

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RENA JAMES LAWRENCE

APPELLANT

VERSUS

CASE NO.2006-KA-01917-COA

STATE OF MISSISSIPPI

APPELLEE

APPEAL FROM

THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

Rena James Lawrence, Appellant

Rodney A. Ray, Attorney for Appellant

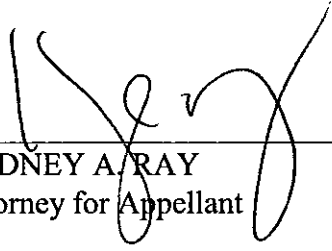
Roy Andre' Perkins, Attorney for Appellant (Trial Counsel)

Forrest Allgood, District Attorney

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Honorable Lee J. Howard, IV, Trial Judge

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STATEMENT OF THE CASE

This is a criminal appeal from the Oktibbeha County Circuit Court where Rena James Lawrence was convicted of aggravated assault (T. 348). She was sentenced to ten (10) years to serve in the Mississippi Department of Corrections on the conviction (T. 356-7). The trial court denied Rena James Lawrence's Motion for a New Trial and/or JNOV (R.E. 29). Aggrieved, she files this appeal.

On the evening of April 19, 2005, Rena James Lawrence shot her husband, Joe Willie Lawrence, once in the abdomen with her .380 caliber pistol at their marital home in the community of Sessum, Oktibbeha County, Mississippi (T.132, 131, 141). Joe Willie Lawrence first testified to the events of that day (T. 131). He and Rena James Lawrence had been married just over one year at the time of the incident (T. 138). Both had been to work that day (T. 133). Joe Willie Lawrence stated that he had been at work that day, visited some relatives, and came to neighbor's house where relatives had gathered comforting a family in mourning (T. 133). At this gathering, Joe Willie Lawrence did not like the behavior of Rena James Lawrence and told her to go home (T. 134-9). Rena Lawrence went home (T. 139). They began to argue about consumption of alcohol and Rena Lawrence's conduct (T. 139-140). Rena Lawrence was not happy about Joe Willie Lawrence changes in employment (T. 135). . When Rena Lawrence refused, they had an argument over the cooked food in the refrigerator, and a physical confrontation ensued (T. 139-141).

Joe Willie Lawrence testified than Rena Lawrence threw beer on him and started swinging at him scratching his face (T. 141). He then forced her onto a bed (T. 141). When he let her up, she reached for her bag and took a gun out and shot him (T.141-2). Upon realizing she had shot him, Joe Willie Lawrence said only then had he started beating on Rena James Lawrence's face (T. 142).

After some time, he claimed to have come to his senses and disarmed Mrs. Lawrence (T.142-3). He then took the gun and put it to Mrs. Lawrence's head, stopped himself from shooting her, ran to the door and screamed for someone to dial 911 (T. 142-3).

Rena James Lawrence testified to a different version of the events on April 19, 2005. She had come home from work after having stopped at the local Wal-Mart (T. 275). She went to a grieving neighbor's house (T 277-8). She was talking to a man at the house when Joe Willie Lawrence came home (T. 278-9). Joe Willie Lawrence saw this and ordered her home in a fit of anger (T. 279).

At their home, there was an ongoing argument (T. 280). The argument definitely involved Rena James Lawrence being asked to leave and the disposal of the cooked food in the refrigerator (T. 280). Joe Willie Lawrence threw Rena James Lawrence onto the bed and began beating her about the face (T. 281). During a pause, Ms. Lawrence was able to locate her pistol she had been packing with her clothes to leave (T. 280). She shot Joe Willie Lawrence once to stop the attack, left the marital home, and was arrested leaving the scene (T. 281, T.283, T.284). She later required medical attention for the facial injuries from the beating she received (T. 287).

Trial was held on October 30-31, 2006, in the Oktibbeha County Circuit Court (T.1). After trial by jury, Rena James Lawrence was convicted of aggravated assault (T.348).

On November 1, 2006, Rena James Lawrence was sentenced to ten (10) years in the Mississippi Department of Corrections, with five (5) years post-release supervision, a fine, and restitution (T.356-7).

On November 3, 2006, the Court entered its Order denying Rena James Lawrence's motion for a new trial or a judgment notwithstanding the verdict (R.E. 29). From this Order, Rena James Lawrence appeals.

