

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

**COPY**

**SCOTTY B. LYLES**

**APPELLANT**

**V.**

**FILED**

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

**JUL 24 2008**

**STATE OF MISSISSIPPI**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**NO ORAL ARGUMENT REQUESTED**

**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**SCOTTY B. LYLES**

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**V.**

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

**STATE OF MISSISSIPPI**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.


1. State of Mississippi
2. Scotty B. Lyles, Appellant
3. Honorable Forrest Allgood, District Attorney
4. Honorable James T. Kitchens, Jr., Circuit Court Judge

This the 24<sup>th</sup> day of July, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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## STATEMENT OF THE CASE

Scotty B. Lyles was convicted in the Oktibbeha County Circuit Court, James T. Kitchens, Jr., in violation of Miss. Code Ann. Sec. 97-3-79 for the crime of armed robbery. After his indictment was amended to reflect the habitual offender status, Lyles was sentenced to serve a term of life imprisonment in the Mississippi Department of Corrections without the possibility of parole or probation. Feeling aggrieved, Lyles files his appeal.

## STATEMENT OF THE FACTS

For three years, Janice Kilgore was employed as manager of Tobacco Shed. On May 22, 2006, a man walked in the store and pulled a mask over his face. He came up to her and told her that he was robbing her. **T. 155.** He came around the counter and showed her the knife and told her he was going to cut her. Kilgore shut the drawer to the cash register and went outside and started screaming for help. The store had a security camera recording the actual transaction of the robbery. **T. 156.** Kilgore could not give the police a name for the robber, but said he was a customer and if she saw him again she would know him. **T. 173-174.** Two to three days later she identified Lyles from six photographs the police provided for her to review. **T. 162.**

During cross-examination by pro se Scotty Lyles, Kilgore stated that she saw the robber when he came in the door and passed the cigarette stand. After he covered his face, she did not see his face again. **T. 168.** Lyles questioned her about the scar on his forehead and Kilgore stated that she did not recognize the scar on his forehead because she was not looking for details. However, she was sure it was him. **T. 170.**

The next witness called by the state was Donna Arnold who testified that she saw a young guy twenty or thirty years old. He was tall, black and slender dressed in all black leaving the store

trotting. **T. 177-179.** In response to the state asking her whether the description of the person she saw that day could have been the age, build and height of Lyles, her only response was, “he was about that height.” **T. 179.**

Officer Terry Scott identified a black cap found in Lyles’ car. It was admitted in evidence as State’s Exhibit 4. **T. 182-183.**

Pricilia Logan, worked the counter for Tobacco Shed. She was off the day of the robbery and when she returned three days later, she viewed the video at the request of her employer to see if she recognized the person that robbed Tobacco Shed. **T. 192.** She identified Lyles as the person who robbed Tobacco Shed. Logan knew Lyles because he used to come in Great Oakes Cigarettes, where she worked, to cash his paycheck. **T. 190.** The state rested after Logan’s testimony.

Lyles called several witnesses including his wife Novella Lyles. Mrs. Lyles testified that the day of the robbery she and her husband were at the carwash right down from Tobacco Shed. Lyles had on peach-looking shorts, tan shirt and a red Sonic hat. **T. 233.** She went to the Army/Navy and pawn shop which is across the street from the carwash, to check on her lay-a-way. The owner of the shop was standing outside talking to two other people, so she talked to him outside and did not go inside. **T. 244.** She went back to the carwash and her husband had on the same clothing vacuuming out the back seat area. She said Lyles did not own a black hat, black pants or black jogging pants. **T. 235.** When shown the video in court she said she could not identify the person because it was not a clear enough shot. The clothing the man had own were not her husbands. **T. 236 and 241.** She also said as far as she knew her husband did not own a pair of shoes like the ones the robber had own in the video. **T. 237.** She further testified that the hat taken by the police out of her car belonged to her. **T. 240-41.** Mrs. Lyles testified that she may have told the police that she was 70 to 80 percent

sure it was Scotty Lyles in the video the day they interviewed her. **T. 247.** However, she testified that she honestly couldn't tell by looking at the video that it was him. She said it was a possibility that she had been drinking later that afternoon after the robbery when she talked to the police. **T. 248- 249.**

