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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SPARKY DARNEZ WATSON

APPELLANT

FILED

VS.

NO. 2007-KA-1747

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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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IN THE COURT OF APPEALS OF MISSISSIPPI

SPARKY DARNEZ WATSON

APPELLANT

VERSUS

NO. 2007-KA-1747-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Sparky Darnez Watson was convicted in the Circuit Court of Grenada County on a on count of sale of marijuana and one count of sale of cocaine and was sentenced to terms of imprisonment of three years and 20 years with eight years suspended, respectively. (C.P.75-76) Aggrieved by the judgment rendered against him, Watson has perfected an appeal to this Court.

Substantive Facts

On February 19, 2004, Terry Peebles was employed as an undercover agent with the Central Mississippi Narcotics Task Force in Grenada. On that date, he met with confidential informant Brenda Wade,¹ searched her and the "undercover vehicle," provided her with task force funds with which to purchase contraband, and installed surveillance equipment in the car. With Ms. Wade in the passenger's seat, Agent Peebles drove to Boone Alley, where they encountered Sparky Watson. Agent "pulled up to him" and told him that he wanted to purchase some marijuana, or "green." Watson responded, "okay," and got into the back seat of the car. He then asked Agent Peebles how much he wanted; Agent Peebles answered that he wanted to purchase \$20 worth of "green." (T.44-48)

Agent Peebles then drove the car "around Boone Alley" and onto Pearl Street. Having negotiated the purchase of "green," the agent told Watson that he "wanted some hard," i.e., crack cocaine. Watson responded that he knew where to obtain this substance. Agent Peebles then "gave him \$20. According to Agent Peebles, "I dropped him off, and he got out of the car and in about, approximately maybe a minute and a half he came back, handed the C.I. the crack cocaine." Watson also sold Agent Peebles a quantity of marijuana. (T.54-58)

Additional facts will be set out as necessary in the following argument.

¹Ms. Wade had participated with Agent Peebles in some 20 undercover operations. Between the transaction at issue here and trial, she died of cancer. (T.45)

SUMMARY OF THE ARGUMENT

No error has been shown in the trial court's admission of the surveillance videotape into evidence. The court found that the tape did not contain evidence of an uncharged crime. Moreover, the only testimony regarding an alleged uncharged crime was brought out by the defense during cross-examination. It is well settled that a defendant may not complain on appeal about evidence brought out by the defense.

Furthermore, the trial court did not err in allowing the prosecution to elaborate on a matter brought out by the defense on cross-examination of Agent Peeples. Having introduced the evidence of the "PC buy" during cross-examination of the agent, Watson cannot be heard to complain of the state's redirect examination on this point.

PROPOSITION ONE:

NO ERROR HAS BEEN SHOWN IN THE TRIAL COURT'S ADMISSION OF THE VIDEOTAPE INTO EVIDENCE

Watson first contends that the trial court committed reversible error in allowing the introduction, through the videotape, of evidence of another crime not charged in the indictment. This issue arose during the direct examination of Agent Peeples, when the defense asked to be heard outside the presence of the jury. After the court excused the jurors, defense counsel moved in limine for the court "to enter an order instructing this witness not to make any comment of any evidence of any other crimes not charged in the indictment." Defense counsel went on to assert that the videotape purported "to show some type of bag ... being handed to the confidential informant" before the sale of marijuana., and that a conversation "about the contents of the bag" ensued. Arguing that this footage would constitute evidence of another crime, defense counsel argued that it should be excluded. (T.48-50)

The assistant district attorney stated the prosecution's position as follows:

Your Honor, I would state that the way that the events occur— and certainly if you would like to view the tape, we could watch it; it's not that long. The way that the events occurred is that Agent Peeples comes up to the Defendant, asks him for some weed, some green, and he gets in the vehicle. At that point the Defendant does have, you know, after he has already asked for the marijuana, the Defendant does hand him a bag of a substance, which we have not charged him with, and we have not sent to the crime lab or anything because Agent Peeples did not purchase at that point. He looks at it and hands it back. Then there is the exchange of the weed or the marihuana. Then he hands the marihuana up, and the money is given, and then there is a cocaine sale after that.

(T.50)

Shortly thereafter, the record shows the following:

(“VIDEOTAPE WAS MARKED AS STATE’S EXHIBIT S-1 FOR IDENTIFICATION AND PLAYED FOR THE COURT ONLY UNTIL THE COURT INTERRUPTED THE PLAYING OF THE TAPE WITH THE FOLLOWING:)

BY THE COURT: Have we covered the part that you are talking about?

BY MR. HORAN: Excuse me?

BY THE COURT: Haven't you covered the part you are talking about?

BY MR. HORAN: Yeah, I have covered it.

BY THE COURT: I don't need to see the whole thing. You can turn it off. ...

BY MR. HORAN: Your Honor, our position is that the marihuana sale happens after, at some point around 12:38 the marihuana sale actually occurs, and the cocaine sale occurs at approximately 12—

BY THE COURT: —What is it—

BY MR. HORAN: –allegedly–

BY THE COURT: –you object to?

BY MR. HORAN: My objection is to any of this conversation about this prior–

BY THE COURT: Did you understand any of it? I didn't understand a word.

