IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00196 COA

DWAYNE ANTHONY GATES **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:	01/25/95
TRIAL JUDGE:	HON. JERRY OWEN TERRY SR.
COURT FROM WHICH APPEALED:	HANCOCK COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	HERMAN F. COX
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	TRANSFER OF A CONTROLLED SUBSTANCE TO-WIT: COCAINE SENTENCED TO SERVE 20 YRS IN THE CUSTODY OF MDOC AND THAT DEFENDANT PAY A FINE OF $10,000
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	2/5/98
MANDATE ISSUED:	4/15/98

BEFORE McMILLIN, P.J., HINKEBEIN, AND SOUTHWICK, JJ.

HINKEBEIN, J., FOR THE COURT:

Dwayne Anthony Gates was convicted in the Hancock County Circuit Court for the sale of cocaine. For his offense, Gates was sentenced to a term of twenty years in the custody of the Mississippi Department of Corrections. Aggrieved by his conviction, Gates appeals to this court on the following grounds:

I. THE TRIAL COURT ERRED IN ALLOWING INTO EVIDENCE STATE'S EXHIBIT #2, THE CONTROLLED SUBSTANCE.

II. THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR

DIRECTED VERDICT/REQUEST FOR A PEREMPTORY INSTRUCTION AND IN OVERRULING THE DEFENDANT'S MOTION FOR JNOV OR IN THE ALTERNATIVE, NEW TRIAL.

III. THE TRIAL COURT ERRED IN REFUSING DEFENSE INSTRUCTION D-1, A REQUEST FOR A PEREMPTORY INSTRUCTION.

IV. THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-1.

V. THE TRIAL COURT ERRED IN ALLOWING INTO EVIDENCE STATE'S EXHIBIT #4.

VI. THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S MOTION IN LIMINE THEREBY NOT REQUIRING PRODUCTION OF INFORMATION CONCERNING THE DATES OF KESTER HALL'S PRIOR FELONY CONVICTIONS AND IN NOT ALLOWING COUNSEL FOR THE DEFENDANT TO CROSS-EXAMINE HALL ABOUT SUCH.

VII. THE TRIAL COURT ERRED IN ALLOWING JAMES SINGLETON TO TESTIFY TO CERTAIN MATTERS AS A REBUTTAL WITNESS FOR THE STATE.

Holding these assignments of error to be without merit, we affirm the judgment of the circuit court.

FACTS

On March 2, 1994 the Waveland, Mississippi Police Department commenced an operation designed to apprehend participants in the local drug trade. Chief of Police Jimmy Varnell and Detective David Stepro wired the mobile home of a confidential informant, Kester Hall, with a listening device. The officers searched the premises as well as Hall, finding no drugs. Then Hall left on his bicycle in search of someone from whom he might purchase narcotics. Shortly thereafter he returned. The officers scrambled into a back room as Dwayne Anthony Gates' truck, in which Hall was then a passenger, pulled into the drive. Gates and Hall entered the mobile home and engaged in a brief verbal exchange. As Varnell and Stepro monitored the conversation via their surveillance equipment, they heard Hall utter a phrase designated to indicate that a sale had taken place. When the officers burst into the room, Gates exited the mobile home and fled into a nearby wooded area. Stepro followed in an unsuccessful attempt at capture. Meanwhile, Varnell spotted a package containing crack cocaine lying on a stool and immediately placed it in an evidence bag. After Gates eventually turned himself in, he was charged with and convicted of distributing cocaine.

ANALYSIS

I. THE TRIAL COURT ERRED IN ALLOWING INTO EVIDENCE STATE'S EXHIBIT #2, THE CONTROLLED SUBSTANCE.

Gates begins by suggesting that the State failed to prove the cocaine produced at trial and the substance Hall purchased from Gates were one and the same. He argues that Hall's failure to identify the exhibit necessitated its exclusion from evidence. In turn, the State contends that the trial court's admission of the evidence was proper since there was no indication of tampering or substitution. We

agree with the State.

