

IN THE COURT OF APPEALS 8/6/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00296 COA

YETT STANBERRY III A/K/A "JUNE BUG" 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 FOR APPELLANT; CHARLES E. WEBSTER

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: LAURENCE MELLEN

NATURE OF THE CASE: CRIMINAL

TRIAL COURT DISPOSITION: APPELLANT SENTENCED TO LIFE

IMPRISONMENT; SENTENCE TO RUN

CONSECUTIVE TO ANY AND ALL

SENTENCES PREVIOUSLY IMPOSED

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

THOMAS, P.J., FOR THE COURT:

Yett Stanberry III was convicted in the Circuit Court of Coahoma County, Mississippi, of murder in violation of section 97-3-19 of the Mississippi Code of 1972 and sentenced to serve a life sentence in the Mississippi Department of Corrections. Subsequent to his conviction and sentence, Stanberry filed a motion for new trial which was thereafter denied by the trial court. On appeal, he presents a single error alleging that the verdict of the jury was against the overwhelming weight of the evidence. Finding the trial court did not abuse its discretion in denying Appellant's motion for a new trial, we affirm.

FACTS

On June 19, 1993, Timothy Hogan was working in a cotton field in Coahoma County within the city limits of Clarksdale, Mississippi. When Hogan went up near the barn area for some water, he discovered a body lying near the cotton gin. Hogan relayed what he found to his cousin Robert Holmes who subsequently notified the police.

A full investigation followed and the Clarksdale police department determined that the victim was Rochelle McGee. During the course of the investigation, the police talked with several suspects; however, no arrest was made until three months later when Mrs. Lottie Johnson gave a statement to the police. On September 7, 1993, Johnson met with officer Roosevelt Howard and Sheriff Andrew Thompson at the King's Temple Church in Clarksdale, Mississippi. At that time Johnson informed the officers that she was Yett Stanberry's former girlfriend and that the two had a daughter. Johnson also testified that on the day of the murder, she loaned the Appellant her car around 4:00 P.M., and he returned home sometime the next morning around 3:45 A.M. Johnson recalled going outside and to the car where the Appellant was:

So we walked out and got into the car. I guess we was at the beer place when he started to tell me - - he said, 'I just killed somebody.' I said 'What?' He said, 'I just killed somebody.' . . . And he said that he was selling drugs for somebody, and he had her selling for him. He said he asked her for his drugs or his money, and she didn't have them. He said that he had her to get out of her clothes to see whether they was on her or not, and he didn't find them. And then he said that he told her that he was going to kill her, and she laughed. He said that he shot her. That she used the bathroom on herself, and she fell back. He said she tried to fight and then she took off and she started to run, and he halted her down in the ditch, and he shot her.

Johnson was in the car with the Appellant when he drove to the river and threw a pistol in near the edge. Johnson also helped the Appellant clean both the outside and inside of her car. Johnson testified that she was scared: "After he finished saying what he had done, he told me that I was the only person that he had told and if anybody were ever found out, that he would know that I was the one that told, and that I would end up like her."

Subsequently, the authorities arrested Stanberry for the murder. After his arrest, and after being fully advised of his *Miranda* rights, Stanberry gave a full confession to the police.

DISCUSSION

In considering whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989). Only when the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal. *Benson v. State*, 551 So. 2d 188, 193 (Miss. 1989) (citing *MeFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1984)). In this case, Johnson's testimony, coupled with Stanberry's confession, was more than ample evidence to support Stanberry's conviction.

We note that in Stanberry's argument that his conviction was against the overwhelming weight of the evidence, he argues briefly that his confession was coerced. We find that he is barred from raising this issue on appeal. The record is entirely devoid of any pre-trial motion to suppress the confession or to challenge the voluntariness of the confession. In addition, there was no objection by the defense at trial when the taped confession was introduced into evidence.

**THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF
CONVICTION OF MURDER AND SENTENCE OF LIFE IN THE CUSTODY OF THE
MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. THE SENTENCE
IMPOSED HEREIN SHALL BE CONSECUTIVE TO ANY AND ALL SENTENCES
PREVIOUSLY IMPOSED. COSTS OF APPEAL ARE TAXED TO COAHOMA COUNY.**

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

