IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEVIN DEHART a/k/a KEVIN RAY DEHART **APPELLANT**

VS. **NO. 2018-KA-1580-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VERSUS **NO. 2018-KA-01580-COA**

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BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

Mississippi's aggravated assault statute includes "attempt" as one of the ways in which a person may be found guilty of aggravated assault. *See* Miss.Code Ann. §97-3-7(2)(a).

The sufficiency and weight of the evidence predicated on the alleged failure of the State to prove beyond a reasonable doubt the defendant intended to cause bodily injury to the victim forms the centerpiece of this appeal from a conviction of aggravated assault as defined by Miss.Code Ann. §97-3-7.

Dehart, a non-testifying defendant, claims there was no proof he intended to cause bodily injury to another person although it is undisputed Dehart purposely and knowingly fired three shots from a twelve gauge shotgun in the direction of the victim who shielded himself from incoming pellets by crouching in front of his privately owned vehicle he had just parked in the yard of his employer's home.

We respectfully submit that specific intent to cause bodily injury to another was not required under Miss.Code Ann. §97-3-7(2)(a) but even if otherwise the testimony and evidence was sufficient for a reasonable, hypothetical juror to find any required intent beyond a reasonable doubt.

KEVIN DEHART, a 44-year-old Caucasian male, high school graduate, and resident of Jones

County (R. 97; C.P. at 55), prosecutes a criminal appeal from the Circuit Court of Jones County, Dal Williamson, Circuit Judge, presiding.

Dehart, in the wake of an indictment returned on June 16, 2017, was convicted of using a firearm to shoot at Mac Craven, a man whose estranged wife was living with Dehart. (R. 86-87)

The indictment, omitting its formal parts, alleged

> ". . . that: **KEVIN RAY DEHART** . . . on or about the 24th day of January, 2017 A.D., did purposely, knowingly and feloniously attempt to cause bodily injury to Mac Craven with a firearm, a deadly weapon, by shooting at him with said gun; in violation of Mississippi Code Annotated Section 97-3-7 (1972) and contrary to the form of the statute in such cases made and provided . . ." (C.P. at 8)

Following a trial by jury conducted on October 5, 2018, the jury returned a verdict of, "We, the jury, find the defendant, Kevin DeHart, guilty of attempted aggravated assault." (R. 113; C.P. at 50)

Two (2) issues, articulated by Dehart as follows, are raised on appeal to this Court:

I. "The evidence was insufficient to support the verdict." (Brief of the Appellant at 1, 6, 3)

II. "The verdict was against the overwhelming weight of the evidence." (Brief of the Appellant at 1, 9)

STATEMENT OF FACTS

Mac Craven is the husband of Deanne Craven. They have been separated "[g]oing on four years." (R. 88) The only real relationship between the two is through their 17-year-old son. (R. 88)

Kevin Dehart lives with Mac Craven's estranged wife, Deanne. (R. 87-88)

On the morning of the shooting at the home of Robert Yates where Craven was drinking coffee with Yates, a roofer and Craven's employer, Dehart arrived in his truck and fired a shotgun three times in the direction of Craven after admonishing Craven not to text Deanne's phone ever again else he would kill Craven. (R. 87)

Craven's version of the shooting is found in the following colloquy.

Q. [BY PROSECUTOR BISNETTE:] Okay, now tell me what happened when you drove up to go to work that day.

A. When I pulled up to his house I was getting out of the car to walk in Roberts Yates' house because we usually sat there and drank coffee before we leave. I seen him coming in the driveway gunning the gas on the truck. He fishtailed it and slid sideways behind the car while I was out. And his wife at the time Lynn Yates was carrying the granddaughter to school.

Q. Robert's wife Lynn?

A. Yes, sir.

And I said, go in there and get Robert because that's Kevin, Deanne lives with him, and I've never seen him before, and he's probably going to start something. And she said, well, why is that. I said, because he's jealous and I was trying to find out something about her son which has autism.

