

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROSHUN WOODS

APPELLANT

VERSUS

NO. 2008-KA-01461-COA

STATE OF MISSISSIPPI

FILED

APPELLEE

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SUPREME COURT
COURT OF APPEALS

BRIEF OF APPELLANT
ROSHUN WOODS

APPEALED FROM
THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI
ELEVENTH JUDICIAL DISTRICT
CAUSE NO. 2007-0043

ORAL ARGUMENT IS NOT REQUESTED

RICHARD B. LEWIS, [REDACTED]
CHAPMAN, LEWIS & SWAN
P.O. BOX 428
CLARKSDALE, MS 38614
(662) 627-4105
ATTORNEY FOR APPELLANT

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Their representations are made in order that the Justice of this Court may evaluate possible disqualification or refusal:

Hon. Walter Bleck
Assistant District Attorney
115 1st St., Suite 200
Clarksdale, MS 38614

Hon. Charles Webster
Circuit Court Judge
P.O. Drawer 998
Clarksdale, MS 38614

Hon. Jim Hood
Assistant Attorney General
P. O. Box 220
Jackson, MS 39205

Ms. Roshon Woods
128806
2A - A zone, bed 95
Pearl, MS 39208

This the 9th day of January, 2009.



RICHARD B. LEWIS

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NO. 2008-KA-01461-COA

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BRIEF OF APPELLANT

COMES NOW the Appellant, Roshun Woods, and states the following issues concerning the appeal of her conviction in the Circuit Court of Tunica County, Mississippi and the Lower Court's denial of Appellant's Motion for Judgment Non Obstante Verdicto Or Alternatively For A New Trial:

STATEMENT OF INCARCERATION

The Appellant is presently in MDOC custody in Pearl, Mississippi. The Appellant was sentenced on April 5, 2007 to serve a term of 3 years in the custody of Mississippi Department of Corrections without the possibility of parole, probation, suspension of sentence, earned time allowance, or any other reduction of sentence (MCA 47-5-198) for the crime of possession of a controlled substance , to-wit: marijuana , within a correctional facility. (R.E.6-7)

STATEMENT OF ISSUES

- I. APPELLANT CONTENDS THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR DIRECTED VERDICT AND SUBSEQUENT MOTION FOR JUDGEMENT NON OBSTANTE VERDICTO OR ALTERNATIVELY FOR A NEW TRIAL SINCE THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE.**

STATEMENT OF THE CASE

The Appellant was indicted on the 6th day of February, 2007, for crime of possession of a controlled substance , to-wit: marijuana , within a correctional facility, which occurred on or about

September 17, 2006, at the Tunica County Jail, Tunica County, Mississippi. The Appellant was arraigned on or about February 13, 2007. (R.E. 3) A trial was had on or about April 5, 2007. (R.E. 4-5). A jury was empaneled and a verdict returned in finding the Defendant guilty of possession of a controlled substance , to-wit: marijuana , within a correctional facility. (R.E. 4-5) The Appellant was sentenced to serve a term of 3 years in the custody of Mississippi Department of Corrections without the possibility of parole, probation, suspension of sentence, earned time allowance, or any other reduction of sentence (MCA 47-5-198). (R.E. 6-7) The Defendant filed a Motion for Judgment Non Obstante Verdicto Or Alternatively For A New Trial which was denied on or about April 12, 2007. (R.E. 8-9). It is from this conviction and denial of a new trial that the Defendant, Appellant herein, brings her timely appeal.

The State presented proof that Roshun Woods brought deodorant, soap and toothpaste in a Dollar General bag to the Tunica County Jail on September 17, 2006 for her husband, an inmate. (R. 131-132). The State also presented proof that Ms. Woods gave the items to Ms. Jannie Robertson, a receptionist at the Tunica County Jail. (R. 129-132) There was proof presented that Ms. Woods left and the bag of items remained in the custody of Ms. Robertson until James Clark, a jailer at the Tunica County Jail, arrived back from his break to escort the items to be examined. (R. 144-148) During examination of the deodorant, officer Clark and officer Hart discovered two rolls of marijuana and a blunt cigar. (R.148) Upon discovering the contraband, the officer contacted the warden who then contacted Detective Cedric Milburn, Tunica County Sheriff Department. (R. 149). The State presented proof that the officer Clark placed the items into an evidence bag. (R. 149-150). Detective Milburn testified that he received a call from the jail in regards to the contraband found and proceeded to the jail to speak with officer Clark. (R. 160-161). Detective Milburn testified that

after speaking with officer Clark, he attempted to contact the suspect, Roshun Woods. (R. 160-161) Detective Milburn testified that he read Ms. Woods her Miranda Rights and she signed a waiver. (R. 161-162) . Detective Milburn along with Detective Henson interviewed Ms. Woods via audio cassette tape. (R. 166-168) Detective Milburn testified that Ms. Woods admitted that she purchase the items from the Dollar General and brought the items to the Tunica Jail. (R. 166-168). She also admitted that she was in sole custody of the items the entire time.(R. 166-168).

