

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00691 COA**

**JAMIE ROBINSON A/K/A JAMIE LEVON
ROBINSON**

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:	05/24/96
TRIAL JUDGE:	HON. R. I. PRICHARD III
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	THOMAS E. SCHWARTZ
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	RICHARD DOUGLASS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I MURDER: CT II AGGRAVATED ASSAULT: CT I SENTENCED TO SERVE A TERM OF LIFE IMPRISONMENT IN THE MDOC; CT II SENTENCED TO SERVE A TERM OF 20 YRS IN THE MDOC, SAID SENTENCE TO RUN CONSECUTIVE TO THE SENTENCE IMPOSED IN CT I
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

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

THOMAS, P.J., FOR THE COURT:

Jamie Robinson appeals his conviction for murder and aggravated assault raising the following issues as error:

I. THE COURT ERRED IN DENYING DEFENSE MOTION TO SUPPRESS STATEMENTS OF DEFENDANT AND ALLOWING THEIR ADMISSION INTO EVIDENCE.

II. THE COURT ERRED IN OVERRULING DEFENDANT'S OBJECTION TO THE IN-COURT IDENTIFICATION BY SABRINA BRIDGES.

III. THE COURT ERRED IN OVERRULING DEFENDANT'S APPLICATION FOR CHANGE OF VENUE.

IV. THE COURT ERRED IN REFUSING THE DEFENDANT'S REQUEST FOR INDIVIDUAL VOIR DIRE.

V. THE COURT ERRED IN FAILING TO GRANT A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

VI. THE COURT ERRED IN GRANTING OF INSTRUCTION S-10 AND THE REFUSAL TO GRANT PROPOSED INSTRUCTION D-9.

VII. THE COURT ERRED IN REFUSAL OF DEFENSE JURY INSTRUCTION D-7.

Finding no error, we affirm.

FACTS

On January 15, 1995, Jamie Robinson went over to Jonathan Banks's house in Picayune, Mississippi to watch football. Around two o'clock that afternoon, Banks and Robinson left to pick up Banks's girlfriend from work. After picking up Banks's girlfriend, Melvina Smith, the three individuals drove to a convenience store. They then proceeded to drive to Robinson's father's house in order to drop off Robinson. In route to Robinson's father's house, Robinson spotted Daniel Magee and Eric Shelton walking along a bridge which was located on Beech Street in Picayune.

Robinson recognized the two individuals as members of a gang who had confronted him a few weeks earlier concerning a stolen assault rifle. During that incident, a fight broke out wherein at least three individuals fought with Robinson. The assault rifle belonged to the gang known as the Black Gangster Disciples. The rifle had been borrowed by Robinson's cousin but never returned. This gang had on several occasions harassed and intimidated Robinson concerning this assault rifle. Robinson claimed that earlier this same day that these two individuals had taunted him, made threats to him, and had fought with him. Further, he claimed that the two individuals told him that "we gonna do this every time we see you." After this latest incident, Robinson had gone home and armed himself with a .22 caliber pistol.

After seeing Magee and Shelton on the bridge, Robinson immediately asked to be let out of the car. Banks let Robinson out of the car and then turned the car around, heading in the opposite direction. Robinson drew his pistol and proceeded to shoot at Magee and Shelton.

Marie Williams and her twelve-year-old daughter, Sabrina Bridges, were driving in a car directly behind Banks's car. Marie Williams testified at trial that she was near the bridge on Beech Street

when the car in front of her stopped. She saw a black man get out of the car and draw a gun. She then testified that the black man began to shoot at a white man and a black man who were on the bridge. The two men who were shot at then began to run. However, Marie Williams was unable to identify Robinson as the shooter.

Sabrina Bridges gave a statement to police immediately after the incident. In this statement, she stated she saw a black man get out of the car and begin shooting at "Booger Magee" and a "white boy." She then stated that the two individuals who were shot at took off running. At trial Sabrina testified to knowing and identifying Robinson, Magee, and Shelton. She further testified to actually seeing Shelton being shot on or near the bridge. She claimed to have given all this information to the police who failed to take it down in her statement. However, during a pretrial photographic lineup, Sabrina had failed to identify Robinson as the shooter. She did, however, identify Robinson as the shooter at trial.

