

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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SILENTRO MILLER

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APPELLANT

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SUPREME COURT
COURT OF APPEALS

VS.

NO. 2007-KA-0885

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**SILENTRO MILLER
A/K/A SELENTRO MILLER**

APPELLANT

vs.

CAUSE No. 2007-KA-00885-SCT

THE STATE OF MISSISSIPPI

APPELLEE

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of Winston County, Mississippi in which the Appellant was convicted and sentenced for his felony of **SALE OF COCAINE**.

STATEMENT OF FACTS

Wes Stapp, an agent with the Mississippi Bureau of Narcotics, testified that he met with one Bobby Wayne Goodin and fellow agent Barry McWhirter on 23 May 2005. Goodin and his truck were searched to determine whether he was in possession of contraband. Goodin was then fitted out with audio and video transmitting devices and provided the sum of forty dollars. Goodin then drove into Louisville to attempt to make a purchase of cocaine. Stapp and McWhirter followed. When Goodin reached his destination, the agents parked their vehicle and listened to what transpired.

Goodin entered a residence on Miller avenue and asked the occupant for forty dollars'

worth of cocaine. Goodin was told that only thirty dollars' worth was available. Goodin purchased that amount and received a five-dollar bill and five one dollar bills in return. Goodin then left the residence and drove to a "post - buy" meeting place, where he gave the agents what he had purchased as well as the ten dollars given him in change. The purchase was recorded on tape. (R. Vol. 2, pp. 36 - 41).

The substance purchased by Goodin contained .17 grams of cocaine. (R. Vol. 2, pp. 46 - 51).

Bobby Wayne Goodin testified. He testified as to the meeting with agents Stapp and McWhirter on 23 May 2005. He stated that he then drove to Miller avenue in Louisville, Winston County. He was expecting to find a Chris Miller. However, Miller was in bed asleep at the time, so he dealt with the Appellant. Goodin did not, at that time, know the Appellant. Goodin said he wanted forty dollars' worth of cocaine; the Appellant said he had only thirty dollars' worth. Goodin agreed to purchase what the Appellant had. The Appellant laid the cocaine on a coffee table. The Appellant gave the Appellant forty dollars and received ten dollars in return. Goodin stated that he then left the residence and drove to meet the agents. He turned the cocaine and money over to them at that meeting. The Appellant was searched again and relieved of the video and audio transmitting devices.

Goodin then authenticated a tape of the transaction with the Appellant. This tape was played for the jury. (R. Vol. 2, pp. 52 - 58).

Gerald Hayes, an investigator with the Louisville police department, testified that he knew the Appellant. The Appellant had been one of his DARE students and he had known the Appellant for most of the Appellant's life. He was asked to watch the video tape of the meeting between the Appellant and Goodin to see if he could identify the person who sold the cocaine to

Goodin. Hayes identified the Appellant as the person who, on the tape, made the sale to Goodin. (R. Vol. 2, pp. 62 - 65).

STATEMENT OF ISSUES

1. IS THE VERDICT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE?

SUMMARY OF ARGUMENT

THAT THE VERDICT IS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

ARGUMENT

THAT THE VERDICT IS NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE

In considering the Appellant's assignment of error, we bear in mind the standard of review in this Court applicable to the claim. *May v. State*, 460 So.2d 778, 781 - 782 (Miss. 1984).

The case at bar is routine "controlled buy" of a controlled substance. An informant was given a sum of money with which to buy cocaine, fitted out with an audio and video transmitter, and went to the Appellant's location and bought cocaine. The trip to the residence, the purchase and the trip to the "post buy" meeting were recorded. The substance purchased proved to contain cocaine.

The Appellant invites this Court to act as a "thirteenth juror" and nullify the verdict against him, however. He claims that the testimony of the informant should have been given no credit inasmuch as the informant had run afoul of the law himself. He also claims that the testimony left open the possibility that the informant was in possession of the cocaine before he met with the Appellant. He then says that since the video tape showed that there was another person present at the place at which the sale occurred, it was possible that that other person made

the sale. And then he says that the video does not actually show cocaine or money being paid to the Appellant by the informant.

