

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NICKY ALONZO PATTERSON A/K/A NICHOLAS

APPELLANT

V.

NO. 2009-KA-00076-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.


1. State of Mississippi
2. Nicky Alonzo Patterson, a/k/a Nicholas
- 4 Laurence Y. Mellen, and the Coahoma County District Attorney's Office
5. Honorable Albert B. Smith, III

THIS 10th day of July, 2009.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Nicky Alonzo Patterson, Appellant

By:



Leslie S. Lee, Counsel for Appellant

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STATEMENT OF THE ISSUE

WHETHER THE VERDICTS WERE AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Coahoma County, Mississippi, and a judgment of conviction for one count of possession of cocaine, and one count of possession of a firearm by a convicted felon against the appellant, Nicky Alonzo Patterson. Tr.161, C.P. 10-11, R.E. 14. Patterson was subsequently sentenced as an habitual offender under Miss. Code Ann. §99-19-81, to sixteen (16) years on Count I, and ten (10) years on Count II in the custody of the Mississippi Department of Corrections. The sentences were to run consecutively. Tr. 170-71, C.P. 12-14, R.E. 16. This sentence followed a jury trial on November 14, 2008, with a sentencing hearing on December 16, 2008, Honorable Albert B. Smith, III, Circuit Judge, presiding. Patterson is presently incarcerated with the Mississippi Department of Corrections.

FACTS

According to the testimony presented at trial, Officer Otis Taylor and Corporal Jason Sims, Sr., of the Clarksdale Police Department were on patrol duty on October 30, 2007. Tr. 38-39. Sims testified he observed a red Nissan turn north on Ashton from 7th Street, go halfway up the street, pull over to the left side near a van, and stop in the street. Tr. 63. Taylor also testified that he observed the red Nissan Sentra illegally park the wrong way in the southbound side facing north on Ashton Street. Tr. 39. As the officers drove closer to

the vehicle, they saw a female exiting a residence and then walking up to the driver's side window of the Sentra. Tr. 39-40, 48, 63. As the female reached inside the vehicle, both officers saw a hand to hand transaction occur between the female and the driver, Nicky Patterson. The officers claimed that because the location was a known area for drug transactions, they drove closer to investigate. Tr. 40, 49, 63.

As the officers pulled up behind the car, the female ran back inside the residence. Tr. 40, 63. Taylor testified that they activated the blue lights when he and Sims pulled up behind the vehicle. Tr. 52, 58. However, Taylor admitted that he did not know whether they had activated the spotlights, but he assumed they did because they normally turn them on when they turn on the blue lights. Tr. 52. As the officers exited their vehicle, Taylor testified that Patterson immediately exited his vehicle from the driver's side. Tr. 40. Sims also stated that when the officers pulled up beside the Nissan, Patterson saw them, and immediately got out of the vehicle. Patterson then walked toward the front of his vehicle and moved to the curb. Tr. 63.

Sims testified he saw Patterson drop a plastic baggie containing a white substance from his right hand to the ground. Tr. 63. Taylor also noticed Patterson had something in his hand which he dropped between the two cars. Tr. 41. Around the same time, Sims, while standing between the patrol car and the Nissan, on the passenger side of the Nissan, looked into the car and saw a black Ruger 9mm semi-automatic gun laying in the passenger floor board. Tr. 41, 63, 64. The weapon had a stain on its left side. Tr. 47. When Sims saw the gun, he told Taylor there was a gun in the car. Taylor looked and also saw the weapon. Tr.

43, 65. Sims then asked Patterson if he had any weapons on him. After he replied no, Sims then told Patterson to place his hands on his car so they could check him. Tr. 41, 65.

As soon as Sims asked Patterson to place his hands on the car to search him, Patterson started running southbound on Ashton, passing Taylor. Tr. 41, 65. Taylor swung at the subject but was unable to detain him. Tr. 41. As the Patterson fled on foot, Sims immediately pursued him with Taylor following. Tr. 42, 65. After Sims secured Patterson, he told Taylor to go back to the scene to protect it. Tr. 65. Taylor returned to the scene of the incident and secured the crime scene. Tr. 45.

Taylor testified he immediately went to the area beside the car where he had seen Patterson throw something. Tr. 45. Taylor searched the whole area but concentrated on where he had seen Patterson throw the object. Tr. 59. Taylor testified to finding and securing a small plastic bag containing what appeared to be crack cocaine. Tr. 45. There was nothing else on the ground around the cocaine. Tr. 59. He then returned to the passenger side of the vehicle and retrieved the weapon. Tr. 45. However, Taylor admitted that he did not remember stating that he had seen a gun in the car in the previous report he had made of the incident. Tr. 51.

