

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COA

KEEHAN ANDRE HOYE

APPELLANT

FILED

JUN 13 2008

VS.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-KA-1985-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

39 g. w.

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On October 16, 2007, Keehan Andre Hoyer, "Hoyer" was tried for sale of cocaine before a Scott County Circuit Court jury, the Honorable Vernon R. Cotten presiding. R. 1. Hoyer was found guilty and given a thirty year sentence in the custody of the Mississippi Department of Corrections. R 98. From that conviction, he appealed to this Court. C.P. 26.

ISSUES ON APPEAL

I.

WAS THE VIDEOTAPE ADMISSIBLE?

II.

**WAS THE VERDICT AGAINST THE SUFFICIENCY OF THE
EVIDENCE?**

III.

**WAS THE VERDICT AGAINST THE WEIGHT OF THE
EVIDENCE?**

STATEMENT OF THE FACTS

In July, 2007, Hoye was indicted for sale of cocaine by a Scott County Grand jury. C.P. 5. The indictment stated that Hoye sold MBN confidential informant 096-2006 a schedule 2 substance, cocaine, in Scott County on December 8, 2006. C.P. 5.

On October 16, 2007, Hoye was tried for sale of cocaine before a Scott County Circuit Court jury, the Honorable Vernon R. Cotten presiding. R. 1. Hoye was represented by Mr. Shawn Harris. R.1.

Officer Will Peterson was an agent with the Mississippi Bureau of Narcotics, "the MBN. He testified that on December 8, 2006 he monitored an alleged cocaine purchase. Peterson testified that he monitored the alleged cocaine sale by listening to an audio tape that was operating at that time. R. 45.

Peterson testified that an informant, Gina Lewis, was fitted with a video camera and an audio recorder. The tapes were operating during the alleged cocaine purchase. Lewis was searched along with her car prior to the monitored alleged drug transaction. After the completion of the transaction, she went to a post buy meeting place. The alleged wrapped cocaine was received, packaged, marked. It was then taken to a state crime laboratory for identification. This was introduced into evidence as State's Exhibit 1. R. 68.

Peterson testified that the informant, Gina Lewis, was not promised anything in exchange for her testimony. R. 46. Her cooperation with law enforcement would be communicated to the District Attorney. Peterson testified that informants are used to arrange drug transactions because they have the necessary contacts. They are acquainted with persons in a local community who are involved in alleged clandestine drug operations.

Officer Will Peterson testified that the tape brought to the court room had been downloaded

from the tape originally made at the Waggoner Road Trailer Park. R. 39. Officer Peterson with the MBN testified that he reviewed the video tape made of the alleged cocaine purchase. This was just prior to trial. Peterson found the video tape to be "a true and accurate depiction of the tape" that was made on December 8, 2006. R. 39.

Confidential informant Gina Lewis identified Hoye as the person who gave her \$40.00 worth of cocaine. R. 49. This was on December 8, 2006. The sale took place at the Waggoner Road Trailer Park in Morton, Mississippi.

Lewis testified that she was cooperating with the prosecution in December, 2006. R. 47. She testified that she and her car were searched prior to her leaving to purchase cocaine. She had called someone she knew as "Keno." R. 48. She went to the Waggoner Road Trailer Park. She met this person there. He was sitting in a red Ford Explorer. R. 51. She provided him with \$40.00, and he handed her what appeared to be cocaine. R. 51-52.

After the sale was completed, Lewis returned to a location for a post buy meeting. She left the alleged cocaine with Agent Peterson. Lewis identified state's exhibit 1 as being the alleged cocaine she had purchased from Hoye. R. 53-54. Lewis testified that she did not stop or see anyone after the alleged drug transaction. R. 48. She went directly to the post buy meeting. She also testified that she had no cocaine or any other drugs with her when she went to the pre-arranged meeting place for the drug transaction. R. 53.

