IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONALD VANDER BOND, JR. — APPELLANT

VS. — NO. 2008-KA-2152

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROLAND VANDER BOND, JR. **APPELLANT**

vs. **CAUSE No. 2008-KA-02152-COA**

THE STATE OF MISSISSIPPI **APPELLEE**

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against a judgment by the Circuit Court of Harrison County, Mississippi, wherein the Appellant was convicted of and sentenced for the crimes of **POSSESSION OF PRECURSORS** and **POSSESSION OF METHAMPHETAMINE WITH INTENT TO DISTRIBUTE.**

STATEMENT OF FACTS

On 11 October 2004, law enforcement officers executed a search warrant on a residence located at 20016 Merinda Lane, Long Beach, Mississippi. At the time of the search, one Cynthia Young was present. However, the Appellant had been living there with her for a year and a half to two years prior to the search. One of the Appellant's vehicles was parked on the property, and a checkbook was found which bore Young's and his names. In the course of the search, quite a

number of items used and useable in the manufacture of methamphetamine was found in the house and in the garage of the house. These items included modified coolers and gasoline cans, and a host of precursor materials including acetone, denatured alcohol, mineral spirits, camp fuel canisters, lithium batteries, and a large amount of pseudoephedrine. Receipts for additional precursor materials were found in a trash bin in the garage. Also found were tin foil, rubber tubing, a modified salt canister, and empty pseudoephedrine packs.

In addition to these items, a substance later determined to be methamphetamine was found in a work table and in a toolbox in the garage. Moreover, small zip-lock baggies were found, as well as two scales.

About two weeks prior to the search, the Appellant was stopped in his other vehicle. At that time he indicated that he was living at 20016 Merinda Lane. (R. Vol. 2, pp. 62 - 113).

A specialist in clandestine methamphetamine laboratories was called to testify, and he explained the process of manufacturing methamphetamine and the how the items found in the house were used in that process. He further testified that the quantity of methamphetamine found – 24.44 grams, or nearly an ounce -- indicated that it was not for personal consumption, stating that a person using methamphetamine would not likely consume more than half a gram to a gram of the substance a day. The scales also indicated an intent to distribute methamphetamine, as did the small baggies, which he said were commonly used by methamphetamine distributors. The methamphetamine, scales and baggies were all found in the same place. (R. Vol. 2, pp. 113 - 133).

Cynthia Young, the Appellant's romantic interest, testified that the Appellant had lived with her for a year to a year and a half prior to the search of her house. She maintained a joint checking account with the Appellant. The Appellant owned two vehicles and worked offshore.

He was not present when her house was searched, though one of his vehicles was. She admitted having been a methamphetamine addict, and stated that the methamphetamine found during the search of her house belonged to the Appellant and her. The Appellant and she purchased the precursors, knowing that they would be used to produce methamphetamine.

Young denied having relationship problems with the Appellant prior to the search, denied that the Appellant had begun staying at someone else's home before the search of her home occurred. She stated that she paid all of their bills through the joint checking account. She stated that the Appellant had deposited money to the account, or had given her money to deposit to the account.

Young stated that one David Hand actually "cooked" the methamphetamine, though she said that she had previously said during her plea colloquy that she thought the Appellant was "cooking" the drug. She also said that the Appellant did not know how to manufacture the drug and that either he was helping Hand or Hand was helping him. She did not see the Appellant sell any of it. (R. Vol. 2, pp. 136 - 154; Vol. 3, pp. 155 - 159).

A forensic scientist with the Mississippi Crime Laboratory testified that the substances found in the Appellant's tool box was methamphetamine. The total weight was 24.44 grams. The scientist went on to testify as to his finding concerning the other substances found in the course of the search, which included acetone, denatured alcohol, mineral spirits, ammonium nitrate, and hundreds of pseudoephedrine tablets found. (R. Vol. 3, pp. 159 - 173).

The defense produced a case - in - chief. His first witness was one Shannon Mercer, who testified that the Appellant was staying in a Shannon Owen's residence. Mercer said he knew this because the Appellant had personal effects there. Mercer claimed that he visited the Appellant around or just after 21 September 2004. Mercer spent a lot more time the Appellant

after the Appellant was arrested, and knew a great deal about the case against the Appellant. However, he never took it upon himself to inform law enforcement of his belief that the Appellant was living at Owen's residence prior to the search of Young's house. (R. Vol. 3, pp. 183 - 191).

