IN THE COURT OF APPEALS 3/11/97

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01195 COA

LARRY MAYFIELD

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. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TRAVIS BUCKLEY

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR.

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: FELONY-SALE OF COCAINE

TRIAL COURT DISPOSITION: CONVICTED OF SALE OF COCAINE AND SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MDOC AND A FINE OF $2,000.00.

BEFORE BRIDGES, C.J., DIAZ, AND KING, JJ.

PER CURIAM:

Larry Mayfield (Mayfield) was indicted, tried, and convicted in the Scott County Circuit Court for the sale of cocaine, and sentenced to serve a term of fifteen (15) years in the custody of the Mississippi Department of Corrections (MDOC) and a fine of $2,000.00. On January 31, 1992, Mississippi Bureau of Narcotics Agent Warren Buchanan (Buchanan) joined a confidential informant in Morton, Mississippi to make a drug buy. Buchanan and the confidential informant traveled to an area of Morton called "the Bottom", and there saw two black males in a yard. One of the males was defendant Mayfield and the other was Robert Boyd (Boyd). Boyd was talking to Mayfield who was shoveling dirt. Buchanan and the confidential informant pulled up to the yard in their vehicle, and Boyd approached Buchanan and asked what he wanted. Buchanan replied that he wanted a "twenty", which was slang for twenty dollars worth of cocaine. Boyd went to Mayfield who pulled a pill bottle from his pocket and took out an object and handed it to Boyd. Boyd delivered the object to Buchanan who gave Boyd a twenty dollar bill. Boyd took the twenty dollar bill to Mayfield who put the money in his pocket. The object Boyd delivered to Buchanan was tested at the Meridian Crime Lab and determined to be crack cocaine. Mayfield claimed not to remember the events of that night and denied ever selling cocaine. On appeal he raises two issues: The trial court erred in granting instructions number S-1 and S-3, and the trial court committed plain error in permitting the state witnesses to testify falsely that the defendant had fled from law enforcement.

Mayfield did not object to instruction S-1 at trial, and is barred from raising his objection for the first time on appeal. *Davis v. State*, 568 So. 2d 277, 279 (Miss. 1990) ("This Court has repeatedly held that failure to object to a jury instruction constitutes a waiver."). Instruction S-1 was a standard elements-of-the-crime instruction, and Mayfield's assertion that the trial court erred in granting it is not supported by any legal argument or relevant case authority. Instruction S-3 instructed the jury that if two people act in concert in the commission of a crime, then both people are equally guilty of the crime. At trial, Mayfield objected on the grounds that S-3 was a conspiracy instruction, but on appeal argues that the instruction does not require the jury to find that he acted knowingly, wilfully or intentionally. The jury was so instructed by instruction S-1. Mayfield's argument is not only meritless and unsupported by case authority, it is procedurally barred. *Haddox v. State*, 636 So. 2d 1229,

1239-40 (Miss. 1994) ("The assertion on appeal of grounds for an objection [to instructions] which was not the assertion at trial is not an issue properly preserved for appeal.").

While cross-examining two of the state's witnesses, Mayfield elicited testimony regarding the difficulty the law enforcement had in apprehending Mayfield because he was supposedly on the run. On appeal Mayfield claims that the trial court had a duty to object sua sponte to the testimony as prejudicial and inflammatory. Again, Mayfield is procedurally barred from rasing this issue for the first time on appeal. Mayfield elicited the testimony himself, not once, but twice and failed to voice any objection until now. *Fleming v. State*, 604 So. 2d 280, 291 (Miss. 1992) ("[A] defendant cannot complain of evidence which he himself brings out.") This issue is meritless. We affirm the ruling of the Scott County Circuit Court.

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND A FINE OF $2,000.00 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

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