IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ARDES JOHNSON — APPELLANT

V. — NO. 2007-KA-00159-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS
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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ARDES JOHNSON	**APPELLANT**
V.	**NO. 2007-KA-00159-SCT**
STATE OF MISSISSIPPI	**APPELLEE**

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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Ardes Johnson, Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Albert B. Smith, III, Circuit Court Judge

This the 1st day of October, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

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STATEMENT OF THE ISSUES

ISSUE NO. 1

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ISSUE NO. 2

THE TRIAL COURT ERRED IN DENYING JOHNSON'S MOTION FOR A NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Bolivar County, Mississippi, and a judgment of conviction for the crime of Manslaughter. Ardes Johnson was sentenced to twenty (20) years in the custody of the Department of Corrections following a jury trial on December 11-12, 2007, Honorable Albert B. Smith III, presiding. Johnson is presently incarcerated with the Mississippi Department of Corrections.

Johnson had previously been convicted of murder from the Circuit Court of Bolivar County following a jury trial on May 25, 2004, Honorable Albert B. Smith III, presiding. The Supreme Court of Mississippi reversed and remanded his conviction for a new trial. Johnson was subsequently tried again for murder on or about November 29, 2005, Honorable Albert B. Smith III, presiding. The Circuit Court of Bolivar County, Mississippi, granted a mistrial after the jury indicated that it was unable to reach a unanimous verdict.

FACTS

Ardes Johnson was in Shelby, Mississippi, having made the trip from his home in Chicago to attend his grandmother's funeral. Tr. 170. After the funeral, Johnson stayed in Shelby at his aunt's house and spent most of July 1, 2003, packing her belongings for an intended move. Tr. 172. Shirley Landrum, an old friend of Johnson's whom he had not seen in twenty years, arrived at 10:00 a.m. to help Johnson pack his aunt's belongings. Tr. 121, 173. Throughout the day, Dennis Terrell Davis, Landrum's live-in boyfriend, stopped by the apartment to speak with Landrum. Tr. 122, 174-75.

Davis made his first appearance at the apartment around 7:30 a.m., inquiring as to Landrum's whereabouts. Tr. 174. Johnson informed Davis that Landrum was not there, and Davis left peacefully. *Id.* Landrum arrived at the apartment to help Johnson pack around 10:00 a.m. Tr. 175. Thirty minutes later, Davis returned to the apartment to speak with Landrum. *Id.* Landrum and Davis went outside, had a conversation, and Davis went on his way. Tr. 176. Landrum went back inside the apartment to continue helping Johnson pack. *Id.*

Johnson and Landrum continued packing throughout the day. *Id.* While Johnson was packing, he found a folding knife among his aunt's belongings. Tr. 86, 180. According to Johnson, he is a knife collector, so he threw the knife into his suitcase to take with him when he left for Chicago. Tr. 86. Around 9:30 p.m. Davis made his last visit at the apartment demanding to see Landrum. Tr. 204. Davis, who was irate at the time, pounded on the front door demanding that Landrum leave the apartment. Tr. 177, 78. Upon Landrum's request, Johnson informed Davis that Landrum was not at the apartment and had already left. Following this incident, Johnson called 911 and related the incident to Officer Gwendolyn Russell. Tr. 128, 177-78. Officer Russell arrived at the apartment for a short investigative visit and to look around for Davis. Tr. 178. Officer Russell told Johnson that she did not see Davis and that if he came back to call the station. Tr. 204.

When Officer Russell left, Landrum and Johnson continued to pack and later took a break for dinner. Tr. 140. Around midnight, the two decided to go to the store to get a few beers. Tr. 179. Johnson suggested walking instead of driving because it was nice outside.

Tr. 179-80. As Johnson was leaving the apartment, he put the folding knife in his pocket. Tr. 180. While Landrum and Johnson were walking down the street, Johnson stopped at the corner to talk to a few friends. Tr. 181. While they were on the street corner, Davis appeared from around a dark corner and ran towards Landrum calling her a liar and yelling obscenities. Tr. 181. Davis approached Landrum and hit her with his right hand across the face. Tr. 131. Upon seeing Davis hit Landrum, Johnson walked over to them and told Davis to quit hitting her. Tr. 182. At this point, Landrum walked away from Davis, because she did not want to be hit anymore. Tr. 132. Both Johnson and Landrum testified that Davis had a dark object in his hand, however, no object was ever recovered. Tr. 131, 182. Johnson claims that Davis then turned towards him, with a swinging motion as if to hit him, and Johnson stabbed Davis once in the abdomen with the knife. Tr. 183. When Landrum realized that Davis had been stabbed, she ran to a neighboring house to get a towel for the wound. Tr. 136. Johnson told Davis to stay down because he was hurt. Tr. 184. Johnson tried to get people to call 911, but no one responded so he went back to his aunt's apartment to call himself. *Id.* Johnson threw the knife in some bushes and fled the scene. Tr. 201.