When Magee saw Robinson, he immediately began to run and shouted to Shelton to do the same. Shots rang out and Shelton was hit. Magee, seeing Shelton shot and bleeding, ran to a close-by apartment and tried to get help, but no one answered the door. He then went to some nearby woods where he had stashed a rifle. Magee then went to the Beech Street Apartments where Robinson lived. He began shooting the rifle, and Robinson came out and returned fire. Finally, Magee's mother showed up and dragged Magee from the scene.

Chris Goods, who was visiting his girlfriend in a house next door to Robinson, testified at trial that he heard shots which caused him to come out onto the porch. He saw Shelton and Magee standing in front of Robinson's residence. He testified that Magee was armed with a rifle which he fired. He then testified Robinson came out of his house and fired "down the sidewalk." He further testified that Shelton ran off "toward the bridge" and Magee ran off across the street to the Beech Street Apartments.

Shelton eventually died from his gunshot wound. His body was found near the corner of Bender and Beech Street. A blood splatter trail was found beginning near the corner of the bridge and ending where the body was discovered. Robinson was charged with murder and aggravated assault. After deliberations, the jury returned a verdict of guilty on both counts.

ANALYSIS

I.

THE COURT ERRED IN DENYING DEFENSE MOTION TO SUPPRESS STATEMENTS OF DEFENDANT AND ALLOWING THEIR ADMISSION INTO EVIDENCE.

Robinson argues that it was improper of the trial court to admit a written statement and two oral statements made by Robinson to police officers. Both the written and oral statements were in essence confessions made by Robinson. The order of a trial court admitting written or oral confessions of a defendant is in effect a "finding of fact which will not be reversed on appeal unless it is manifestly in error or contrary to the overwhelming weight of the evidence." *Harrison v. State*, 534 So. 2d 175, 181 (Miss. 1988) (quoting *Cabello v. State*, 490 So. 2d 852, 856 (Miss. 1986)). The Mississippi

Supreme Court has stated:

Once the trial judge has determined . . . that a confession is admissible, the defendant/appellant has a heavy burden in attempting to reverse that decision on appeal. That finding is considered a finding of fact which will not be reversed on appeal unless manifestly in error, or contrary to the overwhelming weight of the evidence.

***Frost v. State*, 483 So. 2d 1345, 1350 (Miss. 1986).**

Robinson charges that his written confession was made only after an officer promised him leniency and a charge reduction, thus falsely inducing the defendant to make the confession. At the suppression hearing Robinson testified to such a claim, but there is simply nothing in the record and Robinson has provided us with nothing (other than his own testimony) to indicate that the trial court's decision allowing his written confession into evidence was manifestly in error. Robinson was given multiple *Miranda* warnings, he initiated the contact with the officer who took down his confession, and the officer who took down the confession testified that no promises were given to Robinson. There was more than ample evidence supporting the trial court's ruling.

Robinson also charges that the two oral statements purported to have been made by him were in fact never made. Again, Robinson only has his own testimony at the suppression hearing to support this claim. He offers us nothing on appeal to show the court's order admitting this evidence was manifestly in error. The officer who heard the statements testified that they were in fact made. The officer further testified that one statement was spontaneously made while he was in the process of reading the defendant his *Miranda* rights and not made as a response to any question or interrogation. He also testified that the second statement was made after the defendant received his *Miranda* warnings and in response to something he heard on the police radio and not the result of a question or interrogation. The suppression hearing presented the classic scenario of whom do you believe; the trial court chose to believe law enforcement over Robinson. There was more than enough evidence supporting the trial court's ruling. This assignment of error is without merit.

II.

THE COURT ERRED IN OVERRULING DEFENDANT'S OBJECTION TO THE IN-COURT IDENTIFICATION BY SABRINA BRIDGES.

Robinson argues that Sabrina Bridges's in-court identification of the defendant was tainted, unreliable, and should have been deemed inadmissible by the trial court. "The standard of review for suppression hearing findings in a matter of pretrial identification cases is whether or not substantial credible evidence supports the trial court's findings that, considering the totality of the circumstances, in-court identification testimony was not impermissibly tainted." ***Ellis v. State*, 667 So. 2d 599, 605 (Miss. 1995)**. We will disturb the findings of the lower court "only where there is an absence of substantial credible evidence supporting it." ***Id.*** (quoting *Ray v. State*, 503 So. 2d 222, 224 (Miss. 1986)).

