

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00661 COA**

**ANTHONY DORRIS, A/K/A "TONY" DORRIS,
A/K/A ANTHONY EUGENE DORRIS**

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:	9/6/91
TRIAL JUDGE:	HON. ELZY J. SMITH
COURT FROM WHICH APPEALED:	CIRCUIT COURT OF TUNICA COUNTY
ATTORNEY FOR APPELLANT:	ALLAN D. SHACKELFORD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: PAT FLYNN
DISTRICT ATTORNEY:	LAURENCE Y. MELLEN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	GUILTY - MANSLAUGHTER, SENTENCED TO TERM OF 12 YEARS IN AN INSTITUTION UNDER THE SUPERVISION OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WHICH SENTENCE IS TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED
DISPOSITION:	AFFIRMED - 10/21/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/12/97

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

A grand jury indicted the appellant, Anthony Dorris, for the crime of murder in the death of Charles Ray Cook, but a jury in the Circuit Court of Tunica County returned a verdict of "guilty of manslaughter." Pursuant to that verdict, the circuit judge entered a judgment of Dorris' guilt of the crime of manslaughter and sentenced him to serve a term of twelve years in an institution under the

supervision and control of the Mississippi Department of Corrections, which sentence is to run consecutively to any and all sentences previously imposed. Dorris appeals from this judgment to argue that his conviction was against the overwhelming weight of the evidence; nevertheless, this Court affirms the trial court's judgment and sentence.

I. FACTS

On Saturday, June 28, 1991, Charles Ray Cook and three companions were participating in a barbeque contest, or "cook-off," conducted at Nelwin Camp, which is located on Tunica Cut-off in Tunica County. Cook and his companions had rented the location where they were to cook for \$75, and Tammy Everett, one of Cook's companions engaged in the contest, had painted the boundaries of their assigned area in the grass with red spray-paint. Cook's group was cooking pork shoulders, a task which required some eight to ten hours to complete. The judging was to begin at noon on that day, so Cook's group had arrived at around nine o'clock the night before to begin their preparation for the contest.

On that same Friday evening, Dorris and his brother-in-law, Terry Roland, had driven in Dorris' mother's car from Dorris' home in Memphis to Tunica Cut-off for a weekend fishing trip. Dorris and Roland planned to stay in his family's trailer which was located at Bordeaux Point, another camp located in the Cut-off. Attached behind their car was a trailer on which they were hauling their fishing boat. On the floorboard of the car was a fishing knife with a three-inch blade that Dorris used to open the car's hood and trunk. Once Dorris and Roland had arrived at his family's trailer, Dorris opened the car's trunk with the fishing knife preparatory to his unhooking the boat trailer and disconnecting the wires for the trailer's lights from the car. After Dorris had opened the trunk with the knife, he put the knife in his rear pants pocket.

Dorris and Roland also brought a half-gallon container of Jim Beam whiskey with them. Once they had unhooked the boat trailer from the car and Dorris had changed his shirt, Roland and Dorris went to Rico's, a bar located in the Bordeaux Camp. After they had played pool and had been drinking for about an hour and a half at Rico's, Dorris and Roland left Rico's and went to Kingston's, a bait shop and bar located in Nelwin Camp, the site of the barbeque cook-off.

At about three o'clock on Saturday morning, June 28, Dorris left Kingston's and walked over to the area assigned to Cook and his companions to barbeque. There he began to socialize with some of the contestants and their guests. A fight erupted between Dorris and Charles Ray Cook, the consequence of which was Dorris' nearly severing Cook's eye brow from his face and stabbing Cook one time in the chest with his fishing knife. Tammy Everett and Frank Johnston placed Cook, gasping and convulsing, in the bed of Cook's pick-up and drove him to the hospital in Tunica, where they met a helicopter which flew Cook to a trauma center in Memphis. Cook died en route.

Immediately after he stabbed Cook, Dorris returned to Kingston's, where he tried to persuade his brother-in-law to leave with him. After Dorris and Roland went outside, a scuffle ensued among Dorris and some of Cook's companions, including James Chambers, who were trying to get the numbers on the license plate of Dorris' car before he left. After the scuffle, Dorris sped away without Roland into the Delta summer night.

