IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ISAIAH WILLIAMS — APPELLANT

VS. — NO. 2007-KA-1958

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

On September 18, 2007, a Panola County jury convicted Isaiah Williams of sale of cocaine. (R 144). The trial judge sentenced Williams to life imprisonment as a habitual offender under Mississippi Code Annotated § 99-19-83. (T 167) Aggrieved, Williams appeals and asserts that the court erred: (1) in refusing to grant a mistrial based on the testimony of Buck Harris; (2) in denying his motion for a new trial and in the alternative for a judgment notwithstanding the verdict; and (3) in sentencing him to life imprisonment without parole as a habitual offender.

STATEMENT OF FACTS

This case arose from an undercover drug operation conducted by the Panola Narcotics Task Force (Task Force) that focused on the Pure gas station in Como, Mississippi. It is undisputed that the area of the Pure gas station was the initial target of the drug operation, not Isaiah Williams. (T 42, 59, 84). The Task Force agents filmed the undercover drug operation while providing surveillance across the road. The confidential informant's vehicle was wired with audio and video equipment as well. (T 26, 27; Ex 2, 3, 7). Task Force agents conducted a search of the confidential informant and her vehicle prior to and after the undercover drug operation. Both videos were shown at trial.

On, March 6, 2006, Anita Riley (the CI), acting as a confidential informant for the Task Force, drove to the Pure station in Como. An unidentified male approached the CI's car; she asked him for a couple of twenties (cocaine). The unidentified man didn't have any and motioned for the CI to go to Williams, who was standing close by. (T 26; Ex 3, 7). According to the CI, Williams waived at her, and the CI waved him on over to her car. (T 57). According to Williams, the CI waived at him first. (T 106). Regardless of whether the CI or Williams waived first, a viewing of the surveillance video clearly shows the unidentified man motioning for the CI to go to Williams and Williams then stepping up. (Ex 3).

The CI told Williams "I need two twenties. Couple twenties hard." Williams responded that he didn't have the drugs on him and told the CI to take him to get it. The CI refused to allow Williams in her car so he instructed her to hold on and he would go get the drugs. (T 27, 52; Ex 7). Williams crossed the road to a parked blue car and got in the rear seat on the driver's side. The blue car pulled forward to the road, Williams exited and returned to the CI's car. The blue car left for approximately 10 minutes, then returned to the Pure station parking lot. Williams went to the blue car where the driver gave Williams the cocaine. Williams delivered one rock of cocaine to the CI and

said "Here's you a big slug." (T 28, 34; Ex 7). The CI gave Williams $40.00; Williams subsequently returned to the blue car and another exchange was made with the driver. (T 32, 45, 109).

The following day, Task Force agents showed the surveillance video from the undercover drug transaction to Deputy Sheriff Eric "Buck" Harris. Harris, having worked at the Sheriff's office for approximately 16 years, assisted the Task Force in identifying unknown persons involved in drug transactions. Harris identified Isaiah Williams for the agents. (T 91).

It was undisputed at trial that Williams got cocaine from the unidentified person in the blue car and handed it to the CI. It is also undisputed that while waiting for the drugs to arrive, Williams asked the CI for a pinch of the rock cocaine. (T 45; Ex 7). Williams first testified he never saw any money but later admitted that there was a hand-to-hand exchange of money. (T 110-111). According to Williams, he would not have made the drug transaction if the CI had not waived at him first. (T 108). He further testified the driver of the blue car gave him the crack cocaine and he gave the driver all the money. Williams didn't know whether the cocaine was real or dummies and that is why he wanted a "pinch." (T 107, 108).

SUMMARY OF ARGUMENT

The trial court did not err in denying Williams' motion for a mistrial based on Deputy Harris testifying that Williams "had been in and out of the system." The trial court properly denied Williams' motion for a new trial and in the alternative a judgment not withstanding the verdict. The verdict was well with the overwhelming weight of the evidence. Williams' sentence to life without parole pursuant to Mississippi Code Annotated § 99-19-83 is proper.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING WILLIAMS' MOTION FOR A MISTRIAL.

Williams contends that the trial judge impermissibly allowed testimony of other bad acts into evidence that unfairly prejudiced him in the eyes of the jury. Deputy Sheriff Eric "Buck" As in this case, Harris often assisted the Task Force in identifying unknown drug violators in recorded drug transactions. At trial, when asked by the prosecutor to identify the person in the subject video, Harris identified Isaiah Williams.

