IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ANDRE J. JONES — APPELLANT

VS. — NO. 2009-KA-0039-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jones County, Mississippi, wherein a jury convicted Andre J. Jones of the July 17, 2007, murder of Eric Rogers. CP 34-37. Circuit Judge Billy Joe Landrum sentenced Jones to life in the custody of the Department of Corrections. CP 37-38. After denial of post trial motions, Barfield appealed raising the following issues. CP 40 .

STATEMENT OF THE ISSUES

ISSUE NO. 2: **Whether the *Weathersby* rule applies?**
ISSUE NO. 1: **Whether there is sufficient evidence to support the verdict?**

STATEMENT OF THE FACTS

Vernon Barnes (Barnes) testified to the events surrounding the day Andre J. Jones (Appellant) killed Eric Rogers. On July 17, 2007, Cadaro Gavin, Chris Jones, Brandon Jones, (Appellant's relatives) and Eric Rogers were in the car with Barnes when they picked up Appellant.

T. 41-42. The men rode around, listening to music, made a few stops and eventually went to the house belonging to Eric Rogers and Barnes where Appellant stabbed and killed Eric Rogers (Eric).

. Barnes testified that when Appellant first got in the car, he sat in the front seat with Barnes and Eric. T. 42. After making a stop, Eric got back in the front seat of the car but Appellant ordered Eric to get in the back seat; Eric complied and Appellant sat alone in the front passenger seat. T. 42 As the group rode on, "It was just a lot of ragging going on" between Eric and Appellant. T.43. Upon arriving at Barnes' and Eric's house, Appellant continued "...ragging on [Eric]. He was just on him for some reason. I don't know why." T. 44. Fed up with being "ragged on" Eric walked down the road but Appellant followed. T. 45. Appellant "punched Eric, Eric hit him back and [Appellant] fell. And Eric just grabbed him and said man, I told you to leave me alone." *Id.* Then, according to Barnes, Eric went into their house through an opened window. T. 46. Appellant asked Barnes to unlock the door, but he refused because he wanted Appellant to leave Eric alone. T. 47. Eric unlocked the door for the others to enter the house. *Id.* Barnes and Appellant entered the house through the front door. *Id.* Barnes testified that the house did not have any power so it was dark; however, there was sufficient street light shining in the house to see each other's face and to see where you were going. T. 48; 57. Barnes testified Appellant had visited in the house two or three times before that day. T. 48. Barnes heard Eric telling Appellant to leave him alone. T. 47. Appellant, who was walking around holding his head, passed by Barnes in the living room area, went in the kitchen, returned to the room and punched Eric two to three times. T. 47-48. Barnes testified "He started punching Eric. I thought he was punching Eric. It was dark. I really can't say that he was stabbing him because it was dark. But he was – and Eric tried to fight back again. And Eric just let him go and took a step back and fell." T. 48. The men ran from the house and Barnes

called 911 when he realized Eric was hurt. T. 48.

Chris Jones (Chris), Appellant's nephew, was the next witness. Chris testified about the incident between Appellant and Eric involving riding in the front seat. (T. 59). He also testified that at one point during the day, Eric offered Appellant his hand saying he didn't want to fight but Appellant refused the handshake. T. 64-65. After arriving at Barnes's house, Chris saw Appellant walk to the street where Eric was already standing and smoking a cigarette. T. 60. The two men started fighting, Chris saw Eric on top of Appellant and bust Appellant's head. *Id.* Chris did not see who start the fight but did testify that Appellant approach Eric. *Id.* According to Chris, Eric ran into the house and locked the door. T. 60 Chris testified Appellant crawled through a window into the house and then unlocked the front door for the others. T. 60; 66. Chris remained outside while the others went in the house. T. 61. Chris heard bumping in the house, then saw everyone run out of the house. *Id.* He looked in the house and saw Eric lying in a pool of blood. *Id.* When Chris went to Barnes's car to leave; Appellant, Barnes and Cadaro were already in the car. (T. 61). Chris told his uncle to get out of the car. T. 62. Appellant denied any wrongdoing, told the group that he did not know what was going on and then got out of the car. T. 62.

Michael Reaves, an investigator with the Laurel Police Department, testified to his investigation of the stabbing. Upon arriving at the scene, Reeves observed Eric's body lying face down with his hands by his side near the front door. T. 67. Eric's body was facing away from the front door. T. 73. There was a large amount of blood around the body and splattered along the wall near the body. T. 67; Ex. 6. Blood droplets were also found on the floor in the hallway going from the living room to the kitchen, bedroom and bath. T. 74; Ex. S-4. His examination of the body revealed a single knife wound to the collarbone area; he did not see any defensive wounds. T. 68.