And he gets out of the truck with a shotgun. Told me, don't ever text Deanne phone again or he's going to kill me. And he shot. And that's when I ducked down in front of the car and made it to Robert's carport at his house. And he had come to the door and told Kevin DeHart that the law has been called, you need to leave. And he started cussing and said, I don't care if the law is coming, such and such, and fired the shotgun again at the back of the car. And I was walking in front and I had to dive down to the side of it. And then he shot the third time and then he left.

Q. Okay. What did you think was going on when he was shooting that shotgun? Was he trying to shoot that car or was he trying to shoot at you?

MR. PIAZZA. Objection.

A. **He was shooting at me.**

THE COURT: Overruled.

Q. (Mr. Bisnette) Okay. How many times did that happen?

A. What? Him shooting?

Q. Yeah.

A. Three times.

Q. After he shot the third time what did he do?

A. He got in his vehicle and gunned out of the driveway and went back to his house to go hide the gun. (R. 86-88) [emphasis ours]

During cross-examination, the following colloquy took place:

Q. [BY MR. PIAZZA:] Mr. Craven, good afternoon.

A. Afternoon.

Q. How far was Mr. DeHart from you when he shot?

A. From here to the front of that table. (R. 89)

Four (4) witnesses testified on behalf of the State during its case-in-chief, including the victim, **Mac Craven**, who testified Dehart fired the shotgun after threatening to kill him if he ever texted Deanne's phone again and **Lynn Yates** who testified the defendant " . . . was shooting at Mac's car, so I figured he was shooting at Mac because he was hollering and cussing him." (R. 83)

At the close of the State's case-in-chief, the defendant moved for a directed verdict of acquittal of aggravated assault on the ground that

> "[t]aking the case in light most favorable to the State, that the defendant attempted to shoot the alleged victim's vehicle. It's very clear if Mr. DeHart had wanted to, he was allegedly in light most favorable to the State, Mr. DeHart was using a shotgun. He was a very short distance from Mr. Craven. And Mr. DeHart, had he wanted to injure Mr. Craven he could have." (R. 91-92)

Following a response by the State, the motion was overruled with the following rhetoric: "The court finds that the State has presented sufficient evidence from which the jury could find the defendant's guilt of attempted aggravated assault beyond a reasonable doubt." (R. 93)

After being personally advised of his right to testify or not, Dehart, elected to remain silent. (R. 97-99)

Peremptory instruction was denied as was Dehart's renewed motion for a directed verdict. (R. 95, 100-01)

Following closing arguments, the jury retired to deliberate at 2:02 p.m. (R. 113) Thirty-two (32) minutes later at 2:34 p.m. it returned with the following verdict:

> "We, the jury, find the defendant Kevin Dehart, guilty of attempted aggravated assault." (R. 113; C.P. at 50)

A poll of the jury reflected the verdict was unanimous. (R. 113)

Sentencing took place immediately thereafter. Judge Williamson sentenced Dehart to " . . .serve a term of 12 years in the Mississippi Department of Corrections with eight years of that to be in full-time custody" and suspension of " . . . four years of that and ordering that you will complete four years of post-release supervision." (R. 115; C.P. at 52-54)

On October 8, 2018, Dehart filed a motion for judgment notwithstanding the verdict, or in the alternative, for a new trial, on the ground, *inter alia,* "[t]he verdict was against the overwhelming weight of the evidence." (C.P. at 61-62)

That motion was overruled by an order entered October 23, 2018. (C.P. at 65)

A timely notice of appeal was filed on October 30, 2018, by the indigent appeals division of the office of the state public defender.

SUMMARY OF THE ARGUMENT

I. "[T]he Mississippi Supreme Court in addressing whether aggravated assault requires intent stated that '[t]here is apparently no specific intent requirement.' " **McCallum v. State,** 996 So.2d 189, 194 (¶22) (Ct. App. Miss. 2008), citing and quoting from **McGowan v. State,** 541 So.2d 1027, 1029 (Miss. 1989) (citing **Davis v. State,** 476 So.2d 608, 610 (Miss. 1985)).

