

**IN THE COURT OF APPEALS 12/03/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 95-KA-00009 COA**

**HAZEL JENE HAYES**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES E. THOMAS

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES F. THOMPSON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.

DISTRICT ATTORNEY: STEVE SIMPSON

NATURE OF THE CASE: CRIMINAL- MANSLAUGHTER

TRIAL COURT DISPOSITION: GUILTY- SENTENCED TO SERVE TWELVE (12) YEARS IN  
THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE BRIDGES, P.J., COLEMAN, KING, AND McMILLIN, JJ.

COLEMAN, J., FOR THE COURT:

A jury in the Harrison County Circuit Court found Hazel Jene Hayes, whom the grand jury had indicted for murder, guilty of manslaughter for the death of Lloyd Rushing, her live-in male companion. The trial court sentenced her to serve a term of twelve years in the custody of the Mississippi Department of Corrections. Hayes appeals from the judgment of her guilt of manslaughter, but we affirm the trial court's judgment and its sentence of Hayes to serve twelve years in the custody of the Mississippi Department of Corrections.

## I. FACTS

Shortly after ten o'clock on the night of December 6, 1989, Hazel Jene Hayes slew her live-in male companion, Lloyd Rushing, by stabbing him six times with a kitchen knife. Rushing and Hayes had lived together for five years in Gulfport. Rushing was employed by the Dupont Company as a bricklayer, and Hayes worked in housecleaning services at Keesler Air Force Base. On the night he was destined to enter eternity, Rushing phoned Hayes about 5:00 p.m. to tell her that he was going to his son's house after work and would be home about 7:00 p.m.

Rushing had been seeing one Annie Pearl Martin for approximately four months before December 6; but he continued to live with Hayes. Annie Pearl Martin, also a Gulfport resident, would meet Rushing at a restaurant/bar known as Pearl's Cafe which was located around the corner from Annie Pearl's home. Some weeks the two would rent a room after work on Thursdays or Fridays. We reserve the narration of the conflicting versions of events which led to Rushing's death for the portion of this opinion in which we discuss Hayes' trial.

## II. TRIAL

We have explained that while the grand jury indicted Hayes for murder, the trial jury found her guilty of manslaughter. We first relate the version of the events on Friday night, December 6, 1989, to which Hayes testified, and then we provide the explanation of Annie Pearl Martin and her brother, Jimmy Lee Martin, in accordance with their testimony.

### A. Hazel Jene Hayes' version

Hayes admits that she stabbed Rushing. She testified that after she arrived home from work shortly after 4:30 that afternoon, Rushing telephoned her about five o'clock to say that he would be late because he was going to see his son, Lawrence, to ask his son if he would go with him on a work-related trip the next day. Hayes proceeded to do the laundry and to cook supper. She ate her meal, wrapped Rushing's plate, placed it on the stove, and then washed the dishes. She testified that after she finished eating her supper, she bathed and then watched television while she waited for Rushing to come home. She remembered watching "Wheel of Fortune," which came on after the six o'clock news, but she did not recall what other programs she watched while she waited for Rushing to arrive that night.

When he finally arrived home a little after 10:00 p.m., she met him at the kitchen-carport door and she asked him, "Where you been?" Rushing retorted, "I'm a grown man, and I'll do what I want." Then he grabbed her around the neck with both of his hands and began to choke her as she stood with her back against the kitchen stove with the kitchen counter in which the sink was located to her left. During the scuffle, Hayes reached with her left hand over to the kitchen counter to get anything that would make Rushing stop choking her. She grabbed a knife and stabbed Rushing at least twice, once in the back of his right shoulder and once in Rushing's anterior. She testified, "I didn't really mean to kill him. I really didn't." Hayes claimed she stabbed Rushing in self-defense.

