

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2002-KA-00916-COA

ANTHONY HICKS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF TRIAL COURT JUDGMENT:	5/15/2002
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	HOLMES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	W. S. STUCKEY
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL
	BY: CHARLES W. MARIS
DISTRICT ATTORNEY:	JAMES H. POWELL, III
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF ASSAULT OF A LAW ENFORCEMENT OFFICER - SENTENCED TO SERVE A TERM OF THREE YEARS IN THE CUSTODY OF MDOC.
DISPOSITION:	AFFIRMED - 5/13/2003
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., MYERS AND GRIFFIS, JJ.

MYERS, J., FOR THE COURT:

¶1. Anthony Hicks appeals his conviction of an assault on an officer. The only issue he presents to us is:

THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

STATEMENT OF FACTS

¶2. Hicks was an inmate at the Holmes County Correctional Facility. He refused to return to his cell after being informed that it would be later in the day before he could go to canteen call. Hicks requested to speak with the warden. The warden did speak with Hicks but Hicks still refused to return to his cell. The warden and several guards tried to coerce Hicks into his cell, but Hicks responded with a violent outburst. He attacked and wounded the warden. Several officers were required to pull Hicks off the warden. Hicks refused to be subdued which resulted in Mace being used.

¶3. Hicks argued that he started punching the warden only after being Maced. He was granted an instruction of self-defense. The testimony and a videotape shows that Hicks attacked the warden prior to being Maced. Hicks was able to move around one guard and grab the retreating warden.

LEGAL ANALYSIS

¶4. As to the weight of the evidence, the trial judge is given wide discretion to order a new trial in the face of overwhelming evidence contrary to the jury's verdict in order to prevent an unconscionable injustice. *Braxton v. State*, 797 So. 2d 826, 828 (¶6) (Miss. 2000). The jury was able to hear testimony from both sides recounting the facts stated earlier. The jury was also allowed to view a videotape of the assault. The jury chose to believe the evidence presented by the prosecution. The trial judge did not abuse his discretion in refusing the request for a new trial.

CONCLUSION

¶5. This Court cannot say that the verdict was against the overwhelming weight of the evidence nor was the evidence insufficient to allow a verdict of guilty. A reasonable and fair minded jury was presented enough evidence to reach a guilty verdict. This Court affirms the conviction.

¶6. THE JUDGMENT OF THE HOLMES COUNTY CIRCUIT COURT OF CONVICTION OF ASSAULT OF A LAW ENFORCEMENT OFFICER AND SENTENCE OF THREE YEARS IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO HOLMES COUNTY.

McMILLIN, C.J., KING AND SOUTHWICK, P.JJ., BRIDGES, THOMAS, LEE, IRVING, CHANDLER AND GRIFFIS, JJ., CONCUR.