It is no defense to the crime of aggravated assault charged here that Dehart did not intend to cause bodily injury.

This is because Dehart was charged under Miss.Code Ann. §97-3-7(2)(a)(ii), one definition of which defines aggravated assault as "attempt[ing] to cause . . . bodily injury to another with a deadly weapon . . ."

Intent to cause bodily injury is not an element of the crime of aggravated assault under section 97-3-7(2)(a)(ii). **Griffin v. State,** 872 So.2d 90, 91 (Ct. App. Miss. 2004). *Cf.* **Russell v. State,** 924 So.2d 604, 608 (Ct. App. Miss. 2006).

In any event, viewing the testimony and evidence in the light most favorable to the State's theory of the case, reasonable and fair-minded jurors, in the exercise of impartial judgment, could have reached different conclusions on every element of the offense, including any required intent. Stated differently, reasonable minds could have differed. **Townsend v. State,** 939 So.2d 796 ,801 (¶24) (Miss. 2006).

Mac Craven, the victim, told the jury in plain and ordinary English that "[Dehart] was shooting at [him.]" (R. 87)

Lynn Yates, an ear and eye witness to the shooting, testified Dehart " . . . was shooting at Mac's car, so I figured he was shooting at Mac because he was hollering and cussing him." (R. 83)

Whether Dehart was guilty of aggravated assault or the lesser included offense of simple assault was a question for the jury in the wake of jury instructions defining both offenses. (C.P. at 29, 33)

II. The trial judge did not abuse his judicial discretion in overruling Dehart's motion for new trial voiced, in part, on the ground the verdict of the jury was against the overwhelming weight of the evidence.

First, Mac Craven testified that Dehart was shooting at him.

Lynn Yates, an ear and eyewitness, testified she figured that Dehart was shooting at Craven because Dehart was hollering and cussing at Craven.

Obviously, Craven was in the line of fire.

Second, we note that Dehart received jury instruction D-3, a lesser included offense instruction authorizing the jury to find him guilty of simple assault. (C.P. at 33)

The verdict returned by the jury was not against the overwhelming weight of the evidence which did not preponderate in favor of the defendant's claim he was guilty of no crime greater than simple assault. Dehart's purpose and intent could be read from the act itself and the surrounding circumstances.

We disagree with any suggestion by Dehart that to allow this verdict to stand would be tantamount to sanctioning an unconscionable injustice.

ARGUMENT

ISSUE I.

THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT THE VERDICT OF THE JURY.

ISSUE II.

THE TRIAL JUDGE DID NOT ABUSE HIS JUDICIAL DISCRETION IN OVERRULING DEHART'S MOTION FOR A NEW TRIAL BECAUSE THE JURY VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

ALLOWING THE JURY'S VERDICT TO STAND WILL NOT SANCTION AN UNCONSCIONABLE INJUSTICE.

Dehart claims "[t]he evidence was insufficient to prove that Dehart committed the crime of attempted aggravated assault because the evidence failed to establish beyond a reasonable doubt that

Dehart intended to cause bodily injury to Craven." (Brief of the Appellant at 6)

He invites this Court to either remand this case for re-sentencing for simple assault or reverse his conviction and sentence and remand for a new trial.

We disagree with Dehart's claim on direct appeal that "[t]o convict Dehart of aggravated assault based on an attempt to injure Craven, '[t]he State was required to prove that [Dehart] intended to injure [him.]' " (Brief of the Appellant at 8)

Dehart was indicted under the aggravated assault statute - 97-3-7 - as opposed to the general attempt statute - 97-1-7. In **Brooks v. State,** 18 So.3d 833, 839 (¶24) (Miss. 2009), cited and relied upon by Dehart, we find the following language pertinent here:

> [E]ven though a person is guilty of aggravated assault if he or she attempts to commit the crime, there is no requirement that the elements of attempt under the general attempt statute, Mississippi Code Section 97-1-7, must be included in an indictment for aggravated assault.

