

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DONALD RAY TOBIAS

APPELLANT

VS.

NO. 2008-KA-1687-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On January 31, 2008, Donald Ray Tobias, "Tobias" was tried for armed robbery before an Amite County Circuit Court jury, the Honorable Forrest A. Johnson presiding. R. 1. Tobias was found guilty. R. 135. He was given a thirteen-year sentence with ten years suspended with five years of supervision in the custody of the Mississippi Department of Corrections. R.138. After a hearing, Tobias' motion for a JNOV or a new trial was denied. C.P. 41-43; R. 144-145.

From that conviction, Tobias filed notice of appeal. C.P. 44-45.

ISSUE ON APPEAL

I.

**WAS THERE CREDIBLE, SUBSTANTIAL EVIDENCE IN
SUPPORT OF TOBIAS' CONVICTION?**

STATEMENT OF THE FACTS

On April 4, 2007, Tobias was indicted by an Amite County Grand jury for the armed robbery of Mr. Davis Bell on Thanksgiving day, November 23, 2006. C.P. 1.

On January 31, 2008, Tobias was tried for armed robbery before an Amite County Circuit Court jury, the Honorable Forrest A. Johnson presiding. R. 1. Tobias was represented by Mr. Gus Sermos. R. 1.

Mr. Davis Bell, who was seventy one years old at the time, went to his hunting club on Springhill Church Road. This was on Thanksgiving day, November 23rd, 2006. It was around 3:45 in the afternoon. Mr. Bell lived at 509 Lakeview Avenue in McComb. R. 25.

While registering his presence on a written form, he was suddenly attacked. The form was in a mail box near the highway

He was attacked from behind. Someone hit him on the shoulder with "a pipe." R. 28. Although stunned from receiving the blow from the pipe and other blows to his body, Bell testified that he was face to face with his assailant. Bell was struck in the head which started bleeding. He used his hand for protection which was also struck. Bell believed he was struck some eight times. R. 29.

Although the assailant had a hooded sweat shirt on, it did not cover his face. Bell testified to having "a good look" at his assailant's face. R. 30. He testified that "he was right in my face, you know, real close." R. 29.

Bell was eventually knocked or tripped to the ground. The assailant demanded his "billfold." R. 29. When Bell threw out his wallet, he heard the assailant say, "go, go, go" as he ran. Then Bell heard a door slam and a car drive off. R. 30.

Bell called for help from a neighbor. He was taken to the hospital. Bell received some

“seventeen stitches” to his head and needed medical assistance for broken bones in his hand.

While in the hospital receiving medical care, law enforcement took his statement. When presented with a five man photographic spread which included a photo of Tobias, Bell picked out Tobias’ photo. He testified to having no difficulty in picking out his photograph. R. 37.

Mr. Bell identified Tobias in the court room. R. 30. He did not have any doubt that this was the man who attacked him on Thanksgiving day, 2006. R. 30.

While Bell wears glasses, he does so when he is reading and writing. R. 48. He sees well enough not to require glasses most of the time. R. 48.

Deputy Joe Hampton testified that Mr. Bell was contacted while he was still at the Southwest Mississippi Medical Center. While at the hospital, he was shown a five man photographic line up. Without hesitation, Bell identified Tobias’s photo as the man who assaulted him with a metal pipe and took his wallet. R. 54; 58. This identification came a few hours after the actual attack. R. 50-54.

Photographic exhibit 1 and 3 are color photographs of Mr. Bell’s head wounds, while he was still bleeding from cuts at the scene of the attack. Exhibit 2 shows Bell’s blood on the ground at the scene. Exhibit 4 shows unidentified photographs of suspects, including Mr. Tobias. All exhibits are in manila envelop marked “exhibits.”

At the conclusion of the prosecution’s case, the trial court denied a motion for a directed verdict. R. 65-68.

Mr. Tobias testified in his own behalf. R. 87-110. He testified that on Thanksgiving day he was at his girl friend’s house, Ms. Gwendolyn Allen. R. 88. Tobias testified that he was forty three years old. R. 88. Tobias testified that he was in bed with her most of the day. R. 88. Although he did go out for some cigarettes several times, he believed this was around nine thirty in the morning and four thirty that afternoon. R. 89-90.

