

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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SHAE HUGHES

APPELLANT

VS.

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SUPREME COURT
COURT OF APPEALS

CASE NO. 2009-^{KA}TS-00155-COA

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

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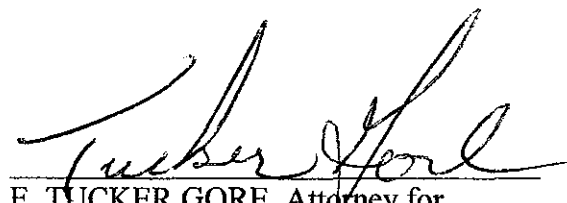
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of the record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the Justice of this Court may evaluate possible disqualifications of recusal.

1. SHAE HUGHES, APPELLANT
2. Honorable Jim Hood, Attorney General for State of Mississippi
3. Honorable E. Tucker Gore, Attorney for Appellant
4. Honorable Dewayne Richardson, District Attorney for the Fourth District
5. Fourth District of the State of Mississippi, Circuit Judge, Honorable

Ashley Hines


E. TUCKER GORE, Attorney for
SHAE HUGHES, APPELLANT

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STATEMENT OF ISSUES

- 1.) 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.
- 2.) The Lower Court erred by failing to sustain Defendant's motion for directed verdict.
- 3.) The Lower Court's overruling of Defendant's motion directed verdict was against the interest of justice and against the overwhelming weight of the evidence.
- 4.) At the close of the evidence the State still failed to prove the facts beyond a reasonable doubt.
- 5.) The Lower Court erred by failing to grant Defendant's motion for judgment not withstanding the verdict of the jury, or, in the alternative, a new trial.

STATEMENT OF THE CASE

This is an appeal from the Circuit Court of Washington County, Mississippi where appellant SHAE HUGHES, was convicted of Count I of armed robbery for which he was sentenced to serve a term of forty (40) years with the Mississippi Department of Corrections. The Defendant was also convicted of Count II of aggravated assault and sentenced to serve twenty (20) years, which are to run consecutive to Count I. Additionally, the Court imposed court costs in the amount of \$284.000 and a bond fee in the amount of \$1,200.00

The State called as its witnesses: Sheriff deputies Jeffery Wiggington, Mack White, Percy Myles, Jake Williams and witnesses Diane Bryant, Christopher Bryant, Regina Humphrey, Tarika Cartlidge, Nathaniel Winder and Roscoe McCoy. The defendant Shae Hughes also took the stand.

Sheriff deputy Jeffery Wiggington testified that he responded about 2:30 a.m. on October 14, 2006 to a call about a shot person at Pearson's Trailer Park on Old Leland Road (R-23). He made contact with the Bryants who lived at Lot 13 and saw an injured person in their trailer. This person was bleeding from chin and was unable to talk to the deputy (R-25). DRMC arrived on scene, began treatment and transported McCoy back to hospital. Once deputies Mack White and Percy Myles arrived on scene Wiggington departed and went to DRMC (R-26). Wiggington did not know who had shot McCoy (R-28).

Next the State called Diane Bryant (R-29). Ms. Bryant stated she got home from work and was about to dose off when she was awakened by a banging at her door about 2:30 a.m. She opened her door and saw a man standing there bleeding;

she called 911 and then awoke her husband. She had never seen this man before (R-30), and she didn't know what happened or how it happened to this person (R-35).

Christopher Bryant, Ms. Bryant's husband, next took the stand. Mr. Bryant was awakened by his wife and a banging noise on his door. Ms. Bryant let the person in who was bleeding and gave him water and a towel (R-37). Mr. Bryant had no knowledge of how McCoy got hurt (R-39).