The next day Tunica County Deputy Sheriff Jessie Powell went to the Cut-off to investigate the fight

between Dorris and Cook. When he arrived at the Cut-off, Powell obtained a description of Dorris' car and a partial description of Dorris. As Deputy Powell returned to Tunica on Highway 61, the dispatcher for the Tunica County Sheriff's Office called Powell to advise him that a subject who matched Dorris' partial description had been seen walking north toward Memphis on Highway 61. About two miles north of Robinsonville, the deputy saw Dorris walking toward Memphis on the east side of the highway. He stopped to interrogate Dorris and subsequently arrested him.

The three categories of competition in the barbeque cook-off were shoulders, ribs, and wild game. Cook's team won the category for barbequing shoulders.

II. TRIAL

Pursuant to the grand jury's indictment of Dorris for the murder of Cook on August 6, 1991, Dorris was tried on Monday, which was Labor Day, and Tuesday, the second and third days of September, 1991. Dorris' only issue is that "[t]he verdict of the jury is against the overwhelming weight of the evidence." Dorris argues that the evidence overwhelmingly demonstrated that he acted in self-defense because it was reasonable for him to believe that Cook, who was the aggressor from his perspective, was armed with a knife when Cook approached him and began fighting. Thus, we review in detail the witnesses' testimony about whether Cook was the aggressor and whether Cook may have been armed with a knife when the fight between Dorris and him began. As with most trials where there are several witnesses, the details are murky and contradictory. The clarity of testimony was sullied by all the witnesses' admissions that everybody involved in this escapade had been drinking beer and/or whiskey and were intoxicated to some degree.

The State's first witness was Carolyn Cook, widow of Charles Ray Cook, who testified that Claiborne, Louisiana, had been her late husband's family's home. However, her husband, a carpenter and self-employed contractor, had been living in a camping trailer in the Tunica Cut-off for the two years which preceded his death while he built apartments and did remodeling jobs in the Tunica area. She described her husband as being five feet, ten inches tall, and weighing "probably 145, maybe 150 pounds."

James D. Chambers was the State's second witness. Chambers testified that things began to happen around three o'clock Saturday morning when Dorris walked to Cook's designated barbequing area and began visiting with the contestants and their guests. Tammy Everett asked Chambers to ask Dorris to leave, but Dorris replied that Cook's group had no right to ask him to leave. Everett then explained to Dorris the red boundary, after which Dorris voluntarily stepped across it. However, Dorris continued to stand just across the boundary outside Cook's designated cooking area. Chambers had been sitting on a cooler situated just under the edge of the pavilion next to the cooking area while he talked to Kenny Boling and Tammy Scarborough. Chambers looked up just in time to see Cook and Dorris "head up," to use Chamber's language. Chambers had last seen Cook standing next to the cooker which was located near the center of the designated area. David Chambers, who was James Chambers' little brother, had been standing with Cook at the cooker before the fight began.

Chambers got up and walked toward the fight to break it up. As he approached the combatants, Cook stumbled backward toward him, went around him "in almost a semi-circle, and fell to the ground." As Cook fell, he hit his head on the corner of a bench to a picnic table, which was out from

under the roof of the pavilion. When Chambers noticed that Cook was "bleeding real bad" across his face and that "there was blood all over his shirt," he said, "Call 911." Dorris had retreated to the stairs leading up to Kingston's bar when Chambers went inside to call 911. Chambers testified that as he ascended the stairs past Dorris to enter Kingston's, Dorris brandished a knife and told him, Chambers, "to stay the hell away from him [Dorris]." Once inside, he found that Kenny Boling was already on the phone. Chambers did not see Dorris stab Cook, nor did he know what precipitated the fight.

The State asked Chambers, "At the time that you saw Charles Ray on the ground, was there a knife anywhere near him that you saw?" Chambers replied, "Not on the ground." He then testified that he had not seen anything in Cook's hands during his fight with Dorris. On cross-examination, Chambers testified that he did not know whether Cook carried a knife and that he had not seen Cook hand a sharpening stone to Tammy Everett as Cook approached Dorris. Chambers also testified on cross-examination that he did not hear Cook threaten Dorris.