Q. And who was that person in the video?
A. Isaiah Williams.
Q. And how long have you known Isaiah Williams?
A. I have known Isaiah quite a while. Like I say, I've been around 16 years.
Q. You've known him about 16 years?
A. And he's been in and out of the system quite a bit. (T 92).

The admissibility of evidence related to prior bad acts is well established in Mississippi. Mississippi Rule of Evidence 404 provides that evidence of a person's character or a trait of his character and evidence of other crimes, wrongs, or acts are generally not admissible. The rule does, however, designate certain exceptions such as evidence of other crimes, wrongs or acts that are admissible to prove motive, opportunity, intent, preparation, knowledge, or identity.

In the case at hand, the prosecution did not set out in a deliberate fashion to sway the jury with references to Williams' prior bad acts. This is not a case where the State continuously brought up evidence of other crimes and bad acts of the defendant so as to substantially prejudice him. Deputy Harris' reply was not introduced to prove the character of Williams, but to show that Harris had known Williams for many years and could readily identify him. At the time of Harris' testimony, it was not known that Williams was going to testify and admit that he was the person in the surveillance videos.

Therefore, the reference to the "in and out of the system" falls within the exception designated in MRE 404(b). The testimony was not offered to show prior bad acts, prior criminal activity or prior convictions in violation of MRE 404(b). The statement was in response to how long the witness had known Williams.

Harris's statement at issue is not a statement that caused serious and irreparable damage to William's case. The jury previously heard narcotics agent Jimmy Shannon testify that he had seen Williams at the jail and defense counsel did not object.

Q. And did you know Isaiah Williams at the time?
A. Not personally. I worked at the jail, so I saw him, you know, from time to time.
Q. You knew his face?
A. Yeah. I didn't know his name, though. (T 81)

Williams' argument that reference "to being in and out of the system" has a broader meaning than being incarcerated and implies conviction of a crime is without merit. A person can be arrested without being convicted. Saying he had "been in and out of the system" does not imply any more criminal activity than saying Williams had been in jail, which the jury already knew from agent Shannon's testimony.

II. THE TRIAL COURT PROPERLY DENIED WILLIAMS' MOTION FOR A NEW TRIAL AND IN THE ALTERNATIVE A JUDGMENT NOT WITHSTANDING THE VERDICT. THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Williams contends that the verdict was against the overwhelming weight of the evidence, entitling him to a new trial. When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, an appellate court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836 (Miss. 2005). The appellate court will only grant a new trial in exceptional cases in which the evidence preponderates heavily against the verdict. *Id.*

Smith v. State, 826 So.2d 768 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence the Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the trial court has abused its discretion in failing to grant a new trial.

Williams claims the Panola County Task Force entrapped him into selling cocaine to the CI on March 6, 2007. Once Williams makes a prima facie case of entrapment the burden is on the State to show Williams had a predisposition to sell the cocaine. To make his prima facie case, Williams must show both of the necessary elements: (1) government inducement and (2) absence of predisposition. *King v. State*, 530 So.2d 1356, 1360 (Miss.1988) Even though the State agreed to an entrapment instruction, Williams failed to show the Task Force induced him to sell the CI cocaine. Williams, therefore, fails to establish a prime facie case of entrapment.

An informant asking a defendant one time to sell cocaine does not constitute entrapment where the defendant sells cocaine to an officer and is caught. *Gill v. State*, 924 So.2d 554 (Miss. App. 2005). The question is whether the State induced Williams to sell cocaine to the CI or whether the CI, while

acting as an informant for the State, just provided the opportunity. A defendant is not excused for selling contraband simply because it was an informant who requested him to do so. *Tribbett v. State*, 394 So.2d 878 (Miss.1981).

In *Walls v. State* the Court found that the defendant did not reach the prima facie requirement in order to get an instruction on the entrapment defense since the government did not coerce or force him to commit the crime. "This Court has held that an entrapment instruction is not necessary where a defendant was merely "asked to sell the substance and he was caught." *Walls*, 672 So.2d at 1231 (citing *Ervin v. State* 431 So.2d 130, 134 (Miss.1983)). In the case at hand, Williams was asked to sell the substance and he was caught. The CI asked "Two twenties, hard." No one coerced or otherwise forced him to make the sale. There is simply no credible evidence in the record supporting an entrapment defense. No reasonable juror could find for Williams on the issue of entrapment based on the evidence presented.

