

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00380-COA**

CHRISTOPHER MOORE A/K/A CHRISTOPHER A. MOORE A/K/A CHRISTOPHER ALEXANDER MOORE **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

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| DATE OF JUDGMENT: | MARCH 1, 1996 |
| TRIAL JUDGE: | HONORABLE JAMES E. GRAVES, JR. |
| COURT FROM WHICH APPEALED: | HINDS COUNTY CIRCUIT COURT |
| ATTORNEY FOR APPELLANT: | SANFORD KNOTT |
| ATTORNEYS FOR APPELLEE: | OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART |
| DISTRICT ATTORNEY: | EDWARD J. PETERS |
| NATURE OF THE CASE: | CRIMINAL - FELONY |
| TRIAL COURT DISPOSITION: | AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 15 YRS IN THE MDOC 5 YRS SUSPENDED & 10 YRS TO SERVE |
| DISPOSITION: | AFFIRMED - 11/18/97 |
| MOTION FOR REHEARING FILED: | |
| CERTIORARI FILED: | |
| MANDATE ISSUED: | 12/9/97 |

BEFORE McMILLIN, P.J., KING, PAYNE, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Moore was convicted by a jury in the Circuit Court of Hinds County of aggravated assault of Dorothy Lee. The jury found Moore not guilty of the murder of Lee's daughter, Vanessa Brown. Moore challenges his conviction of aggravated assault, asserting that the verdict was against the overwhelming weight of the evidence. Finding ample evidence to support the verdict of the jury, we affirm.

DISCUSSION

The sole issue Moore asserts on appeal is that the verdict was against the overwhelming weight of the evidence. Moore contends that the only evidence presented by the State to rebut his claim of self-defense was the testimony of Lee, the victim. Moore argues that Lee's testimony was not credible, and thus, the verdict is contrary to the weight of the evidence.

The supreme court has held that a motion contending that the verdict of the jury was against the overwhelming weight of the evidence (as opposed to an attack on the sufficiency of evidence) must be brought to the attention of the trial court in a motion for new trial. ***Jackson v. State*, 423 So. 2d 129, 131-32 (Miss. 1982)**. A thorough review of the record fails to reveal any post-trial motions for a judgment notwithstanding the verdict or in the alternative for a new trial. Although we recognize this potential procedural bar, we will assume in the absence of an issue being raised by the State that Moore preserved this assignment of error.

In reviewing the decision of the trial court, this Court views all of the evidence in the light consistent with the jury verdict. ***Strong v. State*, 600 So. 2d 199, 204 (Miss. 1992)**. A motion for a new trial should only be granted to prevent an unconscionable injustice. ***McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993)**. Accordingly, we will reverse and remand for a new trial only upon reaching the conclusion that the trial court has abused its discretion in failing to grant a new trial. ***Herring v. State*, 691 So. 2d 949, 957 (Miss. 1997)**.

During the trial, Lee testified to the following: On June 24, 1994, Moore called his ex-girlfriend, Vanessa Brown (Lee's daughter), and asked if she would keep his child because he was going out of town. Later that day, Lee accompanied Brown to Moore's apartment to pick up the child. After arriving at the apartment, Lee proceeded upstairs to Moore's apartment while Brown remained in the car. However, Moore refused to give Lee the child unless Brown came up to the apartment. Brown approached the bottom of the stairwell, but she was hesitant to go in Moore's apartment. Finally, Moore came downstairs and handed the child to Brown. As Brown entered the car with the child, she inquired about the child's clothing. Moore returned to the apartment and then placed a basket of clothing in the backseat of the car. As Lee proceeded around the rear of the car to the driver's side, she heard gunfire, and she observed Moore and Brown "tussling" as a gun continued to fire. Lee fled from the car, and Moore began pursuing her. Moore shot Lee in the back of the head, and she fell to the ground. He then walked over to Lee and shot twice more toward her.

Contrary to Lee's testimony, Moore denied ever asking Brown to keep his child. Moore stated that he did not want to have any further contact with Brown after she fraudulently adopted his child without his permission. Moore alleged that a few months earlier Brown had an individual impersonate him during an adoption proceeding. He testified that on June 24, Lee and Brown came over to his apartment to harass him about some money that was stolen from Lee's car. While Brown and Moore were arguing over the money, Moore stated that Brown pulled a gun from under the car seat. In self-defense, Moore asserted that he pulled a gun from his back pocket and shot Brown. Moore also shot Lee as she ran away from the car.

Moore's primary defense was that he shot both Brown and Lee in self-defense. He contends that the testimony of Lee was not credible since she was also allegedly involved in the fraudulent adoption.

Thus, Moore asserts that the verdict was contrary to the overwhelming weight of the evidence. However, in the face of Moore's assertion of self-defense, the jury heard the testimony of three tenants from the apartment complex who testified to facts that would indicate to the contrary. None of this evidence was incredible, unbelievable, or substantially impeached.

We find that the jury was entitled to conclude, after hearing all of the testimony, that the proof established that Moore's actions against Lee were not in self-defense. As a result, we find that the verdict was not against the overwhelming weight of the evidence.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS SUSPENDED AND TEN YEARS TO SERVE IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.

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