Mr. Tobias denied having gone to the scene of the crime in Amite County. R.99. He denied having assaulted and robbed Mr. Bell. He denied owning a hooded sweat shirt. R. 98. Tobias denied having a car or access to a car. R. 88-89. He used a bicycle for transportation.

Ms. Gwendolyn Allen and Ms. Lois Caston testified that they both were living in the house where Allen was visiting on Thanksgiving day. While Allen testified that he was with her most of the day, she testified that he did leave several times to get some cigarettes. Ms. Caston claimed that she saw Tobias in Allen's bed room at the house during Thanksgiving day. R. 71-82.

The prosecution presented rebuttal testimony to show that Tobias' testimony was inaccurate. R. 114. This was as to the distance to the bloody crime scene and the time it would have taken to get there.

Tobias admitted to contacting investigators the day of the assault. He inquired about why they were looking for him and asked if he "needed a bondsman." R. 107.

Mr. Tobias was found guilty. R. 135. He was given a thirteen year sentence with ten years suspended in the custody of the Mississippi Department of Corrections. R.138 .

After a hearing, Tobias' motion for a JNOV or new trial was denied. C.P. 41-43; R. 144-145..

From that conviction, Tobias filed notice of appeal. C.P. 44-45.

SUMMARY OF THE ARGUMENT

1. The record reflects that the trial court denied motions for a directed verdict, as well as a motion for a JNOV or a new trial. R 65-68; 144-145. The record reflects that Mr. Davis Bell had a good look at his assailant's face.

Although Bell was attacked with a pipe which broke his hand, he was face to face with the assailant. Nothing was "covering his face." R. 29. Bell identified Tobias in the court room. This was after having identified his photograph from a five man photograph spread. R.30; 37. Bell identified Tobias' photo with "no hesitation whatsoever." R. 53-54. This was only a few hours of the attack upon his person. R. 30.

The record reflects Tobias' photographs is similar to the other unidentified suspects photographs. See State's exhibit 4 in manila envelop marked "Exhibits" for photograph of 5 suspects, including Tobias.

The record reflects evidence in support of most, if not all of the **York v. State**, 413 So. 2d 1372, 1374 (Miss. 1983), identification factors, (**Neil v. Biggers**, 409 U. S. 188, 199, 34 L. Ed. 2d 401, 411 (1972)) to be considered in assessing the validity of identification testimony. In addition, the uncorroborated testimony of a single witness is sufficient for supporting a conviction. **Doby v. State**, 532 So. 2d 584, 591 (Miss. 1988).

While Tobias presented an alibi defense, he admitted there were time gaps in his claim. This was when he was supposedly with his girl friend. This was on November 23, 2006. R. 89-90. Likewise, the inconsistencies in Tobias' denial testimony brought his credibility into question. R.108. The prosecution presented rebuttal testimony to show that Tobias' testimony was inaccurate. R. 114. Tobias admitted to contacting investigators the day of the assault. He inquired about why they were looking for him and asked if he "needed a bondsman." R. 107.

Tobias' testimony merely created a conflict in the evidence the jury resolved in their deliberations. **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983). There was sufficient testimony and evidence in support of Tobias' conviction.

ARGUMENT

PROPOSITION I

THERE WAS CREDIBLE SUBSTANTIAL EVIDENCE IN SUPPORT OF TOBIAS' CONVICTION.

Tobias believes that there was insufficient evidence in support of his conviction. Tobias believes the evidence against him was solely the identification testimony of Mr. Bell. Tobias thinks there was no corroboration from Bell as to his actual height or what he was allegedly wearing at the time of the assault. He also believes that the victim's identification is suspect because he admitted that he had his glasses knocked off during the struggle with his assailant. Tobias thinks his alibi defense proved he could not have been the culprit. Appellant's brief page 1-13.