SUMMARY OF THE ARGUMENT

Appellant contends that the verdict was against the overwhelming weight of the evidence. (R.E. 8). Ms. Eunice Odums testified that she was with the Appellant from the time the Appellant bought the deodorant at Dollar General until the Appellant delivered the deodorant to Ms. Jannie Robertson at the Tunica County Jail. (R. 190-194). Ms. Odums testified that the Appellant went directly to the Tunica County Jail from Dollar General . (R. 194). Further, Ms. Odums testified that the trip from Dollar General to the Tunica County Jail took only three to five minutes (R. 194). Ms. Roshun Woods also testified that the trip took only three minutes and that she did not place any illegal drugs in the deodorant. (R. 204). Appellant also contends that the Appellant did not have time and would have been impossible for the Appellant to place the illegal drugs in the deodorant as argued by the State at trial. Appellant asks that the jury's guilty verdict be reversed on grounds related to the weight of evidence. Appellant contends her conviction should be reversed and she be granted a new trial.

ARGUMENT

I. APPELLANT CONTENDS THE COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR DIRECTED VERDICT AND SUBSEQUENT MOTION FOR JUDGMENT NON OBSTANTE VERDICTO OR ALTERNATIVELY FOR A NEW TRIAL SINCE THE

VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE.

Appellant contends that the verdict is against the overwhelming weight of the evidence. Taking the testimony of all the witnesses as a whole, Appellant asserts that his Motion For Directed Verdict and Subsequent Motion for Judgment Non Obstante Verdicto should have been sustained because in taking all the evidence into light, the most favorable to the State, the State has failed to meet his burden of proof in this case. The basic standard of review of the sufficiency of evidence to support a criminal conviction is set out in Jackson v. Virginia, 443 U.S. 307, 99 Supreme Court 2781, 61 Lawyers Ed. Second 560 (1979).

Based on Jackson v. Virginia, the critical inquiry is not simply whether the jury was properly instructed, but also whether the record of evidence can reasonably support a finding of guilt beyond a reasonable doubt. This inquiry does not, in preserving the fact finder's role as a weigher of evidence, require a Court to ask itself whether it believes that the evidence in trial establishes guilt beyond a reasonable doubt. The relevant question, as pointed out in this case, is whether after reviewing all the evidence in light most favorable to the government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

It is Appellant's contention that the Judge, at the Lower Court level, must require acquittal by sustaining a Motion For Directed Verdict or at least requiring a new trial if reasonable jurors would necessarily have reasonable doubt as to his guilt in this case.

This Court pointed out in May v. State, 460 So.2d 778 (Mississippi 1984) as follows:

In other words, once the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the Defendant be discharged short of a conclusion on our part, that given the evidence, taken in the light most favorable to the verdict, no reasonable,

hypothetical juror, could find a reasonable doubt that the Defendant was guilty Pearson v State, 428 So.2d 1361, 1364 (Miss., 1983).

The Motion for New Trial is a different animal. While the Motion for Judgement of Acquittal Not Withstanding A Verdict presents to the trial court a pure question of law, the Motion For A New Trial is addressed to the Trial Court's sound discretion Neal vs. State, 451 So.2d 743, 760, (Miss. 1984) when he moves for a new trial, a Defendant in a criminal case necessarily invokes **Rule 10.05** of our Circuit and County Court Rules which in pertinent part provides:

The Court on written notice of the Defendant may grant a new trial on any of the following grounds:

- (1) If required in the interest of justice;
- (2) If the verdict is contrary to law or the weight of the evidence;...

As distinguished from the J.N.O.V. Motion, here the Defendant is not seeking final discharge. He is asking that the jury's guilty verdict be vacated on grounds related to the weight of the evidence, not it's sufficiency, and may be retired consistent with the double jeopardy clause, Tibbs v. Florida, 457 U.S. 31,39, 102 S.Ct. 2211, 2217, 72 L. Ed. 2d. 652, 659-60 (1982).

