IN THE COURT OF APPEALS 4/25/95

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00700 COA

STANLEY STAPLETON 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. ELZY JONATHAN SMITH, JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY(S) FOR APPELLANT(S): CHARLES E. WEBSTER

ATTORNEY(S) FOR APPELLEE(S): OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: CLYDE V. HILL

NATURE OF THE CASE: CRIMINAL/SALE OF A CONTROLLED SUBSTANCE

TRIAL COURT DISPOSITION: SENTENCED AS AN HABITUAL CRIMINAL TO THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT REDUCTION OR SUSPENSION, PAROLE OR PROBATION AND FINED $1,000, 000

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

BARBER, J., FOR THE COURT:

Stanley Stapleton was indicted and convicted for the sale of cocaine. He was sentenced in the Coahoma County Circuit Court as an habitual offender to thirty years in prison without hope of reduction, suspension, parole, or probation and fined one million dollars. His motion for a new trial was denied. On appeal, Stapleton claims that the verdictwas against the overwhelming weight of the evidence. We find this argument to be wholly without merit and affirm the judgment of the lower court.

The record reflects that Clarksdale police officers Donald Wood, Darry Jenkins, and Margaret Hardmon met with confidential informant, Marilyn Barron, to prepare for an undercover drug operation the night of May 29, 1992. Hardmon, who had been a police officer for eighteen days, received a body transmitter. After the brief meeting, Hardmon and Barron left in one car and Officers Wood and Jenkins were in a separate vehicle monitoring the transaction. Hardmon drove Barron to the intersection of Fifth Street and Harrison Alley, where Stapleton was standing near the entrance to the alley.

Officer Hardmon testified that when she stopped the car, Stapleton approached the driver's side of the car and peered inside. According to Hardmon, Barron asked "What you got?" Stapleton replied, "What do you want?" Hardmon told him she wanted "a twenty." Stapleton then walked down the alley several feet and reached into a garbage can. When he returned to the car, he gave Hardmon a small white rock and she gave him a twenty dollar bill. The entire transaction lasted about two minutes, and the recording of the encounter was introduced into evidence. The rock was later identified by the Mississippi Crime Lab as crack cocaine.

Officers Hardmon and Jenkins testified that the entrance to the alley was very well-lit by a street lamp. Officers Wood and Jenkins saw Hardmon's vehicle stop at the corner of Fifth Street and Harrison Alley. Wood and Jenkins then parked on Fifth Street about one and one-half blocks away. They saw a black male, whom they could not identify, walk up to the car, then walk back in the alley out of sight, and walk back to the car. After Hardmon drove away, Woods and Jenkins kept the

subject in sight. They drove by the subject and identified him as Stanley Stapleton. They waved to him, and he waved back to them. The area was well-lit, and both officers knew Stapleton.

Stapleton testified that his child lived near Harrison Alley. As a result, he frequented that part of town and probably was in that area the night the drug deal occurred. According to Stapleton, numerous people came through that area. He stated that he did not know Officer Hardmon, he had never seen her before the preliminary hearing, and he did not sell her a rock of cocaine. On the other hand, Officer Hardmon testified that she had seen and spoken with Stapleton on three other occasions and that she documented those occasions. Stapleton further testified that he had known Barron for about four years and that he knew she was an informer. He knew Officers Wood and Jenkins, and he waved every time he saw them.

Stapleton contends that the verdict was against the overwhelming weight of the evidence. The basic thrust of his argument is that, based on the testimony given at trial, "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." This, however, is basically the standard of review for questions involving sufficiency of the evidence -- not the weight of the evidence. Because it is unclear whether Stapleton is arguing weight or sufficiency of the evidence, we address both. Regardless of the standard applied, however, the judgment of the trial court was proper.

The standard for reviewing the legal sufficiency of the evidence is as follows:

> [W]e must, with respect to each element of the offense, consider all of the evidence--not just the evidence which supports the case for the prosecution--in the light most favorable to the verdict. The credible evidence which is consistent with the guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. 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.

Wetz v. State, 503 So.2d 803, 808 (Miss. 1987) (citations omitted).

Stapleton was convicted of selling cocaine. Officer Hardmon testified that he sold her cocaine. The jury heard an audiotape of the transaction. Two officers monitored the audiotape and corroborated Hardmon's testimony. They also testified that, after Hardmon left the scene of the transaction, they drove by Stapleton, identified him, and waved to him. On the other hand, Stapleton testified that, although he probably was in the area, he did not sell drugs to Hardmon and he had never met her. In rebuttal, Hardmon testified that she had seen and spoken to Stapleton on three other occasions.

When we: (a) consider this evidence in the light most favorable to the verdict, (b) accept as true the officers' credible testimony, which is consistent with Stapleton's guilt, and (c) give the prosecution all favorable inferences that may be reasonably drawn from this evidence, the evidence is not such that reasonable and fair-minded jurors could only find the accused not guilty.

Stapleton also argues that the verdict was against the overwhelming weight of the evidence. Matters related to the weight of the evidence "[implicate] the trial court's sound discretion." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). The question in these cases is whether the trial court abused its discretion in denying the appellant's motion for a new trial. "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.* (citing *Wetz,* 503 So. 2d at 807-808). Based on the

testimony discussed above, the trial court judge did not abuse his discretion in overruling the motion for a new trial.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF SALE OF A CONTROLLED SUBSTANCE AND SENTENCE AS AN HABITUAL OFFENDER OF THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI

DEPARTMENT OF CORRECTIONS WITHOUT REDUCTION OR SUSPENSION, PAROLE OR PROBATION AND FINE OF $1,000,000.00 IS AFFIRMED. COSTS ARE ASSESSED AGAINST COAHOMA COUNTY.

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