SUMMARY OF THE ARGUMENT

I. The jury's verdict was against the overwhelming weight of the evidence.

II. The trial court erred in granting the prosecution's jury instruction concerning voluntary intoxication. The Defendant did not attempt to use intoxication directly or indirectly to mitigate her liability and under her theory of defense, the jury could not have excused her conduct based on involuntary intoxication. The instruction instead confused the jury to believe that if Rena James Lawrence was intoxicated, she could not have been acting in necessary self-defense.

III. If the errors described in the first two arguments are found to be harmless error, their commutative weight rises to the level of prejudicial error, and the convictions should be set aside, and the case should be remanded for a new trial.

ARGUMENT

I. Factual Background

On the evening of April 19, 2005, Rena James Lawrence shot her husband, Joe Willie Lawrence, once in the abdomen with her .380 caliber pistol at their marital home in the community of Sessum, Oktibbeha County, Mississippi (T.132, 131, 141) . Joe Willie Lawrence first testified to the events of that day (T. 131). He and Rena James Lawrence had been married just over one year at the time of the incident (T. 138). Both had been to work that day (T. 133). Joe Willie Lawrence stated that he had been at work that day, visited some relatives, and came to neighbor's house where relatives had gathered comforting a family in mourning (T. 133). At this gathering, Joe Willie Lawrence did not like the behavior of Rena James Lawrence and told her to go home (T. 134-9). Rena Lawrence went home (T. 139). They began to argue about consumption of alcohol and Rena Lawrence's conduct (T. 139-140). Rena Lawrence was not happy about Joe Willie Lawrence changes in employment (T. 135). When Rena Lawrence refused, they had an argument over the cooked food in the refrigerator, and a physical confrontation ensued (T. 139-141).

Joe Willie Lawrence testified than Rena Lawrence threw beer on him and started swinging at him scratching his face (T. 141). He then forced her onto a bed (T. 141). When he let her up, she reached for her bag and took a gun out and shot him (T.141-2). Upon realizing she had shot him, Joe Willie Lawrence said only then had he started beating on Rena James Lawrence's face (T. 142). After some time, he claimed to have come to his senses and disarmed Mrs. Lawrence (T.142-3). He then took the gun and put it to Mrs. Lawrence's head, stopped himself from shooting her, ran to the door and screamed for someone to dial 911 (T. 142-3).

Rena James Lawrence testified to a different version of the events on April 19, 2005. She

had come home from work after having stopped at the local Wal-Mart (T. 275). She went to a grieving neighbor's house (T. 277-8). She was talking to a man at the house when Joe Willie Lawrence came home (T. 278-9). Joe Willie Lawrence saw this and ordered her home in a fit of anger (T. 279).

At their home, there was an ongoing argument (T. 280). The argument definitely involved Rena James Lawrence being asked to leave and the disposal of the cooked food in the refrigerator (T. 280). Joe Willie Lawrence threw Rena James Lawrence onto the bed and began beating her about the face (T. 281). During a pause, Ms. Lawrence was able to locate her pistol she had been packing with her clothes to leave (T. 280). She shot Joe Willie Lawrence once to stop the attack, left the marital home, and was arrested leaving the scene (T. 281, T.283, T.284). She later required medical attention for the facial injuries from the beating she received (T. 287).

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II. Argument

I. WHETHER THE JURY'S VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE, AND THEREFORE, THE TRIAL COURT ERRED IN NOT GRANTING A MOTION FOR NEW TRIAL?

The Mississippi Supreme Court in the capital murder case of **Bush v. State**, 895 So.2d 836, at 844 (Miss. 2005) reviewed the standard for determining whether a jury's verdict was against the overwhelming weight of the evidence, citing **Herring v. State**, 691 So. 2d 948, 957 (Miss. 1997). **Herring** states that the Court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. The **Bush** Court, though citing favorably **Herring**'sm at 957, admonition that evidence should be weighed in the light most favorable to the verdict, goes on to cite favorably its opinion in **McQueen v. State**, 423 So.2d 800, 803 (Miss. 1982). The **Bush** Court states:

A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict. **McQueen**, at 803. Rather as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. **Id.** The difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. **Id.** Instead the proper remedy is to grant a new trial. (Footnote omitted except as discussed below).

