

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00845 COA**

MARCUS MORRIS A/K/A MARCUS F. MORRIS

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

DATE OF JUDGMENT:	05/21/94
TRIAL JUDGE:	HON. EUGENE M. BOGEN
COURT FROM WHICH APPEALED:	WASHINGTON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	MARTIN A. KILPATRICK
ATTORNEY FOR APPELLEE:	JEFFERY A. KLINGFUSS BY: JEFFERY A. KLINGFUSS
DISTRICT ATTORNEY:	HALLIE G. BRIDGES, JOYCE CHILES
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CAPITAL MURDER: SENTENCED TO LIFE IN THE MDOC; DEFENDANT SHOULD PAY ALL COURT COSTS, \$192.50 & \$250.00 ASSESSMENT OF MS CRIME LAB, PLUS COSTS OF JURY \$1785.00
DISPOSITION:	AFFIRMED - 9/23/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/14/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Marcus Morris was convicted of capital murder and sentenced to serve a term of life in the custody of the Mississippi Department of Corrections. Morris's motion for JNOV or, in the alternative, a new trial was denied. Finding no error in the judgment of the circuit court, we affirm.

FACTS

Marcus Morris was indicted and convicted for the September 14, 1992, murder of Jimmy Lepri. The testimony indicated that Morris, a former employee at Lepri's fast-food restaurant, had become disgruntled with Lepri because Lepri owed Morris some money. Two witnesses, Quinzie Kelly and Sylvester Hall, Jr., testified that prior to the killing Morris stated that he planned to kill Lepri. Another witness, Torrence Thornton, testified that on the day of the murder Morris came to his home, displayed some money, gave Thornton a .25 automatic, and stated, "I killed that niger [sic]." According to the Mississippi Crime Lab, tests on the gun were inconclusive as to whether it was the same gun that was used to kill Jimmy Lepri. Various other witnesses testified that on the morning of the murder, they saw a car similar to Morris's car at the restaurant. Morris did not testify in his own behalf but presented several witnesses who indicated that Morris was at home during the time of the murder.

Subsequently, the jury returned a verdict of guilty of capital murder. Following a sentencing hearing, the jury recommended a life sentence and Morris was sentenced to same. Feeling aggrieved, Morris filed this appeal in which he alleges that the verdict was against the overwhelming weight of the evidence.

ANALYSIS

I. WHETHER THE CIRCUIT COURT ERRED IN ITS DENIAL OF MORRIS'S MOTION FOR A NEW TRIAL.

Morris argues that the verdict was against the overwhelming weight of the evidence. We find no merit in this argument.

Our standard of review for a denied motion for a new trial is limited and well known. The Mississippi Supreme Court has held that "[t]he jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993); *see also Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993) (witness credibility and weight of conflicting testimony are left to the jury); *Kelly v. State*, 553 So. 2d 517, 522 (Miss. 1989) (witness credibility issues are to be left solely to the province of the jury). Furthermore, "the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion." *McClain*, 625 So. 2d at 781 (citing *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987)). The decision to grant a new trial "rest[s] in the sound discretion of the trial court, and the motion [for a new trial based on the weight of the evidence] should not be granted except to prevent an unconscionable injustice." *Id.* This Court will reverse only for abuse of discretion, and on review will accept as true all evidence favorable to the State. *Id.*

In the present case, the jury heard the witnesses and the evidence as presented by both the State and the defense. From the facts as outlined above and in the record, we find that there was no injustice in the denial of Morris's motion for a new trial. The testimony was clearly for the jury to evaluate. The jury's decision to believe the State's evidence and witnesses was well within its discretion. Moreover, the jury was well within its power to weigh the evidence and the credibility of the witnesses' testimony and to convict Morris. The trial court did not abuse its discretion by refusing to grant

Morris a new trial based on the weight of the evidence. The jury verdict was not so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to promote an unconscionable injustice. We therefore find that the trial court properly denied Morris's motion for a new trial.

THE JUDGMENT OF THE WASHINGTON COUNTY CIRCUIT COURT OF CONVICTION OF CAPITAL MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WASHINGTON COUNTY.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., NOT PARTICIPATING.