

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00721 COA**

**JIMMY DOSS A/K/A JIMMIE DARRYL DOSS A/K/A
J.D.**

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:	04/13/95
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	CLAY COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICHARD BURDINE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	FORREST ALLGOOD
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 20 YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
DISPOSITION:	AFFIRMED.-12/16/97
MOTION FOR REHEARING FILED:	12/30/97
CERTIORARI FILED:	
MANDATE ISSUED:	3/12/98

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

COLEMAN, J., FOR THE COURT:

Pursuant to the jury's verdict of "Guilty as charged" on an indictment for the crime of aggravated assault, the Circuit Court of Clay County entered its order in which it sentenced the appellant, Jimmy Doss, to serve a term of twenty years in the Mississippi Department of Corrections. Doss has appealed from the trial court's order to assert only the issue of whether the jury's verdict was contrary to the overwhelming weight of the evidence. We affirm the trial court's judgment and sentence which it imposed on Doss.

I. FACTS

On February 21, 1993, between 7:45 P.M. and 8:00 P.M., Shashone Lyles and his friend, Alonzo Lane, were waiting on the corner of Cottrell and Ezell Streets in West Point for Darrell Thomas. Thomas was supposed to come for both money that Lyles had collected from the sale of raffle tickets and for unsold raffle tickets. As Lyles and Lane waited for Thomas's arrival, Timothy Wayne Doss, Avis Quinn, who was Doss's girlfriend, and Robert Cox drove up in a small blue Mazda pickup truck. After Doss and Lyles had exchanged unpleasantries, Doss and Quinn drove away. Cox remained behind. Approximately five minutes later, Doss and Quinn returned with Timothy's younger brother, Anthony Doss, in the truck. Shashone Lyles and Anthony Doss began to fight; during the altercation, Lyles struck Doss so severely in the face with a .380 pistol that Doss was taken to the emergency room in the Clay County Medical Center for treatment of swelling about his face. Lyles, who was on probation for the commission of another felony, called the West Point Police Department to report the incident.

West Point Police Officers Eddie Johnson and John Sevier responded to Lyles' call and arrived at the scene of the fight on Cottrell Street. After Lyles told the two officers about his fight with Anthony Doss, he gave the .380 pistol with which he had struck Doss to Officers Johnson and Sevier. Lyles' version of the fracas was that Doss had pulled a pistol on him, and he wrestled the gun away from Doss when he saw that the pistol did not have a clip. Lyles' told the officers that he struck Doss in the face with the .380 pistol in the process of his wresting it from Doss. As Lyles and his friend, Alonzo Lane, related the incident to the two officers, Lane saw Timothy Doss's truck and pointed it out to the police. The officers pursued and stopped the truck. They frisked Anthony Doss and placed him in the police car. Timothy Doss and Avis Quinn followed the policemen and Anthony Doss to the police station in the truck. When Officer Johnson began to question Anthony Doss about the incident, he noticed the rapid swelling in Doss's face and urged Doss's mother, who had arrived at the police station by that time, to take her son Anthony to the hospital.

Soon after Anthony Doss and his mother arrived at the emergency room of the Clay County Medical Center, nine of Anthony Doss's ten brothers and sisters and some of their friends gathered outside the entrance to the emergency room because they were concerned about the seriousness of Anthony's facial injury. They waited outside the hospital building because the hospital's staff would not allow any of them to see Anthony inside the emergency room. A member of the hospital's security force called the West Point Police Department to request police assistance to deal with the disturbance which Anthony's family and friends were causing. Officers Eddie Johnson and Tony Tillman arrived to find several members of the Doss family, including the appellant, Jimmy Doss, standing outside the hospital and blocking the emergency exit.

In the meantime, Lyles and Alonzo Lane left the police station and walked to Demetria Lane's house at 715 Fifth Street. Demetria Lane is Alonzo Lane's sister. Between 9:00 p.m. and 10:00 p.m., while Lyles and Alonzo Lane were waiting for someone to come for them at Demetria Lane's house, a car pulled into the driveway at Demetria Lane's house. Because Lyles and Lane thought the car was their ride home, they stepped outside through the kitchen door beneath the carport on the side of the house. Once they were outside, Lyles and Lane discovered that the car contained Jimmy Doss; Anthony Doss; Patricia Boone, who was Jimmy and Anthony Doss's sister; Robert Cox, a friend of Patricia Boone; and Bobby Joe Seals. Jimmy Doss, Anthony Doss, and Robert Cox emerged from the

car, and what can only be described as a melee ensued. The encounter ended with Lyles being shot once in the arm and once in the left side as he ran from Demetria Lane's house in an unsuccessful attempt to escape injury. Alonzo Lane, who had run back into his sister's house, called 911 to report that Lyles had been shot.

