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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK G. FORIEST

APPELLANT

FILED

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SUPREME COURT
COURT OF APPEALS**

V.

NO. 2007-KA-2025-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Roderick G. Foriest, Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable Michael M. Taylor, Circuit Court Judge

This the 29 day of May, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

**RODERICK GREGORY FORIEST A/K/A RODERICK
GREGORY FOREST A/K/A BIG NASTY**

APPELLANT

V.

NO. 2007-KA-02025-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUE

**THE TRIAL COURT ERRED IN DENYING JEFFERSON'S MOTION FOR A
NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE
OVERWHELMING WEIGHT OF THE EVIDENCE**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Walthall County, Mississippi, and a judgment of conviction for the crimes of Count I - Sale of Cocaine and Count II - Conspiracy to Sell Cocaine. Roderick Gregory Foriest was sentenced to life imprisonment without parole in the custody of the Department of Corrections following a jury trial from October

2 - 3, 2008, Honorable Michael M. Taylor, presiding. Foriest is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On April 10, 2006, Mississippi Bureau of Narcotics Agent Billy Ray Warner, hereinafter Agent Warner, and two confidential informants were searching to purchase narcotics within the Walthall County. Tr. 131. One of the informants was a coded confidential informant and the second was an uncoded confidential informant. Tr. 133. A coded informant is someone who is not in any kind of trouble and is not involved in any kind of drug activity; however in this case the coded confidential informant had previously had a cocaine problem. Tr. 133, 176. He is providing a service for the state and is paid for his services. Tr. 134. An uncoded informant is someone that is actually from the area and knew different locations to purchase illegal drugs. Tr. 134-34. The coded confidential informant was Joey Boone, hereinafter Boone, and the uncoded confidential informant was P.J. Sistrunk, hereinafter Sistrunk. Tr. 134, 168.

Agent Warner issued Boone \$150 in official state funds, audio device, and visual recording device. Tr. 169. Boone and Sistrunk left Agent Warner and rode around town to try to make a buy. Tr. 170. Eventually, Boone encountered Curtis Hart, hereinafter Curtis. *Id.* Boone asked Curtis if he had any “white¹ cocaine.” *Id.* Curtis informed Boone that all

¹ “White” refers to white powder cocaine.

he had was “hard².” *Id.* Boone stated that he wanted to buy some and Curtis told him to make a couple of blocks. *Id.*

When Boone made a couple of blocks and came back to where Curtis had been, Boone noticed that Curtis was with another man, Roderick Foriest, hereinafter Foriest. Tr. 170-171. Curtis told Boone that he could get the white powder. Tr. 171. Boone said he asked for an “eight ball³.” *Id.* Curtis ultimately agreed to sell an “eightball” to Boone for \$150. *Id.* Curtis then told Boone to meet him at a service station. *Id.*

Boone testified that as he was talking to Curtis, Foriest was talking back and forth with Curtis also. Tr. 172. Boone further stated that he tried to engage conversation with Foriest, but Foriest did not respond to Boone. Tr. 172, 174-75.

Boone stated that when he pulled into the service station, Curtis asked him to take a look under his hood. Tr. 175. Curtis had a little box under the hood where he had the cocaine. *Id.* Boone handed Curtis the money and took the cocaine out of the box. *Id.* After the sale, Boone and Sistrunk met back up with Agent Warner and turned the cocaine, audio, and video equipment over to Agent Warner. Tr. 176.

Curtis testified that after he had first talked to Boone, he went to Foriest’s house to get him. Tr. 184. Curtis stated that Foriest was in the truck when he was talking to Boone the second time. *Id.* Curtis claimed that Foriest was telling him the price of the cocaine and

² “Hard” refers to crack cocaine.

³ “Eightball” refers to 1/8 of an ounce or approximately 3.5 grams of cocaine.

that he and Foriest had decided to sell the cocaine to Boone. *Id.* Foriest then gave the cocaine to Curtis and then Curtis went alone and made the deal with Boone. Tr. 184-85.

However, Foriest's testimony differs from that of Boone and Curtis. Foriest testified that Curtis was giving him a ride to the store. Tr. 228. Foriest continued to state that on the way to the store, two white guys pulled up asking about some drugs. *Id.* Foriest got out of the truck when he realized that Curtis and Boone were trying to negotiate a drug deal. Tr. 229.

Foriest declared that he did not participate in a drug deal with Curtis that day. Tr. 229-230. Foriest did not want any part of the drug deal and did not go to the service station. Tr. 232. Foriest got out of the truck and walked back to his house. *Id.*

Foriest stated that he did talk to Curtis during Curtis's negotiations with Boone, but Foriest told Curtis that he was not into that kind of thing, and he was wanting to go to the store. Tr. 233. Foriest did not give Curtis any drugs, nor did he receive any money from Curtis. Tr. 234.