Next the state called deputy Mack White. White testified that he also responded to a call about a shot person at Pearson Trailer Park on the morning of October 14, 2006 (R-41). White tried to interview McCoy but he couldn't talk plainly (R-42). After DRMC left with McCoy, White started looking for a crime scene. He followed a blood trail from the Bryants' steps down Raceway Road a little ways that lead to a spot in a ditch in front of a volunteer fire station. In the ditch, White saw a \$1 dollar bill, a \$20 dollar bill and a chap stick (R-44). White then stood by until investigator Percy Myles arrived on scene. White did not know anything about who shot McCoy (R-49).

Regina Humphrey then took the stand for the state. Ms. Humphrey is the manager at Double Quick in Leland. Humphrey produced a surveillance tape from the store that was entered into evidence as State's Ex S-2 (R-52).

Major Percy Myles of the Washington County Sheriff's Department was called to the stand. On the morning of October 14, 2006, Myles received a call from Corporal White to meet him at the scene. Upon his arrival at the scene on Raceway Road, White showed Myles the blood on the road and ditch (R-54). Myles took pictures, which were entered into evidence as S3A-MC (R-56). Myles then collected

the \$1 and \$20 dollar bills, the sticks of gum and the chap stick (R-56). After spending 15 minutes at scene, Myles went to DRMC (R-58).

At the hospital, McCoy told Myles he was in Leland at the Double Quick trying to catch a ride. He saw Little Man (Nathaniel Winder) and asked him for a ride but Winder told him to catch a ride with his cousin (Shae Hughes) (R-60). He gets into the car with four other people and they take Old Leland Road back to Greenville but suddenly turn on Old Leland Road. Then the guy in the middle of the back seat who McCoy was sitting by (Darian Hughes) pushed him out of car (R-60) and that man then got out of the car (R-61). McCoy said the man in the middle of the back then took his Nike shoe and tried to take his money (R-62). The interview ended at that time and McCoy was transported to UMC in Jackson (R-66).

Myles was then shown the videotape, S-2, that was retrieved from Leland Double Quick. Myles then identified McCoy, Shae Hughes, and Darian Hughes, Shae's cousin, coming in and out of Double Quick about 2:00 a.m. on the morning of October 14, 2006 (R-65).

Myles then compiled a photo lineup (S-4A thru S-4G) and went to UMC to show McCoy (R-68). McCoy identified first Shae Hughes and then later Darian Hughes (R-70). Darian Hughes was identified as the person sitting in the middle of the back next to McCoy (R-71) and Shae Hughes as the driver (R-72). There were bullet fragments from McCoy's jaw that were collected from UMC (S-6), (R-74).

On cross-examination Myles was questioned about the extent of his training and the importance of accurately recording witnesses statements in his offense reports

(R-77). Myles testified that none of the evidence collected from the crime scene were checked to see if Shae Hughes' fingerprints were on them.

Myles was then shown his offense report in which he wrote that during the interview of McCoy at DRMC in Greenville that McCoy said that it was the man on the back seat (Darian Hughes) that pulled a pistol on him in the car and demanded his money. After McCoy told Darian Hughes that he didn't have any money that it was Darian Hughes that shot him while they were on the back seat (R-81). McCoy said it a second time to Myles that the man on the back seat (Darian Hughes) shot him (R-82).

Next, Investigator Myles was shown his sworn probable cause statement which is presented to a Judge to obtain an arrest warrant. In that sworn statement Myles states that Roscoe McCoy told him that the man in the middle of the back seat was the man who shot him (R-84).

Next Myles was shown again the photo lineup that he put together. All of the pictures in the lineup are relatives of Nathaniel Winder (who testifies for the State) all of whom are shorter than six feet and none of whom remotely look like or similar to Shae Hughes who also is 6'2" tall (R-86, 87).

Myles admits that the Sheriff Department has no physical evidence such as fingerprints or a gun that ties Shae Hughes to the crime (R-89).

Deputy Jake Williams was the next witness called by the State. Williams helped to a degree with the investigation. He took Shae Hughes' statement in which Hughes said he was in Leland on the morning in question driving a white Grand Am which belonged to a friend and that three (3) other people were in the car with him

(R-102). Williams took pictures of the car which were introduced into evidence as S-7A thru E (R-106).

