

**IN THE COURT OF APPEALS 01/28/97**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 94-KA-00973 COA**

**WILLIAM ANDERSON A/K/A WILLIAM EDWARD ANDERSON**

**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. ROBERT L. GOZA, JR.

COURT FROM WHICH APPEALED: CIRCUIT COURT OF MADISON COUNTY

ATTORNEY FOR APPELLANT:

WALTER E. WOOD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: TOMMY SAVANT AND MARK RAY

NATURE OF THE CASE: CRIMINAL: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: CONVICTED OF AGGRAVATED ASSAULT AND  
SENTENCED TO 15 YEARS IN THE CUSTODY OF MDOC, 8 YEARS SUSPENDED, 5  
YEARS ON PROBATION

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This is a criminal appeal from the Circuit Court of Madison County wherein William E. Anderson was convicted of the aggravated assault of Anthony Smith. The trial court sentenced Anderson to fifteen years in the custody of the Mississippi Department of Corrections, eight years suspended and five years probation. Feeling aggrieved, Anderson appeals arguing: (1) that the jury's verdict is against the overwhelming weight of the evidence, and (2) that the trial court erred in failing to dismiss the indictment pursuant to the 270 day rule. Finding no error, we affirm.

#### STATEMENT OF THE FACTS

On April 10, 1993, Anderson was at the home of Anthony Smith for a barbecue. Anderson was involved in an argument with another guest which resulted in Anderson's being hit in the face by that person. Smith testified that he brought Anderson home. Anderson testified that he returned home on his own, and Smith then showed up at his house. Both men testified that Anderson produced a shotgun and they wrestled, ending up in the front yard of Anderson's home. Smith testified that Anderson broke free, loaded the shotgun, aimed the gun at him, and fired it at him. Smith then ran from Anderson's yard and was grazed by a bullet in his left thigh. Smith testified that Anderson fired a total of three times as Smith ran down the street and around the corner. According to Anderson, he only fired his shotgun in the air to run Smith off, initially in his yard, and again in the street. Anderson stated that if he had intended to shoot Smith, he could have done so. Harvey Watkins, Sr., Anderson's neighbor who lived across the street, testified that as he returned home, he heard a shot from Anderson's house. Watkins observed a young man running from Anderson's yard into the street. Watkins testified that Anderson had a shotgun and was chasing and shooting at the man as the man ran away.

Betty Vaughan, a registered nurse at Madison General Hospital in Canton, testified that Smith suffered from a 1.5 cm abrasion on his left thigh.

Sarah Yvonne Diamond, Smith's girlfriend, testified that Smith returned home running and out of breath. According to Diamond, Smith was scared and he stated that he had been shot.

Birdie Mae Potts, Diamond's niece who lived down the street from Anderson, testified that she observed Smith running down the road. Potts then saw another man running behind Smith with a shotgun. As Potts passed Smith, he stated he had been shot.

Frank Brown, Jr. also lived on the same street as Anderson, Watkins, and Diamond. Brown testified that he heard two shots and discovered that his car window had been shot.

Johnny Burse testified that he was the officer from the Canton Police Department who was dispatched for the shooting incident. He also responded to the dispatch for Brown's car. According to Burse, the damage to Brown's car window was consistent with a buck shot.

## ARGUMENT AND DISCUSSION OF THE LAW

### I. THE JUDGMENT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE FOR FAILURE BY THE PROSECUTOR TO PROVE BEYOND A REASONABLE DOUBT, THAT ANDERSON DID "CAUSE OR ATTEMPT TO CAUSE SERIOUS BODILY INJURY TO ANTHONY SMITH, . . . BY SHOOTING AT ANTHONY SMITH WITH . . . A SHOTGUN."

The essence of Anderson's argument is that the State failed to establish that he intended to harm Smith. In support of this argument, Anderson outlines his qualifications as a marksman and experience with firearms, concluding "if [Anderson] had wanted to harm Anthony Smith, he would have done so." Anderson's testimony at trial contained similar assertions. This argument is an apparent attempt by Anderson to somehow benefit from the fact that Anthony Smith was not seriously injured or killed during the shooting. Indeed, Anderson does benefit in that he was not charged with a more serious crime. However, the fact that Anderson was skilled with a firearm does nothing to mitigate his responsibility for his actions. Smith testified that Anderson aimed and fired the gun at him. Smith's testimony was corroborated by two neighbors, Watkins and Potts. The only testimony to the contrary was from Anderson himself.

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) (citations omitted); *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 evidence presented by both the State and by Anderson in his own defense. 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 Anderson's testimony and to convict him. We do not find that the jury's verdict was so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to promote an unconscionable injustice. Accordingly, we find Anderson's assignment of error to be without merit.

### II. WHETHER THE COURT ERRED IN FAILING TO DISMISS THE INDICTMENT PURSUANT TO THE 270 DAY RULE.

Anderson asserts his statutory right to a speedy trial pursuant to section 99-17-1 of the Mississippi Code. Anderson argues that his testimony established that he was arraigned on June 18, 1993, which was more than 270 attributable to the State until his trial on July 28, 1994.

Section 99-17-1 entitled "Indictments to be Tried Within 270 Days of Arraignment", provides:

"Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned." However, "specifically include[d] in that class of waivable rights . . . [is] the right to a speedy trial, whether of constitutional or statutory origin." *Anderson v. State*, 577 So. 2d 390, 392 (Miss. 1991).

The record reflects that in the trial court's order dated June 17, 1994, Anderson waived the 270 day rule, thus barring him from raising a violation of his statutory right to a speedy trial. Accordingly, this issue is without merit.

**THE JUDGMENT OF THE CIRCUIT COURT OF MADISON COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH EIGHT (8) YEARS SUSPENDED AND FIVE (5) YEARS PROBATION IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO MADISON COUNTY.**

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