In *King*, the Court found entrapment when an informant continuously asked the defendant to sell marijuana. King testified the informant pestered him for months to sell her marijuana. That is not the case here, Williams was not pestered but was only asked "Couple of twenties hard." The CI did not pester, beg or coerce Williams to make a sale. She merely provided him with an opportunity. Williams fails to give sufficient evidence that the government importuned him to sell the cocaine. Instead the facts support an "asked and caught determination."

Williams argues that he did not have a predisposition to sell cocaine; he would not have sold the cocaine to the CI if she had not waived him over to her car. Williams also claims he is just a cocaine user. Testimony conflicts as to whether the CI waived Williams over to her car first or whether the CI pulled her car up to Williams because Williams motioned to her first. A review of the video shows the unidentified man motioning the CI over to Williams and Williams stepping up to the

CI's car. (Ex 2).

After reviewing all the evidence in the light most favorable to the State, a reasonable juror could have found Williams guilty. The evidence was sufficient to sustain Williams' conviction for sale of cocaine. Williams contends the CI induced him to sell her cocaine. Task Force agents testified Williams was not the initial target of the undercover operation, but that he quickly became the target as the operation developed. Williams was at a location well known for illegal drug activity. When the CI pulled in the Pure gas station and Williams approached the CI's vehicle and told her to hold on he'd get her the drugs, he became the target. (T 84). Williams knew where to get the cocaine for the CI. Williams knew the drug terminology. When the CI told Williams she wanted a "couple of twenties hard," he knew she wanted two rocks of cocaine for $20.00 each. When Williams returned to the CI with the cocaine, he told her "Give you a big slug," a term used to describe a large rock of cocaine. (Ex 7).

Williams also argues that the trial court should have granted his motion for a judgment notwithstanding the verdict. The standard of review for denial of a JNOV which challenges the sufficiency and weight of the evidence supporting the verdict is abuse of discretion by the trial court. All evidence favorable to the State is accepted as true. *Tran v. State*, 785 So2d 1112, 1116(¶8) (Miss. Ct. App.2001).

Evidence was sufficient to support a conviction for sale of cocaine; video tapes indicated Williams was not entrapped when he sold cocaine to the confidential informant, witnesses identified Williams as the individual who sold cocaine to the informant, and the substance that tested positive for cocaine was shown to be that obtained from Williams. The State's evidence was sufficient to find Williams guilty beyond a reasonable doubt.

III. WILLIAMS' LIFE SENTENCE WITHOUT PAROLE AS A HABITUAL OFFENDER IS PROPER.

Williams contends his sentence of life without parole is excessive, disproportionate to the crime and cruel and unusual punishment pursuant to the Eight Amendment of the United States Constitution, the Fourteenth Amendment of the United States Constitution and Article 3 Section 28 of the Mississippi Constitution of 1890. Prior to pronouncing its sentence, the trial court conducted a proportionality review of the life sentence, as requested by defense counsel. Williams was then sentenced within the mandatory, statutory limits of Mississippi Code Annotated § 99-19-83 as a habitual offender.

The facts do not lend themselves to a finding that Williams' sentence is grossly disproportionate to his crimes. For purposes of proportionality analysis under the Eighth Amendment, the question is not whether Williams' sentence of life imprisonment without parole is disproportionate to his most recent offense of sale of cocaine, but whether the sentence under Mississippi's habitual offender statute, imposed to reflect the seriousness of the most recent offense in light of prior offenses, was disproportionate. See *McGruder v. Puckett* (Miss.C.A.5 (Miss.) 1992) 954 F.2d 313, *certiorari denied* 113 S.Ct. 146, 506 U.S. 849, 121 L.Ed2d 98. Williams was previously convicted on October 3, 1979 of attempted rape and sentenced to three years; on September 29, 1981 of burglary and grand larceny and sentenced to three years; on April 5, 1984 of accessory after the fact to burglary and sentenced to five years; and a conviction for felony shoplifting. Hence, Williams' life sentence without parole was not disproportionate.

The Mississippi Supreme Court has held that when a trial court imposes a sentence which complies with statutory limitations, the Court will not be held in error and will not have abused its discretion. *Johnson v. State*, 461 So.2d 1288, 1292 (Miss.1984) (citing Contreras v. State, 445 So.2d 543, 546 (Miss.1984)). The case law of our courts and the courts within our federal district has well

established that a sentence of a life term predicated on habitual offender status pursuant to Mississippi Code Annotated § 99-19-83 as a habitual offender is constitutional. *Shumaker v. State,* 956 So.2d 1078, 1088 (Miss. App. 2007).

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this Court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, 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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