The State's third witness, Tammy Scarborough, testified that she saw Dorris strike Tammy Everett before the fight between Dorris and Cook erupted. She did not see with what he struck her. Cook was wearing glasses before his fight with Dorris. Scarborough testified that she saw Cook hand someone his glasses before he approached Dorris. The next thing she knew, Dorris and Cook were fighting. Then she saw Cook, who was bleeding, throw his hands up. She saw nothing in Cook's hands during the fight. Scarborough went into Kingston's and asked the woman who worked there to call 911. Scarborough testified that she did not see Cook make any threatening or assaultive gestures as he approached Dorris and that she did not hear Cook say anything to Dorris of a threatening nature. All Scarborough heard before the fight began was Cook's asking Dorris, "[P]lease leave so no trouble would be started." When the prosecutor asked her, "Did you ever see the knife that evening?" Scarborough answered, "No, Sir."

On cross-examination, Scarborough testified that she had first seen Dorris earlier that night in Kingston's when he bought her and her unidentified friend a beer. Scarborough did not know whether Cook carried a knife. Scarborough professed to know that Cook had been in a lot of fights, but she asserted that Cook was trying "not to get in a fight." On redirect examination, the prosecutor asked, "Was [Cook] doing anything aggressive this night when this thing happened?" Scarborough answered, "No." When the prosecutor inquired, "Did [Cook] threaten [Dorris] in any way that you saw or heard?" Scarborough replied, "No."

Frank D. Johnston was the State's fourth witness. As had Scarborough, Johnston had first seen Dorris inside Kingston's earlier that night. Then, around 3:00 a.m. Dorris came over to where Cook's group was cooking and began to bicker with some of the people who were present. Johnston, who was busy preparing the fire and getting everything ready to begin cooking, had not paid very much attention to Dorris. Just before the confrontation began, Johnston decided to move his truck. Thus, he was inside his truck when Dorris and Cook began fighting. From inside his truck, Johnston saw that "Charles Ray went at him . . . after the conflict with Tammy."

The prosecutor asked Johnston, "When [Cook] was on the ground there, did you see any knife or any weapon in his hand?" Johnston replied, "No." On cross-examination, Johnston stated that the first time he saw Dorris that night was when he met him in the parking lot of Kingston's where Dorris was

talking to some of Johnston's friends. When Dorris' counsel asked Johnston if he knew whether Cook carried a knife, Johnston responded, "He always did. He used it in work everyday It was just a habit." Johnston further testified that he had heard Dorris brag before the fight began that "[t]here wasn't a son of a bitch out there big enough to make him leave." Johnston added that Dorris had been flirting with both Tammy Everett and Tammy Scarborough and that Everett did not appreciate it. At that moment James Chambers asked Dorris to leave. On redirect examination, Johnston reiterated that he never saw Cook pull a knife. However, he established that Cook had a knife in his back pocket that he had used earlier that evening to cut up the meat for cooking. He reiterated that he never saw Cook assume the roll of aggressor toward Dorris that night.

Kenneth Boling, Jr. was the State's fifth witness. He testified that he observed Dorris and Cook swinging at each other for three or four blows before Cook staggered, but he too never saw any knife, whether wielded by Dorris or by Cook. On cross-examination, Boling stated that he had never seen Cook with a knife. He also testified that he had seen Dorris put his hand in his back pocket one time when he was standing across the red line before the fight began. About Cook's glasses which he had been wearing before the fight, Boling testified that he believed that Cook had taken off his glasses and put them down before he approached Dorris.

Tammy Everett, the State's sixth witness, testified that a few minutes after Dorris had arrived at their cooking area, he began to make comments that were "sexual" and "not really wanted at the time." According to Everett, she was the first person to ask Dorris to leave. Then, James Chambers, David Chambers, and Charles Ray Cook each asked Dorris to leave. Next, Everett explained to Dorris that they had rented the area within the red lines for \$75 and that he was not welcome. Only then did Dorris cross the line, but after he had crossed it, Dorris stated, again according to Everett, that the first person who crossed the line to his side was a dead person.

After Dorris crossed the red line, Everett walked over to Cook and James Chambers to ask if either of them wanted a beer. Everett testified that the next thing she knew, Dorris hit her underneath her eye. Dorris's blow cut Everett just beneath her eye. Everett testified that after Dorris struck her, Cook got between Dorris and her, and the fight began. She saw Cook stumble backward and heard him say, "I've been cut." Everett explained that she had not seen Dorris stab Cook because she bent down after Dorris' blow had hurt her eye. Everett did not know whether Cook had removed his glasses before he approached Dorris. When the prosecutor asked Everett if she saw anything happen which would require Dorris to defend himself, she replied, "No, Sir, I did not." On cross-examination, Everett testified that she never saw a knife.

