

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HENRY LAWSON

APPELLANT

VS.

NO. 2013-KA-0641

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO EXCLUDE EVIDENCE AND TESTIMONY.
- II. THE TRIAL COURT DID NOT ERR IN GRANTING THE STATE'S MOTION TO AMEND THE INDICTMENT TO REFLECT THE APPELLANT'S HABITUAL OFFENDER STATUS.
- III. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

STATEMENT OF THE FACTS

The Prentiss County Sheriff's Department obtained a warrant to search the Appellant, Henry Lawson's residence and "all sheds, vehicles, and curtilidge thereto." (State's Exhibit 4). The warrant was executed on May 31, 2007. (State's Exhibit 4). During the search, the officers seized several vehicle parts as well as documented, with both notes and photographs, several pieces of salvage and

VIN plates. (Transcript p. 121).

After receiving information from a confidential informant, the Sheriff's Department obtained a warrant to search the residence of Lawson's son-in-law, Bennie Burcham. (Transcript p. 18 and State's Exhibit 7). On June 23, 2009, that warrant was executed and several items were seized from Burcham's property, one of which was a "2001 Chevrolet pickup bearing VIN 2GCEC19V7X1220946 ext cab 4 dr. gold in color." (State's Exhibit 7).¹ Sheriff Randy Tolar indicated that his informant told him that Lawson switched the VIN on this truck sold it to Burcham. (Transcript p. 19). Burcham confirmed to the officers executing the warrant that he had obtained the vehicle from Lawson. (Transcript p. 19 and 136). Sheriff Tolar explained that during his subsequent investigation, he determined that the VIN attached to the gold 2001 Chevrolet pickup seized from Burcham's property had previously been attached to a salvage vehicle, a 1999 General Motors pickup, seen and photographed during the 2007 search of Lawson's property. (Transcript p. 20-21).

The results of this search and investigation led the Sheriff's Department to obtain a second search warrant for Lawson's property. (State's Exhibit 5). During this search, a long list of items were seized including several vehicle parts and car tags. (State's Exhibit 5). Subsequent investigation led to the Sheriff's Department obtaining a third search warrant for Lawson's property. (Transcript p. 156 and State's Exhibit 6). Again, a long list of items were seized including a white four door rollback VIN 1GDJC34KOME509051. (State's Exhibit 6).

Lawson was subsequently charged with Count I - operating a chop shop in violation of Miss. Code Ann. §63-25-5(1); Count II - possession of a vehicle with an altered VIN in violation of Miss.

¹For the sake of clarity and brevity, the State is not addressing each vehicle and/or vehicle part that was seized from each search. The State is only referencing the vehicles which are either necessary to explain the necessity for additional searches or were the subject of the conviction.

Code Ann. §63-25-5(3)(A), specifically a white Chevrolet rollback VIN 1GDJC34KOME509051; Count III - possession of stolen property in violation of Miss. Code Ann. §97-17-70, specifically a 2001 gold Chevrolet extended cab truck VIN 2GCEC19T611247089; and Count IV- possession of a vehicle with an altered VIN in violation of Miss. Code Ann. §63-25-5(3)(A), specifically a 2005 gray Chevrolet 4X4 truck VIN 1GCHK290656E162241. (Record p. 1-3,59-60, and 74). The jury found him guilty of Count II but a mistrial was declared as to the remaining counts because the jury was unable to reach a unanimous verdict. (Record p. 106-09). Lawson was sentenced as habitual offender under Miss. Code Ann. §99-19-81 to five years in the custody of the Mississippi Department of Corrections without the possibility of parole or probation. Lawson now appeals from that conviction and sentence.

SUMMARY OF THE ARGUMENT

This Court should affirm Henry Lawson’s conviction and sentence as there were no reversible errors committed during his trial. The trial court did not abuse its discretion in denying Lawson’s motion to exclude as there was a warrant signed by a magistrate prior to the initial search of his property. Additionally, Lawson was properly sentenced as a habitual offender pursuant to Miss. Code Ann. §99-19-81 and there was sufficient evidence to support the verdict.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE APPELLANT’S MOTION TO EXCLUDE EVIDENCE AND TESTIMONY.