By virtue of Miss.Code Ann. §97-3-7(2)(a)(ii), an "attempt" is included as one of the ways in which a person may be found guilty of aggravated assault.

Miss.Code Ann. §97-3-7(2)(a) reads, in its relevant parts, as follows:

> (2)(a) A person is guilty of aggravated assault if he (i) 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 (ii) **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; * * * [emphasis ours]

The statutes plain language includes "attempts to cause . . . bodily injury to another with a deadly weapon."

We have no quarrel with Dehart's position that an "attempt" to commit a crime consists of three elements, including "an intent to commit a particular crime." (Brief of the Appellant at 7) The latter is a general intent. There is a distinction between a general intent to commit a particular crime,

in this case aggravated assault, and a specific intent to cause bodily injury.

It is our position there is no specific intent requirement under Miss. Code Ann. §97-3-7(2)(a)(ii). **McCallum v. State,** *supra,* 996 So.2d 189 (Ct. App. Miss. 2008) quoting from **McGowan v. State,** *supra,* 541 So.2d 1027, 1029 (Miss. 1989).

Even if otherwise viewing the evidence in a light most favorable to the State, a reasonable and fair-minded juror could have found that Dehart was shooting at Craven, that Craven was in the line of fire, and Dehart intended to cause bodily injury to Craven by thrice shooting at him with a 12 gauge shotgun.

Whether Dehart was guilty of aggravated assault or simple assault was a question for the jury in the wake of proper jury instructions defining each offense.

Jury instruction S-1 instructed the jury as follows:

> KEVIN RAY DEHART, has been charged with the offense of Attempted Aggravated Assault.
>
> If you find from the evidence in this case beyond a reasonable doubt that:
>
> > 1. On or about the 24th day of January, 2017, in the Second Judicial District of Jones County, Mississippi;
> >
> > 2. Kevin Ray Dehart unlawfully attempted to cause serious bodily injury, with a deadly, weapon, to Mac Craven;
> >
> > 3. By shooting at him with a firearm, a deadly weapon;
>
> then you shall find the defendant, Kevin Ray Dehart, guilty of Attempted Aggravated Assault.
>
> If the State has failed to prove any one or more of the above elements beyond a reasonable doubt, then you shall find the defendant, Kevin Ray Dehart, not guilty of Attempted Aggravated Assault. (C.P. at 29)

Jury instruction D-3 authorized the jury to find Dehart guilty of the lesser included offense

of simple assault. It reads, in its entirety, as follows:

> If you find that the State has failed to prove any one or more of the essential elements of the crime charged Attempted Aggravated Assault, you must find the Defendant not guilty of that charge. You will then proceed with your deliberations to decide whether the State has proved beyond a reasonable doubt all of the elements [of] Simple Assault.
>
> If you find from the evidence in this case beyond a reasonable doubt that:
>
> 1. On or about the 24th day of January, 2017, in the Second Judicial District of Jones County, Mississippi;
>
> 2. Kevin Dehart did attempt by physical menace to put Mac Craven in fear of imminent serious bodily harm[,]
>
> then you shall find the Defendant, Kevin Dehart, guilty of the lesser included crime of Simple Assault.
>
> If you find beyond a reasonable doubt from the evidence in this case that the defendant is guilty of the crime charged or a lesser crime as defined, but you have a reasonable doubt as to the crime of which the Defendant is guilty, you must resolve the doubt in favor of the Defendant and find him guilty of the lesser crime, simple assault. (C.P. at 33)

Dehart suggests the overwhelming weight of the evidence clearly showed that he had no intent to cause any bodily injury to Craven because " . . the evidence showed that Dehart could have shot and injured Craven if that was his true intent." (Brief of the Appellant at 10)

