

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JEROME PATTERSON

APPELLANT

VS.

NO. 2010-KA-0466

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GRANT THE APPELLANT'S MOTION FOR A CONTINUANCE.

STATEMENT OF THE FACTS

On January 19, 2010, the Appellant, Jerome Patterson, was indicted for the sale of twelve dosage units of hydrocodone, a Schedule III controlled substance, in violation of Miss. Code Ann. §41-29-139(a)(1)(b)(4). (Record p. 3). The Appellant filed a motion for discovery on January 28, 2010 and the State responded on February 5, 2010. (Record p. 15 - 16 and 17). The trial was originally set for February 16, 2010 but was reset for February 18, 2010. (Transcript p. 2).

On February 17, 2010 a motion hearing was held on the Appellant's motion for continuance which he filed on the same day. During the hearing, defense counsel stated that he and his client had met and reviewed the State's video of the drug sale which involved a confidential informant on

February 9, 2010. (Transcript p. 3 - 4). In his motion, the Appellant argued that as of that date he had not received the confidential informant's address nor his NCIC report. (Record p. 30 - 31). The following exchange took place during the hearing regarding when defense counsel was given information about the confidential informant:

COURT: Well, didn't they give you - - when they gave you the discovery on the 5th, didn't they give you his name then?

DEFENSE COUNSEL: No, sir, Your Honor.

COURT: When did you get his name?

DEFENSE COUNSEL: They had told me orally a couple of days later. I don't really know exactly, but I did know the name.

ADA WHITFIELD: But it was shortly thereafter, Your Honor.

DEFENSE COUNSEL: I'm not, I'm not - -

COURT: - - so you have had it at least a week?

ADA WHITFIELD: Yes, sir.

DEFENSE COUNSEL: The name. I just had no other information to get in touch with the guy but a phone number. I was given the phone number last night by my colleague here, Tommy [Whitfield].

ADA WHITFIELD: That was the night before.

DEFENSE COUNSEL: I was thinking it was last night, when I wrote it down. You may have said it. But in any event - -

ADA WHITFIELD: - - In addition to that, Your Honor, we have made arrangements with the confidential informant. He is supposed to be here at 11 o'clock today. If he so desires to speak with Defense Counsel, he will be here for that opportunity. I can't say whether he will or he won't, but we have got him coming here today.

DEFENSE COUNSEL: In any event - -

ADA WHITFIELD: -- and also, I have not met with him either so.

(Transcript p. 5 - 6). The trial court decided to reserve his ruling on the motion until after the 11:00 a.m. meeting with the confidential informant specifically holding:

I'm going to reserve -- that may produce some new stuff, that if it produces after -- if he talks to him, if he give him information, and it may produce some new facts that may justify a continuance. On what I have got right now, I'm not going to grant it, but I'm going to give you the opportunity to talk with this person and see what it brings. . . . So I am going to reserve it; I am going to reserve my ruling on the continuance for you to check that and you talk to the confidential informant.

(Transcript p. 8). The trial court also ordered that the State get with law enforcement and have them run a NCIC report on the confidential informant and produce it. (Transcript p. 9).

On February 18, 2010, the trial court called the case to trial and the following exchange was had:

COURT: Good morning. The Court calls cause number 2010-12, the State of Mississippi versus Jerome Patterson. What says the State?

ADA HOPPER: The State of Mississippi is ready for trial, Your Honor.

COURT: And what says the Defendant?

DEFENSE COUNSEL: Your Honor, I would like to renew my motion for a continuance, but as we stated yesterday, we are ready to go.

COURT: Okay. I reserved my ruling on that. The things that I reserved it for did not occur, so I overrule that motion.

(Transcript p. 10). After the jury was selected, defense counsel again renewed his motion for a continuance. (Transcript p. 50). The trial court responded by holding:

And for the same reasons I denied it this morning and are in the record from yesterday, I deny it again. Okay. . . . Let me make it more specific. I reserved my ruling on the continuance yesterday on the basis or the indication after the conversations with the confidential informant. If any new facts appeared that might influence that decision, I would look at it then. None of those facts have arisen, so therefore the factual basis being the same as it was yesterday, I deny the Motion for Continuance.

(Transcript p. 50). The trial then commenced as planned. The Appellant was convicted of the sale

of a schedule III controlled substance and sentenced to fifteen years with seven years suspended and eight years to serve in the custody of the Mississippi Department of Corrections.¹

SUMMARY OF THE ARGUMENT

The Appellant is not entitled to a new trial based upon the trial court's denial of his motion for continuance. The record clearly indicates that the trial court did not abuse its discretion in refusing to grant the motion. The State did not violate Uniform Rule of Circuit and County Court 9.04 and the Appellant was given ample opportunity to prepare to confront the confidential informant's testimony at trial. Furthermore, the Appellant was given an opportunity after meeting with the confidential informant to give the trial court reasons why the continuance was needed based on the specifics learned during his meeting with the confidential informant and no such reasons were provided. As such, no manifest injustice resulted from refusing the motion.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GRANT THE APPELLANT'S MOTION FOR A CONTINUANCE.

