

IN THE COURT OF APPEALS

8/12/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00823 COA

WILLIE L. BULLINS A/K/A "STOMPER" 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: RICHARD B. LEWIS

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: LAWRENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL (FELONY)

TRIAL COURT DISPOSITION: CTS I & II - MURDER: CT III -AGGRAV. ASSAULT:
SENTENCED AS HABITUAL OFFENDER TO CTS I & II - LIFE ON EACH COUNT; CT III -
20 YRS; ALL COUNTS RUNNING CONSECUTIVE.

MANDATE ISSUED: 9/2/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

McMILLIN, P.J., FOR THE COURT:

Willie L. Bullins was found guilty of two counts of murder and one count of aggravated assault by a jury in the Circuit Court of Coahoma County. In this appeal from his conviction, Bullins suggests that the trial court erred in denying him a new trial on the basis that the jury's verdict was against the weight of the evidence. Based on our limited scope of review of this issue, we determine it to lack merit and affirm.

I.

Facts

Clarksdale police, responding to a 911 call, went to the home of Mary White, where they discovered the bodies of Mary White and her daughter, Terry Keys. Both had been killed by gunfire. Police also discovered Mrs. White's son, Zachary White, who had suffered critical injuries from three gunshots. Willie Bullins, the boyfriend of Terry Keys, was ultimately arrested, tried, and convicted on two counts of murder and one count of aggravated assault arising out of the incident.

At trial, Zachary White, who survived his injuries, testified to seeing the defendant standing in White's bedroom doorway holding a gun in one hand and Terry Keys by the wrist with the other hand. White said Bullins proceeded to fire three shots in his direction, all of which struck him.

. Alvin Keys, one of Terry Keys's children, was sleeping in the room with White. He testified that he was awakened by the disturbance and saw Bullins shoot White. Alvin also testified that he followed Bullins as he forced his mother down the hall into the kitchen. There Alvin saw the body of his grandmother, who had apparently already been shot. According to Alvin, Bullins, still exercising physical control over Terry Keys, ordered Alvin to follow him outside. Once outside, Terry Keys broke free from Bullins and attempted to flee. Alvin testified that he then ran into the neighbor's house to call 911, and while on the telephone with the dispatcher, he heard an additional shot from

outside. His mother was, as we have already noted, discovered shortly thereafter, dead of a gunshot wound.

II.

Weight of the Evidence

Bullins begins his argument by stating the standard of review for testing the sufficiency of the evidence to support a jury verdict. However, his brief asks that "the jury's verdict be vacated on grounds related to the weight of the evidence, not its sufficiency, so that it might be retried in order to allow another jury to be permitted to pass upon this question." We will, therefore, confine our consideration to the issue of whether the jury verdict was against the weight of the evidence.

The request for a new trial based on the weight of the evidence must be made, in the first instance, by motion to the trial court. *See* M.R.C.P. 59; *Metcalf v. State*, 629 So. 2d 558, 561-62 (Miss. 1993). The trial court should grant such a motion when it is convinced that the verdict is so contrary to the weight of the credible evidence that to permit it to stand would work a substantial injustice. *Clark v. State*, 693 So. 2d 927, 931 (Miss. 1997). Bullins filed the proper post-trial motion in this case; however, the trial court denied the new trial request. When considering the denial of such a motion on appeal, we are limited to searching for an abuse of discretion on the trial court's part. *Strong v. State*, 600 So. 2d 199, 204 (Miss. 1992). We are further constrained to consider the evidence in the light consistent with the verdict and to permit the State all favorable inferences that may reasonably be drawn from the evidence. *Id.*

The evidence of guilt, as summarized above, appears overwhelming if accepted as true by the jury. Bullins, on the other hand, presented evidence that there was a power outage on the night of the crime and claims that the resulting darkness renders the eyewitness identifications of White and Keys substantially suspect. Bullins also presented several alibi witnesses who testified that he was at a nightclub in another town at the time of the shootings.

It is the opinion of this Court that this conflicting evidence did nothing more than present a disputed question of fact that is within the exclusive province of the jury to resolve. The testimony in support of the defendant's guilt was not so patently unbelievable as to lack probative value. Neither does the alibi evidence appear so convincing that the jury's apparent decision to disbelieve it seems arbitrary or capricious. The trial court, having the opportunity to observe the testimony first-hand and form its own impressions of the credibility of the various witnesses, was of the opinion that the jury's verdict did not constitute a manifest miscarriage of justice. Nothing we have discovered in the record convinces us that this conclusion was an abuse of the trial court's discretion. There is, therefore, no basis for this Court to disturb the jury's verdict and the resulting judgment of sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF WILLIE L. BULLINS AS A HABITUAL OFFENDER OF COUNTS I AND II OF MURDER AND SENTENCE OF LIFE FOR EACH COUNT AND COUNT III OF

AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. THE SENTENCE IN COUNT I IS TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED, AND THE SENTENCES IN COUNTS II AND III ARE TO RUN CONSECUTIVELY TO COUNT I. COSTS OF THIS APPEAL ARE ASSESSED TO COAHOMA COUNTY.

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