

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

RICHARD ANDERSON

APPELLANT

VS.

DOCKET NO. 2008-~~13~~¹¹⁸-00697-COA

STATE OF MISSISSIPPI

APPELLEE

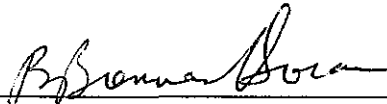
An Appeal from the Circuit Court
Of Desoto County, Mississippi

FILED

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SUPREME COURT
COURT OF APPEALS

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 the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. RICHARD ANDERSON
2. STATE OF MISSISSIPPI



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TABLE OF CONTENTS

Table of cases.....	4
Statement of Issues.....	5
Statement of Case.....	6
Summary of Argument.....	7
Argument.....	7-8
Conclusion.....	9

TABLE OF CASES

Cases Cited:

<u>Sanderson v. State</u> , 883 So.2d 558, 560 (Miss. 2004).....	7
<u>Mitchell v. State</u> , 572 so.2d 865, 867 (Miss. 1990).....	7
<u>Johnson v. State</u> , 642 So.2d 924, 928	7

STATEMENT OF ISSUES

Whether or not the Jury was in error in finding the Defendant Richard Anderson guilty of Conspiracy to sell Hydrocodone . Consequently the trial court judge should have granted the Defendant's Motion for a Directed Verdict or Alternatively, Motion for Judgment Notwithstanding the Verdict.

STATEMENT OF THE CASE

This is the Appeal from a jury trial where the Defendant Richard Anderson was found guilty of conspiracy to sell a controlled substance : Hydrocodone.

The case was tried before a jury on March 19, 2008 with Scot Evans, Harlan DeWayne Holt, Gary Scott Fernandez and Kristina Anderson, testifying for the state. The Defense in his case and chief recalled Kristina Anderson to the stand, his brother Ralph Anderson, and his niece Jessica Anderson, the sister of Kristina Anderson.

The case follows the basic scanario where a confidential informant, Harlyn Dewayne Holt, was provided with the necessary audio and video equipment to secure evidence to convict Kristina Anderson of selling 16 Loratabs to the informant. The state relies on the testimony of Kristina Anderson and Harlyn Holt as well as a text message from Kristian Anderson to Richard Anderson alleged to be evidence of conspiratorial conduct between Kristina Anderson and Richard Anderson.

It is undisputed that Richard Anderson came to the home of his brother, Ralph Anderson whose address is 3525 Mayfair Dr. Horn Lake, Mississippi on September 14, 2006. He frequently and routinely came to the home of his brother where a bedroom was provided for him and his children. The case went to the jury and the jury found the Defendant Richard Anderson not guilty of the sell of Hydrocodone, but was found guilty of conspiracy to sell Hydrocodone.

From said jury verdict the Defendant Appeals.

SUMMARY OF ARGUMENT

There was no substantial evidence to substantiate a conspiracy between Richard Anderson and Kristina Anderson. The states witnesses Kristina Anderson and Harlyn Holt were not credible witnesses and the trial court Judge should have granted the Defendant's Motion for Directed Verdict or Alternatively his Motion for Judgment Notwithstanding the Verdict.

ARGUMENT

The Law is clear that "the elements of a conspiracy require recognition on the part of the conspirators that they are entering into a common plan and knowingly intend to further its common purpose, Sanderson v. State, 883 So.2d 558, 560 (Miss. 2004). Further the State is required to prove that the conspirator knew that he was entering into a common plan and intended to further its common purpose. Mitchell vs. State, 572 So.2d 865, 867 (Miss. 1990). And finally a conspiracy can be proven by the acts of conduct of the alleged conspirators and can be inferred from the circumstances. Johnson vs. State, 642 So. 2d 924, 928. (Miss. 1994).