He suggests that no reasonable juror could have found that Dehart purposely or knowingly caused bodily injury to Craven; rather, the great weight of the evidence showed that "Dehart shot the back of Craven's car." (Brief of the Appellant at 10)

The problem with this argument is that a "specific intent" to cause bodily injury is not required by our statute, §97-3-7(2)(a)(ii). **Griffin v. State,** *supra*, 872 So.2d 90, 91 (Ct. App. Miss. 2004), citing **McGowan v. State,** 541 So.2d 1027, 1029 (Miss. 1989) ["There is apparently no specific intent requirement."] *Cf.* **Russell v. State,** *supra*, 924 So.2d 604, 608 (Ct. App. Miss. 2006).

Dehart's indictment charged that he " . . . on or about the 24th day of January, 2017 A.D., did purposely, knowingly and feloniously attempt to cause bodily injury to Mac Craven with a firearm, a deadly weapon, by shooting at him with said gun; in violation of Mississippi Code Annotated Section 97-3-7 (1972) and contrary to the form of the statute in such cases made and provided . . ." (C.P. at 8)

Quite clearly Dehart was charged under Miss. Code Ann. §97-3-7(2)(a)(ii) a part of which defines aggravated assault as "attempt[ing] to cause . . . bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm."

Jury instruction S-1 required the jury to find from the evidence beyond a reasonable doubt that Dehart "unlawfully attempted to cause serious bodily injury, with a deadly weapon to Mac Craven; by shooting at him with a firearm, a deadly weapon" (C.P. at 29).

Although Craven was not injured and while the second part of (2)(a)(ii) is inapplicable to Craven's scenario, Dehart would interpret the statutory language "purposely or knowingly causes bodily injury" to require a "specific intent" to cause bodily injury.

We think Dehart is mistaken. An intent to cause bodily injury is not an element of the aggravated assault charged under any part of (2)(a)(ii).

Stated differently, it is no defense to aggravated assault charged under (2)(a)(ii) that Dehart did not intend to cause bodily injury to Craven. It is enough that Dehart intended, purposely and knowingly, to set in motion the mechanism that either caused or could have caused bodily injury.

"For an attempted crime, an intent to *commit the particular crime* must be established." [emphasis ours] **Craig v. State,** 201 So.2d 1108, 1114 (Ct. App. Miss. 2016) citing **Brooks v. State,** *supra,* 18 So.3d 833 (Miss. 2009). It was enough that Dehart possessed the intent to commit the crime of aggravated assault by attempting to cause bodily injury to Craven with a deadly weapon.

We find in **Griffin v. State,** 872 So.2d 90, 91 (Ct. App. Miss. 2004), the following language applicable here:

> Assault is not a crime requiring proof of specific intent; that is, the State need not prove that the defendant had formed the specific purpose of inflicting bodily injury on his victim in order to convict. *McGowan v. State,* 541 So.2d 1027, 1029 (Miss. 1989). **Rather, the prosecution must simply show that the blow itself was purposely inflicted and that the requisite bodily injury resulted.** [emphasis ours]

See also **McGowan v. State,** *supra*, 541 So.2d 1027, 1029 (Miss. 1989) and the **Davis** and **Nelson** decisions [citations omitted] cited therein. ["There is apparently no specific intent requirement."]. *Cf.* **Russell v. State,** *supra*, 924 So.2d 604, 608 (Ct. App. Miss. 2006) ["(I)ntent to cause serious bodily injury is not an element of the crime of aggravated assault under section 97-3-7(2)(b)."]

"In reviewing the sufficiency of the evidence, as opposed to its weight, " . . . all evidence supporting the guilty verdict is accepted as true, and the State must be given the benefit of all reasonable inferences that can be reasonably drawn from the evidence." **Jiles v. State,** 962 So.2d 604, 605 (¶ 5) (Ct. App. Miss. 2006). *See also* **McDowell v. State,** 813 So.2d 694, 697 (¶8) (Miss. 2002).