A Jason Mills testified that he knew the Appellant and had visited him at Young's house and also at Owen's residence around late October and early November of 2004. He was of the opinion that the Appellant was residing with Owen since he observed the Appellant's personal effects there. (R. Vol. 3, pp. 192 - 198).

Shannon Owen then testified. He said he knew the Appellant, that the Appellant had been living in Merinda Lane, and that the Appellant began living with him in mid - September of 2004. The Appellant moved his "stuff" in. The Appellant was said to have stayed there until Christmas of that year. The Appellant was said to have been staying with Owen on 11 October 2004.

Owen stated that he knew what the Appellant was charged with having done, but he did not know why the Appellant was "pulled over." Like the others, this witness never contacted law enforcement to relate this information, but he also stated that he was never contacted. (R. Vol. 3, pp. 198 - 209).

The Appellant testified. He stated that he had moved in with Young in early 2004. He said that Young and he opened a checking account together in order to establish their credit, and that he deposited insurance proceeds from an accident claim in that account. However, according to the Appellant, some $6,000.00 came up missing from the account, and Young had no explanation as to what happened to those funds. So, the Appellant said, he withdrew his money and never deposited money to the account again. The Appellant said he then began gradually

moving out of Young's house and began living with Owen. He moved out completely by mid - September, 2004 and spent no nights with Young in October, 2004. Young had a set of keys to the Appellant's truck and drove it sometimes. According to the Appellant, the reason his truck was at the Young's house when her house was searched was because some friend had borrowed the truck. Young went to Gautier to pick it up.

The Appellant knew David Hand. He thought Young's change in appearance had something to do with her association with Hand. The Appellant denied having any knowledge about the precursors in Young's house, and, of course, he denied any knowledge of the methamphetamine in the garage. He denied having used methamphetamine.

On cross-examination, the Appellant admitted that there were personal items of his at Young's house at the time of and after the search. The Appellant denied having a recollection of certain statements he made after his arrest. (R. Vol. 3, pp. 210 - 237).

The defense then called one William Donaldson, father of Cynthia Young. He testified that he came into title of Young's house after the execution of the search warrant, and had the house sanitized. He sold the house after it was determined that there were no "problems" with the house. Donaldson testified that he removed everything left in the house, including the carpets, and used a strong solution to wash down every surface within the house. He left the doors to the garage open "for weeks and weeks and weeks" to get a smell out of it. He then repainted the surfaces within the house and had the house tested.

After the warrant had been executed, the Appellant got in touch with Donaldson to request that he be allowed to remove his personal possessions from the house, a request that was granted. Among those items of personal property were clothing, shaving implements, and a large number of tools located in the garage. The Appellant filled his mother's van and his father's

pick'em up with his personal possessions. (R. Vol. 3, pp. 237 - 243).

In rebuttal, the State re-called Officer Kevin Brazil. He stated that the Appellant was arrested on 18 October 2004. After the arrest, the Appellant was given his rights and he waived same. In this statement, the Appellant denied involvement in the manufacture of methamphetamine and said that anything found at the house or in his truck must have been placed there by other people. He stated that other people had come to him and coerced him into using the house and his truck for making methamphetamine and distributing methamphetamine. He said these other people were brandishing guns. At the time of the statement, the Appellant gave as his address the address on Merinda Lane. (R. Vol. 3, pp. 244 - 250).

An investigator with the district attorney's office, David Stepbro, testified that he attempted to contact Shannon Owen prior to trial to determine what Owen's testimony would be. Owen never returned his call. (R. Vol. 3, pp. 250 - 253)

STATEMENT OF ISSUES

1. DID THE TRIAL COURT ERR IN DENYING THE DEFENDANT'S MOTION FOR A DIRECTED VERDICT AND PEREMPTORY INSTRUCTION FOR A DIRECTED VERDICT ON THE ISSUE OF INTENT TO DISTRIBUTE?

2. DID THE TRIAL COURT ERR IN DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL OR, ALTERNATIVELY, FOR J.N.O.V., ON THE ISSUE OF INTENT TO DISTRIBUTE?

SUMMARY OF ARGUMENT

1. THAT THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT AND PEREMPTORY INSTRUCTION FOR A DIRECTED VERDICT BECAUSE THE STATE PRODUCED SUFFICIENT EVIDENCE OF AN INTENT TO DISTRIBUTE

2. THAT THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR DIRECTED VERDICT (J.N.O.V.) ON THE ISSUE OF INTENT TO DISTRIBUTE BECAUSE THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

ARGUMENT

1. THAT THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT AND PEREMPTORY INSTRUCTION FOR A DIRECTED VERDICT BECAUSE THE STATE PRODUCED SUFFICIENT EVIDENCE OF AN INTENT TO DISTRIBUTE

The Appellant, at the close of evidence, moved for a directed verdict and tendered a peremptory jury instruction for a directed verdict on the issue of intent to distribute; both were denied by the court.