After a bench conference which was not included in the record, the trial court overruled an objection to the introduction of the videotape allegedly made of the cocaine sale. R. 55. This objection came during the testimony of Ms. Gina Lewis, the informant. The grounds of the objection was that Lewis was not the person who "handled it and took it out and reported all that stuff." R. 55.

The video tape was shown to the jury. R. 56-57. Lewis testified that the video "accurately

and clearly show(ed) the transaction as it took place.” R. 56. Hoyer was identified as the person with whom she had exchanged \$40.00 for a cocaine rock wrapped in plastic. R. 56-57. Lewis testified that on the video, Hoyer could be seen reaching into his jacket to retrieve the cocaine she received. This was simultaneous with Lewis’s giving Hoyer \$40.00. R. 57.

Neither Agent Peterson nor informant Lewis were ever questioned by Hoyer about whether Lewis the informant used in the alleged cocaine purchase was also identified by the Narcotics Bureau as 096-2006 as stated in the indictment. R. 41-47; 57-60.

Ms. Jamie Johnson, a forensic analyst with the state crime laboratory, testified that the substance identified in State’s Exhibit 1 was cocaine base, .39 grams. R. 66. This identification was made using several separate scientific tests.

At the conclusion of the prosecution’s case, the trial court denied a motion for a directed verdict. R. 70. After being advised of his right to testify in his own behalf, Hoyer decided not to testify. R. 72-73.

There was no objection to jury instruction S-1 from Hoyer, which stated the elements of the offense as being the sale of cocaine to “Gina Lewis” by Hoyer on December 8, 2006. R. 71-72 ; C.P. 14.

Hoyer was found guilty and given a thirty year sentence in the custody of the Mississippi Department of Corrections. R 98. Hoyer’s “Motion For a New Trial” was denied by the trial court. C.P. 24. From that conviction, he appealed to this Court. C.P. 26.

SUMMARY OF THE ARGUMENT

1. This issue was waived for failure to raise it on the same grounds as objected to in the trial court. R. 55; C.P. 22. **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994). The record reflects there was no objection to the admissibility of the video tape based upon M. R.E. Rule 1001 and 10002, which deals with original and duplicates for recordings.

The objection at trial was on general grounds. It was an objection to the informant identifying the video tape unless she handled it, took it out and reported it. R. 55. Nor was this Rule 1001 issue raised in Hoye's Motion For A New Trial. C.P. 22.

An objection on one ground waives all others. An objection can not be expanded upon on appeal. **Burns v. State**, 729 So. 2d 203, 219 (Miss 1998).

In addition, the record reflects that the trial court did not abuse its discretion in admitting the video tape into evidence. There was corroborated testimony from Officer Peterson and Ms. Gina Lewis that the video accurately depicted the alleged cocaine sale at issue.

The video was shown to the jury. R. 56. Both Officer Peterson and Gina Lewis were cross examined about the video tape. Hoye argued in closing about what the video tape did not show, viz. the actual hand to hand exchange of drugs for money. R. 80-81. Hoye should not be heard to complain about issues he raised with the jury.

2. The record reflects credible, substantial partially corroborated evidence in support of the trial court's denial of all peremptory instructions. When the testimony was taken as true with reasonable inferences, there was more than sufficient credible evidence in support of Hoye's conviction. **Noe v. State**, 616 So. 2d 298, 302 (Miss. 1993).

The issue of the relationship between MBN informant #096-2006 as stated in the indictment and Gina Lewis, who testified as being the informant used in the instant cause, was waived for

failure to raise it with the trial court. **Haddox, supra.**

The record reflects that Hoye did not object to jury instruction S-1, which included in the elements the selling of cocaine by Hoye to "Gina Lewis." R. 71-72; C.P. 14. The failure to object to an instruction waives the issue on appeal. **Davis v. State**, 568 So. 2d 277, 279 (Miss. 1990).

