

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ELIJAH DOWDLE

APPELLANT

V.

NO. 2009-KA-1994

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

On Appeal from the Circuit Court of Lowndes County, Mississippi

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. Elijah Dowdle, Appellant
3. Honorable Forrest Allgood, District Attorney
4. Honorable Lee J. Howard, Circuit Court Judge

This the 27th day of May, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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STATEMENT OF THE ISSUE

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DOWDLE'S MOTION FOR A NEW TRIAL.

STATEMENT OF THE CASE

This appeal proceeds from the Lowdnes County Circuit Court in Lowdnes County, Mississippi. Elijah Bennett Dowdle was charged with possession of cocaine, in less than 1 gram. [R.E. 4] Dowdle filed several motions prior to trial that are not at issue in this appeal. [Tr. 5, 21-23] The jury rendered a guilty verdict and Dowdle was sentenced as an habitual offender under Mississippi Code Annotated Section 99-19-81, and as a prior violator of the Uniform Controlled Substance Act Section 41-29-147. [Tr. 15] He was sentenced to serve eight (8) years, without the possibility of parole, in the custody of the Mississippi

Department of Corrections. He was also ordered to pay a fine of \$20,000 upon his release.

Following the trial, Dowdle filed a motion to reconsider the court's sentence and a motion for J.N.O.V. or, in the alternative, motion for a new trial. [R.E. 18-25] The Court denied both of these motions and Dowdle timely filed his notice of this appeal.[R.E. 27-28]

STATEMENT OF THE FACTS

Elijah Dowdle was a family man with a love for motorcycles. [Tr. 142] That is what brought him down from Indiana to Mississippi in late July 2007. [Tr. 139] One day, he called up Patrick Logan, owner of a bike shop, and arranged to trade a motorcycle that Dowdle had recently purchased. [Tr. 122] Dowdle and Logan had known each other for over seven years and the men traded with each other on a regular basis. [Tr. 147]

When Dowdle arrived in Mississippi, he ended up trading the bike with someone else. [Tr. 123] However, Logan asked Dowdle to go and purchase a Honda Accord from Earl Smith for him.[Tr. 148] Smith was in the business of trading vehicles as well and had traded a lot with Dowdle in the past. Dowdle and Smith arranged for Dowdle to come and pick up the car from Smith's salvage yard. [Tr. 150]

Most of Smith's cars came from the police auction and he used them for parts or for selling. This particular car that Dowdle was coming to purchase had a junk title and no license plate. [Tr. 153-54] It had been previously sold to another person, but the man returned the car after discovering the junk title. [Tr. 153]

When Dowdle arrived, he notice that the car had been sitting in Smith's salvage yard unlocked, with the keys inside the vehicle. [Tr. 123] Dowdle took the tag off of his truck and placed it on the car. He then left Smith's yard in search of a nearby gas station before he made it back to Logan's shop.

Dowdle was driving down the road and eventually came to a stop sign. [Tr. 125] Since there was no light in the car, he did not notice anything laying in the car prior to that moment. However, now under the streetlights, Dowdle could clearly see that there was an old, dirty hat left in the passenger's seat of the car. He was preparing to throw the hat out of the window when he looked down and discovered what appeared to be drugs. He became extremely nervous, especially since moments later, Deputy Sheriff Chris Smith initiated a traffic stop.

As Dowdle entered the intersection, Officer Chris Smith noticed that one of Dowdle's headlights had blown out. [Tr. 80] Deputy Smith made a traffic stop and discovered that Dowdle was driving with a suspended license. [Tr. 83] Deputy Smith also checked the car tag and learned that the tag on the car was registered to a Toyota. [Tr. 94] Dowdle explained that he did not want to drive from Smith's house to Logan's shop without any tag on the vehicle. [Tr. 95, 123]

Smith handcuffed and asked Dowdle if there were any drugs or weapons in the car. [Tr. 96] Dowdle told Smith that, although there were drugs in the car, the drugs did not belong to him. [Tr. 100] Deputy Smith reached underneath the baseball hat and found a small white rock that was later determined to be .5 grams of crack cocaine. [Tr. 83, 109] Deputy Smith also found a beer can, between the seat and the center console, that he believed had been used as drug paraphernalia. [Tr. 89] According to police on the scene, Dowdle did not appear to be under the influence of alcohol or drugs at the time of the stop. [Tr. 162] Deputy Smith also noted that, while it appeared that the beer can had been used to smoke drugs, the can was not hot when it was discovered by the officer. [Tr. 99]

Dowdle was taken to jail and he gave the police a statement. [Tr. 100] In the statement, Deputy Smith recorded Dowdle saying "I went to pick a car up for my boss Pat Logan at Earl Smith's house,

located on Valley Chapel Road in Hamilton, MS. Earl took his hat off and threw it in the seat and told me to have it, because I earned it.” [R.E. 14] At trial, however, Dowdle explained that he had not seen the hat until moments prior to Deputy Smith’s stop. [Tr. 122] Although his signatures were listed on the report, Dowdle contested the accuracy of the police statement because he said Logan was not present when he retrieved the car from the salvage yard. [Tr. 132] According to Logan, however, none of the items the police found in the Honda were left in the car when Logan sold it to Dowdle. [Tr. 151]

