

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-01196 COA**

REGINALD SKINNER

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:	10/07/96
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	HOLMES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES H. ARNOLD JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	NOEL CROOK
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 15 YRS IN THE MDOC WITH 3 YRS SUSPENDED
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

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

THOMAS, P.J., FOR THE COURT:

Reginald Skinner was found guilty of aggravated assault with a deadly weapon and sentenced to fifteen years imprisonment with three years suspended. On appeal, Skinner raises the following assignments of error:

I. THE COURT ERRED IN OVERRULING APPELLANT'S OBJECTIONS DURING THE COURSE OF HIS JURY TRIAL.

II. THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR A DIRECTED VERDICT.

III. THE VERDICT OF THE TRIAL COURT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

IV. THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR A NEW TRIAL OR FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OF THE JURY.

We find no error and affirm the judgment of the trial court.

FACTS

During the evening of March 13, 1996, Reginald Skinner had an exchange of words with Timothy Stewart in front of the Double Quick on Highway 12 in Lexington, Mississippi. Skinner left but returned a short time later and began firing his gun at Stewart. One of the shots hit Stewart in the arm.

Skinner testified that he was afraid of Stewart's pit bull dog and that he fired in self defense. Skinner stated on direct examination:

When I got out of the car, I was fixing to pump some gas. I seen him pull the dog out of back of the truck. I was like, "Man, let me out of here. Don't put that dog on me." I went back and got my pistol. In fact, when I got to my car, he was still walking out with it. I just went to shooting. He asked me what was up, and I just went shooting at him. I wasn't going to take no chances. If he had of turned that dog a loose on me, when I just went to get some gas and I didn't have my gun, I would have been ate up by the dog. That's the way I was looking at it.

When asked what kind of threats were made by Stewart that evening, Skinner testified: "He didn't do nothing but have his hand behind his back like he want to do something to me at the time."

Stewart testified that he was unarmed and did nothing to threaten Skinner. Randy Webster, the assistant chief of police, witnessed part of the shooting. Webster testified to seeing Stewart running to escape the gunfire. Webster pulled out his weapon and ordered Skinner to "freeze"; Skinner got into his automobile and fled. Webster and a police officer in another patrol car pursued Skinner and were able to apprehend him.

DISCUSSION

I. THE COURT ERRED IN OVERRULING APPELLANT'S OBJECTIONS DURING THE COURSE OF HIS JURY TRIAL.

Over the objection of defense counsel, Stewart, the victim, was allowed to testify that when he saw Skinner at the police station the evening of the shooting that Skinner said, "I wish I had killed your mother-fucking ass." Skinner contends that the statement was not admissible because it was not part of the res geste and irrelevant. The State argued at trial and on appeal that the statement was admissible as an admission and relevant to the question of intent to injure.

"A confession is an acknowledgment in express terms of the confessor's guilt of the crime charged. An admission is a statement of the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with other facts, to prove his guilt." *Reed v. State*, 229 Miss. 440, 446 91 So. 2d 269, 272 (1956) (citations omitted). Skinner's statement was clearly a voluntary statement which indicated that he intended to do more than act in self-defense. There is no merit to this assignment of error.

II. THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR A DIRECTED VERDICT.

After the close of the State's case, Skinner moved for a directed verdict on the ground that the State failed to make out a prima facie case, that the chain of custody of the gun had not been established, and that he was entitled to acquittal because of the threats made on his life. The motion was denied, and Skinner then testified in his own behalf.

As the supreme court stated in *Holland v. State*, 656 So. 2d 1192, 1197 (Miss. 1995): "When the defendant proceeds with his case after the [S]tate rests and the court overrules the defendant's motion for a directed verdict, the defendant has waived the appeal of that directed verdict." *See also Esparaza v. State*, 595 So. 2d 418, 426 (Miss. 1992); *Harrell v. State*, 583 So. 2d 963, 965 (Miss. 1991).

We find that this issue is procedurally barred.

III. THE VERDICT OF THE TRIAL COURT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

IV. THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR A NEW TRIAL OR FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OF THE JURY.

Skinner's remaining issues concern the weight and sufficiency of the evidence against him.

A motion for JNOV challenges the legal sufficiency of the evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). The credible evidence consistent with the verdict must be accepted as true and the prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Id.*

Stewart identified Skinner as the man who pulled a gun and shot him at a time when he was unarmed and had done nothing to provoke the attack. Stewart's testimony was supported by that of Assistant Police Chief Webster, who was an eyewitness to part of the shooting. Skinner's own testimony fails to establish that he had any reasonable grounds for the shooting.

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, 948 (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.*

Responding to Skinner's allegation that he felt threatened, the jury was free, even compelled, to reject his argument that he was acting in self defense. There was no unconscionable injustice as a result of the jury verdict in this case.

THE JUDGMENT OF THE CIRCUIT COURT OF HOLMES COUNTY OF CONVICTION OF AGGRAVATED ASSAULT WITH SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THREE YEARS SUSPENDED IS AFFIRMED. ALL COSTS OF APPEAL ARE ASSESSED AGAINST HOLMES COUNTY.

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