

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00337 COA

TYRONE JOHNSON A/K/A "POO POO"

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KENNETH L. THOMAS

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: FELONY: TWO COUNTS OF AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: GUILTY OF TWO COUNTS OF AGGRAVATED ASSAULT

BEFORE FRAISER, C.J., KING, AND SOUTHWICK, JJ.

PER CURIAM:

Tyrone Johnson was convicted in the Lincoln County Circuit Court of aggravated assault of Minnie Pettigrew and attempted aggravated assault of Natasha Hill. On appeal, Johnson contends the verdict is contrary to the overwhelming weight of the evidence. It is not; therefore, we affirm.

A challenge to the weight of the evidence via a motion for a new trial implicates the trial court's sound discretion. New trial decisions rest in the sound discretion of the trial court and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State. *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987).

The testimony adduced at trial reflects that Natasha Hill and Mini Pettigrew both positively identified Johnson as the man who shot Pettigrew and shot at Hill. Jerome Atkins testified that he saw Johnson shooting but did not know at whom Johnson was shooting. Johnson testified that he did not have a gun or shoot at Pettigrew or Hill. Frank Anthony testified that he was with Johnson on the night in question and that Johnson did not have a gun.

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses. *Lewis v. State*, 580 So. 2d 1279, 1288 (Miss. 1991). Viewing the evidence in a light most favorable to the verdict, we cannot say that the jury reached the wrong verdict. The trial court did not abuse its discretion in denying Dixon's motion for a new trial. We are not persuaded 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. *Wetz*, 503 So. 2d at 812.

The judgment of the trial court is affirmed.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF COUNT I, AGGRAVATED ASSAULT, AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVELY TO ANY AND ALL PREVIOUS SENTENCES AND COUNT II, ATTEMPTED AGGRAVATED ASSAULT, AND SENTENCE OF FIVE (5) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, SAID SENTENCE TO RUN CONCURRENTLY WITH COUNT I, IS AFFIRMED. COSTS OF THE APPEAL ARE TAXED TO COAHOMA COUNTY.

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