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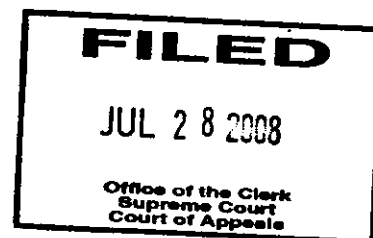
IN THE SUPREME COURT OF MISSISSIPPI

DEMETRIUS TISDALE

v.

STATE OF MISSISSIPPI

NO. 2008-KA-00098-COA



Appeal from Circuit Court of Neshoba County, Mississippi

**BRIEF FOR APPELLANT**

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Oral Argument is Not Requested.

**CERTIFICATE OF INTERESTED PERSON**

**DEMETRIUS TISDALE**

**v.**

**STATE OF MISSISSIPPI**

**NO. 2008-KA-00098-COA**

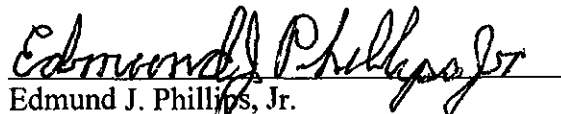
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan  
District Attorney  
P.O. Box 603  
Philadelphia, MS 39350**

**Honorable Marcus D. Gordon  
Circuit Court Judge  
P.O. Box 220  
Decatur, MS 39327**

**Honorable Jim Hood  
Attorney General of MS  
P.O. Box 220  
Jackson, MS 39205**

**Demetrius Tisdale  
APPELLANT**

  
Edmund J. Phillips, Jr.  
Attorney of Record for Demetrius Tisdale

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## **TABLE OF AUTHORITIES**

### **Cases**

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## **STATEMENT OF THE ISSUES**

1. The verdict was against the overwhelming weight of the evidence.

## **STATEMENT OF THE CASE**

Demetrius Tisdale appeals his conviction from the Circuit Court of Neshoba County, Mississippi of the crime of feloniously and knowingly selling and delivering a Schedule I controlled substance, less than 30 grams, and sentence of two and one-half (2 ½) years confinement in the custody of the Mississippi Department of Corrections.

Bobby Gene Stanley agreed to participate with the Philadelphia, Mississippi police department as a confidential informant by endeavoring to purchase marijuana in order to help pay old fines assessed on his convictions for petit larceny and trespassing and to avoid further punishment for non-payment of the fines. For reason unexplained at trial, his wife, Nicolette (Nikki) drove him to the pre-buy meeting with policeman Neal Higgason and officer Baysinger [present only as an observer (T-63) and then (Nicolette) drove him to meet with Appellant.

At trial, Stanley testified that he bought marijuana from Appellant and provided a ziplock bag he kept in his car to put the marijuana in when he bought it, although he met Appellant behind a KFC store in Philadelphia (T-72) and rode in Appellant's car to consummate the purchase of a small amount of marijuana for \$20.00.

Other pertinent facts will be referred to in the argument.

## **SUMMARY OF THE ARGUMENT**

The United States Supreme Court held in *In Re Winship*, 397 U.S. 358, 364 90 S. Ct. 1068 (1970) “that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged”.

## **ARGUMENT**

### **THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE**

The idea behind the use of a “controlled buy” to purchase contraband narcotics for law enforcement purposes is straight forward.

“A controlled buy consists of searching the person who is to act as the buyer, removing all personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is again searched for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction.”

*Flaherty v. State*, Ind. App. 443 N.E. 2d 340, 341 (1982); *Mills v. State*, 177 Ind. App. 432, 434, 379 N.E. 2d 1023, 1026 (1978).

By sanitizing the person and vehicle of the informant of drugs before the purchase and keeping the informant under observation, the observing police can be reasonably sure that only the person the informant came in contact with was the source of any contraband

in the possession of the informant after the contact. Sanitizing is necessary when the informant is untrustworthy, that is a person who has used drugs in the past, is familiar with the use of drugs, is cooperating with police to avoid punishment, has other compelling reasons to generate a successful case.

Bobby Gene Stanley, informant, had prior convictions for petit larceny and trespassing and had been unable to pay the fines (T-77, 78). Completing a successful drug purchase from Appellant would enable him to reduce the amount owed on the fines (T-70) and avoid the consequent punishment for non-payment.

In the case before the Court, the informant was accompanied by his wife. Although he was searched, any search of her was cursory and necessarily ineffective (T-62):

Q. So there was no female officer there present to conduct a thorough search of Nikki Stanley was there?

A. No.

(testimony of policeman Neal Higgason, witness for the prosecution). Therefore, although the preparations and observation by law enforcement officer gave the drug purchase the trappings of a controlled buy, the failure to search the wife left open the possibility that she had marijuana on her person and supplied it to her husband so that they might fabricate a successful case against Appellant.

In a criminal trial, the State bears the burden of proving each element of the

offense charged beyond a reasonable doubt and of overcoming the presumption of innocence. *Hedrick v. State* 637 So. 2d 834 (Miss. 1994); *Jones v. State*, 798 So. 2d 124 (Miss. 2001); *Edge v. State*, 393 So. 2d 1337 (Miss. 1981); *Love v. State*, 208 S. 2d 755 (Miss. 1968).

The United States Supreme Court held in *In Re Winship*, 397 U.S. 358, 364 90 S. Ct. 1068 (1970) “that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged”.

In the case before the Court, the failure of the two law enforcement officers to conduct a through search of Nicolette (Nikki) Stanley, wife of informant Bobby Gene Stanley, and their permitting her to accompany her husband when he went to make the marijuana purchase, vitiated the prophylactic effect of the other elements of a “controlled buy”.

Without this protection, the evidence that Appellant sold marijuana to Stanley could not use to proof of Appellant’s guilt beyond a reasonable doubt, because the possibility that Nikki Stanley had the contraband in her possession was not beyond reason. No reasonable juror could find otherwise.


The verdict should be overturned.



**CONCLUSION**

The verdict should be overturned.


RESPECTFULLY SUBMITTED,

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: July 28, 2008.

  
EDMUND J. PHILLIPS, JR.  
Attorney for Appellant