IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JASON C. JOHNSON — APPELLANT

VS. — NO. 2008-KA-0576

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VERSUS **NO. 2008-KA-0576-COA**

STATE OF MISSISSIPPI **APPELLEE**

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STATEMENT OF THE CASE

Procedural History

On grand jury empaneled in the Circuit Court of Rankin County returned an indictment charging Jason C. Johnson with one count of armed robbery (Count I), one count of aggravated assault (Count II), and one count of shooting into a dwelling (Count III). He was acquitted on Counts I and II but convicted on Count II. Thereafter the court sentenced him to a term of ten years in the custody of the Mississippi Department of Corrections and was ordered to pay a fine of $10,000 and court costs. (C.P.6, 56-57) Aggrieved by the judgment rendered against him, Johnson has perfected an appeal to this Court.

Substantive Facts

Late in the afternoon of May 22, 2005, Kenkalelus "Ken" Aldridge was returning his two-year-old twins to their mother's house after they had spent the weekend with him. Their mother, Tyana Taylor (hereinafter "Tyana"), lived in a trailer on Lawrence Road in Rankin County with her children as well as her grandmother, mother and brother. Mr. Aldridge carried his sleeping children one by one into the house. When he came back outside, he saw a brown car occupied by "three guys," one of whom was Tyana's son Sergio Watson. Watson "ran up" to Mr. Aldridge's car, essentially pinning him between the open door and the car. He then told Mr. Aldridge "to give it up," and "punched" him, knocking his hat off. While Mr. Aldridge put his hands up to defend himself, "another guy ran out with a bat and started hitting" him with it. At that point, Mr. Aldridge had Watson "kind of like ... in a head lock. .. And then the other guy came with the rifle, had the rifle aimed" at Mr. Aldridge's face. (T.79-83)

Mr. Aldridge went on to testify that the man wielding the rifle was Watson's brother, who was known as "Cook."[1] While the second man continued to swing the bat, Mr. Aldridge was relieved of his hat, car keys, and $84 or $88 in cash from his pocket. Ultimately, the gun "went off" twice. Mr. Aldridge heard his children's grandmother, Jennifer Stokes, saying, "Don't shoot.." Mr. Aldridge "was continuing to struggle, trying to avoid getting shot., ... using the other guy as kind of a shield to block the gun." After Ms. Stokes appeared, the three assailants "got in their car" and departed. "Somebody found" the car keys on the ground, but the money and the hat were not recovered. (T.83-85, 106)

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[1]Mr. Aldridge identified "Cook" as the defendant, Jason Johnson. (T.86-87)

Ms. Stokes invited Mr. Aldridge to come back into the house to wait for the police. After the officers arrived, Mr. Aldridge told them what had happened. He then went to the hospital for evaluation and treatment of his injuries from the bat. He "was off work for like maybe two or three weeks" and took medication for pain and swelling. (T.85-88)

Deputy Raymond Duke was advised of a report of "a trespassing with shots fired at a property on Lawrence Road." When he arrived at the scene, he spoke first with Mr. Aldridge, who told him that "he had been physically assaulted, robbed, and shots were fired, actually fired into a residence." Deputy Duke saw an abrasion on Mr. Aldridge's cheek and observed that the windshield of his car had been "busted out." Mr. Aldridge told Deputy Duke that this damage had been inflicted by a baseball bat and that he had been robbed of "his ball cap and eighty dollars in cash." Deputy Duke went on to talk with "Mr. Aldridge's ex-girlfriend, the mother of his children"; her sister, and their mother. These three witnesses gave statements consistent with what Mr. Aldridge had reported. "They advised that Cook, Jason Johnson, had the firearm." (T.108-11) When the district attorney asked whether he had seen "anything on the scene" to indicate "that shots had been fired," Deputy Duke testified as follows:

> Yes, sir. The grandmother was actually standing in the doorway when the assault occurred, and advised that a round had struck the trailer. And I did locate, just to the right of the door, about halfway, the middle height of the door, what appeared to be a projectile entry into the side of the trailer.
>
> (T.112)

