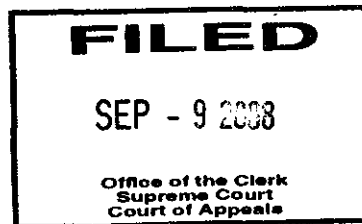


**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**JEFFREY HOLMAN**

**APPELLANT**

**VS.**



**NO. 2008-KA-0611**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

- I. THE TRIAL JUDGE PROPERLY DENIED THE APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT.
- II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

**STATEMENT OF THE FACTS**

On the evening of November 10, 2007, George Dotson told the Appellant, Jeffrey Holman, that he needed to make some money. (Transcript p. 91). The two men subsequently got into Holman's car and headed into town. (Transcript p. 93). Dotson got Holman's pistol and Holman dropped him off down the road from Ella's Country Store. (Transcript p. 93). Dotson walked to the side of the store and waved at Holman to come on in. (Transcript p. 112). Holman pulled up at the store and went inside. (Transcript p. 94). Holman casually walked over to the candy rack, picked

up some candy, and spoke with the cashier. (Transcript p. 67). Dotson fixed his hood over his head and burst into the store. (Transcript p. 94). He pointed Holman's gun at the cashier and demanded money. (Transcript p. 67 and 94). During this time, Holman simply backed out of the way. (Transcript p. 67). Dotson then took off out of the store. (Transcript p. 68). Holman shortly followed, got into his car and headed in the same direction that Dotson ran. (Transcript p. 113).

Holman picked Dotson up from the same spot where he dropped him off and Dotson gave him \$160 of the money stolen from the store. (Transcript p. 96). Holman drove Dotson to his house and then left to hide the gun and gamble the money he received from the robbery. (Transcript p. 147, 148, 150, 151, and 166 - 168).

Holman was later arrested and tried for armed robbery. He was convicted and sentenced to serve twenty-two years in the custody of the Mississippi Department of Corrections.

### **SUMMARY OF THE ARGUMENT**

There is more than sufficient evidence to establish that the Appellant aided in the commission of the crime of armed robbery. As Mississippi law is clear that one who aids in the commission of a crime is equally guilty with the principal offender, the trial court properly denied the Appellant's Motion for Judgment Notwithstanding the Verdict. Furthermore, the verdict was not against the overwhelming weight of the evidence.

### **ARGUMENT**

#### **I. THE TRIAL JUDGE PROPERLY DENIED THE APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT.**

Holman first argues that "the trial court erred in failing to grant Holman's motion for judgment notwithstanding the verdict as the evidence was not sufficient to support a conviction of armed robbery." (Appellant's Brief p. 7). The Court of Appeals has previously noted that "[w]hen

on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, [the court's] authority to interfere with the jury's verdict is quite limited." *Phinisee v. State*, 864 So.2d 988, 992 (Miss. Ct. App. 2004) (*emphasis added*). The evidence which is consistent with the verdict must be accepted as true. *Lee v. State*, 469 So.2d 1225, 1229-30 (Miss.1985) (citing *Williams v. State*, 463 So.2d 1064, 1067 (Miss.1984); *Spikes v. State*, 302 So.2d 250, 251 (Miss.1974)). The State must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* (citing *Glass v. State*, 278 So.2d 384, 386 (Miss.1973)). Basically, "once the jury has returned a verdict of guilty in a criminal case, [the court is] not at liberty to direct that the defendant be discharged short of a conclusion on [its] part that the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty." *Id.* (citing *Fairchild v. State*, 459 So.2d 793, 798 (Miss.1984); *Pearson v. State*, 428 So.2d 1361, 1364 (Miss.1983)) (*emphasis added*). With this standard in mind, there is sufficient evidence in the case at hand to prove each and every required element of armed robbery.

