

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

RODERICK G. FORIEST

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APPELLANT

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COURT OF APPEALS**

VS.

NO. 2007-KA-2025

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE FACTS

On April 10, 2006, two confidential informants were searched, wired, and sent out to buy drugs with State issued marked cash. (Transcript p. 131 - 135). One of the confidential informants, Joey Boone made contact with Curtis Hart. (Transcript p. 137). Mr. Boone informed Mr. Hart that he was looking for some “white” (slang for powder cocaine). (Transcript p. 137). Mr. Hart responded that he did not have any “white” but only had “hard” (slang for crack cocaine). (Transcript p. 137). Mr. Boone replied that he wanted an eight ball of “white” (approximately 3.5 ounces). (Transcript p. 137). Mr. Hart then asked what Mr. Boone would be willing to pay for an eight ball and Mr. Boone replied \$150. (Transcript p. 138). After some additional conversation, Mr. Hart told Mr. Boone to make the block. (Transcript p. 138).

When Mr. Boone returned there was another person in the truck with Mr. Hart, the Defendant, Roderick Foriest. (Transcript p. 140). Mr. Hart then informed Mr. Boone that he could get the "white." (Transcript p. 171). The two began negotiating the price. (Transcript p. 171). During these negotiations, Foriest told Mr. Hart what to say and told him the price. (Transcript p. 164, 181, and 185). Mr. Boone was told to make the block and meet up at the Amoco Station across from Builder's Mart. (Transcript p. 171). The Amoco Station is less than 1500 feet from Tylertown Methodist Church. (Transcript p. 144).

After Mr. Boone arrived at the Amoco Station, Mr. Hart asked him to look under the hood of his truck. (Transcript p. 175). He did and found a small box under the hood with the cocaine inside. (Transcript p. 175). Mr. Boone gave him \$150. (Transcript p. 175).

After the sale, the confidential informants returned to the preestablished meeting place to be searched and to turn over the wire and cocaine. (Transcript p. 149 - 150). It was later determined that Mr. Boone purchased approximately 3.1 ounces of cocaine. (Transcript p. 201).

At trial, Billy Warner of the Mississippi Bureau of Narcotics testified to the following:

It was on August the 14th. We were in this courtroom on another matter. I was present, and Mr. Foriest was present on other matters. And we began to leave the courtroom area to go through the chambers into the law library, and Mr. Foriest asked me if I had a drug case on him. And I answered to him that I might have one, you know, just in conversation, and he said, "I know when it was." He said, "It was that white boy that day, 3.5 grams." And I said, "Yeah," I said, "it might be. That might be when it was." And he continued to talk with me as we were walking out, and he said, "I'll take a plea to that." He said, "I'll take a plea to that to do about three years." And I said, "Well, we'll just see." And we kind of kept on walking and going on through the law library around towards the elevator, and he said, "Yeah, I'll take a plea to that if ol' Curt don't hold up for it." And got on the elevator, and I went on up to the courtroom, left the court house. . . . Yeah, he said that - - he said if somebody told him they had a drug case on him, he said nine out of ten they'd be right.

(Transcript p. 159). Gary McBeth testified that he overheard this same conversation. (Transcript p. 193 - 196). Foriest was convicted of the sale of cocaine within 1500 feet of a church and conspiracy to sell cocaine. He was sentenced as a habitual offender to life in the custody of the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The trial court properly denied Foriest's motion for new trial as the verdict was not against the overwhelming weight of the evidence.

ARGUMENT

Foriest argues that "the trial court erred in denying [his] motion for a new trial because the verdict was against the overwhelming weight of the evidence." (Appellant's Brief p. 5). The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

[This court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an "unconscionable injustice."

Pierce v. State, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86 (Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993).

The evidence at trial clearly established Foriest sold cocaine within 1500 feet of a church and conspired to sell cocaine. First, both the confidential informant, Mr. Boone, and Officer Warner testified to Foriest's involvement in the sale and in conspiring to sell cocaine. For example, both testified that Foriest told Mr. Hart what to say during the price negotiations. (Transcript p. 164 and 181). Also both testified that the "white" only became available after Foriest entered the picture.

(Transcript p. 165 and 180). Additionally, Officer Warner testified as follows regarding Foriest's involvement:

As I said, they - - upon pulling back up beside the vehicle, they go right back through the same conversation they initially had. And every time Mr. Hart would look over to the informant, the informant states something, then Mr. Foriest, he would be looking at him while he's saying it, and then when he finishes talking he'll turn and put his hand by his mouth, say something to Mr. Hart. Mr. Hart will turn and speak back to the informant.

(Transcript p. 143). Moreover, Mr. Hart testified that Foriest gave him the cocaine to sell and that he gave the \$150 to Foriest after the sale. (Transcript p. 184, 186, and 187). He also testified that while Foriest was in the truck, he told Mr. Hart the price of the cocaine and instructed him regarding how to make the sale. (Transcript p. 185). In fact, Mr. Hart specifically testified that he sold the cocaine for Foriest. (Transcript p. 191).

Nonetheless, Foriest argues that "the testimony of Curtis [Hart] is the only evidence that Foriest was involved in the sale of cocaine" and that "no reasonable jury could put any faith into his testimony." (Appellant's Brief p. 6). However, as set forth above, there is ample evidence outside Mr. Hart's testimony which links Foriest to the crimes. Furthermore, it is well-established Mississippi law that "the jury is the sole judge of the weight and credibility of the witnesses." *Thomas v. State*, 754 So.2d 579, 582 (Miss. Ct. App. 2000)(citing *Miller v. State*, 634 So.2d 127, 129 (Miss.1994)). Accordingly, the verdict was not against the overwhelming weight of the evidence and the trial court properly denied Foriest's motion for new trial.

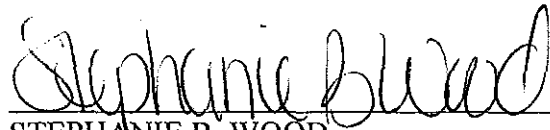
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Roderick Foriest as the verdict was not against the overwhelming weight of the evidence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in cursive script, reading "Stephanie B. Wood", written over a horizontal line.

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CERTIFICATE OF SERVICE

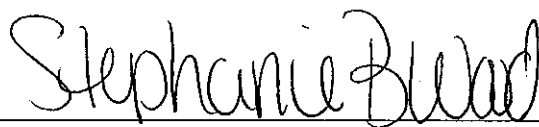
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 7th day of August, 2008.



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