

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00789 COA**

HATTIE DANNER A/K/A HATTIE RUTH DANNER

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:	07/18/96
TRIAL JUDGE:	HON. ANDREW CLEVELAND BAKER
COURT FROM WHICH APPEALED:	PANOLA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	AZKI SHAH
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	ROBERT J. KELLY
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT'S I & CT II SALE OF A CONTROLLED SUBSTANCE, TO-WIT COCAINE: CT I SENTENCED TO 10 YRS IN THE MDOC LAST 6 YRS SUSPENDED & PAY A FINE \$1, 000; CT II SERVE A TERM OF 10 YRS IN THE MDOC SENTENCE SUSPENDED & CONSECUTIVE TO CT I & PAY \$1,000
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	1/5/98
CERTIORARI FILED:	3/2/98
MANDATE ISSUED:	5/14/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

PAYNE, J., FOR THE COURT:

Hattie Ruth Danner was convicted of two counts of sale of cocaine. The trial court sentenced Danner in count I to serve a term of ten years with the last six years suspended and to pay a fine in the amount of \$1,000. In count II, Danner was sentenced to a suspended ten year sentence and ordered

to pay a fine in the amount of \$1,000. The sentences are to be served in the custody of the Mississippi Department of Corrections and the sentence in count II is to run consecutively to the sentence in count I. Feeling aggrieved, Danner filed this appeal asserting one issue: whether the trial court erred in allowing the State of Mississippi to introduce evidence of other crimes to show that appellant was a "drug dealer." Finding no error, we affirm the judgment of the circuit court.

FACTS

The Panola/Tate Narcotics Task Force being led by Agent John Chrestman received information that drugs were being sold out of Hattie Ruth Danner's house. On February 6, 1995, an undercover operation was conducted in an attempt to ascertain whether drugs were being sold out of Danner's house. Participating in this operation was Mississippi Bureau of Narcotics Agent John Warren and confidential informant Reddie Holmes. Warren and Holmes were both given money and instructed to go to Danner's house and purchase crack cocaine. Holmes testified that he and Warren went to Danner's house as instructed and that he purchased five rocks of cocaine for \$60. Warren testified that he witnessed the transaction between Holmes and Danner. Warren testified further that he purchased three rocks of crack cocaine from Danner for \$40. Holmes and Warren testified unequivocally that Danner was the person who sold them the cocaine on February 6. The State also offered into evidence a transcription of a tape that was recorded via a transmitter being worn by Holmes during the transaction.

Danner testified in her own behalf and stated that she did not sell cocaine to Warren or Holmes and that she was not a drug dealer. After hearing the evidence, the jury returned a verdict of guilty on both counts.

I. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE OF MISSISSIPPI TO INTRODUCE EVIDENCE OF OTHER CRIMES TO SHOW THAT APPELLANT WAS A "DRUG DEALER."

During the direct examination of Danner, her attorney asked if she was a drug dealer to which Danner responded, "No sir, No way." Thereafter, in chambers, the State requested that they be allowed to question Danner about a drug deal that allegedly occurred on February 7, 1995, the day after the drug deal for which Danner was being tried. The State argued and the trial court agreed that Danner had opened the door with her denial that she was a drug dealer. The State argued that the law permits evidence of other crimes for impeachment purposes. The trial court then permitted the State to question Danner about the drug transaction that allegedly occurred on February 7. The State was also permitted to question defense witnesses, John Warren and Jason Chrestman, about the February 7th transaction. Both Warren and Chrestman testified that Danner sold drugs to Holmes and Warren on February 7th. We note that at the time of this trial Danner had been indicted for the February 7th transaction but a trial had not been conducted. Danner denied that she sold drugs to Holmes and Warren on February 7th.

Danner argues that evidence of other crimes is not admissible unless the evidence is admitted to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. **M.R.E. 404(b)**. Danner contends that the State did not offer the evidence for any of the reasons stated in rule 404(b) and that the State's "open door" argument exceeded that which is allowed for

impeachment purposes.

This issue has been addressed on numerous occasions by the Mississippi Supreme Court. *See Pierce v. State*, 401 So. 2d 730, 732-733 (Miss. 1981); *Quinn v. State*, 479 So. 2d 706, 708 (Miss. 1985); *Stewart v. State*, 596 So. 2d 851, 853-54 (Miss. 1992); *Spraggins v. State*, 606 So. 2d 592, 596-97 (Miss. 1992). In *Quinn*, a case very similar to the one before us, the defendant, in response to questions by his own attorney, testified that he did not sell marijuana and had never sold marijuana to anyone at any time. *Quinn*, 479 So. 2d at 708. The trial court then permitted the State to introduce evidence of a prior marijuana sale for purposes of impeachment. In affirming the trial court's decision, the supreme court stated as follows:

To be sure, every defendant brought to trial may, if he wishes, try to paint himself as being as pure as the driven snow. He may do this by testifying directly, in response to questions from his own lawyer, that he has never been involved in any criminal activity anywhere. When he indulges in this tactic, however, it is only fair that the State should have the right to test the credibility of such assertions through the normal process of impeachment.

Id. at 709. The supreme court further established its position on this issue in *Stewart*, 596 So. 2d at 853, in which the court stated: "Where an accused, on direct examination, seeks to exculpate himself, such testimony is subject to normal impeachment via cross-examination, and this is so though it would bring out that the accused may have committed another crime." The *Stewart* court, however, recognized that the impeachment privilege was not unlimited. *Id.* In *Stewart*, the defendant denied that he had ever seen cocaine, except on television. *Id.* at 854. The prosecution was then permitted to challenge this statement by questioning Stewart about his alleged possession of cocaine on another date, about his alleged attempt to conceal the cocaine on his mother's person, and about the fact that this took place at the police department. *Id.* In reversing Stewart's conviction, the supreme court stated that while the prosecution was entitled to show that Stewart had in fact seen cocaine before, the prosecution could not go any further. *Id.* (citing *Blanks v. State*, 547 So. 2d 29, 37 (Miss. 1989)), the court held that "the prosecution's impeachment privilege may not exceed the invitation extended." *Id.* at 853. The supreme court found that Stewart's alleged prior possession of cocaine was beyond the scope of what Stewart had denied, i.e., that he had never seen cocaine. *Id.* at 854.

Turning to the case before us, we must determine whether the prosecution, in questioning Danner, Warren, and Chrestman, went beyond the invitation extended by Danner when she stated that she was not a drug dealer. Although the line we must walk is a fine one, we believe that the prosecution in this instance did not go beyond Danner's invitation. Danner stated that she was not a drug dealer. The prosecution then presented competent evidence that on the day after the charge for which she is being tried arose, Danner sold cocaine to both Holmes and Warren. We find this evidence to be within the permissible parameters recognized by *Quinn* and progeny. We therefore find Danner's argument to be without merit and affirm the decision of the circuit court.

THE JUDGMENT OF THE PANOLA COUNTY CIRCUIT COURT OF CONVICTION OF TWO COUNTS OF SALE OF COCAINE AND SENTENCE IN COUNT I OF TEN YEARS TO SERVE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE LAST SIX YEARS SUSPENDED AND \$1,000 FINE; SENTENCE IN COUNT II OF TEN YEARS SUSPENDED WITH COUNT II TO RUN CONSECUTIVELY TO COUNT I

AND FINE OF \$1,000 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., CONCURS IN RESULT ONLY.