IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01195-COA

ANGELA MICHELLE HARRIS **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

DATE OF JUDGMENT:	11/17/95
TRIAL JUDGE:	HON. GEORGE B. READY
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	DAVID G. HILL
	DAVID L. MINYARD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL
	BY: PAT FLYNN
DISTRICT ATTORNEY:	BOBBY WILLIAMS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTION OF MANSLAUGHTER AND SENTENCE OF 20 YEARS WITH 5 YEARS SUSPENDED
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	12/30/97
CERTIORARI FILED:	2/24/98
MANDATE ISSUED:	5/14/98

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

THOMAS, P.J., FOR THE COURT:

Angela Michelle Harris appeals her conviction of manslaughter raising the following issues as error:

I. WHETHER THE STATE'S FAILURE TO MATERIALLY CONTRADICT ANGELA'S REASONABLE VERSION OF EVENTS WHICH ADEQUATELYEXPLAINS THE PHYSICAL EVIDENCE AND ESTABLISHES SHE ACTED IN SELF-DEFENSE MANDATES THIS COURT'S APPLICATION OF THE *WEATHERSBY* RULE AND THE

ENTRY OF AN ORDER FINALLY DISCHARGING HER OR, AT LEAST REMANDING THIS CASE FOR A NEW TRIAL BECAUSE THE VERDICT IS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE?

II. WHETHER THE PROSECUTOR'S PERSISTENT INSINUATION DURING CLOSING ARGUMENTS, AND IN VIOLATION OF PRIOR COURT RULINGS, THAT ANGELA HAD A HISTORY OF VIOLENCE AND THAT HER COUNSEL HAD LIED WHEN HE ARGUED, CONSISTENT WITH THE RECORD EVIDENCE, THAT SHE DID NOT, VIOLATED HER STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND TO THE EFFECTIVE ASSISTANCE OF COUNSEL?

III. CAN THE VERDICT BE UPHELD EVEN THOUGH IT WAS UNFAIRLY TAINTED BY THE FOLLOWING, INFLAMMATORY ACTS OF PROSECUTORIAL MISCONDUCT WHICH, EITHER SEPARATELY OR CUMULATIVELY, DENIED ANGELA HER RIGHT, UNDER THE STATE AND FEDERAL CONSTITUTIONS, TO A FAIR TRIAL:

A. THE PROSECUTOR'S GRATUITOUS ACCUSATION, WHILE MAKING AN OBJECTION, THAT ANGELA HAD "TAKEN THE LAW INTO HER OWN HANDS;"

B. THE PROSECUTOR'S UNSUPPORTED INSINUATION, DURING HIS CROSS-EXAMINATION OF HER, THAT ANGELA HAD MANIPULATED HER RIGHT TO REMAIN SILENT, THE PRE-TRIAL DISCOVERY PROCESS, AND HER RIGHT TO TESTIFY ON HER OWN BEHALF, TO FABRICATE A DEFENSE CONSISTENT WITH THE STATE'S EVIDENCE;

C. THE PROSECUTOR'S CHARACTERIZATION, DURING HIS CROSS-EXAMINATION OF DR. MILLER AND IN VIOLATION OF A COURT RULING, OF AMBIGUOUS STATEMENT AND GESTURE SMITH ATTRIBUTED TO ANGELA, AS A "PRE-MEDITATED THREAT TO KILL [MAXWELL];"

D. THE PROSECUTOR'S CONVERSATION OF THAT SAME AMBIGUOUS STATEMENT, AGAIN DURING HIS CROSS-EXAMINATION OF MILLER AND IN VIOLATION OF ACOURT RULING, INTO AN EXPRESSED THREAT TO "KILL [MAXWELL];"

E. THE PROSECUTOR'S UNSUPPORTED INSINUATION DURING CLOSING ARGUMENTS THAT ANGELA HAD A HISTORY OF VIOLENCE AND THAT HER COUNSEL HAD LIED TO THE JURY.

