

. IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00373 COA

JOHN JOSEPH DEDEAUX

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. JAMES E. THOMAS

COURT FROM WHICH APPEALED: HANCOCK COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES G. TUCKER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: WAYNE SNUGGS

NATURE OF THE CASE: CRIMINAL: SALE OF COCAINE

TRIAL COURT DISPOSITION: SENTENCED AS HABITUAL OFFENDER TO THIRTY (30)
YEARS IN MDOC

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

BRIDGES, P.J., FOR THE COURT:

John Dedeaux was convicted as an habitual offender for the transfer of a controlled substance (cocaine) and sentenced to thirty years in the Mississippi Department of Corrections. He appeals this

conviction, arguing that the trial court erred in showing a single frame speed of a video tape after jury deliberations had begun that was presented during trial at normal speed. Finding his argument is without merit and procedurally barred, we affirm the conviction and sentence of the lower court.

STATEMENT OF THE FACTS

In May of 1993, Terry Eley of the Bay St. Louis Police Department was working in a multi-jurisdictional task force. He had arranged for Warren Newman and April Nelson of the Biloxi Police Department to work undercover in Hancock County. They used a car equipped with a video camera. The officers went to the corner of St. Francis and Sycamore Streets and purchased a rock of cocaine for twenty dollars. Both officers identified John Dedeaux as the perpetrator. However, neither officer noticed identifying marks. Dedeaux showed the jury that he had tattoos on both arms and a scar by his eye.

A video tape of the transaction was played for the jury. Detective Eley identified Dedeaux as the seller on the tape and in court. Eley had known Dedeaux for four years and had seen him almost daily when he was working. After the jury began deliberations, they sent a note requesting that the tape be played again. The jury was brought back to the courtroom to view the tape again. The tape was played twice. Officer Newman then offered to play the video frame by frame and was directed by the judge to do so. It was then frozen at a spot selected by a juror. The jury then retired to deliberate again and returned with a guilty verdict in eight minutes. Dedeaux was sentenced as a habitual offender to serve thirty years in the Mississippi Department of Corrections. He now appeals this conviction arguing that it was error for the lower court to allow the tape to be replayed after deliberations had begun. Finding that his argument is procedurally barred, we affirm the conviction of the lower court.

ARGUMENT AND DISCUSSION OF THE LAW

After the jury had started its deliberations, the following occurred:

THE COURT: All right. Let's get on the record. The jury has sent out a note requesting that the tape be played for them again. The request was to have somebody play it, and they didn't care if it was in the jury room or out here. Since it's set up out here, I didn't have a problem with letting them come back in and watching it. Do you, State's counsel?

MR. WOOD: No, sir. I was just trying to think of how the jury might be able to look at it closer because it's a fair distance from them, whereas in the jury room they might be able to see it up close.

THE COURT: Any objection to doing it out here?

MR. GEX: No, sir. I have no objection as long as there is no testimony or no comments being made.

THE COURT: There won't be, and Officer, obviously don't say anything. Let's bring them out.

(THE JURY WAS RETURNED TO THE COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HAD IN THEIR PRESENCE).

THE COURT: If some of you want to be seated out front so you can see better. If some of you want to stand, that will be all right, too.

A JUROR: I need to get my glasses.

THE COURT: Okay. Let me get the other juror in here.

(PAUSE).

THE COURT: Officer, I asked that it be run to the point where the transaction is about to begin.

OFFICER NEWMAN: Yes, sir, I did.

THE COURT: Okay.

(TAPE WAS PLAYED FOR THE JURY).

THE COURT: Don't talk, please. Do y'all want it backed up and played again? I have got an indication of yes from one at least. Back it up and play it.

OFFICER NEWMAN: I can also advance frame by frame if you'd like.

A JUROR: You can freeze the thing again, if you want.

THE COURT: Go ahead and frame by frame freeze frame.

(TAPE WAS PLAYED FOR THE JURY).

A JUROR: Can you get it clearer?

OFFICER NEWMAN: Yes, sir. Let me try just a second here.

THE COURT: All right. Is that enough?

A JUROR: Perfect.

THE COURT: Let the jury go back.

(THE JURY WAS RETURNED TO THE JURY ROOM TO DELIBERATE ON THE CASE, AT 2: 57).

THE COURT: Any comments or objections?

MR. GEX: No, your Honor.

MR. WOOD: No, sir.

THE COURT: Okay, we will be in recess until we have a verdict.

Dedeaux claims that the trial court committed reversible error by allowing the frame by frame replay of the video tape because it constituted receipt of additional evidence in violation of the provision of Rule 5.14 of the Mississippi Uniform Criminal Rules of Circuit Court Practice, now Uniform Rule of Circuit and County Court 3.10. However, as shown by the prior summary of the trial, not only did Dedeaux fail to object to the replaying of the video tape, but specifically answered "no" when asked by the trial court if there were any "comments or objections" after the tape was replayed.

It is well settled that a trial judge cannot be put in error on a matter which was not presented to him for decision. *Ballenger v. State*, 667 So. 2d 1242, 1256 (Miss. 1995); *Jones v. State* 606 So. 2d 1051, 1058 (Miss. 1992). As such, this assignment of error is procedurally barred from our review.

THE JUDGMENT OF THE HANCOCK COUNTY CIRCUIT COURT OF CONVICTION OF THE TRANSFER OF A CONTROLLED SUBSTANCE (COCAINE) AND SENTENCE OF THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS AN HABITUAL OFFENDER IS AFFIRMED. HANCOCK COUNTY IS TAXED WITH ALL COSTS OF THIS APPEAL.

FRAISER, C.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.