### **B. The version of Annie Pearl Martin and her brother, Jimmy Lee Martin**

On the night of December 6, 1989, Rushing came to Annie Pearl Martin's house for supper, which consisted of corn and pork chops. Jimmy Lee Martin, who had been at his sister's home earlier that night visiting with Rushing and Annie Pearl Martin, left his sister's home to get his daughters, who had been at a beautician's, and take them to his home. With this mission accomplished, Jimmy Lee Martin returned to his sister's home between 9:00 and 9:30 p.m. with a bottle of gin. Upon his return, Jimmy Lee Martin noticed a blue Nissan car parked in front of Annie Pearl Martin's residence. Jimmy Lee Martin saw a female wearing glasses sitting in the driver's seat of the blue Nissan car. Jimmy Lee Martin knew that the blue Nissan car also belonged to Rushing. When Jimmy Lee Martin was asked at trial why he knew the blue Nissan automobile was Rushing's, he responded, "Because the Nissan has been to my house several times, and when I told him [Rushing] about the car being parked out there, then he got up and looked out the door, and he verified that it was his car." Rushing appeared to know that Hayes was the woman who was sitting in his blue Nissan car.

When Jimmy Lee Martin returned with the bottle of gin, he found his sister and Rushing laughing and talking, or, as he described it, "skinning and grinning." Rushing had a drink of gin mixed with 7-Up. Jimmy Lee Martin indulged in a drink with Rushing. Jimmy Lee Martin testified that after Rushing discovered that Hayes was sitting in his other car outside Annie Pearl Martin's house, Rushing told his sister and him that he would go home and pack all his worldly possessions in the trunk of his car and leave. Jimmy Lee Martin testified that Rushing also stated, "I might as well go on and get this over with." Around ten o'clock that evening, Rushing left Annie Pearl Martin's home. Jimmy Lee Martin testified that he went outside with Rushing when Rushing left Annie Pearl Martin's house. When he did he saw the blue Nissan with the same woman sitting inside it. Just after Rushing left, the female drove away in the blue Nissan in the direction opposite to the one driven by Rushing.

As we noted, the jury returned a verdict of guilty of manslaughter, and the trial judge sentenced Hayes to serve a term of twelve years in the custody of the Mississippi Department of Corrections

### **III. ISSUES**

In her brief, Hayes sets out two issues for this Court's review, analysis and resolution:

1. The trial court erred in failing to sustain the motion for directed verdict at the end of the State's case in chief and at the conclusion of the trial in accordance with the rule of law as set out in *Weathersby v. State*.

2. The trial court erred in overruling Defendant's motion for J.N.O.V. or in the alternative for a new trial, in that the verdict of the jury was against the overwhelming weight of the evidence and contrary to law.

#### IV. ANALYSIS AND THE LAW

Our standard of review provides that this Court must view all of the evidence presented at trial in the light most favorable to the State. As stated by the Mississippi Supreme Court in *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987):

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence -- not just that supporting the case for the prosecution -- in the light most consistent with the verdict. We give prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb. (citations omitted).

*Id.* "The same rule as to the scope of appellate review applies in motions for directed verdict and judgments notwithstanding the verdict." *Litton Systems, Inc. v. Enochs*, 449 So. 2d 1213, 1214 (Miss. 1984).

"In determining whether or not a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when it is convinced that the circuit court has abused its discretion in failing to grant a new trial." *Isaac v. State*, 645 so. 2d 903, 907 (Miss. 1994). "Unless the lower court abused its discretion in finding that the verdict was not against the overwhelming weight of the evidence, we will not reverse." *James v. Mabus*, 574 So. 2d 596, 601 (Miss. 1990). Thus, this Court must affirm the trial court's judgment of Hayes' guilt of manslaughter and sentence to serve twelve years in the custody of the Mississippi Department of Corrections unless we determine that the trial court abused its discretion in denying Hayes' post-conviction motions.

**Issue 1** 1. The trial court erred in failing to sustain the motion for directed verdict at the end of the State's case in chief and at the conclusion of the trial in accordance with the rule of law as set out in *Weathersby v. State*.

The first issue argued by Hayes is that her motions for a directed verdict, which she made both at the conclusion of the state's case in chief and at the conclusion of the trial, ought to have been sustained

based on the law as set out in *Weathersby v. State*, 165 Miss. 207, 147 So. 481, 482 (1933). The "*Weathersby Rule*" states:

[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.