Marlon Taylor and his partner, paramedics at the Bolivar County Medical Center in Cleveland, Mississippi, responded to a 911 call supposedly placed by Johnson shortly after midnight. Tr. 10, 21. When the paramedics arrived at the scene in Shelby, they saw the victim, Davis, lying on his back in the middle of the street. *Id.* At this point in time, Davis was not responding so they performed a sternum rub which proved successful in getting him to respond. Tr. 11. The paramedics observed that Davis was suffering from a stab wound

in the upper left region of the abdomen. Tr. 12. Davis was placed in the ambulance, where he continuously asked the paramedic if he was going to die. Tr.16. Noticing that he was suffering from internal bleeding, the paramedics responded that they were doing everything they could to help him. *Id.* While in the ambulance, Davis was speaking to the police officer at the scene, Officer Russell, and told the officer that Ardes Johnson was the person that stabbed him. Tr. 29-30. Officer Russell went to Johnson's family home but was unsuccessful in finding Johnson. Tr. 30.

Around 6:00 a.m. Johnson left Shelby, Mississippi, and headed back home to Chicago. Johnson was eventually found on July 8, 2003, in Chicago by FBI Agent Pablo Araya. Tr. 84, 186. Agent Araya is a special agent in the violent crimes task force and is also a fugitive coordinator for those that come into the Chicago area. Tr. 77. Agent Araya arrested Johnson in a home in the Chicago area, read him his Miranda rights, and then interviewed him at the police station. Tr. 78-79, 81. During the interview, Johnson gave his version of the story. Johnson told Agent Araya that he placed the knife in his pocket for protection. Tr. 89. He then described the area where he threw the knife upon fleeing the scene. Tr. 93.

When Charlie Griffith, a criminal investigator with the Bolivar County sheriff's Department, received word from the FBI, he went and found the knife that was used to stab Davis. Tr. 42. Upon Johnson's return to Mississippi, Griffith asked him if the knife he found in the bushes was the knife used to stab Davis, and Johnson replied that it was, in fact, the one he used to stab Davis. Johnson continually stated that he stabbed Davis in self-defense and in defense of Landrum. Tr. 194, 210.

SUMMARY OF THE ARGUMENT

The Appellant, Ardes Johnson, was entitled to an acquittal as a matter of law pursuant to the Weathersby Rule which is found in Weathersby v. State, 165 Miss. 207, 209, 147 So. 481, 482 (1933) and its progeny. The Appellant was the only one present when Davis was stabbed because Landrum had already walked off. The Appellant admitted to stabbing Davis. Johnson did so, in fear for his life and that of Landrum. Johnson's version of the events was not substantially contradicted by the evidence, and therefore he was entitled to an acquittal as a matter of law.

The verdict was also against the overwhelming weight of the evidence. Johnson only used the knife for protection. He was in fear for his life and that of Landrum. The evidence shows that Davis had been harassing Landrum throughout the day. With the last incidence, Davis showed up at Johnson's aunts's apartment, intoxicated, extremely irate, beating on the door real hard, and making threatening remarks. Davis slapped Landrum, then lunged while swinging at Johnson with a potentially dangerous object in his hand, Johnson did what he thought he could do to defend himself and to further prevent harm to Landrum. Johnson acted in self-defense. The verdict was clearly against the overwhelming weight of the evidence. This was clearly reversible error.

ARGUMENT

ISSUE NO. 1

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT; THEREFORE THE APPELLANT WAS ENTITLED TO AN ACQUITTAL PURSUANT TO *WEATHERSBY V. STATE*, 165 MISS. 207, 209, 147 SO. 481, 482 (1933).

The Mississippi Supreme Court has set forth the standard of review for the sufficiency of the evidence as follows:

> We must, with respect to each element of the offense, consider all of the evidence-not just the evidence which supports the case for the prosecution-in the light most favorable to the verdict. The credible evidence which is consistent with the guilt [of the accused] must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are resolved by the jury. We may reverse only 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.