In addition, there is a presumption that the trial court's rulings are correct. **Clark v. State**, 503 So. 2d 277, 280 (Miss. 1987). A trial court can not be faulted for an issue never raised before it. **Wilcher v. State**, 479 So. 2d 710, 712 (Miss. 1985). It is also reasonable to infer from the record that Ms. Gina Lewis and MBN informant 096-2006 were one and the same. Both Agent Peterson and Gina Lewis specifically testified that Lewis was the informant used in the instant cause. R. 35-45; 47-60. There was no testimony or evidence as to any other informant having been used in the instant cause. There was no evidence or testimony presented by Hoye to the judge or the jury to the contrary.

Hoye was identified as the person who sold apparent cocaine for \$40.00 at the Waggoner Road Trailer Park in Morton. R. 56-57. Lewis also identified exhibit 1 as to alleged cocaine she purchased from Hoye. R. 53-54.

The record reflects that Hoye and his red Ford Explorer could be seen on the video tape along with what appeared to be a small object wrapped in plastic. R. 51. Ms. Jamie Johnson with the Crime Laboratory identified exhibit 1 as being cocaine base, .39 grams. R. 66.

The testimony of Ms Gina Lewis was therefore partially corroborated. The fact that a hand to hand exchange of \$40.00 for cocaine could not be seen but could be inferred from other evidence does not indicate any defect in the proof. See **Doby v. State**, 532 So. 2d 584, 591 (Miss. 1988). The uncorroborated testimony of one eye witness is sufficient for supporting a conviction.

3. The evidence summarized above was sufficient for denying a motion for a new trial. There was

no “injustice” involved in denying that motion. Since Hoyer chose not to testify, he did not present an alternative theory of the case. The theory of the case presented on appeal was based upon denigration of informant Lewis’ integrity, and upon emphasizing what the evidence and testimony did not show.

However, as previously stated, Hoyer is not entitled to give himself the benefit of gaps in the evidence and favorable inferences from them consistent with his innocence. Rather the appeal court “must consider all the evidence, not just that supporting the case for the prosecution, in the light most consistent with the verdict.” **Jackson v. State**, 580 So. 2d 1217, 1219 (Miss. 1991).

ARGUMENT

PROPOSITION I

THIS ISSUE WAS WAIVED. IT IS ALSO LACKING IN MERIT.

Mr. Hoyer believes that a videotape of an alleged cocaine sale was improperly admitted into evidence against him. Mr. Hoyer believes that this videotape was admitted even though it was supposedly a composite of two separate video recordings. Hoyer also believes there was insufficient evidence for establishing the relationship between the original video tape(s) made in the field and the duplicate which was shown to the jury during the trial. Appellant's brief page 2-8.

The record reflects that the objection at trial was that the informant, Ms. Gina Lewis, was not qualified to identify the video tape. She was not qualified because she did "handle it and took it out and reported all that stuff." R. 55. There was no objection on grounds of confusion about what was an original as opposed to a duplicate video tape recording under M. R.E. 1001-1002. Nor was this issue raised in Hoyer's motion for a new trial. C.P. 22.

In **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994), the Court stated:

Because these arguments are not preserved for appeal, this Court cannot reverse based upon them. The assertion on appeal of grounds for an objection which was not the assertion at trial is not an issue properly preserved on appeal. **Baine v. State**, 606 So. 2d 1076 (Miss. 1992); **Willie v. State**, 585 So. 2d 660, 671 (Miss. 1991); **Crawford v. State**, 515 So. 2d 936, 938 (Miss. 1987);...

Without conceding that this issue was waived, the merits will also be addressed.

Confidential informant Ms. Gina Lewis identified Hoyer as the person who gave her \$40.00 worth of what looked like cocaine. R. 49. This was on December 8, 2006. The sale took place at the Waggoner Road Trailer Park in Morton, Mississippi. She also testified that she had reviewed the video tape of the transaction in which she participated. She testified that the video did "accurately and correctly show" the alleged cocaine sale as it took place in her presence. She

testified that she had done nothing to alter or change anything depicted on the tape.

Q. What is that?

A. This is the tape of the transaction.

Q. Have you had an opportunity to review and look at the contents of that VCR tape?

A. Yes, I have.

Q. And could you tell us is that a video recording of the transaction that took place between yourself and the defendant on December 8, 2006?

