IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00953 COA

NORA LEE SHUMPERT	**APPELLANT**
v.	
STATE OF MISSISSIPPI	**APPELLEE**

DATE OF JUDGMENT:	08/12/96
TRIAL JUDGE:	HON. THOMAS J. GARDNER III
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILLIAM C. BRISTOW
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY
DISTRICT ATTORNEY:	JOHN R. YOUNG
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 10 YEARS IN THE MDOC; 5 YEARS OF SAID SENTENCE SHALL BE SUSPENDED UPON CONDITION DEFENDANT SHALL HEREAFTER COMMIT NO OFFENSE AGAINST THE LAWS OF THIS OR ANY STATE OF THE UNITED STATES
DISPOSITION:	AFFIRMED - 9/15/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/6/98

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

COLEMAN, J., FOR THE COURT:

¶1. A grand jury in Lee County indicted the appellant, Nora Lee Shumpert, for aggravated assault as defined by Section 97-3-7 of the Mississippi Code. A jury in the circuit court of that county returned a verdict of "Guilty as charged" against Shumpert, and the trial court sentenced him to serve a term of ten years in a facility to be designated by the Mississippi Department of Corrections, with five

years suspended. The trial court denied Shumpert's motion for acquittal JNOV or, in the alternative, a new trial. In his appeal from the trial court's judgment and sentence, Shumpert presents for our review and resolution the following two issues, which we quote verbatim from his brief:

1. The trial court erred in not granting the defendant's motion for a directed verdict at both the close of the State's case and at the close of the entire case as the proof was insufficient to prove that the defendant committed the act accused of on the date alleged in the indictment.

2. The verdict of the jury was against the overwhelming weight of the evidence at trial.

¶2. We resolve both issues adversely to Shumpert and affirm the judgment and sentence of the trial court.

I. FACTS

¶3. Vanessa DeVauld met the appellant, Nora Lee Shumpert, in December 1992. Both of them worked for Reed Manufacturing Company at its clothing factory located in East Tupelo in Lee County. Shumpert and DeVauld began living together in DeVauld's apartment located in Okolona. On November 4,1994, Shumpert and DeVauld, who already owned a red 1986 Chevrolet Cavalier, purchased a 1986 Buick Park Avenue automobile. Shumpert provided the down payment of $1,500, but because Shumpert did not have a driver's license, the Park Avenue was purchased and financed in DeVauld's name.(1) After Shumpert and DeVauld purchased the automobile, their relationship quickly deteriorated so that by December 7, 1994, DeVauld demanded that Shumpert return the Park Avenue to her.

¶4. Shumpert left his job at Reed Manufacturing around nine o'clock on the morning of December 7, 1994, to attend to personal business, but by 3:30 that afternoon, when DeVauld's work shift ended, Shumpert had returned to the parking lot at Reed Manufacturing's factory, where he parked the Park Avenue automobile next to DeVauld's Cavalier automobile.

¶5. After DeVauld completed her shift at 3:30 that afternoon, she left the factory with Molitha Ward, and together they walked toward DeVauld's automobile. Ward had parked her Mazda 323 automobile several parking spaces from DeVauld's Cavalier. As DeVauld and Ward parted company, each to enter her car, Shumpert slowly drove the Park Avenue automobile toward DeVauld. When the Park Avenue was about "five paces," or about fifteen feet, from DeVauld, Shumpert abruptly "gunned" its engine and drove the car directly toward DeVauld. DeVauld jumped into a vacant parking place with cars parked on either side to avoid being struck by the Park Avenue. As the Park Avenue passed her, DeVauld stumbled to her knees on the paved parking lot. DeVauld skinned both of her knees and injured her left hand. With Shumpert at its wheel, the Park Avenue then collided with DeVauld's Cavalier and pushed it into the next parked car. That car then collided with Ward's Mazda 323 automobile.