The jury found Dowdle guilty of possession of less than 1 gram of cocaine. [R.E. 15] Prior to sentencing, the defense filed a motion to prohibit the State from amending the indictment to charge Dowdle as an habitual offender. [R.E. 6] The court ruled that the defense was put on proper notice prior to the trial and that the amended indictment would not cause unfair surprise. [Tr. 194-96] The court sentenced Dowdle as a habitual offender and prior offender under the Uniform Controlled Substance Act. Dowdle was sentenced to eight (8) years, without the possibility of parole. [R.E. 18]

SUMMARY OF THE ARGUMENT

Elijah Bennett Dowdle was just helping out a friend when he was simply caught in the wrong place at the wrong time. He purchased a car for a friend from a salvage yard. He was taking the car back to the friend’s bike shop, when he was stopped by police for driving with only one operating headlight. Minutes prior to the stop, Dowdle discovered that there was a small amount of drugs left underneath an old hat in the car. Dowdle did not hide the drugs or even try to discard them. Instead, once the officer stopped him, he was honest with the officer and informed him where the drugs were located. Nonetheless, Dowdle was arrested and charged with possession of cocaine. The overwhelming weight of the evidence shows that Dowdle did not knowingly or intentionally possess the drugs. For this reason, the trial court

should have granted Dowdle's motion for a new trial.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DOWDLE'S MOTION FOR A NEW TRIAL.

i. Standard of Review

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

ii. Dowdle's conviction for possessing cocaine is contrary to the overwhelming weight of the evidence.

The issue in this case is not whether Deputy Smith had a lawful right to initiate a traffic stop of Dowdle's car. Officer Smith noticed that one of the headlights in the car Dowdle was driving in was blown out. [Tr. 80] After stopping Dowdle, Deputy Smith discovered that Dowdle was driving with a suspended license and that he was driving with a switched car license plate on the car. [Tr. 83, 94] It is also not at

issue whether there were drugs in the Honda at the time Deputy Smith stopped Dowdle. The MS Crime Lab confirmed that the substance that Deputy Smith found in the car was .5 grams of crack cocaine. [Tr. 109] The question before this Court is simply, whether the jury's determination that Dowdle *knowingly or intentionally* possessed cocaine was supported by the overwhelming weight of the evidence.

Dowdle testified that he was not aware of the drugs in the Honda Accord when he bought the car from Earl Smith. [Tr. 140-41] The evidence overwhelming supports Dowdle's statements. Dowdle was arrested on the same day that he purchased the car for Logan from Smith. [Tr. 122] When Deputy Smith stopped Dowdle, he had not had possession of the car for weeks or months. He had just purchased the car from Smith's salvage yard the very same day¹. [Tr. 95]

There are several reasons why the jury should have found that Dowdle was not aware of any drugs in the Honda Accord. First, Dowdle did not go to a used car lot to purchase the car. One can reasonably infer that cars purchased through a used car lot would undergo a certain amount of detailed cleaning prior to a customer purchasing that vehicle. In this case, Dowdle purchased the car from Earl Smith's salvage yard². When Dowdle arrived to buy the car, the Honda had been sitting in Smith's yard, unlocked, with the keys still in the car. [Tr. 123] Dowdle had to go to an adjoining field from Smith's house, through a cut road, to get the car. [Tr. 125] This field was not enclosed with a fence. Anyone could have had access

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There was no bill of sale for the car admitted as evidence in the trial. However, the evidence admitted does not contradict Dowdle's testimony that he purchased the car on the same day of the arrest. He testified that Smith and Logan were planning to exchange the junk title on the following day. [Tr. 126]

²Earl Smith testified that the car was sitting in his yard on the day of the sale. [Tr. 152] However, when asked about prior testimony that the car was in a field, Smith did not clarify his answer. "Q. It was testimony earlier that the car sat kind of in a field? A. [The car was] sitting right there at my house. You can call my yard. I got a big yard. We live in the country." [Tr. 153]

to this field and used the car as a place to smoke drugs.

Smith claimed that he saw the inside of the car daily and that he cleaned the car out prior to Dowdle purchasing the car. [Tr. 152] He said he did not recognize any of the items that were confiscated by the police when Dowdle was arrested. [Tr. 151] Smith knew that he did not put any items in the car. This does not preclude the possibility that someone else placed the items in the car prior to Dowdle driving the car out of the yard. Smith was not even present when Dowdle came to pick up the car out of the yard. [Tr. 123, 132, 150] He made a deal with Dowdle prior to him coming to pick the car up from Smith's yard. [Tr. 150] Smith did not testify about conducting any type of overall inspection of the car at the time Dowdle came to pick up the vehicle. Smith was not even aware that one of the car's headlight bulbs was blown out³. [Tr. 154] Smith's lack of attention to the details to the condition of this car would reasonably indicate that the cocaine could have been in the car at the time Dowdle retrieved the car without Smith's or Dowdle's knowledge.

