Mr. Lyles' face, the jury could take Ms. Logan's testimony or, after seeing Mr. Lyles in court for two days, they could make their own determination of whether the face, body, and mannerisms of the man in the video were the same as the Defendant.

Mr. Lyles' wife testified that on the morning of the robbery, the Defendant was with her or within sight the entire time. However, just because an alibi was presented, it does not mean that the jury had to assign any weight or credibility to it over the State's witnesses. There are numerous problems with Ms. Lyles' testimony. To begin, there seems to be some confusion as to what time she was even at the car wash next to the Tobacco Shed. She testified that she left the house at 10 a.m., but she also said she didn't go to the car wash with Mr. Lyles until after noon. **T. 232-234.** The robbery took place around 10:30 a.m.. **T. 155.** However, even if she had gone to the car wash between 10 and 11 that morning, the Defendant was alone next to the Tobacco Shed for "5 maybe 10 minutes" while she went across the street. **T. 233.** In addition to the alibi testimony, Ms. Lyles also testified that she was 70-80% sure that it was Mr. Lyles on the surveillance tape, and she also claimed to have a hat similar to the one worn in the robbery. **T. 247, 238, 240.** The jury heard all of this evidence and was capable of deciding whether there was some bias in her testimony, whether her alibi was sound, or whether her prior statement of identification was sufficient.

The last identification came from the Defendant's stepdaughter, Alexandria Burchfield, who testified that she was 100% sure that it was her stepfather on the tape. **T.298.** Though, Ms.

Burchfield testified that she didn't like her stepfather, the jury already had other identifications and may have either considered the testimony with some degree of skepticism or ignored the testimony altogether.

The only questionable identifications raised by Mr. Lyles were of Donna Arnold and Mary Miles who saw the Defendant fleeing the scene. Ms. Arnold thought the person she saw running was a younger man and Ms. Miles thought the man she saw had a darker complexion. **T. 278.** However, the jury could have easily found that neither of these witnesses had a full view of the Defendant since he had a mask pulled over part of his face and a hat pulled down low. Both women did testify that he was tall and slender.

When looking at the facts presented at trial, it is clear that there were strengths and weaknesses to the State's case, and perhaps if the jury had completely believed Ms. Lyles' testimony then Mr. Lyles would have been acquitted. However, the jury is the ultimate trier of fact and made their own determinations as to who was credible and who wasn't. There was enough evidence to convict the Defendant of the crime of armed robbery, and the verdict was not against the overwhelming weight of the evidence.

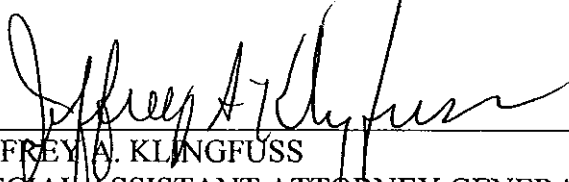
## CONCLUSION


There was sufficient evidence to support a guilty verdict against Mr. Scotty B. Lyles. The evidence was properly presented and the verdict was not so against the overwhelming weight of the evidence as to be unconscionable justice. Therefore, the guilty verdict of the jury in the Oktibbeha County Circuit Court under Miss. Code Ann. Sec. 97-3-79 should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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:

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