IV. DID THE TRIAL COURT'S ABUSE OF ITS DISCRETION IN LIMITING DR. MILLER'S TESTIMONY, WHICH WAS CRITICAL TO THE JURY'S EVALUATION OF ANGELA'S CONDUCT AFTER THE SHOOTING AND, THUS, TO HER CLAIM OF SELF-DEFENSE, VIOLATE ANGELA'S RIGHTS, UNDER THE STATE AND FEDERAL CONSTITUTIONS, TO A FAIR TRIAL?

Finding no error, we affirm. For clarity's sake, sub-issues A, B, C, and D of issue III will be combined. Sub-issue E of issue III will be addressed in issue II.

FACTS

Angela Michelle Harris was indicted for the murder of Jessie "Petey" Maxwell on the afternoon of July 31, 1994. The killing took place at the Mineral Wells Hotel in Olive Branch, Mississippi.

Harris and Maxwell had been in a relationship for approximately three years before the killing took place. According to Harris, she ended the relationship on July 21, 1994. Harris had been living in a trailer which belonged to her cousin, Willie "Lee Lee" Rayford. On July 28, 1994, while Harris was at work, someone threw gasoline into Harris's bedroom and set the trailer on fire. Only Harris's room was burned, although the fire spread to the hallway and caused smoke damage. Someone matching Maxwell's description was seen running from the trailer at the time of the fire. A valuable necklace which Maxwell had given Harris was missing. The necklace had been kept in an unused microwave and according to Harris, only she and Maxwell knew the hiding place.

Marshall County Sheriff's Department's arson investigator, J.C. Smith, testified that when he first investigated the fire he spoke with Rayford, who led him to believe that Maxwell was the individual who set the fire. Smith, along with Jimmy Owens, a Victoria volunteer firefighter, left the scene in search of Maxwell. After returning from the unsuccessful search, Smith talked with Harris about an hour after the fire was discovered. She told him that Jessie Maxwell had started the fire and told him about the missing necklace. When he advised her to come to the sheriff's office and make out an affidavit for his arrest, she replied that it would not be necessary, "I'll get even with the black son of a bitch." Smith testified that while Harris made this statement she patted her purse. Smith was still looking for Maxwell to question him about the fire when he learned that Maxwell had been killed. On cross-examination Smith testified that the report which he made that day did not indicate that Harris had patted or gestured to her purse in any way.

James Morris is owner of the Mineral Wells Motel in Olive Branch, Mississippi. He testified that on July 30, 1994, he entered the linen room of the motel to see if Dorothy Coleman, an employee of the motel, needed anything. While he was in the linen room, five doors from the room rented by Maxwell, he heard a noise "like someone hitting on the bottom of a tin tub two or three times." He heard no other noise. On his way back to the office, Morris testified that he saw something dark in the doorway of room number 12. He heard a groan and approached the victim and saw he had a gunshot wound to the back. He ran and called the police.

Dorothy Coleman, an employee of Mineral Wells Motel, said Maxwell came to rent a room on July 30, 1994. Coleman asked Maxwell if he wanted the room for two hours or for the night. Maxwell went back to a car, which a female drove, and she heard Maxwell ask the female how long they would be there. Maxwell came back in and rented the room for two hours. Coleman left the office

and saw Maxwell and Harris enter the room. Coleman was in the linen room with Morris when she heard a noise. She left the linen room and looked out in the parking lot and saw the car being driven away by the female. A few minutes later, Morris left the linen room and called Coleman to the room Maxwell had rented. Coleman saw Maxwell lying on the floor. She testified that she told Morris to call an ambulance, which he promptly did.

Officer Richard Gentry worked for the Olive Branch Police Department as the dispatcher and received a phone call from the Mineral Wells Motel on July 30, 1994 at 4:21 in the afternoon. At 4:54 p.m. a black female came into the police department and informed Richard Gentry that she had been jumped on at the Mineral Wells Motel. Richard Gentry identified Harris as the woman who entered the police station that day.

Melvin Calvin Myers, uncle of the deceased, said that he knew Angela Harris for approximately three years because she dated Maxwell. On the day of the shooting, Myers testified that Harris twice called his mother's house and he answered the phone. He testified that Harris called, sounding upset, and asked to speak to Maxwell. Myers testified she complained that she had been beeping Maxwell trying to get in touch with him and he refused to call back. Later that day, around 3:30 p.m. Maxwell came to the house and placed a call. Myers overheard Maxwell state, "Okay, baby. Come on. I'll be here when you get here." Maxwell left a few minutes after that phone conversation.