BY MR. HORAN: I understand that. I am worried about whether or not if he testifies that he viewed cocaine prior to the time– he is going to say that substance was cocaine prior to the time–

BY THE COURT: Are you objecting to what he is going to say or what is on the tape?

BY MR. HORAN: On the tape and what he is going to say about–

BY THE COURT: –I didn't hear anything on the tape about cocaine.

BY MR. HORAN: Hear on the tape and–

BY THE COURT: I didn't hear anything on the tape about cocaine.

BY MR. HORAN: I understand that. But he hands a bag– allegedly, he is going to testify from what they have told me, that what is in that bag was cocaine, before the marihuana sale. If he testifies that is what he handed me–

BY THE COURT: –Well, he is not charged with that. I don't have a problem about sustaining that motion.

BY MR. HORAN: That's what I, that is my concern.

BY THE COURT: As to what he testified to, but on that tape, there is nothing on that tape.

BY MS. DENLEY: Agent Peeples is not going to testify to that.

BY MR. HORAN: If you will look at approximately 12–

BY THE COURT: –Well, I have seen them pass– the passing of the bag without some explanation of what is in the bag is just not objectionable. I’m going to allow that part of the tape in. I’m going to allow the whole tape in, and there is nothing in the language in there that anybody could understand that denotes that as cocaine. And I will prohibit him from testifying as to what was in the bag.

BY MR. HORAN: Okay. He can’t testify that it appeared to be cocaine or anything like that.

BY THE COURT: It has got nothing to do with this case.

BY MR. HORAN: Thank you.

BY THE COURT: Okay. Do you understand my ruling?

BY MS. DENLEY: Yes, sir, Your Honor.

BY THE COURT: Do you understand my ruling, Mr. Peebles?

BY THE WITNESS: Yes, sir.

BY THE COURT: As to just no conversation about the bag, okay?

BY THE WITNESS: Yes, sir.

BY THE COURT: As your testimony goes, I am going to let the tape in which shows the bag being transferred. There is nothing that I could understand on that tape that would denote another crime being committed. No discussion– I never heard the word “cocaine.” If it was there, I just couldn’t understand it. I don’t believe the jury can either. But as to him testifying as to what was said on the tape, the tape speaks for itself to begin with. So I’m going to limit his testimony to where he cannot talk about the bag at all or the contents of it. Okay.

(emphasis added) (T.51-54)

In keeping with the court’s ruling, Agent Peebles did not refer to the bag during the remainder of the state’s direct examination. (T.54-60)

"In criminal appeals, a presumption of correctness attaches to any ruling by the trial court." *Jaramillo v. State*, 950 So.2d 1104, 1106 (Miss.App.2007). The state respectfully submits that there is nothing on this videotape to rebut the correctness of the trial court's finding that the tape contained no evidence of an uncharged crime.

Moreover, defense counsel validated the court's conclusion, "I didn't hear anything on the tape about cocaine." Defense counsel was concerned, however, that Agent Peeples might testify that the bag in question contained cocaine. That concern was eliminated when the court ruled that Agent Peeples could not "talk about the bag at all or the contents of it." Indeed, the only references to those facts were brought out on cross-examination by the defense. (T.70-73) It is axiomatic that a defendant may not "complain on appeal concerning evidence that he himself brought out at trial." *Fleming v. State*, 604 So.2d 280, 289 (Miss.1992), quoted in *Beckham v. State*, 735 So.2d 1059, 1062 (Miss.App.1999). Accord, *Mullins v. State*, 757 So.2d 1027, 1033 (Miss.App.2000).

For these reasons, the state submits Watson's first proposition lacks merit.

PROPOSITION TWO:

**THE TRIAL COURT DID NOT ERR IN ALLOWING THE PROSECUTION
TO ELABORATE ON A MATTER BROUGHT OUT BY THE DEFENSE
ON CROSS-EXAMINATION OF AGENT PEEPLES**

Watson finally argues that the trial court committed reversible error in allowing Agent Peeples to testify during redirect examination about a "PC buy."² (T.78) When defense counsel objected, the court ruled, "You admitted this thing into evidence."³ It is well-settled that "[t]rial courts have broad discretion in allowing or disallowing redirect examination of witnesses and when the defense attorney inquires into a subject on cross-examination of the State's witness, the prosecutor on redirect is unquestionably entitled to elaborate on the matter." *Manning v. State*, 835 So.2d 94, 99-100 (Miss.App.2002). Accord, *Brown v. State*, 981 So.2d 1007, 1017 (Miss.App.2007); *Alexander v. State*, 875 So.2d 261, 272 (Miss.App.2004); *Kolberg v. State*, 829 So.2d 29 (Miss.2002); *Pruitt v. State*, 807 So.2d 1236 (Miss.2002). Watson's second proposition plainly lacks merit.

²Agent Peeples testified that "a PC buy is when we go in, make a purchase on someone to try to get inside an alleged drug house to confiscate dope money or to see what else is in there." (T.78)

³Indeed, the defense had introduced evidence of the "PC buy" during its cross-examination of Agent Peeples. (T.65)

CONCLUSION

The state respectfully submits that the arguments presented by Watson are without merit. Accordingly, the judgment of the circuit court should be affirmed.

Respectfully submitted,

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STATE OF MISSISSIPPI**



BY: DEIRDRE McCRORY
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CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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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