A. Yes, it is.

Q. And that is the transaction that took place at Waggoner Road Road Trailer Park in Morton?

A. Yes, it is.

Q. Does that video tape accurately and correctly show the transaction as it took place?

A. Yes, it does.

Q. Did you do, or anybody do anything to that VCR tape to alter or change it in any way?

A. No, sir.

Thames: Your Honor, at this time I'd like to ask that this, what's been marked for identification only, No 2 to the State's case, be marked as an exhibit.

Court: Any objection.

Harris: Your Honor, I'd like to—I want to object at this point in time, Your Honor. **Unless she's the one that handled it and took it out and reported all that stuff, I don't know how she can identify that particular tape.**

Court: Let me ask—approach the bench just a minute.
(Off record)

Thames: Again I renew my request to the Court to allow what's been marked for identification number 2 to the state's case to now be marked as an exhibit.

Court: The objection is noted. The Court had a bench conference which is not on record, but the objection is overruled. Let it be marked. (Emphasis by Appellee).

(Exhibit 2 marked and admitted into evidence). R. 54-55.

Agent Will Peterson with the MBN testified that the video tape that he brought to the court room had been downloaded from the tape originally made at the Waggoner Road Trailer Park. R. 39. The record reflects that Peterson testified that he reviewed the video tape made of the alleged cocaine purchase. This was just prior to trial. Peterson found the video tape to be “a true and accurate depiction of the tape” that was made on December 8, 2006 and downloaded on December 12, 2006. R. 39.

Peterson also testified that he monitored the alleged cocaine sale by listening to an audio tape that was operating at that time. R. 45.

Q. And was it a true and accurate depiction of the tape that you made that day?

A. It is. (Emphasis by Appellee).

In **Burns v. State**, 729 So. 2d 203, 219 (Miss 1998), this court stated that an appellant can not be “enlarged” on appeal to encompass an omission not complained of at trial..

In **Conner**, this Court held that an objection on one or more specific grounds constitutes a waiver of all other grounds. **Id.** at 1255 (citing **Stringer v. State**, 279 So. 2d 156, 158 (Miss. 1973). See also **Brown v. State**, 682 So. 2d 340, 350 (Miss 1996), It has long been the finding of this Court that “an objection at trial cannot be enlarged in a reviewing court to embrace an omission not complained of at trial.” **Brown**, 682 at 350 (citing **McGarrh v. State**, 249 Miss. 247, 148 So. 2d 494, 506 (1963). This claim is procedurally barred. Objection on one or more specific grounds at trial constitutes a waiver of all other grounds for objection on appeal. **Burns v. State**, 728 So.2d 203 (Miss. 1998)

In addition to being waived, the Appellee would submit that this issue is also lacking in merit.

In **Gilley v. State**, 748 So. 2d 123, 126 (Miss. 1999), the Court stated the admission of evidence was within the trial court's "discretion." Unless the trial court abused its discretion that resulted in prejudice to a defendant, its decision would be affirmed.

This Court has held that 'a trial judge enjoys a great deal of discretion as to the relevancy and admissibility of evidence. Unless the judge abuses this discretion so as to be prejudicial to the accused, the Court will not reverse this ruling.' **Turner v. State**, 732 So. 2d 937, 946 (Miss. 1999)(quoting **Fisher v. State**, 690 So. 2d 268, 274 (Miss. 1996). Similarly, the decision that an error is irreversible and a mistrial should be granted is within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. **Snelson v. State**, 704 So. 2d 452, 456 (Miss. 1997).

The record reflects that Hoye cross examined both Ms. Gina Lewis, and Mr. Will Peterson about the video tape evidence that was shown to the jury . R. 41-45; 57-60. Hoye questioned them thoroughly about Ms. Lewis' involvement in the alleged cocaine sale.

Agent Peterson testified that Ms. Lewis had not been promised anything in exchange for her testimony. R. 46.

