

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00427 COA**

SADIE BLACK A/K/A SADIE R. BLACK

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

DATE OF JUDGMENT:	03/18/96
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	NESHOBA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES M. MARS II
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED
DISTRICT ATTORNEY:	KEN TURNER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	SALE OF COCAINE: SENTENCED TO SERVE A TERM OF 15 YRS IN THE MDOC & PAY A FINE OF \$5,000
DISPOSITION:	AFFIRMED - 10/21/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/12/97

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

THOMAS, P.J., FOR THE COURT:

Sadie R. Black appeals her conviction of sale of cocaine raising the following issues as error:

I. WHETHER THE DEFENDANT WAS PROPERLY IDENTIFIED AS THE PERPETRATOR.

II. WHETHER THE STATE PROVED THE CHAIN OF CUSTODY OF THE COCAINE RECEIVED AS EVIDENCE.

III. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Finding no error, we affirm.

FACTS

On October 28, 1994, Narcotics Agents C.J. Cranford, Stanley Wash, Louis Hawkins, City of Philadelphia Police Officer Keith Stanley, and a confidential informant named Ronnie Reed met in Neshoba County, Mississippi to discuss plans to conduct an undercover drug investigation in Philadelphia, Mississippi. Agent Cranford was provided a body transmitter and state funds. Cranford and the confidential informant traveled to an area commonly referred to as "the hill." Agents Knight, Hawkins, and Wash, along with Officer Stanley, provided surveillance in their vehicle by listening to the transmissions over the body transmitter, but were unable to see the transaction.

The confidential informant drove, with Agent Cranford as passenger, to "the hill." The informant parked and talked to some individuals that were standing in the area. Thereafter, Sadie R. Black got into the vehicle. Cranford asked Black if he could purchase "fifty." She informed him that she did not have any on her but instructed the informant to drive down the street, and she would tell them where to go. They drove to Black's mother's house located on 255 Adams Street in Philadelphia. Upon arrival, Black went inside the house and returned with three rocks, which she handed to the informant, who thereafter gave them to Cranford. Cranford gave Black the fifty dollars.

Cranford and the informant then proceeded to a post-buy meeting. Cranford handed over the three rocks to Agent Knight. Cranford watched Knight put the three rocks into an evidence bag, which Cranford initialed.

On cross-examination, Cranford testified that he could not have been with Black for over twenty minutes and that the sale had occurred approximately a year and a half prior to the date of the trial. Cranford testified that the only thing he remembered Black wearing that night was a black fuzzy hat. He stated that the only other time he had seen Black was at a local convenience store, the day before the buy.

Agent Knight testified that he was present at the pre-buy meeting. He stated that he searched the confidential informant and his vehicle. Knight followed the vehicle driven by the informant and was able to hear most of the transaction, but was unable to see the transaction. He was present at the post-buy meeting, where he received three rocks from Cranford. Knight testified that he took the three rocks to the East Mississippi Crime Lab in Meridian.

Patricia L. Barnes, a forensic scientist specializing in drug analysis who is presently employed with the Jackson Police Department, testified that she had analyzed the three rocks and determined that they were cocaine. On cross-examination, Barnes testified that the evidence was probably received at the crime lab by a lady named Marie Pace. Barnes testified that she had no personal knowledge of what was done with the evidence between the time that it was submitted and the time it was tested, but that all evidence was kept in a vault in the crime lab.

Wanda Black Clemons, the sister of Black, was first to testify for the defense. She testified that Black

had never owned a fuzzy black hat, as the one described by Agent Cranford. She stated that no one who resided at 255 Adams Street sold cocaine.

The defense next called Wydell Fulton. Fulton testified that he had lived at 255 Adams Street and was Black's boyfriend. He stated that he had never seen Black wear a fuzzy black hat. Fulton testified that he and Black resided at an address different from the 255 Adams Street address on October 28, 1994, the date of the sale of the cocaine.

The defense recalled Officer Keith Stanley. Stanley testified that when the confidential informant, Ronnie Reed, was approached in October 1994, Reed was charged with a felony. Stanley stated that the police department worked out a deal with Reed where he would not be prosecuted on the felony charge and that the charge would be remanded to the files.

Sadie R. Black testified on her own behalf. She testified that she did not know Agent Cranford, that she did not recall seeing him on October 28, 1994, that she did not own a fuzzy black hat, and that she did not sell Cranford or anybody else cocaine that day.