At 9:16 p.m. Officer John Sevier, who had remained behind at the police station after Officers Johnson and Tillman had gone to the hospital, responded to the dispatcher's call about the shooting on Fifth Street. Sevier hardly brought his cruiser to a complete stop while Alonzo Lane, who had run from the house when he saw Sevier's cruiser approaching, identified the brown Buick Skylark, which was then traveling down Fifth Street as the one in which the assailants had arrived at the house. Sevier turned on his cruiser's blue lights and began pursuing the brown Skylark. As he pursued the Skylark, Sevier observed its occupants throwing two objects out of the car. The latter toss occurred near the railroad track just before Sevier managed to pull the Skylark over close to the intersection of Lowe and Center Streets.

In the meantime, Officer Johnson received a call at the hospital about the shooting on Fifth Street. He was advised that Officer Sevier had responded alone, so he and Officer Tillman left the hospital en route to back up Officer Sevier. When Officers Johnson and Tillman arrived at the intersection of Lowe and Center Streets, they found that Sevier had all five passengers from the Skylark, including Jimmy Doss and his brother Anthony, lying face down on the ground. Officer Johnson returned to Progress Street, where he found Shashone Lyles lying on the ground. Later that night, West Point Assistant Police Chief James Fowler joined the other three West Point police officers to search for the objects which Officer Sevier had seen tossed from the Skylark while he pursued it. Their search culminated successfully with their recovery of a .380 pistol near a utility pole next to the St. Paul Church located near 715 Fifth Street and .357 caliber gun near the railroad track on Center Street.

Lyles was flown by helicopter from the Clay County Medical Center to the Northeast Mississippi Medical Center in Tupelo, where a bullet, which had entered the left side of his chest, was removed from the right side of his chest. Dr. Ronald Powell, the emergency room physician who treated Lyles at the Clay County Medical Center emergency room, described the wound, which caused a hemothorax in the left chest cavity, as "life-threatening." However, Lyles recovered completely from the injury and testified against Jimmy Doss.

II. Trial

The indictment charged that Doss had "cause[d] bodily injury to Shashone Lyles, a human being, with a deadly weapon, to-wit: a pistol, by shooting [him] in the chest with said pistol" Because Doss argues that the jury's verdict was against the overwhelming weight of the evidence, this Court reviews the testimony and evidence relevant to the shooting of Lyles. However, even Doss does not dispute that Lyles was seriously wounded by a bullet on the night of February 21, 1993.

For its first witness, the State called Shashone Lyles, who recited his version of the events that transpired on the night in February when he was shot. About what occurred at Demetria Lane's house at 715 Fifth Street after Jimmy Doss's entourage arrived, Lyles testified under cross-examination:

After Jimmy [Doss] had Alonzo up under the car porch, Robert Cox got out of the right side of the car and say, "Jimmy, dare's that bitch that hit your brother." By then Jimmy runs behind me

with a gun and tried to hit me with the gun. I kind of faded him out the way. Robert had made it in the yard. Tony [Doss] drops down with the .380 small pistol shoot at my feet; Robert Cox tried to grab my arm. I run and like going north on Progress. I seen [sic] Jimmy [Doss] squat down with the gun with the loud noise which I said it was a big handle revolving handgun. I felt it hit my arm, but after I made the steps about I say from here up to--to your stand I heard two recall shot with rapid fire like pow, pow, and den I was hit, and den after the bullet had hit me I was running.

While "Tony" can be a nickname for Anthony, the record makes it clear Tony Doss is one brother, and Anthony Doss is another brother. It is appropriate to reiterate that Anthony Doss participated with Lyles in the first fight, but Tony Doss was the passenger in the car that pulled into the driveway at Demetria Lane's house.

Later, the following exchange between Doss's counsel and Lyles occurred:

Q. So your testimony is that as you ran out the yard, got back in the middle of the street, somebody shot you in your left arm?

A. I seen him.

Q. Somebody shot you in the left arm?

A. Nope; that ain't my testimony.

Q. As you ran out the yard into the street you saw Jimmy shoot you?

A. Yes, I did.

Q. And the reason you say he shot you because he was down like this?

A. I seen the fire come from the gun.

The State's second witness was Alonzo Lane, who described what happened in the front yard of his sister's house when Jimmy, Tony Doss, and the others arrived as follows:

Jimmy [Doss] put the gun on me; me and him was into it; I was like by my sister's doorstep. I had just ran all the way back up under the porch. It was a car full of folks trying to get out. At the time I was scared. Shashone was still in the house on the phone and Robert Cox said . . . said, "Dat's the wrong Shone," and so by dat time me--me and Jimmy got through, Shashone came out the house and Tony shot at Shashone foot wid dat .380 right here, shot by his foot, boom; I was scared; I was -- I ran in the house den. I ran -- when I ran in the house, I got to the phone, I called for help for the law; I was looking out the window and I seen Jimmy running behind Shashone shooting.