Charity Howard then takes the stand for the State. Ms. Howard testified that she knows Shae Hughes through a friend of hers, Myesha Jones. Myesha and Hughes came to Howard's work place at about 10:30 October 13, 2006 and borrowed her white Grand Am so they could go out (R-110). Shae Hughes brought her car back at 6:30 the next morning and she dropped him off at his home (R-112).

Nathaniel Winder was next called by the State. Winder stated that he had known Roscoe McCoy for about fifteen (15) years and Shae Hughes for about eight (8) years (R-115). Winder said he came to Leland on October 14, 2006 at about 1:00 a.m. He went to Club Vedio and then to Double Quick. Winder testified he saw Shae Hughes, Darian Hughes and Tarika Cartlidge together at Double Quick in a white Grand Am. He also saw Roscoe McCoy who asked him for a ride to Greenville. Winder told McCoy he could ride with his cousin Shae Hughes. Later he saw McCoy get in the car with Hughes and the others he was with (R-118).

Winder left Leland and went to the Huddle House in Greenville. After Winder got to Huddle House, Shae Hughes, Darian Hughes and Myesha came in a short time later (R-123). Winder went home and a couple of days later the Sheriff's Department came and arrested him and questioned him three (3) different times until he told them what they wanted to hear (R-124). Winder was charged and now is testifying for the State (R-125 – 127).

The State next called Tarika Cartlidge. Ms. Cartlidge knows Shae Hughes due to the fact that they are cousins (R-129). She also knows Darian Hughes (R-130).

On October 13, 2006, she went with a girl friend to a club in Leland and stayed until it was closed. Cartlidge then got in a car with Shae and Myesha and went to Double Quick. When they left Double Quick it was Shae driving Myesha up front Cartlidge behind Shae, Darian Hughes in the middle of the back seat, and next to him was McCoy (R-135).

The car traveled down Old Leland Road and turned on Raceway Road when Darian and the guy in back began arguing and fighting (R-135). Shae pulled over, got out and then pulled the dude and Darian out of car and closed the door. Shae was trying to break up the fight when she heard a gun shot go off. Shae and Darian got back in the car but she did not see either one with a gun (R-137).

Later on Cartlidge gave a statement to the police that she had seen Shae rob the man and shoot him in the face. Cartlidge then testified that the reason she told the sheriff's office that was to stop them from hassling her. She testified that in reality that was what she heard on the street and that she did not see Shae shoot the man or take his Nike shoes (R-137-139).

On cross-examination, Cartlidge confirmed that she said what she said in her statement was to get the sheriff's department to leave her alone and stop pressuring her (R-141). She also testified that someone from the District Attorney's office told her she had to testify like what she had said in her statement (R-141). Cartlidge went on to testify that Shae had never threatened her (R-142).

The State then called Roscoe McCoy to testify. On October 13, 2006, Mr. McCoy caught a ride with a friend in Arcola and went to Club Vedio in Leland (R-150). Around 1:30 a.m. on the 14th, McCoy left the club and walked to Double Quick

where he saw a friend, Nathaniel Winder. McCoy told Winder he needed a ride to Greenville, so they made an arrangement for McCoy to ride with Nathaniel's cousin Shae Hughes (R-152-153). They got in the car and took Old Leland Road toward Greenville. When they get to Raceway Road, McCoy says they turn off and stop and the driver gets out to use the bathroom. Then McCoy claims the driver pulled him out of the car while the guy in the middle back pushed him out. McCoy says he falls in a ditch and the driver puts a gun to his head and demands money. At the same time, guy in middle is searching McCoy and takes his Nike shoes. McCoy testified the driver then shot him in the chin (R-154-157). McCoy then testifies that S-5 is a picture of the guy in middle of back seat (Darian Hughes) and that S4-B is the driver (Shae Hughes) (R-162).