Lawson first argues that “the trial court erred in denying [his] Motion to Exclude Evidence and Testimony.” (Appellant’s Brief p. 6). The standard of review for the admission or exclusion of evidence is abuse of discretion. *Flake v. State*, 948 So.2d 493, 496 (Miss. Ct. App. 2007) (citing *Stallworth v. State*, 797 So.2d 905, 908 (Miss.2001)). The record in this case shows that the trial

court did not abuse its discretion in denying Lawson's motion to exclude.

The motion was presented on the grounds that the warrant presented to Lawson at the time of the 2007 search was unsigned and on the grounds that Lawson only had control over the home itself and not any of the surrounding property. (Transcript p. 29-30). During the hearing, Lawson testified that the officers presented him with a warrant. (Transcript p. 6-7). He then testified as follows:

- Q: Okay. I'm going to show you a document. *Mr. Lawson, you cannot read; is that correct?*
- A: *No, unh-unh.*
- Q: Okay. But can you recognize a document in its form?
- A: Yeah.
- Q: Okay. I'm going to show you a document. Does this appear to be the document that you were presented with on the day your home was searched?
- A: Yes, sir.
- Q: Okay. And I notice the document was not signed. Was it signed on the day you were - - it was presented to you?
- A: No, sir.
- Q: Is this an accurate copy of the document that was given to you on that day?
- A: Yes, sir, *looks like it.*

(Transcript p. 6-7) (*emphasis added*). A copy of an unsigned warrant was received as Defendant's Exhibit 2. (Transcript p. 7). Later during Sheriff Randy Tolar's testimony, a signed search warrant was received as State's Exhibit 4 and Sheriff Tolar stated that it was "the actual search warrant that [he] executed on May the 31st of 2007 at the residence and shop of Henry Lawson." (Transcript p. 17). He confirmed that Judge Bill Sartain signed the warrant. (Transcript p. 17).

On appeal, Lawson argues that prior to the search, officers should have obtained a warrant from a neutral and detached magistrate as evidenced by a magistrate's signature on a warrant but failed to do so as evidenced by the unsigned warrant placed into evidence as Exhibit 2. (Appellant's Brief p. 6). However, the State provided a copy of the signed warrant as well testimony that the warrant was signed by Judge Sartain prior to the search. (Transcript p. 17 and State's Exhibit 4).

A copy of an unsigned warrant does not establish that a proper warrant was not obtained prior to the search. *See McCommon v. State*, 467 So.2d 940, 943 (Miss. 1985). This is especially true since Lawson was unable to positively identify the unsigned warrant as the one he was presented with at the time of the search. Furthermore, the trial court found that a proper warrant was obtained and “a trial court's findings of fact are not disturbed on appeal absent a finding that the ‘trial judge applied an incorrect legal standard, committed manifest error, or made a decision contrary to the overwhelming weight of the evidence.’” *Simmons v. State*, 805 So.2d 452, 482 (Miss.2001) (quoting *Taylor v. State*, 733 So.2d 251, 255 (Miss.1999)).

Lawson also argues that he “only controlled the property which was indicated to be his home” and that he “was not in control of the shop or any other areas because of his health.” (Appellant’s Brief p. 7). The warrant described the area to be searched as “49 CR 7149 Booneville, MS 38829 and any and all sheds, vehicles, and curtilage thereto.” (State’s Exhibit 4). The warrant further indicated that this area was occupied by “Henry Lawson and persons unknown.” (State’s Exhibit 4). Whether or not Lawson controlled the area does not affect the validity of the warrant. His claim that the area was not in his control could be, and was, used as a defense to the crimes for which he was charged.

As such, the record does not show that the trial court abused its discretion in denying the motion to exclude. This issue is without merit.

II. THE TRIAL COURT DID NOT ERR IN GRANTING THE STATE’S MOTION TO AMEND THE INDICTMENT TO REFLECT THE APPELLANT’S HABITUAL OFFENDER STATUS.