*Id.* In other words, Hayes maintains that the *Weathersby* rule entitles her to an acquittal since she is the only eyewitness to Rushing's death and her version of the facts is reasonable and not contradicted by a credible witness, or witnesses, for the State nor by physical facts or other credible evidence. *Mallett v. State*, 606 So. 2d 1092, 1094 (Miss. 1992).

The State, in its brief, contends that Hayes' argument with regard to the *Weathersby* rule is procedurally barred because Hayes never mentioned the *Weathersby* rule in either of her motions for a directed verdict during trial. However, Hayes did raise the *Weathersby* rule in her motion for JNOV or, in the alternative, for a new trial. This Court declines to address the procedural aspect of invoking the rule because whether Hayes properly raised the *Weathersby* rule, it has no application to the evidence in this case. Many defendants have cited and argued the application of the *Weathersby* rule, but few have prevailed. *Buchanan v. State*, 567 So. 2d 194, 196 (Miss. 1990). Usually, a factual issue is presented which requires submission of the case to the jury. *Id.* In *Buchanan*, the supreme court expressed the other side of the *Weathersby* rule: "Where the physical facts and circumstances in evidence materially contradict the defendant's version of what happened, the Circuit Court is not required to direct a verdict under *Weathersby*. Rather, the matter then becomes a question for the jury." *Id.* at 197 (citations omitted).

Hayes asserts that because she was the only witness to the altercation with Rushing, no one else can contradict her version of Rushing's death by stabbing. True, Hayes was the only witness to the incident which culminated in Rushing's death. However, other testimony exists about Hayes' motive to kill Rushing (his two-timing her for Annie Pearl Martin). There is also the fact that Rushing was stabbed six times -- four times in the posterior of his right shoulder and twice in the anterior of his body. Hayes admits that she killed Rushing by stabbing him with a knife, but she claims that she did so in self-defense. The clause in the *Weathersby* rule relevant to our analysis of this issue states, "accepted as true, unless substantially contradicted in material particulars by a credible witness. . . ."

The State's evidence, which included the protocol and pictures of Rushing's autopsy, and the testimony of Annie Pearl Martin and her brother, Jimmy Lee Martin, revealed facts that created an issue of fact only a jury could weigh to determine the outcome of the case. Hayes' live-in male companion, Rushing, was dating another woman, and Jimmy Lee Martin testified that he saw Rushing's blue Nissan automobile in front of his sister's home the night of the homicide. He also saw a woman who was wearing glasses sitting in the driver's seat of that car. The State called Hayes' sister, Ida Nell Stapleton, to whom Hayes had called after the wounded Rushing left her home on Friday night, as a rebuttal witness. Ms. Stapleton testified that during another conversation with Hayes, she told her that she had been to North Gulfport, where she has seen Rushing come out of a house "somewhere over there." Stapleton further testified that Hayes told her that she had beat Rushing home.

On cross-examination, the State asked Hayes the following questions about whether she suspected that Rushing was seeing another woman, to which she gave the following answers:

Q. Did you ever quarrel about Lloyd seeing another woman?

A. No. I asked him and he told me he wasn't, so that was that.

Q. When did you ask him that?

A. Like in November, I think.

Q. Around Thanksgiving?

A. Yeah. So he told me he wasn't seeing another woman, which I didn't know the lady's name at that time, because I had heard this like hearsay that he was - had saw another woman in the car.

Q. Let me ask you about that. What made you think Lloyd was seeing another woman?

A. Because one of his friends had told me this. And so I asked him, confronted him about it. He said he wasn't. So that -- I never thought no (sic) more about it.

Even though Hayes testified that she conclusively accepted Rushing's denial that he was seeing another woman, her testimony established that she suspected that her live-in male companion of five years was succumbing to the charms of another woman. All of the foregoing testimony establishes a possible motive of jealousy which so enraged Hayes that she stabbed Rushing six times to claim his life. Moreover, the question of whether Hayes had driven Rushing's blue Nissan car to Annie Pearl Martin's home on Friday night creates enough contradiction of Hayes' testimony to send this case to the jury for their determination of Hayes' guilt or innocence.