Gleeton v. State, 716 So.2d 1083, 1087 (Miss.1998)(citing ***Wetz v. State***, 503 So.2d 803, 808 (Miss.1987)).

The Appellant asserts that he was entitled to an acquittal based on the rule set forth by the Mississippi Supreme Court in ***Weathersby v. State***, 165 Miss. 207, 209, 147 So. 481, 482 (1933). In ***Weathersby***, the Court held:

> [W]here the defendant or the defendant's witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge.

Weathersby, 165 Miss. At 209, 147 So. At 482. The ***Weathersby*** "rule is alive and well and living in the courtrooms of this state." ***Heidel v. State***, 587 So.2d 835, 839 (Miss. 1991)(citing ***Pritchett v. State***, 560 So.2d 1017, 1019 (Miss. 1990); ***Blanks v. State***, 547 So.2d 29, 33 (Miss. 1989); ***Lanier v. State***, 533 So.2d 473, 490 (Miss. 1998)).

"The ***Weathersby*** rule requires that the reasonable, uncontradicted story of the defendant or his witness must be accepted as true. ***Wetz v. State***, 503 So.2d 803, 808 (Miss. 1987), quoting ***Weathersby v. State***, 165 Miss. 207, 209, 147 So. 481, 482 (1933)." ***Green v. State***, 631 So.2d 167, 174 (Miss. 1994). "Where the ***Weathersby*** rule applies and the defendant's version affords an absolute legal defense, the defendant is entitled to a directed verdict of acquittal." ***Green v. State***, 631 So.2d 167, 174 (Miss. 1994)(~~quoting~~ citing ***Blanks v. State***, 547 So.2d ~~29~~ at 33) ~~(Miss. 1989))~~. "But where the defendant's story is materially contradicted, the ***Weathersby*** rule has no application and the matter of conviction versus acquittal becomes a question for the jury." ***Id.***

"It is for the court and not the jury to determine whether the defendant receives the benefit of the ***Weathersby*** rule." ***Green v. State***, 631 So.2d ~~167~~ at 175 ~~(Miss. 1994)~~(citing ***Null v. State***, 311 So.2d 654, 658 (Miss. 1975)). "***Weathersby***, of course, is nothing more than a particularized version of our general standards according to which courts must decide whether in a criminal prosecution the accused is entitled to a judgment of acquittal as a matter of law." ***Jackson v. State***, 551 So.2d 132, 136 (Miss. 1989)(~~citing ***Lanier v. State***, 533 So.2d 473, 490 (Miss. 1988); ***Shaw v. State***, 521 So.2d 1278, 1282 (Miss. 1987); ***Wetz v. State***, 503 So.2d 803, 809 (Miss. 1987); ***Harveston v. State***, 493 So.2d 365, 371 (Miss. 1986))~~ (citation omitted).

In the present case, Johnson was the only one present when Davis was stabbed because Landrum had already walked off. Tr. 132. Johnson stated that he only stabbed Davis because he was in fear for his life. Tr. 210. Both Johnson and Landrum had seen a

dark object in Davis' hand. Tr. 131, 182. Neither Johnson nor Landrum knew what the object could have been. The object could have been a gun, a brick, or some other dangerous object. The fact is that Johnson was afraid for his life and that of Landrum that he acted in self-defense to protect his own life and the life of Landrum. There was testimony that no object was found on the body of Davis or in the street. Tr. 34. However, according to Johnson's testimony, Davis was not stabbed in the street. Tr. 184. Johnson and Davis were off of the street, because after Johnson defended himself with the knife, Davis stepped back a couple of steps and he slipped on the curb and fell in the grass. Tr. 184, 194. Davis was found in the middle of the street yet he fell in the grass after he was stabbed. The dark object was probably dropped at the moment he was stabbed which would have been off of the street in the grass.

Landrum testified that she saw Davis drinking earlier during the day and that he had been on a three day drinking binge. Tr. 123-24, 160. Davis had been to Johnson's aunt's apartment three times that day, getting more and more aggressive as the day turned into night. Tr. 174, 176. The final time Davis came to the house, Johnson was so threatened and worried about Davis because of his actions, he was extremely irate, talking loud, sweating, and his eyes were bulging, that he called the cops over to the house. Tr. 177. Johnson, trying to enjoy a nice night with Landrum, grabbed a knife for their protection before walking to the store due to the radical behavior of Davis. Once Davis jumped them on the walk to the store, he hit Landrum across the face. Johnson was next on Davis's list as he lunged and

swung at Johnson. Johnson, fearing for his life, pulled out his knife and stabbed Davis in self-defense.