The Mississippi Supreme Court has stated that the factors enumerated in ***Neil v. Biggers*, 409 U.S. 188, 199 (1972)**, should be evaluated to determine whether there was an improperly suggestive pre-

trial identification tainting subsequent identification at trial. *Id.* The *Biggers* factors are:

- (1) the opportunity of the witness to view the accused at the time of the crime;
- (2) the degree of attention exhibited by the witness;
- (3) the accuracy of the witness's prior description of the criminal;
- (4) the level of certainty exhibited by the witness at the confrontation;
- (5) the length of time between the crime and the confrontation.

Id.

"Where the trial judge follows these factors and finds that, under the totality of the circumstances, the in-court identification is not impermissibly tainted, this Court will disturb that finding only when there is insufficient substantial credible evidence supporting it." *Ellis*, 667 So. 2d at 605 (citing *Ray v. State*, 503 So. 2d 222, 223-24 (Miss.1986)).

Sabrina Bridges was twelve years old when she witnessed the shooting. She was in a car directly behind Banks's car when Robinson got out of it on Beech Street. At trial of this matter she testified, with the jury out, that she casually knew both the victims and the defendant before this incident took place. She further testified that she could properly identify Robinson as the shooter. At trial, Robinson objected to the fact that Bridges failed to mention the names of one of the victims and the name of the defendant in her statement to police. Furthermore, when given a photographic lineup, Bridges failed to identify Robinson and in fact picked out someone else as the shooter. Robinson made a motion at trial to exclude her testimony based on these facts. The trial court, however, allowed Bridges's testimony before the jury.

On appeal Robinson argues that Bridges's in-court identification was tainted, unreliable, and prejudicial to the defendant, citing the *Biggers* factors as support. We are satisfied that there was substantial evidence allowing this testimony into evidence. Robinson offers us nothing besides just outlining the *Biggers* factors to show us how the in-court identification was tainted. Furthermore, Robinson was allowed to attack the credibility of this witness at trial with the fact she failed to identify the defendant in a photographic lineup. This assignment of error is without merit.

III.

THE COURT ERRED IN OVERRULING DEFENDANT'S APPLICATION FOR CHANGE OF VENUE.

Robinson argues that because of pre-trial publicity it was doubtful whether an impartial jury could be obtained; therefore, the trial court should have granted his motion for change of venue. The Mississippi Supreme Court has stated that ["w]here a defendant presents the court with an application for change of venue accompanied by two affidavits which affirm the defendant's inability to receive a fair trial in a particular location, a presumption is created that it is impossible for a fair trial to be had in that place." *Hickson v. State*, No. 92-CT-00976-SCT, 1997 WL 765701, at *4

(**Miss. Dec. 15, 1997**). This presumption can be rebutted by the State if it can be shown by voir dire that an impartial jury was impaneled by the trial court. *Id.* When the State makes such a showing of impartiality, we must defer to the trial court's denial of the change of venue request, for the venue decision is within the discretion of the lower court. *Id.*

At trial of this matter Robinson made a motion for change of venue. He alleged that he would not be able to receive a fair trial in Pearl River County, Mississippi because this incident involved the killing of a white man, and since he is black, and because Pearl River County has a low percentage of black population he would not be able to get a jury of his peers. He further charged that because the nature of the case involved gang activities any jury from Pearl River County would be overcome with passion and prejudice and would rush to a verdict that would not be just, either to the State or the defendant. In support of his motion, Robinson provided the affidavits of two citizens of Pearl River County, who stated that it would be in the best interest of justice that the case be tried in another location.

The State countered these affidavits with affidavits of its own. The State offered affidavits from a radio station employee in Picayune, the Chancery Clerk, the advertising director of the Poplarville Democrat Newspaper, a justice court judge, the owner of a Western Auto Store, the County Administrator, an attorney, two retirees, a salesman, and a service technician. All swore to the lack of extensive media coverage of this incident, the lack of any racial tension as a result of this incident, and the lack of general public knowledge of this incident.

The trial court denied the motion but allowed the defendant to renew his request on commencement of voir dire if it appeared that the defendant could not receive a fair trial. From the record before us, the defendant failed to renew his motion and furthermore, he failed on appeal to request the transcription of the voir dire proceedings. We are satisfied that an impartial jury was impaneled. The affidavits provided by the State came from individuals from the north and south ends of Pearl River County. They all evidence the lack of public knowledge about this case. Furthermore, Robinson has provided us with nothing that would show that the trial court erred or that the denial of change of venue resulted in Robinson receiving an unfair trial. We must defer to the trial court's decision on this matter. This assignment of error is without merit.

