

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00833 COA**

**TERRY HILL**

**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. JOHN M. MONTGOMERY

COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

FOR APPELLANT:

THAD BUCK

FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: CRIMINAL: SALE OF CONTROLLED SUBSTANCE

TRIAL COURT DISPOSITION: SALE OF COCAINE: SENTENCED TO SERVE A TERM OF  
20 YRS. IN THE MDOC TO RUN CONCURRENT WITH CAUSE #7022 & A FINE OF \$10,  
000.00;

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

PER CURIAM:

Hill was convicted in the Circuit Court of Clay County for the sale of crack cocaine to an undercover officer of the Mississippi Bureau of Narcotics and a confidential informant. At trial, Hill denied selling the crack cocaine, but was positively identified by both the officer and the confidential informer as the offender. The officer testified that Hill had a tattoo on his stomach that appeared to be a marijuana plant. Hill contends that the trial court abused its discretion under Mississippi Rules of Evidence 401, 403, and 901 by admitting this testimony into evidence.

At trial, Hill's only objection to the evidence in question was raised pursuant to Rule 403. Accordingly, the trial judge engaged in a balancing process to determine if the probative value of Officer Marshall's testimony that Hill had a tattoo of a marijuana plant on his stomach was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or of misleading the jury. The court determined that the evidence went to identification of Mr. Hill as the offender, and was not substantially prejudicial to Hill. We agree. In doing so, our task is not to engage in a second balancing process, but to determine whether the trial court abused its discretion in weighing the factors and admitting the evidence. *Foster v. State*, 508 So. 2d 1111, 1118 (Miss. 1987).

As to Hill's second contention that the trial court abused its discretion under Rules 401 and 901 by allowing evidence of the marijuana plant tattoo on his stomach, we find that his objection was untimely raised. He did not raise an objection pursuant to either of these rules at trial. "It is elementary that different grounds than the objections presented to the trial court cannot be presented for the first time on appeal." *Thornhill v. State*, 561 So. 2d 1025, 1029 (Miss. 1989). We will not hear objections on appeal raised on grounds different from those raised at trial. Therefore, we affirm the conviction and sentence.

**THE JUDGMENT OF CONVICTION OF THE CIRCUIT COURT OF CLAY COUNTY OF THE SALE OF A CONTROLLED SUBSTANCE AND SENTENCE OF 20 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, TO RUN CONCURRENTLY WITH PREVIOUS SENTENCE WITH THE PAYMENT OF A FINE IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00) IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO TATE COUNTY.**

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