

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00490 COA

**JAMES MCCLURE A/K/A JAMES EVERETTE MCCLURE A/K/A JAMES EDWARD
MCCLURE**

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. JOHN M. MONTGOMERY

COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RICHARD BURDINE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS

NATURE OF THE CASE: CRIMINAL: MANSLAUGHTER

TRIAL COURT DISPOSITION: SENTENCED TO TWENTY (20) YEARS IN MDOC

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

BRIDGES, P.J., FOR THE COURT:

McClure was convicted of manslaughter and sentenced to serve twenty (20) years in the Mississippi Department of Corrections. On appeal, McClure raises a single issue claiming that the evidence in the case did not support a conviction for manslaughter. We disagree and affirm the decision of the lower court.

STATEMENT OF THE FACTS

On July 14, 1992, Christy Massie was found dead in the trunk of her car at Propst Park in Columbus, Mississippi. After an investigation, James McClure was arrested for her death. McClure worked as a janitor in the building where Massie worked as an attorney.

In his first statement to the police, McClure claimed that he and Massie were kidnapped by a professional looking, black male. He also stated that the male held a gun to his back and forced him to lock Massie in the trunk of her car. He later retracted that statement and confessed to killing Massie. In his taped confession, which was transcribed and is a part of the record, McClure admitted that he was "high off cocaine" when he went to work, and needed some money to buy some more cocaine. He "asked" Massie for some money. Massie replied that she only had twenty dollars but that she could get more if he would not hurt her. She also offered him her rings, which he took. He subsequently put her in a garbage can and took her out of the building. He taped her mouth shut with adhesive tape and took her twenty dollars. He then bound her legs with leather shoestrings and put her in the trunk of her car.

McClure drove Massie's car to Seventh Avenue to purchase cocaine. After smoking the cocaine, he drove to a Propst Park and abandoned her car, leaving her inside of the trunk to die. He also told the police that he had showed his girlfriend, Sheila Doughty, the parked car at the park.

Sheila Doughty, McClure's fiancé, testified at trial that McClure confessed that he had killed a woman. She further testified that McClure had showed her the car at the park where he locked Massie inside of the trunk. Doughty also testified that after McClure had confessed to her, she heard on the news that Massie's body was found. Doughty's mother gave McClure \$100.00 to leave town. On July 15, 1992, the day after Massie's body was discovered, Doughty went to the police and gave her statement.

Susie Hairston, McClure's former coworker, testified that on the night of Massie's death, she noticed McClure's car at Court Square Towers. When she entered the building, she saw McClure "pushing a garbage can" from the second floor. McClure told her that he had to leave early from work because someone was "trying to break into the house." He also told her that Massie had specifically informed him not to clean her office until she left further notice. Hairston thought it was odd that McClure told her Massie did not want her office cleaned because the day before, Massie had told her to "make sure we clean her office the next night." Hairston then saw McClure leave the building in a dark car which was not his.

Hairston further testified that she asked her supervisor if she should clean Massie's office even though McClure had said Massie did not want her office cleaned. Her supervisor told her to clean the office. However, when she went to unlock Massie's office, she found a note on Massie's door stating

that she did not want her office cleaned. Hairston and Mary Beth Vickers, another coworker, unlocked the door and went inside to clean the office. She noticed two chairs turned upside down, half of the carpet rolled up, Massie's bra and her shoes. The women left the office without cleaning it and reported what they had found to their supervisor.

Two days later, July 10, McClure appeared at work at Court Square Towers. Hairston saw him cleaning Massie's office. When she asked him what he was doing, he replied that he was just helping them out. Hairston again thought this behavior was odd because before McClure had never helped clean any of the offices. His job was only to empty the trash and ash trays in the building.

The next day, McClure again went to work. He asked Hairston if she had heard about a police officer being shot, and further asked if she would go inside the bank with him and watch the news. Later, Hairston could not find McClure and had to call her supervisor to send another worker to do his job. McClure did not show up for work again.

Willie Robinson, supervisor of the janitorial service, also testified. He stated that on July 8, he received a call from one of his employees and had to send someone else to work for McClure. Both Robinson and the employee went to Court Square Towers. He further testified that he had found the note on the door that stated not to clean the room but told his employees to clean the room anyway. Upon finding the upturned chairs, underwear, and rolled rug, he told everyone to leave the room as it was and locked the door upon their leaving. He later saw McClure come back to the office building driving a dark blue Park Avenue, the same kind of car that was owned by Massie. McClure told Robinson that the car was his sister's.

ARGUMENT AND DISCUSSION OF LAW

In his brief the Appellant contends the verdict was not supported by the evidence, and thus we should reverse the conviction of the lower court. He further claims that the evidence was circumstantial, and therefore the *Weathersby* rule mandated that the version of the facts offered by McClure be accepted as true. We disagree and affirm the decision of the lower court.

Where the defendant or the defendant's witnesses are the only eyewitnesses to the homicide witness or witnesses for the state, or by the physical facts or by the facts of common knowle

Weathersby v State, 147 So. 481, 482 (Miss. 1933), quoted in *Fuller v. State*, 468 So. 2d 68, 71 (Miss. 1985). There were no eyewitnesses to this crime. McClure did testify and admitted to the involvement in the abduction, but he clearly stated that his actions were involuntary. He also claims that he never testified that he had killed the victim. McClure, however, confessed to the entire crime before trial. His confession was heard by the jury and is a part of this record. Additionally, his fiancé, Sheila Doughty, testified that McClure had confessed the murder to her, and had told her where he left Massie's body. Other testimony included a statement that McClure was seen driving Massie's car, and statements about McClure's odd behavior. There is no evidence in the record to suggest that

these witnesses were not credible.

Moreover, the Mississippi Supreme Court has held that the *Weathersby* rule is inapplicable where there is a confession in direct conflict with the defendant's in-court testimony. "While he would have a good argument if his tape-recorded statement had been suppressed, the conflict between his statement and his testimony at trial leaves him unable to invoke the *Weathersby* rule." *Harris v. State*, 446 So. 2d 585, 589 (Miss. 1984); *see also Jordan v. State*, 513 So. 2d 574, 579 (Miss. 1987); *Anderson v. State*, 461 So. 2d 716, 719 (Miss. 1984).

Since *Weathersby* is inapplicable, the issue then left for review is whether the jury verdict was against the overwhelming weight of the evidence. It is well settled that the jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). Further, in *Pinkney v. State*, 538 So. 2d 329, 353 (Miss. 1988), the court held that it may reverse only where "the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty."

In *Williams v. State*, the court held that jurors may accept or refuse testimony of witnesses stating "it is not for this Court to pass upon the credibility of witnesses and where the evidence justifies the verdict it must be accepted as having been found worthy of belief." *Williams v. State*, 427 So. 2d 100, 104 (Miss. 1983). Here, there was abundant testimony, exhibits, and McClure's own confession to show or infer that he abducted Massie, robbed her, physically assaulted her, bound her, and left her in the trunk of her own car to die. The jury weighed the evidence, believed the State's witnesses, and convicted McClure of manslaughter. Accordingly, we find the verdict was not against the overwhelming weight of the evidence.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT ON CHANGE OF VENUE FROM LOWNDES COUNTY OF CONVICTION OF MANSLAUGHTER AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TO BE TAXED TO LOWNDES COUNTY.

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