Officer Scott Gentry of the Olive Branch Police Department was dispatched to the Mineral Well's Motel at 4:21 p.m. on July 30, 1994. When he arrived at the Mineral Wells Motel, Maxwell was on the floor facing out the open door with his legs partially under the bed and his head out the door. Gentry said there was no sign of a struggle in the room, as the bed was square to the wall and had not been moved. He observed two shell casings on the bed. Maxwell was able to talk when Gentry arrived. Maxwell stated that he was thirsty and when asked who had shot him Gentry could clearly hear Maxwell state the name "Harris," but the first name sounded unclear.

Officer Robert Davis, an investigator with the Olive Branch Police Department, was second to arrive at the Mineral Wells Motel at approximately 4:23 p.m. He also heard Maxwell identify the person who shot him as "Harris," with the first name being unclear. When the ambulance crew arrived, they asked the officers to slide over the bed so they could work on Maxwell and when they moved the bed they noticed a third shell casing. The officers found $204 in Maxwell's pocket and two spots of blood on the bed. Davis said he was still at the motel when a call came from the dispatcher that a suspect was at the police department. When he arrived at the station, Davis noted that Harris was disoriented and that she acted like she did not know what was going on. She had tears on her shirt and pants. During cross-examination, they asked Davis if he found any evidence that contradicted Harris's claim that Maxwell had assaulted her or that she was acting in self-defense. He stated that he did not have any information that would contradict her defense, but in his opinion from where the shell casings were found it appeared that she was at the door when the shots were fired, and he felt that she could have gotten out of the room if she was being attacked.

Lucille Maxwell, the victim's mother, testified that the Friday after Maxwell was shot, Lucille saw Harris at the Collierville, Tennessee post office. Lucille stated that when she asked Harris if she had killed her son because he had burned the trailer, Harris stated that the trailer burning was not the reason. She also said that "everything happened so fast . . . [I don't] remember what had happened to

the gun." Harris also stated that nobody wanted to listen to her and that she did not intend to spend the rest of the life in jail.

Dr. Tom McGee, a pathologist, testified that Maxwell had three gunshot wounds, one in the left shoulder, one in the right chest, and one in the lumbar region of the back. He stated that all three shots traveled in a downward pattern, ranging from a sixty-degree angle, to the most direct at a thirty degree angle. There were no exit wounds. The shot in the shoulder was from a distance of less than two feet. The other two were from a distance of more than two feet. McGee testified that he did not know which order the shots were fired. During cross-examination, defense counsel asked McGee if the shot to the lumbar region could have been shot from the front of the victim, while the victim was bent over. McGee stated that the shot was more likely fired in that fashion. On redirect, McGee stated that someone could have inflicted the shot to the victim's back who was standing while the victim was sitting.

Harris testified in her own behalf. She stated that she had broken off the relationship with Maxwell. Harris stated that she believed that Maxwell had burned the trailer because a necklace was stolen that only she and Maxwell knew where it was hidden. Harris denied that she patted her purse when talking about Maxwell. Later that day, after the trailer burned, Harris went to the county jail and tried to file charges against Maxwell. The woman she spoke to told her that Smith was the only one who could take an arson report and that he was not present at the time.

The following day, Friday, July 29, Harris testified that Maxwell notified her, through his mother, that he wanted to talk to her. When she failed to call him, he telephoned her and asked her to come and see him. She testified that she told Maxwell that she could not see him. He called again and told her there was something he wanted her to do for him and asked her to come see him. When she asked what he wanted her to do, Maxwell told her he had hidden a gun underneath a truck her cousin Lee Lee had sitting up on blocks in the yard and asked her to bring the gun to him. When Harris asked why he wanted the gun, Maxwell said he was going to sell it and give Lee Lee the money, because his trailer had burned. Harris finally told him that she was not going any where at that time of night, but to call her in the morning.