Taylor then claimed he turned the baggie and the gun over to Sims, who transported both to the police department. Tr. 46, 66, Ex. 1 and Ex. 2. Corporal Joseph Wide, the narcotics investigator was contacted and met the officers at the police department. Wide took the drugs into his custody. Tr. 66. Corporal Wide testified to the chain of custody of the drugs found at the scene. Tr. 72-74. The State also called Erik Frazure, a forensic scientist

with the Mississippi Crime Laboratory in Batesville, Mississippi. Tr. 78, 79. Frazure testified that he performed two tests on the evidence and was able to determine that it contained 6.2 grams of cocaine salt, or powder cocaine. Tr. 82-84.

Patterson took the stand in his own defense. Patterson testified that he neither possessed any cocaine nor knew a gun was in his vehicle on October 30, 2007. Tr. 109. Patterson testified that he pulled up to a young lady's house and she came out to speak with him. Tr. 109. The young lady was at the driver's side window while he was talking to her when a car pulled up behind them with its lights off. Tr. 109. Patterson said he was parked behind a car so when the car pulled up behind him he was boxed in. Tr. 109. Patterson testified that he did not know the female very well because they had only recently met. He was going to the house to pick her up. Tr. 110, 111.

When the female came to Patterson's window, she asked him where they were going so she could know if she needed to go back in the house and bring a bag or something, but she did not finish asking the question because the car pulled up and she ran. Tr. 111. Patterson did know the reason she ran. Tr. 109. Patterson testified that the female had previously told him that she had a boyfriend who liked to act up, so he feared for his life when the car pulled up behind him. He jumped out of his car and ran until he realized the person chasing him was a police officer. Tr. 110.

Patterson testified that he did not have anything in his hand when he got out of the car, but he did not know if the female had anything. Tr. 110. Patterson said that he did not see a gun on the passenger side floorboard and he did not know a gun was in the car. Tr. 111.

Patterson testified that the officers never showed him the gun or the cocaine at the scene, but that he first saw them at the police station. Tr. 111,112.

Patterson admitted that the red Nissan Sentra belonged to him. Tr. 112. He also testified that he did not remember the female's name who was at the scene because he had just met her. Patterson explained that the female had told him about her boyfriend the night of the incident, and when she took off from his car, he assumed the boyfriend was there. Tr. 113.

Patterson stated that the car that pulled up behind him did not have its lights on, and that he could not pull off because his car was boxed in. He also testified that his car was on the right side of the road, not parked illegally. Tr. 114. Patterson testified that the female came out of her house and came all the way across the road to talk to him in his car. Tr. 115. Patterson stated he was parked with the passenger side of his car next to the curb. Tr. 115.

Patterson explained that when the female ran, he was already opening the door and on his way out of the car to use the bathroom, so when she took off running, he ran too. Tr. 116. Contrary to the officers, Patterson testified that he ran north, away from the car that pulled up behind him. Tr. 116-17. Patterson said the officers did not have their blue lights on, nor did he notice their uniforms, or that they were in marked police patrol car. Tr. 117. Patterson said the officers did not say anything as they approached him, but later yelled for him to stop. Tr. 118. Patterson only ran about fifty feet before he stopped. Tr. 118. Patterson denied that Larsharonda Jordan purchased the gun for him¹. Tr. 119.

¹ Both parties agreed to a stipulation that Patterson was a convicted felon. Tr. 90.

Larsharonda Jordan testified in Patterson's defense. She stated that she had been in a relationship for three years with Patterson at the time of this incident. Tr. 95. Jordan stated that she had used his car for a week or so because her car was not working. Tr. 96. Jordan testified that she owned the gun that was found in Patterson's car. Tr. 96. She had purchased the gun from a pawnshop in Clarksdale, and had it registered in her name. Tr. 97, 100. Jordan also testified that she normally kept the gun under the passenger seat and had left it there when Patterson came to pick the car up, but she did not remember it was there until after Patterson had left her house. Tr. 98-99.

Jordan testified that her son had wrecked Patterson's car, and she had lied to him about it. Tr. 96, 97. When Patterson came to pick the car up, he was upset because he thought another man had wrecked his car, so he just got the car and drove off. When Jordan realized she had left the gun in the car, she called Patterson but he did not answer. She also sent a text message to him telling him to turn around because she needed to get something out of the car. Patterson would not answer Jordan's calls or text messages. The next day she called again, but hung up when a girl answered his phone. She called again on Monday, and his sister answered and told her that Patterson was in jail. Tr. 98.