Our Supreme Court's recent decision in *Butler v. State*, 592 So. 2d 983 (Miss. 1991), cited by neither of the parties, dictates the outcome of the case. Butler sold cocaine to a confidential informant while police monitored the transaction via radio. Upon leaving Butler, the informant immediately turned over the narcotics to the officers. But during the subsequent trial, the informant did not identify the cocaine as he was unable to distinguish Butler's packages from those of other sources targeted during the operation. *Butler*, 592 So. 2d at 984. Nevertheless, the Mississippi Supreme Court affirmed the decision to admit the cocaine into evidence. *Id.* at 987. As the court explained, rule 901(a) of the Mississippi Rules of Evidence requires proof supporting a finding that the proffered item is what it is said to be. *Id.* As such, receipt of the physical object is allowed if all of the evidence, giving the prosecution the benefit of all favorable inferences that may reasonably be drawn therefrom, is such that reasonable and fair-minded jurors, having in mind the beyond-a-reasonable-doubt burden of proof standard, might in the exercise of impartial judgment, reach different conclusions as whether it is what it is propounded to be. *Id.* at 985-6. This inquiry is influenced in large part by whether or not there are indications of tampering with or substitution of evidence. *Id.* (citations omitted). We will reverse only where the trial court has abused its discretion so as to prejudice the defendant. *Id.*

Therefore, the question is whether the evidence, viewed under the above standards, supports a jury finding that the cocaine introduced was the cocaine Hall previously bought from Gates. At trial, the officers recalled searching Hall before he departed to ensure he had no drugs in his possession. They also conducted a thorough search of his mobile home, finding no drugs on the premises. Hall testified to purchasing cocaine from Gates upon their return and observing Gates place the package on the nearby stool. The officers meanwhile monitored the transaction from elsewhere in the home. Seconds after completion of the exchange, the detectives burst into the room. Chief Varnell immediately saw the cocaine and took possession shortly thereafter. On these facts, reasonable and fair minded jurors might well have found that the cocaine produced at trial was the same cocaine sold by Gates to Hall. Because the evidence was identified with sufficient certainty, this assignment of error is without merit.

> II. THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT/REQUEST FOR A PEREMPTORY INSTRUCTION AND IN OVERRULING THE DEFENDANT'S MOTION FOR JNOV OR IN THE ALTERNATIVE, A NEW TRIAL.

Gates further contends that had the cocaine been excluded from evidence as suggested, the prosecution would have necessarily been unable to prove each element of the crime charged. In response, the State reiterates its argument as described above. Gates then offers an alternative basis for the same contention, citing the prosecution's alleged failure to make a sufficient showing that cocaine was in fact a Schedule II controlled substance as charged in the indictment. Here, the State argues that the prosecution made the minimal showing required where the applicable statute clearly lists cocaine as such. We agree with the State.

Both motions for directed verdict/peremptory instruction and motions for JNOV challenge the legal sufficiency of the evidence. *Noe v. State*, 616 So. 2d 298, 301 (Miss. 1993) (stating that a motion for directed verdict tests legal sufficiency of the evidence); *McClain v. State*, 625 So. 2d 774, 778 (Miss.

1993) (stating the same test for motion for judgment of acquittal notwithstanding). *See also Strong v. State*, 600 So. 2d 199, 201 (Miss. 1992) (stating that the trial judge is bound by the same law whether addressing a motion for directed verdict or addressing a request for a peremptory instruction). Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling only on the last occasion that the challenge was made in the trial court. *McClain*, 625 So. 2d at 778. In this instance, that challenge occurred when the circuit court denied Gates' motion for JNOV/new trial. *See e.g., Wetz v. State*, 503 So. 2d 803, 807-8 (Miss. 1987).

Where a defendant moves for JNOV, the trial court considers all of the credible evidence consistent with the defendant's guilt, giving the prosecution the benefit of all favorable inferences that may be reasonably drawn from this evidence. *McClain*, 625 So. 2d at 778. We are authorized to reverse on appeal only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could not find the accused guilty. *Wetz*, 503 So. 2d at 808 n.3.

As distinguished from the motion for JNOV (as well as a motion for directed verdict), a motion for new trial requests that the jury's verdict be vacated on grounds related to the weight of the evidence, not its sufficiency. *May v. State*, 460 So. 2d 778, 781 (Miss. 1985). The jury bears sole responsibility for determining the weight and credibility of evidence. *Id.* Therefore, a new trial is appropriate only where a verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction unconscionable injustice. *Wetz*, 503 So. 2d at 812. Such a determination lies within the trial court's sound discretion. *McClain*, 625 So. 2d at 778. We will reverse and order a new trial only if, accepting as true all evidence favorable to the prosecution, we determine that the trial court abused that discretion. *Id.*

In this case, Gates' second assignment of error relies heavily on our resolution of his first. Initially he reiterates his argument discussed above, arguing that without the admission of the cocaine, the prosecution would have been unable to prove the crime charged. As stated, the trial court acted within its discretion in allowing the cocaine into evidence. Accordingly, this facet of his contention lacks merit.