In footnote 3, the **Bush** Court cited examples of incorrect standards in reviewing a challenge to the overwhelming weight of the evidence. The **Bush** Court found specifically that as stated in **Turner v. State**, 726 So.2d 117, 125 (Miss. 1998) that "the Court must accept as true the evidence which supports the verdict," the Court "must accept as true the evidence favorable to the State," and "[w]here there is conflicting testimony, the jury is the judge of the credibility of the witnesses" are

incorrect standards in reviewing challenges to the sufficiency of the evidence.

To convict Rena James Lawrence of aggravated assault, the jury had to find that:

On or about the 19th day of April of 2005 in Oktibbeha County, Mississippi, unlawfully, willfully, feloniously, purposely, and knowingly cause bodily injury to Joe Willie Lawrence, a human being, with a deadly weapon, to wit, a pistol, by shooting the said Joe Willie Lawrence in his abdomen with the pistol without authority of law and not in necessary self-defense contrary to the form of the statutes in such cases made and provide and against the peace and dignity of the State of Mississippi. (T. 11, L. 6-15).

As stated, the prosecution had to prove beyond a reasonable doubt that Rena James Lawrence did not act in necessary self-defense. Based on the testimony presented, for a juror to convict, the juror had to totally credit Joe Willie Lawrence's account of events and discredit Rena James Lawrence's testimony. Rena James Lawrence argues that the verdict is against the overwhelming weight of the testimony.

To convict Rena James Lawrence, the jury had to believe that Joe Willie Lawrence had been involved in a physical confrontation with Rena James Lawrence, but did not strike her. Then, according to Joe Willie Lawrence, withdrew from her immediate presence. Then, Rena James Lawrence shot him in the abdomen. Only then did Joe Willie Lawrence strike and beat Rena about the head and face, then wrestle the gun away from Rena James Lawrence, hold it to her head, not shoot her, and then call for 911. No one else was present to witness the shooting and/or the beating (T. 167). No forensic or expert testimony was offered about the wounds or gunshot. Joe Willie Lawrence's account of the days events are simply preposterous and certainly cannot be credited beyond a reasonable doubt. Therefore, the trial court should have granted Rena James Lawrence's Motion for a New Trial as against the overwhelming weight of the evidence.

II. WHETHER THE TRIAL COURT ERRED BY GRANTING THE STATE'S
PROPOSED JURY INSTRUCTION S-4 ABOUT INVOLUNTARY
INTOXICATION ?

Over objection (R.E. 17-28) of Defense Counsel, the trial court granted the prosecution's proposed instruction S-4. S-4 reads:

The Court instructs the Jury that voluntary intoxication from alcohol and/or drugs is not a defense to a crime. If a Defendant, when sober, is capable of distinguishing between right and wrong, and then voluntarily intoxicates herself by using alcohol and/or drugs, and deprives herself of that ability, then she is criminally responsible for any offenses committed while in that condition.

Therefore, if you find from the evidence in this case beyond a reasonable doubt, that the Defendant voluntarily intoxicated herself through the use of alcohol and/or drugs, and then committed the offense for which she is charged, then that intoxication in no way relieves her of criminal responsibility.

Rena James Lawrence never claimed voluntary intoxication as a defense. She steadfastly insisted that she shot Joe Willie Lawrence in necessary self-defense to stop him from beating her. In fact, insisted that she was not as intoxicated as the prosecution had attempted to portray her.

This S-4 instruction is a formulation of the **McDaniel v. State**, 346 So.2d 1151 (Miss. 1978) rule establishing that voluntary intoxication does not negate specific intent to commit a crime, specifically, at 1161, "prevents submission to a jury the question of voluntary intoxication as a defense in specific intent offenses." The Mississippi Supreme Court in **Harris v. State**, 386 So.2d 393 (Miss. 1980) further found it not error to fail to grant a Defendant's requested instruction for voluntary intoxication. The Court again upheld denial of a Defendant's instruction for voluntary intoxication in **Lee v. State**, 403 So.2d 132, 134 (Miss. 1981), but cautioned, "Trial courts must remember that the purpose of the **McDaniel** rule is to remove voluntary intoxication as a defense, not to provide an affirmative instruction for the state which might mislead a jury into thinking that

it is not necessary to prove intent, when intent is a requisite ingredient of the offense.” Rena Lawrence admitted that she shot Joe Willie Lawrence on purpose in necessary self-defense, and in no way, by either witness testimony or counsel argument, attempted to offer intoxication or any other excuse to lessen her responsibility or diminish her criminal intent. Therefore, the rationale for allowing a **McDaniel** instruction was not present and no such instruction should have been given.