¶6. DeVauld got up and ran into the Reed Manufacturing personnel office. Officer J. B. Creson, a motor officer for the Tupelo Police Department who was also trained as an emergency medical respondent, responded to the police department's call that a motor vehicle accident had occurred on

the Reed Manufacturing parking lot. Officer Creson determined that he could treat DeVauld's skinned knees by applying an antiseptic to the abrasions and wrapping them with bandages. Thus, no ambulance was summoned for DeVauld; neither did she go to the hospital nor did she consult a physician about her injuries. In the meantime, Shumpert drove the Park Avenue from the parking lot. The Tupelo Police Department broadcast an alert for its officers to be on the lookout for the Park Avenue. In response to a 911 call, the dispatcher for the Tupelo Police Department dispatched two police officers to a railroad crossing where they found the Park Avenue parked across the railroad. No key was in the automobile's ignition switch.

¶7. Shumpert surrendered to the Tupelo Police Department the next afternoon, December 8, and later he gave a statement about what had occurred to Detective Sergeant Tim Sanders. In his statement, Shumpert denied that he struck DeVauld with the Park Avenue as he began to drive away from the parking lot.

II. TRIAL

¶8. The grand jury indicted Shumpert for aggravated assault. The indictment charged that Nora Lee Shumpert "on the 7th day of December, A. D., 1994, did wilfully, unlawfully and feloniously commit an aggravated assault upon Vanessa DeVauld, by attempting to cause and by causing, knowingly and purposely, serious bodily injury to Vanessa DeVauld, a human being, by a means likely to produce death or serious bodily injury, by deliberately speeding and crashing his car into Vanessa DeVauld thereby causing serious bodily injury to the said Vanessa DeVauld, thereby manifesting extreme indifference to the value of human life . . . and against the peace and dignity of the State of Mississippi."

¶9. At trial, the State called Vanessa DeVauld as its first witness. DeVauld's testimony is reflected in the recitation of the facts. DeVauld further explained that the left front side of the Park Avenue struck her in the area of her lower right hip, which caused her to stumble. She elaborated that after Shumpert struck and knocked her to the paved parking lot, she "put [her] face in [her] hand hoping [Shumpert] would run over [her] instead of running on [her]." DeVauld added that one month passed before the injury to her right knee healed with a permanent scar. DeVauld explained that she ran into the personnel office because she "thought [Shumpert] was fixing to hit [her]" and run over her. She testified that she "didn't want to give him a chance to hit [her]." When the prosecutor asked her, "Were you afraid for your life?," DeVauld replied "Yes, I was." DeVauld admitted that she did not see where Shumpert drove the Park Avenue after he hit her. During the State's re-direct examination, DeVauld added that Shumpert was already behind on the payments for the Park Avenue. Thus she was concerned that Shumpert would ruin her credit record.

¶10. The State's next witness, Molitha Ward, had left the factory with DeVauld and was walking across the parking lot with her when the incident occurred. Ward testified that because she had parted company with DeVauld as they each approached their respective cars, she did not see the Park Avenue strike DeVauld. However, Ward testified that she heard a car screech nearby and saw DeVauld hit the ground. Ward identified Shumpert as the driver of the Park Avenue and stated that Shumpert tried to maneuver the Park Avenue between two cars to hit DeVauld where she was lying on the ground. Ward further testified that Shumpert drove around the area where DeVauld had fallen. Without objection, Ward opined that Shumpert was looking for DeVauld before he drove the

Park Avenue out of the parking lot at a "[n]ormal speed, slow."

¶11. Under Shumpert's counsel's cross-examination, Ward acknowledged that the screeching sound which she heard coming from the direction of the Park Avenue could have been caused by the sudden application of its brakes. Ward's car, a Mazda 323, was the third car struck, and it sustained a dent in its side about the size of a fist.