Deputy Duke also "located one spent .22 cartridge ... [i]n front of the trailer and toward the right of the trailer, where the car was." (T.112)

Deputy Tim Lawless testified that he had personally observed the hole in the trailer which had been identified by the witnesses and was depicted in the photographic evidence. (T.126)

Thereafter, Deputy Lawless conducted two interviews of Johnson. During the first, Johnson told him that he, Watson and Marcus Devine had gone to the trailer "to buy some marijuana," and that when they arrived, they decided they were going to take drugs and money from the victim." (T.138)

Regarding the second interview, the district attorney conducted a line of questioning set out below in pertinent part:

> Q. What statements if any did the defendant make to you in reagrd to the events that would have occurred on May 22nd, 2005?
>
> * * * * * *
>
> A. I went ahead and asked him basically did he know why he was present and why he had been arrested, and he stated he did. And I asked him, I said, well, based on my investigation and talking with witnesses, and my victim, and obtaining a written statement from my victim, I told him that there's some accusations that him and two other co-defendants had robbed a gentleman, and he had pointed a firearm at the gentleman and fired at him.
>
> Q. What if anything did he tell you that his involvement was in these crimes?
>
> A. Mr. Johnson told me that he didn't own a gun, he's never owned a gun. And that by him not owning a gun and never possessing a gun, he didn't shoot anybody, or shoot at anybody. He did, however, state that him and the two co-defendants did go down with the plans of robbing the victim, Mr. Ken Aldridge.
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> * * * * * *
>
> Q. Did this defendant make any statements to you about whether or not a gun was used in this robbery?
>
> A. Yes, sir, he did.
>
> Q. What statements [did] he make to you regarding that firearm and who possessed that firearm?

A. Mr. Johnson told me that Marcus Devine, one of the other co-defendants that was present with him, is the gentleman who possessed the gun, pointed it at the victim and fired.

Q. Officer Lawless, based on the witnesses you have spoken to, do any other witnesses say that Mr. Marcus Devine had the gun?

A. No, none of the other witnesses implicated Mr. Devine as being the gentleman possessing or shooting the gun.

(T.143-45)

Jennifer Stokes, grandmother of Mr. Aldridge's twins, recounted the key events as follows:

Well, a loud noise woke me up because I had worked that night, and I was resting, and noise woke me up. So when I went outside, that's when Ken's, his car, his door was open, and Sergio had him like straddled the door, you know, and they was tussling. And Cook had a gun, which is Jason; he had a gun. And I told him, don't shoot that gun. And he still shot, but he missed Ken, and he hit our trailer. And my mom and my grand babies was standing in that door when that bullet hit.

* * * * * *

He was pointing, I was screaming. I was telling him to stop, and he still shot that gun.

(T.157-58)

Ms. Stokes maintained that Johnson had shot twice, and that one bullet hit the trailer near the door. She identified the hole caused by the bullet. After she announced that she was going to call the police, the trio departed. (T.158-59, 166)

Johnson testified that on May 22, Mr. Aldridge phoned him and asked to speak to Watson. After Mr. Aldridge "put the phone on speaker," Johnson heard him tell Watson that he

was returning his children to their mother and ask him "did he need anything ..." _Watson asked him to bring "about a hundred dollars worth" of marijuana. Using his sister's car, Johnson drove Watson and Devine to the house on Lawrence Road. Watson and Mr. Aldridge initially had a friendly conversation, but a few minutes later, they began "fighting." Mr. Aldridge "ran to his car and grabbed a gun." Devine hit Mr. Aldridge with a bat to try to get him to drop the weapon. When the gun fell onto the ground, Johnson picked it up and tried to remove the clip. When Mr. Aldridge "snatched" the gun, one shot was fired accidentally. (T.181-87)

SUMMARY OF THE ARGUMENT

Johnson's specific challenge to the sufficiency of the evidence was not presented below and cannot be considered for the first time on appeal. Alternatively, the state submits the proof is legally sufficient to sustain the verdict. Moreover, the verdict is not contrary to the overwhelming weight of the evidence.