Mississippi Code Annotated §97-3-79 states that "[e]very person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his 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 shall be guilty of robbery. . ." In the case at hand, Holman did not actually take the personal property of another nor did he exhibit a deadly weapon; however, Mississippi law is clear that one who aids in the commission of a criminal offense is equally guilty with the principal offender. This concept is set forth in detail in *McCuiston v. State*, which holds:

Mississippi Code Annotated Section 97-1-3 (Rev. 2000) encompasses both accessory before the fact and aiding and abetting and states that "[e]very person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be indicted as such; and this whether the principal has been previously convicted or not." Our Mississippi Supreme Court defined aiding and

abetting in *Hoops v. State*, 681 So.2d 521, 533 (Miss. 1996) and held that any individual who is present during the commission of a crime and aids, counsels, or encourages another in the execution of that offense is an “aider and abettor” and is as guilty as the principal offender. This Court has held that there is no difference between an aider and abettor and accessory before the fact of the commission of a crime in terms of criminal liability. *Walton v. State*, 752 So.2d 452 (¶16) (Miss. Ct. App. 1999). All are prosecutable as principals to the offense. *Id.*

791 So.2d 315, 317 (Miss. Ct. App. 2001). The evidence clearly establishes that Holman aided Dotson in the commission of this crime even when one looks at the evidence, not in the light most favorable to the State as the law requires, but instead in the light most favorable to Holman. Holman himself testified that when he stopped at the store he knew that Dotson planned to rob the store with Holman’s gun. (Transcript p. 143 - 145). Admittedly he testified that he only stopped because Holman pulled a gun on him; however, after dropping Dotson off to rob the store, Holman pulled up to the store and went inside, instead of going for help or calling the police. (Transcript p.145). While Holman claims that he went in to warn the cashier about the robbery, he did not go straight to the cashier to warn him even though he knew that Dotson was in the process of walking toward the store with his gun with plans to rob it. (Transcript p. 146 and 67). Instead, he went to the candy isle, picked himself out some candy, and then casually walked up to the cashier never mentioning the impending robbery. (Transcript p. 67 and 183). Additionally, Holman testified that after the robbery, he left the store and stopped to pick up Dotson from the side of the road and drove him home. (Transcript p. 147). Perhaps most damaging is the fact that he also testified that he accepted \$160 from the money stolen and gambled it away. (Transcript p. 148, 151, and 166 - 168). *See also* Exhibit S-4. Additionally, he admitted to hiding the gun used in the robbery. (Transcript p. 150). Clearly, even from Holman’s perspective, he is guilty.

Moreover, the evidence certainly establishes Holman’s guilt when looking at it, as the law requires, with the State being given the benefit of all favorable inferences that may reasonably be

drawn from the evidence. According to Dotson's testimony, Holman knew from the very beginning that the plan was to rob the store. (Transcript p. 91 - 93). Dotson also testified that Holman gave him his pistol to use in the robbery. (Transcript p. 93). Dotson further testified that he gave Holman \$160 from the money stolen and that he never threatened Holman. (Transcript p. 96). Furthermore, Officer Anderson, who testified that he could not believe Holman would be involved in this crime, testified that after viewing the video he thought Holman was involved. (Transcript p. 80 and 86). Moreover, Officer Blakely described what was seen on the video, in pertinent part, as follows:

... there is a camera on the outside of the store, as well as the video camera inside. When you are watching it, the first thing you observe from the outside camera, you see what appears to be an arm near the end of the building making a moving motion, like waiving somebody to come up that way. And just within seconds you see a set of headlights come up into the parking lot. And they drive passed the door of the store. And then you see a black male subject come into the door and walk up to the register. And almost simultaneously you see a person step out from the corner of the building where they - - what appeared to be the arm waving. You see a person step out there, put a hood over his head. And this person walks into the door, in from the outside, comes into the store and displays a firearm towards the clerk. When he - - the firearm is displayed, the first subject that came into the store just kind of stepped to the side, out of the way. The gentleman who was - - displayed the firearm never, never turned towards the, the other person in the store, never paid that person any mind. . . . Just within a matter of seconds you see the, the person who displayed the firearm, you see him leave the store. And then you see the other person that came in before him come up to the register. . . . Then you see him leave the store. And you see his vehicle on the video go out of the parking lot in the same direction that the subject that displayed the firearm. You see, see that they both left going out of the parking lot the same direction.

(Transcript p. 112 - 113). Thus, there is sufficient evidence to conclude that Holman aided in the commission of this crime. As the Court of Appeals noted in *McCuiston*, "one who buys into part of a crime buys into all of the crime." 791 So.2d at 317.

