

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RENA JAMES LAWRENCE

APPELLANT

VS.

NO. 2006-KP-1917-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Oktibbeha County indicted defendant, Rena James Lawrence for Aggravated Assault in violation of *Miss. Code Ann.* § 97-3-7. (Indictment, cp.5-6). After a trial by jury, Judge Lee J. Howard, presiding, the jury found defendant guilty. (C.p.98). Defendant was sentenced to 10 years costs of court, restitution, and a fine. (Sentence order, cp. 99-102).

After denial of post-trial motions this instant appeal was timely noticed.

It would appear defendant is free on an appeal bond pending decision of this reviewing court.

STATEMENT OF FACTS

After a brief spat with her husband over various and sundry issues, defendant pulled out a handgun and shot her husband. She then left in a vehicle, was apprehended, found to be driving whilst intoxicated.

Defendant admitted to shooting her husband in necessary self-defense during a severe beating. The jury heard from the victim, the defendant and others in support of each of their positions.

The jury after being instructed found defendant guilty of aggravated assault.

It is from that verdict that defendant now appeals.

SUMMARY OF THE ARGUMENT

Issue I.

THE WEIGH OF THE EVIDENCE AMPLY SUPPORTS THE JURY VERDICT – GUILTY OF AGGRAVATED ASSAULT AND NOT IN NECESSARY SELF-DEFENSE.

Issue II.

IT WAS NOT ERROR FOR THE TRIAL COURT TO GRANT AN INSTRUCTION REGARDING VOLUNTARY INTOXICATION PROFFERED BY THE STATE.

Issue III.

THERE BEING NO ERROR, NEAR-ERROR OR HARMLESS ERROR THERE CAN BE NO CUMULATIVE ERROR.

ARGUMENT

Issue I.

THE WEIGH OF THE EVIDENCE AMPLY SUPPORTS THE JURY VERDICT – GUILTY OF AGGRAVATED ASSAULT AND NOT IN NECESSARY SELF-DEFENSE.

In this initial allegation of error counsel for defendant meticulously delineates the appropriate standard of review. And, then asks this reviewing court to ignore same.

The argument raised is the jury just could not believe the testimony of the victim. When in truth, it is more likely the jury did not believe the testimony of defendant.

¶ 14. Furthermore, after a thorough review of the court record, we cannot say that the overwhelming weight of the evidence does not support the jury's finding [. . .], nor do we find that to allow the verdict to stand would be an unconscionable injustice. The jury is charged with weighing the evidence and determining the credibility of witnesses. *Nobles v. State*, 879 So.2d 1067, 1071(¶ 11) (Miss.Ct.App.2004) (citing *McClain v. State*, 625 So.2d 774, 778 (Miss.1993)). *Sheffield v. State*, 749 So.2d 123, 128(¶ 17) (Miss.1999), presents a similar situation where Sheffield argued for a new trial upon the grounds that the weight of the evidence presented did not support the jury's verdict. The court noted in Sheffield that there was no need for the reviewing court to determine exactly which witnesses and testimonies the jury chose to believe or disbelieve in reaching its verdict. *Id.* Furthermore, it is enough that the evidence presented a factual dispute for the jury. *Id.* (citing *Groseclose v. State*, 440 So.2d 297, 300 (Miss.1983)). In the present case, the jury heard three eyewitnesses testify that Young was the man they saw driving the green Maxima, and they also identified Young in court. The jury then had the opportunity to hear Young's recollection of what happened on November 9, 2001. Young argues that the State did not

present any fingerprint evidence or an alleged video from the Double Quick surveillance cameras. Both of these evidentiary issues were addressed by Young's counsel during Captain Smith's testimony regarding his investigation of the matter. As stated in Sheffield, this Court cannot determine which witnesses the jury chooses to believe or disbelieve. Sheffield, 749 So.2d at 128(¶ 17). The jury had the duty to discern what witness's statements to believe or disbelieve and to reach a verdict based upon the evidence it found to be credible. We find that the overwhelming weight of the evidence supports the jury's verdict of guilty. We also find that reasonable and fair-minded jurors could have found Young guilty based on the weight and quality of evidence before us on appeal. Therefore, this issue is without merit.

Young v. State, 962 So.2d 110 (Miss.App. 2007).