Later, the State called Joe E. Andrews, Jr., a forensic scientist specializing in microanalysis who was employed by the Mississippi State Crime Laboratory. Mr. Andrews opined without objection: "In this particular case [from] the sample that was submitted as being from the left palm area of Jimmy Darrell Doss we recovered or observed one particle that fits the characteristics that you need to--to be able to say that's gunshot residue."

The State called West Point Police Officers Eddie Johnson and John Sevier and West Point Assistant Police Chief James Fowler to testify about their respective roles in the investigation of this incident, the apprehension of Jimmy Doss, and the recovery of the two pistols which Officer Sevier testified he had observed being thrown from the car as he pursued it. We earlier referred to Dr. Ronald Powell's testimony about his treatment of Shashone Lyles at the emergency room of the Clay County Medical Center.

The State's last witness was Bobby Joe Seals, who was a passenger in the Doss car when it pulled up at the Lane house on Fifth Street. Seals, who had also been indicted for the aggravated assault on Lyles, testified that when they arrived at the Lane house, Jimmy and Tony Doss got out of the car, that each grabbed either Lyles or Alonzo Lane, and that both Jimmy and Tony Doss had a gun when they got out of the car. Seals testified that when Robert Cox identified Lyles as the person who had attacked Anthony Doss, "[Alonzo] Lane took off that way, and Lyles took off running the other way." He explained that Robert Cox had left the hospital with the Dosses because he knew where to find Lyles, who, he thought, would be at Alonzo Lane's sister's house. Cox further explained that initially Jimmy Doss drove the car to Demetria Lane's house. However, after Lyles got shot, Jimmy Doss ran across to where Lyles had fallen. Tony Doss then drove the car over to where Jimmy Doss had gone; Jimmy Doss got in the car; and Tony Doss drove away. Seals testified that two guns were thrown out of the car while the police were in pursuit of it.

After the State rested, Jimmy Doss called the remaining three occupants of the car, Anthony Doss, Patricia Boone, who was the Dosses' sister, and Robert Cox. All three of these witnesses explained that the reason they stopped at the Lane house was that the car had stalled for one reason or another. Patricia Boone admitted that she heard "five or six" shots fired before Anthony was able to start the car and drive it to pick up his brother Jimmy. Otherwise, their testimony was vague and elusive about the melee at Demetria Lane's house which involved the Doss brothers, Alonzo Lane, and Lyles.

Notwithstanding that he had previously been convicted of manslaughter in Monroe County as a fifteen-year-old child, for which he had served approximately seven years in the state penitentiary, Jimmy Doss testified in his own behalf.⁽¹⁾ Jimmy Doss testified that he first grabbed Alonzo Lane because he thought he was the one who had attacked his brother Anthony earlier that night but that he let go of Lane when Robert Cox told him that Lane had nothing to do with the attack. When he let Lane go, Lane ran back into his sister's house. Then, Lyles said, "It's me." Jimmy Doss struck at Lyles but missed him because Lyles ducked. Jimmy Doss continued, "When he ducked, uh, something fell off; the gun fell off and went off. I jumped back." Doss admitted that he ran after Lyles "[f]or a little distance." Doss's explanation for chasing Lyles was that "either [Lyles] had me to whip or I had [Lyles] to whip, but I didn't have no gun." Jimmy Doss denied hearing any shots other than the one which the gun fired as it fell to the ground when he swung at and missed Lyles. He further denied that he knew that Lyles had been shot.

We have already related the jury's verdict and the court's sentence.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUE

We quote verbatim from Jimmy Doss's brief his one issue in this appeal:

Whether the verdict of the jury is contrary to the overwhelming weight of the evidence.

In support of his contention that the jury's verdict was contrary to the overwhelming weight of the evidence, Doss argues that (1) the State's evidence did not prove beyond a reasonable doubt that he fired the gun which wounded Lyles, (2) that because Bobby Joe Seal, Jimmy Doss's co-indictee in this crime and a passenger in the Doss car, "offered the most damaging testimony of all," his testimony should be regarded with caution and suspicion, and (3) that the investigating officers mishandled the evidence which they gathered from their investigation. He complains in particular about the "mysterious appearance of the other weapon and its use in the court below to convict [him] , " which he terms "a serious and grave miscarriage of justice." While Doss admits that he participated "in the brawl," he insists that Lyles and Lane had weapons that were also fired during the altercation at Demetria Lane's house.