Gates also argues that the prosecution was required but failed to prove that the substance he sold was in fact a Schedule II controlled substance. In support of his assertion, Gates provides this court with clearly distinguishable extra-jurisdictional authorities while ignoring applicable Mississippi case law. In *Hart v. State*, 639 So. 2d 1313 (Miss. 1994), the Mississippi Supreme Court entertained and rejected Gates' argument, opting instead to take a different approach to the issue. The court reasoned that where a statute expressly deems a particular substance as controlled, and the prosecution provides proof of the sale and delivery of that substance, then a sufficient showing has been made by which the jury may reasonably infer the transfer of a controlled substance. *Hart*, 639 So. 2d 1313-19 (Miss. 1994)(citing *Thomas v. State*, 377 So. 2d 593, 594 (Miss. 1979)).

In the case sub judice, section 41-29-115(a)(A)(4) of the Mississippi Code specifically lists cocaine as a Schedule II controlled substance. At trial, a forensic chemist specializing in drug analysis confirmed that the substance admitted as State's exhibit # 2 was in fact cocaine. Therefore, this assignment of error is without merit.

III. THE TRIAL COURT ERRED IN REFUSING DEFENSE INSTRUCTION D-1, A REQUEST FOR A PEREMPTORY INSTRUCTION.

In his third assignment of error, Gates presents no additional issue for our consideration. Rather, he merely reiterates his prior claims which we have already addressed. Therefore, for efficiency's sake, we decline his invitation to discuss his concerns again. This assignment of error is without merit.

VI. THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-1.

Jury instruction S-1 reads as follows:

> The Court instructs the Jury that the defendant, DWAYNE ANTHONY GATES, has been charged by an indictment with the crime of sale or transfer of a Controlled Substance, Cocaine. If you find from the evidence beyond a reasonable doubt that:
>
> 1. the defendant, DWAYNE ANTHONY GATES, did wilfully, unlawfully, knowingly and feloniously sell or transfer cocaine to Kester Hall; and,
>
> 2. the event occurred on or about March 2, 1994, in Hancock County, Mississippi, then you shall find the Defendant Guilty of Sale or Transfer of a Controlled Substance, Cocaine.
>
> If you find that the Prosecution has failed to prove any one of the above essential elements of the crime of Sale or Transfer of a Controlled Substance, Cocaine, then you shall find the Defendant Not Guilty.

Gates takes issue with the trial court's granting this instruction because it did not require a finding by the jury that cocaine was in fact a Schedule II controlled substance. In essence, he again suggests that the prosecution failed to prove that cocaine was indeed covered by the indictment. As previously explained, this contention is without merit.

V. THE TRIAL COURT ERRED IN ALLOWING INTO EVIDENCE STATE'S EXHIBIT #4.

Next, Gates seems to contend the trial court erred in allowing the recorded transaction into evidence without first requiring the State to establish Hall's consensual participation in the surveillance. Specifically, he makes the unsupported claim that "it was incumbent upon the State to show by direct testimony that the said Kester Hall consented [to the monitoring]." In turn, the State suggests the prosecution below fulfilled this supposed predicate to admission. Because the record discloses an implicit, yet indisputable confirmation contained within Hall's testimony, we agree with the State.

The recorded conversation between Gates and Hall is very brief, largely inaudible, and vague as it discloses only that some exchange of currency took place. On that basis, Gates moved prior to trial to prevent its presentation to the jury. Recognizing the questionable value of the evidence, the prosecution responded by announcing that it did not intend to use the tape. Nevertheless, Gates inexplicably persisted in cross-examining each prosecution witness as to the tape's existence and the manner in which it was made. Understandably, the trial court responded,

> [I]t was wholly improper to question the witnesses concerning a recording knowing full well

> that the State had suggested or agreed that they were not going to use it and that you had moved to suppress it. Now it leaves the jury to the matter of questioning the reasons why such a tape, if there was one, is not offered into evidence suggesting a false impression that there was none, or that there was one and none had been used or offered. So the motion to suppress in its renewed form is overruled. Be [sic]a matter of the State now laying a predicate to offer it into evidence.

