

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TAMECA DRUMMER

APPELLANT

VS.

NO. 2008-KA-1225-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]**

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

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STATEMENT OF ISSUES

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- II. DRUMMER'S SENTENCE IS NOT UNCONSTITUTIONALLY DISPROPORTIONATE TO THE CRIME FOR WHICH SHE WAS CONVICTED IN LIGHT OF HER PREVIOUS CONVICTIONS WHICH INCLUDE VIOLENT CRIMES.

STATEMENT OF FACTS

On August 3, 2006 near the midnight hour, Corinth police officer Shannon Hester was on patrol when her attention was drawn to the car in front of her as it appeared to have no tag. T. 5, 7. Hester followed the vehicle for approximately one mile, and observed the car weaving and crossing the center line more than once. T. 6, 8-9. Hester pulled the driver over for careless driving, and as she approached the car, she saw a temporary tag lying on the back dash. T. 13, 35-36. When Hester asked the driver for her license and proof of insurance, the driver, Tameca Drummer fumbled around in her purse and produced a suspension notice from the state of Tennessee. T. 13. Hester radioed dispatch to run Drummer's driver's license number, and dispatch verified that the license was in fact suspended. T. 20. Two police units in the area heard about the traffic stop on their radios and

arrived to assist. T. 220. Hester asked Drummer to step out of the vehicle, and Hester performed a safety pat down. T. 21. Hester found over \$800. T. 21. After the pat down, Officer Hester handcuffed Drummer and placed her under arrest for driving on a suspended license. T. 21-22. Officer Hester asked Drummer if she could search her vehicle, and Drummer consented. T. 22. Officers Mayhall and Fortenberry assisted Officer Hester in the search. T. 25. Officer Hester found a compact disk case with a white powdery substance in the driver's door. T. 25. Hester performed a field test on the substance, which tested positive for cocaine. T. 41. Meanwhile, Officer Mayhall found a plastic bag in the dash under the steering column. T. 26. The plastic bag contained two other plastic bags of marijuana. T. 27.

Drummer was indicted for possession of more than 30 grams, but less than 250 grams, of marijuana. The State subsequently amended the indictment to reflect Drummer's status as a habitual offender, proving that Drummer had previously been convicted of manslaughter and aggravated assault, both crimes of violence for which she served more than one year. Officer Hester testified to the aforementioned facts at trial. Officer Mayhall also testified as to his participation in the search. Detective Ben Caldwell testified that he Mirandized Drummer and took a written statement from Drummer, in which Drummer admitted that the drugs belonged to her. T. 242, 248. Drummer told Caldwell that she "dated" a man with the expectation of payment, but when her "associate" did not pay, she took his marijuana and hid it in the dash of her car. T. 248.

Drummer testified on her own behalf. She testified that all of the officers were lying when they testified that her tag was not displayed, that she was told why she was pulled over and asked if she had been drinking, that they had asked for and obtained consent to search her car, that they showed her the marijuana found in her car, and that she told Caldwell that she took the marijuana and hid it in her car. T. 315-26. She further testified that she only talked to Caldwell because he said

that he was the one that set her bond, and that he would not set her bond if she did not talk. T. 325, 341. Drummer admitted to having sex with a man in and around her car for money, but claimed that when he did not pay her, he put the marijuana in her car without her knowledge. T. 315, 322. Drummer was found guilty, and sentenced as a habitual offender to life in the custody of the Mississippi Department of Corrections.

SUMMARY OF ARGUMENT

Officer Hester had a reasonable suspicion to believe that Drummer was violating the careless driving statute, as Drummer was weaving and crossed the center line more than once. Even if Officer Hester had been mistaken that Drummer's actions constituted a violation the careless driving statute, the officer's good faith belief that Drummer was violating the law sufficiently establishes the reasonable suspicion required for making a traffic stop.

Drummer's disproportionality argument is procedurally barred because it was not raised before the trial court. Additionally, the claim is without merit. Drummer was not given a life sentence for possessing marijuana. Drummer was given a life sentence because in addition to possessing fifty-five grams of marijuana, Drummer has been previously been convicted of aggravated assault and manslaughter, both violent crimes, for which she served more than a year on each charge. The inference of gross disproportionality required to even trigger a full-blown *Solem* analysis has not been raised.

ARGUMENT

I. DRUMMER WAS NOT SUBJECTED TO AN ILLEGAL SEIZURE.

Prior to trial, Drummer moved to suppress the marijuana found in her vehicle, claiming that Officer Hester had no probable cause to pull her over. Defense counsel argued that although Officer Hester testified at the hearing that Drummer crossed the yellow line, her police report stated that she was weaving from the “right side of her lane to the *inside* of the yellow lines more than once.” T. 10.¹ Defense counsel argued that such conduct was not a violation of the careless driving statute, and as such the officer had no probable cause to pull Drummer over. On appeal, Drummer employs similar reasoning, and claims that because Officer Hester had no probable cause to pull her over, she was illegally seized, and the marijuana should have been excluded as fruit from the poisonous tree. The fatal flaw in the appellant’s argument is that Drummer was not charged with or tried for careless driving, and the State is not burdened with proving the legal sufficiency of a careless driving charge. Instead, the proper inquiry is whether Officer Hester had a reasonable suspicion to believe that Drummer was engaged in criminal activity. *Wilson v. State*, 935 So.2d 945, 950 (¶18) (Miss. 2006). The reasonable suspicion required for the justification of an investigative or traffic stop is much less stringent than the probable cause requirement for an arrest. *Id.* Reviewing courts consider the totality of the circumstances to determine whether an officer had the requisite reasonable suspicion to believe that the defendant was committing or about to commit a crime. *Id.*

According to Officer Hester, Drummer was weaving and crossed the center lines more than once. Drummer was driving in a residential area, and Officer Hester was concerned that if they

¹Hester testified that in her estimation if you are on the yellow lines, you have crossed one of them. Additionally, Hester testified that regardless of how it was worded in her report, Drummer did in fact cross the center line more than once.