Lawson next argues that “the trial court erred in granting the State’s Motion to Amend Indictment.” (Appellant’s Brief p. 9). Prior to trial, the State moved to amend the indictment to reflect Lawson’s status as a habitual offender under Miss. Code Ann. §99-19-81. (Transcript p. 34).

A hearing was held the day before trial during which the State presented three court documents from the United States District Court of the Northern District of Mississippi. (State's Exhibits 8, 9, and 10). State's Exhibit 8 is a judgment entered December 7, 1990 in Case Number CRE89-70-B reflecting that Lawson pled guilty to possession of a stolen motor vehicle and possession with intent to sell stolen motor vehicle with the VIN removed in violation of sections 2313 and 2321, Title 18, United States Code. (State's Exhibit 8). The judgment further reflects that three year sentences for each of the four counts were imposed. (State's Exhibit 8). State's Exhibit 9 is a judgment entered on December 7, 1990 in Case Number CRE-90-47-B reflecting that Lawson pled guilty to conspiracy to steal and possess goods from an interstate shipment of freight and receipt and possession of goods from an interstate shipment of freight in violation of sections 511(a), 659 and 2, Title 18, United States Code. (State's Exhibit 9). The judgment indicates that Lawson was sentenced to three years for each count. (State's Exhibit 9). State's Exhibit 10 is a judgment entered December 7, 1990 in Case Number CRE90-48-B showing that Lawson pled guilty to removing, abliterating, tampering with, and altering a VIN plate, in violation of section 511(a), Title 18, United States Code. (State's Exhibit 10). The judgment also shows that Lawson was placed on probation for a period of five years. (State's Exhibit 10). At the conclusion of the hearing, the trial court allowed the amendment. (Transcript p. 38).

A trial court's "decision to allow an indictment to be amended is a question of law" and therefore should "receive a de novo review." *Powell v. State*, 80 So.3d 849, 852 (Miss. Ct. App. 2012). On appeal, Lawson first asserts that "the State has not shown that the charges arose out of separate incidents at different times as required by the statute." (Appellant's Brief p. 9). However, Lawson did not object to the amendment on these grounds. He only objected based on the timing of the motion. (Transcript p. 37-38). An objection on one grounds waives an objection on all other

grounds. *DeSalvo v. State*, 776 So.2d 704, 710 (Miss. Ct. App. 2000). Additionally, no objection was made at the time of sentencing. (Transcript p. 468-473). Regardless of any procedural bars, Lawson's assertion lacks merit. In making the argument that the State failed to meet its burden, Lawson notes that the sentences on all the counts in the judgments provided "were imposed and ordered at the same time." (Appellant's Brief p. 10). However, as this Court noted in *Davis v. State*, "although these convictions took place on the same day, they were listed in [three] separate cause numbers." 5 So.3d 435, 440-41 (Miss. Ct. App. 2008). The sentences being handed down on the same day is not indicative of the counts arising from the same incident.

Lawson next asserts that "the State should not be allowed to amend to habitual status a day before the trial of the issues." (Appellant's Brief p. 10). In Mississippi, "it is permissible to amend the indictment on the day of the trial and to charge the defendant as a habitual criminal . . . when defense counsel is aware of the State's intentions. . . ." *Jackson v. State*, 943 So.2d 746, 750 (Miss. Ct. App. 2006) (quoting *Forkner v. State*, 902 So.2d 615, 624 (Miss. Ct. App. 2004)). In the case at hand, the State provided certified copies of the judgments to Lawson during discovery making him aware of its intentions. (Transcript p. 37-38). Thus, the amendment was not untimely.

Accordingly, the court did not err in allowing the amendment. This issue is also without merit.

III. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

Finally, Lawson argues that "the trial court erred in denying [his] Motion for Judgment Notwithstanding the Verdict or in the Alternative Motion for New Trial." (Appellant's Brief p. 12). "The inquiry as to sufficiency is whether the evidence shows 'beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a

conviction.”” *Winn v. State*, 127 So.3d 289, 291 (Miss. Ct. App. 2013)(quoting *Bush v. State*, 895 So.2d 836, 843 (¶ 16) (Miss.2005)). “The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* In this case, the record evidences that a rational trier of fact could have found the elements beyond a reasonable doubt.