"[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." **Bush v. State,** 895 So.2d 836, 843 (¶16) (Miss. 2005), quoting from **Jackson v. Virginia,** 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

"Should the facts and inferences considered in a challenge to the sufficiency of the evidence 'point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty,' the proper remedy is for the appellate court to reverse and render." **Bush v. State,** *supra*, 895 So.2d at 843

citing, *inter alia*, **Edwards v. State,** 469 So.2d 68, 70 (Miss. 1985).

Dehart did not testify.

All the prosecution was required to prove was that Dehart, without authority of law, intentionally and deliberately shot at Craven with a deadly weapon in an attempt to cause bodily injury.

It is no defense to the crime of aggravated assault charged here that Dehart did not intend to cause bodily injury to Craven who testified that Dehart was shooting at him. (R. 87)

It is clear the offense of aggravated assault is complete where, as here, a jury might find no intent to actually cause bodily injury but could, on the other hand, find an intent and purpose to set into motion the mechanism that causes or could cause bodily injury, whether the injury was intended or not. *Cf.* **Russell v. State,** *supra*, 924 So.2d 604 (Ct. App. Miss. 2006) [Intent to cause serious bodily injury is not an element of the crime of aggravated assault under statute 97-3-7(2)(b) defining one type of aggravated assault as attempting to cause or purposely or knowingly causing bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm].

As stated previously, a specific intent to cause any bodily injury, whether serious or not, is not an element of the offense charged here. The State only had to prove that Dehart intentionally and purposely fired the 12 gauge at Craven in an attempt to cause bodily injury.

The language found in **Griffin v. State,** *supra*, 872 So.2d 90, 91 (Ct. App. Miss. 2004), is worth repeating here:

> Assault is not a crime requiring proof of specific intent; that is, the State need not prove that the defendant had formed the specific purpose of inflicting bodily injury on his victim in order to convict. *McGowan v. State,* 541 So.2d 1027, 1029 (Miss. 1989) **Rather, the prosecution must simply show that the blow itself was purposely inflicted and that the requisite bodily injury resulted.** [emphasis

supplied]

Judge Williamson, by denying Dehart's motion for a new trial, correctly held the identity of Dehart's offense, whether aggravated assault defined by S-1 or simple assault as defined in D-3 was a question for the jury and that the jury's verdict should not be disturbed.

Assuming, on the other hand, a specific intent was required by our statute, the proof still fails to preponderate in favor of Dehart. If we accept as true the testimony of Mac Craven that he was in the line of fire and Dehart was shooting at him and the testimony of Lynn Yates who testified she figured Dehart was shooting at Craven because Dehart was hollering and cussing at him (R. 83, 87), it is clear a fair-minded juror could have found an intent to cause bodily injury.

This is especially true where, as here, the deadly weapon was a 12 gauge shotgun thrice fired from a distance equivalent to the distance inside the courtroom described by Craven as "[f]rom here to the front of that table." (R. 89)

Dehart argues, legitimately but unconvincingly we think, [t]he evidence indicated that Dehart fired the gun, not with the intent to actually hit Craven, but in a display of emotion aimed to scare, intimidate or dissuade Craven from texting Deanne's phone any more." (Brief of the Appellant at 6),

Dehart did not shoot into the air which one might do in order to frighten, intimidate, or admonish another; rather, Dehart, obviously agitated, if not enraged, fired, not once, but three times in Craven's direction.

In **Newburn v. State**, 205 So.2d 260, 265 (Miss. 1967), this Court stated:

> "Intent is a state of mind existing at the time a person commits an offense. If intent required definite and substantive proof, it would be almost impossible to convict, absent facts disclosing a culmination of the intent. The mind of an alleged offender, however, may be read from his acts, conduct, and inferences fairly deducible from all the circumstances."

