

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00780 COA**

JOSEPH BROWN SIPP A/K/A JOE BROWN A/K/A **APPELLANT**
JOE SIPP A/K/A JOSEPH S. BROWN

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:	06/12/96
TRIAL JUDGE:	HON. GEORGE C. CARLSON JR.
COURT FROM WHICH APPEALED:	TATE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	SUSAN M. BREWER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEAN SMITH VAUGHAN
DISTRICT ATTORNEY:	ANN LAMAR
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	MURDER: SENTENCED TO SERVE A TERM OF LIFE IMPRISONMENT IN THE MDOC & PAY ALL COST OF COURT
DISPOSITION:	AFFIRMED - 12/02/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE THOMAS, P.J., HERRING, HINKEBEIN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Joseph Brown Sipp was convicted of murder and sentenced to life imprisonment by the Circuit Court of Tate County. Sipp appeals alleging that: (1) the trial court erred in allowing the State to question him regarding the exercise of his Fifth Amendment right to remain silent; and (2) the jury verdict was against the overwhelming weight of the evidence. Neither issue has merit.

FACTS

Taking the evidence in the light favorable to the verdict reveals that on October 29, 1995, Sipp shot Michael Jones five times. Three days later Jones died. Sipp drove away from the scene and fled to Chicago where he was apprehended five months later. The testimony of witnesses present at the scene is in substantial agreement. They allege that Sipp backed into the driveway of the home of Tracy Booker, his girlfriend, and called Al Boyd to the car. They spoke for a few minutes, and then Jones and Boyd's brother joined them. After a few minutes, Jones turned to walk away from the car and Sipp opened fire. Numerous shots were fired. Jones was hit by five bullets. Jones collapsed on the porch of the home and was aided by the Booker family. He was hospitalized shortly thereafter and died three days later from the gunshot wounds.

Once Sipp was apprehended, he was indicted for murder. The jury indicted Sipp for murder in March of 1996, and the case went to trial in June of 1996. At trial, he testified on his own behalf. Sipp claimed that he shot Jones in self-defense because Jones threatened to kill him and pulled a gun. None of the witnesses, not even Al and James Boyd who were standing beside Jones, corroborated Sipp's story. No one saw Jones with a gun either at that time or earlier in the day. The only gun that witnesses reported seeing was the one that Sipp used to shoot Jones.

At the close of the State's case in chief, Sipp made a motion for a directed verdict, which was denied by the trial court. The jury returned a verdict of guilty of murder and sentenced Sipp to serve life imprisonment.

DISCUSSION

I. FIFTH AMENDMENT RIGHT TO REMAIN SILENT

The State questioned Sipp regarding details of his theory of self-defense. The bulk of the disputed questions concerned why Sipp did not tell the people with whom he spoke immediately after the shooting about the allegation that Jones had a gun and that Sipp had only acted in self-defense. Sipp alleges that this line of questioning violated his Fifth Amendment right to remain silent. More precisely, it would appear that Sipp is arguing that these questions impermissibly commented on his right to remain silent. We find that this is the more precise objection because certainly Sipp is not arguing that cross-examining him in general is a violation of his Fifth Amendment right not to incriminate himself. A defendant does not have to testify, but once doing so, he may be treated in most respects the same as any other witness. The State may seek incriminating answers from him, show discrepancies in his testimony, and otherwise undermine all the supposed benefits he has gained by his direct testimony.

It is certainly error, one frequently addressed by trial and appellate courts, for the State to comment on a defendant's failure to testify. It is not error, however, for the State to ask that if a defendant's version of events as stated on the stand is correct and not a recent fabrication, would he not have disclosed significant details of that version to people with whom he talked soon after the events? The answer may well be in the negative, but the question is not a violation of a defendant's right to remain silent. Sipp had already waived that right by testifying. On direct examination, Sipp was asked about the people whom he went to see immediately after the shooting. He raised the possibility that Jones

had been carrying a gun. A witness who is also the criminal defendant is not immune from normal efforts of opposing counsel to discredit direct testimony.

A final point is that Sipp failed to object to the line of questioning at trial. A contemporaneous objection by defense counsel is necessary to preserve an issue for appeal. *Ratliff v. State*, 313 So.2d 386, 388 (Miss. 1975).

II. WEIGHT OF THE EVIDENCE

Sipp argues that the verdict was against the overwhelming weight of the evidence. A motion for new trial based on this argument should be granted only if the trial judge is convinced that the verdict is so contrary to the overwhelming weight of the evidence that failure to grant a new trial would result in an unconscionable injustice. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). In determining whether a verdict is against the overwhelming weight of the evidence, this Court is required to view all of the evidence adduced at trial in the light consistent with the jury verdict. The reviewing court should not substitute its own view of the evidence for that of the jury's. *Blanks v. State*, 542 So. 2d 222, 226 (Miss. 1989).

There was no testimony other than from Sipp that Jones had a gun. There were several witnesses to the shooting, and all testified to substantially the same set of facts: Jones was shot as he turned to walk toward the house. Sipp on the other hand testified that he shot Jones while he was facing him. The pathologist who testified at trial stated that one of the bullets entered Jones's body through the front, and another through his side. This is consistent with the testimony of eye-witnesses who stated that Sipp fired the first shots as Jones was turning away.

The jury, as the trier of fact, had the benefit of hearing the testimony of witnesses and observing their demeanor. Based upon what they saw and heard in the courtroom, they reached their verdict. Upon reviewing the evidence presented at trial in the light consistent with the verdict, we find that the verdict is amply supported by the evidence.

We note that accompanying the brief prepared by Sipp's counsel is a *pro se* supplemental brief. Our system of appellate review provides for ample representation by counsel, either court-appointed or retained. Counsel prepares a brief setting out the errors that arguably require reversal. Sipp's counsel has presented an able if ultimately unconvincing brief in defense of his client. We have reviewed Sipp's *pro se* issues and determine that none of them require reversal nor merit analysis in this opinion. *See Johnson v. State*, 449 So. 2d 225, 225 (Miss. 1984).

THE JUDGMENT OF THE CIRCUIT COURT OF TATE COUNTY OF CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED AGAINST TATE COUNTY.

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