

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE

RESPONDENT

v.

TAIWAN J. HARDY,

P

APPELLANT

APPELLATE CASE NO. 2015-001671

PRO-SE SUPPLEMENTAL BRIEF

By: Hardy Taiwan, #321387
BRCI-Murray Unit
4460 Broad River Road
Columbia, S.C. 29210

STATEMENT OF ISSUE(S) ON APPEAL.

1. Whether the trial court erred when it failed to grant the defense motion for a directed verdict for insufficient evidence of a "controlled buy";

2. And whether the "tactics" employed by the Spartanburg Police unfairly targeted minorities for "questionable drug convictions" based on crack cocaine, resulting in disproportionate sentences being imposed, that has the perception of cruel and unusual punishment, in violation of Appellant's Sixth, Eighth and Fourteenth Amendment rights?

STATEMENT OF THE CASE

Appellant Taiwan Javon Hardy, was charged out of Spartanburg County, with "distribution of crack cocaine", in violation of S. C. Code Ann. §44-53-375. The Appellant exercised his Sixth Amendment right to trial by jury, and during the July 2015 term of General Sessions. The case proceeded to trial before Judge Roger L. Couch.

The Appellant was represented by Mr. William Bean, and the State teamed up with Assistant Solicitors Hunter Blouin and Edward Hunter. And the conclusion of trial, the Appellant was convicted of the charge, and given a life sentence based on the word of a "crack addict", that allegedly bought \$20.00 worth of the drug from Appellant, on March 10, 2014.

SUMMARY OF THE ARGUMENT (S)

The initial position the pro-se Appellant argues is that the court erred when it allowed this highly questionable so-called evidence of a unreliable crack addict, to be introduced to jurors, when in fact as well as form, "there was absolutely no corroborating evidence (except that of the C.I.)", that any drug exchange occurred inside hotel room #127 on March 10, 2014. Nor for that matter, "was the informant Brandy Cannon '**searched**' by police, prior to entering the hotel room, when the very place the C.I. testified she normally hid crack (i.e. in her bra), was not

searched.

Officer McJunkin testified it was very common for Cannon to keep drugs in her bra. (R. 107, 11-13. Cannon testified "the police search prior to her arriving at the hotel, room #127 consisted of a pat down, pulling out her pockets". R. 83, 3-18.

Officer McJunkin also testified (R. 101, lines 16-21), that officers on scene on March 10, 2014, were "all male policeman", and they searched as best they could being male. Thus, there is nothing existing in the record which would protect the Appellant's due process right that proper procedure was followed which could support a finding "Brandy Cannon, a known drug addict, did not possess drugs prior to entering into hotel room #127". Whereas, the penalty Appellant received (i.e. life imprisonment) based on such a foul-up, is too severe to pass over as a harmless error. Wherefore, Appellant contends there was insufficient evidence to submit this case to jurors based on distribution of crack cocaine, predicated on a controlled buy when no evidence exist of any exchange in money for drugs.

Then taking the above factors under consideration and adding Cannon's testimony of how she knew the Appellant? R. 61. lines 14-17.

Q. Ms. Cannon, how long have you known Mr. Hardy?

A. Maybe ten or eleven years.

Q. And how did you meet him? How do you know him?

A. We used to do drugs together.

would in essence support the theory Appellant did not give Cannon anything he himself was using.

Finally, normally in a controlled buy situation. Police provide the money in which the C.I. uses to purchase the drugs. R. 97 lines 5-10. (Testimony By Officer Travis McJunkin)

And essentially once we establish that there's a sterile environment or a clean environment, we'll equip the informant with **recorded funds, recorded money, recorded cash**. Everybody's seen a twenty dollar bill in their money, there's **serial numbers**. **We document those as part of our investigation.**

Thus, not only did the police "not search the informant" prior to entering hotel room #127 on March 10, 2014. No funds allegedly given to Appellant by the informant was recovered. Although the above record demonstrates such procedure was in play. And the testimony by the C.I., that she knew Appellant "was a user rather than a supplier", renders insufficient facts in order to submit the case to jurors.

Next, as to the summary of the second argument Appellant posits here. Appellant begins by positing a not so handsome history Spartanburg County Police Department has in regards to drug cases, its forensic department's handling of drug evidence. And especially police "tactics or techniques" with regards to building cases against minority offenders, based on crack cocaine.