The jury heard it all – and more. They saw the pictures. They also remember her testimony that she shot her victim. Contrasted to the detailed, consistent, collaborated testimony of the victim. The decision was up to the jury, and they decided against defendant.

There is no merit to this first allegation of error and no relief should be granted.

Issue II.

IT WAS NOT ERROR FOR THE TRIAL COURT TO GRANT AN INSTRUCTION REGARDING VOLUNTARY INTOXICATION PROFFERED BY THE STATE.

Continuing the challenge to her conviction, defendant asserts error by the trial court in granting the State's instruction S-4. (Instruction c.p. 81; discussion at trial Tr. 317, 322-23.)

Interestingly, the *Norris* case cited by defendant, essentially stands for the proposition that if the evidence warrants intoxication then the State may ask for the instruction. And, if the evidence shows intoxication, there is no error.

As the Mississippi Supreme Court noted either side may ask for the instruction:

The McDaniel court did not limit the question of voluntary intoxication to instructions either for the State or the accused. The rule is simply and clearly stated therein and means that, if a person, when sober, is capable of distinguishing right and wrong and voluntarily intoxicates or drugs himself to the extent that he does not know or understand his actions, e.g., steals, robs, or murders, he is responsible and he may be convicted and sentenced for the crime. [Smith v. State,] 445 So.2d at 231. Further, in Jackson v. State, 381 So.2d 1040 (Miss.1980), we did not find that it was error for the court to give a McDaniel rule instruction.

Norris v. State, 490 So.2d 839, 842 (Miss. 1986).

In essence, if the evidence warrants the giving of the instruction – even when it is not raised as a defense to the crime, – the State may seek such an instruction to more fully inform the jury about the elements of criminal intent and what may or may not be considered in deliberations.

¶ 13. Grubbs contends that it was an abuse of discretion to grant the instruction because it negated the State's burden to prove that Grubbs intentionally assaulted Jamison with a deadly weapon. "[T]he 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." *Lee v. State*, 403 So.2d 132, 134 (Miss.1981). The State contends that the instruction did not negate its burden because the trial court granted other instructions which stated that the state had the burden of proving every element of the crime. As long as the jury instructions read as a whole make it clear that the State has the burden of proving all of the elements of the crime, the McDaniel instruction does not negate the State's burden but rather sets forth guidance for the jury. *Id.* Therefore, this issue is without merit.

Grubbs v. State, 956 So.2d 932 (Miss.App. 2006).

Accordingly, and as the judge noted, the evidence showed defendant was quite drunk, (contrary to her testimony and opinion). The judge ruled that since the State had to prove intent it would provide guidance to the jury.

Such is a correct application of the law and nor relief should be granted on this allegation of error.

Issue III.

**THERE BEING NO ERROR, NEAR-ERROR OR HARMLESS
ERROR THERE CAN BE NO CUMULATIVE ERROR.**

Looking to the succinct record and rulings of the trial court there was no error in finding facts to support the jury verdict of guilty. Additionally, there was evidence defendant was intoxicated (her own testimony) and the State sought to have the jury instructed on involuntary intoxication as it was the State's duty to show criminal intent. The proffered instruction (S-4) offered guidance for the jury to consider in addition to all other instructions. (Court instructions, defense instructions and State's instructions).

Consequently there being no error, near-error or harmless error there can be no cumulative error.

¶ 112. In several issues, Bailey claims that the cumulative effect of the errors mandates reversal. As we find only harmless error and no prosecutorial misconduct, we find no accumulation of errors such that would mandate reversal.

Bailey v. State 956 So.2d 1016, *1044 (Miss.App.,2007)

The State would ask this court to adopt the above rationale and find no cumulative error.

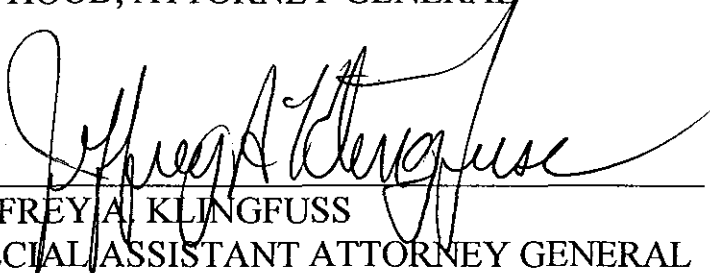
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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