Maxwell called her the next morning and asked her if she were going to help him. Harris testified that she then called Justice Court Judge Cunningham and asked if they were going to pick Maxwell up. Harris stated that Judge Cunningham told her that Smith was the only one who could help her.

Harris drove to the trailer and got the gun. She called Maxwell, but his uncle answered and stated that he was not there. Maxwell paged her and she called back around 3:30 p.m. and spoke with Maxwell.

Harris went to pick up Maxwell and when he approached her car she tried to hand him back the gun. He would not take it and asked her to drive him down the street. Harris passed the gun to Maxwell when he entered the car. Maxwell asked her to keep driving, stating that he wanted to talk to her. As they drove about Maxwell asked her to stop somewhere so they could talk and suggested they go to the Mineral Wells hotel which was nearby. Harris testified that buying a room was usual for Maxwell. She testified that she acquiesced to going to the hotel room because she felt certain that he was going to admit burning the trailer.

When they entered the hotel room, Harris sat on the bed. Maxwell kicked off his shoes, and then took off his cap and pants and placed them on the chair. She testified that she did not think anything of Maxwell taking off his pants because it was a hot day and they had been together for three years. Maxwell sat beside her and began caressing her; Harris stated she declined his advances because they were there to talk. She then asked him if he burned the trailer and that he admitted to burning the trailer. She stated that he then reached down, came up with the gun, and began caressing her face with it. Harris testified that she pushed him away, he pushed back, she pushed him again and the gun went off. He fell down on top of her. She said that she backed away and he came after her trying to get the gun, tearing her shirt. She stated that she shot twice, that "I just got out of there and ran right fast." Driving down the street "steady hollering," Harris realized she had the gun in her hand and threw it out the window.

Pulling into a gas station, she telephoned her cousin who set up a three-way telephone call with their grandmother. They told Harris she needed to go to the police station and she did.

Willie "Lee Lee" Raymond, Harris's cousin who owned the trailer, said that he was with Harris when she talked to Smith and that she did not say that she would "take care" of Maxwell.

Dr. Paula Miller, a licensed professional counselor who had performed tests on Harris at the mental health center, testified that Harris was suffering from post-traumatic stress syndrome and that nothing in Harris's psychological tests or in any of the testimony heard contradicted Harris's story that she shot Maxwell because she was afraid of being killed or raped by him.

In rebuttal, Deputy Jimmy Owens testified that he was at the trailer after the fire. He testified that he heard the conversation between Smith and Harris and that she had said, "Well, I don't need to make papers out on the black son of a bitch. I'll take care of him myself," and patted her purse as she made this statement.

Following deliberations, the jury returned a verdict of guilty of manslaughter.

ANALYSIS

I.

WHETHER THE STATE'S FAILURE TO MATERIALLY CONTRADICT ANGELA'S REASONABLE VERSION OF EVENTS WHICH ADEQUATELY EXPLAINS THE PHYSICAL EVIDENCE AND ESTABLISHES SHE ACTED IN SELF-DEFENSE MANDATES THIS COURT'S APPLICATION OF THE *WEATHERSBY* RULE AND THE ENTRY OF AN ORDER FINALLY DISCHARGING HER OR, AT LEAST REMANDING THIS CASE FOR A NEW TRIAL BECAUSE THE VERDICT IS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE?

Harris argues that she is entitled to be finally discharged under the *Weathersby* rule because her version of events is reasonable, establishes she acted in self-defense, and was not materially contradicted by the physical evidence or the State's witnesses. The *Weathersby* rule is not a jury instruction, but is a guide for the circuit judge in determining whether a defendant is entitled to a directed verdict. ***Blanks v. State*, 547 So. 2d 29, 33 (Miss. 1989).**

The *Weathersby* rule requires:

> [I]f 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.

