

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

DEMETRIUS D. TISDALE

APPELLANT

VS.

NO. 2008-KA-0098-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**ROUN MCNEAL
ATTORNEY GENERAL LEGAL INTERN**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

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STATEMENT OF THE ISSUES

- I. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

PROCEDURAL HISTORY

Demetrius Tisdale was indicted by a Neshoba County Circuit Court Grand Jury on August 29, 2006 for “selling and delivering to Bobby Stanley for the sum of \$20.00, a Schedule I controlled substance, namely marijuana, in an amount less than 30 grams” in violation of Miss. Code Ann. § 41-29-139(b)(3). [C.P. 2]. Tisdale was found guilty by a jury of his peers, Hon. Marcus Gordon presiding, and sentenced to serve two and a half years in the custody of the Mississippi Department of Corrections and pay a fine of \$1,000. [C.P. 14, 15]. Tisdale filed a timely motion for a new trial, or alternative relief, which was denied. [C.P. 17, 19]. From this judgment the defendant filed a notice of appeal. [C.P. 23].

STATEMENT OF FACTS

On April 11, 2006, Officer Neal Higgason set up a pre-buy meeting with a confidential informant, Bobby Stanley, for the purpose “making a buy.” [T. 53]. Officer Higgason, with Officer Kevin Baysinger witnessing, searched the confidential informant and the confidential informant’s wife, who had come with him. [T. 54]. Higgason also searched the couple’s car. [T. 54]. Stanley telephoned someone named “Mete” to set up the buy. [T. 55]. Higgason provided Stanley with \$20.00 to make the buy and outfitted him with a concealed wire and camera. [T. 56]. Higgason kept a visual on the Stanleys during the buy and personally saw Tisdale pick up Stanley from the buy location, the Kentucky Fried Chicken in Philadelphia, MS, drive around the block, and return Stanley to the buy location. [T. 58]. Higgason then recovered the contraband. [T. 58]. Stanley delivered the marijuana to Higgason in a spare plastic bag used previously for “lunches and stuff.” [T. 73].

SUMMARY OF THE ARGUMENT

The State presented ample evidence that Tisdale sold drugs to a confidential informant, Bobby Gene Stanley. Stanley's testimony that he purchased drugs from Tisdale is corroborated by video evidence and the testimony of two police officers. Tisdale's conviction is not against the overwhelming weight of the evidence, and this honorable Court should affirm his conviction and sentence.

ARGUMENT

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

The appellant argues one issue - that his conviction was against the overwhelming weight of the evidence. This Court declines to overturn a conviction unless it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. *Miller v. State*, 982 So. 2d 995, 997 (Miss. 2008). This is a heavy burden, which requires the court to view the evidence in the light most favorable to the verdict. *Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005). The State respectfully submits that Tisdale has failed to meet this burden.

The Court of Appeals dealt with an extremely similar situation in *Cox v. State*. There, the appellant alleged that his conviction for selling cocaine was against the overwhelming weight of the evidence. *Cox v. State*, 887 So. 2d 190, 190-91 (Miss. App. 2004). Cox contended that the narcotics agents did not sufficiently search the confidential informant to whom Cox sold the cocaine. *Id.* at 191. The court disagreed noting “[t]he narcotics agent testified that he searched the confidential informant for drugs, paraphernalia, and weapons and then wired him with recording equipment. As a result, we find an adequate search was conducted.” *Id.*

At trial, defense counsel introduced the question of whether Stanley and his wife had been adequately searched to the jury. Cox seems to stand for the proposition that a reasonable juror can determine beyond a reasonable doubt that a search was adequate based solely on the testimony of the narcotics officer who conducted the search. Here, the record shows that Officer Higgason testified that an adequate search was conducted:

Q: And once you arrived at the meeting, you said you searched the CI, confidential informant and his vehicle. Is that correct?

A: Yes. Bobby Stanley and his wife, Nicolette, were both there. I searched

them. I searched the vehicle. Nothing of evidentiary value was found.

Q: So, no drugs or paraphernalia or anything like that?

A: No, no drugs, paraphernalia, weapons, anything of that nature.

[T. 53-54].

Besides the testimony of Officer Higgason that he adequately searched the confidential informant, the State showed video evidence of the marijuana transaction during the brief time that the confidential informant was in Tisdale's automobile. [T. 75]. The officers also made a first-hand identification of Tisdale as the man driving the automobile. [T. 58-59].

Tisdale contends that "the failure of the two law enforcement officials to conduct a through [sic] search of Nicolette (Nikki) Stanley ... vitiated the prophylactic effect of the other elements of a 'controlled buy.'" This contention is fatally flawed, though, because the trier of fact heard and rejected this very argument at trial. It is within the sole province of the jury to resolve any conflicts in the evidence. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). Additionally, matters of weight of the evidence and witness credibility are to be resolved solely by the jury. *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993). In the case *sub judice*, the jury was not even called upon to resolve a conflict in the evidence. The jury did, however, decide that the State's witnesses were credible. The verdict is not against the overwhelming weight of the evidence, nor does it represent an unconscionable injustice.

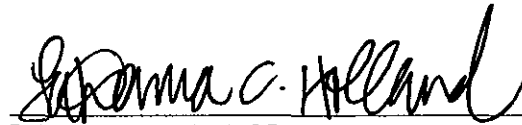
CONCLUSION

Because the overwhelming weight of the evidence supports the findings of fact made by the jury, the State respectfully requests that this honorable Court affirm Tisdale's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in black ink, appearing to read "La Donna C. Holland", written over a horizontal line.

LA DONNA C. HOLLAND
ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE


I, La Donna C. Holland, 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:

Honorable Marcus D. Gordon
Circuit Court Judge
Post Office Drawer 220
Decatur, MS 39327

Honorable Mark Duncan
District Attorney
Post Office Box 603
Philadelphia, MS 39350

Edmund J. Phillips, Jr., Esquire
Attorney At Law
Post Office Box 178
Newton, MS 39345

This the 15th day of August, 2008.


LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680