The Defendant's testimony in the case *sub judice* is further contradicted by the physical facts presented in the decedent's autopsy report. Initially Hayes testified that she remembered stabbing Rushing only twice, but when the prosecution cross-examined her, she admitted that she thought that she had stabbed him only twice until she had seen the protocol for Rushing's autopsy. She then testified that she had stabbed him three times at most, twice in the rear of the right shoulder and once in his anterior. The State's cross-examination on the subject of how many times she had stabbed Rushing ended with the following question, to which she gave the following answer:

Q. You don't know how many times you stabbed him, do you?

A. I really don't.

We previously related that the autopsy protocol contained the information that Rushing had been

stabbed four times in the posterior of his right shoulder and twice in the anterior of his body. With regard to the relationship of the *Weathersby* rule to the accused's defense of self-defense where there is a conflict of evidence on that issue, the Mississippi Supreme Court explained in *Harveston v. State*, 493 So. 2d 365, 371 (Miss. 1986):

[W]e have held repeatedly that, if there are circumstances shown in the evidence which materially contradict the defendant's version of self-defense, the jury is not required to accept his version, but may in determining guilt or innocence consider his version of self-defense along with the conflicting evidence and any unfavorable inferences therefrom.

Regardless of whether this issue is procedurally barred because Hayes omitted mentioning the *Weathersby* rule until she filed her post-conviction motion for JNOV or alternatively a new trial, we hold that the *Weathersby* rule is inapplicable to the evidence and the testimony in this case. There was ample evidence to impeach Hayes' version of the events on the night of Rushing's death; and there was ample evidence to establish Hayes' anger with Rushing and her jealousy of Annie Pearl Martin to motivate her to stab Rushing to death. The trial court did not err by failing to sustain Hayes' motion for JNOV or, alternatively, for a new trial based on the *Weathersby* rule. We resolve this issue adversely to Hayes.

**Issue 2 2.** The trial court erred in overruling Defendant's motion for JNOV or in the alternative for a new trial, in that the verdict of the jury was against the overwhelming weight of the evidence and contrary to law.

### **A. Motion for judgment JNOV**

There is a "distinction with a difference" between a motion for JNOV (judgment notwithstanding the verdict) and a motion for new trial. The ultimate function of a criminal defendant's motion for JNOV is to attack the sufficiency of the State's evidence. The motion for directed verdict which a defendant makes at the close of the State's case in chief serves that same purpose at an earlier stage in the prosecution. Either a motion for a peremptory instruction or another motion for directed verdict made by the criminal defendant after both the State and the defendant have finally rested tests the sufficiency of the State's evidence at that point in the trial.

The Mississippi Supreme Court explained these relationships in *Wetz v. State*, 503 So. 2d 803, 808 n3 (Miss. 1987):

[A]ll of these motions--the motion for directed verdict made at the end of the case for the prosecution, the request for a peremptory instruction at the end of all of the evidence or the motion for a directed verdict at that point, or, finally, a motion for judgment of acquittal notwithstanding the verdict--are procedural vehicles for challenging the sufficiency of the case for the prosecution. Each requires that the court consider all of the evidence before it at the time the motion is considered. When the sufficiency of the evidence is challenged on appeal, this Court properly should review the Circuit Court's

ruling on the last occasion when the sufficiency of the evidence was challenged before the trial court. Here, of course, that was when the Circuit Court overruled the motion for a new trial which contained at least two paragraphs challenging the legal sufficiency of the evidence.

In *Harveston v. State*, 493 So. 2d 365, 370-71 (Miss. 1986), the Mississippi Supreme Court explained and analyzed the *Weathersby* rule to demonstrate that it was another form of the standard of review for an appellate court's determination of whether a trial court erred when it denied a criminal defendant's motion for (1) directed verdict at the close of the State's case, (2) directed verdict or peremptory instruction after both the State and the defendant had rested, or (3) JNOV after the jury had returned its verdict of the defendant's guilt. The supreme court explained when it could reverse the trial court's denial of any of these motions as follows:

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.

