

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01068 COA

WILLIE L. DAVIS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN L. HATCHER

COURT FROM WHICH APPEALED: CIRCUIT COURT OF COAHOMA COUNTY

ATTORNEY FOR APPELLANT:

STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEWITT ALLRED

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL - OBTAINING A CONTROLLED SUBSTANCE BY
MISREPRESENTATION

TRIAL COURT DISPOSITION: SENTENCED TO TEN YEARS IN THE CUSTODY OF THE
MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

PER CURIAM:

Willie L. Davis was convicted of obtaining a controlled substance by misrepresentation and, as a habitual offender, sentenced to serve ten years in the custody of the Mississippi Department of Corrections. On appeal, Davis contends that the verdict rendered by the jury was against the overwhelming weight of the evidence, and that the trial court erred in failing to grant his motion for a continuance.

FACTS

The evidence presented by the State showed that on May 24, 1994, Sammy Chow, a pharmacist in Clarksdale, Mississippi, received a call-in prescription for the drug Lorcet Plus for an individual named Mary Pickett. The call was made by someone representing herself to be a nurse in Dr. Robert D. Miller's office. Doubting the legitimacy of the prescription order because of discrepancies in the information provided by the caller, Chow alerted the Clarksdale Police Department, who dispatched an officer to the scene. Soon after the prescription was phoned in, Davis arrived at the pharmacy and stated that he was to pick up a prescription for "Mary Pickett." The police officer arrested Davis after Davis had received the prescription and paid Chow. At trial, Dr. Miller testified that he did not write the prescription in question and that he had no patient named Mary Pickett.

ANALYSIS

Although Davis' assignment of error is not clear on this point, he is apparently concerned with both the weight and the sufficiency of the evidence. Accordingly, we have examined the sufficiency of the evidence supporting the trial court's denial of Davis' motion for directed verdict and the weight of the evidence supporting the denial of his motion for new trial. We find that the trial court was correct in denying Davis' motion for directed verdict. In reviewing this ruling, we give the State the benefit of all favorable inferences and then examine the evidence to be sure it supports the verdict beyond a reasonable doubt. *Pierre v. State*, 607 So. 2d 43, 54 (Miss. 1992). We will not reverse unless we conclude that no reasonable hypothetical juror could have found Davis guilty. *Ross v. State*, 601 So. 2d 872, 874 (Miss. 1992). In reviewing the evidence in this case, we find it to be sufficient to support a verdict of guilty beyond a reasonable doubt. Therefore, we find no error in the denial of the motion for directed verdict.

When deciding whether the verdict is against the overwhelming weight of the evidence, we must accept as true all the evidence supporting the State's position, as well as all reasonable inferences flowing therefrom, in the light most favorable to the State. *Britt v. State*, 520 So. 2d 1377, 1379 (Miss. 1988). Considering this standard, and after reviewing the record, we find that the weight of the evidence supports a verdict of guilty. Interestingly, at trial Davis declined to put on any proof, leaving only the presumption of his innocence to weigh against the evidence produced by the State. Therefore, we find that the trial court did not abuse its discretion in denying Davis' motion for new

trial.

Regarding the propriety of the trial court's denial of Davis' motion for a continuance, it is well settled that a trial court is vested with broad discretion in the matter of granting or denying continuances. *Lambert v. State*, 518 So. 2d 621, 623 (Miss. 1987). Davis, a diabetic, contends that the continuance he requested was necessary because he was "unable" to testify in his own defense, because he allegedly had not received his insulin injection the morning of trial. However, testimony received by the court from a jailer at the Coahoma County jail indicated that Davis had indeed received his insulin injection on the morning in question. Additionally, Dr. P. W. Hill, the jail doctor, stated that even if Davis had not received his medication the morning of trial, it would be several days before any adverse effects would occur. The record clearly shows that Davis was given an opportunity at trial to take the stand and testify in his own defense, had he chosen to do so. Furthermore, it is also clear from the record that Davis' motion for a continuance was merely a ploy

to delay the proceedings. This issue is without merit, and the judgment of the Circuit Court of Coahoma County is affirmed.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF OBTAINING A CONTROLLED SUBSTANCE BY MISREPRESENTATION AND SENTENCE OF TEN (10) YEARS IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER IS AFFIRMED. SENTENCE IMPOSED SHALL RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS ARE ASSESSED AGAINST COAHOMA COUNTY.

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