

IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00436 COA

ANDRE TURNER A/K/A GERALD

ANDRE TURNER 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. ROBERT G. EVANS

COURT FROM WHICH APPEALED: SIMPSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JOHN EDWARD JACKSON

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: DEWITT ALLRED III

DISTRICT ATTORNEY: DEWITT L. FORTENBERRY, JR.

NATURE OF THE CASE: CRIMINAL-FELONY

TRIAL COURT DISPOSITION: TRANSFER OF COCAINE: SENTENCED TO SERVE A TERM OF 10 YRS IN THE MDOC

MANDATE ISSUED: 11/12/97

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

SOUTHWICK, J., FOR THE COURT:

Andre Turner was convicted in the Circuit Court of Simpson County of selling a controlled substance. He was sentenced to serve 10 years. He appeals, arguing there was insufficient evidence to convict him and that the verdict was against the overwhelming weight of the evidence. Finding no error, we affirm.

FACTS

On October 19, 1993, Defendant Andre Turner sold cocaine to a confidential informant for the narcotics division of the Simpson County Sheriff's Office. The informant was wired and the conversation between Turner and the informant was recorded and monitored by a narcotics officer. The informant and the narcotics officer that monitored the tape testified that Turner sold the cocaine and that Turner's voice was on the tape. Turner testified on his own behalf and denied selling drugs to the informant and denied that his voice was on the tape.

On April 3, 1995, Turner was convicted of selling cocaine and sentenced to ten years in prison.

DISCUSSION

I. Sufficiency of the Evidence

Turner argues that the testimony of the State's witnesses was inconsistent and created reasonable doubt that Turner was guilty. Turner contends that on cross examination of the informant, it was revealed that the informant had told several lies. He argues that the informant lied about having used drugs in the past, about how many drug-buys he had made as an informant, and about how much money he made.

The State argues that testimony of a confidential informant is legally sufficient to support a conviction for sale of a controlled substance even if the confidential informant is a convicted felon, drug addict, and general reprobate, and even if there is no tape recording of the "controlled buy" introduced into evidence. *Clayton v. State*, 582 So. 2d 1019, 1021 (Miss. 1991). The State also cites authority for the proposition that uncorroborated testimony of an undercover narcotics agent, standing alone, is legally sufficient to sustain a conviction. *Doby v. State* 532 So. 2d 584 (Miss.

1988). Here, the testimony was hardly alone. The officer who accompanied the informant into the area in which the buy was to be made, and who while waiting in his automobile overheard the conversation over the body wire, testified as to hearing the buy being made by the informant from a man whose voice he recognized as Turner's. The tape was also played for the jury.

It was for the jury to resolve conflicts in the evidence and to determine the weight and worth to be given to a witness's testimony. *Noe v. State*, 616 So. 2d 298, 303 (Miss. 1993). There was sufficient evidence to convict.

II. Weight of the Evidence

Turner argues that the court erred in denying his motion for a judgment notwithstanding the verdict, or in the alternative, a new trial. He argues that the testimony presented against him was not credible, and that no reasonable jury could have found him guilty.

The question of whether a verdict should be set aside and the case submitted to a new jury is within the discretion of the trial judge, whose ruling will not be reversed unless there is a showing of abuse of discretion. *Moore v. State*, 617 So. 2d 272, 274 (Miss. 1993).

There was substantial evidence to convict Turner, the verdict was not against the overwhelming weight of the evidence, and the court did not abuse its discretion.

THE JUDGMENT OF THE SIMPSON COUNTY CIRCUIT COURT OF CONVICTION OF TRANSFER OF A CONTROLLED SUBSTANCE AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.