IV.

THE TRIAL COURT ERRED IN REFUSING THE DEFENDANT'S REQUEST FOR INDIVIDUAL VOIR DIRE.

Robinson argues that the trial court erred by failing to allow individual voir dire and by accepting at face value the assurance of the jurors impaneled that they could ignore anything they had previously heard about the case and could ignore any prejudice that might be placed upon the defendant because of gang-related testimony that would be forthcoming at trial. Whether or not to allow individual sequestered voir dire is within the discretion of the trial court. *Ballenger v. State*, 667 So. 2d 1242, 1249 (Miss. 1995). Nothing that Robinson has given us on appeal would show that the trial court abused its discretion. In fact, because the voir dire transcripts were not requested, we can not even know if anything happened at voir dire which would justify individual questioning of venirepersons. In such a case it cannot be said that the trial judge abused his discretion. This assignment of error is without merit.

V.

THE TRIAL COURT ERRED IN REFUSING TO DIRECT A VERDICT OR GRANT A NEW TRIAL AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF EVIDENCE.

Robinson's motion for a directed verdict challenges the sufficiency of the evidence supporting a guilty verdict. *Butler v. State*, 544 So. 2d 816, 819 (Miss. 1989). Robinson argues that the evidence presented at trial was insufficient to support a guilty verdict and as such should be reversed. When the legal sufficiency of the evidence is challenged we will 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 reasonably be drawn from the evidence." *Griffin*, 607 So. 2d at 1201 (citations omitted). We will reverse such a ruling only where "reasonable and fairminded jurors could only find the accused not guilty." *McClain*, 625 So. 2d at 778 (citing *Wetz*, 503 So.2d 803, 808 (Miss. 1987); *Harveston v. State*, 493 So.2d 365, 370 (Miss. 1986); *Fisher v. State*, 481 So. 2d 203, 212 (Miss. 1985)).

Robinson bases his insufficiency of the evidence argument on the fact there was no proof that the bullet that killed Shelton came from the firearm of Robinson, no proof of malice aforethought required for a murder conviction or aggravated assault conviction, and no proof Robinson intended to kill anyone. These arguments are simply baseless. The State presented Robinson's oral statement in which he told Officer Farmer "that he shot him, that he hoped he hit him and hoped that he killed the little bastard." The State further offered Robinson's written statement in which he confesses to shooting at the victims. Magee testified Robinson shot at both him and Shelton and in fact hit Shelton. Sabrina Bridges testified to seeing Robinson shoot at Magee and Shelton and to seeing Shelton being hit. There was more than sufficient evidence supporting the verdict.

The trial court also denied Robinson'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. These assignments of error are without merit.

VI.

THE COURT ERRED IN THE GRANTING OF INSTRUCTION S-10 AND THE REFUSAL TO GRANT PROPOSED INSTRUCTION D-9.

The trial court granted Jury Instruction No.10 over defense objections that it failed to allow the jury to fully consider the issue of self-defense. Jury Instruction No. 10 reads as follows:

The court instructs the jury that if you believe from the evidence in this case that the shooting at Daniel Terrell Magee and Eric Shelton which resulted in the death of Eric Shelton as testified by some of the witnesses in this case occurred at the bridge and not the home of the Defendant, then the Defendant is not entitled to the defense of self-defense.

However, if you believe from the evidence in this case that the shooting did not occur at the Beech Street bridge but rather that all of the shooting occurred at the residence of Jamie Robinson wherein the Defendant shot at Daniel Terrell Magee and Eric Shelton you may consider the defense of self-defense, if you further believe that the facts as stated by one witness meets the criteria of self-defense as defined by the instruction on self-defense.

The trial court also granted Jury Instructions No. 8 and No. 18. Jury Instruction No. 8 reads as follows:

The court instructs the jury that to make an assault justifiable on the grounds of self defense, the danger to the attacker must be either actual, present, and urgent, or the attacker must have reasonable grounds to apprehend a design on the part of the victim to kill him or to do him some great bodily harm at that time; and in addition to this, he must have reasonable grounds to apprehend that there is imminent danger of such design being accomplished at that time. It is for the jury to determine the reasonableness of the grounds upon which the Defendant acts.

