

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROTUNDO JENKINS

APPELLANT

VS.

FILED

NO. 2007-KA-0814

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SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF AUTHORITIES

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN ALLOWING OFFICER BOYD TO TESTIFY REGARDING THE ANONYMOUS TIP HE RECEIVED AS IT WAS NOT HEARSAY.
- II. THE DEFENDANT IS PROCEDURALLY BARRED FROM RAISING HIS SECOND ISSUE ON APPEAL AS HE CITED NO RELEVANT AUTHORITY TO SUPPORT HIS ARGUMENT.

STATEMENT OF THE FACTS

On August 18, 2006, Officer Kevin Boyd and Officer O. L. Sanders of the Meridian Police Department were on patrol in separate vehicles and were dispatched to the area around 55th Avenue and 5th Street to look for a white female supposedly soliciting herself for drugs. (Transcript p. 49). The officers did not see the female; however, Officer Boyd was flagged down by a black SUV. (Transcript p. 50). A white male in the back seat of the SUV informed Officer Boyd that he witnessed a black male on a mini back near 1st Street handing a white female crack cocaine. (Transcript p. 51). Immediately, both Officer Boyd and Officer Sanders began driving toward 1st Street. (Transcript p. 52). As they were approaching the area in question, Officer Boyd heard the

sound of a mini bike engine. (Transcript p. 52). He turned to his left and saw a black male on a silver mini bike. (Transcript p. 52).

As Officer Boyd explained at trial, he began pursuing the mini bike for numerous reasons: (1) the driver had a full face helmet but the helmet was sitting on top of his head; (2) there was no tag on the mini bike; and (3) the bike was not street legal as it had no turn signals. (Transcript p. 52). The black male on the mini bike, later identified as the Defendant, Rotunda Jenkins, looked directly at the officer and sped away. (Transcript p. 53). However, before he sped away, Officer Boyd noticed a clear bag with a white substance hanging from Jenkins mouth. (Transcript p. 53). Jenkins led Officers Boyd and Sanders on a chase that lasted several blocks before indicating that he was about to turn into a driveway to stop. (Transcript p. 53 - 55). However, instead of stopping in the driveway, Jenkins sped through the yard near a parked car. (Transcript p. 55 - 56). Officers Boyd and Sanders exited their cars and chased Jenkins on foot. (Transcript p. 56 and 82). Officer Sanders saw Jenkins “wobble his bike and actually lean down beside the front end of the vehicle [parked in the yard]. It appeared to me that the subject tossed something. What it was, I don’t know, and he proceeded to get the bike back in gear and try to get away again.” (Transcript p. 82). Jenkins was eventually apprehended, but resisted arrest. (Transcript p. 57). A bag containing cocaine was found near the vehicle in the yard near the front tire. (Transcript p. 59). Tests revealed that bag contained “cocaine base in the amount of 4.27 grams.” (Transcript p. 110).

Jenkins was arrested and tried for possession of cocaine. He was convicted and sentenced to serve five years in the custody of the Mississippi Department of Corrections with two years suspended and four years of reporting probation.

SUMMARY OF THE ARGUMENT

The trial court properly allowed Officer Boyd's testimony regarding the anonymous tip he received as the testimony was not hearsay, in that it was not offered to prove the truth of the matter asserted but was instead offered to show why he was where he was and why he noticed Jenkins on the mini bike. Also, Jenkins is procedurally barred from raising his second issue on appeal as he cited to no relevant authority to support his argument. Further, Jenkins failed to show any resulting prejudice.

ARGUMENT

I. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN ALLOWING OFFICER BOYD TO TESTIFY REGARDING THE ANONYMOUS TIP HE RECEIVED AS IT WAS NOT HEARSAY.

