

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00280 COA**

RICKY LOWERY A/K/A RICKY JAMES LOWERY **APPELLANT**
A/K/A "NI POOH"

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

DATE OF JUDGMENT:	02/21/96
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	LOWNDES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICHARD BURDINE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: PAT FLYNN
DISTRICT ATTORNEY:	FORREST ALLGOOD
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF AGGRAVATED ASSAULT AND SENTENCED TO 15 YEARS IN CUSTODY OF MDOC
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

PER CURIAM.

Ricky Lowery was convicted of the aggravated assault of Richard Honeycutt and sentenced to fifteen years imprisonment with the Mississippi Department of Corrections. On appeal to this Court, Lowery argues that the verdict of the jury was against the overwhelming weight of the evidence.

Detective John Pevey of the Columbus Police Department testified that Lowery made a statement to him in which Lowery said that Honeycutt owed him \$50 and Terrence Hill \$300 for crack cocaine that they had "spotted" Honeycutt on a Friday. The following day Lowery and Hill drove Honeycutt to several grocery stores to get a check cashed to pay them back. Honeycutt finally admitted that he

did not really have a check. The three then drove to Hill's house where Hill got a gun. From there, Lowery drove to a remote place in the country. Hill and Honeycutt got out of the car and went off into the woods. Lowery remained in the car until Hill called him. Lowery said that Hill hit Honeycutt several times with the butt of the gun. While Honeycutt was on the ground, Lowery kicked him three times then went back to the car. Lowery heard gunshots, then Hill came back to the car without Honeycutt. Lowery asked Hill if he had shot Honeycutt and Hill said no. Lowery and Hill left without Honeycutt.

Honeycutt was treated for lacerations on the head and tenderness of the left side and abdomen. Dr. Patty Manning, who treated Honeycutt, said that the injuries were serious although not serious enough to require hospitalization and consistent with Honeycutt being hit on the head and kicked.

Honeycutt could not be found to testify at trial. The testimony against Lowery came from police officers who investigated the case and from the physician who treated Honeycutt after the incident. Lowery was the only witness for the defense.

Lowery did not deny making a statement to police. He did deny the part of the statement that Honeycutt owed him money; instead, Lowery contended that Honeycutt had attempted to borrow \$50 from him. Lowery said that he kicked Honeycutt "in the butt" only to persuade him to stop screaming so that Hill would leave Honeycutt alone. Lowery testified that he did not attempt to stop Hill.

In rebuttal, the State offered testimony from DeLeslie Shanklin that Hill and Lowery were arguing with Honeycutt over money that he owed both of them. Detective Pevey and Officer Tom Thompson both testified that Honeycutt told them Honeycutt owed him and Hill money.

The jury was instructed that they could find Lowery guilty of the lesser crime of simple assault, but the jury found Lowery guilty of aggravated assault.

"Any person who is present at the commission of a criminal offense and aids, counsels, or encourages another in the commission of that offense is an 'aider and abettor' and is equally guilty with the principal offender." *Hoops v. State*, 681 So. 2d 521, 533 (Miss. 1996), quoting *Sayles v. State*, 552 So. 2d 1383, 1389 (Miss. 1989). *See also Mowdy v. State*, 638 So. 2d 738, 742 (Miss. 1994) (holding that it was not necessary to fire the gun to be classified as principals to the offense of aggravated assault).

This Court will not reverse a jury verdict and order a new trial unless it is convinced that the verdict was contrary to the overwhelming weight of the evidence and that to allow it to stand would sanction an unconscionable injustice. *Johnson v. State*, 642 So. 2d 924, 928 (Miss. 1994). "In determining whether a jury verdict is against the overwhelming weight of the evidence . . . this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the trial court has abused its discretion in failing to grant a new trial. Any factual disputes are properly resolved by the jury and do not mandate a new trial." *Id.* (citations omitted).

Here the jury had Lowery's testimony and his statement to the police from which they could find that he participated in the assault on Honeycutt. It was for the jury to resolve the disputes in the testimony.

THE JUDGMENT OF THE CIRCUIT COURT OF LOWNDES COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO LOWNDES COUNTY.

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