¶12. The State's third witness was Officer J. B. Creson, who treated DeVauld's skinned knees by spraying them with an antiseptic and wrapping them with bandages. Officer Creson's testimony also established that the Park Avenue was found parked across a railroad track. Finally, Creson confirmed that warrants had been issued for Shumpert's arrest by the time Shumpert surrendered to the police the next afternoon.

¶13. For its final witness, the State called Detective Sergeant Tim Sanders of the Tupelo Police Department. Sanders interviewed Shumpert at the Tupelo Police Department's Criminal Investigation Division and affirmed that Shumpert was in custody at the time of the interview. Sanders explained that he had advised Shumpert of his rights against self-incrimination, that he read the standard rights waiver form to Shumpert, that Shumpert signed the form, and that Sanders witnessed it.

¶14. The jury was excused while the State and the Defense questioned Sanders and Shumpert about the execution of the waiver and the statement signed by Shumpert. The trial court found that Shumpert's statement was freely, voluntarily, and knowingly given by Shumpert after Detective Sanders had advised Shumpert of his *Miranda* rights, and it overruled Shumpert's motion to suppress his statement. Furthermore, the court found that the defendant was under no disability when he signed the statement; therefore, the statement was admitted into evidence.

¶15. After the jury reentered the courtroom, Detective Sergeant Sanders read the complete standard rights waiver form. He testified that Shumpert did not appear to be intoxicated, and that he did not smell alcohol on Shumpert's breath. He stated that Shumpert never asked to have an attorney present. Sanders testified that Shumpert freely and voluntarily discussed the substantive matter of this case without being subject to any promises or threats. The conversations were not recorded on tape, but Sanders handwrote a statement and read it to Shumpert. Sanders said that he gave Shumpert a chance to read the written statement, and Shumpert freely and voluntarily signed the statement, agreeing that it was substantially correct. Finally, Sanders read Shumpert's complete statement for the jury, which we quote in full as follows:

> Me and Vanessa DeVauld had been going together for two years. I saved up for three months to put $1500 down on a 1986 Park Avenue and put it in her name. I thought that Vanessa had been messing around because I thought I had VD and went to Med-Serve and got a shot and some pills, and I know where I been. I asked Vanessa about it and she said she hadn't been messing around. I had the car and Vanessa told me at work in front of a lot of people she wanted the car and wanted to break up. I got upset and left work. About five hours later at 3:30 I came back, and she was on the parking lot, and I was mad and wanted to scare her. I gunned the car toward her and it was on loose gravel, and when I turned the wheel, it slid forward and hit a car. I thought, "Man, what have I done." I backed up and left and went and talked to my mama and then went to my cousin's house. I went and talked to my boss at work, Tommy Moore, at Reed's. We both work there, and [I] came and turned myself in.

With the conclusion of Detective Sanders's testimony, the State rested. When the defense then offered a motion in response to the judge's inquiry, the judge reserved hearing the motion.

¶16. Shumpert testified in his defense. He confirmed that DeVauld and he had shared DeVauld's apartment in Okolona for almost two years before DeVauld and he bought the Park Avenue. Shumpert then testified that after he began working in his department at Reed Manufacturing on the morning of December 7, DeVauld and Ward came to his department where DeVauld threatened "to put the police on [him] and take [his] car and everything." Because he "had some business to take care of," Shumpert left work about nine o'clock that morning. Shumpert admitted that after he concluded his personal business, he "went and had a couple of cocktails." After he talked "to [his] folks," Shumpert decided "the best thing to do . . . was to give [DeVauld] the car . . . because it was in her name." Thus, Shumpert drove the Park Avenue to the Reed Manufacturing parking lot about 3:20 p.m. and parked it adjacent to DeVauld's Cavalier automobile. However, Shumpert decided not to give her the car, but, instead, decided to leave the parking lot. Nevertheless, according to his testimony, as he was leaving the parking lot, DeVauld ran across in front of the Park Avenue. When he applied the car's brakes, the car struck another car. Shumpert denied that he struck DeVauld, and he denied that he intended to hurt her. Shumpert acknowledged that he knew that DeVauld "was going to be scared."

