

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**RELIOUS DENSMORE**

**APPELLANT**

**VS.**

**NO. 2008-KA-0981**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

**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 trial court was within its discretion to deny Densmore's request for a continuance after the State divulged the name of its confidential informant on the day of trial.
- II. The verdict was supported by the overwhelming weight of the evidence.

### **STATEMENT OF THE CASE**

On or about November 14, 2007, Relious Densmore was indicted by Lauderdale County Grand Jury for the sale of 0.7 grams of cocaine to a confidential source in exchange for \$60.00. (C.P. 2, Tr. 6) Densmore was indicted as an habitual offender pursuant to Miss. Code Ann. § 99-19-81 (1972), as amended. (C.P. 3, Tr. 6) On March 19, 2008, Densmore filed a Motion for Continuance citing that the identity of the confidential informant used in the investigation was identified on the morning of trial as reason for the continuance. Densmore was tried before the Lauderdale County Circuit Court on March 19-20, 2008. He was convicted of sale of cocaine. (C.P. 28) On May 23, 2008, Densmore was adjudicated an habitual offender and was sentenced to 30 years in the custody of the Mississippi Department of Corrections. (C.P. 30) On May 29, 2008, Densmore filed his Motion for a New Trial and/or Judgement Not Withstanding the Verdict. (C.P. 31) The trial court denied Densmore's post trial motions on May 28, 2008. (C.P. 33) Densmore filed his Notice of Appeal an May 29, 2008. (C.P. 34)

### **STATEMENT OF THE FACTS**

Cecil Spraggins was a confidential informant for the East Mississippi Drug Task Force. In exchange for not being arrested and charged with possession of cocaine, Spraggins agreed to conduct undercover drug buys for the task force. Spraggins signed an agreement that he would not engage in any criminal activity while he was "working off" his possession of crack cocaine.

After Spraggins worked off his crime, he continued to serve as a paid confidential informant for the task force. On August 15, 2007, Spraggins was engaged to make and undercover buy of crack cocaine from Debra Nance at her residence in Meridian. After being searched by the agents, his truck being searched, being equipped with concealed audio and video wires and receiving \$70.00 to make the buy, Spraggins drove to Nance's house to make the buy. The agents followed him to the house, but remained hidden from view. Spraggins knocked on the door and was greeted by a young man. He walked back to find Nance, who was in the shower. He returned to the front of the house and was greeted by another man who sold him \$60.00 worth of crack cocaine. He left and went back to the task force. Spraggins gave the agents the drugs he had purchased. The agents then searched his person and his car again. He identified the person who sold him the drugs in a photo line-up. The Agents knew the person to be Relious Densmore, the defendant at trial. The audio and video recording of the sale shows Relious Densmore making the sale of crack cocaine to Spraggins.

Officer Karl Merchant, a Detective with the Meridian Police Department, testified that he is assigned to the East Mississippi Drug Task Force. (Tr. 96) The investigation that led to Densmores' arrest was originally intended to target Debra Nance at 3110 27<sup>th</sup> Street in Meridian, Mississippi. (Tr. 97) They targeted Nance through confidential informant Cecil Spraggins. (Tr. 98) Merchant testified that Spraggins became a confidential informant to work off a charge of possession of cocaine. (Tr. 99) Spraggins was such a good informant that the task force began paying him to be an informant. (Tr. 99) Spraggins has probably done 20 cases or more. (Tr. 100)

Agents Lea, White, Mercado and Merchant were all working the drug deal related to