*Id.* at 370. The supreme court then proceeded to explain the correlation of this standard of review for the grant or denial of motions for directed verdict, peremptory instruction, and JNOV and the *Weathersby* rule as follows:

[T]he *Weathersby* rule . . . is familiar to all, although we sometimes overlook the fact that it is nothing more than a restatement of the general rule recited above; that is, if the defendant and his witnesses are the only eyewitnesses to the homicide and if their version of what happened is both reasonable and consistent with innocence and if, further, there is no contradiction of that version in the physical facts, facts of common knowledge or other credible evidence, then surely it follows that no reasonable juror could find the defendant guilty beyond a reasonable doubt. Under such circumstances we have always mandated that peremptory instructions be granted whether under the label of *Weathersby* or otherwise.

Conversely, we have held repeatedly that, if there are circumstances shown in the evidence which materially contradict the defendant's version of self-defense, the jury is not required to accept his version, but may in determining guilt or innocence consider his version of self-defense along with the conflicting evidence and any unfavorable inferences therefrom.

*Id.* at 371.

In other words, our previous determination that the *Weathersby* rule did not apply to the evidence and facts in the case *sub judice* because of the evidence of Hayes' jealousy turned to deadly rage and



the contradiction of her testimony that she stabbed Rushing at most three times with Rushing's autopsy protocol in which it was determined that he had been stabbed six times also determined that the trial court had not erred when it denied her motion for JNOV. The trial court had not erred because the State had offered sufficient evidence to establish beyond a reasonable doubt that Hayes had not killed Rushing in self-defense, Hayes' version of Rushing's death notwithstanding.

## **B. Motion for New Trial**

Whereas a motion for JNOV challenges the sufficiency of the evidence, a motion for a new trial challenges the weight of the evidence. *James v. Mabus*, 574 So. 2d 596, 601 (Miss. 1990). Thus, the Mississippi Supreme Court has opined that "[a] lesser showing . . . is required for a new trial than that necessary to grant a motion for j.n.o.v." *Id.* In *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993), the Mississippi Supreme Court explained the trial court's discretion to deny motions for new trials as follows:

Moreover, the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. . . . New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

The only reason Hayes assigns for the reversal of her conviction of manslaughter is that "[t]he jury, in order to convict [her] of manslaughter, had to determine that the State had proven beyond a reasonable doubt, that she did not act in self defense." She "asks this Court to hold as a matter of law, that the evidence is insufficient to support the verdict and that she should be finally discharged." Other than the insufficiency of the evidence to support her conviction of manslaughter, which she bases entirely on the application of the *Weathersby* rule to the testimony and evidence in this case, which we have rejected, she offers no reason why the trial court's denial of her motion for new trial constituted an unconscionable injustice. Neither does she attempt to demonstrate that the trial court's denial of her motion for new trial was an abuse of its discretion. We therefore conclude that the trial court did not err when it denied Hayes' motion for a new trial.

## **V. SUMMARY**

Although Hayes was the only eyewitness to the crime, and although she testified that she stabbed Rushing in self-defense with no intent of killing him after he had angrily attacked and choked her, other evidence refuted her claim of self-defense. The other evidence included Hayes' jealousy of Annie Pearl Morgan which turned to rage when Rushing came home, and Hayes' "spying" on Rushing while she parked in front of Martin's home, which she denied. Furthermore, the autopsy protocol refuted Hayes' initial testimony that she stabbed Rushing only twice so much that under the State's cross-examination she admitted that she was not sure how many times she had stabbed him. The jury's task was to resolve these conflicts, which they did by returning a verdict of "Guilty of manslaughter." The trial court did not err by refusing to set aside their verdict, whether by way of

granting Hayes' motion for JNOV or by way of granting her a new trial. Thus, we affirm the trial court's judgment of Hayes's guilt of manslaughter in the death of Lloyd Rushing on December 6, 1989, and its sentence of Hayes to serve twelve years in the custody of the Mississippi Department of Corrections.

**THE HARRISON COUNTY CIRCUIT COURT'S JUDGMENT OF THE APPELLANT'S GUILT OF THE CRIME OF MANSLAUGHTER AND ITS SENTENCE TO SERVE A TERM OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS ARE AFFIRMED. COSTS ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES, P.J., BARBER, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.**