After the State called the paramedic who treated Cook at the hospital in Tunica and Jessie Powell, the deputy sheriff who had arrested Dorris the next day, it then called David Chambers. David Chambers testified that because his brother James had invited Dorris over to Cook's companions, the group asked James to ask Dorris to leave. David testified that after Dorris had joined the group, he became cocky and began to brag about his knife wounds from earlier bar fights. He testified that he saw Dorris strike Everett and that Dorris was holding an object in the hand with which he struck Everett. David Chambers told the jury that he had seen Cook approach Dorris and Dorris then stab Cook. Chambers described Cook's approach to Dorris as "a moderate walking toward [him]." To quote David Chambers' testimony: "He [Cook] wasn't running. He wasn't screaming at him. He wasn't yelling, and he didn't have his fists drawn back or anything. He was just walking towards him."

David Chambers testified that he had seen Cook with a beer can in his hand, but that he never saw Cook with a knife before Dorris stabbed him. Chambers saw Cook "hugged up" to Dorris. Then he saw Cook get a couple of licks into Dorris' back after Dorris had stabbed him but before he began to stumble back. Chambers helped Frank Johnston put Cook in the bed of Cook's truck after the fight had ended. The State rested after David Chamber's testimony.

Dorris testified as the only witness on his behalf. He testified that he had first met James Chambers at Rico's. When he and Roland went to Kingston's, Dorris saw James Chambers for the second time that evening. As he left Kingston's with James Chambers around midnight, they encountered Cook, Frank Johnston, and others in Kingston's parking lot. Chambers introduced him to Cook and the others there in the parking lot. Dorris and Roland then returned to Kingston's, where they resumed drinking their Jim Beam. According to Dorris, his brother-in-law and he "had almost done finished (sic) [the half-gallon of Jim Beam]" when Roland "got so drunk he couldn't even talk to me no more (sic)." Dorris eventually walked outside of Kingston's, looked over to where Cook's team was preparing to barbeque, and saw James Chambers. Dorris "casually walked over and sat down" and began to engage in casual conversation with the barbequers and their guests.

Dorris' version of the events which led up to his stabbing Cook was not very dissimilar from the accounts of Cook's companions; however, he emphatically denied that he ever struck Tammy Everett, whom he described as being "real bad in the mouth" with a "really bad attitude." The record contains Dorris' version of what transpired during his fight with Cook, which we quote:

A. And then I looked over at Charles Ray, and he was taking off his glasses. So I said, "I know this man is fixing to jump on me." So he started -- he turned around and took his right hand and [put it] behind him, and I thought he was fixing to stick his hand in his back pocket, and I already knew that he had a knife because he had . . .

Q. How did you know that he had a knife?

A. Because he had a sharpening rock. Because earlier the little pocket knife that they was -- said that they was poking the meat with, Tammy Everett was sitting there sharpening it, and she asked him for his sharpening rock. So he took his sharpening rock out of his pocket and handed it to her.

Dorris next testified:

I figured that he had had a weapon. You know, that I knew he had a knife of some kind 'cause when he was standing there and he was walking towards me, he never took his right hand out from behind him. I could not see his hand. I could not -- I didn't -- I cannot say that I seen a knife. All I did was presume that he had a knife in his hand.

Dorris explained that Cook took off his glasses as he approached Dorris and that Cook reached for him when he got close enough to do it. When Cook reached for Dorris, Dorris hit Cook; then both combatants began swinging at each other. Dorris "kind of [fell] back on one knee" and caught himself with his left hand on the ground. Dorris next testified that when he came back up, Cook was falling back, stepping away from him. When Dorris saw "everybody starting to swarm in that place," he "took off running." Dorris told the jury in his direct testimony that he had taken his knife out of his

pocket when Cook was "walking towards him with his hand behind his back."

After the circuit court entered its judgment of Dorris' guilt of manslaughter and its sentence of twelve years, Dorris' court-appointed counsel failed to perfect an appeal from that judgment to the Mississippi Supreme Court. Dorris' present appeal resulted from the trial judge's granting him an out of time appeal by an order rendered on June 9, 1994, in response to Dorris' motion for an out of time appeal and other relief.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUE

We quote Anthony Dorris's one issue verbatim from his brief: "The verdict of the jury is against the overwhelming weight of the evidence."