Nance. (Tr. 100) Agent Lea searched Spraggins prior to going to do the deal. This entailed a complete strip search. (Tr. 100) There were no drugs or weapons hidden on Spraggins. (Tr. 100) Spraggins used his own vehicle to make the buy, so Agents White and Mercado searched Spraggins vehicle. (Tr. 102) Spraggins did not appear to be under the influence of drugs or alcohol. (Tr. 103) Agent Mercado wired Spraggins with a concealed audio/video recorder. (Tr. 103) When Spraggins went to make the buy, Nance did not make the sale, but Densmore answered the door and made the sale. Agents Mercado and White followed Spraggins from the residence after the buy was made. (Tr. 109) Agents Merchant and Lea continued surveillance on the residence since they realized Spraggins had made a buy from an unknown subject. (Tr. 109) There was a vehicle in the driveway, and when they circled the block and returned to the house the vehicle was gone. (Tr. 109) The agents then met at the task force office. They recovered the evidence from Spraggins, a white rock-like substance, and field tested it. They sealed it and processed it according to their procedures. (Tr. 110) The substance field tested positive for cocaine. (Tr. 110) When Spraggins returned from making the buy, he and his vehicle were searched again. (116)

Spraggins was unable to tell the agents the name of the person who sold him the cocaine. (Tr. 113) Agents Merchant and Lea made a photo line-up. When they viewed the videotape from the concealed recorder, Densmore, whom they knew personally, made the sale, and so they included his picture in the photo line-up. (Tr. 113) From the line-up, Spraggins identified Densmore as the person who made the sale. (Tr. 114)

The recording of the transaction was imperfect. The audio went in and out. However, the video did produce a good picture of Densmore. (Tr. 121) Agent Lea testified that he was able to

maintain audio surveillance during the buy. Keith McMahan of the Mississippi Crime Lab testified that the evidence sent to the lab for testing was 0.7 grams of crack cocaine. (Tr. 132)

Confidential Informant Cecil Spraggins testified that he went to Debra Nance's house. I A young white man answered the door. (Tr. 240) Spraggins came in the house and walked down the hallway to talk to Debra. Debra said she was in the shower. (Tr. 241) Spraggins replied, "Ok," and then walked back to the front to the house. The young, white man came up and Spraggins asked, "What going on?" The young man said, "Well, they're cutting it up." A few minutes later a black man came out and Spraggins asked him "if he had the 60." The black man replied, "Yes, sir, I do." Spraggins testified that he bought \$60 worth from him and then left. (Tr. 241)

Spraggins testified, "I mentioned if he had any, and he said, Yeah, I do. And he took it out of his pocket and counted out -- he got \$60 worth out and I gave him the money and he gave me the crack." Spraggins told the man he had to go, and left and came back to the task force. (Tr. 241) Spraggins stated that he gave the cocaine to the task force agents, who then search his truck and him. He testified that he identified the person he made the sale from in a line-up after the buy. He identified Relious Densmore as the person from the line-up and the person who made the sale. (Tr. 242) Spraggins testified that the CD of the audio and video recording of the buy from Relious Densmore was an fair and accurate description of what happened. (Tr. 244) On cross examination, Spraggins testified at length about his criminal and drug use history. (Tr. 252-274)

### **SUMMARY OF THE ARGUMENT**

The trial court was within its discretion to deny Densmore's request for a continuance

after the State divulged the name of its confidential informant on the day of trial where the defendant did not ask for any relief prior to the day of trial and waiting until the jury venire was summoned to court before asked for a continuance. Further there was not prejudice to the defendant in the release of the confidential informant's identity on the day of trial where all of the informant's criminal history and drug use history was placed before the jury. The verdict was supported by the overwhelming weight of the evidence. It was not error for the trial court to deny Densmore's Motion for New Trial. The verdict is supported by the overwhelming weight of the evidence. The jury is entitled to make reasonable inferences from the evidence presented and thus was entitled to infer from the content of the audio and video recording that an actual exchange of money-for-drugs between Spraggins and Densmore did occur. All questions of witness credibility are the sole province of the jury.