***Green v. State,* 614 So. 2d 926, 932 (Miss. 1992)** (citing *Harveston v. State*, 493 So. 2d 365, 371 (Miss. 1986)). Where a defendant is the only eyewitness and her version of the homicide is reasonable and consistent with her innocence, then we must accept the defendant's version as true, "unless substantially contradicted by material particulars by a credible witness or witnesses, or by physical facts or facts of common knowledge . . . ." ***Tran v. State,* 681 So. 2d 514, 521 (Miss. 1996)** . The *Weathersby* rule does not to apply to situations where the defendant's version has been contradicted. ***Ruffin v. State,* 481 So. 2d 312, 316 (Miss. 1985).**

In Harris's case, the trial court ruled that the *Weathersby* rule did not apply because there was proof of threats made by Harris two days before the shooting. Harris opines that the trial court committed reversible error when it ruled that the proof of threats by her precluded application of the *Weathersby* rule because she argues that neither this Court nor the Mississippi Supreme Court has held, in any case, that proof of a threat alone is enough to foreclose application of the *Weathersby*rule.

We agree that there is no case in Mississippi where the Supreme Court has held that threats alone were sufficient to preclude the use of the *Weathersby* rule. However, in our research we did not find where this Court or the Mississippi Supreme Court had ever held that threats alone were insufficient. In looking at the record of this case, not only were Harris's threats inconsistent with innocence, there was other evidence, both through witnesses and physical evidence, which would exclude the use of the *Weathersby* rule.

First, Harris's threats of violence toward Maxwell are inconsistent with innocence. Arson Investigator, J.C. Smith, testified that when he explained to her the procedure to have a warrant issued on Maxwell, Harris replied that she would "take care of the black son of a bitch." Smith testified that while making this threat Harris patted her purse. During rebuttal testimony, Jimmy Owens remembered Harris as upset and when Smith suggested that she have a warrant issued and while patting her purse she stated, "Well, I don't need to make papers out on the black son of a bitch. I'll take care of him myself."

Second, Harris's testimony regarding how Maxwell got the gun to rub up against her that day was unreasonable. Harris testified that once she picked up Maxwell she immediately handed him the gun. After arriving at the hotel she testified that Maxwell took off his pants and sat beside her wearing only his underwear and an unbuttoned shirt, yet suddenly the gun, which she had given to him earlier, was in his hand. Where did Maxwell get the gun if his pants were on a chair too far to reach casually?

Third, Harris's claim that Maxwell assaulted her and she struggled to get away was contradicted by the first officer on the scene. Officer Gentry, the first officer on the scene, was there within one minute. Gentry was asked was there any sign, as indicated by the furniture arrangement, that there

had been a struggle. He testified that there was no sign of a struggle.

Fourth, Harris testified that she was frightened of Maxwell, yet her actions that day refute her claim of self-defense. Harris testified that she knew Maxwell had a record for aggravated assault that he had shot someone before. Yet, she testified that she retrieved a gun for Maxwell, who she believed had burned the trailer she was staying in and stolen a valuable necklace. Also, she followed this man that she was afraid of to a secluded motel so she could talk to him about the burning of the trailer. If Harris were so scared of Maxwell, why did she retrieve a gun for him and follow him to this secluded motel?

Fifth, the testimony concerning how Maxwell was shot was inconclusive. Dr. Tom McGee, the pathologist, testified on cross-examination the shot to the lumbar region could have been shot from the front of the victim, while the victim was bent over. McGee stated that the shot was more likely fired in that fashion. However, on redirect McGee stated that someone could have inflicted the shot to Maxwell's back who was standing behind him while he was sitting on the bed.

Sixth, the physical evidence contradicted Harris's claim of how she fired the shots. McGee testified that Harris fired one shot from less than two feet away. Harris testified that Maxwell was on top of her when at least one of the shots was fired. There were no blood stains on Harris. Also, Harris had testified that the first shot happened when Maxwell was on top of her. On the bed there were four small drops of blood on the covers, showing that there probably was nothing between Maxwell and the bed.

Last, Harris testified that when she left the room after the shooting she was screaming and hollering. Dorothy Coleman, the hotel worker, testified that Harris did not leave the room screaming. The individual facts in evidence, standing alone, might warrant application of the *Weathersby*rule, however, taken as a whole, they preclude application of *Weathersby*. As the Mississippi Supreme Court said in ***Lanier v. State*, 533 So. 2d 473, 490 (Miss. 1988)**, the *Weathersby* rule is "nothing more than a statement of the general principle that the hypothetical 'reasonable' juror must have some material evidence, contradictory to defendant's version, upon which a verdict of guilty beyond a reasonable doubt could be found." The trial court was correct in not applying the *Weathersby* rule.