Q. Was Gina Lewis promised anything if she cooperated with you?

A. No, sir. (Emphasis by Appellee).

Lewis testified that she had not been requested to lie. She had been requested to merely tell the truth about what occurred during the cocaine sale at Waggoner Road Trailer Park. R. 60.

Hoye's counsel argued before the jury in closing that what the video "did not show." R. 80-84. While he admitted that Hoye was seen in his red truck on the video, he argued that he was not actually seen conducting the transaction as described by Gina Lewis. It did not actually show the hand to hand transaction of \$40.00 for cocaine. R. 80-81.

He also argued that the transaction could not have occurred because a dog and the cocaine were supposedly both in Hoye's lap at the same time. R. 83. He also castigated the integrity of the

informant because she had something to gain by her testimony. R. 82.

Remember I talked to you in voir dire this morning. I asked you to look at the video when they showed the video, because I knew they were going to show the video. I asked you to look at the video and asked you to not only look for what it does show, look for what it does not show. R. 80-81

The Appellee would submit that Hoye's counsel stated during voir dire and argued in closing about what the video tape did not show. R. 25; 80-81. This was a major tenet of his defense.

Consequently, his argument on appeal for the first time about there being confusion about what was the original and what was the duplicate of the video tape recording made at the scene of the alleged crime is wide of the mark. Hoye's defense tactic was to take full advantage of what was not shown rather than to complain about the techniques used to produce the video images the jury viewed along with all the testimony and exhibits.

In **Fleming v. State**, 604 So. 2d 280, 289 (Miss. 1992), the Court stated a defendant should not be allowed to complain about evidence he brought out at trial.

It is axiomatic that a defendant cannot complain on appeal concerning evidence that he himself brought out at trial. See **Singleton v. State**, 518 So. 2d 653, 655 (Miss. 1988)... As the Court stated pithily in **Reddix v State**, 381 So. 2d 999, 1009 (Miss.), cert denied, 499 U S 986, 101 S Ct 408, 66 L Ed 2d 251 (1980): 'If the defendant goes fishing in the state's waters, he must take such fish as he catches.'

The Appellee would submit that this issue is lacking in merit.

PROPOSITION II & III.

**THERE WAS CREDIBLE, SUBSTANTIAL CORROBORATED
EVIDENCE IN SUPPORT OF THE VERDICT AND THE
DENIAL OF ALL PEREMPTORY INSTRUCTIONS BY THE
TRIAL COURT.**

Hoye believes that there was insufficient evidence in support of the jury's verdict. He thinks that the only evidence against him came from the informant, Ms. Gina Lewis. Since Lewis was facing separate pending criminal charges that could result in her imprisonment, he believes she had a motive to be less than truthful. Therefore, Hoye believes her testimony was not credible. He also thinks that Lewis' testimony about the cocaine being in his lap along with a dog casts doubt upon her credibility about how the transfer of cocaine occurred. Appellant's brief page 3-5.

On motions for a directed verdict, Hoye, like other appellants, is not entitled to give himself the benefit of conflicts or gaps in the evidence. Rather it is the appellee who is entitled to have the evidence taken as true with reasonable inferences on such a motion.

In *Noe v. State*, 616 So. 2d 298, 302 (Miss. 1993), this Court stated that when the sufficiency of the evidence is challenged that the evidence favorable to the State must be accepted as true with all reasonable inferences. Evidence favorable to the defense must be disregarded.

In judging the sufficiency of the evidence on a motion for a directed verdict, or request for peremptory instruction, the trial judge is required to accept as true all of the evidence that is favorable to the state, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. *Clemons v. State*, 460 So. 2d 835 (Miss. 1984).

The record reflects that agent Will Peterson with the Mississippi Bureau Narcotics testified that while he did not see what occurred during the alleged cocaine purchase, he listened to the conversation occurring at that time. R. 45. Agent Peterson also testified that Gina Lewis had not been promised anything in exchange for her testimony. R. 46.

