

**IN THE COURT OF APPEALS 03/12/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00808 COA**

**TONY CURTIS DOSS**

**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. LEE J. HOWARD

COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

BENNIE L. JONES, JR.

ATTORNEYS FOR APPELLEE:

MIKE MOORE

PAT FLYNN

DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: CRIMINAL - AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: APPELLANT WAS CONVICTED OF AGGRAVATED  
ASSAULT AND SENTENCED TO SERVE A TERM OF EIGHTEEN YEARS IN THE  
CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

COLEMAN, J., FOR THE COURT:

Tony Curtis Doss was convicted of the felony of aggravated assault in the Circuit Court of Clay County. That court sentenced Doss to serve a term of eighteen years in the custody of the Mississippi Department of Corrections. Doss appeals to challenge first the sufficiency of the evidence and then the weight of the evidence on which the jury returned their verdict of guilty. We find the evidence to have been sufficient to support Doss's conviction of aggravated assault, and we further find that the verdict was not against the overwhelming weight of the evidence. Thus we affirm the trial court's judgment of Doss's guilt of aggravated assault and his sentence to serve eighteen years in the custody of the Mississippi Department of Corrections.

### **I. Facts**

Alonzo Lane and Shashona Lyles were selling raffle tickets on a street corner in the City of West Point when Lyles and Timothy Doss, brother of the Appellant, "had words" over Doss's girlfriend. About ten minutes later, Timothy Doss returned to the street corner with his and the Appellant's brother, Anthony Doss. A fight erupted among these parties, and Anthony Doss displayed a gun which possibly had no clip for ammunition in it. During the fight, Lyles disarmed Anthony Doss, and Alonzo Lane left the scene of the altercation to call the police from a pay phone which was located about one block away from the street corner where the fight was happening. West Point Police Officers Eddie Johnson and John Sevier quickly responded to Alonzo Lane's call. When these two officers arrived, Lyles gave them the gun which he had taken from Anthony Doss.

Later that same night, Lane and Lyles were at the home of Lane's sister, Demetria Lane, who was visiting a neighbor. A car drove up outside Demetria Lane's home, and its driver sounded the horn. Lyles and Lane left the house in response to their having heard the car's horn, but when they recognized the occupants of the car, they began to retreat to the house. The occupants of the car were Tony Doss, Jimmy Doss, another of Tony Doss's brothers, their sister, Patricia, and two of their friends. The Appellant, Tony Doss, quickly exited the car with a gun. Jimmy Doss then exited the car with a gun, which he first held on Lane, after which Lane and he began to fight. Another occupant of the car told Jimmy Doss that he had engaged the wrong man, whereupon Jimmy Doss left his engagement with Lane -- no doubt to Lane's relief -- and joined his brother, Tony Doss, the Appellant, in the fight which Tony Doss had started with Alonzo Lyles, the soon-to-be victim of a gunshot wound.

Set free from Jimmy Doss, his attacker, Alonzo Lane ran back into his sister's house, locked the door, and called the police. While Alonzo Lane was inside his sister's house calling the police, Shashona Lyles was shot in the chest while he was running away from his encounter with the Doss brothers, Tony and Jimmy. After he was shot, Lyles ran for several blocks, during which he scaled at least one six-foot high fence, and collapsed to the ground. A man named Detavias Williams, Lane's cousin, found Lyles. An ambulance was summoned, and eventually Lyles was taken first to the hospital in West Point and then to the Northeast Medical Center in Tupelo. A surgeon, Dr. Philip Mathis, attended Lyles in Tupelo.

### **B. Trial**

The State called Alonzo Lane as its first witness. On direct examination Lane was questioned about what happened after the car pulled up to the front of his sister's house. He testified:

[Lyles] said, "Who is that?" By then I already knew who it was because I had dealing with Tony from the football team. I know who he was. I said, "Them them Doss boys," just like that. So [Lyles] backing back taking steps back towards the car porch.

Lane then answered the following questions about what he saw after he went back into his sister's house to call the police:

Q What did you see when you looked out the window? Tell the ladies and gentlemen of the jury what you saw happen as you looked out the window that--that evening.

A I seen Tony Doss unloading a .380 on Shashona [Lyles]; he was running.

