

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00337 COA**

**ERIC JONES**

**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:	02/20/96
TRIAL JUDGE:	HON. SHIRLEY C. BYERS
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	LEMAN D. GANDY
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	HALLIE GAIL BRIDGES
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF AGGRAVATED ASSAULT; SENTENCED TO TEN YEARS IN MDOC
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

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

BRIDGES, C.J., FOR THE COURT:

Eric Jones was convicted in the Circuit Court of Sunflower County on February 20, 1996 of aggravated assault and was sentenced to serve a term of ten years in the custody of the Mississippi Department of Corrections. Aggrieved, Jones appeals raising the following issues: **(1) that the court erred by denying his motion to dismiss the indictment, (2) that the conflicting and contradictory testimony of the State's witnesses was insufficient to support the jury's verdict, and (3) that the court erred in denying his motion for a new trial. Finding no merit to the issues raised by Jones, we affirm the jury's verdict.**

## FACTS

On February 14, 1995, Marcus Taylor, an inmate and member of a gang called the Bloods, was transferred to another unit in the correctional facility. Taylor testified that after being transferred, he was approached by Manuel Torres and Eric Jones, a/k/a Schoolboy, both members of the Gangsters, and was told "[O]ne of your brothers killed my brother." It seems that a few days before Valentine's Day, another inmate, who was also a member of the Gangsters, was killed by a member of the Bloods. Taylor testified that a fight ensued between the two, and that other inmates became involved in the fight, including Jones. Taylor testified that Jones stabbed and cut him in several places with a homemade knife known as a "shank." Guards eventually broke up the fight, and an ambulance was called for Taylor. The jury found Jones guilty of the crime of aggravated assault, and he was sentenced to serve a term of ten years in the custody of the Mississippi Department of Corrections.

## ARGUMENT AND DISCUSSION OF LAW

### I. WHETHER THE COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT.

Jones argues that the indictment was insufficient and did not properly place him on notice because it failed to state the section and subsection for what he was charged. Jones contends that since both simple assault and aggravated assault are listed under the same statute, he should have been charged with the lesser offense of simple assault. Furthermore, Jones argues that the State should not have been allowed to amend the indictment to include the section number because it went directly to the substance of the indictment and not to form. We disagree.

According to Rule 7.06 Uniform Rules of Circuit and County Court Practice, the indictment shall be a plain, concise and definite written statement of the essential facts constituting the charged offense, fully notifying the defendant of the nature and charge of the accusation against him. The indictment shall also include: (1) the name of the accused; (2) the date on which the indictment was filed in each court; (3) a statement that the prosecution is brought in the name and by the authority of the State of Mississippi; (4) the county and district where brought; (5) the date and time, if applicable, which the offense was committed; (6) the signature of the foreman of the grand jury issuing the indictment; and (7) the words "against the peace and dignity of the state." The Mississippi Supreme Court has held that "[i]f an indictment reasonably provides the accused with actual notice and it complies with Rule 2.05 of the Unif.Crim.R.Cir.Ct.Prac., it is sufficient to charge the defendant with the crime." *Reining v. State*, 606 So. 2d 1098, 1103 (Miss. 1992). [\(1\)](#)

Additionally, the supreme court has stated:

Section 99-17-13 of the Miss. Code Ann. (1972), provides for amendments to criminal indictments during the course of a trial in limited situations. However, any amendment, to be permissible, must be in form and not substance. We have adopted the following test to determine whether an amendment to an indictment results in prejudice to the defendant:

The test of whether an accused is prejudiced by the amendment of an indictment or information has been said to be whether or not a defense under the indictment or information as it originally stood would be equally available after the amendment is made and whether or not any evidence

accused might have would be equally applicable to the indictment or information in the one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.

**Reed v. State, 506 So. 2d 277, 279 (Miss. 1987)** (citations omitted).

In **Nathan v. State, 552 So. 2d 99, 107 (Miss. 1989)**, the Mississippi Supreme Court stated:

It is well settled in this state, . . . that a change in the indictment is permissible if it does not materially alter facts which are the essence of the offense on the face of the indictment as it originally stood or materially alter a defense to the indictment as it originally stood so as to prejudice the defendant's case.

In the case *sub judice*, Jones's original indictment read the he "did unlawfully, wilfully, and feloniously cause or attempt to cause bodily harm to Marcus Taylor by stabbing him with a shank, a homemade knife, a deadly weapon, against the peace and dignity of the State of Mississippi. The top of the indictment read: "INDICTMENT Aggravated Assault." The State contends that Jones was sufficiently put on notice of the charge, and that adding a section number does not change the charge. Therefore, such a change is one of form and not substance. It is this Court's opinion that clearly Jones and his attorney understood well in advance of trial that the charge was aggravated assault, as it was stated in the original indictment. No rule requires that a specific section number be cited in the indictment. As a matter of due process, a defendant is entitled to reasonable advance notice of the charges against him and a reasonable opportunity to prepare and present his defense to those charges. **Jones v. State, 461 So. 2d 686, 693 (Miss. 1984)**. Jones enjoyed those rights. Accordingly, we are of the opinion that the amendment was one of form and not one of substance. This issue is without merit.

## **II. WHETHER THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION OF AGGRAVATED ASSAULT.**

In questioning the court's denial of his motion for directed verdict, Jones argues that the State did not make out its prima facie case as required. Jones contends that the State's evidence failed to meet the burden of proof required in criminal prosecutions--proof beyond a reasonable doubt. Specifically, Jones argues that the conflicting and contradictory testimony of the State's witnesses failed to prove his guilt. We disagree.

The Mississippi Supreme Court's standard of review of denials of directed verdicts is as follows:

In judging the sufficiency of the evidence on a motion for a directed verdict...the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable references that may be drawn therefrom, and to disregard evidence favorable to the defendant.

**Noe v. State, 616 So. 2d 298, 302 (Miss. 1993)**(citations omitted). If, under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict should be overruled. **Noe, 616 So. 2d at 302.**

Jones argues that the testimony of the State's witnesses is conflicting and contradictory. The Mississippi Supreme Court has held that the jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory and sincerity. *Id.* In *Evans v. State*, 159 Miss. 561, 132 So. 563, 564 (1931), the Mississippi Supreme Court stated:

We invite the attention of the bar to the fact that we do not reverse criminal cases where there is a straight issue of fact, or conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury.

When we apply those tests to this record, there is no merit to this assignment of error.

### **III. WHETHER THE COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR NEW TRIAL.**

Jones argues that the jury verdict was "totally contrary to the evidence and the verdict was decidedly and strongly against the weight of the evidence." Our standard of review is dictated by *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993):

[T]he challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. . . .New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

. . . .

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed.

There was direct testimony from Taylor that Jones was the person who assaulted him. Additionally, there were other witnesses that testified as to their knowledge of what occurred that day. The jury was provided ample testimony, and it was the province of the jury to weigh the credibility of the witnesses. The trial court did not abuse its discretion in overruling Jones's motion for a new trial. This issue is without merit.

**THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE TO SERVE A TERM OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO RUN CONCURRENT WITH SENTENCE NOW SERVING IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SUNFLOWER COUNTY.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

1. Rule 2.05 of the Unif.Crim.R.Cir.Ct.Prac. has been replaced with Rule 7.06 of the U.R.C.C.C.

