

IN THE COURT OF APPEALS 12/17/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01151 COA

ANTHONY WILLIAMS A/K/A ANTHONY DEMON WILLIAMS

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. BILLY JOE LANDRUM

COURT FROM WHICH APPEALED: CIRCUIT COURT OF JONES COUNTY

ATTORNEY FOR APPELLANT:

THOMAS EUGENE CLARK

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: JEANNENE T. PACIFIC

NATURE OF THE CASE: CRIMINAL-MURDER

TRIAL COURT DISPOSITION: CONVICTED OF MURDER- SENTENCED TO LIFE IN
CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE BRIDGES, P.J., BARBER, AND DIAZ, JJ.

BRIDGES, P.J., FOR THE COURT:

In this case, Anthony Williams (Anthony) appeals his conviction of murder of Samuel Williams (Sammy) and sentence to life in prison. In his appeal, Anthony argues (1) that the evidence was insufficient to support a verdict of guilty and that the verdict was against the overwhelming weight of the evidence, and (2) that the trial court erred in not allowing the testimony of Thomas Husband, thereby denying Anthony a fair trial. Finding no merit in Anthony's arguments, we affirm.

FACTS

Early on March 6, 1994, Sammy, Anthony, and Anthony Earl Hatten (Hatten) were walking along some railroad tracks near Laurel, Mississippi. An argument erupted between Sammy and Anthony about certain items allegedly stolen from Anthony's mother by Sammy, during which Sammy was shot and killed by Anthony. Hatten and Anthony fled to Hatten's house, where they stayed the night. Both were apprehended by the police the next day.

While in custody, Anthony admitted to killing Sammy with a .38 pistol. At trial, however, Anthony testified that Hatten shot Sammy, and that he confessed to the crime because he was fearful that Hatten would kill him. The record reveals that the gun was hidden in some bushes near Hatten's grandmother's house, and that only Anthony could pinpoint exactly where the weapon had been hidden. Bernetha Millsap, the twelve-year-old girlfriend of Sammy, testified that two days before his death, Sammy had told her that he feared that Anthony would kill him. Anthony was later convicted of the murder of Sammy Williams.

ARGUMENT AND DISCUSSION OF THE LAW

I. WHETHER THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A VERDICT OF GUILTY OF MURDER OR IN THE ALTERNATIVE WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In his first issue, Anthony argues that the evidence was insufficient to support a verdict of guilty, or that the verdict was against the overwhelming weight of the evidence. We disagree. While Anthony's first issue has combined two separate arguments, we shall address them together.

A directed verdict entitles the defendant to a discharge. A verdict based upon insufficient evidence entitles the defendant to a discharge by way of a JNOV. However, a verdict against the weight of the evidence entitles the defendant to a new trial. We shall now consider the evidence in support of the conviction.

Appeals from overruled JNOV motions are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with

guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778.

On the other hand, where the defendant contends that a new trial should have been granted because the jury verdict was against the weight of the evidence, the standard of review is as follows:

The challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes [Uniform Criminal Rule of Circuit Court Practice] 5.16. 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.

Id. at 781. All matters concerning the weight and credibility of the evidence are resolved by the jury. *Id.*

The Supreme Court of Mississippi condensed this standard stating:

[O]nce the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part from that [sic] the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.

Williams v. State, 463 So. 2d 1064, 1068 (Miss. 1985).

Our review of the record clearly reveals sufficient evidence upon which the jury could predicate a verdict of guilty. The precedent cited above clearly permits the jury to assign weight and credibility as it see fit. It has done so in this case. Accordingly, we shall not disturb the jury's verdict. Furthermore, this Court shall not encroach upon the boundaries of the trial court's sound discretion by reversing the denial of Anthony's motion for a new trial. We find no merit in Anthony's first issue.

II. WHETHER THE TRIAL COURT ERRED IN NOT ALLOWING THE TESTIMONY OF THOMAS HUSBAND, THEREBY DENYING ANTHONY WILLIAMS A FAIR TRIAL.

At trial, Anthony sought to admit the testimony of Thomas Husband (Husband). The State objected just as Husband was going to testify about what Sammy had told him a few days prior to his murder. The jury was excused, and Husband's testimony was heard and excluded as hearsay by the court. The direct examination of Husband by Mr. Buckley and Mr. Clark concerning Sammy's statements went as follows:

Q Thomas, had you met your cousin, Sammy Williams, two or three days prior to this date?

A I met him two.

Q Two days before his death.

A Uh-Huh. (Affirmative)

Q And when you say two, you mean two days before his death?

A Yes, sir.

Q Why did you meet him?

A He came to my house one Thursday night.

Q He came to your house--

A One Thursday night. Uh-Huh. (Affirmative)

Q Thursday night.

A Uh-Huh. (Affirmative)

Q Okay. Why did he come to your house?

A Because-- I don't know why he came to my house, but he came in breathing really hard.

Q Could you slow that down? Could you say that--

A He come to my house breathing real hard.

Q Breathing real hard.

A Uh-Huh. (Affirmative)

Q What did he say--

MR. BURDICK: We object to any comments made--

THE COURT: All right, take the jury out. Y'all will have to go out at this time.

THE COURT: All right.

Q Did Sammy Williams tell you that Anthony Hatten just tried to shoot him?

A He said he told him to meet him on the railroad tracks.

Q Meet who on the railroad tracks?

A Him.

Q Who's him?

A Sammy.

Q Okay. Sammy said that Anthony Earl Hatten told him to meet him on the railroad tracks, would that be correct?

A Yes, sir.

Q And what did he say happened on the railroad tracks?

A He said when he met him on the railroad tracks, he shot at him.

Q Who shot at him?

A Anthony.

MR. CLARK: Anthony Hatten.

Q Anthony Earl Hatten?

A Yes, sir.

Q Did he hit him, do you know?

A No.

Q Then what did Sammy say to you?

A He said that he ran.

MR. BUCKLEY: No further questions, your Honor.

MR. BURDICK: This is proffer and we have no questions.

THE COURT: Well it was not a proffer that was offered, but I'll make a ruling that it's too far removed from this, and two, that it--

MR. CLARK: Also for impeachment purposes because, you know, Anthony Hatten, the State's sole eye witness, said that he had no problems at all with Sammy Williams.

THE COURT: Well I understand that. They were--this is too far removed from the occasion that we are dealing with here, and the Court will have to look at this in light of the fact that, you know, if there was any problem. How long were they together that night? I mean, you know, they were running together, they were buddies going to girlfriends houses, and all that.

All right, you can step down. The Court will take--you can have that as your proffer if you want that to go in the record as your proffer. The Court's ruling is it's not admissible.

On appeal, Anthony argues that the statements of Husband were admissible pursuant to Mississippi Rule of Evidence 803(3). Anthony is procedurally barred from arguing this exception to the hearsay rule because his argument at trial was that the statement was offered for impeachment purposes, with no mention of this exception, and he may not, on appeal, change his argument. *Jones v. State*, 606 So. 2d 1051, 1058 (Miss. 1992).

THE JUDGMENT OF THE JONES COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE TO A TERM OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO JONES COUNTY.

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