In **Shanklin v. State**, 290 So.2d 625, 627 (Miss. 1974), this Court further opined:

> Intent to do an act or commit a crime is also a question of fact to be gleaned by the jury from the facts shown in each case. The intent to commit a crime or to do an act by a free agent can be determined only by the act itself, surrounding circumstances, and expressions made by the actor with reference to his intent. [citations omitted]

Here Dehart's purpose and intent could be read from the act itself and the surrounding circumstances.

Accepting as true all evidence favorable to the State, together with all reasonable inferences to be drawn from that evidence, and viewing it in a light most favorable to the prosecution's theory of the case, we submit a reviewing Court can conclude that a reasonable, hypothetical juror could have found Dehart guilty of aggravated assault.

Our position on the issue of any required intent can be summarized in only three (3) words: "classic jury issue."

This is not a case where the evidence, at least as to one of the elements of the crime charged, is such that a reasonable and fair-minded juror could only find the accused not guilty. *See* **McClain v. State,** 625 So.2d 774, 778 (Miss. 1993).

Nor is this an exceptional case where the evidence preponderates heavily against the verdict.

We find in **Smoot v. State,** 780 So.2d 660, 664 (Ct. App. Miss. 2001), a prosecution for aggravated assault, the following language:

> * * * Basically, Smoot calls into question his whole ordeal before the trial court. Still, he has not shown how an unconscionable injustice has resulted, as all the evidence points to the guilty verdict. The evidence consisted primarily of Clark's testimony positively identifying Smoot as one of his assailants, but also included Williams's eyewitness testimony which implicated Smoot. Smoot presented no evidence whatsoever, called no witnesses, and offered no proof to contradict the State's convincingly made case. The jury verdict reflected the facts presented and no unconscionable injustice resulted in Smoot's being convicted. This issue is without merit.

Finally, in **Maiben v. State**, 405 So.2d 87, 88 (Miss. 1981), this Court announced that

> . . . . . we will not set aside a guilty verdict, absent other error, **unless it is clearly a result of prejudice, bias or fraud, or is manifestly against the weight of credible evidence.** [emphasis supplied]

The following observations made in **Groseclose v. State**, 440 So.2d 297, 300 (Miss. 1983), are also worth repeating here:

> We will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, **would be to sanction an unconscionable injustice.** *Pearson v. State*, 428 So.2d 1361, 1364 (Miss. 1983). Any less stringent rule would denigrate the constitutional power and responsibility of the jury in our criminal justice system. [emphasis supplied]

In short, this Court will not set aside a guilty verdict unless the verdict is manifestly against the weight of credible evidence [**Maiben v. State**, 405 So.2d 87, 88 (Miss. 1981)] and unless this Court is convinced that to allow the verdict to stand, would be to sanction an unconscionable injustice. **Groseclose v. State**, 440 So.2d 297, 300 (Miss. 1983). The case at bar certainly does not exist in this posture.

CONCLUSION

"This Court will not set aside a conviction without concluding that the evidence, taken in the most favorable light, could not have supported a reasonable juror's conclusion that the defendant was guilty beyond a reasonable doubt." **Rainer v. State**, 473 So.2d 172, 173 (Miss. 1985).

In the case at bar it could, and he was.

Although Dehart, with the able and effective assistance of his trial and appellate counsel, has argued with both intensity and sincerity, his claims are devoid of merit.

Appellee respectfully submits that no reversible error took place during the trial of this cause and that the judgment of conviction of aggravated assault and the twelve (12) year sentence with four

(4) years suspended followed by four (4) years of post-release supervision, imposed by the trial court should be forthwith affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, BILLY L. GORE, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Hunter N. Aikens, Esq.
Indigent Appeals Division
Office of State Public Defender
P. O. Box 3510
Jackson, MS 39207-3510

Further, I hereby certify that I h ave mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Dal Williamson
Circuit Court Judge
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Honorable Anthony J. Buckley
District Attorney
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This the 3rd day of July, 2019.

/s/ Billy L. Gore
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