The Appellant questions "whether the trial court erred when it failed to grant Appellant's motion for a continuance where the State failed to timely disclose the name and address of a witness and confidential informant until the day before trial." (Appellant's Brief p. 1). With regard to such issues, this Court has held:

"The trial court has considerable discretion in matters pertaining to discovery, and its exercise of discretion will not be set aside in the absence of an abuse of that discretion." *Gray v. State*, 799 So.2d 53, 60 (Miss. 2001). Specifically, "the decision to grant or deny a motion for continuance is within the sound discretion of the trial court and will not be grounds for reversal unless shown to have resulted in manifest injustice." *Simmons v. State*, 805 So.2d 452, 484 (Miss. 2001). In considering

¹ The State did not set forth the facts of the actual crime in this section of its Brief as the only issue raised on appeal was procedural.

whether the denial of a continuance was error, the supreme court has stated that “the question of whether the defendant had a reasonable opportunity to prepare to confront the State’s evidence at trial depends upon the particular facts and circumstances of each case.” *Traylor v. State*, 582 So.2d 1003, 1006 (Miss. 1991) (quoting *Reuben v. State*, 517 So.2d 1383, 1386 (Miss. 1987)).

Sanders v. State, 38 So.3d 639, 646 (Miss. Ct. App. 2010). As the *Sanders* Court noted, “the seminal case regarding violations of discovery rules is *Box v. State*, 437 So.2d 19 (Miss. 1983)” and “the guidance set forth in *Box*, and its progeny, was subsequently codified in Rule 9.04 of the Uniform Rules of Circuit and County Court.” *Id.* at 643. Rule 9.04 reads in pertinent part as follows:

* * *

B. . . .

The following is not subject to disclosure:

. . .

2. *Informants.* Disclosure of an informant’s identity shall not be required unless the confidential informant is to be produced at a hearing or trial or a failure to disclose his/her identity will infringe the constitutional rights of the accused or unless the informant was or depicts himself/herself as an eyewitness to the event or events constituting the charge against the defendant.

* * *

- I. If at any time prior to trial it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.

. . .

(*emphasis added*). With this Rule and the standard set forth above in mind, the record clearly establishes that the trial court did not abuse its discretion in failing to grant the Appellant’s motion for a continuance.

First, there was no violation of Rule 9.04. As set forth above, the State is only required to disclose information about the confidential informant when it is apparent that the informant will

testify at trial. As noted during the hearing on the motion for continuance, the name of the informant was given at least a week prior to trial. (Transcript p. 5). More details about the informant such as his phone number were provided after plea negotiations failed. (Transcript p. 4 - 6). After plea negotiations failed, it was apparent that the matter was going to trial. At that time the State not only provided the Appellant with the confidential informant's phone number, but also arranged for the Appellant to meet with the confidential informant prior to trial. (Transcript p. 6).

Secondly, the trial court provided the Appellant ample opportunity to prepare to confront the confidential informant's testimony at trial. Rule 9.04(I) allows the trial court to order a continuance if it is brought to its attention prior to trial that there is an undisclosed witness. In this case, the Appellant brought to the trial court's attention that it had the confidential informant's name and phone number but no address. To which the States responded that the witness would be available to meet with the Appellant that day at 11:00 a.m. As the trial court noted, the Appellant knew the identity of the informant for a week and met with the informant the day before trial. (Transcript p. 5 - 6). The trial court also ordered that the State obtain and produce the informant's NCIC report for the Appellant prior to trial. (Transcript p. 6). To further insure that the Appellant had ample opportunity to prepare to confront the informant, the trial court reserved his ruling on the motion for continuance until after the Appellant's meeting with the informant. (Transcript p. 8).

Finally, the Appellant was given an opportunity after meeting with the confidential informant to give the trial court reasons why the continuance was needed based on the specifics learned during his meeting the confidential informant and no such reasons were provided. The record indicates that just prior to voir dire the trial court asked if the Appellant was ready for trial and defense counsel responded that he was renewing his motion for continuance but "as we stated yesterday, we are ready to go." (Transcript p. 10). The Appellant had one other opportunity to voice any concerns prior to

the start of trial and failed to do so. (Transcript p. 50). With no specific reasons given in support of granting a continuance, the trial court did not abuse its discretion in failing to grant the motion. Additionally, the trial transcript indicates that the Appellant adequately cross-examined the confidential informant. As such, there was no prejudice to the Appellant.

As no manifest injustice resulted from the trial court's failure to grant the Appellant's motion for continuance and as the record does not indicate that the trial court abused its discretion in refusing the motion, the Appellant is not entitled to a new trial.

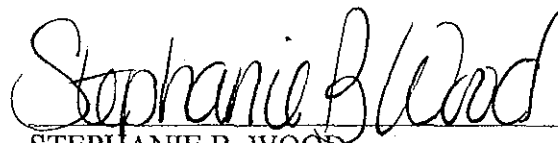
CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the Appellant's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephanie B. Wood, 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 30th day of August, 2010.



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