They did not find a weapon near the body or anywhere in the house. T. 68. They did find a butcher block knife holder on the kitchen counter with a knife missing. T. 68; Ex. S-4; S-12. They found the kitchen knife used to kill Eric in a shrub in the front yard. T. 78. Reaves testified that a streetlight was shining through the front window and a window in the breakfast nook so there was enough light to see through the house. T. 89-90. Reaves testified that even though the kitchen area was not visible from the front door, when you "walked into the kitchen, the block of knives was the only thing in that area on the counter and it was prominently in view. It wasn't something that I had to search for in the kitchen. " T. 91-92.

Dr. Steven Hayne, performed the autopsy on Eric Rogers. Dr. Hayne, a forensic pathologist, testified that Eric died from a single stab wound over the right shoulder just to the side of the neck and just above the chest T. 95. The track of the stab wound was downward. T. 99.

Appellant testified in his own defense. According to Appellant, after arriving at Barnes's house, he was standing by the car port when Eric approached him and started an altercation. T. 111-112. Eric hit him several times. *Id.* He thought his head was bleeding so he asked Barnes to let him into the house. *Id.* Barnes refused to let him in so Appellant went up to the house and stood on the front porch until Eric "snatched the door open" with a knife in one hand. T. 111.

Q. Okay. And what did you say he had when he snatched the door open?
A. A knife.
Q. How was he holding it?
A. It was straight up.
Q. What did you do?
A. **I was fixing to run. I started to run, but I knew I couldn't get away from him because he was so close up on me when he snatched the door open. I was standing right there. So I grabbed him,** and we started tussling.
Q. Why. Why did you grab him?
A. I was scared he was going to stab me. We already had a fight.

Q. What happened in the tussle?
A. We were tussling. We tussling, and then we both fell. He didn't get up. I got up. I jumped up. And I grabbed the knife. And [Barnes] came to the door and he was like, what you do, what you do, like that there. And he told Cadaro to go get his gun out his trunk. And I walked passed him and walked outside and started walking up the street.

T. 112. (*Emphasis added.*)

Appellant testified he did not know if anyone else went in the house. T. 112. He testified Barnes was standing at the carport, Cadaro was standing by the car and his nephews were standing in the yard, so no one else could see what he saw. T. 113. Appellant denied going into the kitchen and getting the knife and denied intending to kill Eric. T. 113. He also denied wanting to fight anyone that day. T. 114.

Appellant testified he left the house with the knife in his hand because Barnes had asked for his gun when he learned of Eric being injured. T.119. Appellant saw two ladies that he was trying to get a ride from so he threw down the knife. *Id.*

SUMMARY OF THE ARGUMENT

The State submits Appellant's version of events is not reasonable and is contradicted by the physical evidence and testimony of the State's witnesses; therefore, the *Weathersby* rule does not apply. The State presented legally sufficient evidence that Andre Jones is guilty of the murder of Eric Rogers; therefore, this Court should affirm the jury's verdict.

ARGUMENT

Proposition I. The *Weathersby* rule is not applicable to the case *sub judice.*

In his first assignment of error, Appellant asserts that he was entitled to an acquittal based on the rule set forth in *Weathersby v. State*, 165 Miss. 207, 209, 147 So. 481, 482 (1933). The

Weathersby Court held:

> [W]here the defendant or 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 [S]tate, or by the physical facts or by the facts of common knowledge.

Appellant contends that his "version of the events on the night in question are more [sic] reasonable. His version of those events was not substantially contradicted in material particulars, and therefore he was entitled to an acquittal....." Appellant argues Barnes did not know what happened inside the house. He contends as the only eyewitness to the stabbing, his story of self defense must be accepted as true thereby entitling him to reversal and rendering on this issue.

The State submits Jones's reliance on *Weathersby* is misplaced; the rule does not apply to the case *sub judice*. The Mississippi Supreme Court ruled the *Weathersby* rule applicable in *Johnson v. State*, 987 So.2d 420 (Miss.,2008) but stated:

> [W]e are fully cognizant that there can be circumstances when the defendant and/or defendant's witnesses are the only eyewitness to the homicide and the *Weathersby* rule would not apply. For example, if the defendant or the defendant's eyewitnesses' testimony satisfies all the elements of murder or manslaughter, the defendant would not be entitled to a directed verdict of acquittal, as their testimony would be the basis for a valid conviction.
>
> Furthermore: this rule has no application where the defendant's version is patently unreasonable, or contradicted by physical facts. Where the defendant is the only eyewitness to a slaying, his version must be reasonable and credible before he is entitled to an acquittal under the rule.
>
> And, there is still another circumstance which still precludes the application of the *Weathersby* rule, and that is where the accused, following the slaying, gives conflicting versions of how the killing took place, or initially denies the act....
>
> In those cases in which the defendant is the only eyewitness to the slaying, and in which the *Weathersby* rule is inapplicable (i.e., the defendant does not secure a directed verdict of acquittal), it then becomes a jury issue as to whether to believe or not believe the defendant's testimony of how the slaying occurred, and to either convict or acquit. *Blanks,* 547 So.2d at 33-34 (citations omitted).