In **Norris v. State**, 490 So.2d 839 (Miss. 1986), the Defendant objected to the State offering a **McDaniel** instruction. The Court cited **Cummings v. State**, 465 So.2d 993 (Miss. 1985) for the proposition that the State could be granted a **McDaniel** instruction. The **Norris** defendant was charged with aggravated assault. The sole defense he offered was insanity. The prosecution sought and was granted a **McDaniel** instruction. The **Norris v. State**, 490 So.2d 839, 842 (Miss. 1986) court said:

Norris argues that his case is distinguishable from **McDaniel** and its progeny because he did not make intoxication a defense. True he did not request an intoxication defense instruction; however, it is clear that intoxication was made an issue by Norris regardless of whether it was expressly made a defense.

It is apparent that a jury could reasonably infer from the testimony of Norris that, because he was so drunk, he did not know what he was doing. From that, a reasonable juror could infer that Norris did not have the requisite intent to commit the crime; this is exactly what the **McDaniel** rule prohibits. Where, as in this case, the evidence justifies it, the state may be granted a **McDaniel** instruction.

The **Norris** defendant had put on evidence of his own intoxication, **Norris**, at 841. Rena Jane Lawrence put on no evidence of intoxication, tried to prevent any evidence of intoxication, and did not offer an intent-based defense. She stated that she intended to shoot Joe Willie Lawrence, but she was justified in doing so. Thus the facts in this case distinguished it from the facts in **Norris**.

Another case involving an involuntary intoxication jury instruction is **McGowen v. State**, 859 So.2d 320 (Miss. 2003). **McGowen** was convicted of the capital murder of a four year old child.

His defense was absolute innocence, because a third party had committed the crime. The Defendant asserted as error the granting of the prosecution's involuntarily intoxication instruction because he had not offered intoxication as a defense and that the instruction had deflected the jury's attention prejudicially from his actual defense, absolute innocence, relying on **Taylor v. State**, 597 So.2d 192 (Miss. 1992). The Mississippi Supreme Court reversed Taylor's murder conviction where his sole defense had been accident; but the prosecution had asked for, and was granted, an instruction requiring that the jury find Taylor had not been acting in self-defense. More specifically, the Court said "Taylor made no claim of self-defense. No one offered evidence of self-defense. Taylor's theory of defense throughout was one of accident or excusable homicide." **Taylor** at 194. The Court went to further explain, after finding that the self-defense instruction had deflected attention away from Taylor's theory of accident, "Where as here, the evidence is somewhat circumstantial and inconclusive, and where the Court has substantially instructed the jury that it consider a matter extraneous to the process, the risk of misdirected verdict becomes intolerably high." **Taylor**, at 195.

The **McGowen** Court, however, in analyzing his claim to follow **Taylor**, decided the case of **Hester v. State**, 841 So.2d 158 (Miss.Ct.App. 2002) was more applicable. The **Hester** defendant was on trial for murder and offered a defense of self-defense. The trial court granted a manslaughter instruction. On appeal, Hester argued that the manslaughter instruction had negated his self-defense claim. The Court of Appeals, as characterized by the **McGowen** court, held that **Taylor** stood for avoiding giving instructions that confuse the jury and not as much about commenting upon other defenses. The **Hester** Court stated at 161, "Whether Hester was completely exonerated because of a legitimate threat to him, or whether his reaction to events were still criminal but lessened by the heat-of-passion, are not self-cancelling in the manner of the precedents."

Taking this analysis of **Taylor** from **Hester** in **McGowen**, the **McGowen** Court (McGowen had claimed an unrequested voluntary intoxication instruction confused and impermissibly deflected jury attention to his absolute innocence claim) found at 343:

“This Court similarly views the inclusion of an intoxication instruction as not self-canceling McGowen’s proposed defense of total innocence. Before convicting McGowen, the jury had to ascertain for themselves beyond a reasonable doubt that he committed the act of killing Shelby (the four year old). This determination had little to do with whether Hugh McGowen was intoxicated on the night of February 26, 200. The jury’s consideration of McGowen’s inebriation would only come into play once the jury decided he in fact killed the victim. McGowen meanwhile maintained no partial defense, but rather total innocence, claiming his brother Charles committed the crime. The intoxication instruction did not present a high risk of confusing the jury’s attention from McGowen’s proposed defense of complete innocence. Additionally, the jury instruction did not lessen the jury’s responsibility in determining McGowen’s guilt or innocence from the evidence and the law, but instead informed the jury that McGowen’s criminal culpability was not otherwise lessened because of his voluntary intoxication.