### **ARGUMENT**

**I. The trial court was within its discretion to deny Densmore's request for a continuance after the State divulged the name of its confidential informant.**

To support his argument, Densmore cites Uniform Rule of Circuit and County Court 9.04, which requires the prosecution to disclose the names, addresses, and testimonies of witnesses to be offered during their case-in-chief. URCCC 9.04(A). It also requires the prosecution to disclose the identities of confidential informants that will be produced at a hearing or trial. URCCC 9.04(B)(2). Failure to do so is addressed in URCCC 9.04(I):

If during the course of trial, prosecution attempts to introduce evidence which has not been timely disclosed to the defense ... and the defense objects to the introduction for that reason, the court shall act as follows:



1. Grant the defense a reasonable opportunity to interview the newly discovered witness ...; and
2. If, after such opportunity, the defense claims unfair surprise or undue prejudice and seeks a continuance or a mistrial, the court shall, in the interest of justice and absent unusual circumstances, exclude the evidence or grant a continuance for a period of time reasonably necessary for the defense to meet the non-disclosed evidence or grant a mistrial.
3. The court shall not be required to grant either a continuance or mistrial for such a discovery violation if the prosecution withdraws its efforts to introduce such evidence.

A trial court's decision to deny a motion for continuance will not be reversed "unless it appears to have resulted in manifest injustice." Stack v. State, 860 So.2d 687, 691 (Miss.2003) (citation omitted). Conclusory arguments alone are not sufficient to support a request for additional time. Golden v. State, 736 So.2d 1076, 1077-78 (Miss.Ct.App.1999). Rather, "[i]t is incumbent on the defendant seeking ... a continuance to show concrete facts that demonstrate the particular prejudice to the defense that will necessarily arise if a delay is not granted." Id. at 1078.

In addition, "a violation of Rule 9.04 is considered harmless error unless it affirmatively appears from the entire record that the violation caused a miscarriage of justice." Wyatt v. City of Pearl, 876 So.2d 281, 284 (Miss.2004). Even cases involving clear discovery violations have ruled that such violations are harmless as long as the defendant was not prejudiced. Gray v. State, 926 So.2d 961, 971 (Miss.Ct .App.2006) (citing Jones v. State, 669 So.2d 1383, 1392 (Miss.1995)).

In the case *sub judice*, pretrial motions were heard on March 19, 2008. (Tr. 6) Two plea offers were made and Densmore rejected both. (Tr. 12, 13) Densmore then requested a

continuance stating that the DA's office had a policy of not revealing confidential informant information while plea negotiations were in progress. Once the information was disclosed, further negotiations were barred. (Tr. 13) Because plea negotiations had continued until the morning of trial, the State had not divulged the name of its confidential informant in the case. (Tr. 13) Densmore claimed that he had not had time to prepare an adequate defense. (Tr. 15) The Trial Court noted that the case had been continued once from February 4<sup>th</sup> until March 19<sup>th</sup> on Densmore's motion in order to allow more time to prepare his defense. (Tr. 16) The Trial Court also noted that the jury was already present in the courthouse. It is clear from the record that Densmore's counsel knew the DA's policy of not divulging the identity of confidential informants during plea negotiations and could have made a more timely request for continuance before a jury had been called based on the ongoing nature of the plea negotiations. (Tr. 15) Densmore cites Gowdy v. State, 592 So.2d 29 (Miss.1991) as authority for the proposition that he was entitled to a continuance on the morning of trial. He notes that the court in *Gowdy* was influenced by the defense counsel's "repeated complaints about the State's failure to disclose the informant's whereabouts, and defense counsel's motion for continuance was heard on the morning of trial. (Appellant's Brief at 6) However, the case at bar is easily distinguished, since Densmore's counsel did not make repeated complaint's about the State's failure to disclose Spraggin's identity, and indeed, simply went forward assuming his client would settle. Defense counsel did not mention the problem to the trial court until the morning of trial when the venire was already present in the Courthouse. Therefore, the trial court correctly ruled that the request was not timely made. (Tr. 16) Further, the trial court granted a brief continuance to allow Densmore's counsel to get identity of the confidential informant and the information from the

NCIC. (Tr. 16)

