

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00421 COA**

JASON STARK A/K/A JASON RICHARD STARK

APPELLANT

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:	04/10/96
TRIAL JUDGE:	HON. JOHN M. MONTGOMERY
COURT FROM WHICH APPEALED:	CLAY COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID WAYNE LAMBERT
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	FORREST ALLGOOD
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I AGGRAVATED ASSAULT: CT II AGGRAVATED ASSAULT: CT I SENTENCED TO SERVE A TERM OF 20 YEARS IN THE MDOC; CT II SENTENCED TO 20 YEARS IN THE MDOC SAID SENTENCE TO RUN CONSECUTIVELY WITH THE SENTENCE IMPOSED TO CT I
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

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

PER CURIAM:

Jason Richard Stark was convicted in the Circuit Court of Clay County on two counts of aggravated

assault. For each count, Stark was sentenced to twenty years in the custody of the Mississippi Department of Corrections, with the terms to run consecutively. He appeals his conviction and sentence, contending that the trial court abused its discretion initially by refusing to grant a directed verdict in his favor, and again by denying his post-trial motion for judgment notwithstanding the verdict or, in the alternative, new trial.

On May 10, 1993, two employees of the City Pawn Shop in West Point, Mississippi were shot by a relatively frequent customer of the business. The gunman initially spoke with Ms. Pauline Beard about purchasing a piece of jewelry, much like he had done numerous times in the preceding weeks. After briefly examining the necklace and promising to return shortly, he exited the store. When he returned shortly thereafter, Ms. Beard's grandson, Heath Beard, completed the sale. However, as Heath finished the accompanying paperwork, the individual, without explanation, shot him in the face. Ms. Beard, who had been watching from nearby stepped between her grandson and the young man's pistol, pleading with him to cease. Rather than complying, he shot her in the hand as well. Stunned and missing a finger, Ms. Beard ran from the pawn shop toward another nearby business. But the gunman followed and shot her again, this time in the neck. As Ms. Beard stumbled into Tower Loan, employees of the company locked the doors behind her. Heath and Pauline Beard subsequently identified Stark as their assailant.

At trial, the prosecution presented their testimony as well as that of a Tower Loan employee who had observed Stark emerge from the pawn shop in pursuit of Ms. Beard. All made positive identifications. An acquaintance of Stark then admitted concealing the defendant in his home during the days following the crime. Finally, the Mississippi Crime Laboratory's Associate Director concluded with testimony that fingerprints left at the scene matched Stark's. On that basis, the jury returned a guilty verdict on both counts.

Contrary to Stark's allegations on appeal, the testimony presented through these witnesses warranted submission of this case to the jury and supports its ultimate determination of guilt. Both motions for directed verdict and motions for JNOV challenge the legal sufficiency of the evidence. *Noe v. State*, **616 So. 2d 298, 302 (Miss. 1993)** (stating that a motion for directed verdict tests legal sufficiency of the evidence); *McClain v. State*, **625 So. 2d 774, 778 (Miss. 1993)** (stating that a motion for judgment of acquittal notwithstanding the verdict also tests legal sufficiency of the evidence). Since both require consideration of the evidence before the court when made, this Court properly reviews the ruling only on the last occasion that the challenge was made in the trial court. *McClain*, **625 So. 2d at 778**. In this instance, that challenge was quelled when the circuit court denied Stark's motion for JNOV/new trial. *See, e.g., Wetz v. State*, **503 So. 2d 803, 807-08 (Miss. 1987)**.

Where a defendant moves for JNOV, the trial court considers all of the credible evidence consistent with the defendant's guilt, giving the prosecution the benefit of all favorable inferences that may be reasonably drawn from this evidence. *McClain*, **625 So. 2d at 778**. 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*, **503 So. 2d at 808 n.3**.

As distinguished from the motion for JNOV (as well as a motion for directed verdict), a motion for new trial requests 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). However, the jury bears sole responsibility for determining the weight and credibility of evidence. *Id.* 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*, 503 So. 2d at 812. Such a determination lies within the trial court's sound discretion. *McClain*, 625 So. 2d at 778. We will reverse and order a new trial only if, accepting as true all evidence favorable to the prosecution, we determine that the trial court abused that discretion. *Id.*

Because the overwhelming weight of the evidence lies with the State, we perceive no injustice in either the jury's finding Stark guilty or the trial court's allowing the verdict to stand. Consequently, Stark's contentions are without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF CLAY COUNTY OF CONVICTION ON BOTH COUNTS I AND II OF AGGRAVATED ASSAULT AND SENTENCES OF TWENTY YEARS EACH TO BE SERVED CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO CLAY COUNTY.

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