

IN THE COURT OF APPEALS 03/11/97
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00766 COA

DEWAYNE LYNELL BRANTLEY

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. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

DON KILGORE

MAX KILPATRICK

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE LOWRY

DISTRICT ATTORNEY: J. KENNEDY TURNER

NATURE OF THE CASE: CRIMINAL

TRIAL COURT DISPOSITION: POSSESSION OF COCAINE, 3 YEARS IN PRISON

BEFORE McMILLIN, P.J., BARBER, AND COLEMAN, JJ.*

McMILLIN, P.J., FOR THE COURT

A jury in the Circuit Court of Scott County convicted Dewayne Brantley of possession of cocaine. Brantley now seeks the reversal of his conviction asserting that (1) the court erred when it denied his motion to suppress certain evidence, and (2) the evidence was not sufficient to support the verdict. Finding these issues to be without merit, we affirm.

I.

Facts

On three separate occasions within the span of a month, a confidential informant purchased cocaine from a residence located in Scott County. Based on this information, Justice Court Judge Wilber McCurdy issued a search warrant for the premises authorizing a search for illicit drugs. Several officers from the Mississippi Bureau of Narcotics, along with several local police officers, executed the warrant during the early morning hours of October 14, 1994. The warrant was executed in a "no knock" manner. The police found, upon entering the residence, Dewayne Brantley asleep in a bedroom. On the nightstand next to the bed where Brantley was sleeping was a wallet which contained Brantley's college identification. The officers also discovered a pill bottle which contained three rocks of crack cocaine in the open drawer of a dresser located in the bedroom.

II.

Suppression of Evidence

Brantley raises as his first assignment of error the court's failure to suppress evidence recovered during the search. Brantley attacks the search that produced the illicit drugs in this case on two fronts. First, he claims that the warrant as issued did not conform to the requirements of section 41-29-157(c) of the Mississippi Code of 1972. This provision of the Mississippi Code provided a method by which law enforcement officers could, in cases involving controlled substances, obtain a warrant that, on its face, permitted entry without knocking and announcing. However, this provision contained an automatic repealer with a repeal date of July 1, 1974. Admittedly, the matter of the viability of this section is somewhat confusing because the legislature enacted an amended section 41-29-157 in 1992 which again included the warrant provisions of subsection (c). However, the reenactment also included the previous repealer language for this particular subsection. The 1992 amendments to section 41-29-157 apparently related to subsections of the law other than subsection (c). While it appears that a more logical method of amendment would have been simply to omit subsection (c) in the reenactment; nevertheless, the clear language of the law shows that the part of the statute relied upon by Brantley has long since ceased to be a part of the laws of this State. Thus, this argument is without merit.

Alternatively, Brantley urges that the trial court erred under general constitutional considerations when it failed to exclude the fruits of the "no-knock" search. The Fourth Amendment to the United States Constitution protects "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. This right also extends

against the states by virtue of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 646- 647 (1961). In evaluating the reasonableness of a search the court should examine the manner in which the search was executed. *Wilson v. Arkansas*, 115 S. Ct. 1914, 1916 (1995). "This is not to say, of course, that every entry must be preceded by an announcement." *Id.* at 1918. The Supreme Court and the Fifth Circuit have indicated that an unannounced entry may be justified under certain exigent circumstances, such as where the officers believe that the evidence would likely be destroyed in the event that advance notice were given or where a violent response to such an announcement is reasonably anticipated. *See Id.* at 1919; *Ker v. California*, 374 U.S. 23, 40-41 (1963); *United States v. Mendez*, 437 F. 2d 85, 86 (5th Cir. 1971).

Brantley's argument centers on the proposition that "there was no anticipated violence, nor were weapons used or present at any of the three previous transactions." While it is true that anticipation of armed resistance is one basis to proceed with a "no-knock" search, what Brantley appears to overlook is that it is not the only basis. As we have previously observed, reasonable concern that formally knocking and announcing the presence of police officers would provide an opportunity to destroy or conceal incriminating evidence is an independent basis to execute a "no-knock" warrant. *Wilson*, 115 S.Ct. at 1919. This Court is satisfied that such considerations legitimately existed on the facts of this case, and we can find no abuse of discretion in the trial court's decision to deny Brantley's motion to suppress on this basis.

III.

Sufficiency of Evidence

As his final assignment of error, Brantley asserts that the State failed to present any specific credible evidence of possession that would support the verdict. Brantley relies on a line of cases in which the Mississippi Supreme Court has held that mere physical proximity to contraband does not, in itself, show constructive possession. Brantley argues that the State's case was weak by pointing out that his brother, Carl Lee Brantley, was the owner of the residence searched, and a female also occupied the residence at the time of the search.

In reviewing the legal sufficiency of the evidence, our authority to disturb the jury's verdict is quite limited. *Clayton v. State*, 652 So. 2d 720, 724 (Miss. 1995). We consider the evidence in the light most consistent with the verdict. *Id.* The prosecution must be given the benefit of "all favorable inferences that may reasonably be drawn from the evidence." *Id.* We may not reverse unless one or more of the elements of the offense charged is such that reasonable and fairminded jurors could only find the accused not guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993).

In this case, the burden was on the State to prove that Brantley willfully had the cocaine in his possession and under his conscious control. This does not mean that the State was required to show that Brantley had actual physical possession of the cocaine. To the contrary, the State could meet its burden by showing that the cocaine was under Brantley's dominion or control. *Fultz v. State*, 573 So. 2d 689, 690 (Miss. 1990). Since Brantley was not in physical possession of the drugs and was not the owner of the house, the State had to show additional incriminating circumstances to justify a finding of constructive possession. *Id.*

A review of the testimony reveals that additional incriminating circumstances were present in this

case. While the house was not Brantley's residence, he was shown to be in exclusive possession of the bedroom he occupied alone. The drugs were visible in an open dresser drawer in the room, from which the jury could reasonably infer that Brantley was actually aware of the presence of the contraband. This actual knowledge combined with his physical dominion of the room was, in our opinion, sufficiently incriminating to permit a guilty verdict under the *Fultz* opinion.

After considering all of the evidence in a light most consistent with the verdict, reasonable and fairminded jurors were entitled to find Brantley guilty of possession of cocaine. As a result, we find the issue of the sufficiency of the evidence to be without merit.

It is unclear from his brief whether Brantley is also claiming the trial court erred by denying his motion for a new trial on the ground that the verdict was against the weight of the evidence. Out of an abundance of caution, we have reviewed the record from this standpoint. Brantley presented no evidence explaining the circumstances of his presence in the room, but chose to rest after the State presented its case. There was credible evidence presented by the State on all the essential elements of the crime. In considering whether the jury's verdict was against the weight of the evidence, we can discover little or no affirmative proof tending to demonstrate Brantley's innocence. Thus, we cannot conclude that the trial court was manifestly in error in denying the motion.

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF CONVICTION OF POSSESSION OF COCAINE AND SENTENCE OF THREE (3) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND \$10,000 FINE IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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

*Judge Frank D. Barber participated in the consideration of this case as a member of the panel; however, he died on March 4, 1997, prior to the hand-down date of this opinion.