

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIE JACKSON

APPELLANT

VS.

NO. 2008-KA-1479

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF MISSISSIPPI

WILLIE JACKSON

APPELLANT

VERSUS

NO. 2008-KA-1479-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Willie Jackson was convicted in the Circuit Court of Oktibbeha County on a charge of sale of cocaine and was sentenced as an habitual offender to a term of 30 years in the custody of the Mississippi Department of Corrections. (C.P.44-45) Aggrieved by the judgment rendered against him, Jackson has perfected an appeal to this Court.

Substantive Facts¹

Kimberly Henderson testified that she was 25 years old, a resident of Starkville, married, the mother of two sons, and that she was employed as the general manager of Days Inn and Suites on Highway 12 in Starkville. She went on to testify that she had previously suffered an addiction to

¹Jackson does not challenge the sufficiency or weight of the evidence undergirding his conviction. The state therefore presents an abbreviated statement of facts.

methamphetamine and cocaine. In mid-2006, she had begun injecting the drugs; she was on the verge of losing her marriage, her children, her house, her arm, and her life. (T.121-23)

At some point during the middle of 2006, Officer Brad Ray of the Columbus CAT team stopped her in Columbus for a traffic violation. She allowed him to search her car. Although he found no contraband, he told her that he could tell that she was “on something” and that he wanted to help her. She showed him her damaged arm and told him that she wanted help, but that she could not afford “rehab.” After a discussion at the Lowndes County Sheriff’s Department, Officer Ray agreed to help her break her addiction if she would assist law enforcement in “get[ting] them [drug dealers] off the streets and stop them from selling them” to her “or anybody else.” At that point, she became a “civilian informant.”² (T.123-24)

On January 4, 2007, Willie Jackson telephoned Ms. Henderson, told her that he “had some crack cocaine” and asked her whether she “want[ed] any.” She told him that she did, and that she would “call him back.” After she ended that conversation, she “immediately called Tri-County Narcotics.” She then went to the Tri-County Narcotics headquarters, where agents put audio and video surveillance equipment on her as well as her vehicle. After she and her vehicle were searched, she was given two \$20 bills with which to make the purchase. Thereafter, she called Jackson, who told her to “meet him at McKee Park.” Followed by “the officers,” she drove to that location, but did not see Jackson immediately. (T.126-28)

²After treatment, Ms. Henderson had stopped using drugs. At the time of trial, she had been drug-free for a year. (T.125)

A few minutes later, Jackson phoned her to tell her he was “scared” to make the transaction at McKee Park and told her to meet him at Ferndale Apartments. When she arrived at that location, she saw Jackson “standing outside in a white jacket.” He got into her vehicle, “and he had a crack rock in his hand.” He “said he didn’t have time to wrap it up, it was just a crack rock.” She replied, “that’s fine,” and handed him the two \$20 bills in exchange for the “crack rock.” As he was exiting her vehicle, he asked her whether she wanted any powder cocaine. She “not him no, not at that time,” but asked whether he could procure “some rolls,” i.e., ecstasy. After he agreed to sell her some of that substance, he “left.” Ms. Henderson then returned to headquarters, where she handed the substance over to Agent Gus McKay. (T.128-32)

A video recording of the transaction was admitted into evidence and played for the jury. (T.135)

Agent McKay corroborated Ms. Henderson’s testimony. (T.151-67)

The state’s expert witness identified the exhibit in question as cocaine base, or crack cocaine, weighing .051 gram. (T.117)

The defense presented no evidence.

SUMMARY OF THE ARGUMENT

Jackson’s argument is procedurally barred by his failure to raise the pertinent issue at trial. Solely in the alternative, the state submits his proposition lacks substantive merit as well.

PROPOSITION:

**THE SOLE PROPOSITION PRESENTED BY JACKSON IS
PROCEDURALLY BARRED AND SUBSTANTIVELY
WITHOUT MERIT**

The sole argument advanced in this appeal is that the prosecution used questioning and argument to inflame the passions of the jury with respect to the deleterious effect of illegal drugs on society. At the outset, Jackson acknowledges that “[t]he defense in this case objected only once to the repeated references complained on in this brief.” He goes on to assert, however, that the procedural bar should not apply because this issue involves his constitutional right to a fair trial by an impartial jury. (Brief for Appellant 4)

The state counters that even constitutional issues not raised at trial are waived on appeal. *Larson v. State*, 957 So.2d 1005 (Miss. App. 2006). “Trial courts should not be reversed based on issues never presented to them.” *Id.*, citing *Billiot v. State*, 454 So.2d 445, 455 (Miss.1984). See also *Jordan v. State*, 995 So.2d 94, 103 (Miss. 2008). All attempts to predicate error upon questioning or argument to which the defense interposed no objection are clearly barred at this point. (T.49-50, 107, 122-24, 142-44, 156-57) Because Jackson “did not claim a constitutional violation in the trial court, he is procedurally barred from doing so here.” *Mingo v. State*, 944 So.2d 18, 28 (Miss.2006). Solely in the alternative, we contend that the prosecution had a legitimate interest in telling the complete story of what happened in this transaction. *Givens v. State*, 967 So.2d 1, 8 (Miss. 2007). This “rational and coherent story” may be presented even though it might “reveal or

suggest other crimes” committed by the accused.³ *Id.* Accord, *Gray v. State*, 921 So.2d 393, 396 (Miss. App. 2006). To this end, the prosecution was entitled to show why the Task Force had been created, why Ms. Henderson had chosen to become a confidential informant, and why the Task Force routinely refrained from making arrests immediately after a transaction. This proof was admissible to show Ms. Henderson’s motive for participating in this transaction and for testifying at trial as well forestall possible confusion on the part of the jurors as to the procedures of the Task Force.

The state submits trial counsel did not object to this evidence because it was not objectionable. In any case, the failure to do so bars the issue on appeal. For these reasons, the judgment entered below should be affirmed.

CONCLUSION

The state respectfully submits that the argument presented by Jackson has no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**


BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

³In this case the state did not present any evidence or insinuation of other crimes committed by Jackson.

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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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