Although Doss only claims to challenge the weight of the evidence, part of his argument actually addresses the sufficiency of the evidence. As a result, we will address both the sufficiency and weight of the evidence presented in his case to ensure clarity.

A. CREDIBILITY OF WITNESSES

In his effort to prove that the verdict is against the overwhelming weight of the evidence, Doss points to inconsistencies in the testimony of the witnesses in the record. Where the testimony of witnesses conflict, the jury is ultimately responsible for making findings of fact and weighing witness credibility. *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987); *Dixon v. State*, 519 So. 2d 1226, 1228 (Miss. 1988); *Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983). On appeal, the appellate court does not reevaluate the jury's verdict or findings of fact. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991). Nevertheless, "if there is substantial evidence of such quality and weight that it is uncertain whether reasonable and fair-minded jurors in the exercise of impartial judgment would have reached a different conclusion, then the verdict is beyond the authority of the Court to disturb." *Williams v. State*, 667 So. 2d 15, 23 (Miss. 1996).

The appellant specifically points to the testimony of Bobby Joe Seals as unreliable on the grounds that he is a coindictee to the crime and that his testimony substantially differed from the testimony of the other coindictees. Doss cites *Boyce v. State*, 239 Miss. 405, 123 So. 2d 452 (1960), for the proposition that the testimony of an coindictee should be viewed with caution and suspicion. While this may be true, the Mississippi Supreme Court has held that the testimony of a coindictee is sufficient support a verdict where there is only "slight corroborating evidence." *Jackson v. State*, 420 So. 2d 1045, 1048 (Miss. 1982). The testimony of Seals was not uncorroborated. It was the jury's duty as fact finder to determine which evidence was credible. *Wetz*, 503 So. 2d at 812. "The jury had the duty to determine the impeachment value of the inconsistencies or contradictions as well as any testimonial defects." *Jackson*, 420 So. 2d at 1048. The jury's verdict that Jimmy Doss was guilty of aggravated assault is consistent with their determination that Seals' testimony, corroborated as it was by the testimony of other of the State's witnesses, was credible. Thus, we decline to disturb their verdict on this ground "absent a showing of prejudice, fraud, manifest error as to the weight assigned to this testimony" *Haymer v. State*, 613 So. 2d 837, 841 (1993).

B. SUFFICIENCY OF THE EVIDENCE

Doss argues that the evidence was insufficient to prove "beyond a reasonable doubt that [he] fired the weapon that was used to shoot Shashone Lyles." It is true that the State is required to prove every element of the offense charged beyond a reasonable doubt. *Heidel v. State*, 587 So. 2d 835, 843 (Miss. 1991). In this case, Doss was convicted of aggravated assault. According to the § 97-3-7(2) (b), "[a] person is guilty of aggravated assault if he . . . (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm" Miss. Code Ann. § 97-3-7(2)(b) (Rev. 1994). We noted that the indictment on which Doss was tried charged Doss with "purposely and knowingly caus[ing] bodily injury to Shashone Lyles, a human being, with a deadly weapon, to-wit: a pistol, by shooting the said Shashone Lyles in the chest with said pistol, without authority of law and not in necessary self-defense."

1. Standard of Review

A motion for a judgment notwithstanding the verdict challenges the legal sufficiency of the evidence which supports the jury verdict of guilty of the crime charged. *Lee v. State*, 469 So. 2d 1225, 1229 (Miss. 1985). "In the present context we must, with respect to each element of the offense, consider all of the evidence--not just the evidence which supports the case for the prosecution--in the light most favorable to the verdict." *Wetz*, 503 So. 2d at 808. All credible evidence consistent with the verdict "must be accepted as true." *Id.* "The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Id.* See e.g., *Lee*, 469 So. 2d at 1229. As a result, on appeal, this Court may only reverse where it finds that no reasonable and fairminded jury could have found the appellant guilty of the crime charged beyond a reasonable doubt. *Lee*, 469 So. 2d at 1230; *Williams*, 667 So. 2d at 23.

