

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01148 COA

EDITH WATTS

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. LARRY EUGENE ROBERTS

COURT FROM WHICH APPEALED: CLARKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

STANFORD YOUNG

ERIC TIEBAUER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE LOWRY

DISTRICT ATTORNEY: E. J. MITCHELL

NATURE OF THE CASE: CRIMINAL-DELIVERY OF COCAINE

TRIAL COURT DISPOSITION: GUILTY-SENTENCED AS HABITUAL OFFENDER TO

SERVE SIXTY YEARS IN THE MDOC WITHOUT PAROLE AND PAY FINE OF \$10,000

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

PER CURIAM:

Edith Watts (Watts), the Appellant, was convicted in the Clarke County Circuit Court of delivery of cocaine. As a habitual offender, Watts was sentenced to serve sixty (60) years in the Mississippi Department of Corrections without the possibility of parole and also ordered to pay a \$10,000 fine. Aggrieved from this judgment, Watts appeals to this Court asserting that the lower court erred in failing to grant her motion for a mistrial, as well as denying her motion for a new trial. Finding no reversible error, we affirm.

On March 3, 1994, Leon Williams (Williams) of the Mississippi Bureau of Narcotics approached Watts in order to purchase crack cocaine. Rigged with a hidden tape recorder, Williams bought four rocks with \$50.00 supplied by the Wayne-Clarke-Jasper Narcotic Task Force funds. After the transaction, Williams met with officers who were conducting surveillance on the transaction. Williams handed the crack cocaine over to agent Joseph Waller, a lieutenant at the Waynesboro Police Department, who put the rocks in an evidence bag. The evidence was tested by the Mississippi Crime Lab, and was positively identified as cocaine.

Watts' first argument on appeal is that the trial court erred in denying her motion for a new trial. She argues that the trial court should have excluded evidence of the audio tape that was made by Williams when he was making the purchase. The defense argues that although it knew about the tape in question, the State never delivered a copy of it to the defense. The trial court ruled that the State has no duty to deliver an entire file over to the defense stating that the tape was available for the defense to examine at any time, and that the State adequately complied with Rule 4.06 of the Uniform Criminal Rules of Circuit Court Practice. The tape was accordingly admitted into evidence.

Whether a new trial should be granted depends on the circumstances of the case. *Williams v. State*, 669 So. 2d 44, 53 (Miss. 1996). Aside from an abuse of discretion, we will not disturb the lower court's findings. *Eakes v. State*, 665 So. 2d 852, 871 (Miss. 1995).

Rule 4.06 of the Uniform Criminal Rules of Circuit Court Practice governing discovery merely required that the prosecution disclose to the defendant, and permit the defendant to inspect, copy, test and photograph the relevant evidence listed in the rule. Unif. Crim. Cir. Ct. Prac. 4.06. The existence of the tape was known to the defense. Had the defense wanted to hear the tape, or test the tape, as it contended it wanted to do, the defense should have requested a copy from the State.

Watts' second issue is that the trial court erred in denying her motion for a mistrial based on prejudicial statements made by a witness for the State, as well as the prosecutor in his closing argument. The statements were to the effect that drugs had been sold at Watts' house for a long time.

It is well settled that the trial judge is in the best position for determining the prejudicial effect of an

objectionable remark. *Roundtree v. State*, 568 So. 2d 1173, 1177 (Miss. 1990). The trial judge is given considerable discretion to determine whether the remark is so prejudicial that a mistrial should be declared. *Roundtree*, 568 So. 2d at 1177. A review of the record finds no abuse of discretion. The trial court was within his discretion in denying the motion for a mistrial. Therefore, we affirm the judgment of the lower court.

THE JUDGMENT OF CONVICTION IN THE CLARKE COUNTY CIRCUIT COURT OF DELIVERY OF COCAINE AND SENTENCE OF SIXTY (60) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER WITHOUT THE POSSIBILITY OF PAROLE AND PAYMENT OF \$10,000 FINE IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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