On cross-examination, McCoy denies ever making the statement to Major Myles that it was the man in the middle of the back seat who pulled the pistol and shot him (R-164-166). Also, McCoy was shown the paper he had written at UMC and he testified the 5'9" he wrote was the height of the two who robbed him (R-167). Shae Hughes is 6'1" or 2" (R-86, 87). The State then rested its case (R-171). Court denies defendant motion for directed verdict (R-172).

The Defense then calls the defendant Shae Hughes. On October 13th and 14th, Hughes resided in Memphis, Tennessee, but was in Greenville on family business. Hughes came into possession of Charity Howard's white Grand Am on October 13, 2006 by way of his girlfriend Myesha Jones (R-176). Hughes, Myesha and Darian Hughes left Greenville and went to Club Vedio located in Leland (R-177). Once the club closed at 2:00 a.m. on the 14th the three (3) plus Tarika Cartlidge went to Double

Quick (R-178). At Double Quick Shae saw his cousin Nathaniel Winder and agreed with him to give Roscoe McCoy a ride to Greenville. The five (5) of them left Double Quick and took Old Leland Road towards Greenville. As Hughes turned onto Raceway Road, McCoy and Darian were fighting on the back seat. Hughes pulls over, gets out and pulls McCoy and Darian out of the car and all three (3) fall in a ditch. While they were tussling a shot went off. Hughes didn't know where the shot came from but he and Darian jumped up, got in the car and drove away. (R-180).

Hughes then took Cartlidge to a club and he, Myesha and Darian went to the Huddle House where he saw his brother, sister and Nathaniel Winder. After a while, Hughes and company left the Huddle House, dropped Darian off and returned Charity's car. Hughes was dropped off at his sister's house and later that day returned to Memphis (R-181, 182).

Hughes was later arrested and gave a statement to the police. Hughes testified that he did not tell the police about the events on Raceway Road because he was trying to protect his cousin Darian Hughes (R-183). After cross-examination, the defense rested (R-191).

After receiving the jury instructions from the Court (R-200 thru 209) and hearing closing arguments of counsel (R-210 thru 226) the jury returned a verdict against Shae Hughes wherein they found Hughes guilty of Count I armed robbery and Count II aggravated assault (R 227 thru 228).

As a result of Hughes' convictions, the Court at 10:40 a.m. on January 23, 2009 sentenced Hughes to a term of 40 years in custody as to Count I and 20 years as

to Count II consecutive to Count I; payment of court costs of \$284 and a bond fee of \$1,200 (R-223 thru 234).

SUMMARY OF THE ARGUMENTS

Shae Hughes 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.

The victim in this case, Roscoe McCoy, gave an interview to sheriff department investigator Major Percy Myles shortly after this incident occurred. McCoy told Major Myles twice that it was the man in the middle back seat (Darian Hughes) who pulled the gun out, took his Nike shoes and shot McCoy on the back seat. Major Myles recorded McCoy's statement in his investigative report. Myles was so impressed with McCoy's statement that he included it in his sworn probable cause statement that was presented to a Judge to obtain an arrest warrant.

Based on the inconsistencies, not only between the witnesses, but also within their own testimony and statements, Hughes argues that his conviction is in error.

ARGUMENT

When the sufficiency and weight of the evidence are questioned, the allegation is really being directed against the accuracy of the jury's verdict. King v.

State, 798 So. 2d 1258, 60 (Miss. 2001) (citing May v. State, 460 So. 2d 778, 780-82 (Miss. 1994)).

On the issue of legal sufficiency, a reversal can only occur when evidence of one or more of the elements of the charged offense is such that “reasonable and fair minded jurors could only find the accused not guilty.” Dickey v. State, 819 So. 2d 1253, 1256 (Miss. 2002) The standard of review for a denial of a directed verdict, peremptory instruction and JNOV are identical. Coleman v. State, 697 So. 2d 777, 787 (Miss. 1997) In McClain v. State, 625 So. 2d 774, 778 (Miss. 1993) this Court held that a motion for JNOV, motion for directed verdict and a request for peremptory instruction challenge the legal sufficiency of the evidence.

