

6/3/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00082 COA

LEDALE WILLIAMS A/K/A LeDALE 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. ISADORE W. PATRICK, JR.

COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

EUGENE A. PERRIER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN DISTRICT ATTORNEY: G. GILMORE MARTIN

NATURE OF THE CASE: DEPRAVED HEART MURDER

TRIAL COURT DISPOSITION: CONVICTION OF MURDER, LIFE IMPRISONMENT.

MANDATE ISSUED: 6/24/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

THOMAS, P.J., FOR THE COURT:

Ledale Williams appeals his conviction of depraved heart murder, raising the following issue as error:

**I. THE COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE A NEW TRIAL. THE VERDICT OF THE JURY WAS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THE TRIAL COURT SHOULD HAVE REVERSED AND RELEASED THE DEFENDANT, OR AT THE VERY LEAST, ORDERED A NEW TRIAL.**

FACTS

On the evening of April 4, 1994, a high school graduation party was held at the address of 203 Easy Street, Vicksburg, Warren County, Mississippi. A large number of teenagers were present. A fight broke out among a group of boys and many were asked to leave. After the fight, there was gunfire, but no one was injured. However, a few minutes later some more guns were fired and Frank Dimbly, an honor student who was not a participant in the shooting, was found dead in the yard of 202 Easy Street, the yard across from the party. The bullet that killed Dimbly came from a 9-mm gun.

Vicksburg Detective Mitchell Dent testified that when he arrived at the scene there was chaos and dozens of persons running around. He was able to recover projectiles from different weapons and take the names of several witnesses to the shooting. Dent testified that there were bullet holes in several automobiles parked on the street, in the window of the house where the party was being held, and in an automobile parked in the driveway of the house where the party was held. After questioning some witnesses, Dent discovered the name of several males who had been shooting that night. One name Dent was given was that of Ledale Williams, the appellant.

Ledale Williams voluntarily went to the police station to make a report and admitted that he had shot a gun that night. Williams took the police to the place where he stated he had discarded a 9-mm gun; however, no gun was ever found in this area. Crime lab technician Steve Byrd testified that the projectiles, gathered from the incident and sent to the lab, came from at least two different 9-mm handguns and one 380 handgun.

Kilby Wilkerson, an adult who was helping with the party, testified that on the evening of the shooting he saw Williams standing in the driveway of 203 Easy Street with a gun in his hands. Wilkerson stated that after he saw the gun he went back toward the house and within a minute he heard "a lot of shots." After the shooting was over "[e]verybody was getting up, one guy didn't."

Leon Walker testified that he had come to pick up his son from the party that night. While he was sitting in his automobile talking to a friend and waiting for his son, two young men came running down the street and retrieved a gun from an automobile parked on the street. As the boys ran back toward Walker's automobile, they stopped right beside Walker's automobile and Walker saw one boy with a gun in his hand. Thereafter, as the two boys ran down the street, Walker heard rapid gunfire. At trial, Walker positively identified Williams as the boy who got the gun from the automobile and the one who had a gun beside his automobile.

Demond Cage testified that after the fight broke out Williams said he was going to his automobile to get his gun. He stated he saw Williams pointing and aiming his gun toward the house where the party was located. He saw Williams initially discharge his gun toward the sky but "it seemed like he lost

control of it" and as he was running the gun "started coming down to the ground." Irene Ward testified that she heard a group of shots while she was at the party, but did not see who was firing. Thereafter she went out to the street and saw Williams with a gun. She also saw Frank Dimbly walking on the lawn of 202 Easy Street. She stated that she was standing about twelve feet from Williams and about the same distance from Dimbly in a triangle formation. She saw Williams fire the first shot, and she dropped to the ground. She testified that during the time Williams was shooting "that's during the time I seen him [Dimbly] fall . . ." after the first shot "during the other shots, he [Dimbly] fell. He fell face down in the yard . . . 202 was the address of the yard." She said that no one else was shooting in that area of the yard.

The defense produced four witnesses, Ruther Turner, Alex Buck, Chris Wallace, and Tiffany Porter, all of whom stated Williams was shooting in the air and that "someone dressed in black" was shooting into the crowd.

Williams testified on his own behalf and admitted that he was shooting his 9-mm gun that evening, but testified that he only shot in the air. He stated that he lost the gun when he was running away.

The jury was given a depraved heart murder instruction and a criminal negligence instruction. The jury returned a verdict of guilty of depraved heart murder.

## ANALYSIS

### I.

**THE COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE A NEW TRIAL. THE VERDICT OF THE JURY WAS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE. THE TRIAL COURT SHOULD HAVE REVERSED AND RELEASED THE DEFENDANT, OR AT THE VERY LEAST, ORDERED A NEW TRIAL.**

Williams argues that the State of Mississippi never proved beyond a reasonable doubt who shot and killed Frank Dimbly. He states that several persons were discharging firearms that night, at least one other person fired a 9-mm gun, and that no one witness saw who fired the fatal shot. He complains that the jury found him guilty of murder because he was acting irresponsibly by discharging a firearm near a crowd, not because the State proved beyond a reasonable doubt that he actually shot and killed Dimbly.

A motion for judgment notwithstanding the verdict tests the sufficiency of the evidence supporting a guilty verdict. *Butler v. State*, 544 So. 2d 816, 819 (Miss. 1989). To test the sufficiency of the evidence of a crime:

[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 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).

The trial court also denied Williams' motion for a new trial which he brought with his motion for judgment of acquittal notwithstanding the verdict. A motion for new trial tests the weight of the evidence rather than its sufficiency. *Butler*, 544 So. 2d at 819. The Mississippi Supreme Court has stated:

As to a motion for a new trial, the trial judge should set aside the jury's verdict only when, in the exercise of his sound discretion, he is convinced that the verdict is contrary to the substantial weight of the evidence; this Court will not reverse unless convinced the verdict is against the substantial weight of the evidence.

*Id.* (quoting *Russell v. State*, 506 So. 2d 974, 977 (Miss. 1987)).

Witnesses testified to the fact that Williams was shooting a Tec 9 gun, a 9-mm, which is the caliber gun that killed Dimbly. We have another witness testifying that Williams started shooting in the air, but it seemed as if William lost control of the gun and began shooting lower, into the crowd. Last, we have the testimony of Irene Walker, who is the closest thing the State has to an eyewitness. Although she did not see Williams actually shoot Dimbly, she testified that after Williams began shooting, directly in the vicinity of Dimbly, Dimbly fell to the ground. Since the credible evidence must be accepted as true, and all reasonable inferences which may be drawn from the evidence must benefit the prosecution, we may not disturb the judgment of the lower court denying Williams judgment notwithstanding the verdict.

The jury has the benefit of having seen witnesses before them, in person. *Culberson v. State*, 379 So. 2d 499, 503 (Miss. 1979). Contradictions in testimony may be explained and the jury may accept the explanations given, that is their prerogative. We will not invade the province of the jury. Therefore, after considering the evidence in the light most consistent with the verdict, there is substantial evidence upon which fair-minded and reasonable jurors could have found Williams to be guilty beyond a reasonable doubt. Accordingly, this assignment of error has no merit.

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

**BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**