The record reflects that Mr. Davis Bell went to his hunting club on Springhill Church Road. This was in Amite County on Thanksgiving day, November 23rd, 2006. Bell lived at 509 Lakeview Avenue in McComb. R. 25. He was to be joined by his sons and grandchildren. It was around 3:45 in the afternoon.

While Bell was registering his presence on a written form at a mailbox, he was suddenly attacked.

He was attacked from behind. Someone hit him on the shoulder with "a pipe." Although stunned from receiving blows from the pipe to his body, Bell testified that he was face to face with his assailant. Bell was struck in the head which required some "seventeen stitches." The hand Bell used for protection was broken. Although the attacker had a hooded sweat shirt on, it did not cover his face. Bell testified to having "a good look" at his assailant's face. R. 30. He testified that "he was right in my face, you know, real close." R. 29.

Mr. Bell was eventually knocked or tripped to the ground. The assailant demanded, "give

me your money.” R. 29. Bell threw out his wallet. Then he heard the assailant say, “go, go, go” as he ran toward the road. Then Bell heard a door slam and a car drive off. R. 30.

While in the hospital receiving medical care, law enforcement located Bell. See photographic evidence 1-3. Photographs 1 and 3 shows the bleeding from Mr. Bell’s head at the scene of the attack. Photograph 2 shows blood on the ground where Bell was lying after being knocked down. This is where he surrendered his wallet.

Officer Hampton took Bell’s statement. When Hampton presented a five man photographic spread, which included a photo of Tobias, Mr. Bell picked out Tobias’ photo. R. 37. Bell had no trouble identifying the photo as being that of his assailant although he did not know his name. R. 37.

Mr. Bell testified that while he was at the Southwest Medical Center receiving medical attention, he was shown a series of photographs. This photographic identification occurred only a few hours after he had been attacked.

Q. Was there any problem with you identifying that suspect?

A. No, sir.

Q. **Did you know who he was when you saw him?**

A. **Yes, sir.**

Q. **Was there any question in your mind that that individual was the one that assaulted you?**

A. **No, sir.** R. 37. (Emphasis by appellee).

Deputy Hampton corroborated Bell’s testimony. Hampton testified that Bell identified Tobias’ unmarked photograph. He testified that there was “no hesitation whatsoever.” R. 54.

Q. And, Deputy Hampton, when Mr. Bell was going through those photos was there any hesitation when he picked him out Mr. Tobias?

A. **We had five photographs, one through five, and he went through them.**

When he got to Donald Tobias, he said, "That's the man right there." No hesitation whatsoever. R. 54. (Emphasis by appellee).

Mr. Bell identified Tobias in the court room. R. 30. He testified that there wasn't any question in his mind that this was the man who attacked him. This was on Thanksgiving day in Amite County.

Q. Is the person that you saw that struck you out there on Springhill Church Roads—is he present in the court room today?

A. Yes, sir.

Q. Would you point him out and describe what he's wearing for me, please?

A. This gentlemen sitting right over here with the black jacket and brown trousers.

Harper: **Your Honor, we would ask that the record reflect that the witness has identified the defendant, Donald Ray Tobias. R. 30.**

Q. Mr. Bell, is there any question in your mind as to who was standing in front of you on that day?

A. No, sir. R. 30. (Emphasis by appellee).

While Bell uses glasses, he testified in rebuttal that he does so when he is reading and writing. R. 48. He sees well enough not to require glasses most of the time. R. 48. He was wearing them when attacked because he was in the process of signing his name on a hunting club registration form. R. 48.

Mr. Davis Bell testified that the assailant's hood did not cover his face. During the altercation, he testified that the assailant was "right in his face." R. 29. He got "a good look" at him. He remembered his face. It was "vivid" in his memory.

Q. Was anything covering his face?

A. Well, the hood was up. His face was showing, but it wasn't covering his face.

Q. Okay, sir. And you say that he was right in front of you, right in your face?

A. **Yes, sir.** R. 29. (Emphasis by appellee).

The trial court denied a motion for a directed verdict at the conclusion of the prosecution's case. R. 65-68.