In addition, Gina Lewis testified that she had not been promised anything in exchange for her testimony. She testified that the prosecution had not requested that she do anything other than tell the truth about what occurred during the alleged cocaine sale. R. 60. Lewis testified that she and her car were searched prior to the transaction to prevent any substitution of evidence. R. 47-48. She was traveling alone. There was no one else in the car with her. She also testified that after the transaction, she did not stop or meet with anyone else. R. 52-53. She left the alleged cocaine, State's exhibit 1 with agent Peterson, as she had been directed to do prior to the transaction.

Lewis testified that after Hoye pulled the wrapped cocaine out of his jacket pocket, he placed it on his left leg. His truck's door was open. While Sunflower, a dog, was mentioned as also being on Hoye's lap, there were no questions from Hoye about how having a dog of indeterminate size along with a small piece of cocaine on your lap somehow made the drug transaction improbable or impossible. R. 57-60. Therefore, Hoye is not entitled to any inferences from evidence never brought before the jury. R. 57-60; C.P. 22.

Ms. Gina Lewis testified that she contacted a person she knew as "Keno." R. 49. After arranging a time and place for an alleged cocaine purchase, she was told to meet him at the Waggoner Road Trailer Park. Lewis identified Hoye in the court room as the person from whom she purchased \$40.00 worth of cocaine. R. 49.

Q. And who did you call in regard to trying to make a purchase of cocaine?

A. A person I knew by the name of Keno.

Q. Now, the person that you know as Keno, are you able to identify that person today?

A. Yes, sir.

Q. Can you make identification of him by pointing to that person?

A. Yes, sir, he's sitting right there.

Thames: Your Honor, I'd like the record to reflect that the witness has pointed to the defendant seated at the counsel table.

Court: The record will so reflect. (Emphasis by Appellee)

Lewis also identified State's Exhibit 1 as being the alleged crack cocaine she purchased at the Waggoner Road Trailer Park. R. 54.

This drug transaction occurred on December 8, 2006 at the Waggoner Road Trailer Park in Morton, Scott County. Lewis testified that she and her car were searched prior to the purchase. R. 47-48. She and her car had a video camera and an audio recorder operating at the time of the alleged sale. Agent Peterson testified without objection that he had reviewed the video of the transaction prior to trial and found it to be an accurate depiction, without alteration, of what occurred during the sale, based upon his listening to the transaction. R. 39. Gina Lewis testified that she reviewed the video tape. It "accurately and correctly show(ed) the transaction as it took place. R. 55.

Ms. Gina Lewis testified that she gave Hoye the \$40.00 and received the cocaine which was wrapped in cellophane. R. 52. She took the alleged cocaine, exhibit 1, and surrendered it agent Peterson with the Bureau of Narcotics. R. 52. She did not stop and make any contact with any other person who could have been the source of the cocaine. R. 53.

Ms. Jamie Johnson, a forensic analysts, testified that exhibit 1 was determined to be crack cocaine by using several scientific tests. It weighed .39 grams. R. 66.

Q. Can you tell us what your tests revealed that substance to be and how much of it?

A. Based on the results of both examinations, I was able to determine that the substance contained in State's Exhibit 1 for ID only, is cocaine based, which is also known as crack cocaine, with a weight of .39 grams. R. 66. (Emphasis by Appellee).

The issue of the relationship between informant #096-2006 as stated in the indictment and

Gina Lewis, who testified as being the informant used in the instant cause, was waived for failure to ever raise it with the trial court. C.P. 22. **Haddox, supra**. The record reflects that Hoye did not object to jury instruction S-1, which included in the elements the selling of cocaine by Hoye to "Gina Lewis." R. 71-72; C.P. 14. The failure to object to an instruction waives the issue on appeal. **Davis v. State**, 568 So. 2d 277, 279 (Miss. 1990)

In addition, there is a presumption that the trial court's rulings are correct. **Clark v. State**, 503 So. 2d 277, 280 (Miss. 1987). A trial court can not be faulted for an issue never raised. **Wilcher v. State**, 479 So. 2d 710, 712 (Miss. 1985).