That, as a matter of law, the motion for judgment of acquittal, not withstanding the verdict, must be overruled and denied and in no way affects and little informs the trial judge regarding his disposition of the motion for new trial. Cases are hardly unfamiliar wherein the Court holds that the evidence is sufficient so that one party or the other was not entitled to judgment not withstanding the verdict but, nevertheless, that a new trial in the interest of justice should be ordered. Hux v. State 234 So.2d 50, 51(Miss. 1970), Quarles v. State 199 So.2d 58, 61 (Miss. 1967); Mister v. State 190 So.2d 869, 871 (Miss. 1966); Yelverton v. State 191 So.2d 393,394 (Miss. 1966); Heflin v. State 178 So.2d 594 (Miss. 1938); Conway v. State, 177 MS. 461, 469, 171 So. 16, 17 (1936).

A greater quantum of evidence favoring the State is necessary for the State to withstand a motion for a new trial as distinguished from a motion for J.N.O.V. Under our established case law, the trial judge should set aside a jury's verdict only when, in the exercise of his sound discretion, he is convinced that the verdict is contrary to the substantial weight of the evidence Pearson v. State 428 So.2d at 1364.

Appellant contends that the verdict is against the overwhelming weight of the evidence, due to the testimony of Ms. Eunice Odums. Ms. Odums testified that she was with the Appellant from

the time the Appellant bought the deodorant at Dollar General until the Appellant delivered the deodorant to Ms. Jannie Robertson at the Tunica County Jail. (R. 190-194). Ms. Odums testified that the Appellant went directly to the Tunica County Jail from Dollar General. (R. 194). Further, Ms. Odums testified that the trip from Dollar General to the Tunica County Jail took only three to five minutes (R. 194). Ms. Roshun Woods also testified that the trip took only three minutes and that she did not place any illegal drugs in the deodorant. (R. 204). Appellant also contends that the Appellant did not have time and would have been impossible for the Appellant to place the illegal drugs in the deodorant as argued by the State at trial.

When testing the legal sufficiency of the State's evidence, the standard of review is as follows: "the court must review the evidence in the light most favorable to the State, accept as true all the evidence supporting the guilty verdict and give the prosecution the benefit of all favorable influences that may reasonably be drawn from the evidence." See McClain vs. State, 625 So.2d 774, 778 (Miss. 1993). The court will only reverse when fair-minded jurors could find the accused not guilty. Weltz vs. State, 503 So.2d 803, 808 (Miss. 1987). It has long been a rule that the jury "may give consideration to all inferences flowing from the testimony." Magnum vs. State, 762 So.2d 337 (Miss. 2000). In reviewing the proof as alleged above, Appellant should be granted a new trial.

CONCLUSION

Appellant argues that the State did not have a greater quantum of evidence favoring their version of the facts as elicited due to the testimony of Ms. Eunice Odums and Ms. Roshun Woods along with the impossibility of the Appellant to place the illegal drugs in the deodorant within the three to five minutes from the Dollar General to the Tunica County Jail. The State's case should not

have been allowed to withstand a Motion For New Trial as distinguished from a Motion For J.N.O.V., under our established case law. (R.E. 8). The Trial Judge should have set aside the jury's verdict in this case when considering all the evidence. The Court in exercising his sound discretion, and in the interest of justice, should have ruled that the verdict was contrary to the weight of the evidence. (R.E. 9). **Pearson v. State** 428 So.2d 1364, Miss. 1983).

As stated in **Hawthorne vs. State**, 835 So.2d 14 at 21 (Miss. 2003) the standard for review of a Motion for a J.N.O.V., as well as a motion for a directed verdict and a request for peremptory instructions is all the same in that it challenges the legal sufficiency of the evidence. As stated in **Hawthorne**, 835 So.2d at 21 ¶31 (citing **McClain vs. State**, 625 So.2d 774, 778 (Miss. 1993), on the issue of legal sufficiency, reversal can only occur when evidence of one or more of the elements of the charged offense is such that reasonable and fairminded jurors could only find the accused not guilty. Here, that element is impossibility of the Appellant from committing this crime.

There is reasonable doubt as to the impossibility of the Appellant from committing this crime.

Appellant beseeches this Court, after a thorough review of the record, to conclude that the Appellant should be granted this new trial in the interest of justice.

CERTIFICATE OF SERVICE

I, Richard B. Lewis, Attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant to the following persons:


Hon. Walter Bleck
Assistant District Attorney
115 1st St., Suite 200
Clarksdale, MS 38614

Hon. Charles Webster
Circuit Court Judge
P.O. Drawer 998
Clarksdale, MS 38614

Hon. Jim Hood
Assistant Attorney General
P. O. Box 220
Jackson, MS 39205

Ms. Roshon Woods
128806
2A - A zone, bed 95
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This the 9th day of January, 2009.



RICHARD B. LEWIS