

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 96-KA-00283 COA

DARRYL HARRIS A/K/A "RANDALL" APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. LEE J. HOWARD

COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RICHARD BURDINE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEAN SMITH VAUGHN

DISTRICT ATTORNEY: ROBERT RUBY

NATURE OF THE CASE: CRIMINAL FELONY

TRIAL COURT DISPOSITION: CONVICTED OF SALE OF COCAINE; SENTENCED TO TWENTY YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY \$10,000 FINE

MANDATE ISSUED: 9/30/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

COLEMAN, J., FOR THE COURT:

A jury in the Circuit Court of Lowndes County found Darryl Harris guilty of the sale of a controlled substance, cocaine, pursuant to which that court sentenced Harris to serve a term of twenty years in the Mississippi Department of Corrections and to pay a \$10,000 fine. Harris has appealed to argue that the jury's verdict of his guilt was against the overwhelming weight of the evidence. We affirm.

I. FACTS

On May 3, 1995, Eddie and Sandra Steele, husband and wife, were working as confidential informants for the Columbus-Metro Narcotics Unit, when they purchased cocaine from Harris and one Stanley Erby. The Steeles concluded this illicit transaction from their pickup truck, which was parked in the parking lot of a service station located on Highway 45 in Columbus. The Steeles had actually targeted another person from whom to buy the cocaine, but while Mrs. Steele was at the pay telephone located at the service station, Erby and Harris drove up in Erby's Cadillac. Either Erby or Harris asked the Steeles if they needed anything, which, of course, they did. After some negotiation about the price of the cocaine, during which Mr. Steele haggled Harris from \$60 to \$40, because "that was all it was worth," Harris delivered the cocaine to Mr. Steele, who sat beneath the wheel of his pickup with Mrs. Steele's sitting on the passenger's side. Steele gave Harris two of the three twenty dollar bills in official funds of the Columbus Police Department which Agent Mike Westbrook had given the Steeles during a pre-buy conference at a nearby hotel room.

Mike Westbrook, an agent with both the Columbus-Metro Narcotics Unit and the Mississippi Bureau of Narcotics, Charlie McVey, also an agent with the Mississippi Bureau of Narcotics, and other law enforcement personnel taped the event from two different locations and monitored who said what during the transaction via a body wire worn by Mr. Steele. The nature of Harris' defense requires no further elaboration of the facts which begot his indictment for his sale of the cocaine to Mr. Steele.

II. TRIAL

Nothing about Harris' trial is remarkable. The State called Agents Westbrook and McVey, Eddie Steele, the cooperating individual, and Grady E. Downy, a forensic scientist who worked in the area of drug identification and who was employed by the Mississippi State Crime Laboratory, to establish the elements of the crime of the sale of the cocaine, a controlled substance, by Harris. The State

played both videotapes of the transaction which Agent McVey and Westbrook had made from different locations near the service station where Harris sold Steele the cocaine.

Harris testified in his own behalf. Harris testified that he was addicted to cocaine and that he had received treatment for his addiction. During the State's cross-examination of Harris, the trial judge granted the State permission to replay one of the videotapes so that it might ask Harris whether he was in fact the individual depicted in the videotape as selling the cocaine to Steele. Harris answered:

I don't know what day it was, but, uh, the guy that was on the video -- he looks like me. Uh, to -- the reason -- the reason I say that is because I wanted to be, you know, on the record that I -- I'm -- I don't want to lie; I just want to tell the truth, but, yes, that was me; that -- that was me.

While Harris rambled during his stint on the witness stand, the gist of his testimony was that he was not a drug dealer, that he kept none of the forty dollars which Steele had given him for the cocaine, that he participated in this sale as a "go-between" for Stanley Erby, in whose Cadillac the two of them had driven to the service station, and that he participated in this sale in the hope that Erby would share a bit of his cocaine with Harris. Harris explained that, as an addict of cocaine, he supported his habit in this fashion without having to resort to stealing others' property to support his habit.

We previously recited the result of the trial.

III. REVIEW AND RESOLUTION OF HARRIS' ONE ISSUE

We quote verbatim from Harris' brief the one issue which he presents for our review and resolution in this case: "Whether the verdict of the jury was against the overwhelming weight of the evidence?"

Harris argues:

The jury's verdict of his guilt "was clearly erroneous and contrary to the overwhelming weight of the evidence that showed that Harris was no more than a hapless victim himself, caught in the grasps of a strong and over-powering drug that forced him into acting as a go-between"

He argues that the Steeles seized the opportunity to use him as "a fall guy."

The law allows Harris' argument to avail him nothing. One who aids or abets another in the offense, such as knowing participation in the completion of a sale or arranging for the sale, can be found guilty of the illegal sale of an unlawful controlled substance. *Williams v. State*, 463 So. 2d 1064, 1066 (Miss. 1985). In *Boone v. State*, 291 So. 2d 182, 184 (Miss. 1974), the Mississippi Supreme Court explained:

[Section 41-29-139(c)(2) of the Mississippi Code of 1972] does not contemplate that the seller must realize a profit in order to be guilty of the sale of a controlled substance. The statute simply says that the crime occurs whenever a controlled substance is transferred or delivered in exchange for remuneration, whether in money or other consideration.

When it reviews a challenge to the weight of the evidence, an appellate court must determine whether the trial court abused its discretion in denying the motion for a new trial. *Taylor v. State*, 672 So. 2d 1246, 1256 (Miss. 1996). This Court "will not reverse the denial of a motion for a new trial 'unless we are convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction and unconscionable injustice.'" *Clark v. State*, 693 So. 2d 927, 931 (Miss. 1997) (quoting *Morgan v. State*, 681 So. 2d 82, 93 (Miss. 1996)).

In this case there was overwhelming evidence, including Harris' admission of participation in the sale during the State's cross-examination of him, from which the jury had little choice but to find Harris guilty. This court finds no "unconscionable injustice" in allowing the jury's verdict of Harris' guilt of the sale of cocaine to stand, and it affirms the trial court's judgment of his guilt of that crime and its sentence of Harris to serve twenty years in the Mississippi Department of Corrections

and to pay a fine of \$10,000.

THE LOWNDES COUNTY CIRCUIT COURT'S JUDGMENT OF THE APPELLANT'S GUILT OF THE SALE OF COCAINE, A CONTROLLED SUBSTANCE, AND ITS SENTENCE OF APPELLANT TO SERVE TWENTY YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF \$10,000 ARE AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LOWNDES COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.