Mary Miles testified that the person who robbed the store ran right by her. He was dark-skinned, tall and had on a black jogging jog with stripes and a baseball cap. Told Lyles that he was a little darker than you are. **T. 278.**

Lyles recalled his wife, Novella Lyles as his last witness to rebut how Kilgore knew who he was. She stated that witness Kilgore lives two houses down from their house. Mrs. Lyles said that she walks daily and passes Kilgore's house and they speak. Sometimes Scotty Lyles walks with her. On cross-examination she stated that because they pass her house while walking, Kilgore would know Lyles' face and would be able to recognize him regardless as to whether she knew his name. **T. 291.**

On rebuttal, the only witness called by the state was Alexandria Burchfield, the stepdaughter of Scotty Lyles. After the video of the robbery was played, Burchfield testified that she was 100 percent sure it was Scotty Lyles. **T. 295.** She also testified that she told the officer that she did not like Scotty. **T. 297.**

## STATEMENT OF THE ISSUES

### I. WHETHER THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

#### SUMMARY OF THE ARGUMENT

##### I. WEIGHT OF THE EVIDENCE.

The jury's guilty verdict is against the overwhelming weight of the evidence.

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 injustice. Bush v. State, 895 So.2d 836, 844-45 (Miss. 2005)( citing Herring v. State, 691 So.2d 948, 957 (Miss. 1997). We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. Amiker v. Drugs For Less, Inc., 796 So.2d 942, 947 (Miss. 2000). However, the evidence should be weighed in the light most favorable to the verdict. Bush v. State, 895 So.2d at 844 citing Herring v. State, 691 So.2d at 957. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, “unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict.” Bush v. State, 895 So.2d at 844 citing McQueen v. State, 423 So.2d 800, 803 (Miss. 1982). Rather, as the “thirteenth juror,” the court simply disagrees with the jury’s resolution of the conflicting testimony. Id. This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. Id. Instead the proper remedy is to grant a new trial.



In the present case, the juror's resolution of the conflicting testimony should have been different. Despite Kilgore's testimony that she knew Lyles because he had been a customer in Tobacco Shed, the state failed to offer rebuttal to Mrs. Lyles' testimony that Kilgore knew Lyles from his being a neighbor and passing her house while walking with his wife during her daily walk. There was no rebuttal to her being mistaken as to how she actually knew him. Therefore, the question of her being a credible witness arises. The implications are strong that she could have been confused with how she knew him and just picked him from the photo line up because she knew Lyles from his passing her house while walking with his wife.

The next witness, Donna Arnold describes a person who was 20 or 30 years old. She says he was a young guy, he wasn't an old man. **T. 178-179.** During redirect, in response to the question as to whether the age, build and height of the person she saw could fit the description of Lyles, her response was only that he was about Lyles' height. Lyles' date of birth is December 2, 1966.<sup>1</sup> The date of trial was April 30, 2007, making Lyles forty (40) years old on that date.

Logan identified Lyles as the robber after reviewing the tape. She said she could see his face in the video and knew him from his coming in the store cashing his paychecks. **T. 194.** However, it is questionable whether the video was clear enough to identify Lyles on it.

Ms. Lyles had an alibi for her husband who she testified was either with her or right where she could see him while she was at the pawn shop the entire time the robbery was taking place. Even though she had said that she might have previously told the police she was 80 percent sure the person in the video was her husband, she said, "honest truth", she couldn't tell who was in the video. **T. 246.** She says she told the police the same thing that she could not identify the person from the ear

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<sup>1</sup> Exhibit Pen Pack 2007-044-CR

## CERTIFICATE OF SERVICE

I, Brenda Jackson Patterson, Counsel for Scotty B. Lyles, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
100 North Lafayette, Suite 3  
Columbus, MS 39703

Honorable Forrest Allgood  
District Attorney, District 16  
Post Office Box 1044  
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Honorable Jim Hood  
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This the 24<sup>TH</sup> day of July, 2008.

  
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