A. STANDARD OF REVIEW

Dorris does not dispute the legal sufficiency of the State's evidence. Instead, Dorris contends only that the trial court erred in denying his motion for a new trial. It is within the trial court's discretion whether to grant a motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). This motion is not considered *de novo* on review. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991). The Mississippi Supreme Court will only reverse where it finds that there has been an abuse of discretion. *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987); *Catchings v. State*, 684 So. 2d 591, 600 (Miss. 1996). The Mississippi Supreme Court will overturn the trial court's denial of a motion for a new trial only where it is "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." *Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983); *May v. State*, 460 So. 2d 778, 781-2 (Miss. 1984). *See e.g.*, *Wetz*, 503 So. 2d at 812; *Taylor v. State*, 672 So. 2d 1246, 1256 (Miss. 1996). The Mississippi Supreme Court's standard of review perforce becomes this Court's standard of review.

B. SELF-DEFENSE

In every criminal case, the State bears the burden of proving each element of the offense charged beyond a reasonable doubt. *Heidel v. State*, 587 So. 2d 835, 843 (Miss. 1991). The law does not require that a defendant prove his conduct was in self-defense in order to obtain a verdict of acquittal. *Heidel*, 587 So. 2d at 843. Instead, "[I]f a reasonable doubt of his guilt arises from the evidence . . . he must be acquitted." *Id.* (citations omitted). Dorris admitted that he stabbed Cook, but he claimed that his taking Cook's life was justified because he did so in self-defense. As a result, the only real dispute is whether Dorris's evidence of self-defense was so strong that it precluded any decision by the jury other than acquittal. *Kelly v. State*, 463 So. 2d 1070, 1075 (Miss. 1985).

Section 97-3-15(1)(f) of the Mississippi Code states:

(1) The killing of a human being by the act, procurement, or omission of another shall be justifiable in the following cases:

....

(f) When committed in the lawful defense of one's own person . . . where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal

injury, and there shall be imminent danger of such design being accomplished

Miss. Code Ann. § 97-3-15(1)(f) (Rev. 1994).

Fear of impending death or great bodily harm does not automatically entitle one person to kill another. No person is privileged to use more force than is reasonably necessary to protect himself. As the Mississippi Supreme Court explained in *Stennis v. State*, 234 So. 2d 611, 614 (Miss. 1970):

[W]here a person repels an assault with a deadly weapon, he acts at his own peril and the question of whether he was justified in using the weapon is for determination by a jury unless there is no reasonable inference in the evidence except that the use of the deadly weapon appeared necessary to protect the person from death or great bodily harm at the hands of his assailant.

In *Scott v. State*, 203 Miss. 349, 353, 34 So. 2d 718, 719 (1948), a case which Dorris contends is factually analogous to the case *sub judice* and thus supports his argument on this issue, the Mississippi Supreme Court held that in order to justify the defense of self-defense, the danger faced by the actor "need not be actual, but only reasonably apparent and imminent." In *Scott*, the Mississippi Supreme Court indicated that "reasonable grounds to apprehend" connotes "apparent danger." 203 Miss. at 354, 34 So. 2d at 719. Further, *Scott* defines "apparent danger" as an "overt demonstration, by conduct and acts, of a design to take life or do some personal injury, as would make the killing reasonably necessary to self-preservation or to escape great bodily harm." *Id.* at 353, 34 So. 2d at 719. The law will allow a person to act based upon "reasonable appearances" and allows the danger to be either actual or apparent. *Id.* at 354, 34 So. 2d at 719.

Nevertheless, in *Hart v. State*, 637 So. 2d 1329, 1339 (Miss. 1994), the Mississippi Supreme Court explained:

In order to justify killing another in self-defense, the actor's apprehension of danger must be "objectively" reasonable. That is to say, the apprehension of danger that would justify a killing of another on the ground of self-defense must be real and such as would or should, under the circumstances, be entertained by a reasonably well-disposed man of average prudence. (citations omitted).

The fact that the defendant believes that a minor assault will be committed against him is not enough to support a claim of self-defense. *Stennis*, 234 So. 2d at 614.