Here, the State would suggest that the Appellant is deserving of life imprisonment for a subsequent conviction based on

an alleged drug sale. To which, no independent evidence exist that Appellant sold Cannon drugs on March 10, 2014. And no money cllected from the Appellant, which would tend to confirm the trade. The United States Congress heard testimony from local and federal law enforcement agencies. And all reached a national consensus.

It was agreed upon which was the result of "the Fairness In Cocaine Sentencing Act" being unanimously passed in 2010. Which freed over 6,000 inmates based on crack. That not only were the sentences disproportionate based on race. But moreover, minorities were "the intended targets" for prosecution for possessing and distribution of the drug. When expert testimony before Congress demonstrated, "there was no scientific distinction" between cocaine and crack, as a bases for increased penalties.

In addition, Congress found that the hightened police presence which targeted minority communities based on crack possession and distribution was "unconstitutional". Such equal protection violations was and is applicable to the states as well.

For argument sake, if Appellant was to request out of the hundreds of cases testified to during his trial that C.I. Brandy Cannon was involved with in connection with the Spartanburg Drug Unit. What would be the result in percentage, per population in this State, for which the Spartanburg Police Drug Unit targeted minorities as opposed to caucasians. In otherwords, under such a equal protection challenge, if proven, such would have the result of invalidating the conviction and sentences. Appellant en-

ters, the following legal arguments in support of these issues.

LEGAL ARGUMENTS IN SUPPORT OF APPEAL.

According to the S.C. Rule of Criminal Procedure, 19 (a). On a motion by the defendant or on the court's own motion. The court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial court shall consider only 'the existence' or 'non-existence' of the evidence not its weight. SCRCrim. Proc. 19(a).

The defendant in this case was indicted for "distribution of crack cocaine", in violation of §44-53-375, S.C. Code Ann. Which connotes the following essential elements: as charged by the court on Tr. tr. p. 165 lines 2-13.

The indictment says that, and I'll go over it with you at this time, that Taiwan J. Hardy did in Spartanburg County on or about March 10, 2014 manufacture, distribute, dispense, deliver, purchase or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with intent to manufacture, distribute, dispense, deliver or purchase a quantity of crack cocaine base, a schedule II controlled substance under the provisions of code section 44-53-375 of the code of laws of South Carolina, 1976 as amended against the peace and dignity of the State and contrary to the statute in such case made and provided.

In accordance with the court's charge in the instant case at bar. The State relied heavily on the prosecution's theory that the Spartanburg Police Department, while utilizing a informant conduc-

ted a "controlled buy" from the appellant, on March 10, 2014, at the Traveler's Inn Hotel, room #127.

However, during the State's presentation of evidence. It was uncovered that (1) that the informant "herself" had set the prospective deal in motion [Tr. tr. p. 55 lines 9-16] as a favor to policeman Travis Mcjunkin; (2) that she knew the Appellant because they used drugs together [Tr. tr. p. 59]; (3) that she Brandy Cannon (C.I.) was given "recorded funds" by police [Tr. tr. p. 97]; and [4], even where the C.I. was known to keep drugs in her bra, police did not search because they were male officers [Tr. tr. p. 101, lines 16-21 and p. 107 lines 11-13].

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id

The admission of evidence is in the sound discretion of the trial court, and its discretion will not be disturbed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E. 2d 262, 265 (2006); State v. Gaster, 340 S.C. 545, 557, 564 S.E. 2d 87, 93 (2002).

In order to reverse the trial court's admission of evidence we must find (1) abuse of discretion on behalf of the trial court; and (2) likely prejudice. State v. Wise, 359 S.C. 14, 21, 596 S. E.2d 475, 478 (2004). A trial court abuses its discretion when its conclusions lack evidentiary support or are controlled by an error of law. Pagan, 369 S.C. at 208, 631 S.E.2d at 265; State v. McDonald, 343 S.C. 319, 325 S.E.2d 464 (2000).

Thus, the Appellant is concerned whereas the trial court committed clear error when it denied the motion for a directed verdict where "proper procedure and safeguards were not employed", in order to have determined the C.I. actually obtained the contraband from the Appellant.