Densmore has not presented any concrete facts demonstrating how he was prejudiced by the circuit court's decision to deny his motion for a continuance. Defense counsel had an opportunity to interview Spraggins outside the presence of the jury, and both Spraggins and the State were forthcoming with information about his past criminal history. The defense claims it needed more time to gather information attacking Spraggins credibility to be used on cross-examination, as it was the central issue in the case. However, Spraggins admitted in front of the jury that he became involved with the task force when was picked up for possession of drugs and that he used cocaine by smoking it in a crack pipe. (Tr. 232) He further admitted that he had been arrested for public drunk after he made an agreement with the task force as an undercover agent. (Tr. 235) He testified that he had one felony charge in Pennsylvania in the mid 80s and that he had convictions for crimes such as public drunkenness and bar fights. (Tr. 252) He admitted to being arrested in September of 2005 for possession of a crack pipe. (Tr. 255) He admitted to an arrest in July of 1971 in Metairie, Louisiana for aggravated battery with a dangerous weapon and to a conviction for assault in Louisiana. (Tr. 257) Spraggins testified that he did not recall whether he plead guilty to aggravated assault in Gretna, Louisiana in 1983 and received a one year of probation. (Tr. 258) He testified that he was arrested for public drunk on two occasions, July and September of 2007. He testified that he made the deal to work as a confidential informant after he was questioned about possession of crack cocaine. He admitted that he had four rocks of crack in a plastic bag. He attempted to hide the crack between the seats of the car. He testified that he wasn't arrested for possession of crack cocaine because he made a deal with the Lauderdale County Task Force to serve as a confidential informant. (Tr. 260)

Spraggins' further testified that he received money from the task force for serving as a confidential informant. (Tr. 262) Clearly, Densmore's counsel had ample information to attack Spraggins' credibility. Consequently, Spraggins' credibility and trustworthiness were sufficiently attacked and that it is unlikely a continuance would have resulted in a different verdict. Therefore, the circuit court did not abuse its discretion in denying Densmore's motion for a continuance. This issue is without merit.

## **II. The verdict was supported by the overwhelming weight of the evidence.**

In order to support a guilty verdict, the State was required to prove that Densmore knowingly and willfully sold, bartered, transferred, distributed, or dispensed cocaine. Miss. Code Ann. § 41-29-139(a)(1) (Rev.2005). The State offered physical evidence, which included video and audio footage, and testimonial evidence from a confidential informant and law enforcement officials that, if deemed true, were sufficient to sustain Densmore's conviction. In addition, the evidence was corroborated by testimony from a crime lab analyst at the Tupelo Crime Lab confirming that they tested the substance the State claimed Spraggins had received from Densmore, and it was, in fact, cocaine.

Although Densmore's post-trial motion filed with the trial court challenged both the legal sufficiency and the weight of the evidence, Densmore on appeal challenges only the weight of the evidence. When Mississippi appellate courts review a trial court's denial of a defendant's motion for a new trial challenging the weight of the evidence undergirding the guilty verdict, they will not disturb the jury verdict of guilty unless it is clear from the record that the verdict "is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." Bush v. State, 895 So.2d 836 (Miss. 2005) (citing *Herring v. State*,

691 So.2d 948, 957 (Miss.1997)). “In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial.” Boone v. State, 973 So.2d 237, 243 (Miss. 2008) (quoting *Herring*, 691 So.2d at 957).

