

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00127 COA**

**MICHAEL LEE WELLS**

**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:	01/25/96
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	YAZOO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DEREK E. PARKER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	JAMES H. POWELL, III
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	MANSLAUGHTER: SENTENCED TO SERVE A TERM OF 12 YRS IN THE CUSTODY OF THE MDOC WITH 2 YRS SUSPENDED, CONDITIONED ON GOOD BEHAVIOR OF THE DEFENDANT
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., HINKEBEIN, AND KING, JJ.

THOMAS, P.J., FOR THE COURT:

Michael Lee Wells appeals his conviction of manslaughter raising the following issue as error:

**I. THE TRIAL COURT ERRED IN THAT THE VERDICT IS CONTRARY TO LAW AND THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Finding no error, we affirm.

## FACTS

On the night of January 27, 1995, Michael Lee Wells and his brother, Kenny Wells, left their home in Bentonia, Mississippi to run an errand. While running the errand, they met up with their cousin, Eddie Lee Bryant. The three men proceeded to visit several night clubs, where they drank and played billiards. All three eventually returned to the Wells's home where both Michael and Kenny lived with their mother. Michael, having to work in the morning, went to sleep around 11:30 p.m., leaving both Kenny and Eddie talking and drinking in the living room.

Around 2:00 a.m., Kenny decided to leave the house and proceeded to empty Michael's wallet and take his car. Kenny, however, did not make it very far and drove Michael's car into a ditch in the front yard. It was around this time that Michael was awakened by his mother and told what Kenny had done. Michael got up to discover a very intoxicated Kenny sitting in Michael's car and racing the engine. Being understandable angry, Michael raced out the house and commenced to punch his brother in the nose. Kenny attempted to punch his brother back but failed in the attempt.

At this time Michael claimed Kenny threatened to get his gun and kill him for what he had done. Michael then retreated to a nearby wood pile where he selected a board which he then used to strike Kenny about his head and shoulders. Kenny, beaten and bleeding, was left in the front yard while Michael sought help from another cousin, Kevin Wells, to retrieve his car from the ditch. Successfully removing the car from the ditch, Michael went back to bed and left Kenny in the front yard.

According to Michael's police statement, around 4:00 a.m. Michael and his grandmother, Fannie Wells, finally went out and brought Kenny onto the porch of the house. At trial Michael testified that he and his mother brought Kenny onto the porch. The next morning Michael went to work as usual. Fannie Wells then discovered that Kenny had died, and she contacted the police. Officers John McGinty and David Smith of the Yazoo County Sheriff's Department responded to the call. The officers took statements from both Michael and his son, Justin Donaldson, who had witnessed the altercation.

In neither statement did Michael nor his son mention any threats made by Kenny. Michael testified on his own behalf at trial. He testified that after he punched Kenny, Kenny threatened to get his gun and kill him. Michael's testimony was bolstered by that of his son, Justin, who also testified that Kenny threatened to get his gun and kill Michael. Following deliberations, the jury returned a verdict of guilty of manslaughter.

## ANALYSIS

### I.

#### **THE TRIAL COURT ERRED IN THAT THE VERDICT IS CONTRARY TO LAW AND THE OVERWHELMING WEIGHT OF THE EVIDENCE**

Michael Wells argues that the evidence presented at trial was not sufficient for reasonable people to

find beyond a reasonable doubt that he was guilty of manslaughter and his sentence should be reversed and he should be discharged. On appeal, this Court does not retry the facts but must take the view of the evidence most favorable to the State and must assume that the fact-finder believed the State's witnesses and disbelieved any contradictory evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992). On review, we accept as true all evidence favorable to the State, and the State is given "the benefit of all favorable inferences that may be reasonably be drawn from the evidence." *Griffin*, 607 So. 2d at 1201 (citations omitted). The Court will reverse such a ruling only for abuse of discretion. *McClain*, 625 So. 2d at 781.

Michael Wells bases his insufficiency of the evidence argument on the fact that the only two witnesses to the altercation (Michael Wells and his son Justin Donaldson) both were unwavering in their testimony that: (1) Kenny Wells had a pistol; (2) Kenny was much larger and stronger than Michael; (3) Kenny announced his intention to go to the house and get his gun and kill Michael; and (4) Michael did not hit Kenny anymore after Kenny stopped trying to get his gun. However, neither son nor father made mention of any threats immediately after the incident in their statements to police. The jury could readily have concluded that if Kenny Wells had threatened to kill his brother, surely Michael or his son would have made this known to the arresting officers. Furthermore, it was for the jury to weigh the statements of Michael and Justin before and at trial. It was for the jury to determine whether the force employed by Michael on an unarmed Kenny was more than reasonably necessary under the circumstances.

The trial court also denied Michael Wells's motion for a new trial. A motion for a new trial tests the weight of the evidence rather than its sufficiency. *Butler v. State*, 544 So. 2d 816, 819 (Miss. 1989). The Mississippi Supreme Court has stated:

As to a motion for a new trial, the trial judge should set aside the jury's verdict only when, in the exercise of his sound discretion, he is convinced that the verdict is contrary to the substantial weight of the evidence; this Court will not reverse unless convinced the verdict is against the substantial weight of the evidence.

*Id.* (quoting *Russell v. State*, 506 So. 2d 974, 977 (Miss. 1987)).

The lower court has the discretionary authority to set aside the jury's verdict and order a new trial only where the court is "convinced that the verdict is so contrary to the weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice." *Roberts v. State*, 582 So. 2d 423, 424 (Miss. 1991) (citations omitted). Based on the record before us, suffice it to say that the evidence was sufficient to allow the case to go to the jury, and the jury's verdict was not against the overwhelming weight of the evidence. Both assignments of error are without merit.

**THE JUDGMENT OF THE YAZOO COUNTY CIRCUIT COURT OF CONVICTION OF MANSLAUGHTER AND SENTENCE OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH TWO YEARS SUSPENDED, CONDITIONED ON GOOD BEHAVIOR OF THE DEFENDANT, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO YAZOO COUNTY.**

**BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING,**

**PAYNE, AND SOUTHWICK, JJ., CONCUR.**