The jury returned a verdict against Black of guilty of sale of cocaine.

ANALYSIS

I. WHETHER THE DEFENDANT WAS PROPERLY IDENTIFIED AS THE PERPETRATOR.

Black argues that the evidence was insufficient for the jury to find her guilty beyond a reasonable doubt because no witness made an in-court identification of her as the seller of the drugs. As authority, Black cites the case of *Green v. State*, 377 So. 2d 618 (Miss. 1979), which deals with the suggestiveness of a pre-trial identification. Here, since there was no pre-trial identification, the *Green* case is inapplicable.

Other jurisdictions have held that the failure of a witness to identify a defendant goes to the weight of the testimony and not the admissibility. *Adail v. Wyrick*, 711 F.2d 99, 102 (8th Cir. 1983); *Sherman v. State*, 485 S.E.2d 557, 558 (Ga. Ct. App. 1997); *People v. Teffertiller*, 510 N.E.2d 1322, 1324 (Ill. App. Ct. 1987); *State v. Green*, 666 So. 2d 1302, 1306 (La. Ct. App. 1996); *People v. Durham*, 653 N.Y.S.2d 391, 392 (N.Y. App. Div. 1997); *Cooks v. State*, 844 S.W.2d 697, 732 (Tex Crim. App. 1992). In our sister state Tennessee, an in-court identification is not required as long as the jury can reasonably determine or infer the defendant's identity from the testimony of witnesses. *State v. Phillips*, 728 S.W.2d 21, 25 (Tenn. Crim. App. 1986).

In the present case, the State presented sufficient evidence to support the jury's verdict. Agent Cranford testified that Sadie Black got into the car with him, and they discussed the drug sale and drove to Black's mother's house. Black gave them directions to 255 Adams Street. Cranford paid Black fifty dollars and received cocaine from her in exchange. Officer Keith Stanley testified that he was familiar with 255 Adams Street and had seen Black there on several occasions. Black herself testified that she lived with her mother at 255 Adams Street. Also, Cranford testified that he had spent approximately fifteen minutes talking with Black on the day prior to the sale at the Spaceway store. The jury determined that the State had proven Black's identity beyond a reasonable doubt.

Although it would have been better to have Black personally identified in court by the State's witnesses, such was not fatal to the State's case. There was sufficient evidence to support the jury's verdict.

II. WHETHER THE STATE PROVED THE CHAIN OF CUSTODY OF THE COCAINE RECEIVED AS EVIDENCE.

Black argues that the State failed to prove the completed chain-of-custody of the crack cocaine. The crack cocaine was delivered by Agent Cranford to Agent Glen Knight. Knight then delivered the crack to a person working at the Mississippi Crime Lab at Meridian, Mississippi. Later the crack was tested by Ms. Barnes and picked up by Knight shortly before trial. Black complains that the chain-of-custody was incomplete because the State presented no witnesses to testify regarding the storage of the crack from October 31, 1994 until the date of its testing on June 2, 1995, and further presented no evidence regarding its whereabouts following the testing until it was picked up by Agent Knight shortly before trial. First we must note that Black is incorrect in her assertion that no witness testified regarding the storage of the crack from when it was taken to the crime lab and when it was tested. Ms. Barnes testified that all evidence is kept in a vault in the crime lab.

In *Butler v. State*, 592 So. 2d 983, 985 (Miss. 1991), the Mississippi Supreme Court stated that the proponent is not required to produce every person who handled evidence or to account for every moment of the day, but the proponent must satisfy the trial court that there is no reasonable inference of tampering or substitution. *See also Nalls v. State*, 651 So. 2d 1074, 1077 (Miss. 1995). Since there was no indication of probable substitution or tampering, we hold that the evidence had an unbroken chain-of-custody and was therefore admissible.

III. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In her last assignment of error, Black argues that the verdict in this case was against the overwhelming weight of the evidence. The evidence presented by the State was more than sufficient to allow the jury to pass judgment. Our scope of review is limited and has been stated many times before and need not be restated here. Suffice to say that the evidence here was sufficient to convict. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987); *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987). Black's last assignment has no merit.

THE JUDGMENT OF THE NESHOPA COUNTY CIRCUIT COURT OF CONVICTION OF SALE OF COCAINE AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF \$5,000 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO NESHOPA COUNTY.

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