

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ELIJAH BENNETT DOWDLE

APPELLANT

VS.

NO. 2009-KA-1994-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUE

- I. THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

Lowndes County Sheriff's Deputy Chris Smith pulled over a green Honda to alert the driver that he had a headlight out. T. 80-81. Deputy Smith noticed that the vehicle had an Indiana tag, and called the tag number in. T. 93. As Deputy Smith approached the vehicle, he saw the driver, Elijah Dowdle, reaching over to the passenger seat. T. 81. Dowdle's hands were shaking when he handed Deputy Smith his driver's license, and Dowdle kept looking over to the passenger seat and avoiding eye contact with Deputy Smith. T. 81-82. Because Dowdle kept "eyeballing" the passenger seat area, Deputy Smith asked Dowdle to step out of the car while he ran his driver's license. T. 82-83, 96. Dispatch advised that Dowdle's driver's license was suspended. T. 83. As Deputy Smith handcuffed Dowdle he asked there were any weapons or narcotics in the vehicle. T. 83. Dowdle informed the officer that there were drugs under the hat on the passenger seat. T. 83, 96, 101.

Dowdle was ultimately convicted by a Lowndes County Circuit Court Jury of possession of cocaine. He was sentenced as a habitual offender to serve eight years in the Mississippi Department of Corrections.

SUMMARY OF ARGUMENT

The jury's verdict is not against the weight of the evidence. The jury could have reasonably inferred from the State's evidence that Dowdle knowingly and intentionally possessed crack cocaine which he hid under the hat on the passenger seat when he was pulled over. Determining witness credibility lies within the sole province of the jury. The jury was faced with two conflicting stories from Dowdle, a convicted perjurer, about his knowledge of the hat which concealed the crack cocaine versus the testimony of man who sold Dowdle the car and swore that the hat was not in it when Dowdle took it. The State proved constructive possession. The verdict is not against the weight of the evidence.

ARGUMENT

I. THE JURY'S VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Dowdle claims that the jury's verdict is against the overwhelming weight of the evidence because he did not knowingly or intentionally possess the cocaine which was hidden under the hat on the passenger seat. When reviewing a claim that a conviction is against the weight of the evidence, a reviewing court will not disturb the verdict unless allowing it to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005). In raising claims that the verdict is against the weight of the evidence, appellant's most often attack witness credibility and draw the Court's attention to conflicts in the evidence. However, the determination of witness credibility lies within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). Also, the jury is solely responsible for resolving any conflicts in witness testimony which may arise. *Id.*

Because the cocaine was not on Dowdle's person, the State was required to prove that he constructively possessed the cocaine which was hidden under the hat on the passenger seat. "What constitutes a sufficient external relationship between the defendant and the narcotic property to complete the concept of 'possession' is a question which is not susceptible to a specific rule." *Hudson v. State*, 30 So. 3d 1199, 1203 (¶10) (Miss. 2010) (quoting *Dixon v. State*, 953 So.2d 1108, 1112 (Miss. 2007). The determination of whether the State sufficiently proved that a defendant knowingly and intentionally constructively possessed a controlled substance is based on the facts and circumstances of the particular case. *Id.* at 1204 (¶11).

Dowdle claimed that the Corona hat was already in the car when he obtained it from Smith's house and that he was not alerted to the presence of the hat on the seat next to him until immediately before he was pulled over. T. 122. In his statement to police, however, Dowdle claimed that Smith

threw the hat in the car and told him that he earned it. T. 160. Smith testified that no such thing happened. In fact, Smith was adamant that the hat was not in the car prior to Dowdle taking it because he had cleaned the car out prior to the sale, as he routinely does with all of his junk cars. T. 150, 151, 152, 154. Smith further testified that the car was parked in his yard and no one else drove it. T. 153, 154. Smith denied that he threw the hat in the car and told Dowdle he “earned it,” and added, “Why would I want to give him my hat?” T. 154-155. Dowdle’s credibility was likely called into question when he claimed that he did not tell officers that Smith gave him the hat, yet the State provided his signed statement which showed otherwise. T. 132, 160. His credibility was further tarnished by the fact that the jury learned that Dowdle had a former perjury conviction. T. 133. The jury was faced with a disinterested witness’s testimony that the hat was not in the car when Dowdle took it versus Dowdle’s conflicting claims that he did not even notice the hat just inches away from him in plain view on the front seat and that Smith gave him the hat. The jury could have reasonably inferred that Dowdle hid the crack cocaine under the hat based on Smith’s testimony combined with Deputy Smith’s testimony that Dowdle was messing with something in the passenger seat when he was pulled over and was nervous, refused to maintain eye contact, and continually “eyeballed” the hat on the passenger seat during the stop. The fact that drug paraphernalia was hidden between the driver’s seat and the console also leads to a reasonable inference that Dowdle knowingly possessed the cocaine. T. 89. It matters not that Deputy Smith testified that Dowdle did not appear to be under the influence of drugs during the stop because Dowdle was not charged with being under the influence but for possession.

The jury’s verdict of guilty of possession of cocaine does not sanction an unconscionable injustice. The State sufficiently proved that Dowdle knowingly and intentionally possessed the crack cocaine, and the verdict is not against the weight of the evidence.

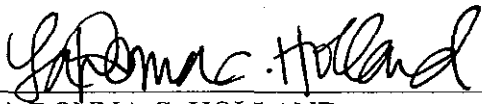

CONCLUSION

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

Respectfully submitted,

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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:

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This the 16th day of August, 2010.



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