

IN THE COURT OF APPEALS 11/12/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00581 COA

LEROY HATHORNE

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. HENRY ROSS

COURT FROM WHICH APPEALED: WINSTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PEARSON LIDDELL, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY KLINGFUSS

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL - MURDER

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SERVE THE
REMAINDER OF HIS NATURAL LIFE IN THE CUSTODY OF THE MISSISSIPPI
DEPARTMENT OF CORRECTIONS

BEFORE FRAISER, C.J., BARBER, COLEMAN, AND MCMILLIN, JJ.

PER CURIAM:

Leroy Hathorne was indicted and convicted of murder in the Winston County Circuit Court. He was sentenced to serve the remainder of his natural life in the custody of the Mississippi Department of Corrections. On appeal, Hathorne challenges the verdict as being against the overwhelming weight of the evidence. Hathorne asks this Court to vacate the judgment below so that his case may be retried.

The proof presented by the State of Mississippi showed that Hathorne shot Johnny Brown in the head and chest. Brown died as a result of the injuries he sustained from the gunshot wounds. Hathorne testified that his actions were in self-defense because Brown was angry with him and he knew that Brown carried a knife. No knife was found on the victim, although some time later a family member of the victim claimed to have found a pocket knife in the vicinity of the shooting. Where as here, the evidence for the State and Defendant are in conflict, a classic jury issue is created. "Factual disputes are properly resolved by the jury and do not mandate a new trial." *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989). The jury determines the weight and credibility to be given to a witness' testimony. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993).

When deciding whether the verdict is against the overwhelming weight of the evidence, we must accept as true all the evidence supporting the State's position, as well as all reasonable inferences flowing therefrom, in the light most favorable to the State. *Britt v. State*, 520 So. 2d 1377, 1379 (Miss. 1988). Considering this standard, and after reviewing the record, we find that the jury had ample evidence to support a verdict of guilty. Therefore, based upon the weight of the evidence supporting the verdict, we find that the trial court did not err in denying Hathorne's motion for a new trial. Accordingly, we affirm Hathorne's conviction.

THE JUDGMENT OF THE WINSTON COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE TO SERVE A TERM OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED TO WINSTON COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.