

7/1/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-01094 COA

JAMES BROWNLEE A/K/A JAMES A. BROWNLEE

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 M. MONTGOMERY

COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID WAYNE LAMBERT

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS DISTRICT ATTORNEY: FORREST ALLGOOD

NATURE OF THE CASE: SALE OF COCAINE

TRIAL COURT DISPOSITION: SENTENCED TO SERVE A TERM OF FIFTEEN (15) YEARS
IN THE CUSTODY OF MDOC AND A FINE OF \$10,000.00

MANDATE ISSUED: 7/22/97

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

PAYNE, J., FOR THE COURT:

James Brownlee was indicted and convicted of the sale of cocaine. The trial court sentenced him to serve fifteen (15) years in the custody of the Mississippi Department of Corrections and to pay a fine in the sum of \$10,000.00. The court denied Brownlee's motion for JNOV or, in the alternative, a new trial. We find that Brownlee's issue on appeal has no merit and therefore affirm.

FACTS

On February 23, 1993, Derek Holland, an agent with the Tri-County Narcotics Task Force, went to West Point, Mississippi, as part of an undercover operation. During this operation, Agent Holland purchased a bag of crack cocaine for \$50.00 from James Brownlee. Agent Holland testified that after he made the purchase, he placed the bag of cocaine in the trunk of his car and transported it to his office where he gave the substance to his supervisor, Robert Jennings. Jennings testified that he stored the evidence in a safe until he transported the evidence to the Mississippi Crime Lab in Tupelo, Mississippi, where it tested positive for cocaine. At trial, the State offered a bag of cocaine into evidence as Exhibit 1. Agent Holland identified the Appellant as being the person from whom he purchased a bag of cocaine on February 23, 1991, and he further testified that Exhibit 1 was the same bag of cocaine that he purchased from Brownlee on that date.

Brownlee chose to rest his case without putting on any evidence. The jury returned a verdict of guilty of the sale of cocaine. The trial court subsequently denied Brownlee's motion for JNOV/new trial, and Brownlee now appeals.

ANALYSIS

I. DID THE TRIAL COURT ERR IN ADMITTING INTO EVIDENCE THE COCAINE THAT AGENT HOLLAND ALLEGEDLY PURCHASED FROM BROWNLEE?

Brownlee contends that the State did not prove beyond a reasonable doubt that the substance sold to Agent Holland was, in fact, cocaine. He argues that the State failed to lay a proper chain of custody for the substance Agent Holland allegedly purchased from Brownlee. Brownlee contends that Agent Holland did not properly label the substance following the purchase. Brownlee bases this assumption on Agent Holland's testimony that he was not sure that he labeled the substance bought from Brownlee before putting it in the trunk of his car. Brownlee argues that there was a chance for accidental or deliberate substitution in this case based on Robert Jennings's testimony that it is possible for substances to be mixed up with other "buys" in the trunk of the car if they are not labeled. Brownlee contends that the bag of cocaine should not have been admitted into evidence absent a proper showing of the chain of custody, and that he is entitled to a reversal of his conviction for the sale of cocaine.

The State argues that there was insufficient evidence for concluding, as Brownlee does in his argument, that Holland had misidentified or mislabeled the substance entered into evidence against him. The State contends that Holland's testimony along with that of his supervisor, Robert Jennings, was sufficient to establish that the cocaine admitted into evidence was the same cocaine purchased from Brownlee on the date in question. We agree.

Mississippi Rule of Evidence 901(a) states: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." M.R.E. 901(a). The Mississippi Supreme Court has held that the test for chain of custody is "whether there is any indication of tampering or substitution of evidence." *Wells v. State*, 604 So. 2d 271, 277 (Miss. 1992). Furthermore, the State does not have to produce every person who handled the evidence, nor does the State have to account for every minute of every day. *Butler v. State*, 592 So. 2d 983, 985 (Miss. 1991).

In the present case, Agent Holland unequivocally identified Brownlee as the person from whom he purchased crack cocaine on February 23, 1993. Holland testified that after he made the purchase, he placed the cocaine in a bag in the trunk of his car and immediately took the evidence back to his office for proper recording and shipment to the drug lab. Although Holland testified that he could not remember specifically labeling the purchase from Brownlee, he did testify that it was his normal procedure to do so. Holland also testified that the substance being introduced into evidence had his markings on it along with his initials. While Brownlee alleges that the bag of cocaine could have been mixed up with other drug "buys" in the trunk of Holland's car, he offers no evidence to support the allegation.

The State also offered testimony from Robert Jennings that he had never known Agent Holland to mix up a drug buy with other "buys." Jennings testified further that Agent Holland followed proper procedures in making the purchase and ultimately getting the substance to the crime lab. Jennings also identified Exhibit 1 as being the bag of cocaine that he received from Holland and transported to the crime lab. Jennings testified that he knew that Exhibit 1 was the same evidence given to him by Agent Holland because the evidence had Jennings's initials on it as well as the date he delivered it to the crime lab.

We do not find the trial court to be in error. The decision of whether the State has properly shown the chain of custody of evidence is left to the discretion of the trial court, *Wells*, 604 So. 2d at 277, and this Court will not reverse the trial court's ruling "absent abuse resulting in prejudice to the defendant." *Gibson v. State*, 503 So. 2d 230, 234 (Miss. 1987). This Court holds that the State properly presented the chain of custody of the evidence, and we find this issue to be without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF CLAY COUNTY OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF \$10,000.00 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLAY COUNTY.

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