

**IN THE COURT OF APPEALS 08/06/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00019 COA**

**DALE O. LOFTON**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM F. COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

SAMUEL H. WILKINS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: CYNTHIA HEWES SPEETJENS

NATURE OF THE CASE: MURDER

TRIAL COURT DISPOSITION: GUILTY OF MURDER, SENTENCED TO SERVE A LIFE  
SENTENCE IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

DIAZ, J., FOR THE COURT:

The Circuit Court of Hinds County tried and convicted Dale O. Lofton (Lofton) for the murder of Ronnie Sutters. Feeling aggrieved, Lofton appeals to this Court citing two errors: (1) the conviction for murder was against the overwhelming weight of the evidence, and (2) the trial court erred in failing to instruct the jury on deliberate design. Finding no error, we affirm.

## FACTS

Ronnie Sutters (Sutters), Henry Woodyard (Woodyard), and Tommy Williams (Williams) were co-employees at Rally's Hamburgers in Jackson, Mississippi. On December 22, 1991, Sutters and Woodyard were working the closing shift together and decided to go play pool after work since Sutters was planning to leave the next day to visit his ailing mother in Milwaukee. They left work at 12:00 P.M., joined Williams and arrived at the Players' Lounge at approximately 1:00 A.M. The Players' Lounge was a local pool hall and bar where they frequently went after work. Shortly thereafter, Lofton and two friends, Joe Thomason (Thomason) and Bo Nowell (Nowell), arrived at the Players' Lounge, riding their motorcycles. The three men had been drinking beer and playing pool for approximately five hours prior to arriving at the Players' Lounge. Thomason seated himself at the bar and continued drinking and talking with his friends. Sutters, who had been playing pool since he arrived, approached the bar to get more quarters. At this time, Thomason testified that Sutters intentionally bumped him on the shoulder. Thomason testified that he said to Sutters, "What's the problem . . . you don't have a black bar to go to at this time of the morning or you just like hanging out with white people"; he also admitted to calling Sutters "a nigger." At this time the bartender admonished Thomason for his comment, and Sutters went back to the pool tables. Sutters, Woodyard, and Williams continued to play pool for another thirty minutes then, due to the hostile atmosphere, decided to leave. The three men walked out the front door and stood under the awning. It was raining, and Woodyard decided to go get the car and pick up the other two men. Thomason then came outside and accused Sutters of messing with their motorcycles. Sutters denied this and Thomason went back inside the lounge. A few minutes later, Thomason and Lofton came outside together. Lofton and Sutters had a heated verbal exchange and witnesses testified that Lofton said, "I'm going to take care of this nigger's problem" and shot Sutters in the face. Sutters died shortly thereafter. Lofton testified that he believed Sutters had a weapon and that he fired in self-defense.

## DISCUSSION

### *Procedural Bar*

The record reveals that Lofton filed a motion for JNOV or in the alternative for a new trial on December 1, 1994. He filed his notice of appeal on December 22, 1994. On January 9, 1995 Lofton's motion was overruled.

Mississippi Supreme Court Rule (e) provided the following:

(e) Post-trial Motions in Criminal Cases.

If a timely motion under the Uniform Criminal Rules of Circuit Court Practice is filed in

the trial court by the defendant: (1) for judgment of acquittal notwithstanding the verdict of the jury, or (2) for a new trial under Rule 5.16, the time for appeal for all parties shall run from the entry of the order denying a such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above.

Miss. Sup. Ct. R. 4(e).

Lofton failed to re-file his notice of appeal after his motion was overruled as required by Rule

4(e). Thus, his appeal was not timely filed and is procedurally barred. Nevertheless, we address Lofton's assignments of error and find them without merit.

#### 1. Lofton's Conviction was Against

the Overwhelming Weight of the Evidence

Upon reviewing the legal sufficiency of the evidence, this Court must consider all the evidence in light most favorable to the State. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). Also, all evidence consistent with the defendant's guilt is accepted as true, along with all reasonable inferences. *Heidel v. State*, 587 So. 2d 835, 838 (Miss. 1991). All 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 will reverse only where the evidence is such that a reasonable and fairminded juror could only find the accused not guilty. *Cook v. State*, 467 So. 2d 203, 208-09 (Miss. 1985).

Lofton argues that there was no evidence of "deliberate design" to support the conviction of murder. He argues that the victim was shot on a "spur-of-the-moment" reaction to a perceived threat on his life. The State counters that there was substantial evidence that Lofton intended to shoot Sutters and that the verdict was consistent with the evidence.

"Deliberate" indicates full awareness of what one is doing, and generally implies careful and unhurried consideration of the consequences. *Windham v. State*, 520 So. 2d 123, 126 (Miss. 1987).

"Design" means to calculate, plan, or contemplate. *Id.* The evidence indicates that Lofton had the requisite intent necessary for a conviction of murder. The record reveals that Lofton knew of the confrontation between Sutters and Thomason before he approached Sutters. The testimony revealed that Lofton came outside, with a weapon, and intentionally became involved in the altercation between Sutters and Thomason. Moreover, witnesses testified that Lofton stated he was "going to take care of this nigger's problem" immediately before he fired the fatal shot. The evidence sufficiently demonstrated that Lofton had adequate time to form the requisite intent for murder. The jury determines the weight and credibility of the evidence, and we do not find the verdict contrary to the overwhelming weight of the evidence. Therefore, there is no merit to this assignment of error.

#### 2. The Trial Court Erred in Failing to

## Instruct the Jury on Deliberate Design

The record reveals that the jury was properly instructed as to the elements of murder. Lofton contends that his instruction D-7 defining deliberate design should have been given. We will not reverse for denial of an individual instruction when the jury has been correctly and fully instructed by the granting of other instructions. *Catchings v. State*, No. 93-KA-00741-SCT, 1996 WL 255384, at \*9 (Miss. May 16, 1996); *Collins v. State*, 594 So. 2d 29, 35 (Miss. 1992). Therefore, Lofton's argument on this point is without merit.

### CONCLUSION

Lofton's conviction for murder was not against the overwhelming weight of the evidence and the trial judge did not abuse his discretion in overruling his motion for a new trial. On the contrary, the State produced substantial evidence by which the jury could find that Lofton possessed the requisite intent for murder. Furthermore, the denial of Lofton's jury instruction defining deliberate design was not reversible error since the jury was properly instructed on the elements of murder. For these reasons, the judgment of the court below is affirmed.

**THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**