

**IN THE COURT OF APPEALS 10/01/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 93-KA-00594 COA**

**WILLIE LEWIS**

**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. HOWARD Q. DAVIS, JR.

COURT FROM WHICH APPEALED: HUMPHREYS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RICHARD A. SMITH

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: HALLIE GAIL BRIDGES

NATURE OF THE CASE: CRIMINAL - ROBBERY

TRIAL COURT DISPOSITION: CONVICTED OF THREE COUNTS OF ROBBERY,  
SENTENCED AS A HABITUAL OFFENDER TO FIFTEEN YEARS IN THE CUSTODY OF  
THE MISSISSIPPI DEPARTMENT OF CORRECTIONS FOR EACH COUNT WITH EACH  
SENTENCE TO RUN CONCURRENTLY

BEFORE BRIDGES, P.J., COLEMAN, DIAZ, JJ.

BRIDGES, P.J., FOR THE COURT:

Willie Lewis was convicted on three counts of robbery and was sentenced as a habitual offender to serve fifteen (15) years in the custody of the Mississippi Department of Corrections for each count, with each sentence to run concurrently. Lewis argues on appeal that the lower court erred in (1) denying his motions for directed verdict and JNOV; (2) denying his motion for a new trial; and (3) ruling that the robberies were three separate incidents and not one incident. Finding no merit in Lewis's appeal, we affirm the decision of the lower court.

#### FACTS

Willie Lewis and Larry Kimble entered Suny's Drive Inn in Belzoni, Mississippi, at approximately 7:00 P.M. on March 21, 1992. Cathy Williams, a cook at Suny's, and Genia Gray, a carhop at Suny's, were both in the store. As the two men entered Suny's, Williams saw Lewis' face because he was still putting his mask on. When Lewis approached the two women, Williams recognized Lewis' "smell," his low voice, and his rapid speech pattern. At this point she realized that the man robbing the store was Lewis, a man she had gone to school with approximately eight years prior.

After asking where the money was in the store, Lewis and Kimble forced the two women into the cooler. By this time, Lewis had informed the women that he had a gun, and that he would kill them. After taking all the money that could be found in the store, Lewis went back to the cooler and brought Gray from the cooler, asking if there was any more money in the store. The same was then done with Williams. Lewis then told the women to give him all of their jewelry and money from their persons. They complied. The women were left in the cooler as Lewis and Kimble fled.

Williams initially informed an officer at the scene that Lewis was one of the robbers. She later identified Lewis in a photographic lineup, as well as at trial.

#### ARGUMENT AND DISCUSSION OF THE LAW

##### WHETHER THE TRIAL COURT ERRED IN DENYING LEWIS' MOTIONS FOR DIRECTED VERDICT AND JNOV.

In his brief, Lewis' *first* enumeration of error is for the denial of his motion for directed verdict and his motion for JNOV. In support, he cites the fact that the jury's verdict rested solely on Williams' identification of Lewis. Lewis' *third* enumeration of error was again that the trial court erred in denying his motion for directed verdict and his motion for JNOV. In support, he argues that the verdict is against the overwhelming weight of the evidence in that Williams' identification of Lewis lacked credibility. Because Lewis' first and third enumerations of error contain similar arguments, and because they seem to confuse the issues of weight and sufficiency, we shall discuss them

together.

In his brief, specifically his third issue, Lewis ties his contention that the jury verdict is against the overwhelming *weight* of the evidence to his assignment of error for the denial of his directed verdict and JNOV motions, which questioned the *sufficiency* of the evidence. This Court views challenges to the weight of the evidence differently from directed verdict and JNOV motions. A directed verdict entitles the defendant to a discharge. A verdict based upon insufficient evidence entitles the defendant to a discharge by way of a JNOV. However, a verdict against the weight of the evidence entitles the defendant to a new trial. We shall now consider the above in support of the conviction.

This Court's standard of review of denials of directed verdicts is as follows:

In passing upon a motion for a directed verdict, all evidence introduced by the state is accepted as true, together with any reasonable inferences that may be drawn from that evidence, and, if there is sufficient evidence to support a verdict of guilty, the motion for directed verdict must be overruled.

*Gray v. State*, 549 So. 2d 1316, 1318 (Miss. 1989) (citing *Guilbeau v. State*, 502 So. 2d 639, 641 (Miss. 1987)).

Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778.

On the other hand, where the defendant contends that a new trial should have been granted because the jury verdict was against the weight of the evidence, the standard of review is as follows:

The challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes [Mississippi Uniform Criminal Rule of Circuit Court Practice] 5.16. 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.

*Id.* at 781. All matters concerning the weight and credibility of the evidence are resolved by the jury. *Id.*

The Supreme Court of Mississippi eloquently condensed this standard stating:

[O]nce the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part from that [sic]

the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.

*Williams v. State*, 463 So. 2d 1064, 1068 (Miss. 1985).

From our review of the record in this case, it is the opinion of this Court that Williams was clearly able to identify Lewis. Furthermore, the jury in this matter was justified in believing Williams' testimony with regard to her identification of Lewis as one of the men who robbed Suny's Drive Inn. In light of this, as well as our standards of review, we hereby affirm the denial by the trial court of Lewis' motions for directed verdict and JNOV.

WHETHER THE JURY VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Lewis' *second* error challenges the jury's verdict as being against the weight of the evidence. Our standard of review of challenges to the weight of the evidence has been stated above and, therefore, we shall not repeat it here. In applying that standard to the facts presented to us, we can find no abuse of discretion and, accordingly, we shall defer to the sound discretion of the trial court and uphold its denial of Lewis' motion for a new trial.

WHETHER THE LOWER COURT ERRED IN RULING THAT THE ROBBERIES WERE THREE SEPARATE INCIDENTS, AS OPPOSED TO JUST ONE.

Lewis also argues on appeal that his actions were continuous and, therefore, should give rise to a charge and subsequent conviction of only one robbery. After reviewing Mississippi Code, section 97-3-79 and the record in this case, we are of the opinion that Lewis was properly charged with, and subsequently convicted of, three counts of robbery. The first to be robbed was Shasi Goel d/b/a Suny's Drive Inn, by way of Williams and Gray who were agents of the store who were forced to turn over the property of the store to Lewis and Kimble. The second robbery was of Williams individually, when she was relieved of her money and jewelry by Lewis after being removed from the cooler. The third robbery was of Gray individually, when she was also relieved of her money by Lewis after being removed from the cooler. We find no merit in Lewis' enumeration of error and, therefore, affirm.

**THE JUDGMENT OF THE HUMPHREYS COUNTY CIRCUIT COURT OF CONVICTION OF THREE COUNTS OF ROBBERY AND SENTENCE AS A HABITUAL OFFENDER TO THREE CONCURRENT TERMS OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED WITH SENTENCE TO RUN CONSECUTIVELY TO ANY SENTENCE LEWIS IS NOW SERVING. ALL COSTS OF THIS APPEAL ARE TAXED TO HUMPHREYS COUNTY.**

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