II.

WHETHER THE PROSECUTOR'S PERSISTENT INSINUATION DURING CLOSING ARGUMENTS, AND IN VIOLATION OF PRIOR COURT RULINGS, THAT ANGELA HAD A HISTORY OF VIOLENCE AND THAT HER COUNSEL HAD LIED WHEN HE ARGUED, CONSISTENT WITH THE RECORD EVIDENCE, THAT SHE DID NOT, VIOLATED HER STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND TO THE EFFECTIVE ASSISTANCE OF COUNSEL?

Harris argues that the trial court abused its discretion when it denied her motion for mistrial because of the prosecutor's repeated attempts to inject her alleged history of violence into closing arguments. Before trial, Harris filed a motion in limine to exclude any mention of her prior violent behavior. The judge held that any violent behavior by the defendant was irrelevant and told the prosecution that it could not bring up any such incidents. During closing argument *defense counsel*, Mr. Hill, argued that Harris did not have a record of violence. The prosecutor objected and was overruled. Thereafter,

defense counsel repeatedly argued how Harris did not have any record of violence. In rebuttal closing argument the State told the jury, "Mr. Hill said she's got a proven track record of no--" prompting the judge to instruct him to approach the bench. Outside the presence of the jury, the trial judge told defense counsel that he had made a material misrepresentation to the jury of the facts because Harris had a record of violence with the victim and possibly with someone else. The trial court went further and stated:

> It's the Court's opinion that I cannot punish this Defendant by the inappropriate and unprofessional action of her lawyer by allowing the State to make responsive arguments in closing. That's why I stopped Mr. Horan [the prosecution]. I'm not going to allow Mr. Horan to make any statements. Mr. Horan can certainly move for a mistrial if he wants to and try this thing entirely again, but that's the only resolution at this point.
>
> I will say for the record, Mr. Hill, that I'm extremely disappointed. . . . what you've done is complete misrepresentation, completely unfair in this Court's opinion. It allows an impression to go to the jury that is absolutely untrue. If an attorney for the State had done that, I would have automatically granted a mistrial; but since I can't punish your client by allowing Mr. Horan to present contradictory statements in closing, I am strongly considering sanctions against you at the conclusion of this matter.

After this discussion, the defense moved for a mistrial based on the prosecutor's comment. The lower court denied this motion. Thereafter, Mr. Horan did not bring up Harris's prior violent behavior. Now Harris argues that the trial court abused its discretion in denying the defense motion for mistrial, because the "natural and probable effect" of the prosecutor's objections, comment, and the resulting in-chamber recess, was to "create unjust prejudice" which tainted that verdict. We take a very different view of this issue than the defense. The trial judge allowed Mr. Hill to make false statements to the jury about Harris's lack of violent behavior and then after Mr. Horan was about to rebut these false statements, the trial judge cut him off, and they held a conference outside the presence of the jury. The jury heard how Harris had no violent history, a false statement, and then saw the prosecution cut off and taken into the judge's chambers. All of this not only made the prosecution look bad but also was favorable to the defense. The events that took place helped Harris.

There is no doubt in this Court's mind that one of the parties was entitled to a mistrial, but it was not the defendant. The first error that occurred was the trial court overruling the prosecution's objection. The second error was allowing the jury to deliberate with the picture of Harris as a person with no history of violence. Any injustice that occurred here was to the State.

III.

CAN THE VERDICT BE UPHELD EVEN THOUGH IT WAS UNFAIRLY TAINTED BY THE FOLLOWING, INFLAMMATORY ACTS OF PROSECUTORIAL MISCONDUCT WHICH, EITHER SEPARATELY OR CUMULATIVELY, DENIED ANGELA HER RIGHT, UNDER THE STATE AND FEDERAL CONSTITUTIONS, TO A FAIR TRIAL

The first remark complained of by Harris came during cross-examination of State's witness J.C. Smith, the arson investigator. Defense counsel was questioning Smith regarding the fact that Harris's room alone had been burned. The prosecution objected to the full line of questioning, stating that "[i]

t seems to me a waste of time unless--it's not relevant unless taking the law into your own hands is relevant." The defense asked the court to admonish the State for testifying and making statements that were inappropriate before the jurors. The court told the defense to go ahead with the line of questioning, but did not instruct the jury to disregard the prosecutor's comment.