¶17. Shumpert also denied that he drove around the parking lot as though he was searching for DeVauld. Instead, Shumpert asserted that he "backed [his] car right out and went straight out of the parking lot." Shumpert then testified that from the parking lot he drove toward his mother's house. Then, as he was driving across the railroad track, the Park Avenue overheated, and he "pulled it over on the side of the tracks." Contrary to Officer Creson's testimony that the Park Avenue was discovered parked across the railroad tracks, Shumpert testified that he parked the car near the railroad crossing. He admitted that he might have taken the keys to the Park Avenue with him out of habit.

¶18. After he abandoned the Park Avenue, Shumpert proceeded first to his mother's house and then to his cousin's house where, Shumpert admitted, he and his cousin drank "for a couple of days." Shumpert recalled that the day after the incident in the parking lot, he called his boss at Reed Manufacturing and asked his boss to take him to the police station. Shumpert then testified regarding his waiver of rights and his sworn statement. He averred that he had been drinking that day and that he did not fully understand his rights or the statement which indicated that he went to the parking lot to scare Vanessa DeVauld. Shumpert also testified that Sanders encouraged him to sign the statement by saying he would talk to the judge about getting a lower bond for Shumpert. At the end of his direct examination, Shumpert acknowledged that he previously completed a sentence at Parchman after pleading guilty to burglary and larceny charges.

¶19. After Shumpert rested, his counsel moved for a directed verdict of not guilty. As grounds for the motion for a directed verdict, counsel argued that "there was no showing of intent on the part of the defendant to cause serious bodily injury to Ms. DeVauld." Counsel contended that the "evidence was only . . . that the defendant intended to scare her." After the prosecutor responded to Shumpert's motion, the trial court denied it. The trial court granted Shumpert's requested instruction on simple assault. As we previously recited, the jury found Shumpert guilty of aggravated assault, on which

verdict the trial court entered its judgment of conviction and sentence of Shumpert.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES

A. Shumpert's first issue -- sufficiency of the evidence

1. *Standard of Review*

¶20. In reviewing sufficiency of evidence, the Mississippi Supreme Court has determined that reversal will only be allowed "where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." ***Wetz v. State*, 503 So.2d 803, 808 (Miss. 1987)**. All credible evidence presented at trial must be considered in the light most favorable to the verdict and must be accepted as true. ***Id.*** "When the sufficiency of the evidence is challenged on appeal, this Court properly should review the [trial court's] ruling on the last occasion when the sufficiency of the evidence was challenged before the trial court." ***Id.* at 808 n.3**. In the case *sub judice*, Shumpert last challenged the sufficiency of the evidence when he moved for a directed verdict after he rested.[(2)]

2. Analysis

a. Shumpert's argument

¶21. Shumpert cites ***Brooks v. State*, 360 So. 2d 704 (Miss. 1978)**, to support his argument that "the proof was insufficient to prove that [he] committed the act accused of on the date alleged in the indictment." In *Brooks*, the appellant pushed, shoved, and struck Sheila Garrard with both his hands and arms, a school book, and a notebook after she had entered her parked automobile. ***Id.*at 705.** Garrard fought Brooks, and he abandoned his attack and ran from the parking lot. ***Id***. Garrard's injuries consisted of a few bruises and marks on the left side of her neck. ***Id***. The Mississippi Supreme Court reversed Brooks's conviction of aggravated assault and remanded the case for a new trial on simple assault because it found that "there was insufficient evidence to prove that appellant attempted to cause serious bodily injury . . . ." ***Id.* at 706**. The supreme court explained:

> There can only be conjecture as to what [Brooks's] intent was as [Garrard's] injuries were not serious. Further, we are unable to say in these particular circumstances that the book used in the attack constituted "a deadly weapon or other means likely to produce death or serious bodily harm . . . ."

