

**IN THE COURT OF APPEALS 02/11/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00960 COA**

**ROBERT MCAFEE A/K/A ROBERT SIMPSON MCAFEE**

**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

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHARLES E. WEBSTER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: LAWRENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: MURDER

TRIAL COURT DISPOSITION: CT I MURDER: CT II MANSLAUGHTER: CT I LIFE

IMPRISONMENT; SENTENCE SHALL RUN CONSECUTIVE TO ANY AND ALL PREVIOUSLY IMPOSED; CT II 20 YRS WITH 20 YRS SUSPENDED; SUSPENSION TO COMMENCE AFTER DEFENDANT SERVES SENTENCE IN CT I OF CAUSE #8450

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

PER CURIAM:

The Defendant, Robert McAfee, was tried and convicted of one count of murder and one count of manslaughter. McAfee was sentenced to life imprisonment for murder plus twenty (20) years for manslaughter. The sentence, which shall run consecutively with all previous sentences, shall be served in the custody of the Mississippi Department of Corrections with the twenty (20) year term to be suspended upon completion of his life sentence. On appeal, McAfee challenges the sufficiency and the weight of the evidence for the murder conviction. McAfee does not appeal the manslaughter conviction.

In the present case, the shooting death of Kenneth Dear was the result of an argument that ensued following a craps game being held in a room at the Hicks Motel. The State presented four on-the-scene witnesses: LaDamien Malone, Roosevelt Ford, Jr., Melvin Stevenson, and Otis Bickham. Malone testified that, during the argument, he retrieved the gun from under a bed in the room and gave it to McAfee. Malone stated that McAfee and Pendarius Lewis began to struggle with the gun and it discharged. Malone testified further that McAfee then "snatched" the gun from Lewis at which time it discharged a second time striking Kenneth Dear. Roosevelt Ford, Jr., testified that the only time he saw the gun was when Malone retrieved it from under the bed. Ford stated that he subsequently heard a shot and saw Dear hit the floor but could not see McAfee at the time the shot was fired. Melvin Stevenson testified that he saw McAfee take possession of the gun and load it. Stevenson stated that he then left the premises but heard the shot immediately thereafter. Stevenson testified that McAfee was the last person he saw with the gun before he heard the shot fired. Otis Bickham testified that he too saw McAfee load the gun. Bickham stated that he took off running, heard the shot, and turned around to see Dear lying in the doorway of the room and McAfee backing out of the room with the gun in his hand.

The State also offered the testimony of the police officer who questioned McAfee as well as the tape recording of that conversation and the transcript of the recording in which McAfee admitted to shooting Kenneth Dear.

McAfee argues that the evidence was insufficient to sustain a guilty verdict for murder, and that the verdict was against the overwhelming weight of the evidence because the jury's decision was based on varied and contradictory testimony. We disagree.

In *Noe v. State*, 616 So. 2d 298, 302 (Miss. 1993), the Mississippi Supreme Court held:

In judging the sufficiency of the evidence . . . the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant.

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of the witnesses, and determining whose testimony should be believed. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). Further, in *Doby v. State*, 532 So. 2d 584, 590 (Miss. 1988), the court held that the testimony of a single witness is sufficient to support a conviction.

In *Williams v. State*, 427 So. 2d 100, 104 (Miss. 1983), our supreme court held that jurors may accept or refuse testimony of witnesses stating, "It is not for this Court to pass upon the credibility of witnesses and where the evidence justifies the verdict it must be accepted as having been found worthy of belief." Here, the jury weighed the evidence, believed the State's witnesses, and convicted McAfee.

This assignment of error must also be reviewed in a light most favorable to the State. *Williams v. State*, 463 So. 2d 1064, 1068 (Miss. 1985). The evidence which is consistent with the verdict must be accepted as true. *Glass v. State*, 278 So. 2d 384, 386 (Miss. 1973). Considered as such, we cannot say that the trial court was in error by refusing to grant McAfee a directed verdict

or JNOV/new trial.

Finding that the lower court did not err in refusing the motions requested by the defense, we affirm the decision of the lower court.

**THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION ON COUNT I OF MURDER AND SENTENCE OF LIFE IMPRISONMENT WITH SENTENCE TO RUN CONSECUTIVELY TO ANY AND ALL PREVIOUSLY IMPOSED SENTENCES; COUNT II OF MANSLAUGHTER AND SENTENCE OF TWENTY YEARS WITH TWENTY YEARS SUSPENDED, WITH SUSPENSION TO COMMENCE AFTER DEFENDANT SERVES SENTENCE IN COUNT I, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.**

**BRIDGES, C.J., MCMILLIN AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HERRING, J., NOT PARTICIPATING.**