SUMMARY OF THE ARGUMENT

The verdict in this case was against the overwhelming weight of the evidence. The evidence presented failed to establish beyond a reasonable doubt the charge of sale of cocaine and conspiracy, as the evidence did not show Foriest involved in an exchange of money for drugs. The State alleged in its indictment Curtis and Foriest were working together to sale cocaine, but the evidence proved that Curtis was the only one involved in the drug transaction. Curtis's testimony is not reliable and no reasonable jury could have

convicted Foriest based on the testimony of Curtis. Allowing the verdict to stand on this evidence would manifest an extreme injustice.

ARGUMENT

ISSUE

THE TRIAL COURT ERRED IN DENYING FORIEST'S MOTION FOR A NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

In trial counsel's Motion for Judgment Notwithstanding the verdict or in the alternative a New Trial, trial counsel specifically argued that the jury's verdict was against the overwhelming weight of the evidence. C.P. 61, R.E. 10. The trial judge denied this motion. C.P. 63, R.E. 12. The trial judge erred in refusing to grant this motion.

In *Bush v. State*, the Mississippi Supreme Court set forth the standard of review as follows:

When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we 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. *Herring v. State*, 691 So.2d 948, 957 (Miss.1997). We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. *Amiker v. Drugs For Less, Inc.*, 796 So.2d 942, 947 (Miss.2000). However, the evidence should be weighed in the light most favorable to the verdict. *Herring*, 691 So.2d at 957. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict." *McQueen v. State*, 423 So.2d 800, 803 (Miss.1982). Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial.

Bush v. State, 895 So.2d 836, 844 (Miss. 2005) (footnotes omitted).

In the present case, Foriest is at a minimum entitled to a new trial as the verdicts were clearly against the overwhelming weight of the evidence. The testimony of Curtis is the only evidence that Foriest was involved in the sale of cocaine. Curtis had already met with Boone setting up a potential cocaine sale prior to picking up Foriest, and Curtis was the one that met with Boone and actually made the sale of cocaine. The video did not show Foriest talking to Boone nor show that Foriest was present during the cocaine exchange. In fact, Foriest did not respond to Boone when Boone tried to talk to Foriest. Tr. 175.

Furthermore, Curtis was not telling the same story during his direct testimony and was not creditable. For example, Curtis testified that he got the cocaine from Foriest before the confidential informant came back and discussed price. Tr. 186. However, later in his testimony, Curtis stated that he went and got the cocaine after the informant left and then he went to the service station. Tr. 189. Curtis changed his story during the middle of his direct testimony. Therefore, his testimony should not have been credible.

Curtis confirmed on cross-examination that his also had been arrested for selling cocaine. Tr. 189. Curtis pled guilty to selling cocaine but has not been sentenced. Tr. 190. Curtis stated that he did not make a deal with the district attorney's office, but he had hoped they would give him a good deal since he testified against Foriest. Tr. 190.

Clearly, it would sanction an unconscionable injustice to allow the Appellant to be convicted on the word of Curtis. No reasonable jury could put any faith into his testimony.

As set forth in the indictment, the State was required to show that Foriest (1)

unlawfully transferred or sold cocaine to the confidential informant, Boone, and (2) received forty (\$150) dollars, and conspired with Curtis Hart to sell the cocaine . C.P. 5, R.E. 6. Besides the testimony of Curtis, the State presented no evidence that Foriest was involved in the drug sell. By alleging in the indictment that Foriest received a sum of money for the cocaine, the State took on the burden of proving that Foriest received money. *Gray v. State*, 728 So.2d 36 (176-77) (Miss. 1998). Other than Curtis's unreliable testimony, no evidence was presented to the court that Foriest received any money for the cocaine sale.

The only involvement of Foriest was for a brief few seconds during the time the Curtis was negotiating a drug deal with Boone. Foriest testified that he wanted no part of this transaction and immediately got out of the truck. Tr. 233. Foriest stated that he was only catching a ride with Curtis to the store. Tr. 228. Foriest admitted to talking to Curtis inside the truck, but that was only to tell Curtis that he wanted out and he did not want to be a part of the transaction. Tr. 232-33. No video evidence exists nor does any audio exist that involves Foriest in the transaction. When Boone tried to initiate contact with Foriest, he refused. Tr. 175.



The verdict was clearly against the overwhelming weight of the evidence. Foriest therefore respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial. "To reverse a conviction and order a new trial because of significant weakness but not total want of evidence is the course marked by a century of Mississippi jurisprudence." *Edwards v. State*, 736 So.2d 475, 486 (Miss. App. 1999). To allow this verdict to stand


would sanction an unconscionable injustice. *See Hawthorne v. State*, 883 So.2d 86 (Miss. 2004).

CONCLUSION

Given the facts presented in the trial below, the verdict was contrary to the overwhelming weight of the evidence. Roderick Foriest is entitled to have his sale of cocaine and conspiracy convictions reversed and remanded for a new trial.

Respectfully submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Roderick Gregory Foriest, Appellant

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CERTIFICATE OF SERVICE

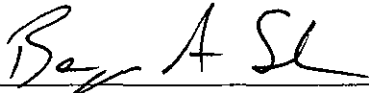
I, Benjamin A. Suber, Counsel for Roderick G. Foriest, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Michael M. Taylor
Circuit Court Judge
Post Office Box 1269
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This the 29 day of May, 2008.


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