What we have here is an attempt to grab at straws. The video fully corroborates the testimony of the informant. Perhaps it does not show cocaine, but the Appellant does appear to put something down on a table, just as the informant testified he did. Moreover, the tape clearly shows the Appellant counting out change, just as the informant testified he did. It cannot be reasonably supposed that the Appellant simply upped and gave the informant ten dollars for no reason. On the drive to the post - buy meeting, the informant can be clearly heard describing what he had purchased and how much money had been returned to him by the Appellant.

As for the informant's credibility, it may be that he had had his own troubles with the law, but this was strictly a matter for the jury to consider and weigh when it considered his testimony. We think it is little surprise that the informant's criminal history was of no significance to the jurors given what the video tape showed. A reasonable jury most certainly could have put faith in the informant's testimony. There is no ground for this Court to disturb the jury's verdict simply because a State's witness has a criminal record, and the Appellant cites no authority to show otherwise.

As for the claim that Goodin might have had the cocaine on his person prior to the sale, there is not the slightest evidence or inference from evidence to support this fevered suggestion. Again, the tape negates any supposition in this regard. To believe that this is what might have happened, the jury, and this Court, would then have to believe that the informant went to the Appellant's residence, gave the Appellant forty dollars for nothing, and received ten dollars back – for nothing. No reasonable juror or Court could possibly believe that such an absurd thing occurred. Beyond this, the Appellant suggests no motive for the informant and he to do such a

strange thing.

That the tape did not show the cocaine is a matter of no importance. The actions of the Appellant shown in the tape are wholly consistent with a sale of cocaine. At very most, this niggling complaint was a matter for the jury to consider. It is no ground here to set aside the verdict.

It is true that the tape showed the presence of a third person at the time of the sale. This is of no help to the Appellant, though. That third person may have been aiding and abetting the sale, or he might have been a mere bystander. His presence does not affect with the tape shows with respect to the Appellant. The Appellant is shown leaning down to put something down and then counting money. The informant then leaves with ten dollars and the crack cocaine.

Finally, the Appellant claims that the verdict amounts to an unconscionable injustice because of the sentence he received. We do not construe this claim to be an attempt to say that the sentence was disproportionate. Even if it were so intended, any such claim would not properly be before this Court since it was not raised in the trial court. *Sims v. State*, 928 So.2d 984 (Miss. Ct. App. 2006).

The length of a sentence can have no bearing on whether the verdict of the jury was contrary to the great weight of the evidence. The claim that a verdict is opposed by the great weight of the evidence, by definition, is a claim directed against a verdict of guilty. Such a claim has nothing to do with a sentence imposed in consequence of a verdict of guilty.

The informant's testimony was very credible, and it was corroborated by the video tape. The most that may be said of the Appellant's complaints here is that they were merely matters for the jury to consider. There is no basis for this Court to find that the verdict is an unconscionable injustice. That the Appellant was guilty of this felony is beyond doubt in view of his apology at

sentencing. He asked forgiveness for his "ignorance" (R. Vol. 2, pg. 88).

The Assignment of Error is without merit.

CONCLUSION

The Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

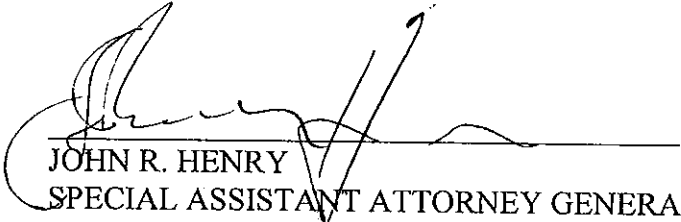
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 17th day of January, 2008.



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