On appeal, Gates contends that the prosecution failed to establish such a foundation for admission. But rather than questioning the trial court's determination of relevancy or authentication/identification pursuant to our rules of evidence, he cites only *Everett v. State*, 248 So.2d 439 (Miss. 1971). In *Everett* the Mississippi Supreme Court wrote, "[e]lectronic surveillance does not tread upon the constitutional rights of the Fourth Amendment when the consent of one of the parties is first obtained." *Everett*, at 443 (citing *Lopez v. United States*, 373 U.S. 427 (1963) (stating that no interest protected by the Fourth Amendment is implicated where a government agent, unbeknownst to the defendant, carries equipment to record the defendant's words, and the evidence so gathered is later offered in evidence). *Everett* imposes no affirmative duty upon the prosecution to expressly establish such consent prior to any Fourth Amendment challenge to admissibility. To the contrary, the Mississippi Supreme Court has previously inferred consent to electronic surveillance from knowledge thereof. *Stewart v. Stewart*, 645 So. 2d 1319, 1322 (Miss. 1994) (citing *United States v. Gomez*, 900 F.2d 43 (5th Cir. 1990)).

In accommodating Gates' request for the recording's exclusion, the prosecution concluded its direct examination of Hall without eliciting information regarding the tape. However, Hall did speak of his relationship with the Waveland Police Department. He told the jury that he, not the police officers, initially devised the idea for the "sting" operation. He had concluded that irretrievably severing all ties with the community from which he had been obtaining cocaine was his best hope for escaping his addiction to the drug. He then approached the Waveland Police Department with that notion, inviting the officers into his home so that they might assemble their surveillance equipment.

After being prompted by Gates during cross-examination, Hall referred specifically to the audio recording. He knew the recording equipment was in his home. More precisely, he knew the officers had placed a microphone on a bookshelf near the door. He knew that their intent had been to record any conversation between him and whomever he brought into the home. In fact, he recalled speaking into the microphone as a test for the officers. Subsequently, the trial judge admitted the tape into evidence.

Such determinations of admissibility are largely within the discretion of the trial court. *Johnston v. State*, 567 So. 2d 237, 238 (Miss. 1990) (citing *Hentz v. State*, 542 So. 2d 914, 917 (Miss. 1989)). Therefore, unless the trial judge's discretion is so abused as to prejudice the accused, we are without the authority to reverse the ruling. *Shearer v. State*, 423 So. 2d 824, 826 (Miss. 1982) (citing *Page v. State*, 295 So. 2d 279 (Miss. 1974)). Because Hall's testimony unquestionably establishes his consensual participation in the electronic monitoring of his home, we cannot characterize the admission of the resulting tape as an abuse of discretion. Accordingly, this assignment of error is without merit.

VI. THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S MOTION IN LIMINE

THEREBY NOT REQUIRING PRODUCTION OF INFORMATION CONCERNING THE DATES OF KESTER HALL'S PRIOR FELONY CONVICTIONS AND IN NOT ALLOWING COUNSEL FOR THE DEFENDANT TO CROSS-EXAMINE KESTER HALL ABOUT SUCH.

Gates' next assignment of error actually encompasses two distinct, albeit related, issues. Initially, he claims that the trial court erroneously excluded evidence of Kester Hall's prior convictions, thereby restraining his planned assault on the prosecution witness's credibility. In support of the contention he reiterates his argument below by writing, "Hall is not a defendant who was on trial and whose admission of prior convictions may prejudice him to the jury, but is a central witness for the State and who is the only witness who could attempt to prove the allegations against the defendant." In response, the State explains that the remoteness of the prior offenses precluded their admission. We agree with the State.