The jury found Lawson guilty of possessing a vehicle with an altered VIN number in violation of Mississippi Code Annotated §63-25-5(a) which reads as follows:

Any person who buys, disposes, sells, transfers or possesses a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of that motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years and by a fine of not more than Five Thousand Dollars (\$5,000.00).

Lawson was specifically charged with “possessing a vehicle with an altered or mutilated Vehicle Identification Number, being a white Chevrolet rollback [VIN]1GDJC34KOME509051, with the knowledge that said [VIN] of the motor vehicle was altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed.” (Record p. 1-2). The State provided sufficient evidence to support the jury’s finding that Lawson was guilty of this charge.

Sheriff Tolar testified that he found an adhesive boat identification number inside Lawson’s garage/basement and discovered that it was associated with a boat owned by Jeff Sanders of Tupelo. (Transcript p. 144-45 and Exhibits S-16 and S-17). Tupelo Police confirmed that Mr. Sanders had been the victim of a vehicle theft, specifically a white Chevrolet Z-71 4X4 truck. (Transcript p. 145). Sheriff Tolar obtained keys to the stolen truck from Mr. Sanders’s insurance company. (Transcript p. 148-49 and State’s Exhibit 19). He then used those keys to unlock a glove box found in Lawson’s garage/basement as well as a tailgate and lug from a bumper found in Lawson’s garage/basement

which indicated that each of these truck parts were once a part of Mr. Sander's stolen truck. (Transcript p. 149-151, 153 and Exhibits S-21 and S-22). The bed of a white Z-71 4X4 which was consistent with the description of Mr. Sanders's stolen truck was found outside Lawson's house. (Transcript p. 152 and Exhibit S-24). Additionally, Sheriff Tolar testified that a confidential informant indicated that a white rollback truck, which Sheriff Tolar had not only seen on Lawson's property but had also previously seen Lawson driving, was built from a cut truck. (Transcript p. 175-76, 179 and Exhibits S-53 - S-59). The VIN on the rollback truck indicated that the truck should have been a two door standard cab truck while the truck was actually an extended cab. (Transcript p. 178). Also, the VIN indicated that the truck should have been a GMC but the emblems outside the vehicle indicated that the truck was a Chevrolet. (Transcript p. 178). This evidence, coupled with other evidence presented at trial, established that the rollback truck was made from a cut truck which used to belong to Mr. Sanders. Pieces of the truck being found inside Lawson's garage/basement as well as on the property just outside his house established that Lawson possessed the truck. As such, the elements of the crime were proven.

Nonetheless, Lawson argues on appeal that "the State failed to show any criminal intent" on his part. (Appellant's Brief p. 13). However, "intent, being a state of mind, is rarely susceptible of direct proof." *Id.* (quoting *Jones v. State*, 920 So.2d 465, 472 (Miss.2006)). "Instead, it 'ordinarily must be inferred from the acts and conduct of the party and the facts and circumstances attending them.'" *Id.* (quoting *Wales v. State*, 73 So.3d 1113, 1121 (Miss.2011)). The facts and circumstances clearly establish that Lawson possessed the vehicle in question. First, Lawson was seen driving the vehicle. (Transcript p. 179). Second, the tag on the vehicle was registered to Lawson's race car business with the address of his residence. (Transcript p. 179 and Exhibit S-60). Also, parts of the stolen vehicle were found inside Lawson's garage/basement. (Transcript p. 144-45 and 153).

Finally, white paint covered blades which can be used to chop vehicles were found inside Lawson's garage/basement. (Transcript p. 147). Thus, a rational jury could certainly infer that Lawson possessed the vehicle in question.

As there was sufficient evidence to support the verdict, the trial court properly denied Lawson's Motion for JNOV. This issue is also without merit.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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