“topped a hill,” Drummer could have encountered an oncoming vehicle. T. 12. Accordingly, Officer Hester pulled Drummer over for careless driving and to see if she had been drinking or taking medication. T. 13. By statute, careless driving includes driving a vehicle “in a careless or imprudent manner, without due regard for the width, grade, curves, corner, traffic and use of the streets.” Miss. Code Ann. §63-3-1213. This Court has stated that carelessness under this statute “is a matter of reasonable interpretation, based on a wide range of factors.” *Henderson v. State*, 878 So.2d 246, 247(¶ 8) (Miss. Ct. App. 2004)). In *Henderson*, this Court found a driver who twice swerved toward a curb without hitting it on a traffic-free street showed a disregard of the width or use of the street, giving an officer reasonable suspicion to believe that the driver had violated the careless driving statute. *Id.* at 247 (¶7). Similarly, Officer Hester had the requisite reasonable suspicion to believe that Drummer had violated the careless driving statute, where Hester observed Drummer weaving within her lane of traffic and crossing one of the center lines. Additionally, and for the sake of argument only, even if Officer Hester was mistaken as to whether Drummer was in fact committing a traffic violation, an officer’s good faith, reasonable belief that a traffic law has been violated establishes probable cause to pull the driver over, notwithstanding the mistake of law. *Adams v. City of Booneville*, 910 So.2d 720, 724 (¶15) (Miss. Ct. App. 2005) (citing *Harrison v. State*, 800 So.2d 1134 (Miss. 2001)). See also *Moore v. State*, 986 So.2d 928 (Miss. 2008).

Because Officer Hester had a valid reasonable suspicion to perform the traffic stop, Drummer was not unlawfully seized. Accordingly, the marijuana subsequently found pursuant to the lawful search, justified by consent, search incident to arrest, and inventory search, was not fruit of the poisonous tree. The trial court properly denied Drummer’s motion to suppress.

II. DRUMMER'S SENTENCE IS NOT UNCONSTITUTIONALLY DISPROPORTIONATE TO THE CRIME FOR WHICH SHE WAS CONVICTED IN LIGHT OF HER PREVIOUS CONVICTIONS WHICH INCLUDE VIOLENT CRIMES.

Drummer argues that her sentence of life imprisonment is disproportionate to the crime of marijuana possession. The State would first note that this argument is procedurally barred because Drummer failed to raise the issue before the trial court. *Riley v. State*, 1 So.3d 877, 883 (¶21) (Miss. Ct. App. 2008). However, should this honorable Court consider the merits of Drummer's procedurally barred claim, the State would offer the following argument.

In analyzing the *Solem*² factors, the appellant includes a chart in her brief to show the relatively lenient sentences given to other criminal defendants in the same district for possession, manufacture or sale of marijuana. Appellant's Brief at 13. The appellant acknowledges by way of footnote that she is aware that her sentence was based on her habitual offender status, but then compares her sentence to that of non-habitual offenders. This Court has repeatedly held that the proper proportionality analysis for a habitual offender sentence does not take into consideration only the current offense, but also the prior offenses. *Oby v. State*, 827 So.2d 731, 735 (¶12) (Miss. Ct. App. 2002). See also, *Jenkins v. State*, 997 So.2d 207, 216 (Miss. Ct. App. 2008); *Lyles v. State*, No. 2007-KA-00993-COA (¶26) (May 19, 2009); *Hudson v. State*, No. 2007-KA-02016-COA (¶14) (Feb. 10, 2009). Additionally, our reviewing courts routinely uphold life sentences for possession of a schedule I controlled substance where the defendant is sentenced as a habitual offender. *Jenkins*, 997 So. 2d at 216; *Oby*, 827 So.2d at 735; *Wall v. State*, 718 So.2d 1107, 1115 (¶35) (Miss. 1998).

Because the proportionality of Drummer's sentence must be considered in light of the fact

²*Solem v. Helm*, 463 U.S. 277, 292 (1983).

that she has been previously convicted of aggravated assault and manslaughter, among other crimes, her life sentence does not even raise the inference of gross disproportionality required to bring on a full blown *Solem v. Helm* analysis. *Johnson v. State*, 950 So.2d 178, 183 (¶22) (Miss. 2007). See also *Rummel v. Estelle*, 445 U.S. 263 (1980). Accordingly, Drummer's second assignment of error must fail.

CONCLUSION

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

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 
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

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 James Seth Andrew Pounds
Circuit Court Judge
Post Office Drawer 1100
Tupelo, MS 38802

Honorable John R. Young
District Attorney
Post Office Box 212
Corinth, MS 38834

Justin T. Cook, Esquire
Attorney at Law
301 North Lamar Street, Suite 210
Jackson, MS 39201

This the 22nd day of May, 2009.



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