Jordan testified that she believed she purchased the gun in January of 2006 or 2007. Tr. 99. Jordan also testified that she took the gun with her most places, but she would not take it in a store. Tr. 100, 101. Jordan also said that she normally has her gun in the house in her closet unless she took it out with her for protection. Tr. 101. The State presented the firearms trace which showed the gun was purchased in May of 2007. Tr. 104. Jordan then

said that she had thought she bought the gun in February but when she went to the pawnshop to get proof of her ownership of the gun, the pawnshop owner had given her a slip from a book that said she had purchased the gun in January. Tr. 105. Jordan also testified that she believed the gun cost \$320, but she was not sure. Tr. 104. Jordan also stated that although she did not give a statement, she did tell officers that as far as she was aware, Patterson did not know the gun was in the car. Tr. 106.

SUMMARY OF THE ARGUMENT

The facts of this case did not justify a conviction on either count of Patterson's indictment. Both verdicts were against the overwhelming weight of the evidence. The evidence presented failed to establish beyond a reasonable doubt that Patterson knowingly committed any crime. The officers involved in this case only testified they believed Patterson dropped something on the ground. Cocaine was later found in that area. No other evidence linked Patterson to the cocaine. Additionally, the owner of the gun found in Patterson's car testified that she accidentally left the gun in the car, and that Patterson had no knowledge that the gun was ever there. The trial judge erred in failing to grant a new trial.

ARGUMENT

WHETHER THE VERDICTS WERE AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

Patterson asserts that the verdicts of guilty were against the overwhelming weight of the evidence. This issue was raised in trial counsel's post-trial motion for Judgment

Notwithstanding the Verdict, or in the Alternative a New Trial. C.P. 16-17, R.E. 19-20. “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.” *Herring v. State*, 691 So.2d 948, 957 (Miss. 1997). “Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal.” *Id.* See also *Benson v. State*, 551 So.2d 188, 193 (Miss. 1989); *McFee v. State*, 511 So.2d 130, 133-34 (Miss. 1987).

Count I

In Count I, Patterson was charged with possession of cocaine in the amount of between 2 and 10 grams. C.P. 2, R.E. 8. However, the testimony of the officers never established beyond a reasonable doubt that Patterson knowingly possessed any cocaine. Although both officers claimed they saw a hand to hand contact between Patterson and the unknown female, as well as Patterson drop something, there was no testimony regarding the lighting conditions by the car. Taylor testified he only assumed the patrol car’s spotlight was activated when they pulled behind Patterson. Tr. 52. The police never attempted to take fingerprints off of the plastic baggie they allege was found at the scene. Tr. 56. Officer Taylor even testified that he believed he did not need fingerprints. Tr. 59-60.

There was no video or even audio tapes of the officers’ investigative stop presented. Tr. 57. Furthermore, the scene was not secure during the pursuit of Patterson. (Corporal

Sims claimed they chased Patterson for two blocks. Tr. 65). Taylor admitted it was a high crime area. Tr. 40. There is no way of knowing if the cocaine that was found had been on the street for hours or even days. Patterson was unfortunately at the wrong place at the wrong time.

Patterson never admitted guilt, always maintaining that he ran only because he feared he was about to be attacked by a jealous boyfriend of a woman he did not know very well. Tr. 110. This woman would have been in a better position than Patterson to see the police pull up. She could very well have dropped some cocaine she was carrying. Unfortunately, the police never bothered to find her and interview her. Apparently, securing a case against Patterson without all the facts was more important. Tr. 54, 57-58. The police did not even attempt to secure a voluntary statement from her, explaining only they would need a warrant to enter her house. Tr. 61.

Count II

In Count II, Patterson was charged with wilfully possessing a firearm as a convicted felon. C.P. 2-3, R.E. 8-9. However, the evidence clearly showed Patterson was unaware of the presence of the firearm in his car. Patterson testified he did not knowingly possess the gun, as he did not know it was in his car. Tr. 111. This was corroborated by Larsharonda Jordan, who testified she left the gun in Patterson's car without his knowledge. Tr. 98.

Sitting as a "thirteenth juror," the evidence in this case certainly points to the conclusion that the jury's resolution of the conflicting testimony in both counts was in error. *McQueen v. State*, 423 So.2d 800, 803 (Miss. 1982). To prevent an unconscionable injustice,

a new trial is the only just remedy. *Bush v. State*, 895 So.2d 836 (¶18) (Miss. 1995).

Patterson is entitled to a new trial on Count II and as well as Count I.

CONCLUSION

Given the evidence presented in the trial below, and based on the above argument, together with any plain error noticed by the Court which has not been specifically raised, Nicky Patterson is entitled to have both his convictions reversed and remanded for a new trial.

Respectfully submitted,
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For Nicky Alonzo Patterson, Appellant

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CERTIFICATE

I, Leslie S. Lee, do hereby certify that I have this the 10th day of July, 2009, mailed a true and correct copy of the above and foregoing Brief of Appellant, by United States mail, postage paid, to the following:

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So certified, this the 10th day of July, 2009.



Leslie S. Lee