***Id.* at 706-07**. Shumpert contends that *Brooks* supports his following argument, which we quote from his brief:

> Applying [the *Brooks*] rationale to the case at bar, it is [appellant's position] that he, likewise, can be guilty of nothing more than simple assault. In the case at bar, it is obvious to all that the alleged victim's injuries were relatively minor and there has been no showing whatsoever that [Shumpert] had intended bodily injury upon the alleged victim. Appellant Shumpert testified that his only intent was to scare Ms. DeVauld and not inflict bodily injury upon her.

¶22. An analysis of Shumpert's argument demonstrates that there are three aspects to it. First, must

DeVauld's injuries be "serious" if Shumpert's conviction of aggravated assault is to be affirmed? Second, was the State's evidence sufficient to establish Shumpert's intent to inflict bodily injury on DeVauld? Third, was the State's evidence sufficient to establish that Shumpert struck DeVauld as he accelerated the Park Avenue?

b. The nature of DeVauld's injuries

¶23. This Court finds that the following portion of Section 97-3-7(2), which creates the felony of aggravated assault, defines the kind of aggravated assault for which Shumpert was indicted: "A person is guilty of aggravated assault if he . . . attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm . . . ." **Miss. Code Ann. § 97-3-7(2) (Rev. 1994).** "Serious" is used as an adjective to describe "bodily injury" only in the portion of this section which defines aggravated assault if the accused "attempts to cause . . . or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life . . . ." **Miss. Code Ann. § 97-3-7(2) (Rev. 1994).** If the cause of the victim's injuries is something other than "a deadly weapon or other means likely to produce death or serious bodily harm," then the bodily injury must be "serious." Otherwise, if the means of inflicting the bodily injury is either "a deadly weapon" or "other means likely to produce death or serious bodily harm," then it is only necessary for the accused to cause bodily injury to the victim. The bodily injury need not be "serious."

¶24. While the indictment charged that Shumpert "caus[ed], knowingly and purposely,*serious*bodily injury to Vanessa DeVauld, a human being, by a means likely to produce death or serious bodily injury, by deliberately speeding and crashing his car into Vanessa DeVauld . . .,"(emphasis added), this Court elects to treat the adjective "serious" as surplusage because the indictment clearly charged that Shumpert caused DeVauld's injury by crashing his car, "a means likely to produce death or serious bodily injury." Shumpert's failure to question the sufficiency of the indictment whether by demurrer or motion to quash allows this court to treat the adjective "serious" as surplusage. Thus, if the Park Avenue was "a means likely to produce death or serious bodily injury," DeVauld's injuries need not have been "serious" to create the crime of aggravated assault.

¶25. ***Gray v. State*, 427 So. 2d 1363, 1365 (Miss. 1983)**, was the first case in which the Mississippi Supreme Court decided that the use of an automobile as "a means likely to produce death or serious bodily harm" could violate Section 97-3-7(2) if it were used by the accused to injure another person. There is no dispute in the case *sub judice* that DeVauld was injured. Therefore, the fact that DeVauld was injured, even if not seriously, was all that Section 97-3-7(2) required the State to prove. This the State did, and Shumpert does not argue that DeVauld was not injured.

c. Whether Shumpert struck DeVauld with the Park Avenue

¶26. DeVauld testified that the Park Avenue was about five paces from her when Shumpert "gunned" the car and struck her in the "lower right hip area" with its left front. DeVauld further testified that the blow caused her to fall onto her knees and scrape them both. Shumpert insisted that he only intended to scare DeVauld, and he consistently denied both to Detective Timothy Sanders and to the jury that he struck her at all as he drove the Park Avenue from the parking lot. In ***Nash v. State*, 278 So. 2d 779, 780 (Miss. 1973),** the Mississippi Supreme Court explained: "It is also true that the testimony of a single witness is sufficient to sustain a conviction though there may be more than one

witness testifying to the contrary."