PROPOSITION ONE:

JOHNSON'S CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE UNDERGIRDING HIS CONVICTION SHOULD BE DENIED

At the close of the state's case, the defense moved for a directed verdict, arguing in pertinent part that the state's proof failed to establish that a bullet had actually hit the trailer. (T.169-70) Citing *May v. State*, 569 So.2d 1188 (Miss.1990), the assistant district attorney countered that the proof made it "abundantly clear" that the defendant had discharged the weapon and that the shot struck the residence, and that it was not necessary to show that the bullet actually penetrated the residence. Aptly summarizing the holding of *May*, the prosecutor stated, "I think the law is clear ... that all we have to show is that the projectile was fired and that it struck the dwelling and that it entered the exterior of the dwelling." (T.172)

For the first time on appeal, Johnson argues the state's proof is deficient with respect to his intent to fire a weapon into a dwelling. The state counters that "[a] motion for a directed verdict on the grounds that the state has failed to make out a prima facie case must state specifically wherein the state has failed to make out a prima facie case." *Banks v. State*, 394 So.2d 875, 877 (Miss.1981). Because this specific ground was never presented below, it cannot be raised for the first time on appeal. *Foster v. State*, 928 So.2d 873, 881 (Miss.2005); *Davis v. State*, 866 So.2d 1107, 1113 (Miss.App.2003); *Harrison v. State*, 534 So.2d 175, 181 (Miss.1988); *Christian v. State*, 456 So.2d 729, 734 (Miss.1984); Accord, *Riley v. State*, ___ So.2d ___ 2008 WL 2169700 (Miss.App.); *Moore v. State*, 958 So.2d 824, 831 (Miss.2007). The state respectfully submits that because Johnson did not bring this first specific challenge to the attention of the trial court, he cannot be heard to do so at this juncture.

Solely in the alternative, we submit the prosecution presented sufficient proof that Johnson shot a firearm into a dwelling house within the meaning of MISS.CODE ANN. § 97-37-29 (1972).[2] Taken in the light most favorable to the verdict,[3] the proof shows that Johnson

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[2]That statute makes criminal the willfull and unlawful shooting into a dwelling. Neither the statute nor the cases interpreting it require a showing of specific intent.

[3]Johnson's challenge to the legal sufficiency of the evidence is subject to the following formidable standard of review:

> When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a

willfully fired the weapon in the direction of the dwelling and that the trailer was actually struck by a bullet. While the state's proof shows that Johnson was aiming at Mr. Aldridge, it is undisputed that Mr. Aldridge was standing in front of the dwelling. It is axiomatic that a person intends the natural and reasonable consequences of his own voluntary acts. See *Stegall v. State*, 765 So.2d 606, 610 (Miss.App.2000). A natural and reasonable consequence of Johnson's firing at Mr. Aldridge, under these circumstances, was that a projectile would strike the dwelling, which is exactly what happened.

While we submit the prosecution presented sufficient proof of Johnson's intent, the state reiterates that this particular challenge was not raised below and should not be considered for the first time on appeal. Johnson's first proposition should be denied.

> reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.
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> *Manning v. State*, 735 So.2d 323, 333 (Miss.1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

PROPOSITION TWO:

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

Johnson contends additionally that he is entitled to a new trial because the verdict is contrary to the overwhelming weight of the evidence. To prevail, he must satisfy following rigorous standard of review:

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

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]

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial credible evidence of Johnson's guilt of shooting into a dwelling. The state presented proof that he willfully shot a weapon into the trailer. Johnson's testimony to the contrary created a straight issue of fact which was properly resolved by the jury. No basis exists for disturbing the jury's verdict. Johnson's second proposition should be denied.

CONCLUSION

The state respectfully submits that the arguments presented by Johnson have no merit. Accordingly, the judgment rendered against should be affirmed.

Respectfully submitted,

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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:

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