It is also reasonable to infer from the record that Gina Lewis and informant 096-2006 were one and the same. The indictment did not just mention 096-2006 in the abstract, it mentioned 096-2006 as "the MBN informant 096-2006" who purchased cocaine from Hoye in Scott County on December 8, 2006.

Both Agent Peterson with the MBN and Gina Lewis testified that Lewis was the informant used by the MBN in the instant cause. R. 35-45; 47-60. Lewis specifically testified that she worked on December 8, 2006 with the MBN to set up an alleged cocaine purchase from Hoye. R. 47. Neither she nor Agent Peterson testified that any other informant besides Lewis was used in the purchase from Hoye on December 8, 2006. It is therefore reasonable to infer that 096-2006 was one and the same as informant Ms. Gina Lewis. There was no evidence or testimony from the defense to the contrary.

In **Reed v. State**, 506 So. 2d 277 (Miss 1987), relied upon by Hoye, the Court found that amending an indictment to eliminate one of three alleged armed robbery victims was improper where there was no evidence for doing so. However, the court affirmed the conviction for the crimes

against the other two victims named in the indictment. In **Reed** there was never any issue about the identity of any of the victims based upon the indictment as is being raised for the first time in the instant cause.

The Appellee would submit that based upon the testimony summarized above, there was sufficient evidence for establishing all the elements of sale of cocaine as stated in jury instruction S-1. C.P. 14.

In **Jones v. State** , 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that a motion challenging the weight of the evidence was in the trial court's discretion. However, it should be denied except to prevent "an unconscionable injustice."

Our scope of review is well established regarding challenges to the weight of the evidence issue. Procedurally, such challenges contend that defendant's motion for new trial should have been granted. Miss. Unif. Crim. R. of Cir. Ct. Prac. 5.16. The decision to grant a new trial rests in the sound discretion of the trial court, and the motion should not be granted except to prevent "an unconscionable injustice." **Wetz v. State**, 503 So. 2d 803, 812 (Miss. 1987). We must consider all the evidence, not just that supporting the case for the prosecution, in the light most consistent with the verdict." **Jackson v. State** , 580 So. 2d 1217, 1219 (Miss. 1991), and then reverse only on the basis of abuse of discretion.

The testimony and evidence presented to the jury were sufficient, credible, partially corroborated evidence for denying a motion for a new trial. The trial court's order denying relief was fully supported by the evidence. C.P. 24.

In **Doby v. State**, 532 So. 2d 584, 591 (Miss. 1988) , the Court stated that the Supreme Court recognizes that the uncorroborated testimony of a single witness was sufficient to support a conviction.

With this reasoning in mind, the Court holds that the testimony of Conner was legally sufficient to support Doby's conviction for the sale of cocaine. This Court recognizes the rule that persons may be found guilty on the uncorroborated testimony of a single witness. See **Ragland v. State**, 403 So. 2d 146 (Miss. 1981);..

In the instant cause, the informant was partially corroborated by the video tape. Hoyer was seen on the video tape in his red Ford Explorer at the time and place of an alleged drug transaction. R. 57; 83. Lewis identified exhibit 1 as being the cocaine she alleged purchased from Hoyer. R. 54. The alleged cocaine shown in the video was recovered and identified by scientific test as being cocaine. R. 66.

Lewis testified that she traveled to the transaction alone in her car after she and the car were searched for contraband. She did not come in contact with anyone else with whom she could have acquired some other contraband. R. 47-60.

Therefore, the record reflects that Ms. Gina Lewis was partially corroborated as to the elements of the sale of cocaine charge. And there was a lack of evidence that any alleged substitution of cocaine could have occurred under the facts of this case. R. 47-60.

The Appellee would submit that these other issues dealing with the sufficiency and weight of the evidence are therefore also lacking in merit.

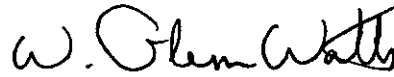
CONCLUSION

Hoye's conviction should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I, W. Glenn Watts, 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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