Mr. Tobias testified that on Thanksgiving day he was at his girl friend's house, Ms. Gwendolyn Allen. R. 88. Tobias testified that he was forty three years old. R. 88. Tobias testified that he was in bed with Ms. Allen most of the day. R. 88. Although admitted he left the house, he believed that it was around nine thirty in the morning and four thirty that afternoon. R. 89-90.

Mr. Tobias denied having gone to the scene of the crime in Amite County or having committed the crime. R.99. He denied owning a hooded sweat shirt. R. 98. Tobias denied having a car or access to a car. R. 88-89. He used a bicycle for transportation.

Mr. Tobias admitted to contacting law enforcement the day of the incident. He wanted to know why they were looking for him, and if he "needed a bondsman." R. 107.

Tobias testified that it would take about "twenty five or thirty minutes" to drive from Ms. Allen's house to the scene of the crime. He believed it was some "twenty miles" between the two destinations. R. 108.

Deputy Joe Hampton testified that Mr. Bell was contacted while he was still at the Southwest Mississippi Medical Center. While at the hospital prior to being released , he was shown a five man photographic line up. Bell identified Tobias's photo as the man who assaulted him with a metal pipe and took his wallet. "No hesitation whatsoever." This identification came a few hours after the actual attack. R. 50-53.

Q. And Deputy Hampton, when Mr. Bell was going through those photos was there any hesitation when he picked out Mr. Tobias?

A. **We had five photographs, one through five, and he went through them. When he got to Donald Tobias, he said, "That's the man right there." No**

hesitation whatsoever. R. 53-54. (Emphasis by appellee).

In **York v. State** , 413 So.2d 1372, 1378 (Miss. 1982), the Supreme Court held that photographic identifications of suspects was admissible. They would be excluded only where they were shown to be “impermissibly suggestive.” This type of suggestiveness could give rise to a later misidentification of a suspect.

Instead, we hold that each case must be considered on its own facts, and that convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. This standard accords with our resolution of a similar issue in **Stovall v. Denno**, 388 U.S. 293, 301-302, 87 S.Ct. 1967 [1972-73], 18 L.Ed.2d 1199, 1206, and with decisions of other courts on the question of identification by photograph.

The Supreme Court stated in **Nicholson v. State**, 523 So. 2d 68, 72 (Miss. 1988) that the leading case in Mississippi on **U.S. v. Wade**, 338 U. S. 218, 18 L. Ed. 2d 1149, 87 S. Ct. 1926 (1966), and its progeny is **York v. State**, 413 So. 2d 1372, 1374 (Miss. 1983), which states the **Neil v. Biggers**, 409 U. S. 188, 199, 34 L. Ed. 2d 401, 411 (1972) factors to be considered in assessing the validity of identification testimony.

York goes on to set out the **Neil** factors to consider in determining whether these standards have been fulfilled:

1. Opportunity of the witness to view the accused at the time of the crime.
2. The degree of attention exhibited by the witness;
3. The accuracy of the witness's prior description of the criminal;
4. The level of certainty exhibited by the witness at the confrontation;
5. The length of time between the crime and the confrontation. **Nicholson**,. page 72, **Neil, supra**, 411.

The record reflects that the time between the crime and the confrontation was only a few

hours. R. 53. Mr. Bell testified to having a good look at his assailant's face. He did not hesitate in identifying Tobias's photograph as the being the facial image of his assailant. His level of certainty was high. He had a high degree of certainty that his assailant was the person who was later determined to be Tobias. Bell identified Tobias as the person who assaulted him for his wallet in the court room. R. 30.

If the description of the assailant was not accurate, it was accurate enough, given the circumstances in the record. The record reflects that the attack upon Bell was sudden and from behind. R. 28. This immediately lead to a struggle. Bell tried to protect his head and face. He was tripped or fell to the ground.

Under these circumstances, Bell's ability to determine the comparative height of the assailant would have been quite limited. And of course discarding of a sweat shirt would not require much time or effort on the part of an assailant.