¶27. In ***Gandy v. State*, 373 So.2d 1042, 1045 (Miss.1979)**, the supreme court discussed the function of the jury:

> As is usual in jury cases, the evidence conflicted, but the conflict does not necessarily create a "reasonable doubt" of appellant's guilt. Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject, the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into findings of fact sufficient to support their verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution.

¶28. In this case it was for the jury "to resolve the conflicts in the testimony" of DeVauld and Shumpert; they "may believe or disbelieve, accept or reject [their] utterances . . . ." The jury simply found DeVauld the more credible of the two witnesses, and thus functioned as the supreme court contemplated in *Gandy*.

d. Shumpert's intent to injure DeVauld

¶29. While it was the State's burden to prove beyond a reasonable doubt that Shumpert intended to injure DeVauld, his intent to injure DeVauld must be inferred from the facts, circumstances, and conduct of Shumpert, because intent is "rarely susceptible of direct proof". ***Thames v. State*, 221 Miss. 573, 577, 73 So.2d 134, 136 (1954).** The Court has also noted that examining what is evinced by the defendant's conduct is frequently the only means of determining a defendant's state of mind. ***Minter v. State*, 583 So.2d 973, 974 (Miss. 1991).** With these principles in mind, ***Woodward v. State*, 164 Miss. 468, 144 So. 895 (1932)**, determines our resolution of this second aspect of Shumpert's first issue.

¶30. In *Woodward*, the appellant's truck was stopped in the middle of a rural road when an automobile driven by the husband of Corrinne Brown attempted to pass it. ***Woodward*, 144 So. at 896.** Instead, Brown's car became stalled in a ditch. ***Id.*** Corrinne Brown was standing outside the automobile when Woodward attempted to back up his truck and struck Mrs. Brown, which knocked her against the automobile and seriously injured her. ***Id.*** Woodward was indicted for and convicted of an assault and battery on Brown by then and there unlawfully and recklessly driving a motor vehicle against the person of the said Mrs. Corrinne Brown. ***Id.*** About Woodward's intent when he backed his truck into Brown, the supreme court opined:

> From these facts the jury could have believed that his act in turning the car upon Mrs. Brown was with deliberate intent, or it could be said that his act in starting and turning his motor vehicle toward and against her evinced such willful, reckless, and wanton disregard for her safety as to impute to him the willful intent to do the act. This is reinforced by the state's evidence that he had ample, open, and safe space in which to turn to his right; and, on the

> whole, the state's evidence shows that he intended the natural consequences of his act. From the state's view, he acted unlawfully and willfully, not because of anger or malice against Mrs. Brown, but in the view of doing an act calculated to injure, and which in fact did trespass upon her and injure her.

Id. In the case *sub judice*, Shumpert admitted that he had drunk "a couple of cocktails" before he drove the Park Avenue to the parking lot. Even Shumpert admitted that he wanted to scare DeVauld. Molitha Ward testified that she saw Shumpert try to maneuver the Park Avenue into the vacant parking space into which she had seen DeVauld stumble. Although Shumpert denied it during his testimony, Ward also testified that Shumpert drove around the parking lot as though he was looking for DeVauld before he left the scene.

¶31. To paraphrase the *Woodward* opinion, "From these facts the jury could have believed that [Shumpert's] act in turning the car upon [Ms. DeVauld] was with deliberate intent . . . ." ***See Woodward*, 144 So. at 896.** Thus, "[f]rom the state's view, [Shumpert] acted unlawfully and willfully . . . in the view of doing an act calculated to injure, and which in fact did trespass upon her and injure her." ***Id.*** If the jury believed beyond a reasonable doubt from the State's evidence that Shumpert struck DeVauld with the Park Avenue, then *Woodward* affirms the proposition that from Shumpert's striking DeVauld, the jury could infer the necessary intent of Shumpert to injure her.