Second, Dowdle was arrested for possessing less than one gram of crack cocaine that Deputy Smith found underneath a baseball cap in the car. Dowdle testified that he did not notice the drugs until he lifted the baseball cap while he was driving down the road. [Tr. 140-41] Contrast this small crack rock with a stop where a police officer finds pounds or kilograms of drugs. Understandably, it is harder for a driver to deny knowledge of drugs that are found in large amounts throughout the car. Or, for instance, if the drug contained a highly distinct aroma - such as marijuana - it would be equally difficult to deny knowledge of the drug's presence. However, in this case, Officer Smith found .5 grams of crack cocaine. He found this small amount of crack cocaine only because Dowdle told him where the drug was located. [Tr. 137]

³Smith testified that he never drove the car at nighttime because it was a junk car and it did not have a car tag. [Tr. 154]

Dowdle could have easily thrown the drugs out of the window or hid the drug in the car. He did not choose these options. Instead, he chose to tell Deputy Smith exactly where he would find the cocaine.

Third, Dowdle did not appear under the influence of any drugs at the time he was arrested. While Dowdle was arrested for possession and not for the use of drugs, the fact that he was not under the influence of drugs at the time of the arrest further supports his claims of innocence. Deputy Chad Bell was present during Dowdle's arrest and did not remember Dowdle appearing to be under the influence of drugs or alcohol. [Tr. 162] In fact, Deputy Bell noted that Dowdle was very cooperative with the police.

In addition to Dowdle's sober appearance, Deputy Smith's statements that there was recently used drug paraphernalia found in the car were not supported by the evidence. During the arrest, Deputy Smith found a beer can in between the car seat and center console. [Tr. 89] He noticed the can had black charring on it, as if someone had used the can in the past to smoke drugs. He explained that smokers who used beer cans as makeshift crack pipes would poke a hole in the side of the can to funnel air through and warm the drugs by lighting the bottom of the can. The smokers would then put their mouth in the place of the normal drinking hole and smoke the drugs in that manner.

Deputy Smith believed the charring on the can showed that the can had been recently used for smoking drugs. However, when Deputy Smith discovered the beer can in the Honda, it's temperature was not hot. [Tr. 99] He could not determine how long it had been since the can had been used to smoke drugs. Furthermore, there is no discussion that the crime lab ever tested the can to determine if Dowdle was the person that actually used the can as a smoking device. In fact, the drug paraphernalia charge was not even included in Dowdle's indictment.

While Dowdle was not charged with drug use, it would have been a stronger case if the police

would have discovered recently used drug paraphernalia or if Dowdle was under the influence of drugs at the time of the arrest. Since these elements were absent, the jury's guilty verdict is not based on strong and substantially supported evidence.

Finally, even if the jury believed Dowdle made conflicting statements about his knowledge of the baseball cap in the car, Dowdle remained consistent that he did not know the drugs were in the car until after he drove the car out of Smith's yard. On the night of the arrest, Deputy Smith recorded Dowdle's statement that said, "I went to pick up a car for my boss Pat Logan at Earl Smith's house.... Earl took his hat off and threw it in the seat and told me to have it, because I earned it. Earl gave me directions to the nearest gas station and that is when I met the Deputy at the intersection ... and he stopped me. Just before he stopped me, I noticed drugs sitting in seat." [R.E. 14] At trial, Dowdle explained that the recorded police statement was incorrect because Smith was not around the car when he came to pick it up. While these are seemingly contradictory positions, the issue at hand is not whether Dowdle saw the cap before or after he entered the car. What has remained consistent is that Dowdle did not knowingly possess the crack cocaine at the time he drove the car from Smith's salvage yard.


CONCLUSION

The jury should have resolved the conflicting evidence in this case in favor of a not guilty verdict. Because the jury refused to do this, its guilty verdict was based on weak and tenuous evidence. The trial court should have granted Dowdle's motion for a new trial. Since the trial court erred in denying this motion, Dowdle prays that this Court will take the correct action and reverse this case and remand for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Elijah Bennett Dowdle, Appellant

By:



Erin E. Pridgen, Miss. Bar N [REDACTED]
Staff Attorney

CERTIFICATE OF SERVICE

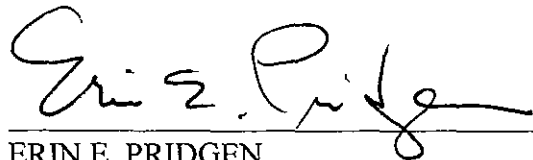
I, Erin E. Pridgen, Counsel for Elijah Dowdle, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Lee J. Howard
Circuit Court Judge
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Honorable Forrest Allgood
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This the 27th day of May, 2010.

A handwritten signature in black ink, appearing to read "Erin E. Pridgen", is written over a horizontal line.

ERIN E. PRIDGEN
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