Harris claims that while she was being cross-examined, the prosecution insinuated that she had manipulated the pre-trial process and fabricated a defense to comport with the State's evidence. During cross-examination the prosecution asked, "and then you wanted to--14 months later coming in here after having received all the information that the State had on him--." The defense promptly objected and moved for a mistrial. The court, after a conference without the jury present, instructed the jury to disregard any negative inference and explained that every defendant has the absolute right to have all the State's information. After instructing the jury the court asked counsel if the instruction was correct, and the defense replied that it was appropriate. In her brief, Harris argues that she did not waive her motion. However, the defense made no such comment. The defense merely stated that the jury instruction was appropriate.

The third and fourth incidents were during the cross-examination of Dr. Paula Miller. The prosecution stated, "I didn't see in your report where she had indicated to you that two days prior to this incident that she had made what many would feel to be a premeditated threat to kill this particular person?" Counsel objected and moved to strike the question. The court instructed the prosecutor to rephrase the question without the "inappropriate commentary." Thereafter the prosecutor asked Miller, "if you were given substantiated proof--I'm not saying that there are--but that two days prior to this event she had premeditated and planned and threatened this man, would you think maybe she wasn't being quite truthful with you?" Counsel objected again then the court held a bench conference that was not reported. The prosecution then asked, "[i]f Ms. Harris had told you--first of all, she did not tell you this, or did she, that two days prior that she patted her purse and said, 'I'll kill the black son of a bitch?'" The defense objected and the court told the prosecution to use the exact words of the fire marshal. The district attorney tried the question again; however, the language he used was again incorrect. The court called a bench conference, which was not reported. The district attorney apparently was shown Harris's actual remark and told the judge "I stand corrected." The trial court gave the jury an instruction that they had heard exactly what the fire marshal said and not to infer or imply anything from the misstatement of the district attorney.

Harris concedes that Mississippi law provides that when the court sustains an objection and the defendant fails to ask the court to admonish the jury, no error results, and that a trial judge's action in sustaining an objection and giving an instruction to disregard cures errors. ***Forrest v. State,*** **335 So. 2d 900, 902 (Miss. 1976).** ***See also Sanders v. State,*** **586 So. 2d 792, 796 (Miss. 1991);** ***Brown v. State,*** **534 So. 2d 1019, 1024-25 (Miss. 1988).** Harris argues that the prejudicial impact of the prosecutor's persistent injection of gratuitous and inflammatory comments, characterizations and insinuations, as well as his repeated misrepresentations of the evidence and references to matters outside the record harmed her due process rights to a fundamentally fair trial before a fair and impartial jury. Harris cites several cases where the Mississippi Supreme Court has reversed a decision because of inflammatory and prejudicial comments. ***See Collins v. State,*** **408 So. 2d 1376 (Miss. 1982);** ***Forrest v. State,*** **335 So. 2d 900 (Miss. 1976);** ***Craft v. State,*** **226 Miss. 426, 84 So. 2d 531 (1956);** ***Murray v. State,*** **52 So. 2d 288 (Miss. 1951)**. We will not reverse unless the prosecuting attorney's argument created "unjust prejudice against the accused resulting in a decision influenced by

prejudice." ***Johnson v. State,* 596 So. 2d 865, 869 (Miss. 1992)** (citations omitted). Each case needs to be decided on its own particular facts. The case sub judice does not fall within the same category of the above cited cases. The thorough corrective measures taken by the trial judge completely cured any error below. This third issue is without merit.

IV.

DID THE TRIAL COURT'S ABUSE OF ITS DISCRETION IN LIMITING DR. MILLER'S TESTIMONY, WHICH WAS CRITICAL TO THE JURY'S EVALUATION OF ANGELA'S CONDUCT AFTER THE SHOOTING AND, THUS, TO HER CLAIM OF SELF-DEFENSE, VIOLATE ANGELA'S RIGHTS, UNDER THE STATE AND FEDERAL CONSTITUTIONS, TO A FAIR TRIAL?