e. Summary of Shumpert's first issue

¶32. Our standard of review in determining whether the State's evidence was sufficient to support the jury's verdict that Shumpert was guilty of aggravated assault does not allow this Court to reverse the trial court's judgment of Shumpert's conviction unless "the evidence . . . is such that reasonable and fair-minded jurors could only find [Shumpert] not guilty." ***See Wetz*, 503 So. 2d at 808.** The initial factual issue was whether Shumpert struck DeVauld with the Park Avenue as DeVauld testified. The jury resolved the conflicts between the State's and Shumpert's evidence by not believing Shumpert's protestation that he did not hit DeVauld. *Woodward* teaches that once the jury determined that Shumpert struck DeVauld, "the jury could have believed that his act in turning the car upon [Ms. DeVauld] was with deliberate intent." ***See Woodward*, 144 So. at 896.** Thus this court can only conclude that it cannot reverse Shumpert's conviction of aggravated assault based on his argument that the evidence was insufficient to support the jury's verdict of "Guilty as charged."

C. Shumpert's second issue

1. ***Standard of Review***

¶33. The trial judge may, in his sound discretion, grant a new trial if the trial judge determines that a new trial is required in the interest of justice or if the verdict is contrary to law or the weight of the evidence. **UCCCR 10.05; *Wetz*, 503 So.2d at 812.** The standard has been well-established that a new trial should not be granted unless 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." ***Wetz*, 503 So.2d at 812; *Malone v. State*, 486 So. 2d 360, 366 (Miss. 1986); *Groseclose v. State*, 440 So.2d 297, 300 (Miss. 1983); *Pearson v. State*, 428 So.2d 1361, 1364 (Miss. 1983).** In determining whether the jury's verdict is contrary to the overwhelming weight of the evidence presented, the trial judge

must accept as true all evidence favorable to the verdict for the State. ***Van Buren v. State*, 498 So.2d 1224, 1229 (Miss. 1986); *Malone*, 486 So. 2d at 366.** This Court will not reverse unless it is convinced that the trial court has abused its discretion by denying the motion for new trial. ***Wetz*, 503 So.2d at 812.**

2. *Analysis*

¶34. Shumpert devotes but one paragraph in his brief to the argument that the jury's verdict was against the overwhelming weight of the evidence, but to this Court, that argument only attacks the sufficiency of the evidence rather than offering an explanation about how the evidence was overwhelmingly against his guilt. Thus, this Court opines that its detailed review and analysis of the State's and Shumpert's evidence set forth in its review and resolution of Shumpert's first issue attacking the sufficiency of the evidence is a sufficient predicate upon which to conclude that to allow the jury's verdict of Shumpert's guilt of aggravated assault to stand does not "sanction an unconscionable injustice." Therefore, the trial court did not abuse its discretion when it denied Shumpert's motion for a new trial.

IV. CONCLUSION

¶35. The State's and Shumpert's evidence presented disputed issues for the jury to resolve, and the jury resolved the conflicts in that evidence favorably to Shumpert's guilt of an aggravated assault committed upon DeVauld by striking her with the Park Avenue, which Shumpert used as a " means likely to produce death or serious bodily harm." Therefore, the trial court did not err when it denied Shumpert's motions for a directed verdict. Neither did the trial court err when it denied Shumpert's motion for new trial. Thus, we affirm the trial court's judgment of Shumpert's guilt of aggravated assault and the sentence which the trial court imposed upon him.

¶36. **THE JUDGMENT OF THE LEE COUNTY CIRCUIT COURT OF APPELLANT'S CONVICTION OF AGGRAVATED ASSAULT AND ITS SENTENCE OF APPELLANT TO SERVE TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS OF THE SENTENCE SUSPENDED ARE AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO LEE COUNTY.**

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

1. DeVauld testified that she contributed $100 to the down payment required to buy the Park Avenue automobile.

2. Shumpert included this issue in his motion for judgment of acquittal notwithstanding the verdict, and thus preserved it. Of course, there was no additional evidence adduced between the defense's resting and filing the motion for JNOV.