

IN THE COURT OF APPEALS 12/17/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00975 COA

SHERWOOD CUMMINGS A/K/A SHERWOOD

WILLIAM CUMMINGS

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. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: TUNICA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ALLAN D. SHACKELFORD

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

W. GLENN WATTS

DISTRICT ATTORNEY: MELLEN, LAWRENCE Y.,

NATURE OF THE CASE: FELONY: POSSESSION OF COCAINE

TRIAL COURT DISPOSITION: POSSESSION OF A CONTROLLED SUBSTANCE, TO-WIT:

COCAINE: SENTENCED TO 3 YRS; SENTENCE SUSPENDED FOR 2 YRS; SUSPENSION OF SENTENCE TO COMMENCE AFTER SERVING 1 YR; SENTENCE TO RUN CONSECUTIVE TO ANY AND ALL PREVIOUSLY IMPOSED (SEE OTHER RECORD)

BEFORE THOMAS, P.J., KING, AND MCMILLIN, JJ.

KING, J., FOR THE COURT:

Cummings was convicted in the Circuit Court of Tunica County for possessing crack cocaine. Aggrieved, Cummings appeals and contends that the conviction and sentence should be reversed because (1) the contraband was retrieved during an illegal arrest and (2) the jury's verdict was against the overwhelming weight of the evidence. We find no error and affirm the conviction and sentence.

FACTS

On March 10, 1994, Lazzaro drove to the Piggly Wiggly in Tunica County for the purpose of cashing a check. The Defendant was a passenger in the vehicle driven by Lazzaro. The Defendant waited in the car while Lazzaro entered the Piggly Wiggly. A conflict arose between Lazzaro and the manager of the Piggly Wiggly, who refused to cash the check. The manager telephoned the police and sheriff's department and reported this conflict. Lazzaro left the Piggly Wiggly.

Piggly Wiggly's manager told the police that Lazzaro was driving a small white car, which had been damaged and had one broken tail light. The sheriff commanded the officers to detain the occupants of the vehicle for questioning. Officer Lester and Deputy Hargowe located the car, stopped Lazzaro, and requested to see Lazzaro's driver's license.

During the stop, the officers learned that Lazzaro's Nevada driver's license had been suspended. The officer arrested Lazzaro for driving with a suspended driver's license and improper equipment. After Lazzaro had been arrested, the officer asked Cummings to step out of the vehicle. When Cummings stepped out of the vehicle, the officer noticed a crack pipe on the seat between the driver and passenger seats. The officers commenced to search the vehicle and discovered a Winston Lights cigarette packet, which contained six rock-like substances, on the floor of the vehicle near the passenger's seat. Lazzaro and Cummings were arrested and charged with possession of a controlled substance. During the arrests, the officers searched Cummings and discovered a package of Winston Lights cigarettes. The crime lab reported that the rock like substances contained crack cocaine.

The court denied Cumming's motion to suppress the pipe and cocaine, and at trial, Lazzaro testified that the pipe and crack cocaine belonged to Cummings. Cummings denied ownership of the pipe and crack cocaine.

ANALYSIS OF THE ISSUES AND DISCUSSION OF LAW

I.

DID THE TRIAL COURT ERR IN FAILING TO SUPPRESS THE PIPE AND

COCAINE BECAUSE THE EVIDENCE WAS FRUIT OF AN ILLEGAL ARREST?

Cummings argues that the court erred in denying his motion to suppress the cocaine because the cocaine was seized during an illegal arrest. Specifically, Cummings equates the officers' stop and detention of Lazarro's vehicle with an arrest and argues that the detention was illegal because the officers stopped the vehicle pursuant to instructions from the sheriff without there having been the commission of a felony or misdemeanor in the officers' presence.

Under reasonable circumstances, an officer may stop and detain a person to resolve an ambiguous situation without having sufficient knowledge to justify an arrest. *Estes v. State*, 533 So. 2d 437, 441 (Miss. 1988). In addition, a police officer may also stop and detain a person without actually arresting him for investigatory purposes. *Floyd v. State*, 500 So. 2d 989, 992 (Miss. 1986). Lazarro's vehicle was stopped because the officers had been instructed by their superior to stop and detain the occupants of Lazarro's vehicle for questioning concerning the disturbance at the Piggly Wiggly. Stopping and detaining the occupants of a vehicle for questioning is permissible pursuant to the decisions in *Estes* and *Floyd*. Therefore, we find that the stop and detention were within the scope of permissible police conduct.

Notwithstanding the fact that the officers could stop and detain the vehicle for investigatory purposes, we find that the officers were authorized to stop, detain, and arrest Lazarro upon observing the inoperable condition of the vehicle's left tail light. The operation of a vehicle without proper equipment is a misdemeanor. *See* Miss. Code Ann. § 63-7-7 (1972). Police officers may arrest an individual without the necessity of a warrant for misdemeanors committed in their presence. *Id.* § 99-3-7. Thus, the officers were authorized to stop and detain Lazarro's vehicle. This assignment of error lacks merit.

II.

DID THE TRIAL COURT ERR IN DENYING CUMMING'S MOTION FOR NEW TRIAL?

Cummings argues that the trial court erred in denying his motion for a new trial because the verdict of the jury was against the overwhelming weight of the evidence. When this Court considers whether the jury's verdict is against the overwhelming weight of the evidence, it accepts as true all evidence supporting the verdict. *Ellis v. State*, 667 So. 2d 599, 611 (Miss. 1995) (citations omitted). Reversal is warranted only when this Court is convinced there was an abuse of discretion in the circuit court's denial of a new trial. *Id.*

In the instant case, we accept as true the following evidence supporting the jury's verdict: (1)after the arrest of Lazarro, Officer Lester observed a crack pipe lying in the center of the front seat of the vehicle; (2) after discovering the pipe, Officer Lester and Officer Hargowe commenced to search the vehicle, and Officer Hargowe discovered a Winston Lights cigarette package containing white rocks on the floor board of the vehicle on the passenger's side; (3)a crime lab analysis revealed that the white rocks contained crack cocaine; (4)upon a search of Cumming's person the officers discovered a

package of Winston Lights cigarettes; and (5)Lazarro's testimony that Cummings purchased the crack cocaine prior to the stop. Considering the tenor of this evidence, we are not convinced

that the circuit court abused its discretion by denying the motion for new trial. This assignment of error also lacks merit.

In conclusion, we find Cummings' appeal to be lacking in merit. Therefore, we affirm the conviction and sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF TUNICA COUNTY OF CONVICTION OF POSSESSION OF COCAINE AND SENTENCE OF THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH TWO YEARS SUSPENDED, FIVE YEARS PROBATION IS AFFIRMED. SENTENCE IMPOSED SHALL RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS OF THIS APPEAL ARE TAXED TO TUNICA COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.