

IN THE COURT OF APPEALS 05/07/96
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00306 COA

JAMES PATTERSON

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. JOHN L. HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TOM T. ROSS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JEAN SMITH VAUGHAN

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL - SALE OF A CONTROLLED SUBSTANCE

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SIXTY YEARS IN THE
MDOC AS AN HABITUAL OFFENDER AND FINED A SUM OF TWO MILLION DOLLARS
(2,000,000.00).

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

BARBER, J., FOR THE COURT:

James Patterson was indicted and convicted of the crime of sale of a controlled substance in violation of section 41-29-115(a)(4) of the Mississippi Code. On appeal, he argues that the lower court erred in granting the prosecution's instruction allowing the jury to find Patterson guilty of the crime charged if it were proved that he aided or abetted another in committing the act. We disagree and affirm the decision of the lower court.

FACTS

This appeal arises from the sale of cocaine to an undercover agent. The agent was wearing a microphone during the transaction, and a transcript of the recording was admitted into evidence. It is uncontroverted that an informant, Marilyn Barron asked Patterson for twenty dollars worth of cocaine. At trial, witnesses for the State testified that Patterson sold the cocaine to Barron. Patterson denied selling drugs to Barron. Instead, Patterson testified that he only facilitated the purchase by locating someone who had the cocaine and sending them to the prospective buyers.

ANALYSIS

Patterson argues that, as instructed, the jury could have found that Patterson, while acting in concert with another, did some act connected with the crime of sale of a controlled substance and found him guilty. This could be the result even if the jury did not believe beyond a reasonable doubt that all elements of the crime had been proved against the person whom Patterson was accused of aiding or abetting. Patterson also complained that he should have been allowed additional time in which to construct and propose a limiting instruction. The instructions given of which Patterson complains are S-1 and S-2 which read as follows:

S-1 The defendant, James Patterson, has been charged with the crime of sale of a controlled substance.

If you find from the evidence in this case beyond a reasonable doubt that:

1) the defendant had cocaine, a controlled substance, and

2) on May 29, 1992, the defendant, James Patterson, knowingly or intentionally sold, transferred, delivered or distributed said controlled substance to Margaret Hardmon,

then you shall find the defendant guilty as charged.

If the state has failed to prove any one or more of these elements beyond a reasonable doubt, then you shall find the defendant not guilty.

S-2 The Court instructs the jury that each person present at the time, and consenting to or encouraging the commission of a crime, and knowing, wilfully and feloniously doing any

act which is an element of the crime, or immediately connected with it, or leading to its commission, is as much a principal as if he had with his own hand committed the whole offense; and if you believe from the evidence, beyond a reasonable doubt, that the defendant, JAMES PATTERSON, did wilfully, knowingly, unlawfully and feloniously do any act which is an element of the crime of sale of a controlled substance or immediately connected with it, or leading to its commission, then and in that event, you should find the defendant guilty as charged.

We find that, when taken together, these instructions clearly and fairly instruct the jury. When read as a whole, the instructions require that the State prove beyond a reasonable doubt every element of the crime charged. *See Hornburger v. State*, 650 So. 2d 510, 515 (Miss. 1995).

We are also careful to heed the legal principle that all jury instructions must be supported by the evidence. Unlike the findings in the recent decision in *Hooker v. State*, No. 092-KA-00242-SCT, 1996 WL 122898, there is more than sufficient evidence that Patterson aided or abetted in the drug transaction. Patterson testified that he arranged the drug deal in the hopes that he would receive drugs as a commission for doing so. According to the testimony at trial, this is a common practice. There is more than enough evidence to find that by Patterson's own admission, he aided and abetted the sale of a controlled substance.

The jury also had sufficient evidence to convict Patterson as a principal per Instruction S-1. Several witnesses for the prosecution testified that Patterson was the direct perpetrator of the crime. It is entirely within the province of the jury to determine the weight and credibility to be assigned witness testimony. *Jackson v. State*, 614 So. 2d 965, 972 (Miss. 1993). It stands to reason that the jury simply believed the witnesses for the prosecution and did not believe the witnesses for the defense. This is the sole prerogative of the jury. Accordingly, we affirm the decision of the trial court.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF THE SALE OF A CONTROLLED SUBSTANCE AND SENTENCE OF SIXTY (60) YEARS AS A HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF \$2,000,000.00 IS AFFIRMED. ALL COSTS ARE ASSESSED TO COAHOMA COUNTY.

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