Johnson 987 So.2d at 426.

The State contends the evidence wholly contradicts Appellant's version of events. Vernon Barnes was a credible eyewitness to the stabbing. Barnes's testimony indicated that Appellant had been the instigator of conflict with Eric throughout the day, from the incident in the front seat of the car to the physical altercation in front of the house. Eric tried to get away from Appellant but Appellant kept seeking out Eric to further the conflict. Eric even retreated to the safety of his own home and Appellant followed him. Chris's testimony corroborated Barnes's testimony on the events occurring outside his house, that Appellant sought out Eric; that Eric retreated to his home.

Barnes and Appellant both testified Appellant asked Barnes to unlock the door and let Appellant in the house but Barnes refused. Both testified Eric opened the door from inside and Appellant entered. Barnes testified that after entering the house, he saw Eric and Appellant tussling. Just because Barnes did not realize at the time that Appellant was stabbing Eric does not mean he did not witness the murder. Barnes testified that even though the house was dark there was sufficient street light shining in the house to enable him to see the faces of the other men in the room. He saw Appellant pass by him in the living room going to the kitchen and then return to the area to tussle with Eric. He witnessed Eric fall to the ground and Appellant leave the house with the knife. In his brief, Appellant misstates Barnes's testimony. Appellant claims Barnes, "when asked directly on cross-examination whether he was certain Andre Jones was the one that walked by him in the dark with the knife, responded I don't know, sir."(Appellant's brief 10). Barnes was responding to the question"**How** are you certain that it was Andre Jones that walked beside you?"(Emphasis added.)

Appellant contends Eric opened the door holding a knife straight up in his hand. Appellant testified that he could not run because Eric was so close to him. Appellant claimed he immediately grabbed Eric fearing that Eric might stab him and then they began tussling inside the house is not

reasonable. As seen in the photographs of the front of the house, Ex. S-1; S-2; S-6A, the front door opens inward. If Eric opened the door from inside the house holding the knife straight up in one hand, as Appellant claims, then Eric would have to step back or away from the door and therefore away from Appellant. Appellant, who was claims he was standing on the front porch, would have had ample room and opportunity to flee from Eric who was standing inside the house. In fact, Appellant would have had to step forward inside the house to grab Eric, which is hardly the actions of a frightened man scared he was about to be stabbed. Also, the drops of blood on the floor and the splattering of blood on the wall and front door would indicate Eric was stabbed while in the entrance area to the kitchen, traveled across the living room and fell near the front door.

When 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. *Green v. State*, 631 So.2d 167, 174 (Miss.1994)(quoting *Blanks v. State*, 547 So.2d 29, 33 (Miss. 1989)). The credibility of a witness is a question for the jury to decide. *Pearson v. State*, 428 So.2d 1361, 1363 (Miss.1983). Based on the verdict, the jury obviously determined that Appellant was not a credible witness. This issue is without merit.

Proposition II. There is legally sufficient and credible evidence to support the jury's verdict of murder.

Jones contends that the evidence supports a finding that he acted in self-defense and, alternatively, that the proof supports at best a finding that he was guilty of manslaughter rather than murder. Appellee counters that the jury was the "ultimate judge" of whether this killing was murder or committed in self-defense. *Webster v. State*, 817 So.2d 515, 518-19 (Miss.2002).

Appellant first argues he stabbed Eric in self-defense. The apprehension or fear that will

justify killing another in self-defense must appear objectively real to a reasonable person of average prudence. *Hart v. State,* 637 So.2d 1329, 1339 (Miss.1994). In *Wade v. State,* 748 So. 2d 771, 775 (Miss. 1999), the Mississippi Supreme Court held that the issue of justifiable self-defense presents a question of the weight and credibility of the evidence rather than sufficiency and is to be decided by the jury. When a defendant has been found guilty by a jury, appellate authority is limited, and the verdict should not be overturned so long as there is "credible evidence in the record from which the jury could have found or reasonably inferred each element of the offense." *Davis v. State*, 586 So.2d 817, 819 (Miss.1991). The reviewing court is to examine all of the evidence in a light most favorable to the verdict. *Yates v. State*, 685 So.2d 715, 718 (Miss.1996). This Court has held that reversal is warranted only where the evidence is such that reasonable and fair-minded jurors could only find the accused not guilty of the offense for which he was convicted. *Wetz v. State*, 503 So.2d 803, 808 (Miss.1987).

