

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00294 COA**

**CHARLES DEWAYNE GRIFFIN**

**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:	03/01/96
TRIAL JUDGE:	HON. LARRY EUGENE ROBERTS
COURT FROM WHICH APPEALED:	CLARKE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GENE BROWN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL
	BY: DEWITT ALLRED, III
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - MISDEMEANOR
TRIAL COURT DISPOSITION:	CARRYING A DEADLY CONCEALED WEAPON: SENTENCED TO 6 MONTHS IN THE CLARKE COUNTY MS JAIL, WITH 4 MONTHS SUSPENDED, BEING 2 MONTHS TO SERVE; UPON RELEASE FROM JAIL, HE SHALL BE ON 5 YRS UNSUPERVISED PROBATION & PAY \$500.00
DISPOSITION:	AFFIRMED - 03/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

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

DIAZ, J., FOR THE COURT:

Charles Dewayne Griffin was convicted of carrying a deadly, concealed weapon. From this conviction, he now perfects his appeal to this Court and assigns as error the following: **(1) the trial**

**court erred in restricting testimony of his state of mind, (2) the jury's verdict was contrary to the overwhelming weight of the evidence, and (3) the trial court erred in overruling his motion for a judgment notwithstanding the verdict and/or a new trial.** Finding Griffin's arguments without merit, we affirm.

## FACTS

On July 1, 1994, Steve Gavin and his younger brother, Robbie, went to the town of Stonewall to pick up Steve's two children for a visitation weekend. Steve had agreed to meet his former wife, Ruth Griffin, and their two children at the Super Stop; but according to Steve, when he passed by Ruth's house and saw his children outside, he decided to stop and pick them up at her house rather than going to the Super Stop. When Steve turned into the driveway, he saw his former wife's husband, Dewayne Griffin, standing in the yard. The two men began to argue, so Ruth called and reported the disturbance to the police. J.G. Kufel, an investigator with the Clarke County Sheriff's Department, was dispatched to the Griffin house. He met with Dewayne and Steve and arranged for Steve to pick up his children at the Super Stop, as originally planned. Some time later, Steve Gavin, Robbie Gavin, Dewayne and Ruth Griffin, the two children, Dewayne's sister and Officers Kufel and Jenkins met at the convenience store. As Steve and Ruth began discussing the visitation arrangement, Dewayne stepped out of the car. Fearing an altercation, the officers approached Dewayne, and noticed a gun protruding from Dewayne's pocket. Dewayne then made a turn toward the car, at which time the officers restrained and handcuffed him. Dewayne was subsequently arrested and convicted in the Justice Court of Clarke County of carrying a concealed weapon. He then appealed his conviction to the Circuit Court of Clarke County, where he was once again found guilty of carrying a deadly, concealed weapon. It is from this conviction that Dewayne Griffin appeals.

## DISCUSSION

### I. DID THE TRIAL COURT ERR IN RESTRICTING TESTIMONY CONCERNING GRIFFIN'S STATE OF MIND?

In his first assignment of error, Griffin argues that the trial court erroneously restricted testimony concerning Steve Gavin's prior hostility toward Griffin and the children to a time frame of only a few months prior to the incident in question. Griffin contends that the testimony was being offered to show his frame of mind so that the jury could determine whether or not he had "good and sufficient reason to apprehend a serious attack . . . ." **Miss. Code Ann. § 97-37-9(a) (Rev. 1994)**. However, the supreme court has stated that the absence of a time frame for "bad act" evidence completely circumvents Mississippi Rules of Evidence 401 and 403 as to relevancy and misleading the jury. ***Bounds v. State*, 688 So. 2d 1362, 1370-71 (Miss. 1997)**. Furthermore, "[t]he relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused." ***McIlwain v. State*, 700 So. 2d 586, 590 (Miss. 1997)** (citations omitted). In the present case, the trial court permitted the jury to hear testimony concerning Gavin's behavior during the months immediately prior to the incident in question. It was then for the jury to decide whether or not Griffin had reasonable cause to apprehend a serious attack. ***Stoop v. State*, 531 So. 2d 1215, 1219 (Miss. 1988)**. Finding no abuse of discretion in the trial judge's decision to limit testimony to a reasonable time frame, we decline Griffin's invitation to hold the lower court in error on this issue.

## **II. WAS THE JURY'S VERDICT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE?**

In determining whether the evidence presented at trial was adequate to support a guilty verdict, the supreme court has held that "[m]atters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury." *Fisher v. State*, 481 So. 2d 203, 212 (Miss. 1985). "We give the prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Hart v. State*, 637 So. 2d 1329, 1341 (Miss. 1994). "We may reverse only where with respect to one or more elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *Fisher*, 481 So. 2d at 212 (citations omitted). In the case at bar, Officer Kufel testified that Steve Gavin was making no threatening gestures toward Griffin, Griffin's wife, or the children so as to justify Griffin stepping out of the car while carrying a gun. Additionally, there was no evidence on which to base a finding that Steve Gavin was even armed. Based on this and all other evidence presented at trial, the jury was justified in concluding that Griffin had no legal defense for carrying a deadly, concealed weapon. Since reasonable and fair-minded jurors might have reached the same conclusion, we refrain from disturbing the verdict and find that the evidence is more than adequate to support Griffin's conviction.

## **III. DID THE TRIAL COURT ERR IN OVERRULING GRIFFIN'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT AND/OR A NEW TRIAL?**

Finally, Griffin argues that the trial judge abused his discretion by not granting a judgment notwithstanding the verdict and/or a new trial. However, a judgment notwithstanding the verdict is proper only if the facts and inferences considered in the light most favorable to the State are such that reasonable men could not have found the accused guilty. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984) (citations omitted). Furthermore, the supreme court has held that a new trial may be granted only when "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." *Id.* The facts of this case, when viewed in a light most favorable to the State, prove that Griffin was guilty of carrying a deadly, concealed weapon without legal justification. Therefore, we cannot agree with Griffin's assertion that the lower court incorrectly denied his motions. Accordingly, we conclude that Griffin's final assignment of error is without merit.

**THE JUDGMENT OF THE CLARKE COUNTY CIRCUIT COURT OF CONVICTION OF CARRYING A DEADLY, CONCEALED WEAPON AND SENTENCE OF SIX MONTHS IN THE CLARKE COUNTY JAIL, WITH FOUR MONTHS SUSPENDED, BEING TWO MONTHS TO SERVE, AND TO PAY A FINE OF \$500, IS AFFIRMED. UPON RELEASE FROM JAIL, GRIFFIN SHALL BE ON FIVE YEARS UNSUPERVISED PROBATION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

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