A Directed Verdict or Alternatively A Judgment Notwithstanding the Verdict should have been granted in this case because there was no credible evidence to justify a conviction of Richard Anderson on the facts presented to the jury. There was no direct evidence that Richard Anderson had any communication directly with Kristina Anderson concerning the transfer of the Hydrocodone pills on September 14, 2006. Rather, Richard Anderson was merely following his standard routine by being at his brothers house. (Anderson, Ralph Trial P. 248 l 15-29). It was uncontradicted at trail that there was a

large quantity of Mylan Hydrocodone of Ralph Anderson's at the home and that his daughter had taken those type pills from him on more than one occasion. (Anderson, Ralph Trial P. 244, L 8-18, 27-29 and P. 245 L. 1-26).

One consistent strand of testimony runs through out the various witnesses. That is that Kristina Anderson on various occasions requested and was given one pill by either her father, Ralph Anderson (Anderson, K Trial P. 233 L. 5-6 or her uncle, Richard Anderson). (Anderson, K Trial P. 206 L 29 and 207 L 1-4). This testimony was further corroborated by her fathers testimony that he gave his daughter one pill for her back and only for her back (Anderson, Ralph Trial P. 246 L. 1-11 and P. 246 L. 22-25). Finally her own sister, Jessica Anderson Testified that Kristina Anderson had told her that her uncle had only given her pills for her back. (Anderson, J. Trial P. 262 L. 20-29 and P. 263 L. 1-

It is uncontradicted that he was there to purchase marijuana and Hydrocodone from Kristina . The only direct evidence which can be viewed from the video or from Harlyn Holt's testimony is that Richard Anderson gave Kristina Anderson one Hydrocodone pill. This was retrieved from the vehicle after Kristina Anderson had gone to the back room to speak to her uncle. This evidence is consistent with the testimony from the various witnesses that Kristina Anderson occasionally asked both her father and her uncle for one Hydrocodone pill when her back was hurting.

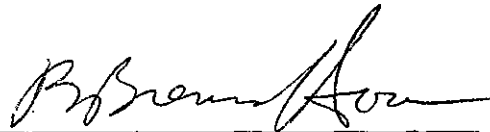
Finally Ralph Anderson who had already plead guilty to the charges against him risked cross examination and potential additional jail time to testify for his brother. He testified and it was undisputed that Richard Anderson had not sold anything since his arrest and brush with the law in 2005. (Anderson, Ralph Trial P. 258 L. 2-3 and P. 260 L. 24-26).

CONCLUSION

The jury was given ample evidence that there was a lot of drug trafficking going on at 3525 Mayfair. There's no evidence that Richard Anderson was in any way involved in this enterprise. Rather, the self serving and bias testimony of Harlyn Holt and Kristina Anderson were all that linked Richard Anderson to any illegal activity on September 14, 2006. Rather the evidence was clear that Richard Anderson frequented the home on Thursday and the reason for him being there on September 14' meet with his regular routine. Further the record is replete with testimony from various witnesses that Kristiana Anderson received one hydrocodone pill on various occasions from both her father and her uncle for her back. There was not enough credible evidence to convict Richard Anderson of conspiracy in this case. The Judge should have granted a Directed Verdict or Alternatively Judgment Notwithstanding the Verdict in this case because the jury basically found him guilty of Conspiracy because of his proximity to 3525 Mayfair Dr. on September 14' 2006 and his giving his niece one Hydrocodone pill.

Respectfully submitted,
Richard Anderson

By:



B. BRENNAN HORAN, [REDACTED]
Attorney for the Appellant

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APPELLANT

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STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF SERVICE
OF APPELLANTS BRIEF AND RECORD EXCERPTS

I, B. Brennan Horan , do hereby certify that I have this day served through United States mail, postage prepaid, a true and correct copy of the above and foregoing Appellants Brief and the record excerpts of the Appellant to the Honorable Robert P. Chamberlin, Circuit Court Judge, P.O. Box 280, Hernando, MS. 38632, Michelle P. Haberstroh Court Reporter for Judge Robert Chamberlin, 10055 Fox Hunt Dr., Olive Branch, MS. 38654, Dale K. Thompson, Circuit Court Clerk, 2535 Highway 51 S. Rm. 201, Hernando, MS., and Betty W. Sephton, Supreme Court Clerk, Post Office Box 249, Jackson, Mississippi, 39205.

THIS the 6th day of April, 2009.


B. BRENNAN HORAN 