Appellant then asserts that the State failed to prove that he acted with deliberate design to commit murder; and at most was guilty of manslaughter, even though at trial he withdrew a proposed manslaughter instruction. In considering whether the evidence is legally sufficient to sustain a conviction in the face of a motion for JNOV, "[T]he critical inquiry is whether the evidence shows 'beyond a reasonable doubt that [the] accused committed the act charged, and that he did so under such circumstances that every element of the offense existed.' " *Id.* at 843-44(¶ 16) (quoting *Carr v. State*, 208 So.2d 886, 889 (Miss.1968)). The key question in this analysis is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* If the evidence against the defendant is such that "reasonable fair-minded men in the exercise of impartial judgment

might reach different conclusions on every element of the offense," we will deem the evidence sufficient. *Id.*

Jones was indicted for murder pursuant to Mississippi Code Annotated section 97-3-19(1)(a). Therefore, the State was required to prove that: (1) a person was killed without the authority of law, and (2) the killing was done with the deliberate design to effect the death of the person killed or of some other person.

Appellant argues the theory of "imperfect self-defense" as set out in *Wade v. State,* 748 So. 2d 771, (Miss. 1999). An intentional killing may be considered manslaughter if done without malice but under a bona fide (but unfounded) belief that it was necessary to prevent death or great bodily harm. *Lanier v. State*, 684 So.2d 93, 97 (Miss.1996). In *Lanier*, this Court reversed a murder conviction where the trial court refused to give an instruction which would have allowed the jury to reject a self-defense theory yet still find the defendant guilty of only manslaughter. *Id.*

Appellant relies on *Wade* and *Dedeaux v. State*, 630 So.2d 30 (Miss. 1993) to support his argument that the facts only support a conviction for manslaughter. However, both can be factually distinguished. In *Dedeaux*, the supreme court reversed a murder conviction and remanded it for sentencing for manslaughter. Even though the defense did not request a manslaughter instruction, the supreme court found the facts only supported manslaughter. In *Dedeaux*, the victim made prior threats to Dedeaux to kill him, on one occasion the victim was armed with a pistol when he made the threat against Dedeaux; and on the night of the slaying, the victim was the aggressor. In *Wade*, there was a history of violent domestic abuse between the victim and Wade. The victim assaulted Wade on the night he was killed and actually took steps toward her as if he was about the assault her again, when Wade shot him.

In support of its argument in Proposition II, the State adopts the facts as set forth in the previous issue. In the case at hand, there is no evidence of a history of conflict about a woman, as Appellant claims. There was testimony of conflict on the day of the stabbing, but Eric was not the instigator. Barnes and Chris both testified that Eric tried to get away from Appellant but Appellant followed him. Eric tried to shake Appellant's hand to no avail; Eric walked away from Appellant upon arriving at the house, and then retreated to the house after Appellant attacked him.

Appellant claims that in this case the evidence shows he acted on impulse without premeditation. The only evidence offered at trial that Appellant acted on impulse or that Eric provoked an argument and that Appellant acted "in the heat of passion" is Appellant's own testimony. The Supreme Court defined "heat of passion" in *Mullins v. State*, 493 So.2d 971 (Miss.1986) as a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.

There was no evidence that Eric provoked Appellant. Both Chris's and Barnes"s testimony indicate Appellant sought out Eric. Testimony established that Eric attempted to avoid Appellant and not fight with him much less provoke him in any manner.

Viewing the evidence in the present case in the light most favorable to the verdict, the verdict is not so contrary to the overwhelming weight of the evidence that to allow it to stand would be an unconscionable injustice. The evidence against Jones is substantial, and in no way preponderates against the guilty verdict. Likewise, the evidence against Jones was sufficient to sustain his murder conviction. Viewing the evidence

in the light most favorable to the prosecution, a rational trier of fact could have found that Jones acted with deliberate design in the killing of Eric Rogers. The evidence established that Eric walked away from the confrontation in the front yard, the Appellant followed him into his own house, (whether he entered the house through the front door or front window), retrieved the knife from the kitchen, and stabbed Eric in the neck. Such conduct evinces a deliberate design to kill. It is the position of the State that there has been no miscarriage of justice. The jury found and the facts absolutely support the murder conviction. The proof amply sustains the jury's determination that this killing was not manslaughter, that it was not justified by necessary self-defense, but that it was in fact murder. No basis exists for disturbing its verdict.

CONCLUSION

Based upon the arguments presented herein as supported by the rulings of the trial court, exhibits and record on appeal, Appellee would ask this reviewing Court to affirm the jury's verdict.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, 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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This the 9th day of November, 2009.

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