

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RICHARD ANDERSON

APPELLANT

VS.

NO. 2008-KA-0697-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

- I. THE STATE PROVIDED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.
- II. THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

On September 14, 2006, Officers Scott Evans and Jason Mitchell with the Horn Lake Police Department met with confidential informant Harlyn Holt to set up an undercover purchase of narcotics from Richard Anderson (Anderson). T. 136. On the day of the controlled buy, Holt had exchanged several text messages with Kristi Anderson (Kristi), the appellant's niece, regarding Holt's desire to purchase hydrocodone from Anderson. T. 138, 141-42, 165, 195-96. Kristi informed Holt via text message that the hydrocodone would be available for purchase after Anderson got off work between 5:30 and 6:00 p.m. T. 142. At the pre-buy meeting, Holt's person and vehicle were searched to ensure that he had no drugs or money other than the money which was provided

for the controlled buy. T. 136-37. Holt was then outfitted with a digital audio-recording device. T. 137. Holt thereafter went to Kristi's house to purchase the hydrocodone. T. 145. Holt waited for approximately one hour for Anderson to arrive. T. 145. Kristi and Anderson went into a room at the end of the hall before Kristi came back into the living room to give Holt a plastic bag containing fifteen tablets of hydrocodone. T. 145, 171-72, 200.

At the post-buy meeting, Holt turned over the hydrocodone to Officers Evans and Mitchell. T. 146, 175. Anderson was arrested on December 14, 2006. T. 148. After being *Mirandized*, Anderson was questioned about the September 14 transaction, and Anderson gave a statement to Evans in which he admitted to selling hydrocodone. T. 151. Anderson was indicted and tried for sale of hydrocodone and conspiracy to sell hydrocodone. A DeSoto County Circuit Court jury found Anderson guilty of conspiracy to sell hydrocodone, and not guilty of sale of hydrocodone.

SUMMARY OF ARGUMENT

The State presented legally sufficient evidence to prove beyond a reasonable doubt that Anderson entered into an agreement with his niece to sell hydrocodone. The duty of assessing witness credibility lies within the sole province of the jury. The jury found that the State's witnesses were credible. The jury's verdict is not against the overwhelming weight of the evidence.

ARGUMENT

I. THE STATE PROVIDED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

In determining whether the State proved each element of the offense beyond a reasonable doubt, all evidence supporting the guilty verdict must be accepted as true. *Wash v. State*, 931 So.2d 672, 673 (¶5) (Miss. Ct. App. 2006). Additionally, the State is given the benefit of all inferences which may reasonably be drawn from the evidence. *Id.*

Anderson was convicted of conspiracy to sell hydrocodone in violation of Mississippi Code Annotated §97-1-1. In order to secure a conviction under this statute, the State must prove only that two or more persons have entered into a common plan to commit a crime. *Berry v. State*, 996 So.2d 782, 786-87 (¶15) (Miss. 2008) (citing *Farris v. State*, 764 So.2d 411, 428-29 (¶58) (Miss. 2000)). The crime of conspiracy is completed once the agreement is formed, and no overt act in furtherance of the conspiracy must be proven. *Id.* While the parties to the conspiracy must understand that they are entering into an agreement and must intend further that agreement, “the agreement need not be formal or express, but may be inferred from the circumstances, particularly by declarations, acts, and conduct of the alleged conspirators.” *Id.*

The appellant argues that the State did not present direct evidence of a verbal communication between Anderson and Kristi regarding the sale of hydrocodone. The State did, however, present ample evidence of their agreement through their acts and conduct. Text messages were sent between Kristi and the Holt to set up the sale. During the exchange, Kristi sent Holt the following messages.

- 1:19 p.m. “Its usually between 530-630 depends what time he gets off.”
- 1:19 p.m. “I jus left him a message 2 call me if I dnt hear from him by 445 im calln bak!”
-
- 1:51 p.m. “Just talkd 2 rich hes comin when he gets off work! Will u

have tha 25 4 those r u gota get it?

