

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAVORAS MOTEN

APPELLANT

VS.

NO. 2008-KA-0970

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO PROVE THE ALLEGATIONS SET FORTH IN THE INDICTMENT	2
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

STATE CASES

<i>Bush v. State</i> , 895 So.2d 836, 843(Miss. 2005)	4
<i>Lewis v. State</i> , 997 So.2d 1001, 1004 (Miss. Ct. App. 2009)	4
<i>McClain v. State</i> , 625 So.2d 774, 778 (Miss.1993)	4

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STATEMENT OF THE ISSUES

THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO PROVE THE ALLEGATIONS SET FORTH IN THE INDICTMENT.

STATEMENT OF THE FACTS

LaDonna Jenkins, a correctional officer at Walnut Grove Correctional Facility, was going from cell to cell picking up dinner trays on the evening of November 1, 2007. (Transcript p. 50). As Ms. Jenkins described, during this particular time, "everybody is locked down." (Transcript p. 50). Her job is to go to each cell, unlock the door, take the dinner tray, and lock the door back. (Transcript p. 50). On that particular evening, Ms. Jenkins unlocked the Appellant, Javoras Moten's cell. (Transcript p. 52). Moten then stepped outside his cell informing Ms. Jenkins that he was not locking down and that she should call someone. (Transcript p. 52). Moten would not allow Ms. Jenkins to secure his cell door. (Transcript p. 52). After her third or fourth attempt to secure the

door, she noticed that Moten had put an object in the door to prevent it from locking properly. (Transcript p. 53). As Ms. Jenkins attempted to remove the object, Moten swung at her hitting her in the chest area. (Transcript p. 53 - 54). The two then became involved in "a physical altercation." (Transcript p. 54). Ms. Jenkins testified that there were at least four or five punches or slaps during this altercation. (Transcript p. 55). She further testified that at some point during the altercation, she slipped, fell, and injured her knee. (Transcript p. 54). Moten ran back in his cell and Ms. Jenkins called for assistance. (Transcript p. 54).

Moten was indicted, tried, and convicted of simple assault of an employee of a private correctional facility. He was sentenced to serve four and one half years in the custody of the Mississippi Department of Corrections with said sentence to run consecutive to any prior sentence he was serving.

SUMMARY OF THE ARGUMENT

The trial judge properly denied Moten's motion for directed verdict as the evidence presented at trial sufficiently established the allegations of the indictment. The indictment charged that Ms. Jenkins suffered bodily injury as a result of Moten striking her with his fist and the testimony of Ms. Jenkins clearly illustrated that she suffered an injury to her knee as a result of Moten striking her with his fist.

ARGUMENT

THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO PROVE THE ALLEGATIONS SET FORTH IN THE INDICTMENT.

On appeal, Moten argues that "to support a conviction, an indictment must include all essential elements of the offense charged and the proof must conform to the indictment in all material particulars." (Appellant's Brief p. 3). The indictment in this case reads as follows:

. . . That Javoras Moten . . . on or about the 1st day of November in the year of our Lord, 2007 . . . did willfully, unlawfully, feloniously, purposely and knowingly cause bodily injury to LaDonna Jenkins, an employee of Walnut Grove Youth Correctional Facility, a private correctional facility, by striking the said LaDonna Jenkins with his fist, at a time when the said LaDonna Jenkins was acting within the scope of her employment with the Walnut Grove Youth Correctional Facility, contrary and in violation of Section 47-4-1, Miss. Code Ann. (1972), against the peace and dignity of the State of Mississippi.

(Record p. 2). Specifically, Moten claims that “the indictment did not charge Appellant expressly with simple assault but described an act which constitutes simple assault.” (Appellant’s Brief p. 4). He further claims that “it was undisputed that Appellant striking her with his fist did not cause any injury.” (Appellant’s Brief p. 4). Moten’s ultimate argument being that “because Appellant’s allegedly striking LaDonna Jenkins with his fist caused no injury, the proof failed to conform to the accusation in a material allegation and failed to prove that allegation of the indictment beyond a reasonable doubt.” (Appellant’s Brief p. 5).

However, this argument overlooks key testimony:

Q: Could you tell us specifically what happened.

A: Well, when I went to get the object out the door, he hit me.

Q: He hit you?

A: He hit me with his fist kind of like in my upper body.

Q: Okay.

A: I know I went back and then we got into a physical altercation.

* * *

Q: Okay. All in all, how many punches or slaps or anything?

A: Probably at least four or five back and forth.

Q: **Okay. You slipped down during the altercation.**

A: **I did.**

Q: **And did you sustain any serious injuries from it?**

A: **Nothing serious, just a bruise on my leg.**

* * *

Q: Okay. So you’re saying that he touched you first, right?

A: That’s correct.

* * *

Q: Now, he hit you the one time, right?

A: **He hit me more than once.**

* * *

- Q: Okay. But, again, him striking you didn't cause you any injury. Slipping on the carrots cause your injury. Right?
- A: Well, I'm not going to say that. **I feel like if I wasn't tussling with him, I wouldn't have fell.**

(Transcript p. 54 - 55, 58, and 62) (*emphasis added*). Quite simply the indictment charges that Ms. Jenkins suffered bodily injury as a result of Moten striking her with his fist. The testimony of Ms. Jenkins clearly establishes that she suffered an injury to her knee as a result of Moten striking her with his fist. Ms. Jenkins specifically testified that if she weren't "tussling" with Moten, she would not have fallen and therefore, would not have injured her knee.

Nonetheless, the Appellant argues that the proof did not conform to the indictment because "if there was anything Appellant did in their altercation that led directly or indirectly to [Ms. Jenkins] falling and bruising her knee or otherwise injuring herself, it was not his hitting her with his fist (something he denied he did)." (Appellant's Brief p. 5). However, as Ms. Jenkins testimony clearly shows, she fell and injured her knee as a result of the altercation with Moten which consisted of him hitting her multiple times with his fist. This is precisely what the indictment alleges.

As recently noted by this Court in *Lewis v. State*:

When reviewing a motion for a directed verdict, the Court looks to the sufficiency of the evidence. *Bush v. State*, 895 So.2d 836, 843(¶ 16) (Miss.2005). All of the evidence must be construed in the light most favorable to the prosecution. *Id.* "We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *McClain v. State*, 625 So.2d 774, 778 (Miss.1993)

997 So.2d 1001, 1004 (Miss. Ct. App. 2009). Viewing the evidence in the light most favorable to the State, it is clear that the State proved beyond a reasonable doubt every necessary allegation of the crime charged. Thus, the trial court properly denied Moten's motion for directed verdict.

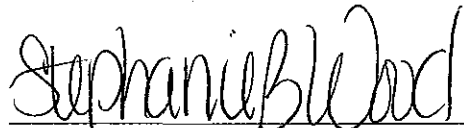
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Javoras Moten as there was sufficient evidence to prove the allegations set forth in the indictment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

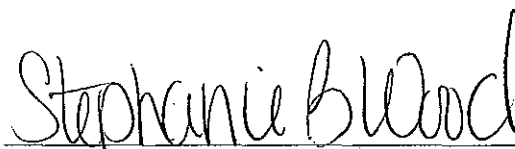
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 24th day of February, 2009.



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