Q All right. You say unloading a .380; what do you mean by that?

A I mean he was shooting.

Q He was shooting at him?

A Yep, and--and, uh,--and Jimmy Doss was too.

Q All right. And Jimmy Doss was firing rounds at him also?

A Yeah. He ran--he was running behind him.

When he was answering these questions, Lane was referring to what he saw from inside his sister's house as he was calling the police and looking through a window toward the street. The district attorney later asked these questions about a gun which he retrieved from an envelope:

Q I'm going to hand you a manila sack; it has a bunch of writing on it, and ask you if you would to look inside that manila sack and see if there is something that you recognize.

A (Witness removes item from sack) This the gun right here.

Q That is the gun that who had?

A Tony Doss.

The State later introduced the gun into evidence without objection.

Dr. Phillip Mathis, a surgeon, who attended Lyles in Tupelo, testified that the bullet entered Lyles' chest from the left side, passed within an inch of his heart, and came to rest on top of his sternum beneath his skin. Lyles remained in the hospital in Tupelo for ten days.

The State next called Shashona Lyles as a witness. Lyles testified that Tony Doss first shot between his feet, which event motivated him to turn and run from the Doss brothers. Thus he was running away from Tony Doss when he was shot. Lyles identified the pistol, which Alonzo Lane had earlier identified as the pistol which Tony Doss had fired at Lyles, as the pistol which Tony Doss was firing that night. The State asked Lyles these questions about how he was able to establish that it was Tony Doss who shot him:

Q Is there any doubt in your mind that it was Tony Doss that had that .380 automatic pistol and Tony Doss that shot at you?

A I know for sure that was who it was.

On redirect examination, the State continued its questioning of Lyles in the following manner:

Q And is there any doubt in your mind whatsoever that Tony Doss was in fact the man that shot you on that evening?

A Okay. From the sounds of the gun and the--by seeing the two weapons I can tell a louder sound from a smaller sound. As I ran I heard the loud sound and I felt my arm, you know, like something tingling. So when I--as I was still running as Tony had shot at my feet I ran, the louder gun came next, and then when Tony had shot the gun when I was running, I can tell from the sound at my feet and the sound when I was running that they

was the same two shots--the same three shots.

Q So the sound of the .380 was the same sound you heard when you got hit in the chest, is that right?

A Yes, sir.

Q And who was shooting the .380?

A Tony Doss.

Q No doubt about it?

A No doubt in my mind.

Demetria Lane, Alonzo Lane's sister, the State's next witness, was returning to her home when she heard the commotion among the Dosses, her brother, and Lyles in the front yard of her home. She described what she saw as she hid behind her neighbor's house as follows:

Q All right. When [Lyles] got off running what happened at that point?

A It was--it was more gunshots fired then.

Q Could you tell who was shooting?

A Tony.

Q All right. You know that Tony Doss was shooting at that point in time?

A I didn't see the--the other identified person.

Q Okay. You lost sight of him, is that right?

John Dial, an employee of the Jackson Police Department, one of whose two specific duties was firearms identification, opined that the bullet removed from Lyles' chest had been fired from the gun which Alonzo Lane and Shashona Lyles had identified as the gun which Tony Doss had fired at Lyles.

After the State and Doss rested, the jury retired to consider its verdict at 10:25 a. m. on the second day of the trial; and one hour and ten minutes later, they returned with a verdict of: "guilty as charged." The trial court sentenced Doss to serve eighteen years in the custody of the Mississippi Department of Corrections.

### **III. Issues and the Law**

Doss presents two issues for this Court's consideration. We adopt his statement of those issues as he presented them in his brief:

- I. The Verdict is not supported by sufficient evidence.
- II. The Judge abused his discretion by not granting a new trial based on the verdict being against the overwhelming weight of the evidence.

Doss moved for a directed verdict of acquittal when the State rested "based on the fact that the State has not presented enough evidence for the case to go forward." The trial court denied this motion. Doss then rested. After the court entered its judgment of guilt and sentence, Doss filed a motion for new trial. Included in his motion for new trial was the ground that "the evidence was insufficient to support a conviction for aggravated assault." The trial court denied the motion for new trial. Thus, Doss has preserved this issue for our consideration.

