

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01055 COA**

JOHNEIL WATKINS, JR., A/K/A JOHNNY

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:	07/28/95
TRIAL JUDGE:	HON. MICHAEL RAY EUBANKS
COURT FROM WHICH APPEALED:	LAWRENCE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ROBERT E. EVANS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLEN WATTS
DISTRICT ATTORNEY:	HON. RICHARD L. DOUGLASS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	MURDER: SENTENCED TO SERVE A TERM OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MDOC
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/5/98

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

Johneil Watkins was convicted of murder in the Lawrence County Circuit Court and sentenced to life imprisonment in the custody of the Mississippi Department of Corrections. Watkins now appeals to this court on three issues. Watkins argues that: (1) the trial court erred in denying Watkins's motion for directed verdict, peremptory instruction, and JNOV; (2) the weight and sufficiency of the evidence did not support a conviction of murder; and (3) if anything, the evidence supported a conviction of manslaughter rather than murder. We affirm the lower court's ruling on all issues.

FACTS

On January 1, 1995, Watkins shot and killed Billy Coleman in the front yard of the home of Darlene Jenkins in Lawrence County. On the evening of Coleman's demise, Watkins and Lea Mae Jenkins, daughter of Darlene Jenkins, were sitting in Watkins's car in front of Darlene Jenkins's house. Billy Coleman drove up and went inside the Jenkins' house. After Coleman went into the Jenkins' home, Watkins attempted to leave, but his car would not crank. Watkins then retrieved a camouflage jacket out of the hatchback of his car and walked to the trailer near Mae Ethel Baggett's house. Lea Mae Jenkins then went inside and went to bed.

Later, a shot was heard by Lea Mae Jenkins and Coleman's stepson, Charles Ray Jenkins. Lea Mae paid no attention to the noise, but Charles Ray came and got her out of bed. They went to the neighbor's house to call the police.

Meanwhile, Watkins went to Don Bennett's house, a neighbor of Mae Ethel Baggett. Watkins told Bennett that he had just shot Coleman and asked Bennett to take him to the police. Watkins also gave Bennett the shotgun and a shell. Bennett then took Watkins to the Monticello Police Station where Watkins was turned over to the Lawrence County Sheriff.

At the sheriff's office Watkins made a statement after being given his *Miranda* rights and signing a waiver of rights form. In his statement Watkins stated that Coleman came out of the Jenkins' house, saw Watkins, told him that "I told you I was going to kill you when I saw you again . . ." and went to Coleman's car where Coleman attempted to take a shotgun out of the back seat. The two men scuffled, and Watkins snatched the gun from Coleman. Watkins then backed away from Coleman around the rear of the car until Watkins was up against a pine tree. Watkins said that he backed away from Coleman because he was afraid that Coleman would shoot him in the back. Coleman then leaned over and started to run around the front of his car with his right hand in his pocket like he was going to pull a gun and his left hand pointed towards Watkins like he had a gun or something in it. At this point, Watkins shot and killed Coleman. Watkins was the only eyewitness to the shooting, although there were others who heard the gunshot.

Watkins would later testify that he and Coleman had gotten into an altercation about a week earlier, and Coleman had tried to choke him. He went on to say that Coleman had broken his glasses the night of the fight, that he could not see without them, and that he did not have them on at the time of the shooting.

ISSUES

A. Did the trial court err in denying Watkins's motion for directed verdict, peremptory instruction, and JNOV based on Watkins's testimony?

Watkins argues that because he was the only eyewitness to the shooting and that there was no testimony or forensic evidence which contradicted his testimony, then his account of what occurred should have been accepted by the trial court, and therefore, he should have been granted the motions for directed verdict, peremptory instruction, and JNOV.

Watkins argued that the *Weathersby* Rule applied in his case because he was the only eyewitness to the homicide and there was no substantial evidence materially contradicting his version of what happened that night. Watkins further argues that it was incumbent upon the trial judge to grant his motion, and failure to do so was error.

[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 instruction be granted whether under the label *Weathersby* or otherwise.

Green v. State, 614 So. 2d 926, 932 (Miss. 1992) (quoting *Harveston v. State*, 493 So. 2d 365, 371 (Miss. 1986)).

In this case, the version told by Watkins was contradicted by the physical and forensic evidence found at the scene. There was testimony that the gunshot could not have come from where Watkins said he was standing when he shot Coleman. There was testimony that Coleman's gun, the one Watkins said Coleman had gotten out of Coleman's car, was stolen a week prior to the homicide. There were witnesses who said that they had not heard any arguing or fighting outside before the shooting. These facts, along with others, substantially contradicted Watkins's testimony.

The *Weathersby* Rule applies when the defendant's version has not been materially contradicted by substantial evidence. *Weathersby v. State*, 165 Miss. 207, 209, 147 So. 481, 482 (Miss. 1933). It also applies when the defendant was the only eyewitness. *Strong v. State*, 600 So. 2d 199, 202 (Miss. 1992). Here, although Watkins was the only eyewitness, there was substantial evidence which materially contradicted his testimony. Based on the evidence contradicting Watkins's version, the *Weathersby* Rule does not apply. The trial judge did not err in allowing the jury to weigh and consider the evidence and testimony introduced by Watkins, as well as that introduced by the State, in order to reach their verdict. We affirm on this issue.

