2007-KA-02016-COA RT

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-02016-COA

VINCENT HUDSON — APPELLANT

vs.

STATE OF MISSISSIPPI — APPELLEE

TABLE OF CASES AND AUTHORITIES

(Appellee's Brief, p. 9) is totally unsupported by the evidence presented by the prosecution at trial. No reasonable inference to sufficiently establish beyond a reasonable doubt conscious, actual possession of a controlled substance was raised by the occurrence testimony of the police and narcotics officers who arrested the Appellant and seized the clothes he was wearing at the time. The leap necessary to reach the Appellee's inferential conclusion is simply too great, despite the bare assertion by the State that the Appellant must have "had knowledge" of the presence of a "trace amount" of cocaine on the clothing he was wearing. (*See* Appellee's Brief, p. 9) In fact, Officer Patrick Estes testified that he and a "Lieutenant Taylor" had both searched Mr. Hudson and no "elicit [sic] drugs were found on him whatsoever." (T. I. 48-49)

Officer Barry McWhirter also testified that during interrogation the Appellant stated to him that "they [Vincent and Hillute Hudson] had been painting vehicles, or painting on a vehicle, and had been around some paint thinner earlier in the day. . ." (T. I. 58) A plausible, reasonable inference that could easily be drawn from this evidence is that after painting the car, the Appellant cleaned up and borrowed some of his brother's clothes to wear, which had traces of cocaine that he was not aware in the pockets. Even when viewing all of the State's evidence "in the light most favorable to the prosecution," it cannot be said that "any trier of fact could have found the essential element of the crime [actual knowledge of the presence of a controlled substance] beyond a reasonable doubt." ***Bush v. State***, 895 So. 2d 836, 843 (Miss. 2005).

Further, as to the averment by the State that the substance "was visible with the naked

eye" (*see* Appellee's Brief, p. 9), the testimony of Mississippi Crime Laboratory forensic examiner Brandy Goodman is also of no assistance in raising or supporting the claimed inference in the State's proof of "guilty knowledge" on the part of the Appellant. During the cross-examination of Ms. Goodman, the following exchange took place:

> Q. Ms. Goodman, I have just a very few questions, but I want you to talk to me, if you would, please ma'am, you say a trace is less than a tenth [of a gram]. Well, it's a lot less than that, is it not?
>
> A. That's correct. A trace amount is an amount that I can physically see that there is something there, but it is not a weighable amount of substance.
>
> Q. When you say physically see, what exactly do you see?
>
> A. Possibly flakes or crumbs, just a very, very minute amount of substance.

(T. I. 75) (emphasis added)

Her testimony was obviously referring to forensic examination of "trace amounts" of substances in general, but not particularly pertaining to the substance specific to this case. Testimony of the "possibility" of visual presence of a controlled substance in this case does not rise to the level of proof beyond a reasonable doubt that would support the Appellee's assertion that "one could reasonably infer" that the Appellant was "aware" of the presence of this substance. ***Dixon v. State***, 953 So. 2d 1108, 1112 (Miss. 2007) (holding that "there must be sufficient facts to warrant a finding that defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession of it."). Undoubtedly, Ms. Goodman might be able to observe substances in the laboratory with

the aid of a microscope that would otherwise be unseeable "with the naked eye." Therefore, the Appellant would respectfully state that the proof presented by the State of Mississippi failed to establish a legally sufficient case, or, in the alternative, the jury's verdict was against the overwhelming weight of the evidence presented at trial.

The Appellant contends that the issues of the legal sufficiency and the weight of the evidence are dispositive of this matter and would stand on the Brief of the Appellant as to the remaining claims of error at trial.

WHEREFORE, PREMISES CONSIDERED, the Appellant herein would submit that the judgment of the trial court and the conviction and sentence as aforesaid should be vacated, this matter rendered, and the Appellant discharged from custody, or, in the alternative, reverse and remand this case to the lower court on the weight of the evidence for a new trial on the merits of this case or re-sentencing on the disproportionality of the sentence of life without the possibility of parole, as set out heretofore in the Brief of the Appellant.

Respectfully submitted,

Vincent Carnell Hudson, Appellant

by: _____

Phillip W. Broadhead, MSB [redacted]
Criminal Appeals Clinic
The University of Mississippi School of Law
520 Lamar Law Center
Post Office Box 1848
University, MS 38677-1848
Telephone: 662.915.5560
Facsimile: 662.915.684

CERTIFICATE OF SERVICE

I, Phillip W. Broadhead, Criminal Appeals Clinic Professor and attorney for the Appellant herein, do hereby certify that I have this day mailed postage fully pre-paid/hand delivered/faxed, a true and correct copy of the foregoing Reply Brief of Appellant to the following interested persons.

Honorable C.E. Morgan, III., Circuit Court Judge
FIFTH JUDICIAL DISTRICT
Post Office Box 721
Kosciusko, Mississippi 39090;

Doug Evans, Esq., District Attorney
Mike Howie, Esq., Assistant District Attorney
and
Adam Hopper, Esq., Assistant District Attorney
Post Office Box 1262
Grenada, Mississippi 38902;

Jim Hood, Esq.
ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI
Post Office Box 220
Jackson, Mississippi 39205; and,

Mr. Vincent Hudson, Appellant
MISSISSIPPI DEPARTMENT OF CORRECTIONS
Louisville, Mississippi 39339

This the 21st day of August, 2008.

Phillip W. Broadhead, MSB #[redacted]
Certifying Attorney