

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2007-~~CR-034~~-NWG

COPY

KA-1662-07

RAYKEITGDRITH RAYLON RICKS

APPELLANT

VS.

FILED

STATE OF MISSISSIPPI

MAR 25 2008

APPELLEE

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SUPREME COURT
COURT OF APPEALS

Appeal from Circuit Court of Newton County, Mississippi

BRIEF FOR APPELLANT

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Oral Argument Not Requested.

CERTIFICATE OF SERVICE OF INTERESTED PERSONS

NO. 2007-CR-034-NWG

RAYKEITGDRITH RAYLON RICKS

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan
District Attorney
P.O. Box 603
Philadelphia, MS 39350**

**Honorable Marcus D. Gordon
Circuit Court Judge
P.O. Box 220
Decatur, MS 39327**

**Honorable Jim Hood
Attorney General of MS
P.O. Box 220
Jackson, MS 39205**

**RayKeitgdrith Raylon Ricks
APPELLANT**

DATED, this the 25th day of March, 2008.



EDMUND J. PHILLIPS, JR.
Attorney for Appellant

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STATEMENT OF THE ISSUES

- 1) The Verdict was against the overwhelming weight of the Evidence.

STATEMENT OF THE CASE

RayKeitgdrith Raylon Ricks, appeals his conviction from the Circuit Court of Newton County, Mississippi of Count One: Sale of Scheduled II controlled substance, namely cocaine, in Newton County, Mississippi and with a sentence of twenty-five (25) years in the custody of the Mississippi Department of Corrections and Count Two: Sale of a Schedule I controlled substance, namely marijuana, in an amount of less than 30 grams, in Newton County, Mississippi, and with a sentence of three (3) years for a total of twenty-eight (28) years in the custody of the Mississippi Department of Corrections and ordered to pay a fine of \$3,000.00 and all clerk's fees and service fee.

Appellant admitted his guilt to the charge described in Count II of the indictment and denied his guilt of Count I.

The principal witness against Appellant was E. Grady Williams, apparently an accused drug dealer with charges pending against him (T-37, 38). The case before the Court was introduced by the prosecutor through the testimony of Shelly Boone, who at the time of the sale, had been a Mississippi Bureau of Narcotics Agent (T-26). Ms. Boone explained the use of Mr. Williams in developing her case as follows (T-38):

- A. Uh - - in a case like this, sometimes - - you know, it takes drug dealers to catch other drug dealers.
- Q. I understand.

- A. Uh - - he had made known - - made it known to us that he would - - you know, like some assistance in his - - in his case, and all we can do is tell the district attorney this is what we have and make a recommendation. It is up to the district attorney to decide what they want to do in prosecuting that person.
- Q. Right. But you've never had the D.A. prosecute somebody you recommended they not prosecute. Right?
- A. That's totally up to the district attorney.
- Q. Right. Uh - - and - - and generally, I mean, I have represented a lot of people in the same situation that Mr. Williams is in and if they don't cooperate then they do not get any assistance. Right? I mean, if the person doesn't cooperate, if he doesn't show up or he doesn't - - he doesn't do what he's supposed to do, then of course you don't recommend anything to the D.A., do you?
- A. That's right.

Ms. Boone testified that Williams was not financially compensated for his assistance in developing the case (T-37).

Williams testified that he was given sixty dollars to buy drugs from Appellant (T-43), that he (T-45) bought cocaine from Appellant for sixty dollars, and that he returned to a designated location and delivered the drugs to Ms. Boone (T-46).

Williams introduced a videotape of the transaction that he had taken with a camera on his person, provided by the Mississippi Bureau of Narcotics. He admitted that he had stopped along the way and had gotten out of the car one time before he went to Appellant's house (T-64).

He likewise admitted that the videotape did not show him paying any money to Appellant (T-64, 65).

Richard Sistrunk, then a Mississippi Bureau of Narcotics agent, testified on behalf of the Appellant, that he was working with agent Shelly Boone, at the time of the alleged purchase, that he and agent Boone gave Williams \$100.00 to buy drugs from Appellant (T-82), and that none of that \$100.00 was returned to them or to the Mississippi Bureau of Narcotics (T-83) after the transaction.

Appellant testified that Williams (T-88) paid him no money and that:

- A. He was looking for cocaine. I didn't have none. I tried to call somebody to get him some. Like you saw on the tape, I was over there by the car for a minute. I was trying to call somebody to get him some. I didn't have none so I came back and told him to try this right here, and, like you saw on the tape, he said he got that, and he said, well, I'm going to come back to get - - holler at you to get some of that weed, and he did, and that's when I - -

He further testified that he instead had given Williams a small amount of marijuana and had not charged him any money for the small amount of marijuana:

- Q. Okay. Uh - - and did he give you any money for that?
A. No, sir.
Q. Did he offer you any money?
A. No, sir. It was like I just gave it to him.
Q. Do what?
A. I just gave it to him. He was looking for something else with the money. I didn't have that.

SUMMARY OF THE ARGUMENT

The prosecution has the burden of proving the guilt of an accused beyond a reasonable doubt.

ARGUMENT

THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

Appellant admitted his guilt of the charge of sale of marijuana and denied his guilt of the sale of cocaine.

The primary witness against Appellant was Grady Williams, a “confidential informant” who had other contraband narcotics charges pending against him and was anticipating that, if he was successful in purchasing cocaine from Appellant, the pending charges would be dismissed or the punishment substantially reduced. He had motive to construct a case against Appellant and to support it to a successful prosecution.

The agents searched Williams and his vehicle at their “pre-buy” meeting to make sure he did not manufacture a false case. Williams did not drive directly to Appellant’s home. After driving around the community for a while, Williams stopped his vehicle and got out, thus vitiating the prophylactic effect of the searches, because he then had an opportunity to pick up the cocaine. The appearance fostered by the searches that Williams did not have the opportunity to falsify the evidence by obtaining other cocaine was therefore illusory.

The fact that the videotape recording did not show any money being delivered to Appellant and the certain defalcation of at least part of the funds delivered to Williams support Appellant’s version of the transaction.

The prosecutor had the burden of proving Appellant’s guilt beyond a reasonable doubt. The requirement of proof of guilt beyond a reasonable doubt in a criminal case is


promised by the due process clauses of the United States Constitution. All elements of the indictment and all necessary elements of the crime charged must be proved beyond a reasonable doubt. In re Winship, 397 U.S. 358, 361, 90 S. CT. 1068, 25 L. Ed. 2d 368, 373 (1970); Westbrook v. State, 202 Miss. 426, 32 So. 2d 251 (1947); Love v. State, 208 So. 2d 755 (Miss. 1968); Edge v. State, 393 So. 2d 1337 (Miss. 1981).

In the case before the Court, the fact that Williams had a motive to convict Appellant, the fact that Williams had the opportunity to obtain cocaine before going to Appellant's house, the fact that the videotape recording did not show any money being delivered to Appellant, and the fact that there was a certain defalcation of funds delivered to Williams, detract from Williams' version of the transaction and the prosecution's proof of the elements of Count I of the indictment and support Appellant's version of the transaction. The prosecution did not fulfill its burden of proof.

CONCLUSION

The verdict should be overturned.


RESPECTFULLY SUBMITTED,


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: March 25, 2008.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant