

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

**SHAE HUGHES**

**APPELLANT**

**VS.**

**NO. 2009-KA-0155**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE ISSUES**

The Appellant raises five issues on appeal, all of which ultimately question whether there was sufficient evidence to support the verdict and whether the verdict was against the overwhelming weight of the evidence. As such, the State of Mississippi will respond to those issues as follows:

**THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.**

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

**STATEMENT OF THE FACTS**

On the evening of October 13, 2006, Roscoe McCoy rode with a friend to Club Video in Leland, Mississippi. (Transcript p. 149 - 150). Around 1:00 a.m., the friend informed Mr. McCoy that he was having issues with his vehicle and that he needed to leave. (Transcript p. 150). Mr. McCoy told him to go ahead and planned to catch a ride with someone else. (Transcript p. 150). Around 1:20 a.m., Mr. McCoy walked to the Double Quick in Leland and saw "Little Man" aka

Nathaniel Winder. (Transcript p. 151). Mr. McCoy asked Mr. Winder if he could ride with him to Greenville. (Transcript p. 152). Mr. Winder responded that his car was full but indicated that it was "cool" if he rode with some people in a white Grand Am who were also at the Double Quick. (Transcript p. 152). Mr. McCoy got in the back passenger side of the white Grand Am. (Transcript p. 153). At the time, Mr. McCoy did not know any of the people in the car, but it was later determined that the Appellant, Shae Hughes, was the driver of the car, his girlfriend Myesha was seated in the front passenger seat, Terika Carlidge was seated in the back seat behind the driver, and Darian Hughes was seated in the middle of the back seat. (Transcript p. 152 and 179). After they had been driving a bit, the Appellant said something along the lines of "Man, I'm going to shoot me somebody, man. I got this .38. I'm going to shoot me somebody." (Transcript p. 154). Mr. McCoy testified at trial as follows regarding what happened next:

When we got to Raceway Road, he [the Appellant] kind of like said he had to use the restroom, so he got out of the driver's seat and come around toward the back and open the door and grabbed me by my shirt, which I had a jersey on; and the guy who was in the back with me, he pushed me out. And the ditch was sitting right here, so I slid down in the ditch. And that's when he pulled the gun to my forehead like that. . . . He [the Appellant] said, 'give me your money, because I know you got the money, because they already told me.' which I don't know who. He had to be referring to Nate because Nate the only person that knew me, really. And when he said that the guy that was in the back, he got out and started to search me. And as he was searching me - - . . . - - as he was going into my right pocket, I know I had about 20, \$22 and some gum and some lip chap. So I reached in my pocket and grabbed it and balled it up. And as he started searching me, he turned me over. When he turned me over, he checked my back pockets. Didn't see nothing. Then he said, 'he ain't got no money.' So the driver said, 'man I know he got that money. Check his shoe.' So when he checked my shoe, he too - - the guy in the back took my shoes off. . . . And he checked my shoes, and wasn't no money in my shoes. So the next thing he said, 'I'm going to shoot this MF anyway.' So by that time now, I kind of left my head up, and the gun went off and shot me right there in the chin. . . . Well, the guy in the backseat still had my shoes, so they - - and the driver. They got in the car and pulled off. I say about a minute I laid there, and got up and walked to this trailer house and knocked on the trailer door; and the people come open the door. And then they called the police 9-1-1, and the ambulance came.

(Transcript p. 154 - 157).

The Appellant was arrested, tried, and convicted of armed robbery and aggravated assault. He was sentenced to serve forty years in the custody of the Mississippi Department of Corrections for the armed robbery conviction and was sentenced to serve twenty years in the custody of the Mississippi Department of Corrections for the aggravated assault conviction with both sentences to run consecutively.

### **SUMMARY OF THE ARGUMENT**

The trial court properly denied the Appellant's Motion for Directed Verdict and Motion for Judgment Notwithstanding the Verdict as there was sufficient evidence establishing each element of both armed robbery and aggravated assault. The trial court also properly denied the Appellant's Motion for a New Trial as the verdict was not against the overwhelming weight of the evidence.

### **ARGUMENT**

The Appellant argues that "the evidence was insufficient to support the verdict of the jury and the verdict was against the overwhelming weight of the evidence; therefore, the Lower Court erred, by failing to sustain Defendant's motion for directed verdict and to grant Defendant's motion for judgment notwithstanding the verdict of the jury, or in the alternative, a new trial." (Appellant's Brief p. 10).