In **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993), the Court stated that when the sufficiency of the evidence is challenged, the prosecution was entitled to have the evidence in support of its case taken as true together with all reasonable inferences. Any issue related to credibility or the weight of the evidence was for the jury to decide, not an appeals court.

The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. **Wetz v. State**, 503 So. 2d 803, 807-08 (Miss. 1987). In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. **Esparaza v. State**, 595 So. 2d 418, 426 (Miss. 1992); *Wetz* at 808; **Harveston v. State**, 493 So. 2d 365, 370 (Miss. 1986);...The credible evidence consistent with McClain's guilt must be accepted as true. **Spikes v. State**, 302 So. 2d 250, 251 (Miss. 1974). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wetz*, at 808, **Hammond v. State**, 465 So. 2d 1031, 1035 (Miss.

1985); *May* at 781. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. **Neal v. State**, 451 So. 2d 743, 758 (Miss. 1984);.. 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. *Wetz* at 808; *Harveston* at 370; **Fisher v. State**, 481 So. 2d 203, 212 (Miss. 1985).

The record reflects that the trial court denied a motion for a directed verdict at the close of the prosecution's case. He also denied it at the conclusion of the defense's case, which included Tobias' own testimony. R. 65-68; 110-111.

Tobias testified in his own behalf. R. 87-110. He also presented his girl friend and others in an attempt at an alibi defense. Tobias testified that on Thanksgiving day he was at his girl friend's house, Ms Gwendolyn Allen. R. 88. Tobias testified that he was forty three years old. R. 88. Tobias testified that he was in bed with her most of the day. R. 88.

Although he admitted that he went out for some cigarettes several times, he thought this it was around nine thirty in the morning and four thirty that afternoon. R. 89-90. Tobias denied having gone to the scene of the crime in Amite County. R.99. He denied owning a hooded sweat shirt. R. 98. Tobias denied having a car or access to a car. R. 88-89. He used a bicycle for transportation. He denied having assaulted or robbed Mr. Davis Bell.

His girl friend testified that he was with her all day. However, she admitted that he left her house several times allegedly to get cigarettes. R. 75-76.

While Tobias claimed to have made various telephone calls at the time of the incident, he admitted that he was using other person's cell phones to make the calls. R. 99-103.

Tobias testified that he knew the distance from his girl friend's home to the hunting club was twenty miles and would take "twenty five or thirty minutes" to drive there. R. 109. He was "pretty sure about that." R. 108. Tobias' mother lives on Springhill Church Road. R. 63.

The prosecution presented rebuttal witness, Deputy Joe Hampton. He testified that it was “12.7 miles” distance. This was the distance between the crime scene and Ms. Allen’s home. Deputy Hampton covered the distance in “sixteen minutes.” This distance was covered while driving around fifty five, not at a fast rate of speed.

Deputy Joe Hampton also testified that on Thanksgiving day the day of the attack on Mr. Bell, there was little if any traffic in McComb. This was based upon his own observations as a driver in McComb on that day. R. 114.

Q. Would you tell us how far—what distance it was? You just actually drove it yourself; is that correct? (The distance from 1101 Wall Street, Gwen Allen’s home where Tobias claimed to have been on the date in question, to the hunting club on Springhill Church Road, the scene of the crime)

A. Yes, sir.

Q. Okay tell us what that distance was?

A. It was twelve point seven miles. (12.7).

Q. Okay, sir. And how long did it take you drive that distance?

A. Approximately, sixteen minutes. R. 113. (Emphasis by appellee).

The trial court denied Tobias’s motions for a directed verdict. C.P. 65-68; 111-112. The trial court correctly pointed out that the identification testimony of a single witness is sufficient to support a conviction. He found, from all the testimony and evidence, that there was sufficient testimony and evidence for allowing the jury to resolve the conflicts in the evidence, and the credibility issues raised by the testimony from state and defense witnesses.