C. WEIGHT OF THE EVIDENCE

In *Scott*, on which Dorris relies, the deceased started an unprovoked argument with the defendant. *Scott*, 203 Miss. at 349, 34 So. 2d at 718. Next, the decedent followed the defendant Scott to another group, only to restart their disagreement. The decedent stated that he was going to get his gun to kill the defendant and left in a drunken rage. Unbeknownst to the defendant, the decedent drove straight to Albert Jones's house to retrieve the gun he had left there earlier. In an effort to seek assistance and protection from the decedent, the defendant also went to Albert Jones' home. *Id.* Upon seeing the defendant, the decedent shouted that he intended to kill the defendant. *Id.* at 352, 34 So. 2d at 719. When the decedent reached into his overalls, Scott assumed that decedent was going

to pull out a weapon. *Id.* The supreme court reversed Scott's conviction and remanded the case for a new trial because it found that Scott's assumption that the decedent was about to pull a weapon was reasonable and was fully supported by the evidence. *Id.* at 354, 34 So. 2d at 720.

However, this Court finds that Anthony Dorris' situation was not analogous to Scott's circumstances. Dorris' basis for believing that Cook was armed was his having seen Cook hand Tammy Everett a sharpening stone and Cook's approaching him with Cook's hand behind his back. Dorris admitted from the stand that he could not say that he had seen a knife and that "all [he] did was presume that [Cook] had a knife in his hand." Unlike the decedent in *Scott*, Cook never threatened to get a weapon. 203 Miss. at 352, 34 So. 2d at 718. No witness saw Cook with a knife in his hand before the fight between the two men began. No witness, not even Dorris, testified that Cook threatened to kill or to harm Dorris before the fight erupted.

The case *sub judice* is more analogous to *Russell v. State*, 497 So. 2d 75 (Miss. 1986). In *Russell*, the Mississippi Supreme Court rejected the defendant's claim that his conviction of murder was unsupported by the evidence in light of his claim of self-defense. 497 So. 2d at 76. The supreme court found that Russell's conviction was supported by evidence that the victim was unarmed and that he was stabbed after the defendant threatened to kill him. *Id.* In the case *sub judice*, there is no evidence that Charles Ray Cook was armed with a knife or any other weapon when he was killed, and according to some of the State's witnesses, Dorris had threatened to kill anyone who crossed the red boundary line. Dorris admitted under oath that he never saw a knife in Cook's hand. Dorris must at least demonstrate that Cook acted in such a way that it was reasonable for him to believe that Cook had a weapon. *Scott*, 203 Miss. at 353-4, 34 So. 2d at 720. True, Frank Johnston testified that Cook habitually carried a pocket knife which he routinely used in his contracting and construction business, but Dorris did not testify that he knew this fact.

The evidence that Dorris acted in self-defense was that he presumed that Cook had a knife because he saw Cook hand a sharpening stone to Tammy Everett and that Cook approached Dorris with his hand behind his back so that Dorris could not see what Cook had in it. The evidence in the case *sub judice* clearly presented an issue for the jury to decide. Where the testimony of witnesses conflict, the jury is ultimately responsible for making findings of fact and weighting witness credibility. *Wetz*, 503 So. 2d at 812; *Dixon v. State*, 519 So. 2d 1226, 1228 (Miss. 1988). The jury's discretion in choosing whether to accept all or part of a witness's testimony is unfettered. *Meshell v. State*, 506 So. 2d 989, 992 (Miss. 1987). On appeal, the appellate court does not reevaluate the jury's verdict or findings of fact. *Veal*, 585 So. 2d at 695. All that is necessary for the appellate court to uphold the verdict of the jury is for there to have been a factual dispute presented to the jury for determination. *Groseclose*, 440 So. 2d at 300. Especially under the rationale of *Russell v. State*, this Court has no difficulty in affirming the trial court's judgment of Dorris' guilt and the sentence which the trial court imposed on him. 497 So. 2d at 76. Thus, this Court does not sanction an unconscionable injustice by upholding the jury's verdict that Dorris was guilty of manslaughter. The trial court's judgment and sentence are affirmed.

THE TUNICA COUNTY CIRCUIT COURT'S JUDGMENT OF APPELLANT'S GUILT OF MANSLAUGHTER AND ITS SENTENCE OF APPELLANT TO SERVE TWELVE YEARS IN AN INSTITUTION UNDER THE SUPERVISION AND CONTROL OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVELY TO ANY

AND ALL SENTENCES PREVIOUSLY IMPOSED ARE AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO TUNICA COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.