Johnson had Davis lay down because he knew Davis was hurt. Tr. 184. Tried to get someone to call 911, but instead ran to his aunt's apartment to make the call himself. Tr. 184-85. Johnson did not know Davis prior to his trip from Chicago to his grandmother's funeral. Tr. 173. The problems that Davis had throughout the day were with Landrum and not Johnson. Tr. 205. All the altercations and arguments during the day were with Landrum. *Id.* Johnson was not trying to cause any problems or get into the middle of any situations. However, Johnson had a right to defend himself and Landrum once he thought his life or Landrum's life was in danger.

In light of the evidence elicited at trial, Johnson's version of the events on the night in question are more that reasonable. His version of those events was not substantially contradicted in material particulars, and therefore he was entitled to an acquittal under Weathersby and its progeny. Accordingly, the trial court erred in not granting Johnson's motion for a directed verdict. The Appellant asserts that the Court should reverse and render on this issue.

ISSUE NO. 2

THE TRIAL COURT ERRED IN DENYING JOHNSON'S MOTION FOR A NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In trial counsel's Motion for Judgment of Acquittal Notwithstanding the Verdict and in the Alternative for a New Trial (JNOV), counsel specifically argued that the jury's verdict

was against the overwhelming weight of the evidence. C.P. 174, R.E. 18. The trial judge denied this motion. C.P. 176, R.E. 19.

In ***Bush v. State***, the Mississippi Supreme Court set forth the standard of review as follows:

> When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we 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. ***Herring v. State***, 691 So.2d 948, 957 (Miss.1997). We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. ***Amiker v. Drugs For Less, Inc.***, 796 So.2d 942, 947 (Miss.2000). However, the evidence should be weighed in the light most favorable to the verdict. ***Herring***, 691 So.2d at 957. 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 v. State***, 423 So.2d 800, 803 (Miss.1982). Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. ***Id.*** This 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.

Bush v. State, 895 So.2d 836, 844 (Miss. 2005) (footnotes omitted).

The Mississippi Supreme Court held that "[i]f the defendant's life was in real or apparent danger at the hands of the deceased, and he believed it, then he had a right to shoot to kill. ***McNeal v. State***, 115 Miss. 678, 76 So. 625, 627 (1917). Johnson's life was in real danger. He nor Landrum knew what Davis was going to do next. He had been harassing them all day long at Johnson's aunt's apartment. Tr. 176. He had been drinking, according to Landrum, for three straight days. Tr. 160. Davis was extremely irate, intoxicated, and

beating on the door real hard. Tr. 127, 177. He had been beating on the door, peeping into the windows, and making threatening remarks. Tr. 177. Johnson called the cops, trying to prevent something from happening, hoping the cops could take care of the harassment by Davis. Tr. 177.

Johnson put a knife in his pocket for protection. While he and Landrum were walking to the store, they were jumped by Davis. Davis, with some object that appeared as a weapon, slapped Landrum, turned toward Johnson while lunging and swinging at him. Johnson pulled out his knife in self-defense and stabbed Davis. Johnson did not know Davis, nor did he have a problem with Davis. Johnson reacted once he thought his life was in danger, by defending himself. The verdict was clearly against the overwhelming weight of the evidence.

The Appellant therefore respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial. To allow this verdict to stand would sanction an unconscionable injustice. *See* ***Hawthorne v. State***, 883 So.2d 86 (Miss. 2004).

CONCLUSION

The Appellant contends that the evidence was insufficient to support the verdict and that the Court should reverse and render his conviction. However, should that Court not reverse and render, the Appellant contends that the verdict was against the overwhelming weight of the evidence, and therefore the Court should reverse and remand for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Ardes Lee Johnson, Appellant

BY: 

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Ardes Johnson, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing BRIEF OF THE APPELLANT to the following:

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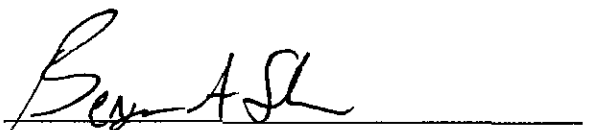
This the 1st day of October, 2007.



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