

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ADAM TROY PETERS

FILED

APPELLANT

JUN 06 2007

VS.

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

NO. 2007-KA-0217-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS.

NO. 2007-KA-0217-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Marion County, Mississippi, in which the Appellant, Adam Troy Peters, was convicted and sentenced for the felony crime of **ARMED ROBBERY**, Miss. Code Ann. § 97-3-79 (1972), and **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-81 (1972).

STATEMENT OF FACTS

On September the 18th, the year 2001, Christy Cook and Josh King were working at the Subway, which is located out on Highway 13. They were both working there that day. Around 10 o'clock at night they were closing up. Christy walked outside with the garbage and she put it in the dumpster. She turned around and there was someone standing there. There was a man, Troy Adam Peters, standing there. He was a black male and he looked at her and he said, I want a burger. She said, sir, we're closed and we don't sell burgers at Subway. She tried to walk off and he said, I want

a burger. She said, sir, we are closed. At this point, she's trying to get to the back door of the Subway so she can get inside the door. This man follows her. She can't shut the door and he pushes his way inside. She screams for Josh. That's when this man pulled out a gun and stuck it to her head. And he said, this is a robbery. They give him the money and he flees. (T. 77 - 78).

Adam Troy Peters, was convicted and sentenced for the felony crime of **ARMED ROBBERY**, Miss. Code Ann. § 97-3-79 (1972), and **HABITUAL OFFENDER**, Miss. Code Ann. § 99-19-81 (1972).

SUMMARY OF THE ARGUMENT

I.

WHETHER THE TRIAL COURT WAS PROPER IN NOT REQUIRING THE STATE TO IDENTIFY A CONFIDENTIAL INFORMANT?

We have held that the disclosure of an informer , who is not a material witness to the guilt or innocence of the accused, is within the sound discretion of the trial court. Strode v. State, 231 So.2d 779 (Miss.1970).

This Court has recognized the value of the informer's role in law enforcement and has developed an "informer's privilege," which enables the prosecution to withhold the informant's identity. Strode v. State, 231 So.2d 779 (Miss.1970).

II.

THE WEIGHT OF THE EVIDENCE SUPPORTS THE VERDICT.

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the 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.

THE ARGUMENT

PROPOSITION I.

WHETHER THE TRIAL COURT WAS PROPER IN NOT REQUIRING THE STATE TO IDENTIFY A CONFIDENTIAL INFORMANT?

Allowing the State to withhold the identity of the confidential informant was not an abuse of discretion where the informant, who gave information concerning the purchase of drugs from the defendant, as well as possession of newly acquired quantities of drugs, was not shown to be a coconspirator intending to sell the drugs, nor a material witness to the offense of the intent to sell. Breckenridge v. State, 472 So.2d 373, 379 (Miss.1985). The same analysis is to be applied here in that this confidential informant was not a material witness.

The appellant contends that the trial court erred in failing to disclose the identity of the confidential informant. This Court has recognized the value of the informer's role in law enforcement and has developed an "informer's privilege," which enables the prosecution to withhold the informant's identity. Strode v. State, 231 So.2d 779 (Miss.1970).

In order for the trial court to require the identity of an informant to be revealed, he must have been a participant in the crime or an eye witness to the offense which would cause the confidential informant to become a material witness.

We have held that the disclosure of an informer ,who is not a material witness to the guilt or innocence of the accused, is within the sound discretion of the trial court. Strode v. State, 231 So.2d 779 (Miss.1970).

15 MR. KITTRELL: No. I said he said he
16 saw him shaking. Let me get the
17 information from Robert Carson's report. I
18 think he was just in the area, but let me
19 see here.
20 It says here, "I've got some

21 information stating that there were two
22 females in a vehicle, a white Cadillac.
23 Also, the informant advised me that the
24 young man, Adam Peters, came from around
25 that area of Subway, and this person
26 advised me that he was shaking and
27 nervous."
28 So I don't think they saw him, in
29 fact. They just saw him in the area come (T. 63)
1 around there, so they just provided that
2 information to law enforcement and then law
3 enforcement acted upon that and continued
4 their investigation.
5 THE COURT: What you're saying,
6 Mr. Sweatt, you want that person to be a
7 witness at the trial?
8 MR. SWEATT: My client asked me to
9 file a motion so we'd know who it was, Your
10 Honor. We'd investigate it if we needed
11 to.
12 THE COURT: If they're not calling him
13 and they're not going to come out at all,
14 there's no way it could be beneficial to
15 your position, could it?
16 MR. SWEATT: On the surface, it may
17 appear so, Your Honor.
18 THE COURT: Okay. All right. I'm
19 going to overrule the motion. (T. 64)

The State would submit that this issue brought by the Appellant is lacking in merit. As the trial court said, "If they're not calling him and they're not going to come out at all, there's no way it could be beneficial to your position, could it?" (T. 64).