Jenkins first argues that the trial court erred in allowing Officer Boyd to testify regarding his being flagged down by a white male in an SUV who told the officer that a black male on a mini bike gave a white female cocaine nearby. (Appellant's Brief p. 10). "The admissibility of evidence is within the discretion of the trial court, and absent abuse of that discretion, the trial court's decision on the admissibility of evidence will not be disturbed on appeal." *Porter v. State*, 869 So.2d 414, 417(Miss. Ct. App. 2004) (citing *McCoy v. State*, 820 So.2d 25, 30 (Miss. Ct. App.2002)). "When the trial court stays within the parameters of the Rules of Evidence, the decision to exclude or admit evidence will be afforded a high degree of deference." *Id.*

Jenkins argues that the officer's testimony was hearsay. However, hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Mississippi Rule of Evidence 801(c). Officer Boyd's testimony was given ONLY to show why he proceeded to the area where he found Jenkins and why he noticed Jenkins at all. "To the extent necessary to show why an officer acted as he did,

an informant's tip is admissible." *Hill v. State*, 865 So.2d 371, 380 (Miss. Ct. App. 2003) (citing *Swindle v. State*, 502 So.2d 652, 657-58 (Miss. 1987)). *See also Stubbs v. State*, 878 So.2d 130, 135 (Miss. Ct. App. 2004) and *Arnold v. State*, 809 So.2d 753, 758 (Miss. Ct. App. 2002).

Moreover, this Court has previously held that "if the significance of a statement is simply that it was made and there is no issue about the truth of the matter asserted, then the statement is not hearsay." *Arnold*, 809 So.2d at 758 (quoting *Mickel v. State*, 602 So.2d 1160, 1162 (Miss. 1992)). Officer's Boyd's testimony was not given to prove that a black male on a mini bike gave a white female cocaine or even to elude that Jenkins was the black male that the anonymous informant saw giving the white female cocaine. It was simply given to illustrate to the jury why Officers Boyd and Sanders drove toward 1st Street and why Officer Boyd noticed Jenkins on a mini bike. As noted in *Hill v. State*, "the evidence used to accuse [the defendant] was not the various statements of anonymous tipsters but the evidence acquired by [the officer] which resulted in [the defendant's] arrest. [The officer], for all practical purposes of this issue, was the accuser and [he] was confronted and cross-examined by [the defendant] at trial." 865 So.2d at 380. Likewise, in the case at hand, for all practical purposes, Officers Boyd and Sanders were the accusers and both were cross-examined by Jenkins at trial. Thus, the trial court properly allowed the testimony and Jenkins first issue is without merit.

II. THE DEFENDANT IS PROCEDURALLY BARRED FROM RAISING HIS SECOND ISSUE ON APPEAL AS HE CITED NO RELEVANT AUTHORITY TO SUPPORT HIS ARGUMENT.

Jenkins also argues that the trial court "abused his discretion in admitting evidence . . . of the weight of the cocaine at issue." (Appellant's Brief p. 13). This issue is procedurally barred as Jenkins failed to cite any relevant authority to support his arguments. *See Williams v. State*, 708 So.2d 1358, 1362-63 (Miss.1998) (failure to cite relevant authority obviates the appellate court's

obligation to review such issues).

Notwithstanding the bar, Jenkins is not entitled to relief as no prejudice resulted from the alleged error. Jenkins objected to the inclusion in the jury instructions of the weight of the cocaine. (Appellant's Brief p. 13 and Transcript p. 145). However, even if it were error to include the weight in the jury instructions which the State denies, it caused no prejudice to Jenkins as the weight of the cocaine was already before the jury. (Transcript p. 98 - 100 and 110). "To warrant reversal on an issue, a party must show both error and a resulting injury." *Vardaman v. State*, 966 So.2d 885, 891 (Miss. Ct. App. 2007). "An error is only grounds for reversal if it affects the final result of the case." *Id.* Accordingly, Jenkins second issue is without merit.

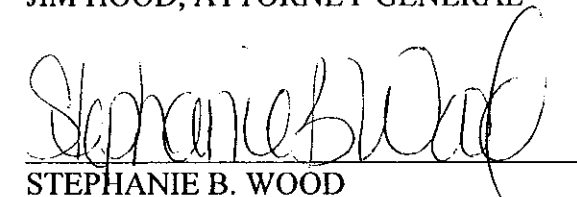
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Rotunda Jenkins as the trial court acted within its discretion in allowing the testimony of Officer Boyd and as Jenkins is procedurally barred from raising his second issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

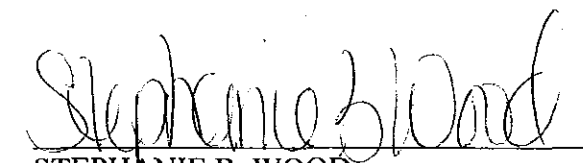
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 26th day of February, 2008.


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