Jury instruction S-4 was clearly an impermissible **Taylor**-type instruction and not the exception contemplated in **Hester** and **McGowen**. Rena James Lawrence only offered self-defense as her theory of defense. This defense acknowledged the intent of her actions, but asserted that her actions were justified. She did not offer that she was innocent, like **McGowen**, nor was there a lesser degree of intent or culpability available like **Hester**. Besides just the procedural posture, unlike **McGowen**, a high degree of confusion was present. In this case, the instruction, taken with the prosecution’s evidence and questioning, implied that a person voluntarily intoxicated could not act in necessary self-defense. While intoxication can be an issue of witness credibility, it cannot imply directly or indirectly that a person is not entitled to a claim of self-defense, nor does it automatically refute the claim. As such, the jury instruction, in this case, could have deflected the jury from the Defendant’s theory unfairly. Therefore, the Defendant did not receive a fair trial, and

the convicted set aside and remanded for trial.

III. WHETHER THE PREVIOUSLY DESCRIBED ERROR, IF FOUND TO BE HARMLESS INDIVIDUALLY, IN ACCUMULATION CONSTITUTES REVERSIBLE ERROR?

Mississippi case law has long allowed an accumulation of otherwise harmless errors to result in reversal. See **Griffin v. State**, 557 So.2d 542, 552-53 (Miss. 1990). In **Jenkins v. State**, 607 So.2d 1171, 1183-84 (Miss. 1992) the Mississippi Supreme Court held that errors in the lower court which do not require reversal standing alone, may, taken cumulatively, require reversal. In **Byrom v. State**, 927 So.2d 709, 730 (Miss. 2006), in clarifying the scope of appellate review of cumulative error, the Court held that in “cases in which we find harmless error or any error which is not specifically found to be reversible in and of itself, we shall have the discretion to determine, on a case-by-case basis, as to whether such error or errors, although not reversible when standing alone, may when considered cumulatively require reversal because of the resulting cumulative prejudicial effect.”

If any or all the errors previously argued in this brief have been found harmless, Rena James Lawrence argues that the errors in accumulation constitute reversible error, and, therefore, her conviction should be set aside and the case remanded for new trial.

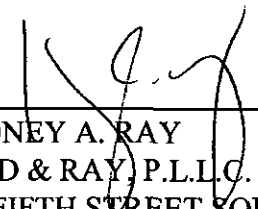
CONCLUSION

The Appellant, Rena James Lawrence, submits to this Court that the Circuit Court of Oktibbeha County erred in failing to grant the Defendant's Motion for a New Trial because the verdict was against the overwhelming weight of the evidence. The Circuit Court further erred in instructing the jury as to voluntary intoxication of the Defendant such that it confused and unfairly deflected from the Defendant's theory of defense. Therefore, for the individual errors listed above, or, errors taken in accumulation, this Court should vacate the conviction and remand for a new trial.

Dated: July 6, 2007.

Respectfully Submitted,

Rena James Lawrence



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CERTIFICATE OF SERVICE

I, Rodney A. Ray, attorney for the Appellant, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Appellant's Brief to the following:

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This the 6th day of July, 2007.

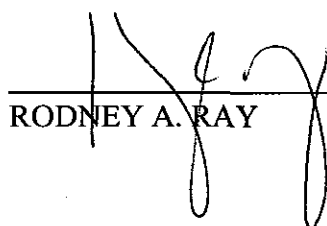


RODNEY A. RAY

CERTIFICATE OF MAILING

I, Rodney A. Ray, attorney for the Appellant, do hereby certify in accordance with M.R.A.P. 25 (a), that I am this day depositing in the United States Mail, first class, postage-prepaid, one original and three copies of the Brief and Record Excerpts in the matter of *Rena James Lawrence (Appellant) versus State of Mississippi (Appellee)*, case number 2006-KA-01917-COA, for filing with the Clerk of the Supreme Court/Court of Appeals.

This the 6th day of July, 2007.



RODNEY A. RAY