

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00965 COA

JAMES JOHNSON

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. JOHN LESLIE HATCHER

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: CRIMINAL: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: SENTENCED TO SERVE TWELVE (12) YEARS IN MDOC
TO RUN CONSECUTIVE TO OTHER SENTENCES, FULL RESTITUTION TO VICTIM OF \$4,
402.25 WITHIN THREE (3) YEARS OF RELEASE

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

BRIDGES, P.J., FOR THE COURT:

James Johnson was convicted for the aggravated assault of Larry Williams and sentenced to serve twelve (12) years in the Mississippi Department of Corrections. He now argues on appeal that he was convicted against the overwhelming weight of the evidence. We disagree and affirm the decision of the lower court.

THE FACTS

On the evening of January 4, 1994, Larry Williams was visiting Andrea Murray at her home in Clarksdale. A short time later, James Johnson showed up at Murray's home and began to beat on her door and demand that Williams come outside. Williams got dressed, obtained a knife, and ordered Johnson to leave. Johnson left, but returned a short time later and once again demanded to speak with Williams. This time, Williams went outside and instructed Johnson to leave the premises. Johnson testified that Williams used the knife to cut Johnson's nose, at which point Johnson stuck Williams with a hammer. The confrontation moved indoors. Williams continued to swing his knife at Johnson, and Johnson continued to swing the hammer at Williams. At some point Williams dropped the knife and began to attack Johnson with a serving fork. Williams testified that he did not use the knife in any way during the argument.

ARGUMENT AND DISCUSSION OF THE LAW

I. WHETHER THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

It is well settled that the 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. *See, e.g., McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993); *Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993); *Kelly v. State*, 553 So. 2d 517, 522 (Miss. 1989). In *Noe v. State*, 616 So. 2d 298, 302 (Miss. 1993), the Mississippi Supreme Court held:

In judging the sufficiency of the evidence . . . the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn there from, and to disregard evidence favorable to the defendant.

Further, in *Pinkney v. State*, 538 So. 2d 329, 353 (Miss. 1988), the court held that it may reverse only where "the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty."

In *Williams v. State*, the court held that jurors may accept or refuse testimony of witnesses stating "it is not for this Court to pass upon the credibility of witnesses and where the evidence justifies the verdict, it must be accepted as having been found worthy of belief." *Williams v. State*, 427 So. 2d 100, 104 (Miss. 1983). The jury weighed the evidence, believed the State's witnesses, and convicted Johnson of aggravated assault. Accordingly, we find the verdict was not against the overwhelming weight of the evidence.

THE COAHOMA COUNTY CIRCUIT COURT CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TWELVE (12) YEARS TO BE SERVED IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, TO RUN CONSECUTIVELY TO ANY AND ALL OTHER SENTENCES, AND FULL RESTITUTION TO VICTIM OF \$4,402.25 WITHIN THREE (3) YEARS OF RELEASE IS AFFIRMED. COSTS ARE TO BE TAXED TO COAHOMA COUNTY.

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