Jury Instruction No. 18 reads as follows:

The court instructs the jury, even though the jury may believe from the evidence that the Defendant was not acting in his necessary self-defense at the time he fired the shots if any at Eric Shane Shelton at the bridge if you so yet find, if the evidence has left a reasonable doubt in your minds as to whether Shelton was killed by these shots or by a later one, at the house of the Defendant then they will acquit, unless they further believe from the evidence, beyond a reasonable doubt, that the shot which killed Shelton was fired by the Defendant at a time when Jamie Robinson was not in real or apparent danger of death or great bodily harm at the hands of Eric Shelton and "Bugger" Magee.

Robinson argues that the evidence at trial clearly revealed two separate shootings, one at the bridge and another shooting at Robinson's residence. Further, the jury should have been able to consider self-defense as a defense under all of the circumstances and not be limited to considering it only where they concluded that all the shooting occurred at Robinson's residence. It was up to the jury to

decide whether the shot that killed Shelton occurred at the bridge or Robinson's residence. The jury could have readily believed that Robinson shot at Magee and Shelton at the bridge but failed to hit anyone, that Magee and Shelton then went to Robinson's residence where they then became the aggressors, and that it was at this exchange of gunfire that Shelton was shot.

There was evidence at trial giving credence to this scenario. Robinson's written statement to police only stated that he shot at Magee and Shelton on the bridge, not that he hit anyone. Sabrina Bridges testified at trial that she saw Shelton shot by Robinson on the bridge. But in her original statement to police immediately after the incident, she only said she saw Robinson shoot at two men, who then took off running. Marie Williams testified that she saw Robinson shoot at two men, who then took off running. Chris Goods testified that he saw both Magee and Shelton in front of Robinson's residence, and that after shots were fired by both sides that Shelton ran off "toward the bridge."

The State offered the testimony of Magee who stated that Shelton was shot on the bridge. Blood spatters found at the crime scene were consistent with someone being shot on or near the bridge. Furthermore, the medical examiner testified that the type of wound that killed Shelton meant almost instantaneous death. With this type of wound the victim could have only traveled five or six feet before collapsing. However, Officer Drexler testified that it was one hundred and eighty-two feet from where the first blood spatter was discovered to where the body of Shelton was found.

If instructions correctly state the law when read together as a whole, there is no reversible error. ***Thompson v. State*, 602 So. 2d 1185, 1190 (Miss. 1992)**. Also, if an error in one instruction is cured by another instruction when the instructions are considered as a whole, the error will not be reversible. ***Id.*** Although Instruction No. 10 was inartistically drawn, nonetheless, we are satisfied that Jury Instruction No. 8 and especially Jury Instruction No. 18 cured any defects in Instruction No. 10. These two instructions when taken together properly define self-defense to the jury and allow them to consider it even when Robinson fired shots both at the bridge and his residence. The record indicates that the jury never requested an explanation on the disputed instruction or requested a clarification on any of the instructions. We are satisfied that the instructions when taken as a whole correctly state the law and do not allow for reversal in this instance.

Robinson also argues that it was error for the trial court to deny proposed Jury Instruction D-9. Instruction D-9 reads as follows:

The court instructs the jury that if they believe from the evidence that the Defendant had reasonable grounds to apprehend a design on the part of the deceased to do him or his family some great personal injury, that there was danger of such design being accomplished, the Defendant was justifiable in acting upon such appearances, if they indicated danger (i.e. the shooting into his home) even to the taking of the life of the deceased.

We are satisfied the jury was properly informed of the definition of self-defense and properly informed as to when to consider it. The Mississippi Supreme Court has stated that ["t]he trial court is not required to grant several instructions on the same question in a different verbiage." ***Ragan v. State*, 318 So. 2d 879, 882 (Miss. 1975)**. When all the instructions that were presented to the jury are read and considered together, it is clear the law was properly submitted. This assignment of error is without merit.

VII.

THE TRIAL COURT ERRED IN REFUSAL OF DEFENSE JURY INSTRUCTION D-7.

The record shows that Defense Jury Instruction D-7 was in fact granted. This assignment of error is without merit.

THE JUDGMENT OF THE PEARL RIVER COUNTY CIRCUIT COURT OF THE CONVICTION OF JAMIE ROBINSON ON COUNT I FOR MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS; COUNT II FOR AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVE WITH SENTENCE OF COUNT I IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO PEARL RIVER COUNTY.

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