Under Mississippi Rule of Evidence 609, a witness may be impeached by either a previous felony conviction or any crime -- felony or misdemeanor -- involving dishonesty. M.R.E. 609(a)(1),(2). Felony convictions are admissible subject to the rule 403 balancing test. M.R.E. 609(a)(1). In contrast, a trial court has "no discretion to prevent introduction, for impeachment purposes, of evidence of prior convictions for crimes involving dishonesty or false statements." *Johnson v. State*, 529 So. 2d 577, 587 (Miss. 1988) (quoting *United States v. Kuecker*, 740 F.2d 496, 502 (7th Cir. 1984)). However, either type of conviction is subject to Mississippi Rule of Evidence 609(b) and is therefore usually too remote and inadmissable if more than 10 years have elapsed since the date of conviction or the date of release from the confinement imposed for the conviction, whichever is the later date. *Johnson*, at 587. Only in extraordinary circumstances, where the trial judge determines that the probative value of the conviction substantially outweighs its prejudicial effect, can such convictions be admitted. *Id.* (citing *United State v. Cathey*, 591 F.2d 268, 275 (5th Cir. 1979)). In other words, where the conviction dates back a decade or more, the proponent of such impeachment evidence bears the heavy burden of rebutting a general presumption against admission. *Johnson*, at 587.

Kester Hall's colorful criminal record reaches back to the early 1960's. However, most of the various offenses listed predate the ten year mark relative to rule 609(b). Gates never specifies on appeal which of Hall's convictions he believes to have been erroneously excluded. But presumably his argument refers to these older convictions because the trial court allowed him to question Hall regarding the rest. Rather than claiming to have overcome the presumption against admission though, he cites case law wherein the time limitation is wholly inapplicable. In *Saucier v. State*, 562 So. 2d 1238 (Miss. 1990), the witness had been paroled from a murder conviction only *five years* prior to trial. *Saucier*, at 1245. And *Bogard v. State*, 624 So. 2d 1313 (Miss. 1993), contains the explicit notation, "the *ten (10) year time limitation* found in 609(b) *is not implicated* in this case." *Bogard*, 1316, n. 1. (emphasis added). These cases are not entirely irrelevant though, as both ultimately affirm the trial court's admissibility determination and therefore serve as implicit reminders of our standard of review. *Saucier* at 1246; *Bogard* at 1317. Because Gates has failed to demonstrate to this court that he has been prejudiced by an abuse of the trial court's discretion, this issue is without merit. *See Parker v. State*, 606 So. 2d 1132, 1137-1138 (Miss. 1982).

Gates continues by complaining of the trial court's failure to compel an expanded search for

additional details of Hall's prior conviction and release dates. The State argues in response that Gates has demonstrated no reversible error in that he fails to cite authority supporting his proposition. Again, we agree with the State.

Prior to trial, Gates asked that the State be required to obtain from Louisiana, where most of Hall's time was served, a certified penitentiary packet. He argued that Hall's less detailed "rap sheet" contained ambiguities as to release dates for certain offenses, thereby making a proper rule 609(b) determination impossible. While his "rap sheet" indeed lacks complete clarity, Hall explained to the court that as to the relevant offenses, he had been released long before the important ten year mark. Upon examining the document, Detective Stepro echoed that testimony. After weighing the limited usefulness of the information against the lengthy delays previously experienced when requesting these packets from sister states, the court denied Gates' request. While we note no obvious error in the court's decision, our analysis proceeds no further because Gates presents for our review only an unsupported and conclusory accusation of wrongdoing.

An appeals court "is under no duty to consider assignments of error when no authority is cited." *Hoops v. State*, 681 So. 2d 521, 526 (Miss. 1996) (citing *Hewlett v. State*, 607 So. 2d 1097, 1106 (Miss. 1992)); *see also Kelly v. State*, 553 So. 2d 517, 520 (Miss. 1989) (stating the court has no obligation to consider argument on appeal imposed where no authority is cited). Clearly "it is the duty of an appellant to provide authority and support of an assignment [of error]," a duty that Gates has failed to fulfill. *Hoops*, 681 So. 2d at 526. Since Gates neither argues this issue in a coherent manner nor cites any authority in support thereof, we decline to consider this issue on appeal. This assignment of error is without merit.

VII. THE TRIAL COURT ERRED IN ALLOWING JAMES SINGLETON TO TESTIFY TO CERTAIN MATTERS AS A REBUTTAL WITNESS FOR THE STATE.

