

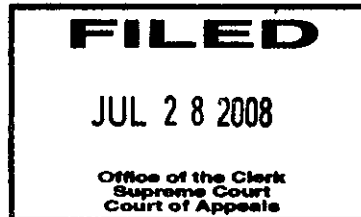
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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CORA ANN TURNER

APPELLANT

VS.



NO. 2007-KA-1539-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. NO BREAK OCCURRED IN THE CHAIN OF CUSTODY, NOR DID TURNER RAISE A REASONABLE INFERENCE OF PROBABLE TAMPERING OR SUBSTITUTION OF THE EVIDENCE.

STATEMENT OF FACTS

On September 15, 2005 Anthony Joseph Kirkley, a confidential informant for the Warren County Sheriff's Department, met with Detective Mike Traxler concerning the purchase of narcotics from Cora Ann Turner. T. 148. Kirkley was outfitted with an audio-visual recording device. T. 149. Traxler instructed Kirkley to attempt to purchase narcotics from Turner and members of her family. T. 151. Kirkley went to the home of Turner's mother to purchase narcotics from her brother, Will Callahan. T. 252. Later, he went to Turner's home nearby where he purchased \$50 worth of cocaine. T. 256. He returned briefly to the Callahan home to complete a deal with Will Callahan, but left when his dealer never showed up. T. 273. He then met Detective Traxler at the post-buy location and turned the drugs over to Traxler. T. 270. Detective Traxler preserved the video evidence of the transaction between Turner and Kirkley, but discarded the remaining video. T. 184. Traxler turned the cocaine into the sheriff's office evidence technician. T. 160. The cocaine was transported the state crime lab. T. 163. It was returned to evidence by Investigator Billy Joe Heggins on December 6 [T. 279], moved once while Traxler's buy box was being organized [T. 235], and finally checked out at 8:45 a.m. and 2:00 p.m. on the first day of the trial. T. 285.

SUMMARY OF THE ARGUMENT

The State fully established the chain of custody of the cocaine through the testimony of Detective Traxler, Mr. Kirkley, and the investigators and evidence technicians of the Warren County Sheriff's Department. To prove her claim on appeal, Turner must show either a break in the chain of custody, or a reasonable inference of probable tampering or substitution of the evidence. Turner simply suggests that "the cocaine that was tested may not have been the same substance that the State purports was sold by Turner." Showing a mere possibility of tampering is insufficient to support her claim on appeal.

ARGUMENT

Before and during trial, Turner moved to suppress the evidence resulting from the transaction between Turner and Kirkley. At a pre-trial hearing, the trial court denied the motion, finding that the issue of chain of custody was a factual issue for the jury.

Reversing a conviction based on a chain of custody violation requires a finding that the trial court abused its discretion in admitting the evidence in question. *Ellis v. State*, 934 So. 2d 1000, 1004 (Miss. 2006). “The test of whether there has been a break in the chain of custody of evidence is whether there is an indication or reasonable inference of probable tampering with the evidence or substitution of the evidence.” *Id.* at 1005. The defendant has the burden of producing evidence that the chain of custody has been broken. *Id.* The State is not required to produce every witness who handled the evidence in question in order to establish the chain of custody. *Id.* (citing *Ormond v. State*, 599 So. 2d 951, 959 (Miss. 1992)).

Detective Traxler testified to Kirkley’s intentions in visiting Turner’s home, namely, to buy cocaine. T. 151. Kirkley’s testimony was corroborated by video evidence. T. 256. After attempting another buy unsuccessfully, Kirkley turned the narcotics over to Traxler. T. 270. Turner asserts that one might infer that Kirkley already had the cocaine or that he purchased it after executing some innocent transaction with Turner. The inferences are based on the assertions that Traxler did not adequately search the confidential informant and that the video evidence available to the defendant cut off before Kirkley returned to the post-buy location.

Turner offers nothing more than inferences. This court has ruled that the State does not have to “thoroughly demonstrate” chain of custody. *Spann v. State*, 771 So. 2d 883, 894 (Miss. 2000). Additionally, showing a break in the chain of custody “requires more than mere possibilities.” *Fulks v. State*, 944 So. 2d 79, 83 (Miss. App. 2006). In *Steen v. State*, the appellant argued that the chain

of custody could not be established because the video recorder had not conclusively recorded the exchange of the narcotics. 873 So. 2d 155, 158. There the testimony alone of a confidential informant who had “bad blood” with the defendant was enough to establish the chain of custody, and the appellant’s assertions did not raise a reasonable inference of probable tampering or substitution of the evidence. *Id.* at 159.

Inferences which may be drawn from Turner’s claim that Kirkley was not adequately searched are issues of fact which were properly resolved by the jury. Defense counsel was unable to offer any evidence that Kirkley had cocaine on him already, whereas the State provided video evidence that Turner handed Kirkley a substance that was later determined to be cocaine.

Turner has failed to offer any evidence showing a break in the chain of custody and nothing more than a “sneaking suspicion” of tampering or substitution of the evidence. “A mere suggestion that substitution could possibly have occurred does not meet the burden of showing probable substitution.” *Ellis*, 934 So. 2d at 1006. Accordingly, her single assignment of error must fail.


CONCLUSION

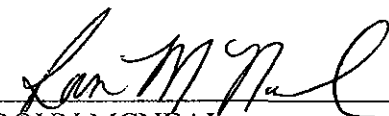
For the foregoing reasons, the State asks this honorable Court to affirm Turner's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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 28th day of July, 2008.



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