B. Did the weight and sufficiency of the evidence support a conviction of murder?

Although Watkins's issue states that the weight and sufficiency of the evidence did not support a conviction of murder, he only argues sufficiency. They are two separate arguments and will be addressed separately.

Sufficiency of the evidence

A challenge to the legal sufficiency of the evidence springs from the denial of a motion for directed verdict at the end of the State's case and from a motion for JNOV after the jury verdict. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). A challenge such as this requires an analysis of the evidence by the trial judge to determine whether a hypothetical juror could find, beyond a reasonable doubt, that the defendant is guilty. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). If the judge determines that no reasonable juror could find the defendant guilty, then he must grant the motion. *Id.* If he finds

that a reasonable juror could find the defendant guilty beyond a reasonable doubt, then he must deny the motion. *Id.* Here Watkins made a motion for a directed verdict at the end of the State's case and the end of all testimony, a request for peremptory instructions, and a motion for a JNOV after the jury verdict. This Court must rule on the last challenge made, which is the motion for a JNOV. This Court's scope is limited to the same examination as that of the trial court in reviewing the motion for a JNOV. That is, if the facts point in favor of the defendant to the extent that reasonable jurors could not have found the defendant guilty beyond a reasonable doubt, viewing all facts in the light most favorable to the State, then it must sustain the assignment of error. *Blanks v. State*, 542 So. 2d 222, 225-26 (Miss. 1989). Of course, the opposite is also true. *Id.* We may reverse the trial court's ruling only where one or more of the elements of the offense charged is lacking to such a degree that reasonable jurors could only have found the defendant not guilty. *McClain*, 625 So. 2d at 778.

In the case at hand, there was sufficient evidence to find Watkins guilty beyond a reasonable doubt. The State made out its prima facia case by proving that Watkins shot and killed Coleman purposefully, with malice aforethought on the evening of January 1, 1995.

After the State made out its prima facia case, Watkins put on his case and claimed that he was acting in self-defense and that he thought Coleman had a gun in his hand. Both the State and Watkins put forth evidence which required that the judge leave the final decision of guilt or innocence to the jury.

Weight of the evidence

The second part of Watkins's issue is that the jury's verdict was against the overwhelming weight of the evidence. In reviewing this claim, the Court should examine the trial judge's overruling of Watkins's motion for a new trial. *Jones v. State*, 635 So. 2d 884, 887 (Miss. 1994). The fact that a trial judge denies a motion for directed verdict or a motion for an acquittal notwithstanding the verdict in no way affects his ruling on a motion for a new trial. *May*, 460 So. 2d at 781. The decision of whether or not to grant a motion for a new trial rests in the sound discretion of the trial judge and should be granted only where the judge is convinced that the verdict is so contrary to the overwhelming weight of the evidence that failure to grant the motion would result in an unconscionable injustice. *Id.* In determining whether a verdict is against the overwhelming weight of the evidence, this Court must view all evidence in the light most consistent with the jury verdict and should not overturn the verdict unless we find that the court abused its discretion when it denied the motion. *Blanks*, 542 So. 2d at 228. The proper function of the jury is to decide the outcome in this type of case, and the court should not substitute its own view of the evidence for that of the jury's. *Id.* at 226. Likewise, the reviewing court may not reverse unless it finds there was an abuse of discretion by the lower court in denying the defendant's motion for a new trial. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991).

Upon reviewing all of the evidence presented in the light most consistent with the verdict, we find that the trial judge did not abuse his discretion in denying Watkins's motion for a new trial.

There was neither abuse of discretion by the trial judge nor an unconscionable injustice in the denial of the motion for a new trial. The judge, finding that the State had made out a prima facia case, allowed the case to go to the jury. The jury properly performed its function by drawing reasonable inferences from the evidence presented and rendering a verdict which was supported by the evidence.

Therefore, we affirm the lower court's denial of Watkins's motion for a JNOV or in the alternative a new trial.

C. Did the evidence support a conviction of manslaughter and not murder?

Watkins argues that if he is guilty of anything, then it's manslaughter--killing in the heat of passion--and not murder. Watkins contends that Coleman had attacked him a week prior to the killing. Watkins also said that Coleman threatened to kill him the same night of Coleman's death. Watkins is again arguing weight of the evidence. The jury heard the evidence and was instructed by the judge that they could find him not guilty, guilty of manslaughter, or guilty of murder. The jury found Watkins guilty of murder. Therefore, unless this Court, viewing all evidence in the light most consistent with the jury verdict, finds that the court abused its discretion, then we must not disturb the jury's verdict. *Blanks*, 542 So. 2d at 228.

We affirm the trial court's ruling on this issue as well.

THE JUDGMENT OF THE LAWRENCE COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND A SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TO BE ASSESSED TO LAWRENCE COUNTY.

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