

IN THE COURT OF APPEALS 02/13/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01013 COA

SYLVANE SMITH a/k/a SYLVANE C. SMITH 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. EUGENE M. BOGEN

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY(S) FOR APPELLANT(S): CHERYL CROSBY GRIFFIN

ATTORNEY(S) FOR APPELLEE(S): OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: JOYCE I. CHILES

NATURE OF THE CASE: AGGRAVATED ASSAULT WITH A DEADLY WEAPON

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO TWENTY (20) YEARS
IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ORDERED TO PAY ALL COURT
COSTS (INCLUDING COST OF 32 JURORS) OF \$672.50, AND RESTITUTION OF \$250,000
TO ANTHONY WALLS

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

PAYNE, J., FOR THE COURT:

Sylvane Smith was convicted of aggravated assault with a deadly weapon of Anthony Walls. Smith was sentenced to serve twenty years in the Mississippi Department of Corrections, to pay all court costs (including the cost of 32 jurors) of \$672.50, and to pay restitution of \$250,000 to Walls. The trial court denied Smith's motion for JNOV or, in the alternative, a new trial. Smith contends on appeal that the trial court erred in denying his motion for a directed verdict and that the jury verdict was against the overwhelming weight of the evidence. Finding no merit to these issues, we affirm.

FACTS AND ANALYSIS

This case involves a shooting in a Greenville public lounge on or about October 16, 1993. Smith was arrested and charged with shooting Walls in the head with a .38-caliber revolver. Smith now argues on appeal that he should have been granted a directed verdict and that the jury's guilty verdict was against the overwhelming weight of the evidence.

Smith's argument regarding the denial of the directed verdict and the denial of the JNOV both challenge the legal sufficiency of the evidence against him. These challenges require consideration of the evidence before the court when made, so this Court must review the ruling on the last occasion the challenge was made at the trial level. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). This occurred when the trial court overruled Smith's motion for JNOV. The Mississippi Supreme Court has stated, in reviewing an overruled motion for JNOV, that the standard of review shall be that:

[T]he sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with [Smith's] guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

Id. (citations omitted).

Here, the evidence was legally sufficient to find that Smith shot Walls. Two State's witnesses testified that they saw Smith and Walls, just before Walls was shot, arguing in the location near where Walls was later found. Another State's witness and the defense witness testified that they observed Smith shoot Walls. The evidence consistent with the guilty verdict must be accepted as true. *Id.* Considering the elements of the crime along with all the evidence in the light most favorable to the verdict, the evidence is not such that reasonable jurors could only find Smith not guilty. Here, the evidence was legally sufficient to support the guilty verdict and to support the trial court's denial of Smith's motion for JNOV.

Smith also argues that the jury verdict was against the overwhelming weight of the evidence and requests a new trial. 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*, 625 So. 2d at 781 (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 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.*

Here, the jury heard the witnesses and the evidence presented by both the State and the defense. Smith's argument regarding self-defense was for the jury to evaluate. The trial judge, while stating in chambers that no evidence existed of self-defense, still provided Smith with a self-defense instruction for the jury to consider. The jury's decision to believe the State's evidence and witnesses was well within its discretion. Moreover, the jury was within its power to weigh the evidence and the credibility of the witnesses' testimony and to convict Smith. The trial court did not abuse its discretion by refusing to grant Smith 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 have been to promote an unconscionable injustice. The trial court properly denied Smith's motion for a new trial.

CONCLUSION

Finding no error, we affirm the jury's verdict and the trial court's sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY OF CONVICTION OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY RESTITUTION OF \$250,000 TO ANTHONY WALLS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WASHINGTON COUNTY.

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