According to the Model Penal Code, involving procedures that must be followed relating to "controlled buys". A recent Indiana Court of Appeals (as persuasive law here) held that the failure to strictly follow the proper procedure can be fatal to cases involving controlled buys.

The court's opinion indicates that, for reasons not stated, the informant was not searched prior to the buy and did not testify at trial, and the audiotape of the buy was unintelligible.

The court concluded by stating that pre-buy search establishes the person making the buy for the police does not have contraband prior to the transaction with the target. Surveillance during the transaction with the target establishes the target as the source of the contraband and "excludes other sources of contraband".

Therefore, any contraband recovered during the search "after the transaction is attributable to the target". Where the C.I. is not searched properly beforehand, the State's evidence falls far short of proving that the defendant possessed the contraband before the buy and transferred it to the C.I..

The above noted is judicially excepted throughout the State of South Carolina. And is normal protocol for conducting "controlled buys". And as the court above noted, without which (i.e.

a proper search of the informant) the State falls far short of proving that the defendant possessed the contraband before the buy and transferred it to the C.I.

Again, a motion for a directed verdict, the court shall consider the "existence or non-existence" of evidence not its weight. Here, such evidence does not exist, (i.e. that the defendant possessed any drugs prior to the C.I. entering the hotel room). Due in large part on the police failure to properly search Brandy Cannon beforehand.

Based on the above argument in support of issue (1), the Appellant is entitled to a reversal as a matter of law. Where the State failed to prove or offer any evidence "that Brandy Cannon, the C.I., did not possess drugs upon entering the hotel room". A fatal flaw when attempting to establish "possession" under S.C. Code §44-53-370.

2. Next, Appellant argues for reversal based on the "tactics employed by the Spartanburg Police Department, which unfairly target minority suspects". Again, as opposed to being the result of police investigations. C.I. Brandy Cannon openly testified "it was done as a favor to Travis McJunkin", the alleged buy from Appellant. Officer McJunkin, testified that the C.I., had already set the deal in motion prior to meeting up with police, via telephone. And finally, having such a questionable

relationship with a female informant in which was addicted for decades to crack cocaine. That police failed to even search prior to attempting a controlled buy. Should never have resulted in Appellant receiving such a harsh penalty.

In Ingraham v. Wright, 430 U.S. 651, 671-72 n. 40 (1977) (the 8th Amendment is concerned with punishment imposed after state has secured formal conviction of guilt). The Supreme Court has held unconstitutional the imposition of criminal punishment for "status offenses" involving punishment for personal characteristics rather than illegal acts.

The Eighth Amendment prohibits the infliction of cruel and unusual punishment upon persons convicted of a crime. See Robinson v. California, 370 U.S. 660 (1962). Even where a sentence sustains constitutional scrutiny under the Eighth Amendment, a sentence may still be seen as excessive (not cruel and unusual) under the Eighth Amendment if it "contravenes 'the evolving standards of decency'" that marks the progress of a maturing society. See Trop v. Dulles, 356 U.S. 86, 101 (1958) Point being, society has previously matured while revisiting the draconic drug sentencing laws, and as of August 10, 2010, the United States Congress voted to change the disparities especially in cases involving minority offenders.

Here, in this day and age. Even in light most favorable to the State. The Appellant is accused of a sale involving a \$20.00 dollar piece of (alleged) crack cocaine. There is evidence the Appellant "is a user as opposed to a drug dealer". For which, the

intended target of §44-53-375's "distribution statute", was not and is not focused on users. But rather, the statute's intended target is distributors of such drug.

The Solem, Court 463 U.S. 277, 292 (1983) held that the imposition of a life sentence without the possibility of parole "for a seventh nonviolent conviction" violated the Eighth Amendment. And Appellant's conviction as well, is a nonviolent one. Thus, based on the above reasoning. Appellant argues at minimum, that his sentence is grossly disproportionate to the offense allegedly committed, and violates equal protection under the Fourteenth Amendment, and Eighth. And therefore this court of appeals can reverse for resentencing, consistent with the Solem Court decision above noted.

Respectfully Submitted,

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cc: filed
5/23/2016

CERTIFICATE OF SERVICE

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Taiwan J. Hardy

Janelle Spearman
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