•

- 2:08 p.m. "I told him I needed a few he should have whatever I need!
I've got to make sum calls n try an make sum money!

T. 141-42, Exhibit 1. Kristi acknowledged at trial that the "he" and "him" she was referring to was Anderson. T. 196. Kristi further testified that she had in fact talked to Anderson about the sale, and he agreed to bring the pills to her house after work to sell to Holt. T. 197, 202.

Although the State is not required to prove an overt act in furtherance of the conspiracy, evidence regarding Anderson's participation in the actual sale of hydrocodone to Holt is further evidence of Anderson's agreement with Kristi. Therefore, the Court should consider the following evidence of Anderson's participation in the actual sale. Holt waited at Kristi's house for approximately one hour before Anderson arrived with the pills. T. 145. Holt's wait, along with the transaction, was recorded and played for the jury. The video shows Anderson arriving at Kristi's house at approximately 29:20 on disk 2. Exhibit 4. Holt testified that after entering the home, Anderson went to a room down the hall, and Kristi followed him. T. 170. Kristi's testimony confirmed that when Anderson arrived, she asked him for the pills and the two walked to the back of the house where he gave her the pills. T. 200. The video shows Kristi coming from the hall into the kitchen to give the pills to Holt. Exhibit 4 at 32:16. In the kitchen Kristi tells Holt, "He's gotta go get me one more." Exhibit 4 at 32:30. On the video Kristi goes on to explain to Holt that Anderson only has fifteen hydrocodone manufactured by Mylan for him, so the sixteenth hydrocodone will have to be one manufactured by Watson.¹ Holt asks where Anderson has to go to get the Watson pill, and Kristi informs that it is in Anderson's truck. Exhibit 4 at 32:50. The video then shows Anderson coming back into the house and handing Kristi the Watson pill. Exhibit 4 at

¹Holt also gave testimony to this effect. T. 171-72.

33:42. Kristi then hands the pill to Holt, stating, “That one will be different.” Exhibit 4 at 34:05.

In addition to Kristi and Holt’s testimony and the video evidence of Anderson’s participation in the sale of hydrocodone, Anderson’s confession that he sells hydrocodone also evidences his agreement with Kristi to sell hydrocodone. T. 151, 157. Anderson’s brother, Ralph, also testified that Anderson sold hydrocodone out of his and Kristi’s home. T. 254, 256. Viewing the foregoing evidence in the light most favorable to the verdict, it is clear that the State proved beyond a reasonable doubt Anderson formed an agreement with Kristi to sell hydrocodone. The State would finally note that it matters not that Anderson was found not guilty of the crime of sale of hydrocodone since the crime of conspiracy is separate and distinct from the underlying crime. *Berry* at 787 (¶16) (citing *State v. Thomas*, 645 So.2d 931, 933 (Miss. 1994)).

II. THE JURY'S VERDICT IS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Anderson also claims that he was convicted solely on the incredible testimony of Kristi and Holt. The determination of witness credibility lies within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). The jury is also responsible for resolving any conflicts in witness testimony which may arise. *Id.* The jury was informed of Kristi and Holt's legal troubles, as well as what they hoped to gain by testifying for the State. The jury nevertheless found Kristi and Holt to be credible witnesses. Their testimony was also substantiated by video evidence, as well as Anderson's confession and Ralph's testimony that he sells hydrocodone. Accordingly, Anderson's conviction for conspiracy to sell hydrocodone is not against the overwhelming weight of the evidence, nor does the conviction represent an unconscionable injustice.

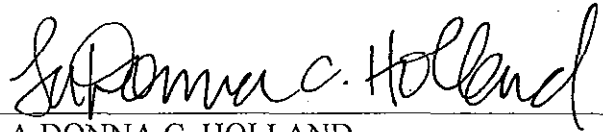
CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Anderson's conviction and sentence.

Respectfully submitted,

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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:

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This the 10th day of June, 2009.



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