It is well established that matters regarding the weight of the evidence are to be resolved by the jury. Brown v. State, 829 So. 2d 93, 103 (Miss. 2002) (citing Neal v. State, 451 So. 2d 743, 758 (Miss. 1984); Danner v. State, 748 So. 2d 844, 846 (Miss. Ct. App. 1999) A motion for a new trial challenges the weight of the evidence. Sheffield v. State, 749 So. 2d 123, 127 (Miss. 1999) in Winston v. State, 626 So. 2d 197, 100 (Miss. App. 1998) (citing Brook v. State, 695 So. 2d 593, 594 (Miss. 1997) the Court stated:

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 quiet limited. We proceed by considering all of the evidence—not just that supporting the case for the prosecution—and the like most consistent with the verdict. We give the prosecution the benefit of inferences that may be reasonably being drawn from the evidence. If the facts and inferences so considered reasonable men could not have found beyond a 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 authority to disturb. McClain v. State, 625 So. 2d 774, 778 (Miss. 1993); Wetz v. State, 503 So. 2d 803, 808 (Miss. 1987); Smith v. State, 503

So. 2d 803, 808 (Miss. 1987); Smith v. State, _____ So. 2d _____ (Miss. 2003) 2001-KA-01235-SCT (Emphasis added)

The lower Court having heard this testimony and being aware of the major discrepancies as to the offense for which HUGHES is charged should have granted a new trial. Gleaton v. State, 716 So. 2d 1083 (Miss. 1998) Failure to grant a new trial to HUGHES would result in an unconscionable injustice by allowing the verdict to stand. Groseclose v. State, 440 So. 2d 297, 300 (Miss. 1983); Danner v. State, 748 So. 2d 844, 846 (Miss. Ct. App. 1999); Collier v. State, 711 So. 2d 458, 461 (Miss. 1998) the verdict entered by this jury is clearly a result of prejudice, and is manifestly against the weight of the creditable evidence. Cromeans v. State, 261 So. 2d 453 (Miss. 1972); Marr v. State, 248 Miss. 281, 159 So. 2d 167 (1963).

The testimony in this case had major discrepancies. As stated above, the alleged victim, Roscoe McCoy, twice told Major Myles that the man in the middle of the back seat (Darian Hughes) was the one who pulled a gun and shot him. McCoy then testifies that he never said those things to Myles. Tarika Cartlidge testified that neither Shae Hughes nor Darian Hughes had a gun.

Also, McCoy testified that at UMC he wrote that the two men were both 5'9". The photo lineup put together by Major Myles clearly shows that Shae Hughes is 6'2" however Darian Hughes is approximately 5'9".

CONCLUSION

SHAE HUGHES submits that based on the foregoing authorities that his conviction before the Circuit Court of Washington County, Mississippi and the sentence imposed as a result thereof should be reversed and his case remanded.

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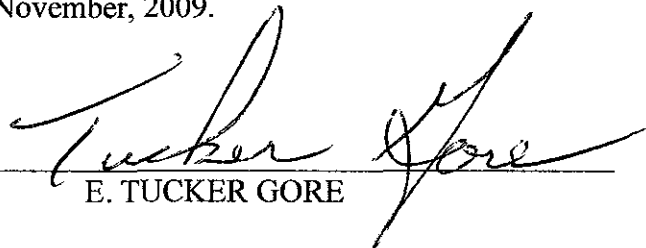
STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I, E. TUCKER GORE, attorney for Appellant, SHAE HUGHES, do hereby certify that I have on this date mailed, postage prepaid, one (1) copy of the Appellant's Brief to Honorable ASHLEY HINES, Circuit Court Judge for the 4th District of the State of Mississippi, Greenville, Mississippi 38701.

SO CERTIFIED, this, the 20th day of November, 2009.



E. TUCKER GORE