In considering a motion for directed verdict or a motion for judgment notwithstanding the verdict, "the trial court must consider all of the evidence - not just the evidence which supports the State's case - in the light most favorable to the State. The State must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence." *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). After a jury has returned a verdict of guilty, this Court has no authority to disturb the verdict absent a conclusion that "given the evidence taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty." *Pearson v. State*, 428 So. 2d 1361, 1364 (Miss. 1983).

The Appellant asserts that the State's evidence of intent to distribute methamphetamine was insufficient to permit the jury to find him guilty of possession with intent to distribute methamphetamine. However, we do not find that he challenges the sufficiency of the evidence as to possession of precursors or as to possession of methamphetamine, as opposed to possession with intent to distribute. This being so, we find it unnecessary to discuss the evidence in support of the precursors charge and the evidence in support of possession. It is sufficient to note that the State clearly and overwhelmingly established the presence of precursors throughout the house occupied by the Appellant and Young, and that methamphetamine was found in a toolbox

belonging to the Appellant in the garage of that house. While the Appellant attempted to say that he knew nothing about the presence of these substances, he also appeared to claim knowledge people brandishing guns were using the house and truck to manufacture methamphetamine. In any event, Young clearly testified as to his participation and knowledge. That evidence, taken as true, was surely sufficient to permit the jury to consider the case.

As to the issue of whether the State produced sufficient evidence on the element of intent to distribute, the evidence was that there was a large quantity of methamphetamine found, along with scales and a particular kind of baggie that was commonly used to package the substance for sale. There was also testimony that users of methamphetamine would use no more than a gram a day, due to the toll the drug takes on the body. The amount found was a twenty - five to forty eight-day supply. In conjunction with this evidence was the evidence of a large amount of materials used and useful in the manufacture of methamphetamine.

This Court has found that a large quantity of methamphetamine and a set of scales is sufficient evidence to permit a jury to consider an accused's guilt for possession with intent to distribute. *Edwards v. State*, 795 So.2d 554 (Miss. Ct. App. 2001). The Court has also found that even where there is only a small amount of contraband found, intent to distribute may be shown by the fact that objects used in the production and sale of contraband were present. *Jenkins v. State*, 757 So.2d 1005 (Miss. Ct. App. 1999). Because there was a large amount of methamphetamine found, together with objects used in manufacturing and selling the substance, the evidence was sufficient to permit the jury to pass on the question of the Appellant's guilt for possession of methamphetamine with the intent to distribute it.

The Appellant, though, asserts that the amount of contraband found was entirely consistent with the personal use requirements of two users. The problem for the Appellant,

assuming that the time period he claims is consistent with personal use, is that the Appellant testified that he never used methamphetamine with Young. (R. Vol. 2, pg. 219). Now, while it may be that Young testified that he did use methamphetamine, there was no testimony as to her's – of his – rate of usage. The Appellant's argument on this point is entirely speculative, and it assumes that Young and the Appellant were daily users of the drug and that they used the maximum amount each day.

The Appellant claims that the clandestine laboratory expert gave conflicting testimony as to the amount of methamphetamine found and how much of a daily supply it would have provided.

First of all, the Appellant, citing Miss. Code Ann. Section 41-29-139, asserts that "[a]n ounce is deemed to weigh thirty grams." The expert, however, testified that an ounce weighed 28 grams. (R. Vol. 2, pg. 121). Under Miss. Code Ann. Section 41-29-138 (Rev. 2005), the avoirdupois system of weights is to be the system by which weights of controlled substances are to be determined for purposes of the Uniform Controlled Substances Act. An avoirdupois ounce weighs 28.3495231 grams, *Roach v. State*, 7 So.3rd 911, 914 fn. 5 (Miss. 2009), or, rounded to the fourth digit, 28.35 grams. It is not thirty grams, as asserted by the Appellant, and we have found nowhere in Section 41-29-139 anything to support his claim. Twenty - four grams (the weight of the methamphetamine found in the search was 24.44 grams) is a twenty - four day supply for a one gram a day man; a forty - eight day supply for a man using half that amount a day. In either case, a large amount. That the Appellant would have this Court assume that Young and the Appellant (1) both used methamphetamine; (2) used it daily; and (3) used the same amount daily is no evidence that the expert gave contradictory testimony. The expert never testified that this was so. It is merely the Appellant who says his speculations are somehow why

the expert gave supposedly conflicting testimony.