2. Analysis

The first element of aggravated assault that the State had to prove was that Doss shot Lyles with a gun. Lyles testified that he saw Jimmy Doss crouch down, point a gun at him, and fire. He saw the flash from the barrel, and he felt the bullet hit his arm. Further, Alonzo Lane testified that he saw Doss chase Lyles with a handgun and heard it firing. Bobby Joe Seals testified that he saw Jimmy Doss get out of the Buick with a gun and shoot as Lyles ran away. John Andrews, a forensic scientist qualified as an expert in the field of microanalysis, opined that gunshot residue was found on Jimmy Doss's left palm. In view of all this evidence and the inferences which might reasonably be drawn from it, this Court holds that there was sufficient evidence adduced by the State from which a reasonable, fairminded jury could have found that Doss shot Lyles.

The second element that the State had to prove was that Lyles suffered a serious bodily injury. Lyles testified that he felt a blow to his arm when he saw Jimmy Doss fire at him. Besides, Doss does not argue that Lyles was not seriously injured by the shooting spree in which Jimmy Doss participated. Dr. Ronald Powell testified that he treated Lyles in the Clay County Medical Center emergency room and that Lyles suffered a serious, life threatening gunshot wound. There is no doubt that Lyles suffered a serious bodily injury. Therefore, we hold that the trial judge did not err by denying Doss's motion for a judgment notwithstanding the verdict.

C. OVERWHELMING WEIGHT OF THE EVIDENCE

1. Standard of Review

It is within the trial court's discretion whether to grant a motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). The motion is not considered *de novo* on review. *Veal*, 585 So. 2d at 695. This Court will only reverse where it finds that there has been an abuse of discretion. *Wetz*, 503 So. 2d at 812; *Catchings v. State*, 684 So. 2d 591, 600 (Miss. 1996). This Court will reverse the trial court's denial of a motion for a new trial only where it is "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*, 440 So. 2d at 300; *May v. State*, 460 So. 2d 778, 781-2 (Miss. 1984). *See e.g.*, *Wetz*, 503 So. 2d at 812; *Taylor v. State*, 672 So. 2d 1246, 1256 (Miss. 1996).

2. Weight of the Evidence

The evidence brought forth in this case clearly presents an issue for the jury to decide. Where the testimony of witnesses conflict, the jury is ultimately responsible for making findings of fact and weighting witness credibility. *Wetz*, 503 So. 2d at 812; *Dixon*, 519 So. 2d at 1228. The jury's discretion in choosing whether to accept all or part of a witness's testimony is unfettered. *Meshell v. State*, 506 So. 2d 989, 992 (Miss. 1987). On appeal, the appellate court does not reevaluate the jury's verdict or findings of fact. *Veal*, 585 So. 2d at 695. All that is necessary for the appellate court to uphold the verdict of the jury is for there to have been a factual dispute presented to the jury for determination. *Groseclose*, 440 So. 2d at 300.

In this case, there were several facts in dispute and all were properly presented to the jury.

Doss seems to suggest in his brief that there was evidence that Lyles and Alonzo Lane fired their weapons at him first, but from our review of the record, we have determined that Doss requested no instruction of law on self-defense. Neither has he assigned error in the trial judge's instructing the jury. Thus, whether the jury's verdict was against the overwhelming weight of the evidence because Jimmy Doss shot Lyles in self-defense becomes a non-issue since Doss did not request an instruction on his having acted in defense of himself. Besides, from Doss's testimony which we have quoted in this opinion, it appears to us that his theory of defense was that the shooting of Lyles was an accident -- not a matter of self-defense. This Court does not sanction an unconscionable injustice by affirming the trial court's denial of Jimmy Doss's motion for a new trial based on the proposition that the jury's verdict was against the overwhelming weight of the evidence. Therefore, we affirm the trial court's order of the appellant's guilt of aggravated assault and its sentence to serve twenty years with the Mississippi Department of Corrections.

THE JUDGMENT OF THE CIRCUIT COURT OF CLAY COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND ITS SENTENCE OF APPELLANT TO SERVE TWENTY YEARS WITH THE MISSISSIPPI DEPARTMENT OF CORRECTIONS ARE AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLAY COUNTY.

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

1. The record reflects that after the State rested and before Doss began the presentation of his evidence, the trial judge conducted a "Peterson" hearing to determine whether Jimmy Doss's conviction of manslaughter was admissible for impeachment purposes pursuant to Rule 609(b) of the Mississippi Rules of Evidence. The date of Doss's conviction was February 14, 1983, but he was discharged from the state penitentiary on October 7, 1990. Because the date of Doss's discharge was less than ten years before the date of this trial, Rule 609(b) rendered it admissible. Nevertheless, the trial judge conducted the four-step analysis to determine its admissibility, from which he concluded that the conviction was admissible. Doss has raised no issue about the trial judge's decision to admit the conviction on motion of the State to impeach him.