Densmore argues that the trial court erred “because Spraggin’s testimony was the only evidence that a drugs-for-money exchange took place” and that Spraggin’s testimony is unreliable. In Miller v. State, 980 So.2d 927 (Miss. 2008), the Mississippi Supreme Court has held that where the video taken by a confidential informant does not show the actual transfer of money for drugs that the jury is entitled to draw reasonable inferences from the evidence. Thus the recording reveals an exchange between Spraggins and Densmore that uses coded language, but is nonetheless clearly a drug deal. The content and context of the video and audio are consistent with the other evidence that Spraggins was given money for the buy, was searched before he went in to ensure that he did not have drugs in his possession already and Spraggin returned with the drugs immediately after his exchange with Densmore in Nance’s house. There is ample evidence to support the jury’s inference that an exchange of drugs for money did take place between Spraggins and Densmore. Further, any issues of credibility regarding Densmore’s testimony are solely the province of the jury. The court in *Miller* held as follows:

... Miller argues that the hands of Goodin and Miller were not visible in the video and that the video did not show Miller giving drugs or change to Goodin. Miller thus asserts that someone else present at the scene could have sold Goodin the drugs. This argument likewise was made by Miller's trial counsel during closing arguments to the jury. The trial judge properly instructed

the jury concerning the jury's responsibilities in determining its verdict. Judge Loper, inter alia, instructed the jury that the jury must "determine the facts in this case and to consider and weigh the evidence for that purpose." Judge Loper likewise informed the jury that the jurors were to determine what weight and credibility they chose to assign the testimony and supporting evidence of each witness, and that the jury was required to exercise "good common sense and sound honest judgment in considering and weighing the testimony of each witness who has testified in this case." Finally, the jurors were instructed that they were, likewise, "permitted to draw such reasonable inferences from the evidence as seem justified in the light of your own experience." Thus, the jury reasonably could conclude from the totality of the credible evidence that since Goodin entered the trailer with \$40, and exited the trailer with crack cocaine and \$10 in change, it was crack cocaine that Miller placed on the coffee table. Such determination is left to the discretion of the jury. Boone, 973 So.2d at 243 (citing *Givens v. State*, 967 So.2d 1, 7 (Miss.2007)).

....

Miller further argues that Goodin's testimony was not credible because of his prior criminal history. However, Miller cites no authority to support his assertion; therefore this Court need not consider this proposition. Byrom v. State, 863 So.2d 836, 853 (Miss.2003) (citing *Simmons v. State*, 805 So.2d 452, 487 (Miss.2001)). Notwithstanding this bar, the jury, being the sole judge of Goodin's credibility, was informed of Goodin's criminal history and thus had an opportunity to consider Goodin's criminal history in weighing what credibility to assign to Goodin's testimony. Harris, 970 So.2d at 157.

....

In sum, consistent with our discussion, we are without question unable to find from the record before us that the jury verdict finding Miller guilty of the sale of cocaine is contrary to the overwhelming weight of the evidence to the extent that we are sanctioning an unconscionable injustice by not setting aside the jury verdict. We thus find this issue to have no merit.

*Miller* at 929-30)

It was not error for the trial court to deny Denmore's Motion for New Trial. The verdict is supported by the overwhelming weight of the evidence. The jury is entitled to make reasonable inferences from the evidence presented and all questions of witness credibility are the sole province of the jury.

**CONCLUSION**

The assignments of error presented by the Appellant are without merit and the jury's verdict and the rulings of the trial court should be upheld.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI

BY: Laura H. Tedder  
Laura H. Tedder, MSB [REDACTED]  
Special Assistant Attorney General

Office of the Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205-0220  
Telephone: (601) 359-3680

**CERTIFICATE OF SERVICE**

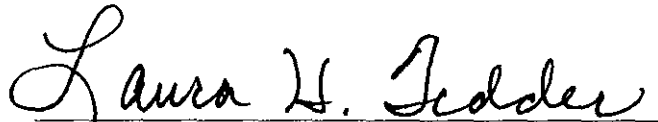
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lester F. Williamson, Jr.  
Circuit Court Judge  
P. O. Box 86  
Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell  
District Attorney  
P. O. Box 5172  
Meridian, MS 39302-5172

Hunter N. Aikens, Esquire  
Attorney At Law  
Mississippi Office of Indigent Appeals  
301 N. Lamar Street, Suite 210  
Jackson, MS 39201

This the 11<sup>th</sup> day of March, 2009.



LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL

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