In *Hicks v. State*, 580 So. 2d 1302, 1305 (Miss. 1991), the Mississippi Supreme Court quoted from *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987), to repeat the standard which we as an appellate court are to apply in resolving the issue of whether the evidence is sufficient to sustain the jury's verdict:

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence -- not just that supporting the case for the prosecution -- in the light most consistent with the verdict. We give prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could

not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.(citations omitted).

Doss's argument in his brief on this issue is worthy of presentation to a jury; but not to this Court as an appellate argument. Among his reasons for asking this Court to adjudicate this issue favorably to him are these:

1. The incident occurred at night in what Doss maintains was a poorly lit area; thus the testimony of any eye witness is unreliable and suspect.
2. The familial and friendly relationships among Alonzo Lane, his sister, Demetria Lane, and Shashona Lyles. The Lane siblings had been friends with Lyles for approximately ten years.
3. Shashona Lyles had been convicted of grand larceny, for which he had been placed on probation, and his probation had subsequently been revoked because urinalysis had detected that he had used cocaine after his conviction and placement on probation.
4. Alonzo Lane witnessed the shooting from inside his sister's house by looking through the window.

The State retorts that these arguments go to the credibility of the witnesses, and that the credibility of witnesses goes to the weight of the evidence -- and not the sufficiency. It relies on *Tyler v. State*, 478 So. 2d 315, 317 (Miss. 1985) to support the proposition that "The jury is the judge of the weight and credibility of the witnesses. They are free to accept and reject all or some of each witness's testimony." We side with the State on this issue. Three of its witnesses testified that they saw Doss fire a gun at Lyles. Lyles admitted that he was running from Doss -- for what this Court thinks was ample reason --and did not see him fire the shot that struck him. However, he explained plausibly why he was positive that it was Tony Doss, and not Jimmy Doss, who fired the shot that wounded him. Doss does not dispute that Lyles was seriously injured by the bullet which entered his left side. A firearms examiner was of the opinion that the bullet retrieved from above Lyles' sternum and beneath his skin had been fired from the gun which two of the State's witnesses identified as the one which Doss fired at Lyles.

We earlier noted that this Court gives the prosecution "the benefit of all favorable inferences that may reasonably be drawn from the evidence." "If there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached" a verdict of guilty, that "verdict of guilty is thus placed beyond our authority to disturb." We conclude that there was substantial evidence in the record to place the jury's verdict that Doss was guilty of aggravated assault beyond our authority to disturb.

Our consideration of Doss's second issue, whether "[t]he Judge abused his discretion by not granting a new trial based on the verdict being against the overwhelming weight of the evidence," can at best be only a rehash of our previous consideration of his first issue because Doss called no witnesses and offered evidence of no defense such as alibi or his having acted in self-defense. It is not without reason that in its argument on this issue, the State observes in its brief that "As to the weight of the evidence, it is all on the side of the prosecution; . . . ." Indeed, in his brief, Doss essentially repeats the same argument on his second issue that he presented on his first issue.

In *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989), the Mississippi Supreme Court provided the following explanation of when it would grant a new trial:

This Court will not order a new trial "unless convinced 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." *Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983). Factual disputes are properly resolved by the jury and do not mandate a new trial. *Temple v. State*, 498 So. 2d 379, 382 (Miss.1986).

Would it not be an enigma for this Court to hold on the one hand that there was sufficient evidence to support the jury's verdict of Doss's guilt of aggravated assault but on the other hand "to allow [the jury's verdict of guilty] to stand would be to sanction an unconscionable injustice" even though Doss offered no evidence? We think that the evidence of Doss's guilt of aggravated assault which we find in the record of the case *sub judice* would render our granting Doss a new trial "an unconscionable injustice."

#### **IV. Conclusion**

The only legitimate issue presented in this appeal was whether the evidence of Doss's guilt of aggravated assault was sufficient to support the jury's verdict that he was guilty of this felony; and we have found that the evidence was sufficient. There is no evidence to weigh against the State's evidence of Doss's guilt. Therefore, the trial court could not -- and did not -- err when it denied Doss's motion for a new trial. There can be no error because we conclude that the jury's verdict was not against the overwhelming weight of the evidence.

**THE JUDGMENT OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF EIGHTEEN (18) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO CLAY COUNTY.**

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