

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2015-KA-00861-COA**

**JOSHUA ALLEN A/K/A JOSHUA F. ALLEN**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT:	04/29/2015
TRIAL JUDGE:	HON. WILLIAM E. CHAPMAN III
COURT FROM WHICH APPEALED:	RANKIN COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: GEORGE T. HOLMES ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	MICHAEL GUEST
NATURE OF THE CASE:	CRIMINAL - MISDEMEANOR
TRIAL COURT DISPOSITION:	CONVICTED OF ONE COUNT OF ARMED ROBBERY AND SENTENCED TO THIRTY- FIVE YEARS AND ONE COUNT OF CONSPIRACY TO COMMIT ARMED ROBBERY AND SENTENCED TO FIVE YEARS, TO RUN CONCURRENTLY, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
DISPOSITION:	AFFIRMED - 09/20/2016
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, C.J., BARNES AND ISHEE, JJ.**

**LEE, C.J., FOR THE COURT:**

**FACTS AND PROCEDURAL HISTORY**

¶1. On March 3, 2015,<sup>1</sup> Joshua Allen was convicted of one count of armed robbery and one count of conspiracy to commit armed robbery. He was sentenced, on May 1, 2015,<sup>2</sup> to thirty-five years for the armed-robbery conviction and five years for the conspiracy conviction, to be served concurrently, in the custody of the Mississippi Department of Corrections. On May 7, 2015, Allen filed a motion for a new trial or, in the alternative, a judgment notwithstanding the verdict (JNOV), which was denied. Allen appeals, asserting his verdict was against the overwhelming weight of the evidence.

### DISCUSSION

¶2. “[Uniform Rule of Circuit and County Court] 10.05 requires that a motion for new trial must be made within ten days of the judgment, and in the case of a motion for JNOV, the motion must be made either within the ten days or by the end of the term of court.” *Wells v. State*, 73 So. 3d 1203, 1206 (¶7) (Miss. Ct. App. 2011) (quoting *Ross v. State*, 16 So. 3d 47, 53 (¶7) (Miss. Ct. App. 2009)). Allen’s judgment of conviction was filed on March 3, 2015. So to be timely, Allen’s motion for a new trial would have to have been filed within ten days of that date. *See Conwill v. State*, 168 So. 3d 1080, 1084 (¶19) (Miss. Ct. App. 2013). Instead it was not filed until May 7, 2015.<sup>3</sup>

¶3. Furthermore, “[t]he contention that the verdict is against the overwhelming weight of

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<sup>1</sup> The final judgment of conviction was signed on March 2, 2015, and entered on March 3, 2015.

<sup>2</sup> The sentencing order was signed on April 29, 2015, and entered on May 1, 2015.

<sup>3</sup> We note that the motion was also filed outside of the term of court, as the term of the Rankin County Circuit Court began on the first Monday of February and ran for thirty days. *See State of Mississippi Judiciary Directory and Court Calendar (2015)*.

the evidence must first be raised in the defendant’s motion for a new trial.” *Hunter v. State*, 187 So. 3d 674, 678 (¶13) (Miss. Ct. App. 2016) (quoting *Beckum v. State*, 917 So. 2d 808, 813 (¶14) (Miss. Ct. App. 2005)). “A claim that the verdict was against the weight of the evidence must be first presented to the trial court since that court is best positioned to make an informed decision as to such issue, having had the benefit of hearing the evidence first-hand.” *Id.* (quoting *Collins v. State*, 858 So. 2d 217, 218-19 (¶5) (Miss. Ct. App. 2003)). Although Allen filed a motion for a new trial, the basis for his motion was “procedural and substantive errors committed during the trial . . . .” We believe the foregoing language is insufficient to preserve the weight-of-the-evidence issue for appeal. *Cf. Wilson v. State*, 904 So. 2d 987, 995 (¶24) (Miss. 2004). For these reasons, the circuit court did not err in denying Allen’s motion.

**¶4. THE JUDGMENT OF THE CIRCUIT COURT OF RANKIN COUNTY OF CONVICTION OF ONE COUNT OF ARMED ROBBERY AND SENTENCE OF THIRTY-FIVE YEARS, AND CONVICTION OF ONE COUNT OF CONSPIRACY TO COMMIT ARMED ROBBERY AND SENTENCE OF FIVE YEARS, TO RUN CONCURRENTLY, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO RANKIN COUNTY.**

**GRIFFIS, P.J., BARNES, ISHEE, CARLTON, FAIR, JAMES, WILSON AND GREENLEE, JJ., CONCUR. IRVING, P.J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.**