The defense called Paula Miller, Ph.D. as an expert witness. Dr. Miller is a licensed professional counselor who works part-time at the Region III Mental Health Center in Tupelo and has a private practice in Oxford. Miller has a Master's degree in counseling, a Specialist degree in counseling, and a Ph.D. in educational psychology. Miller had been qualified as an expert once in a child custody case, but had never testified.

The defense called Miller to render three opinions regarding her testing of Harris. Miller was called to first give her opinion if Harris were suffering from post-traumatic stress disorder (PTSD) because of the shooting; second, if Harris's conduct during and immediately after the shooting was consistent with a belief that Maxwell had assaulted her and/or been the victim of an attempted rape; and third, if her conduct was consistent with a belief that her life was in danger and a belief that she was acting in self-defense. The State objected to Miller's proposed testimony. The trial court ruled that Miller could testify from her testing and interviews that Harris was suffering from PTSD because the tests Miller had run directly related to her education, testing, and evaluation of this condition, but she could not render her opinion on whether Harris's actions during or immediately after the incident were consistent with a person that believed her life was in danger and believed that she was acting in protection of her life.

Harris argues that the trial judge committed reversible error because he disqualified Miller due to her education being inconsistent with someone who could render such opinions. Harris cites several cases that hold that the lack of degree in the exact field or experience with the exact circumstances at issue is merely the subject of cross-examination and not a basis for precluding expert opinion. ***Read v. Southern Pine Elec. Power Ass'n*, 515 So. 2d 916 (Miss. 1987); *Coleman v. Parline Corp.*, 844 F.2d 863 (D.C. Cir. 1988); *Loudermill v. Dow Chem. Co.*, 863 F.2d 566 (8th Cir. 1988).** A close review of the record shows that the trial judge disqualified Miller not only because he felt that she was not qualified in the exact field of psychology, but also because the "opinions [are] directly about what happened that day . . . ."

"[T]he qualification of an expert witness as to whether or not he may testify as an expert lies largely within the discretion of the trial court and will not be considered error unless that discretion is clearly abused." ***Thornhill v. State,* 561 So. 2d 1025, 1033 (Miss. 1989)** (citing *Hollingsworth v. Bovaird Supply Co.*, 465 So. 2d 311 (Miss. 1985)).

During the proffer, defense counsel asked Miller, based on reasonable psychological certainty and probability, whether Harris's actions during or immediately after the incident indicated that Harris believed her life was in danger and she believed that she was acting in protection of her life. Mississippi Rule of Evidence 704 holds that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." **M.R.E. 704**. However, "[q]uestions which simply allow the witness to tell the jury what result to reach are impermissible, as are questions asking the witness for a legal conclusion." ***May v. State*, 524 So. 2d 957, 964 (Miss. 1988)** (citations omitted). ***See alsoAlexander v. State*, 610 So. 2d 320, 334 (Miss. 1992); *Dale v. Bridges*, 507 So. 2d 375, 378 (Miss. 1987).**

It is clear from defense counsel's argument that the principal purpose in calling Miller as their witness was to elicit from her testimony that Harris acted in self-defense and that nothing short of permitting Miller to state that conclusion would make her testimony worthwhile. If the lower court allowed Miller to testify that in her opinion Harris was acting in self-defense when she killed Maxwell, she would be giving her opinion of the truth or falsity, or accuracy or inaccuracy, of the statements of Harris--the ultimate legal conclusion here. Miller's testimony would call for her to tell the jury what result to reach or provide a legal conclusion. This is the job of the jury, not a defense expert. The questions asked of Miller as to whether Harris was suffering from PTSD called for an opinion based upon Miller's testing and expertise and was admissible. Harris's last assignment of error is without merit.

THE JUDGMENT OF THE DESOTO COUNTY CIRCUIT COURT OF CONVICTION OF MANSLAUGHTER AND SENTENCE OF TWENTY YEARS WITH FIVE YEARS SUSPENDED IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.