

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00172 COA**

**CHRISTOPHER MAGSBY A/K/A "CHRIS"**

**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

DATE OF JUDGMENT:	01/19/96
TRIAL JUDGE:	HON. KENNETH LEVENE THOMAS
COURT FROM WHICH APPEALED:	COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICHARD B. LEWIS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	GLENN J. ROSSI
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTION FOR AGGRAVATED ASSAULT; SENTENCED TO SERVE A TERM OF SIX YRS IN THE MDOC; SENTENCE SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE McMILLIN, P.J., HINKEBEIN, AND SOUTHWICK, JJ.

HINKEBEIN, J., FOR THE COURT:

Christopher Magsby was convicted in the Coahoma County Circuit Court of aggravated assault. He was sentenced to serve a term of six years imprisonment in the custody of the Mississippi Department of Corrections. Feeling aggrieved by the judgment against him, Magsby appeals his conviction on only the following ground:

I. THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTIONS FOR  
DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

## OR IN THE ALTERNATIVE, A NEW TRIAL.

We find the issue raised by Magsby does not warrant a reversal of his conviction. Accordingly, we affirm the judgment of the trial court.

## FACTS

This aggravated assault occurred late one evening outside a Friar's Point, Mississippi nightspot known as Word's Cafe. The incident was the culmination of a heated argument between Magsby and his intended victim, Sophia Foster. During the course of their fierce exchange, Magsby broke out Foster's car windows and then bolted. She in turn made various threatening remarks as he disappeared into the darkness. Thereafter, Foster remained outside the club for about an hour, continuing to socialize with friends. Suddenly two gunshots exploded from the shadows of a nearby vacant lot, each nearly striking Foster.

During his trial, Magsby professed ignorance as to the assault, claiming he retreated to his home immediately after vandalizing Foster's car. However, Foster and two additional witnesses positively identified him as the gunman. After hearing all of the testimony, the jury convicted Magsby.

## ANALYSIS

Following his conviction, Magsby moved for judgment notwithstanding the verdict or in the alternative, a new trial. The trial court denied this motion which contained only a cursory claim that the verdict was contrary to the law and the weight of the evidence. On appeal, Magsby characterizes the testimony of the State's witnesses as "improbable, unreasonable, and self-contradictory." On that basis he again requests a new trial. The State contends that there is in the record substantial evidence of such quality and weight that reasonable jurors in the exercise of impartial judgment might have found Magsby guilty of aggravated assault. We agree with the State.

The motion for judgment of acquittal notwithstanding the verdict tests the legal sufficiency of the evidence supporting the verdict of guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Where the defendant has moved for JNOV, the trial court must consider all of the credible evidence consistent with the defendant's guilt. *McClain*, 625 So. 2d at 778. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from this evidence. *Id.* This Court is 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 not find the accused guilty. *Wetz v. State*, 503 So. 2d 803, 808 n.3 (Miss. 1987).

Only a slightly greater quantum of evidence favoring the State is necessary to withstand a motion for new trial. As distinguished from the motion for JNOV, the defendant here is asking that the jury's verdict be vacated on grounds related to the weight of the evidence, not its sufficiency. *May v. State*, 460 So. 2d 778, 781 (Miss. 1985). The jury bears sole responsibility for determining the weight and credibility of evidence. *Id.* at 781. Therefore, a new trial is appropriate only where a verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction unconscionable injustice. *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987). Such a determination lies within the trial court's sound discretion. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Accordingly, we will reverse and order a new trial only if, accepting all evidence favorable to the

State as true, we determine that the trial court abused that discretion. *Id.*

Magsby commences his appeal with a fleeting assertion of error regarding the trial court's denial of his motion for directed verdict. We also begin by discarding this allegation in a similarly swift fashion. Very simply, Magsby made no motion for directed verdict either at the close of the State's case or at the close of all the evidence. Consequently, the trial court made no ruling by which it might have erred.

As for Magsby's post-trial motions, three witnesses identified him as the gunman. First, Foster identified Magsby as her assailant at the scene. A Coahoma County sheriff's deputy patrolling nearby heard the shots and within seconds arrived to investigate. Foster immediately directed the deputy's attention to a person standing in the shadows of a nearby vacant lot. When the deputy advanced toward the lot, the suspect fled. Following an unsuccessful attempt at apprehension, the deputy returned to Word's Cafe where Foster provided him with Magsby's name. Foster subsequently identified the appellant at trial, explaining that she watched an unrecognizable gunman pull the trigger and moments later, as he ran under a light in the empty lot, Magsby's hooded jacket fell away from his face revealing his identity.

Evelena Duckworth and Tony Roby with whom Foster was speaking when the assault took place, echoed her testimony. While neither saw Magsby pull the trigger as did Foster, both saw Magsby running through the lot afterward. And both, consistent with Foster's testimony, credited their identification of Magsby to his ill-fitting hood. Finally, the responding sheriff's deputy, while unable to make a positive identification, provided testimony consistent with that of Foster, Duckworth, and Roby in that he too witnessed the gunman dart through the vacant lot.

On appeal Magsby simultaneously acknowledges and mocks the settled rules of law cited above by implicitly urging that all favorable inferences drawn from conflicts in the evidence be construed in his favor. He essentially resurrects the argument he made before the jury by again disparaging the testimony of each prosecution witness. In an attempt to discredit Foster, Magsby cites his vandalism to her car as the genesis of her accusations. He suggests that either she mistakenly assumed him to be or vindictively named him as the gunman without having adequate opportunity to identify her attacker. However plausible his theory may be, such issues are for the jury's consideration, not ours.

Since the testimony of a single witness is sufficient to sustain a conviction, *Nash v. State*, 278 So. 2d 779, 780 (Miss. 1973), we need not address the credibility of the State's corroborating witnesses. Reasonable and fair-minded jurors might well have found Magsby guilty of aggravated assault on Foster's testimony alone. As a result, this assignment of error is without merit.

**THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF SIX (6) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.**

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