Finally, Gates challenges the prosecution's presentation of James Singleton's testimony during rebuttal. The taped conversation between Hall and Gates contained a brief reference to an individual referred to as "Monty." Neither the prosecution nor the police detectives involved attempted to locate the individual initially, assuming that "Monty" had no knowledge of the circumstances surrounding the incident. But while cross-examining Gates, the prosecution did ask whether he was acquainted with such a person. When Gates responded in the negative, the prosecution then set about locating "Monty." Upon learning that "Monty" and Singleton were one and the same, the State discovered more than expected. As intended, Singleton testified in rebuttal that his nickname was in fact "Monty," and that Gates knew and called him by the name. He then continued, revealing that three days after the incident, Gates had told him about going to Hall's home to sell drugs only to find the police lying in wait.

Gates objects to Singleton's testimony as it relates to their conversation. However, he is inarticulate as to both the basis for his claim of error and the harm allegedly suffered, implying only that he might have structured his defense differently had Singleton testified as part of the State's case-in-chief. In response, the State directs our attention to the applicable standard of review, arguing that a trial court's decision to allow rebuttal testimony over such contentions is discretionary. The State is correct.

The party who has the burden of proof must generally introduce all substantive evidence in his case-

in-chief rather than holding it for use in rebuttal. *Roney v. State*, 167 Miss. 827, 827, 150 So. 774, 775 (1933). However, where there is a doubt as to whether evidence is properly case-in-chief or rebuttal evidence, then the evidence may be properly employed in rebuttal if:

> (1) its reception will not consume so much additional time as to give undue weight or impractical probative force to the evidence so received in rebuttal, and (2) the opposite party would be substantially well prepared to meet it by surrebuttal as if the testimony had been offered in chief, and (3) the opposite party upon request therefor is given the opportunity to reply by surrebuttal.

Smith v. State, 646 So. 2d 538, 543-4 (Miss. 1994) (quoting *Riley v. State*, 248 Miss. 177, 186, 157 So. 2d 381, 385 (1963)). As with any determination of admissibility, the decision ultimately lies within the trial court's discretion. *Wakefield v. Puckett*, 584 So. 2d 1266, 1268 (Miss. 1991).

Gates, on the other hand, cites only *Hosford v. State*, 525 So. 2d 789, 791 (Miss. 1988). In *Hosford*, the prosecution waited until the testimony of an accused child molester was presented to mention complaints about the defendant's mistreatment of his stepchildren and wife. Upon the defendant's denials, the State produced a county welfare investigator who confirmed reports of violence in the household. The Mississippi Supreme Court deemed the evidence "manifestly incompetent at any stage of the trial proceedings" because it concerned unrelated yet "extremely prejudicial" acts having no probative value on the issue before the jury. Even worse, the prosecutor "had no evidentiary basis to ask" the questions which eventually dictated reversal. *Id.*at 791-2.

In Gates' case, as distinguished from *Hosford*, the central issue before the jury was his purpose in entering the home. The State naturally attempted to prove from the outset that he was there to sell cocaine; not to pay Hall for repairs made to his vehicle as claimed. Accordingly, this case more resembles *Powell v. State*, 662 So.2d 1095 (Miss. 1995). In *Powell* the state attempted throughout its case-in-chief to establish whether or not the victim was armed. The defendant subsequently claimed self-defense, and a rebuttal witness then testified that the victim in fact had no gun. *Powell*, at 1098. The Mississippi Supreme Court ultimately affirmed, citing a traditionally liberal application of the rebuttal evidence rule and an accompanying respect for associated trial court decisions. *Id.*Likewise, we find no abuse of discretion in the case at hand.

Sprinkled throughout Gates' argument are references to the surprise nature of the State's maneuver. He implies that his ability to impeach Singleton was unnecessarily hindered because the prosecution made no earlier efforts to locate "Monty" despite knowledge of his existence. Again, *Powell* provides guidance. There, the rebuttal testimony came from a witness that the defense was unaware of until the third day of the trial. *Id.* This failed to alter the result, however, since the importance of the evidence only became apparent at the time and the defense was thereafter promptly informed of the prosecution's intent to call the witness. *Id.* (citing *Smith*, 646 So.2d at 544). Because Gates neither cites authority for his assertions nor distinguishes his case from that of *Powell*, we decline to consider the issue further. *See Hoops*, at 526; *Kelly*, at 520 (impressing no duty to consider assignments of error when no authority is cited). Accordingly, this assignment of error is also without merit.

THE JUDGMENT OF THE HANCOCK COUNTY CIRCUIT COURT OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF $10,000 IS

AFFIRMED. COSTS ARE ASSESSED AGAINST THE APPELLANT.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.