Court: All right. Let the record show that the Court now having heard the defense case including the testimony of the defendant, the court still finds that there is proper evidence before the court and the jury from which the finder of fact, the jury, could find beyond a reasonable doubt that the defendant is, in fact, guilty of the offense charged. So, without going back through all the different findings and reasons of the court, for the same reasons on the motion for a directed verdict, the court is going to,

again, deny the motion for a directed verdict. **It's simply a factual case set out for the jury. The law is quite clear that the testimony of a single eyewitness is sufficient in which a defendant can be found guilty. So that will be denied.** R. 111. (Emphasis by appellee).

In **Doby v. State**, 532 So. 2d 584, 591 (Miss. 1988) , the Supreme Court stated that the “uncorroborated testimony” of a single witness was sufficient for supporting a conviction.

With this reasoning in mind, the Court holds that the testimony of Conner was legally sufficient to support Doby's conviction for the sale of cocaine. This Court recognizes the rule that persons may be found guilty on the uncorroborated testimony of a single witness. See **Ragland v. State**, 403 So. 2d 146 (Miss. 1981);..

In **Noe v. State**, 616 So. 2d 298, 302 (Miss. 1993), this Court stated that when the sufficiency of the evidence is challenged that the evidence favorable to the State must be accepted as true with all reasonable inferences. Evidence favorable to the defense must be disregarded.

In judging the sufficiency of the evidence on a motion for a directed verdict, or request for peremptory instruction, the trial judge is required to accept as true all of the evidence that is favorable to the state, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. **Clemons v. State**, 460 So. 2d 835 (Miss. 1984).

In **Groseclose v. State**, 440 So. 2d 297, 301 (Miss. 1983), the Court stated that any conflicts in the evidence created by testimony from defense witnesses was for the jury “to resolve.” This would go to “the weight of the evidence.” What the jury believes and who the jury believes as to all the evidence presented is solely for their determination. As stated:

Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into finding of fact sufficient to support the verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution. **Shannon v. State**, 321 So. 2d 1 (Miss. 1975) 373 So. 2d at 1045.

The record cited above reflects that Mr. Bell identified Tobias' photograph without any hesitation. R. 53-54. This was within a few hours of being attacked with a pipe. Mr. Bell testified to having a good look at his assailant's face. He testified to not having any question in his mind about which of the five photographs he viewed was the person who attacked him. He also identified Tobias in the court room before the jury. R. 30.

One can look into another persons eyes and observe their face where there is a nine or ten inch difference in their respective heights. This is not difficult much less impossible.

Mr. Bell was corroborated by Deputy Hampton and Sheriff Perkins. They testified that Bell identified Tobias photograph without any hesitation. R. 53-54; 58.

While Tobias and his witnesses' attempted an alibi defense, they admitted Tobias was not inside his girl friends house all day. He admitted going outside the house several times allegedly for cigarettes. Tobias admitted that he contacted law enforcement later on the day in question. He asked if he needed a bondsman which is not what one would expect from an innocent person puzzled by why law enforcement was looking for him. R. 107.

In addition, Tobias testimony about the distance and the traveling time between his girl friend's house and the place where Mr. Bell was attacked was contradicted by Deputy Hampton. R. 113.

The jury observed the demeanor of both prosecution witnesses, as well as Mr. Tobias. They heard their testimony and reviewed the evidence presented by all the witnesses. The record reflects that the jury as "the finder of fact" resolved conflicts about credibility and conflicts in the factual accounts of what occurred. They resolved this conflict in favor of the prosecution.

After the trial and a hearing, the trial court also denied a motion for a JNOV and a new trial.

R. 141-145.

The appellee would submit that the prosecution presented more than sufficient, credible testimony and evidence for submitting the case to the jury. While Tobias and his witnesses created conflicts in the evidence, this merely created issues for the jury's deliberation. The jury found that Tobias was the person who assaulted and robbed Mr. Bell on Thanksgiving day at his hunting club.

R. 135.

Therefore, the appellee would submit that Tobias' conviction should be affirmed based upon the partially corroborated identification testimony of Mr. Davis Bell.

CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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 Forrest A. Johnson, Jr.
Circuit Court Judge
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This the 10th day of March, 2009.



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