### **THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.**

The Appellant argues that "when the State rested at the close of its case in chief, it had failed to prove that Shae Hughes had committed the crimes charged in the indictment," that the trial court "erred by failing to sustain [the Appellant's] motion for directed verdict," that "at the close of the evidence the State still failed to prove the facts beyond a reasonable doubt" and that the trial court "erred by failing to grant [the Appellant's] motion for judgment notwithstanding the verdict of the

jury.” (Appellant’s Brief p. 1). “Motions for directed verdicts and motions for JNOV are both for the purpose of challenging the legal sufficiency of the evidence.” *Nason v. State*, 840 So.2d 788, 792 (Miss. Ct. App. 2003) (citing *Noe v. State*, 616 So.2d 298, 302 (Miss.1993)). This Court has previously set forth the standard of review with regard to sufficiency of the evidence issues as follows:

The sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with [the defendant's] guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence.... 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.

*Graham v. State*, 861 So.2d 1053, 1054 (Miss. Ct. App. 2003) (quoting *Beard v. State*, 837 So.2d 235 (Miss. Ct. App.2003)). With this standard in mind, the record clearly establishes that there was sufficient evidence to support the verdict with regard to both counts.

The Appellant was found guilty of armed robbery in violation of Miss. Code Ann. §97-3-79 which states as follows:

Every 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 and, upon conviction, shall be imprisoned for life in the state penitentiary if the penalty is so fixed by the jury; and in cases where the jury fails to fix penalty at imprisonment for life in the state penitentiary the court shall fix the penalty at imprisonment in the state penitentiary for any term not less than three (3) years.

As set forth in the “Statement of the Facts” section above, Mr. McCoy testified that the Appellant stuck a .38 to his head and told him to give him all his money. He further testified that the Appellant and Darian Hughes drove away with his Nike tennis shoes after they were unable to find any money on him. Accordingly, there was sufficient evidence establishing each of the elements of armed

robbery.

The Appellant was also found guilty of aggravated assault in violation of Miss. Code Ann. §97-3-7(2) which states as follows:

A person is guilty of aggravated assault if he  
(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life or  
(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm. . . .

Again, as set forth above in the “Statement of Facts,” Mr. McCoy testified that the Appellant shot him in the face. He further testified that he was hospitalized for two weeks and underwent several surgeries as a result of that injury. (Transcript p. 158). Accordingly, there was sufficient evidence establishing each of the elements of aggravated assault.

As such, there was sufficient evidence to support the verdict. Thus, the trial court did not err in denying the Appellant’s Motion for Directed Verdict or his Motion for Judgment Notwithstanding the Verdict.

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

The Appellant also argues that the trial court erred by failing to grant the Appellant’s motion for new trial. (Appellant’s Brief p. 1). A motion for a new trial simply challenges the weight of the evidence. *Jones v. State*, 920 So.2d 465, 470 (Miss. 2006). 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).

With regard to this issue, the Appellant argues that “the testimony in this case had major discrepancies.” (Appellant’s Brief p. 12). However, Mississippi law indicates that the appellate 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.” *Nason*, 840 So.2d at 792. The *Nason* Court further noted that:

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 their 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.

*Id.* (quoting *Groseclose v. State*, 440 So.2d 297, 300 (Miss.1983)) (*emphasis added*). Furthermore, “the jury is the sole judge of the credibility of witnesses, and the jury’s decision based on conflicting evidence will not be set aside where there is substantial and believable evidence supporting the verdict.” *Id.* (quoting *Billiot v. State*, 454 So.2d 445, 463 (Miss.1984)). Accordingly, any conflict in the testimony is a jury question and their findings are not to be set aside where there is substantial evidence to support the verdict. The record in this case clearly indicates that there was substantial and believable evidence to support the verdicts. As such, the trial court properly denied the Appellant’s motion for new trial.

**CERTIFICATE OF SERVICE**

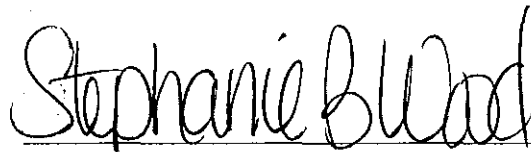
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 2nd day of February, 2010.

A handwritten signature in black ink, reading "Stephanie B. Wood", written over a horizontal line.

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