PROPOSITION II.

THE WEIGHT OF THE EVIDENCE SUPPORTS THE VERDICT.

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the 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.

The correct standard as stated above in Smith, is to take the evidence presented by the prosecution as true together with reasonable inferences. The evidence cited in the record, taken as true together with reasonable inference is more than sufficient evidence in support of the jury's verdict. Furthermore, weight and sufficiency of the evidence will be discussed in detail below.

The applicable standard of review is found in Dilworth v. State, 909 So.2d 731, 741 (Miss. 2005) and Bush v. State, 895 So.2d 836, 843 (Miss. 2005) that the standard of review for a post-trial motion is abuse of discretion.

In Carr v. State, 208 So.2d 886,889 (Miss.1968) the court held:

We stated that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for judgment notwithstanding the verdict, the critical inquiry is whether the evidence shows 'beyond a reasonable doubt that accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction.' However, this inquiry does not require a court to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Reasonably, matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. "Weight" implicates the denial of a motion for a new trial while "sufficiency" implicates the denial of motions for directed verdict, peremptory instruction, and judgment notwithstanding the verdict. May v. State, 460 So.2d 778, 781 (Miss. 1984).

In other words, the remedy for a defect in "weight" is a new trial while the remedy for a defect in "sufficiency" is final discharge from custody.

Where a defendant has made post-trial motions assailing the sufficiency of the evidence, "... the trial court must consider all of the evidence - not just the evidence which supports the State's

case - in the light most favorable to the State.” Winters v. State, 473 So.2d 452, 459 (Miss. 1985). See also McClain v. State, 625 So.2d 774 (Miss. 1993). This includes the defendant’s evidence, if any, which must be construed in a light most favorable to the prosecution’s theory of the case.

In judging the legal "sufficiency," as opposed to "weight," of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. Hart v. State, 637 So.2d 1329, 1340 (Miss. 1994); Edwards v. State, 615 So.2d 590, 594 (Miss. 1993); Clemons v. State, 460 So.2d 835, 839 (Miss. 1984); Forbes v. State, 437 So.2d 59, 60 (Miss. 1983); Bullock v. State, 391 So.2d 601, 606 (Miss. 1980); Boyd v. State, 754 So.2d 586 (Miss. App. 2000).

If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict and request for peremptory instruction or JNOV should be overruled. Brown v. State, 556 So.2d 338 (Miss. 1990); Davis v. State, 530 So.2d 694 (Miss. 1988). As stated previously, a finding that evidence is insufficient results in a discharge of the defendant. May v. State, 460 So.2d 778, 781 (Miss. 1984).

Put another way, the trial court, and this Court on appeal as well, must accept the State’s evidence as true and view it in a light most favorable to the State’s theory of the case.

The State counters that the jury heard all of the evidence, exhibits and testimony, and the members of the jury believed the evidence produced by the prosecution. The jury verdict should stand.

On September 24, 2001, in the Columbia, Mississippi, Legal Complex at 10:23 a.m., Peters knowingly gave a voluntary and intelligent confession (Exhibit 22) to the crime of **ARMED**

ROBBERY, Miss. Code Ann. § 97-3-79 (1972), that he committed on September 18, 2001.

Furthermore, the two direct eye - witness victims identified Peters as being the perpetrator.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

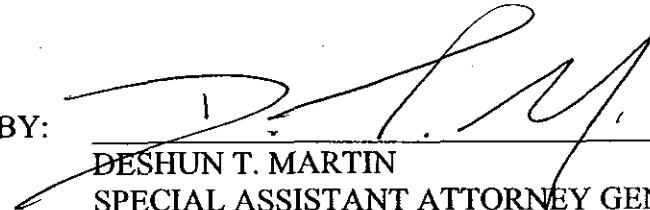
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Deshun T. Martin, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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Circuit Court Judge
Post Office Box 488
Purvis, MS 39475

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This the 6th day of June, 2007.



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