Nonetheless, in support of his argument, Holman specifically asserts that "the State failed to present sufficient evidence that Holman possessed the requisite mens rea for the offense of armed robbery of Ella's Country Store." (Appellant's Brief p. 8). Holman claims that he never had "any



plans, desire, or 'community of intent' to rob the store.” (Appellant’s Brief p. 8). However, Holman went into the store after dropping off Dotson, he picked up Dotson after he robbed the store and drove him home, he accepted \$160 of the cash stolen in the robbery and gambled it, and he hid the gun used in the robbery. Additionally, Dotson testified that Holman was in on the plan from the very beginning.

Accordingly, there was sufficient evidence to support the verdict. As such, the trial judge properly denied Holman’s Motion for Judgment Notwithstanding the Verdict.

## **II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Holman also argues that “the trial court erred in failing to grant [his] Motion for a New Trial as the verdict was against the overwhelming weight of the evidence.” (Appellant’s Brief p. 8). The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

[This 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. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an “unconscionable injustice.”

*Pierce v. State*, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86 (Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993).

In support of his argument that the evidence was against the overwhelming weight of the evidence, Holman argues that the quality of the surveillance tape was “grainy and shaky,” that “Holman’s cooperation with the police does not support the State’s theory that he acted in concert with Dotson,” and that Holman “had a good reputation in the neighborhood for being truthful and

nonviolent.” (Appellant’s Brief p. 9 - 10). When considering this issue, it is important to first note the well-established law of Mississippi that “the jury is the sole judge of the weight and credibility of the witnesses.” *Thomas v. State*, 754 So.2d 579, 582 (Miss. Ct. App. 2000) (citing *Miller v. State*, 634 So.2d 127, 129 (Miss.1994)). In fact this Court previously held that:

“[W]hen the evidence is conflicting, the jury will be the sole judge of the credibility of witnesses and the weight and worth of their conflicting testimony.” *Gathright v. State*, 380 So.2d 1276, 1278 (Miss.1980). “[When] there is substantial evidence consistent with the verdict, evidence which is of such weight and quality that, keeping the burden of proof of beyond a reasonable doubt in mind, ‘fair-minded [jurors] in the exercise of impartial judgment might reach different conclusions’, the jury’s verdict should be allowed to stand.” *Ashford v. State*, 583 So.2d 1279, 1281 (Miss.1991)(quoting *Butler v. State*, 544 So.2d 816, 819 (Miss.1989)).

*Sheffield v. State*, 749 So.2d 123, 127 (Miss. 1999).

With those standards in mind, it is important to note that the jury saw the same video the police officers saw and were able to form their own opinions about whether the video was evidence of Holman’s guilt or innocence. Moreover, while Holman did cooperate with police eventually, it was only after he accepted and gambled away the money he received from participating in the robbery and after he heard that police were looking for him. Perhaps he believed that since the police knew he was involved, that if he came to them and cooperated, they would be lenient with him. Many criminals do cooperate with police after the police find out about their involvement in a crime. This certainly does not prove that he did not willingly participate in the robbery. With regard to the character testimony, it is important to note that Officer Anderson, one of those people who testified that Holman had a good reputation, also testified that he believed that Holman was involved after seeing the surveillance video. There are sadly people with good reputations and with everything to lose who become involved in criminal activity. The fact that they, at one time, had a good reputation does not prove that they were not involved in the criminal activity. Furthermore,

it is the jury's function to determine whether they believed the testimony of those people who testified that Holman had a good reputation.

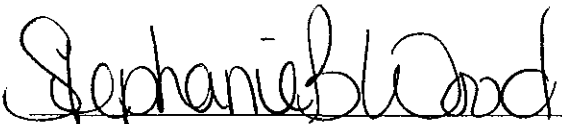

As such, it is clear that the verdict was not against the overwhelming weight of the evidence. Thus, the trial judge properly denied the Appellant's Motion for New Trial.

### CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Jeffrey Holman as there was sufficient evidence to support the verdict and as the verdict was not against the overwhelming weight of the evidence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:   
STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## CERTIFICATE OF SERVICE


I, Stephanie B. Wood, 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 Joseph H. Loper, Jr.  
Circuit Court Judge  
P. O. Box 616  
Ackerman, MS 39735

Honorable Doug Evans  
District Attorney  
P. O. Box 1262  
Grenada, MS 38902-1262

Erin E. Pridgen, Esquire  
Attorney At Law  
Mississippi Office of Indigent Appeals  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39201

This the 9th day of September, 2008.



STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680