Young testified for the State that she and the Appellant purchased the precursors gave them to David Hand for the production of methamphetamine, and that the Appellant personally assisted Hand in this "cooking" process. Receipts found in the garage, listing many of the precursor materials being purchased at various stores, corroborate this testimony. The police raid uncovered gas cans, coolers, rubber tubing, and tin foil, all modified in ways consistent with methamphetamine production, as well as digital scales and specialized, black "meth" baggies. All of these materials were found in very close proximity to each other and were obviously in furtherance of some common design. The combination of the methamphetamine and these materials created a reasonable inference that the Merinda Lane house was being used for production, weighing, and packaging of methamphetamine for transfer or sale.

The Appellant suggests that evidence of prior sales is necessary when the weight of the substance is "modest," citing *Mitchell v. State*, 754 So.2d 519 (Miss. Ct. App. 1999). *Mitchell*, though, sets out no such requirement. It is true that the State in *Mitchell* attempt to prove the intent - to - distribute element by such evidence, but it is not true that it was required to do so. In any event, the weight of the drug in that case was .2485 of an ounce of cocaine, an amount said to be consistent with personal use. Here, the Appellant did not have a "modest" amount of methamphetamine. He had very nearly an entire ounce, not an amount consistent with personal use.

The facts of the case at bar are that the Appellant had nearly an ounce of methamphetamine in his toolbox. He also had scales and packaging material. The Appellant was involved in the manufacture of methamphetamine, and precursors were found throughout the house in which he had been staying. The Appellant gave conflicting stories about his connection

with the methamphetamine, at one time giving a bizarre story about having been forced at gunpoint to allow his truck and the house to be used to manufacture and sell the substance. The evidence was sufficient to permit the jury to consider the issue of whether the Appellant possessed the methamphetamine with the intent to distribute it.

The First Assignment of Error is without merit.

2. THAT THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR DIRECTED VERDICT (J.N.O.V.) ON THE ISSUE OF INTENT TO DISTRIBUTE BECAUSE THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

In addition to the earlier motions, the Appellant filed a motion for a new trial, or alternatively, for judgment notwithstanding the verdict; relief on these was denied by the court. (C.P. 87). In contrast to a motion for directed verdict, a motion for a new trial requests that the jury's guilty verdict be vacated on grounds that it was against the overwhelming weight of the evidence, rather than its sufficiency. *Pearson*, 428 So. 2d at 1364. This Court has frequently stated that a motion for a new trial should be denied unless "the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice." *E.g. Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005); *Groseclose v. State*, 440 So. 2d 297 (Miss. 1983).

We have set out the evidence demonstrating the Appellant's intent above. Here, though, in support of his notion that the trial court erred in denying him a new trial based upon his claim that the verdict was against the overwhelming weight of the evidence, the Appellant asserts that there was no proof of any sale, no evidence that money was found in or about the house in the course of the search, and no evidence of "excess traffic." It may be that there was no evidence on these points, but then the Appellant cites no case in which it was held that there must be such

proof. He does indeed cite cases in which there was such evidence, but the lack of such evidence is not fatal. *Jenkins v. State*, 757 So.2d 1005 (Miss. Ct. App. 1999).

The most that can be said for the Appellant's points is that they were points that might have been argued to the jury during summation. These were simply matters for the jury to consider. These considerations are not evidence opposed to the verdict. The fact that there was no evidence of these things is not the same thing as evidence in opposition to the verdict.

The clandestine laboratory expert testimony about the weight of the methamphetamine found at the house was not in error.

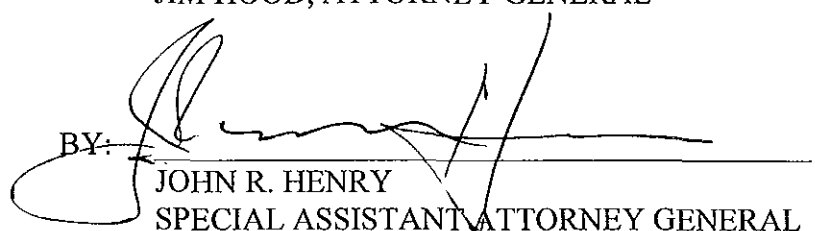
The Second Assignment of Error should be denied.

CONCLUSION

The Appellant's motion for directed verdict and motion for a new trial were properly denied and his conviction and sentence should therefore be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I, John R. Henry, 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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